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118TH CONGRESS
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S. 306

[Report No. 118–110]

To approve the settlement of the water right claims of the Tule River Tribe, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2023

Mr. PADILLA (for himself and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

NOVEMBER 6, 2023

Reported by Mr. SCHATZ, without amendment

A BILL

To approve the settlement of the water right claims of the Tule River Tribe, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Tule River Tribe Reserved Water Rights Settlement Act
6 of 2023”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.
- Sec. 4. Ratification of 2007 Agreement.
- Sec. 5. Tribal Water Right.
- Sec. 6. Tule River Tribe trust accounts.
- Sec. 7. Funding.
- Sec. 8. Transfer of land into trust.
- Sec. 9. Satisfaction of claims.
- Sec. 10. Waivers and releases of claims.
- Sec. 11. Enforceability Date.
- Sec. 12. Binding effect; judicial approval; enforceability.
- Sec. 13. Miscellaneous provisions.
- Sec. 14. Antideficiency.

3 **SEC. 2. PURPOSES.**

4 The purposes of this Act are—

5 (1) to achieve a fair, equitable, and final settle-
 6 ment of claims to water rights in the State of Cali-
 7 fornia for—

8 (A) the Tule River Tribe; and

9 (B) the United States, acting as trustee
 10 for the Tribe;

11 (2) to authorize, ratify, and confirm the 2007
 12 Agreement entered by the Tribe, the South Tule
 13 Independent Ditch Company, and the Tule River As-
 14 sociation, to the extent that the 2007 Agreement is
 15 consistent with this Act;

16 (3) to authorize and direct the Secretary—

17 (A) to execute the 2007 Agreement, with
 18 amendments to facilitate implementation and
 19 approval of the 2007 Agreement; and

1 (B) to take any other actions necessary to
 2 carry out the 2007 Agreement in accordance
 3 with this Act;

4 (4) to authorize funds necessary for the imple-
 5 mentation of the 2007 Agreement and this Act; and

6 (5) to authorize the transfer of certain lands to
 7 the Tribe, to be held in trust.

8 **SEC. 3. DEFINITIONS.**

9 (a) IN GENERAL.—In this Act:

10 (1) 2007 AGREEMENT.—The term “2007
 11 Agreement” means—

12 (A) the agreement dated November 21,
 13 2007, as amended on April 22, 2009, between
 14 the Tribe, the South Tule Independent Ditch
 15 Company, and the Tule River Association, and
 16 exhibits attached thereto; and

17 (B) any amendment to the Agreement re-
 18 ferred to in subparagraph (A) (including an
 19 amendment to any exhibit) that is executed in
 20 accordance with section 4(a)(2).

21 (2) COURT.—The term “Court” means the
 22 United States District Court for the Eastern Dis-
 23 trict of California, unless otherwise specified herein.

24 (3) DIVERT; DIVERSION.—The terms “divert”
 25 and “diversion” mean to remove water from its nat-

1 ural course or location by means of a ditch, canal,
 2 flume, bypass, pipeline, conduit, well, pump, or other
 3 structure or device, or act of a person.

4 (4) DOWNSTREAM WATER USERS.—The term
 5 “Downstream Water Users” means—

6 (A) the Tule River Association and its suc-
 7 cessors and assigns;

8 (B) the South Tule Independent Ditch
 9 Company and its successors and assigns; and

10 (C) any and all other holders of water
 11 rights in the South Fork Tule River Basin.

12 (5) ENFORCEABILITY DATE.—The term “En-
 13 forceability Date” means the date described in sec-
 14 tion 11.

15 (6) OM&R.—

16 (A) IN GENERAL.—The term “OM&R”
 17 means operation, maintenance, and replace-
 18 ment.

19 (B) INCLUSIONS.—The term “OM&R” in-
 20 cludes—

21 (i) any recurring or ongoing activity
 22 relating to the day-to-day operation of a
 23 project;

1 (ii) any activity relating to scheduled
2 or unscheduled maintenance of a project;
3 and

4 (iii) any activity relating to repairing
5 or replacing a feature of a project.

6 (7) OPERATION RULES.—The term “Operation
7 Rules” means the rules of operation for the Phase
8 I Reservoir, as established in accordance with the
9 2007 Agreement and this Act.

10 (8) PARTIES.—The term “Parties” means the
11 signatories to the 2007 Agreement, including the
12 Secretary.

13 (9) PHASE I RESERVOIR.—The term “Phase I
14 Reservoir” means the reservoir described in either
15 section 3.4.B.(1) or section 3.4.B.(2) of the 2007
16 Agreement.

17 (10) RESERVATION; TULE RIVER RESERVA-
18 TION.—The terms “Reservation” and “Tule River
19 Reservation” mean the reservation of lands set aside
20 for the Tribe by the Executive Orders of January 9,
21 1873, October 3, 1873, and August 3, 1878, includ-
22 ing lands added to the Reservation pursuant to sec-
23 tion 8.

24 (11) SECRETARY.—The term “Secretary”
25 means the Secretary of the Interior.

1 (12) SOUTH TULE INDEPENDENT DITCH COM-
 2 PANY.—The term “South Tule Independent Ditch
 3 Company” means the nonprofit mutual water com-
 4 pany incorporated in 1895 that has claims to owner-
 5 ship of water rights dating back to 1854, which pro-
 6 vides water diverted from the South Fork of the
 7 Tule River to its shareholders on lands downstream
 8 from the Tule River Reservation.

9 (13) TRIBAL WATER RIGHT.—The term “Tribal
 10 Water Right” means the water rights ratified, con-
 11 firmed, and declared to be valid for the benefit of
 12 the Tribe as set forth and described in the 2007
 13 Agreement and this Act.

14 (14) TRIBE.—The term “Tribe” means the
 15 Tule River Indian Tribe of the Tule River Reserva-
 16 tion, California, a federally recognized Indian Tribe.

17 (15) TRUST FUND.—The term “Trust Fund”
 18 means the Tule River Indian Tribe Settlement Trust
 19 Fund established under section 6(a).

20 (16) TULE RIVER ASSOCIATION.—

21 (A) IN GENERAL.—The term “Tule River
 22 Association” means the association formed by
 23 agreement in 1965, the members of which are
 24 representatives of all pre-1914 appropriative
 25 and certain riparian water right holders of the

1 Tule River at and below the Richard L. Schafer
2 Dam and Reservoir.

3 (B) INCLUSIONS.—The term “Tule River
4 Association” includes the Pioneer Water Com-
5 pany, the Vandalia Irrigation District, the
6 Porterville Irrigation District, and the Lower
7 Tule River Irrigation District.

8 (17) WATER DEVELOPMENT PROJECT.—The
9 term “Water Development Project” means a project
10 for domestic, commercial, municipal, and industrial
11 water supply, including but not limited to water
12 treatment, storage, and distribution infrastructure,
13 to be constructed, in whole or in part, using monies
14 from the Trust Fund.

15 (b) DEFINITIONS OF OTHER TERMS.—Any other
16 term used in this Act but not defined in subsection (a)—

17 (1) has the meaning given the term in the 2007
18 Agreement; or

19 (2) if no definition for the term is provided in
20 the 2007 Agreement, shall be used in a manner con-
21 sistent with its use in the 2007 Agreement.

22 **SEC. 4. RATIFICATION OF 2007 AGREEMENT.**

23 (a) RATIFICATION.—

24 (1) IN GENERAL.—Except as modified by this
25 Act and to the extent that the 2007 Agreement does

1 not conflict with this Act, the 2007 Agreement is au-
2 thorized, ratified, and confirmed.

3 (2) AMENDMENTS.—

4 (A) GENERAL AMENDMENTS.—If an
5 amendment to the 2007 Agreement, or to any
6 exhibit attached to the 2007 Agreement requir-
7 ing the signature of the Secretary, is executed
8 in accordance with this Act to make the 2007
9 Agreement consistent with this Act, the amend-
10 ment is authorized, ratified, and confirmed.

