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119TH CONGRESS } <i>1st Session</i>	SENATE	{ REPORT 119–22
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TO APPROVE THE SETTLEMENT OF THE WATER RIGHT CLAIMS OF THE TULE RIVER TRIBE, AND FOR OTHER PURPOSES

MAY 12, 2025.—Ordered to be printed

Ms. MURKOWSKI, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 689]

The Committee on Indian Affairs, to which was referred the bill, S. 689, to approve the settlement of the water right claims of the Tule River Tribe, and for other purposes, having considered the same, reports favorably thereon, and recommends that the bill without amendment do pass.

PURPOSE

S. 689 would recognize the federally reserved Indian water rights of the Tule River Indian Tribe and authorize, ratify, and confirm a 2007 water settlement agreement between the Tribe and downstream state-based water users, the Tule River Association, and the South Tule Independent Ditch Company (“2007 Agreement”), satisfying the Tribe’s claims to water rights in California. The bill would also authorize funding for water development projects and operation, maintenance, and repair, establish operating rules for the facility to provide drinking water for the Tribe, guarantee water deliveries to downstream state-based users, and transfer certain lands into trust status for the Tribe.

BACKGROUND AND NEED

The Tule River Indian Reservation (Reservation) was created in 1856 as part of the Tejon Reservation on San Joaquin Valley farmland in Tulare County. It was modified by a series of three Executive Orders issued between 1873 and 1878 that enlarged, and sub-

sequently shrank, the Reservation to its current state.¹ The Reservation is comprised of approximately 86 square miles (55,396 acres) on the western slope of the Sierra Nevada Mountains, east of Porterville in California's Central Valley, which cover the Middle Fork of the Tule River. Only about one percent of the Reservation is functionally habitable, and most of that portion is constrained to the lower reach of the South Fork of the Tule River on the western third of the Reservation.

The Tule River's South Fork flows through the Reservation into the Tule River at Lake Success Reservoir. The Tribe generally draws its water from surface flow available from the South Fork and its tributaries as well as limited groundwater supplies from aquifers and springs.² The Reservation's residents suffer from a relatively low standard of living due, in part, to the absence of an adequate and reliable potable water supply and system. Groundwater is limited in both quantity and quality, and in years of average and below average precipitation, surface water supply falls below community need. In the summer months, low groundwater and surface water supplies create municipal water shortages, resulting in Reservation residents having little to no access to running water. Current drought conditions and river level decreases are forcing the Tribe to rely on bottled water and trucked water to meet the basic needs of its Reservation residents.³ This state of water insecurity interferes with Tribal members' participation in work, school, and other aspects of daily life; prevents the Tribe from providing much-needed on-reservation housing to additional Tribal members; and recently forced the Tribe to relocate its primary economic driver—the Eagle Mountain Casino—to Porterville.⁴

The only known adjudication of water rights on the South Fork of the Tule River occurred in 1916,⁵ in which the United States failed to consider, evaluate, or defend the Tribe's pre-1873 senior water rights claims to the South Fork of the Tule River. In 1922 the United States, on behalf of the Tribe, entered a contract with a downstream state-based water user, the South Tule Independent Ditch Company, for water deliveries without the Tribe's involvement or consent.⁶ The agreement apportioned the flow of the South Tule River under shortage conditions, but failed to construct adequate water storage and delivery systems for the Tribe on the Reservation. In the absence of adequate water storage systems, the Tribe relies on a small number of wells on the Reservation, but flow rates are declining and some have run dry. The Tribe has proposed developing a storage facility, such as a dam or reservoir together with other infrastructure, to meet future water demands.

After ten years of negotiation facilitated by the United States, the Tule River Tribe, South Tule Independent Ditch Company, and the Tule River Association, a consortium of downstream state-

¹Exec. Order of January 9, 1873; Exec. Order of October 3, 1873; Exec. Order of August 2, 1878; Exec. Order of June 2, 1911.

²Native American Rights Fund, Tule River Indian Tribe: Water Settlement Technical Report, pp. 1–1, 1–4, 2–1, 2–2 (2013).

³See Navarro, Elisa, *Tule River Tribe Faces Constant Water Woes*, August 27, 2022, at <https://abc30.com/tule-river-indian-tribe-water-woes-shortage-drought/12170447/>.

⁴*Id.*

⁵Poplar Irrigation Co. v. A.A. Howard, No. 7004 (Cal. Super. Ct. Tulare Cnty. 1916).