11 (B) SPECIFIC AMENDMENTS.—

12 (i) SUBSTITUTE SITES.—If a sub-
13 stitute site for the Phase I Reservoir is
14 identified by the Tribe pursuant to section
15 3.4.B.(2)(a) of the 2007 Agreement, then
16 amendments related to the Operation
17 Rules are authorized, ratified, and con-
18 firmed, to the extent that such Amend-
19 ments are consistent with the 2007 Agree-
20 ment and this Act.

21 (ii) PRIORITY DATE.—Amendments
22 agreed to by the Parties to establish that
23 the priority date for the Tribal Water
24 Right is no later than January 9, 1873, is
25 authorized, ratified, and confirmed.

1 (iii) SENIOR WATER RIGHTS.—
2 Amendments agreed to by the Parties to
3 accommodate senior water rights of those
4 Downstream Water Users described in sec-
5 tion 3(a)(4)(C) are authorized, ratified,
6 and confirmed, to the extent that the
7 Court finds any such Downstream Water
8 Users possess senior water rights that can
9 be accommodated only by amendment of
10 the 2007 Agreement.

11 (iv) OTHER AMENDMENTS.—Other
12 amendments agreed to by the Parties to
13 facilitate implementation and approval of
14 the 2007 Agreement are authorized, rati-
15 fied, and confirmed, to the extent that
16 such amendments are otherwise consistent
17 with this Act and with other applicable
18 law.

19 (b) EXECUTION.—

20 (1) IN GENERAL.—To the extent the 2007
21 Agreement does not conflict with this Act, the Sec-
22 retary shall execute the 2007 Agreement, in accord-
23 ance with paragraph (2), including all exhibits to, or
24 parts of, the 2007 Agreement requiring the signa-
25 ture of the Secretary.

1 (2) TIMING.—The Secretary shall not execute
2 the 2007 Agreement until—

3 (A) the Parties agree on amendments re-
4 lated to the priority date for the Tribal Water
5 Right; and

6 (B) either—

7 (i) the Tribe moves forward with the
8 Phase I Reservoir described in section
9 3.4.B.(1) of the 2007 Agreement; or

10 (ii) if the Tribe selects a substitute
11 site pursuant to section 3.4.B.(2) of the
12 2007 Agreement, either—

13 (I) the Parties agree on Oper-
14 ation Rules; or

15 (II) the Secretary determines, in
16 the discretion of the Secretary, that
17 the Parties have reached an impasse
18 in attempting to negotiate the Oper-
19 ation Rules.

20 (3) MODIFICATIONS.—Nothing in this Act pro-
21 hibits the Secretary, after execution of the 2007
22 Agreement, from approving any modification to the
23 2007 Agreement, including any exhibit to the 2007
24 Agreement, that is consistent with this Act, to the
25 extent that the modification does not otherwise re-

1 quire congressional approval under section 2116 of
2 the Revised Statutes (25 U.S.C. 177) or any other
3 applicable provision of Federal law.

4 (c) ENVIRONMENTAL COMPLIANCE.—

5 (1) IN GENERAL.—In implementing the 2007
6 Agreement and this Act, the Secretary shall comply
7 with all applicable provisions of—

8 (A) the Endangered Species Act of 1973
9 (16 U.S.C. 1531 et seq.);

10 (B) the National Environmental Policy Act
11 of 1969 (42 U.S.C. 4321 et seq.), including the
12 implementing regulations of that Act; and

13 (C) other applicable Federal environmental
14 laws and regulations.

15 (2) COMPLIANCE.—

16 (A) IN GENERAL.—In implementing the
17 2007 Agreement and this Act, the Tribe shall
18 prepare any necessary environmental docu-
19 ments, consistent with all applicable provisions
20 of—

21 (i) the Endangered Species Act of
22 1973 (16 U.S.C. 1531 et seq.);

23 (ii) the National Environmental Policy
24 Act of 1969 (42 U.S.C. 4231 et seq.), in-

1 cluding the implementing regulations of
2 that Act; and

3 (iii) all other applicable Federal envi-
4 ronmental laws and regulations.

5 (B) AUTHORIZATIONS.—The Secretary
6 shall—

7 (i) independently evaluate the docu-
8 mentation submitted under subparagraph
9 (A); and

10 (ii) be responsible for the accuracy,
11 scope, and contents of that documentation.

12 (3) EFFECT OF EXECUTION.—The execution of
13 the 2007 Agreement by the Secretary under this sec-
14 tion shall not constitute a major Federal action for
15 purposes of the National Environmental Policy Act
16 of 1969 (42 U.S.C. 4321 et seq.).

17 (4) COSTS.—Any costs associated with the per-
18 formance of the compliance activities under this sub-
19 section shall be paid from funds deposited in the
20 Trust Fund, subject to the condition that any costs
21 associated with the performance of Federal approval
22 or other review of such compliance work or costs as-
23 sociated with inherently Federal functions shall re-
24 main the responsibility of the Secretary.

1 **SEC. 5. TRIBAL WATER RIGHT.**

2 (a) CONFIRMATION OF TRIBAL WATER RIGHT.—

3 (1) IN GENERAL.—The Tribal Water Right is
4 ratified, confirmed, and declared valid.

5 (2) QUANTIFICATION.—The Tribal Water Right
6 includes the right to divert and use or permit the di-
7 version and use of up to 5,828 acre-feet per year of
8 surface water from the South Fork Tule River, as
9 described in the 2007 Agreement and as confirmed
10 in the decree entered by the Court pursuant to sub-
11 sections (b) and (c) of section 12.

12 (3) USE.—Any diversion, use, and place of use
13 of the Tribal Water Right shall be subject to the
14 terms and conditions of the 2007 Agreement and
15 this Act.

16 (b) TRUST STATUS OF TRIBAL WATER RIGHT.—The
17 Tribal Water Right—

18 (1) shall be held in trust by the United States
19 for the use and benefit of the Tribe in accordance
20 with this Act; and

21 (2) shall not be subject to loss through non-use,
22 forfeiture, abandonment, or other operation of law.

23 (c) AUTHORITY OF THE TULE RIVER TRIBE.—

24 (1) IN GENERAL.—The Tule River Tribe shall
25 have the authority to allocate and distribute the
26 Tribal Water Right for use on the Reservation in ac-

1 cordance with the 2007 Agreement, this Act, and
2 applicable Federal law.

3 (d) ADMINISTRATION.—

4 (1) NO ALIENATION.—The Tribe shall not per-
5 manently alienate any portion of the Tribal Water
6 Right.

7 (2) PURCHASES OR GRANTS OF LAND FROM IN-
8 DIANS.—An authorization provided by this Act for
9 the allocation, distribution, leasing, or other ar-
10 rangement entered into pursuant to this Act shall be
11 considered to satisfy any requirement for authoriza-
12 tion of the action by treaty or convention imposed by
13 section 2116 of the Revised Statutes (25 U.S.C.
14 177).

15 (3) PROHIBITION ON FORFEITURE.—The non-
16 use of all or any portion of the Tribal Water Right
17 by any water user shall not result in the forfeiture,
18 abandonment, relinquishment, or other loss of all or
19 any portion of the Tribal Water Right.

20 **SEC. 6. TULE RIVER TRIBE TRUST ACCOUNTS.**

21 (a) ESTABLISHMENT.—The Secretary shall establish
22 a trust fund, to be known as the “Tule River Indian Tribe
23 Settlement Trust Fund”, to be managed, invested, and
24 distributed by the Secretary and to remain available until
25 expended, withdrawn, or reverted to the general fund of

1 the Treasury, consisting of the amounts deposited in the
2 Trust Fund under subsection (c), together with any inter-
3 est earned on those amounts, for the purpose of carrying
4 out this Act.

5 (b) ACCOUNTS.—The Secretary shall establish in the
6 Trust Fund the following Accounts:

7 (1) The Tule River Tribe Water Development
8 Projects Account.

9 (2) The Tule River Tribe OM&R Account.

10 (c) DEPOSITS.—The Secretary shall deposit—

11 (1) in the Tule River Tribe Water Development
12 Projects Account established under subsection
13 (b)(1), the amounts made available pursuant to sec-
14 tion 7(a)(1); and

15 (2) in the Tule River Tribe OM&R Account es-
16 tablished under subsection (b)(2), the amounts made
17 available pursuant to section 7(a)(2).

18 (d) MANAGEMENT AND INTEREST.—

19 (1) MANAGEMENT.—On receipt and deposit of
20 funds into the accounts in the Trust Fund pursuant
21 to subsection (c), the Secretary shall manage, invest,
22 and distribute all amounts in the Trust Fund in ac-
23 cordance with the investment authority of the Sec-
24 retary under—

1 (A) the first section of the Act of June 24,
2 1938 (52 Stat. 1037, chapter 648; 25 U.S.C.
3 162a);

4 (B) the American Indian Trust Fund Man-
5 agement Reform Act of 1994 (25 U.S.C. 4001
6 et seq.); and

7 (C) this section.

8 (2) INVESTMENT EARNINGS.—In addition to
9 the deposits under subsection (c), any investment
10 earnings, including interest, credited to amounts
11 held in the Trust Fund are authorized to be used in
12 accordance with subsections (e) and (h).

13 (e) AVAILABILITY OF AMOUNTS.—

14 (1) IN GENERAL.—Amounts appropriated to,
15 and deposited in, the Trust Fund, including any in-
16 vestment earnings, including interest, shall be made
17 available to the Tribe by the Secretary beginning on
18 the Enforceability Date and subject to the require-
19 ments set forth in this section, except for funds to
20 be made available to the Tribe pursuant to para-
21 graph (2).

22 (2) USE OF CERTAIN FUNDS.—Notwithstanding
23 paragraph (1), \$20,000,000 of the amounts depos-
24 ited in the Tule River Tribe Water Development
25 Projects Account shall be made available to conduct

1 technical studies and related investigations regarding
2 the Phase I Reservoir and to establish appropriate
3 Operation Rules.

4 (f) WITHDRAWALS.—

5 (1) WITHDRAWALS UNDER THE AMERICAN IN-
6 DIAN TRUST FUND MANAGEMENT REFORM ACT OF
7 1994.—

8 (A) IN GENERAL.—The Tribe may with-
9 draw any portion of the amounts in the Trust
10 Fund on approval by the Secretary of a Tribal
11 management plan submitted by the Tribe in ac-
12 cordance with the American Indian Trust Fund
13 Management Reform Act of 1994 (25 U.S.C.
14 4001 et seq.).

15 (B) REQUIREMENTS.—In addition to the
16 requirements under the American Indian Trust
17 Fund Management Reform Act of 1994 (25
18 U.S.C. 4001 et seq.), the Tribal management
19 plan under this paragraph shall require that the
20 Tribe shall spend all amounts withdrawn from
21 the Trust Fund, and any investment earnings
22 accrued through the investments under the
23 Tribal management plan, in accordance with
24 this Act.

1 (C) ENFORCEMENT.—The Secretary may
2 carry out such judicial and administrative ac-
3 tions as the Secretary determines to be nec-
4 essary to enforce the Tribal management plan
5 under this paragraph to ensure that amounts
6 withdrawn by the Tribe from the Trust Fund
7 under this paragraph are used in accordance
8 with this Act.

9 (2) WITHDRAWALS UNDER EXPENDITURE
10 PLAN.—

11 (A) IN GENERAL.—The Tribe may submit
12 to the Secretary a request to withdraw amounts
13 from the Trust Fund pursuant to an approved
14 expenditure plan.

15 (B) REQUIREMENTS.—To be eligible to
16 withdraw amounts under an expenditure plan
17 under this paragraph, the Tribe shall submit to
18 the Secretary an expenditure plan for any por-
19 tion of the Trust Fund that the Tribe elects to
20 withdraw pursuant to this subparagraph, sub-
21 ject to the condition that the amounts shall be
22 used for the purposes described in this Act.

23 (C) INCLUSIONS.—An expenditure plan
24 under this paragraph shall include a description
25 of the manner and purpose for which the

1 amounts proposed to be withdrawn from the
2 Trust Fund will be used by the Tribe in accord-
3 ance with subsections (e) and (h).

4 (D) APPROVAL.—The Secretary shall ap-
5 prove an expenditure plan submitted under this
6 paragraph if the Secretary determines that the
7 plan—

8 (i) is reasonable; and

9 (ii) is consistent with, and will be used
10 for, the purposes of this Act.

11 (E) ENFORCEMENT.—The Secretary may
12 carry out such judicial and administrative ac-
13 tions as the Secretary determines to be nec-
14 essary to enforce an expenditure plan to ensure
15 that amounts disbursed under this paragraph
16 are used in accordance with this Act.

17 (g) EFFECT OF SECTION.—Nothing in this section
18 gives the Tribe the right to judicial review of a determina-
19 tion of the Secretary relating to whether to approve a
20 Tribal management plan under subsection (f)(1) or an ex-
21 penditure plan under subsection (f)(2) except under sub-
22 chapter II of chapter 5, and chapter 7, of title 5, United
23 States Code (commonly known as the “Administrative
24 Procedure Act”).

1 (h) USES.—Amounts from the Trust Fund may only
2 be used by the Tribe for the following purposes:

3 (1) The Tule River Tribe Water Development
4 Projects Account may only be used to plan, design,
5 and construct Water Development Projects on the
6 Tule River Reservation, and for the conduct of re-
7 lated activities, including for environmental compli-
8 ance in the development and construction of projects
9 under this Act.

10 (2) The Tule River Tribe OM&R Account may
11 only be used for the OM&R of Water Development
12 Projects.

13 (i) LIABILITY.—The Secretary and the Secretary of
14 the Treasury shall not be liable for the expenditure or in-
15 vestment of any amounts withdrawn from the Trust Fund
16 by the Tribe under paragraphs (1) and (2) of subsection
17 (f).

18 (j) TITLE TO INFRASTRUCTURE.—Title to, control
19 over, and operation of any project constructed using funds
20 from the Trust Fund shall remain in the Tribe.

21 (k) OPERATION, MAINTENANCE, & REPLACEMENT.—
22 All OM&R costs of any project constructed using funds
23 from the Trust Fund shall be the responsibility of the
24 Tribe.

1 (l) NO PER CAPITA DISTRIBUTIONS.—No portion of
2 the Trust Fund shall be distributed on a per capita basis
3 to any member of the Tribe.

4 (m) EXPENDITURE REPORT.—The Tule River Tribe
5 shall annually submit to the Secretary an expenditure re-
6 port describing accomplishments and amounts spent from
7 use of withdrawals under a Tribal management plan or
8 an expenditure plan under this Act.

9 **SEC. 7. FUNDING.**

10 (a) FUNDING.—Out of any funds in the Treasury not
11 otherwise appropriated, the Secretary of the Treasury
12 shall transfer to the Secretary—

13 (1) for deposit in the Tule River Tribe Water
14 Development Projects Account \$518,000,000, to be
15 available until expended, withdrawn, or reverted to
16 the general fund of the Treasury; and

17 (2) for deposit in the Tule River Tribe OM&R
18 Account \$50,000,000, to be available until expended,
19 withdrawn, or reverted to the general fund of the
20 Treasury.

21 (b) FLUCTUATION IN COSTS.—

22 (1) IN GENERAL.—The amounts authorized to
23 be appropriated under subsection (a) shall be in-
24 creased or decreased, as appropriate, by such
25 amounts as may be justified by reason of ordinary

1 fluctuations in costs occurring after November 1,
2 2020, as indicated by the Bureau of Reclamation
3 Construction Cost Index—Composite Trend.

4 (2) CONSTRUCTION COSTS ADJUSTMENT.—The
5 amounts authorized to be appropriated under sub-
6 section (a) shall be adjusted to address construction
7 cost changes necessary to account for unforeseen
8 market volatility that may not otherwise be captured
9 by engineering cost indices as determined by the
10 Secretary, including repricing applicable to the types
11 of construction and current industry standards in-
12 volved.

13 (3) REPETITION.—The adjustment process
14 under this subsection shall be repeated for each sub-
15 sequent amount appropriated until the amount au-
16 thorized, as adjusted, has been appropriated.