⁶Agreement between the United States and the South Tule Independent Ditch Company, May 3, 1922, available at <https://tulerivertribe-nsn.gov/wp-content/uploads/2022/09/1922-Agreement-00054973x105FE6.pdf>.

based irrigators, reached consensus on how to avoid adverse impact from a Tribal water storage project. In 2007, the Tribe entered into a water settlement agreement with the Tule River Association and the South Tule Independent Ditch Company to quantify the Tribe's water rights for the Reservation. The agreement allows the Tribe to store up to 5,828 acre-feet per year of surface water from the South Fork of the Tule River, and for the construction of a reservoir, and requires the release of certain quantities of water to meet downstream state-based needs.

According to the Tribe, the parties assessed the Tribe's current and future needs for domestic, commercial, municipal, industrial, and agricultural purposes, and concluded that the Tribe cannot meet its needs without a water storage facility to serve the Reservation and quantification of its federally reserved water rights, which were affirmed in principle in the 1922 agreement between the Secretary of the Interior and the South Tule Independent Ditch Company.⁷

S. 689 will address the Tribe's ongoing water insecurity and resolve, fully and finally, all of the Tribe's claims to water rights in the State of California by authorizing, ratifying, and confirming the 2007 settlement agreement between the Tribe and the state-based Tule River Association and South Tule Independent Ditch Company, and by providing funding and land to fulfill the settlement.

SUMMARY

S. 689 authorizes, ratifies, and confirms the 2007 Agreement, as amended; ratifies, confirms, declares valid, and quantifies the Tribe's water right as 5,828 acre-feet per year of surface water from the South Fork of the Tule River; establishes the Tule River Indian Tribe Settlement Trust Fund and its subaccounts; authorizes mandatory appropriations of \$518,000,000 for the Tule River Tribe Water Development Projects Account and \$50,000,000 for the Tule River Tribe Operations and Maintenance (O&M) Account; provides for certain federal and Tribally-owned fee lands to be transferred and placed in trust for the Tribe as part of the Tule River Reservation; and places certain requirements on the Secretary of the Interior.

SECTION-BY-SECTION ANALYSIS OF S. 689 AS ORDERED REPORTED

Section 1—Short title; Table of Contents

This section sets forth the short title as the "Tule River Tribe Reserved Water Rights Settlement Act of 2025" and includes a table of contents.

Section 2—Purposes

This section sets forth the 5-fold purpose of the bill to: (1) resolve the water rights claims of the Tule River Tribe, and the United States as its trustee, in the State of California; (2) authorize, ratify, and confirm the Agreement entered into by the Tribe, the South Tule Independent Ditch Company, and the Tule River Association; (3) authorize and direct the Secretary to execute the Agreement and take other actions necessary to carry it out; (4) authorize fund-

⁷These rights form the basis of the Tribe's pending claims for damages against the United States for failure to protect the Tribe's water rights and adequately develop its water resources.

ing to implement the Agreement; and (5) authorize the transfer of certain lands to the Tribe, to be held in trust.

Section 3—Definitions

This section provides definitions for various terms used throughout the bill.

Section 4—Ratification of 2007 Agreement

This section authorizes, ratifies, and confirms the Agreement and certain specified amendments; requires the Secretary to execute the Agreement once the parties agree to amendments regarding the Tribe's priority date, and the Tribe either moves forward with the Phase I Reservoir or selects a substitute site and meets Operation Rules requirements; and authorizes the Secretary to make modifications consistent with congressional approval requirements and federal law.

This section also requires the Secretary and the Tribe to comply with federal environmental laws as applicable, affirms that execution of the 2007 Agreement does not constitute a major federal action for purposes of the National Environmental Policy Act, and provides for the Tribe's costs for related compliance activities to be paid from the settlement Trust Fund.

Section 5—Tribal Water Right

This section ratifies, confirms, declares valid, and quantifies the Tribe's water right as 5,828 acre-feet per year of surface water from the South Fork of the Tule River; requires the Tribe's water right to be held in trust by the United States for the use and benefit of the Tribe; and protects the right from being subject to loss through non-use, forfeiture, abandonment, or other operation of law.

This section also authorizes use of the Tribal Water Right in accordance with the terms of the 2007 Agreement; prohibits alienation and forfeiture; and provides that authorizations of the Act satisfy Non-Intercourse Act requirements.

Section 6—Tule River Tribe Trust accounts

This section establishes the Tule River Indian Tribe Settlement Trust Fund and its subaccounts, and it requires the Secretary to: (1) deposit funds pursuant to section 7(a)(1) and section 7(a)(2); (2) manage the Trust Fund in accordance with the American Indian Trust Fund Management Reform Act of 1994 and other federal laws governing the deposit and investment of Tribal funds; (3) invest the funds with earnings accruing to the Tribe; and (4) make most funds available to the Tribe on the enforceability date, with \$20,000,000 made available immediately to the Tribe for activities related to the Phase I Reservoir and Operational Rules.