17 (4) PERIOD OF INDEXING.—The period of in-
18 dexing adjustment under this subsection for any in-
19 crement of funding shall end on the date on which
20 the funds are deposited into the Trust Fund.

21 **SEC. 8. TRANSFER OF LAND INTO TRUST.**

22 (a) TRANSFER OF LAND TO TRUST.—

23 (1) IN GENERAL.—Subject to valid existing
24 rights, and the requirements of this subsection, all
25 right, title, and interest of the United States in and

1 to the land described in paragraph (2) shall be held
 2 in trust by the United States for the benefit of the
 3 Tribe as part of the Reservation upon the Enforce-
 4 ability Date, provided that the Tribal fee land de-
 5 scribed in paragraph (2)(C)—

6 (A) is free from any liens, encumbrances,
 7 or other infirmities; and

8 (B) has no existing evidence of any haz-
 9 ardous substances or other environmental liabil-
 10 ity.

11 (2) LANDS TO BE HELD IN TRUST.—The land
 12 referred to in paragraph (1) is the following:

13 (A) BUREAU OF LAND MANAGEMENT
 14 LANDS.—

15 (i) Approximately 26.15 acres of land
 16 located in T. 22 S., R. 29 E., sec. 35, Lot
 17 9.

18 (ii) Approximately 85.50 acres of land
 19 located in T. 22 S., R. 29 E., sec. 35, Lots
 20 6 and 7.

21 (iii) Approximately 38.77 acres of
 22 land located in—

23 (I) T. 22 S., R. 30 E., sec. 30,
 24 Lot 1; and

1 (II) T. 22 S., R. 30 E., sec. 31,
2 Lots 6 and 7.

3 (iv) Approximately 154.9 acres of land
4 located in T. 22 S., R. 30 E., sec. 34,
5 $N^{1/4}SW^{1/4}$ and $SW^{1/4}SW^{1/4}$, Lots 2 and 3.

6 (v) Approximately 40.00 acres of land
7 located in T. 22 S., R. 30 E., sec. 34,
8 $NE^{1/4}SE^{1/4}$.

9 (vi) Approximately 375.17 acres of
10 land located in—

11 (I) T. 22 S., R. 30 E., sec. 35,
12 $S^{1/2}NE^{1/4}$, $N^{1/2}SE^{1/4}$, and $SE^{1/4}SE^{1/4}$,
13 Lots 3, 4, and 6; and

14 (II) T. 23 S., R. 30 E., sec. 2,
15 $S^{1/2}NE^{1/4}$, Lots 6 and 7.

16 (vii) Approximately 60.43 acres of
17 land located in—

18 (I) T. 22 S., R. 30 E., sec. 35,
19 $SW^{1/4}SW^{1/4}$; and

20 (II) T. 23 S., R. 30 E., sec. 2,
21 Lot 9.

22 (viii) Approximately 15.48 acres of
23 land located in T. 21 S., R. 30 E., sec. 31
24 in that portion of the $NW^{1/4}$ lying between
25 Lots 8 and 9.

1 (ix) Approximately 29.26 acres of
2 land located in T. 21 S., R. 30 E., sec. 31,
3 Lot 7.

4 (B) FOREST SERVICE LANDS.—Approximately 9,037 acres of land comprising the head-
5 waters area of the South Fork Tule River wa-
6 tershed located east of and adjacent to the Tule
7 River Indian Reservation, and more particularly
8 described as follows:
9

10 (i) Commencing at the northeast cor-
11 ner of the Tule River Indian Reservation
12 in T. 21 S., R. 31 E., sec. 16, Mount Dia-
13 blo Base and Meridian, running thence
14 east and then southeast along the ridge of
15 mountains dividing the waters of the South
16 Fork of the Tule River and Middle Fork of
17 the Tule River, continuing south and then
18 southwest along the ridge of mountains di-
19 viding the waters of the South Fork of the
20 Tule River and the Upper Kern River until
21 intersecting with the southeast corner of
22 the Tule River Indian Reservation in T. 22
23 S., R. 31 E., sec. 28, thence from such
24 point north along the eastern boundary of

1 the Tule River Indian Reservation to the
2 place of beginning.

3 (ii) The area encompasses—

4 (I) all of secs. 22, 23, 26, 27, 34,
5 35, and portions of secs. 13, 14, 15,
6 16, 21, 24, 25, 28, 33, and 36, in T.
7 21 S., R. 31 E.; and

8 (II) all of secs. 3 and 10, and
9 portions of secs. 1, 2, 4, 9, 11, 14, 15,
10 16, 21, 22, 27, and 28, in T. 22 S.,
11 R. 31 E.

12 (C) TRIBALLY OWNED FEE LANDS.—

13 (i) Approximately 300 acres of land
14 known as the McCarthy Ranch and more
15 particularly described as follows:

16 (I) The SW¹/₄ and that portion
17 of the SE¹/₄ of sec. 9 in T. 22 S., R.
18 29 E., Mount Diablo Base and Merid-
19 ian, in the County of Tulare, State of
20 California, according to the official
21 plat thereof, lying south and west of
22 the center line of the South Fork of
23 the Tule River, as such river existed
24 on June 9, 1886, in the County of
25 Tulare, State of California; excepting

1 therefrom an undivided one-half inter-
2 est in and to the oil, gas, minerals,
3 and other hydrocarbon substances in,
4 on, or under such land, as reserved by
5 Alice King Henderson, a single
6 woman, by Deed dated January 22,
7 1959, and Recorded February 18,
8 1959, in Book 2106, page 241, Tulare
9 County Official Records.

10 (II) An easement over and across
11 that portion of the SW¹/₄ of sec. 10 in
12 T. 22 S., R. 29 E., Mount Diablo
13 Base and Meridian, County of Tulare,
14 State of California, more particularly
15 described as follows:

16 (aa) Beginning at the inter-
17 section of the west line of the
18 SW¹/₄ of sec. 10, and the south
19 bank of the South Tule Inde-
20 pendent Ditch; thence south 20
21 rods; thence in an easterly direc-
22 tion, parallel with such ditch, 80
23 rods; thence north 20 rods,
24 thence westerly along the south
25 bank of such ditch 80 rods to the

1 point of beginning; for the pur-
2 pose of—

3 (AA) maintaining
4 thereon an irrigation ditch
5 between the headgate of the
6 King Ditch situated on such
7 land and the SW¹/₄ and that
8 portion of the SE¹/₄ of sec.
9 9 in T. 22 S., R. 29 E.,
10 lying south and west of the
11 centerline of the South Fork
12 of the Tule River, as such
13 river existed on June 9,
14 1886, in the County of
15 Tulare, State of California;
16 and

17 (BB) conveying there-
18 through water from the
19 South Fork of the Tule
20 River to the SW¹/₄ and that
21 portion of the SE¹/₄ of sec.
22 9 in T. 22 S., R. 29 E.,
23 lying south and west of the
24 centerline of the South Fork
25 of the Tule River, as such

1 river existed on June 9,
2 1886.

3 (bb) The easement described
4 in item (aa) shall follow the exist-
5 ing route of the King Ditch.

6 (ii) Approximately 640 acres of land
7 known as the Pierson/Diaz property in T.
8 22 S., R. 29 E., sec. 16, Mount Diablo
9 Base and Meridian, in the County of
10 Tulare, State of California, according to
11 the official plat thereof.

12 (iii) Approximately 375.44 acres of
13 land known as the Hyder property and
14 more particularly described as follows:

15 (I) That portion of the S $\frac{1}{2}$ of
16 sec. 12 in T. 22 S., R. 28 E., Mount
17 Diablo Base and Meridian, in the
18 County of Tulare, State of California,
19 according to the official plat thereof,
20 lying south of the County Road known
21 as Reservation Road, excepting there-
22 from an undivided one-half interest in
23 all oil, gas, minerals, and other hydro-
24 carbon substances as reserved in the
25 deed from California Lands, Inc., to

1 Lovell J. Wilson and Genevieve P.
2 Wilson, recorded February 17, 1940,
3 in book 888, page 116, Tulare County
4 Official Records.

5 (II) The NW¹/₄ of sec. 13 in T.
6 22 S., R. 28 E., Mount Diablo Base
7 and Meridian, in the County of
8 Tulare, State of California, according
9 to the official plat thereof, excepting
10 therefrom the south 1200 feet thereof.

11 (III) The south 1200 feet of the
12 NW¹/₄ of sec. 13 in T. 22 S., R. 28
13 E., Mount Diablo Base and Meridian,
14 in the County of Tulare, State of Cali-
15 fornia, according to the official plat
16 thereof.

17 (iv) Approximately 157.22 acres of
18 land situated in the unincorporated area of
19 the County of Tulare, State of California,
20 known as the Trailor property, and more
21 particularly described as follows: The
22 SW¹/₄ of sec. 11 in T. 22 S., R. 28 E.,
23 Mount Diablo Base and Meridian, in the
24 unincorporated area of the County of

1 Tulare, State of California, according to
2 the official plat thereof.

3 (v) Approximately 89.45 acres of land
4 known as the Tomato Patch in that por-
5 tion of the SE¹/₄ of sec. 11 in T. 22 S., R.
6 28 E., Mount Diablo Base and Meridian,
7 in the County of Tulare, State of Cali-
8 fornia, according to the Official Plat of the
9 survey of such land on file in the Bureau
10 of Land Management at the date of the
11 issuance of the patent thereof, and more
12 particularly described as follows: Beginning
13 at the southeast corner of T. 22 S., R. 28
14 E., sec. 11, thence north and along the
15 east line of such sec. 11, 1342 feet, thence
16 south 83° 44' west 258 feet, thence north
17 84° 30' west 456 feet, thence north 65°
18 28' west 800 feet, thence north 68° 44'
19 west 295 feet, thence south 71° 40' west
20 700 feet, thence south 56° 41' west 240
21 feet to the west line of the SE¹/₄ of such
22 sec. 11, thence south 0° 21' west along
23 such west line of the SE¹/₄ of sec. 11,
24 thence west 1427 feet to the southwest
25 corner of such SE¹/₄ of sec. 11, thence

1 south 89° 34' east 2657.0 feet to the point
2 of beginning, excepting therefrom—

3 (I) a strip of land 25 feet in
4 width along the northerly and east
5 sides and used as a County Road; and

6 (II) an undivided one-half inter-
7 est in all oil, gas, and minerals in and
8 under such lands, as reserved in the
9 Deed from Bank of America, a cor-
10 poration, dated August 14, 1935, filed
11 for record August 28, 1935, Fee Book
12 11904.

13 (vi) Approximately 160 acres of land
14 known as the Smith Mill in the NW¹/₄ of
15 the NE¹/₄, the N¹/₂ of the NW¹/₄, and the
16 SE¹/₄ of the NW¹/₄ of sec. 20 in T. 21 S.,
17 R. 31 E., Mount Diablo Base and Merid-
18 ian, in the County of Tulare, State of Cali-
19 fornia, according to the official plat there-
20 of.

21 (vii) Approximately 35 acres of land
22 located within the exterior boundaries of
23 the Tule River Reservation known as the
24 Highway 190 parcel, with the legal de-
25 scription as follows: That portion of T. 21

1 S., R. 29 E., sec. 19, Mount Diablo Base
2 and Meridian, in the County of Tulare,
3 Sate of California, according to the official
4 plat thereof, and more particularly de-
5 scribed as follows: Commencing at a point
6 in the south line of the N¹/₂ of the S¹/₂ of
7 such sec. 19, such point being south 89°
8 54' 47" east, 1500.00 feet of the south-
9 west corner of such N¹/₂, thence north 52°
10 41' 17" east, 1602.80 feet to the true
11 point of beginning of the parcel to be de-
12 scribed, thence north 32° 02' 00" west,
13 1619.53 feet to a point in the southeast-
14 erly line of State Highway 190 per deeds
15 recorded May 5, 1958, in Book 2053,
16 pages 608 and 613, Tulare County Official
17 Records, thence north 57° 58' 00" east,
18 232.29 feet, thence north 66° 33' 24" east,
19 667.51 fee, thence departing the southeast-
20 erly line of such Highway 190, south 44°
21 53' 27" east, 913.62 feet, thence south 85°
22 53' 27" east, 794.53 feet, thence south 52°
23 41' 17" west, 1744.64 feet to the true
24 point of beginning.

1 (viii) Approximately 61.91 acres of
2 land located within the exterior boundaries
3 of the Tule River Reservation known as
4 the Shan King property, with the legal de-
5 scription as follows:

6 (I) Parcel 1: Parcel No. 1 of par-
7 cel map no. 4028 in the County of
8 Tulare, State of California, as per the
9 map recorded in Book 41, page 32 of
10 Tulare County Records.

11 (II)(aa) Parcel 2: That portion of
12 T. 21 S., R. 29 E., sec. 19, Mount
13 Diablo Base and Meridian, in the
14 County of Tulare, State of California,
15 described as follows: Commencing at a
16 point in the south line of the N $\frac{1}{2}$ of
17 the S $\frac{1}{2}$ of such sec. 19, such point
18 being south 89° 54' 58" east, 1500.00
19 feet of the southwest corner of such
20 N $\frac{1}{2}$, thence north 52° 41' 06" east,
21 1602.80 feet to the southwesterly cor-
22 ner of the 40.00 acre parcel shown on
23 the Record of Survey recorded in
24 Book 18, page 17, of Licensed Sur-
25 veys, Tulare County Records, thence,

1 north 32° 01' 28" west, 542.04 feet
2 along the southwesterly line of such
3 40.00 acre parcel to the true point of
4 beginning of the parcel to be de-
5 scribed, thence, continuing north 32°
6 01' 28" west, 1075.50 feet to the
7 northwesterly corner of such 40.00
8 acre parcel, thence north 57° 58' 50"
9 east, 232.31 feet along the southeast-
10 erly line of State Highway 190,
11 thence north 66° 34' 12" east, 6.85
12 feet, thence, departing the southeast-
13 erly line of State Highway 190 south
14 29° 27' 29" east, 884.73 feet, thence
15 south 02° 59' 33" east, 218.00 feet,
16 thence south 57° 58' 31" west, 93.67
17 feet to the true point of beginning.

18 (bb) The property described in
19 item (aa) is subject to a 100 foot min-
20 imum building setback from the right-
21 of-way of Highway 190.

22 (III) Parcel 3: That portion of T.
23 21 S., R. 29 E., sec. 19, Mount Dia-
24 blo Base and Meridian, County of
25 Tulare, State of California, described

1 as follows: Beginning at a point in the
2 south line of the N¹/₂ of the S¹/₂ of
3 such sec. 19, such point being south
4 89° 54' 47" east, 1500.00 feet of the
5 southwest corner of such N¹/₂, thence
6 north 7° 49' 19" east, 1205.00 feet,
7 thence north 40° 00' 00" west,
8 850.00 feet to a point in the south-
9 easterly line of State Highway 190,
10 per deeds recorded May 5, 1958, in
11 Book 2053, pages 608 and 613,
12 Tulare County Official Records,
13 thence, north 57° 58' 00" east,
14 941.46 feet, along the southeasterly
15 line of such Highway 190, thence de-
16 parting the southeasterly line of such
17 Highway 190, south 32° 02' 00" east,
18 1619.53 feet, thence south 52° 41'
19 17" west, 1602.80 feet to the point of
20 beginning, together with a three-quar-
21 ters (³/₄) interest in a water system,
22 as set forth in that certain water sys-
23 tem and maintenance agreement re-
24 corded April 15, 2005, as document
25 no. 2005-0039177.