This section permits withdrawals from the Trust Fund for certain specified purposes pursuant to Tribal management or expenditure plans approved and enforced by the Secretary, requires annual reporting regarding withdrawals, and limits federal liability for expenditures and investments made by the Tribe after withdrawal. It also prohibits per capita distribution of any portion of the Trust Funds; confirms the Tribe will retain title, control, and operation of any project constructed with trust funds; and makes the Tribe

responsible for the operation, maintenance, and replacement costs of such projects.

Section 7—Funding

This section authorizes a mandatory appropriation of \$518,000,000 for the Tule River Tribe Water Development Projects Account and \$50,000,000 for the Tule River Tribe O&M Account, and it provides for adjustments to address cost fluctuation and market volatility.

Section 8—Transfer of land into trust

This section provides that certain specified Bureau of Land Management lands, Forest Service lands, and Tribally-owned fee lands will be transferred and placed into trust for the Tribe as part of the Tule River Reservation, subject to valid existing rights, contracts, leases, permits, and other enumerated encumbrances.

This section also clarifies that parcels are withdrawn from disposal under public land laws, patents under mining law, and disposition under mineral and geothermal leasing; directs the Secretary to issue all trust deeds within 10 years of the enforceability date; prohibits Class II or III gaming on the transferred lands; and provides that associated water rights become part of the Tribe's holdings but not part of Tribe's water rights allocation.

Section 9—Satisfaction of claims

This section provides that benefits realized under the Act shall serve as full satisfaction of any claim of the Tribe against the United States that the Tribe waives and releases under the Act.

Section 10—Waivers and releases of claims

This section requires the parties to execute waivers and releases of claims related to the Tribe's water rights and creation or reduction of the reservation, while reserving certain rights and retaining certain claims. This section also preserves the Tribe's authority to enforce Tribal laws, including environmental and jurisdictional laws; preserves the United States' authority to fulfill its trust responsibilities and enforce its laws, including environmental and jurisdictional laws; clarifies that the Act does not waive individual Tribal member claims; and states that the Act does not confer jurisdiction on any state court to interpret federal health, safety, or environmental laws or determine the duties of any party thereunder, or conduct judicial review of any federal agency action.

This section further provides for tolling of claims and defenses between the enactment and enforceability dates, and provides for termination of the agreement if the Secretary's statement of findings is not issued within 8 years of the enactment date, or a later date mutually agreed upon by the Tribe and the United States with notice to the State.

Section 11—Enforceability date

This section requires the Secretary of the Interior to publish a statement of findings in the Federal Register to render the settlement agreement enforceable.

Section 12—Binding effect; Judicial approval; enforceability

This section provides procedures for seeking the federal district court decree of the Tribe’s water rights, establishes the court’s jurisdiction, and provides standards for the court to resolve an impasse between the parties regarding Operation Rules.

Section 13—Miscellaneous provisions

This section affirms the federal government’s sovereign immunity is not waived; states that the land and water rights of other Tribes, and the water rights of the United States, are not quantified or diminished; and confirms that the Act does not affect laws or regulations in effect prior to enactment regarding pre-enforcement review of federal environmental enforcement actions. This section also provides that the Act controls over the Agreement in the event of a conflict.

Section 14—Anti-deficiency

This section states that the United States shall not be liable for failure to perform if adequate appropriations are not provided by Congress.

LEGISLATIVE HISTORY

S. 689 was introduced by Senators Padilla and Schiff on February 24, 2025.

In the 118th Congress, Senators Padilla and Feinstein introduced a similar bill, S. 306, on February 15, 2023. On March 29, 2023, the Committee held a business meeting and ordered S. 306 to be reported without amendment favorably (S. Rept. 118–110).⁸ A companion bill, H.R. 8920, was introduced by Representative Fong (R–CA–20) in the House of Representatives on July 2, 2024. The House Committee on Natural Resources Subcommittee on Water, Wildlife, and Fisheries held a hearing on H.R. 8920 on July 23, 2024.

In the 117th Congress, Senator Padilla introduced a substantially similar predecessor bill, S. 4870, on September 15, 2022. The Committee held a hearing on the bill on November 16, 2022.

COMMITTEE RECOMMENDATION

The Senate Committee on Indian Affairs, in an open business meeting on March 5, 2025, by a majority voice vote of a quorum present, recommends that the Senate pass S. 689.

COST AND BUDGETARY CONSIDERATIONS

The Committee has requested, but has not yet received, the Congressional Budget Office’s estimate of the cost of S. 689 as ordered reported. When the Congressional Budget Office completes its cost estimate, it will be posted on the Internet at www.cbo.gov, and printed in the Congressional Record.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regu-

⁸ S. Rept. No. 118–110 (2024).

latory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 689 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 689.

CHANGES IN EXISTING LAW

In accordance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by S. 689, as ordered reported.