1 (ix) Approximately 18.44 acres of
2 land located within the exterior boundaries
3 of the Tule River Reservation known as
4 the Parking Lot 4 parcel with the legal de-
5 scription as follows: That portion of the
6 land described in that Grant Deed to Tule
7 River Indian Tribe, recorded June 1, 2010,
8 as document number 2010-0032879,
9 Tulare County Official Records, lying with-
10 in the following described parcel: beginning
11 at a point on the east line of the NW¹/₄ of
12 sec. 3 in T. 22 S., R. 28 E., Mount Diablo
13 Meridian, lying south 0° 49' 43" west,
14 1670.53 feet from the N¹/₄ corner of such
15 sec. 3, thence (1) south 89° 10' 17" east,
16 46.50 feet; thence (2) north 0° 49' 43"
17 east, 84.08 feet; thence (3) north 33° 00'
18 00" west, 76.67 feet to the south line of
19 State Route 190 as described in that
20 Grant Deed to the State of California, re-
21 corded February 14, 1958, in Volume
22 2038, page 562, Tulare County Official
23 Records; thence (4) north 0° 22' 28" east,
24 73.59 feet to the north line of the SE¹/₄ of
25 the NW¹/₄ of such sec. 3; thence (5) south

1 89° 37' 32" east, along such north line,
2 89.77 feet to the center-north sixteenth
3 corner of such sec. 3; thence (6) south 0°
4 49' 43" west, along such east line of the
5 NW¹/₄ of such sec. 3, a distance of 222.06
6 feet to the point of beginning. Containing
7 0.08 acres, more or less, in addition to
8 that portion lying within Road 284. To-
9 gether with the underlying fee interest, if
10 any, contiguous to the above-described
11 property in and to Road 284. This convey-
12 ance is made for the purpose of a freeway
13 and the grantor hereby releases and relin-
14 quishes to the grantee any and all
15 abutter's rights including access rights, ap-
16 purtenant to grantor's remaining property,
17 in and to such freeway. Reserving however,
18 unto grantor, grantor's successors or as-
19 signs, the right of access to the freeway
20 over and across Courses (1) and (2) herein
21 above described. The bearings and dis-
22 tances used in this description are on the
23 California Coordinate System of 1983,
24 Zone 4. Divide distances by 0.999971 to
25 convert to ground distances.

1 (b) TERMS AND CONDITIONS.—

2 (1) EXISTING AUTHORIZATIONS.—Any Federal
3 land transferred under this section shall be conveyed
4 and taken into trust subject to valid existing rights,
5 contracts, leases, permits, and rights-of-way, unless
6 the holder of the right, contract, lease, permit, or
7 right-of-way requests an earlier termination in ac-
8 cordance with existing law. The Bureau of Indian
9 Affairs shall assume all benefits and obligations of
10 the previous land management agency under such
11 existing rights, contracts, leases, permits, or rights-
12 of-way, and shall disburse to the Tribe any amounts
13 that accrue to the United States from such rights,
14 contracts, leases, permits, or rights-of-ways after the
15 date of transfer from any sale, bonus, royalty, or
16 rental relating to that land in the same manner as
17 amounts received from other land held by the Sec-
18 retary in trust for the Tribe.

19 (2) IMPROVEMENTS.—Any improvements con-
20 stituting personal property, as defined by State law,
21 belonging to the holder of a right, contract, lease,
22 permit, or right-of-way on lands transferred under
23 this section shall remain the property of the holder
24 and shall be removed not later than 90 days after
25 the date on which the right, contract, lease, permit,

1 or right-of-way expires, unless the Tribe and the
2 holder agree otherwise. Any such property remaining
3 beyond the 90-day period shall become the property
4 of the Tribe and shall be subject to removal and dis-
5 position at the Tribe's discretion. The holder shall
6 be liable for the costs the Tribe incurs in removing
7 and disposing of the property.

8 (c) WITHDRAWAL OF FEDERAL LANDS.—

9 (1) IN GENERAL.—Subject to valid existing
10 rights, effective on the date of enactment of this Act,
11 all Federal lands within the parcels described in sub-
12 section (a)(2) are withdrawn from all forms of—

13 (A) entry, appropriation, or disposal under
14 the public land laws;

15 (B) location, entry, and patent under the
16 mining laws; and

17 (C) disposition under all laws pertaining to
18 mineral and geothermal leasing or mineral ma-
19 terials.

20 (2) EXPIRATION.—The withdrawals pursuant to
21 paragraph (1) shall terminate on the date that the
22 Secretary takes the lands into trust for the benefit
23 of the Tribe pursuant to subsection (a)(1).

24 (d) TECHNICAL CORRECTIONS.—Notwithstanding
25 the descriptions of the parcels of land in subsection (a)(2),

1 the United States may, with the consent of the Tribe,
2 make technical corrections to the legal land descriptions
3 to more specifically identify the parcels to be exchanged.

4 (e) SURVEY.—

5 (1) Unless the United States or the Tribe re-
6 quests an additional survey for the transferred land
7 or a technical correction is made under subsection
8 (d), the description of land under this section shall
9 be controlling.

10 (2) If the United States or the Tribe requests
11 an additional survey, that survey shall control the
12 total acreage to be transferred into trust under this
13 section.

14 (3) The Secretary or the Secretary of Agri-
15 culture shall provide such assistance as may be ap-
16 propriate—

17 (A) to conduct additional surveys of the
18 transferred land; and

19 (B) to satisfy administrative requirements
20 necessary to accomplish the land transfers
21 under this section.

22 (f) DATE OF TRANSFER.—The Secretary shall issue
23 trust deeds for all land transfers under this section by not
24 later than 10 years after the Enforceability Date.

1 (g) RESTRICTION ON GAMING.—Lands taken into
2 trust pursuant to this section shall not be considered to
3 have been taken into trust for, nor eligible for, class II
4 gaming or class III gaming (as those terms are defined
5 in section 4 of the Indian Gaming Regulatory Act (25
6 U.S.C. 2703)).

7 (h) STATUS OF WATER RIGHTS ON TRANSFERRED
8 LANDS.—Any water rights associated with lands trans-
9 ferred pursuant to subparagraphs (A) through (C) of sub-
10 section (a)(2) shall be held in trust for the Tribe but shall
11 not be included in the Tribal Water Right.

12 **SEC. 9. SATISFACTION OF CLAIMS.**

13 The benefits provided under this Act shall be in com-
14 plete replacement of, complete substitution for, and full
15 satisfaction of any claim of the Tribe against the United
16 States that is waived and released by the Tribe under sec-
17 tion 10(a).

18 **SEC. 10. WAIVERS AND RELEASES OF CLAIMS.**

19 (a) IN GENERAL.—

20 (1) WAIVERS AND RELEASES OF CLAIMS BY
21 THE TRIBE AND THE UNITED STATES AS TRUSTEE
22 FOR THE TRIBE.—Subject to the reservation of
23 rights and retention of claims set forth in subsection
24 (c), as consideration for recognition of the Tribe's
25 Tribal Water Right and other benefits described in

1 the 2007 Agreement and this Act, the Tribe and the
2 United States, acting as trustee for the Tribe, shall
3 execute a waiver and release of all claims for the fol-
4 lowing:

5 (A) All claims for water rights within the
6 State of California based on any and all legal
7 theories that the Tribe or the United States
8 acting as trustee for the Tribe, asserted or
9 could have asserted in any proceeding, including
10 a general stream adjudication, on or before the
11 Enforceability Date, except to the extent that
12 such rights are recognized in the 2007 Agree-
13 ment and this Act.

14 (B) All claims for damages, losses, or inju-
15 ries to water rights or claims of interference
16 with, diversion, or taking of water rights (in-
17 cluding claims for injury to lands resulting from
18 such damages, losses, injuries, interference
19 with, diversion, or taking of water rights) with-
20 in California against the State, or any person,
21 entity, corporation, or municipality, that ac-
22 crued at any time up to and including the En-
23 forceability Date.

24 (2) WAIVER AND RELEASE OF CLAIMS BY THE
25 TRIBE AGAINST THE UNITED STATES.—Subject to

1 the reservation of rights and retention of claims
2 under subsection (c), the Tribe shall execute a waiv-
3 er and release of all claims against the United
4 States (including any agency or employee of the
5 United States) for water rights within the State of
6 California first arising before the Enforceability
7 Date relating to—

8 (A) water rights within the State of Cali-
9 fornia that the United States, acting as trustee
10 for the Tribe, asserted or could have asserted in
11 any proceeding, including a general stream ad-
12 judication, except to the extent that such rights
13 are recognized as part of the Tribal Water
14 Right under this Act;

15 (B) foregone benefits from nontribal use of
16 water, on and off the Reservation (including
17 water from all sources and for all uses);

18 (C) damage, loss, or injury to water, water
19 rights, land, or natural resources due to loss of
20 water or water rights (including damages,
21 losses, or injuries to hunting, fishing, gathering,
22 or cultural rights, due to loss of water or water
23 rights, claims relating to interference with, di-
24 version, or taking of water, or claims relating to
25 a failure to protect, acquire, replace, or develop

1 water, water rights, or water infrastructure)
2 within the State of California;

3 (D) a failure to establish or provide a mu-
4 nicipal rural or industrial water delivery system
5 on the Reservation;

6 (E) damage, loss, or injury to water, water
7 rights, land, or natural resources due to con-
8 struction, operation, and management of irriga-
9 tion projects on the Reservation and other Fed-
10 eral land and facilities (including damages,
11 losses, or injuries to fish habitat, wildlife, and
12 wildlife habitat);

13 (F) failure to provide for operation, main-
14 tenance, or deferred maintenance for any irriga-
15 tion system or irrigation project;

16 (G) failure to provide a dam safety im-
17 provement to a dam on the Reservation;

18 (H) the litigation of claims relating to any
19 water rights of the Tribe within the State of
20 California;

21 (I) the negotiation, execution, or adoption
22 of the 2007 Agreement (including exhibits A-
23 F) and this Act;

24 (J) the negotiation, execution, or adoption
25 of operational rules referred to in article 3.4 of

1 the 2007 Agreement in connection with any res-
2 ervoir locations, including any claims related to
3 the resolution of operational rules pursuant to
4 the dispute resolution processes set forth in the
5 article 8 of the 2007 Agreement, including
6 claims arising after the Enforceability Date;
7 and

8 (K) claims related to the creation or reduc-
9 tion of the Reservation, including any claims re-
10 lating to the failure to ratify any treaties and
11 any claims that any particular lands were in-
12 tended to be set aside as a permanent homeland
13 for the Tribe but were not included as part of
14 the present Reservation.

15 (b) EFFECTIVENESS.—The waivers and releases
16 under subsection (a) shall take effect on the Enforceability
17 Date.

18 (c) RESERVATION OF RIGHTS AND RETENTION OF
19 CLAIMS.—Notwithstanding the waivers and releases under
20 subsection (a), the Tribe and the United States, acting
21 as trustee for the Tribe, shall retain—

22 (1) all claims relating to the enforcement of, or
23 claims accruing after the Enforceability Date relat-
24 ing to water rights recognized under the 2007
25 Agreement, any final court decree entered in the

1 Federal District Court for the Eastern District of
2 California, or this Act;

3 (2) all claims relating to the right to use and
4 protect water rights acquired after the date of enact-
5 ment of this Act;

6 (3) claims regarding the quality of water
7 under—

8 (A) the Comprehensive Environmental Re-
9 sponse, Compensation, and Liability Act of
10 1980 (42 U.S.C. 9601 et seq.), including claims
11 for damages to natural resources;

12 (B) the Safe Drinking Water Act (42
13 U.S.C. 300f et seq.);

14 (C) the Federal Water Pollution Control
15 Act (33 U.S.C. 1251 et seq.) (commonly re-
16 ferred to as the “Clean Water Act”); and

17 (D) any regulations implementing the Acts
18 described in subparagraphs (A) through (C);

19 (4) all claims for damage, loss, or injury to land
20 or natural resources that are not due to loss of
21 water or water rights, including hunting, fishing,
22 gathering, or cultural rights; and

23 (5) all rights, remedies, privileges, immunities,
24 and powers not specifically waived and released pur-
25 suant to this Act or the 2007 Agreement.

1 (d) EFFECT OF 2007 AGREEMENT AND ACT.—Noth-
2 ing in the 2007 Agreement or this Act—

3 (1) affects the authority of the Tribe to enforce
4 the laws of the Tribe, including with respect to envi-
5 ronmental protections or reduces or extends the sov-
6 ereignty (including civil and criminal jurisdiction) of
7 any government entity;

8 (2) affects the ability of the United States, act-
9 ing as sovereign, to carry out any activity authorized
10 by law, including—

11 (A) the Comprehensive Environmental Re-
12 sponse, Compensation, and Liability Act of
13 1980 (42 U.S.C. 9601 et seq.);

14 (B) the Safe Drinking Water Act (42
15 U.S.C. 300f et seq.);

16 (C) the Federal Water Pollution Control
17 Act (33 U.S.C. 1251 et seq.);

18 (D) the Solid Waste Disposal Act (42
19 U.S.C. 6901 et seq.); and

20 (E) any regulations implementing the Acts
21 described in subparagraphs (A) through (D);

22 (3) affects the ability of the United States to
23 act as trustee for any other Indian Tribe or an
24 allottee of any other Indian Tribe;

25 (4) confers jurisdiction on any State court—

1 (A) to interpret Federal law relating to
2 health, safety, or the environment;

3 (B) to determine the duties of the United
4 States or any other party under Federal law re-
5 garding health, safety, or the environment;

6 (C) to conduct judicial review of any Fed-
7 eral agency action; or

8 (D) to interpret Tribal law; or

9 (5) waives any claim of a member of the Tribe
10 in an individual capacity that does not derive from
11 a right of the Tribe.

12 (e) TOLLING OF CLAIMS.—

13 (1) IN GENERAL.—Each applicable period of
14 limitation and time-based equitable defense relating
15 to a claim described in this section shall be tolled for
16 the period beginning on the date of enactment of
17 this Act and ending on the Enforceability Date.

18 (2) EFFECT OF SUBSECTION.—Nothing in this
19 subsection revives any claim or tolls any period of
20 limitation or time-based equitable defense that ex-
21 pired before the date of enactment of this Act.

22 (3) LIMITATION.—Nothing in this section pre-
23 cludes the tolling of any period of limitations or any
24 time-based equitable defense under any other appli-
25 cable law.

1 (f) EXPIRATION.—

2 (1) IN GENERAL.—This Act shall expire in any
3 case in which the Secretary fails to publish a state-
4 ment of findings under section 11 by not later
5 than—

6 (A) 8 years from the date of enactment of
7 this Act; or

8 (B) such alternative later date as is agreed
9 to by the Tribe and the Secretary, after pro-
10 viding reasonable notice to the State of Cali-
11 fornia.

12 (2) CONSEQUENCES.—If this Act expires under
13 paragraph (1)—

14 (A) the waivers and releases under sub-
15 section (a) shall—

16 (i) expire; and

17 (ii) have no further force or effect;

18 (B) the authorization, ratification, con-
19 firmation, and execution of the 2007 Agreement
20 under section 4 shall no longer be effective;

21 (C) any action carried out by the Sec-
22 retary, and any contract or agreement entered
23 into pursuant to this Act, shall be void;

24 (D) any unexpended Federal funds appro-
25 priated or made available to carry out the ac-

1 activities authorized by this Act, together with
2 any interest earned on those funds, and any
3 water rights or contracts to use water and title
4 to other property acquired or constructed with
5 Federal funds appropriated or made available
6 to carry out the activities authorized by this Act
7 shall be returned to the Federal Government,
8 unless otherwise agreed to by the Tribe and the
9 United States and approved by Congress; and

10 (E) except for Federal funds used to ac-
11 quire or construct property that is returned to
12 the Federal Government under subparagraph
13 (D), the United States shall be entitled to offset
14 any Federal funds made available to carry out
15 this Act that were expended or withdrawn, or
16 any funds made available to carry out this Act
17 from other Federal authorized sources, together
18 with any interest accrued on those funds,
19 against any claims against the United States—

20 (i) relating to—

21 (I) water rights in the State of
22 California asserted by—

23 (aa) the Tribe; or

24 (bb) any user of the Tribal
25 Water Right; or

- 1 (II) any other matter covered by
2 subsection (a)(2); or
3 (ii) in any future settlement of water
4 rights of the Tribe.

5 **SEC. 11. ENFORCEABILITY DATE.**

6 The Enforceability Date shall be the date on which
7 the Secretary publishes in the Federal Register a state-
8 ment of findings that—

9 (1) to the extent that the 2007 Agreement con-
10 flicts with the Act, the 2007 Agreement has been
11 amended to conform with this Act;

12 (2) the 2007 Agreement, so revised, includes
13 waivers and releases of claims set forth in section 10
14 and has been executed by the parties, including the
15 United States;

16 (3) a final judgment and decree approving the
17 2007 Agreement, including Operation Rules, and
18 binding all parties to the action has been entered by
19 the Court, and all appeals have been exhausted;

20 (4) all of the amounts authorized to be appro-
21 priated under section 7(a) have been appropriated
22 and deposited in the designated accounts; and

23 (5) the waivers and releases under section 10(a)
24 have been executed by the Tribe and the Secretary.

1 **SEC. 12. BINDING EFFECT; JUDICIAL APPROVAL; ENFORCE-**
2 **ABILITY.**

3 (a) IN GENERAL.—

4 (1) LAWSUIT.—1 or more Parties may file suit
5 in the Court requesting the entry of a final judge-
6 ment and decree approving the Tribal Water Right
7 and the 2007 Agreement, provided that no such suit
8 shall be filed until after—

9 (A) the Tribe has confirmed that the
10 Phase I Reservoir will be sited at the location
11 described in section 3.4.B.(1) of the 2007
12 Agreement and that Exhibit E governs oper-
13 ation of the Phase I Reservoir; or

14 (B) the Tribe has selected a substitute site
15 for the Phase I Reservoir pursuant to section
16 3.4.B.(2)(a) of the 2007 Agreement and—

17 (i) the Parties have agreed on Oper-
18 ation Rules and the Secretary has executed
19 the 2007 Agreement; or

20 (ii) if the Parties have reached an im-
21 passe in attempting to negotiate Operation
22 Rules, at least 1 Party has developed pro-
23 posed Operation Rules to submit for judi-
24 cial review and approval, and has shared
25 the proposed Operation Rules with the

1 other Parties at least 90 days in advance
2 of filing the lawsuit.

3 (2) JOINING UNITED STATES AS PARTY.—

4 Where suit is filed pursuant to this subsection, in-
5 cluding the satisfaction of the requirements in sub-
6 paragraph (A) or (B) of paragraph (1), the United
7 States may be joined in litigation for the purposes
8 set forth in this section.

9 (b) JUDICIAL APPROVAL.—The Court shall have ex-
10 clusive jurisdiction to review and determine whether to ap-
11 prove the Tribal Water Right and the 2007 Agreement,
12 and on doing so over any cause of action initiated by any
13 Party arising from a dispute over the interpretation of the
14 2007 Agreement or this Act, and any cause of action initi-
15 ated by any Party for the enforcement of the 2007 Agree-
16 ment.

17 (c) FAILURE TO AGREE ON OPERATION RULES.—

18 (1) IN GENERAL.—Subject to subsection
19 (a)(1)(B)(ii), the Court shall have jurisdiction over
20 a cause of action that a Party initiates to establish
21 Operation Rules, where the Parties failed to reach
22 agreement on such Operation Rules.

23 (2) VOLUNTARY DISPUTE RESOLUTION.—If a
24 suit is filed under paragraph (1), the Court shall

1 refer the Parties to the voluntary dispute resolution
2 program of the Court.

3 (3) COURT SELECTION OF OPERATION
4 RULES.—

5 (A) IN GENERAL.—If the voluntary dispute
6 resolution program does not, after a reasonable
7 amount of time as determined by the Court, re-
8 sult in agreed-on Operation Rules, the Court
9 shall set a deadline by which any Party or
10 Downstream Water User may submit proposed
11 Operation Rules and, after briefing and hearing
12 evidence, select among the proffered Operation
13 Rule based on the criteria set forth in para-
14 graph (4).

15 (B) IMPLEMENTATION OF AGREED-ON OP-
16 ERATION RULES.—Once the Court selects Oper-
17 ation Rules pursuant to subparagraph (A), such
18 Operation Rules shall thereafter control and
19 shall be implemented by the Parties pursuant to
20 the terms directed by the Court.

21 (4) CRITERIA FOR COURT SELECTION OF OPER-
22 ATION RULES.—

23 (A) IN GENERAL.—The Court shall select
24 the proffered Operation Rules that, if imple-
25 mented, would be the most effective in—

1 (i) regulating the flows in the South
2 Tule River to comply with the terms con-
3 tained in the 2007 Agreement and the fol-
4 lowing diversion limits, where the South
5 Tule Independent Ditch Company's point
6 of diversion is the point of measurement,
7 including—

8 (I) where the natural flow is less
9 than 3 cubic feet per second (referred
10 to in this clause as “cfs”), the Tribe
11 has a right to 1 cfs;

12 (II) where the natural flow is
13 greater than or equal to 3 cfs and less
14 than 5 cfs, the Tribe has a right to
15 1½ cfs;

16 (III) where the natural flow is
17 greater than or equal to 5 cfs and less
18 than 10 cfs, the Tribe has a right to
19 2 cfs; and

20 (IV) where the natural flow is
21 greater than or equal to 10 cfs, the
22 Tribe has a right to any amount;

23 (ii) minimizing adverse impact on the
24 Parties other than the Tribe; and

1 (iii) maintaining the right of the Tribe
2 to the reasonable and economic use of
3 water for domestic and stock purposes on
4 the Reservation.

5 (B) CONSIDERATION OF EXHIBIT E.—In
6 applying the criteria set forth in subparagraph
7 (A), the Court should consider the Operation
8 Rules governing the Phase I Reservoir de-
9 scribed in section 3.4.B.(1) of the 2007 Agree-
10 ment, as set forth in Exhibit E to the 2007
11 Agreement, which the Parties agreed on based
12 on consideration of that criteria.

13 (C) INCONSISTENCY OF PROPOSED OPER-
14 ATION RULES WITH CRITERIA.—

15 (i) IN GENERAL.—The Court shall not
16 approve the 2007 Agreement if the Court
17 finds that none of the proffered Operation
18 Rules are consistent with the criteria set
19 forth in subparagraph (A).

20 (ii) ALTERNATIVE OPERATION
21 RULES.—If the Court finds that none of
22 the proffered Operation Rules are con-
23 sistent with the criteria set forth in sub-
24 paragraph (A), the Court may establish an
25 alternate process to allow the Parties to

1 develop alternate Operation Rules that are
2 consistent with that criteria.

3 **SEC. 13. MISCELLANEOUS PROVISIONS.**

4 (a) WAIVER OF SOVEREIGN IMMUNITY BY THE
5 UNITED STATES.—Nothing in this Act waives the sov-
6 ereign immunity of the United States, except as provided
7 in section 12(a)(2).

8 (b) OTHER TRIBES NOT ADVERSELY AFFECTED.—
9 Nothing in this Act quantifies or diminishes any land or
10 water right, or any claim or entitlement to land or water,
11 of an Indian Tribe, band, or community other than the
12 Tribe.

13 (c) OTHER WATER RIGHTS OF UNITED STATES NOT
14 ADVERSELY AFFECTED.—Nothing in this Act quantifies
15 or diminishes any other water right held by the United
16 States other than as a Downstream Water User.

17 (d) EFFECT ON CURRENT LAW.—Nothing in this Act
18 affects any provision of law (including regulations) in ef-
19 fect on the day before the date of enactment of this Act
20 with respect to pre-enforcement review of any Federal en-
21 vironmental enforcement action.

22 (e) CONFLICT.—In the event of a conflict between the
23 2007 Agreement and this Act, this Act shall control.

1 **SEC. 14. ANTIDEFICIENCY.**

2 The United States shall not be liable for any failure
3 to carry out any obligation or activity authorized by this
4 Act, including any obligation or activity under the 2007
5 Agreement if adequate appropriations are not provided by
6 Congress expressly to carry out the purposes of this Act.

Calendar No. 236

118TH CONGRESS
1ST Session

S. 306

[Report No. 118-110]

A BILL

To approve the settlement of the water right claims of the Tule River Tribe, and for other purposes.

NOVEMBER 6, 2023

Reported without amendment