

**Statement of George Skibine,
Acting Principal Deputy Assistant Secretary
for Indian Affairs
in the U.S. Department of the Interior
before the
Water and Power Subcommittee of the
House Committee on Natural Resources
on H.R. 3061
the Pine River Indian Irrigation Project Act of 2010**

September 16, 2010

Madam Chairwoman and members of the Subcommittee, I am George Skibine, the Acting Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior (Department). I am pleased to provide the Department of the Interior's views on H.R. 3061, the Pine River Indian Irrigation Project Act of 2010.

H.R. 3061 would require the Secretary of the Department of the Interior to assess the irrigation infrastructure of the Pine River Indian Irrigation Project (Project) in the State of Colorado and provide grants to, and enter into cooperative agreement with, the Southern Ute Indian Tribe (Tribe) to assess, repair, rehabilitate, or reconstruct existing Project infrastructure. The Department supports the goals of improving water management and keeping irrigation infrastructure in good condition; however, the Department cannot support H.R. 3061.

Before discussing the specific issues implicated by this legislation I would like to give you some general background on BIA's irrigation program. The BIA has been involved with Indian irrigation since the mid-1800s starting with the Colorado River Indian Irrigation Project. There are over one-hundred Indian irrigation projects and systems. Fifteen of these projects levy assessments and collect monies from water users, both Indian and non-Indian, to reimburse the federal government for their individual operation and maintenance costs (the Pine River Project is one of these). The fifteen projects that collect assessments operate as commercial operations. All of the BIA's irrigation projects are important economic contributors to the local communities they serve.

The BIA's policy, similar to that of the Bureau of Reclamation, is that revenues from irrigators pay for BIA irrigation projects.

Historically, BIA tempered irrigation O&M rate increases based in part on the economic impact on water users. This tempering of rate increases resulted in rate deficiencies and led to critical reviews of this practice by the Office of Inspector General and the General Accounting Office. In response to the concerns that have been raised, BIA has worked for several years to have all irrigation projects charge a reasonable rate to operate and maintain the projects.

The BIA allocates a portion of its appropriated funding for irrigation project rehabilitation, some of which was used on the Project. To assist in using these funds where they are needed most, the BIA developed a Facilities Condition Index (FCI) and Asset Priority Index (API) for the irrigation projects. BIA uses the API and FCI to establish project priorities for those irrigation projects currently receiving irrigation construction funding. As comprehensive condition assessments are performed on each irrigation project, the BIA ranks all irrigation structures and projects in this priority system. This assists all project managers in setting priorities for maintenance work at the projects.

BIA is also using new tools to better manage maintenance activities at its irrigation projects. An automated Maintenance Management System (MAXIMO) has been developed to incorporate all of the BIA's budgeting templates for maintenance management, which will include the irrigation project management. MAXIMO is being implemented at the various BIA irrigation projects. Deferred maintenance projects and other identified work from the conditions assessments, along with day to day work orders are put into MAXIMO and tracked.

The revenue generating irrigation projects employ over 400 BIA employees. BIA irrigation projects provide water vital to agricultural production in the West and their continued ability to provide irrigation water to over 700,000 acres are an important part of regional economies.

Turning to the Pine River Irrigation Project, the Project is owned and operated by the BIA and located on the Southern Ute Indian Reservation in southwestern Colorado. The Project is operated and administered by the BIA, Southern Ute Agency, and consists of a total of 13,000 acres. Project facilities include 170 miles of canals and laterals and 1,263 irrigation structures. The Agency Superintendent, who is the Officer-in-Charge of the Project, administers the project through the Supervisory General Engineer who manages, supervises and administers the daily operations and maintenance of the Project.

Construction of the Project started in the late 1800's. Operation and maintenance is funded entirely by assessments to approximately 390 water users which include Tribal, individual Indian and non-Indian landowners. The current (2010) operation and maintenance assessment for the Project is \$15.00/acre. The cost to operate and maintain the Project is approximately \$180,000 annually. Eighty-five percent of the land is Indian owned and fifteen percent is non-Indian owned. This project is an important economic contributor to the local community it serves.

BIA has commissioned engineering condition assessments for all BIA irrigation projects, and the Pine River study (HKM Engineering Study, 2008) was completed in 2008. The 2008 study estimated the replacement cost of the Project to be approximately \$20 million. The deferred maintenance for the project is estimated at \$10 million. The scope of this study included an engineering evaluation of all key structures and main canals on the Project, but did not include a specific review of all structures and ditches. The study analyzed all the major features of the Project and a representative sample of smaller

structures and ditches. These results were used to extrapolate the estimated deferred maintenance for the entire project. This study is similar to other condition assessments the BIA is conducting on all of its irrigation projects.

We appreciate that this legislation aims to improve efficiency of operations for this Project and to promote water conservation; however we cannot support this legislation. We would like to work with the bill sponsor and members of this Subcommittee to identify a path forward for improving irrigation infrastructure and related water management at all BIA projects.

I thank you for your time and for your consideration of this issue. This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

**Statement of George Skibine,
Acting Principal Deputy Assistant Secretary
for Indian Affairs in the
U.S. Department of the Interior
before the
Subcommittee on Water and Power
Committee on Natural Resources
U.S. House of Representatives
On H.R. 5413
The Pechanga band of Luiseno Mission Indians
Water Rights Settlement Act**

September 16, 2010

Madam Chairwoman and members of the Subcommittee, I am George Skibine, the Acting Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior (Department). I am pleased to provide the Administration's views on H.R. 5413, the Pechanga Band of Luiseno Mission Indians Water Rights Settlement Act, which would approve, and authorize appropriations to carry out, a settlement of the water rights of the Pechanga Band of Luiseno Mission Indians in southern California. As we have previously testified, this Administration supports the resolution of Indian water rights claims through negotiated settlement. Our general policy of support for negotiations is premised on a set of general principles including that the United States participate in water settlements consistent with its responsibilities as trustee to Indians; that Indian tribes receive equivalent benefits for rights which they, and the United States as trustee, may release as part of a settlement; that Indian tribes should realize value from confirmed water rights resulting from a settlement; and that settlements are to contain appropriate cost-sharing proportionate to the benefits received by all parties benefiting from the settlement. We recognize that refinements have been made to this settlement by the Pechanga Band and other settlement parties and that the parties have taken positive and significant steps toward meeting the Federal goals articulated above.

Analyzing and evaluating Indian water rights settlements is a complex task that has become even more complicated as the number and scope of pending settlements in the last few years has expanded far beyond those that the Administration and Congress has historically faced. As we analyze these settlements, the Administration must consider the immediate and long-term water needs of Indian tribes, the merits of all legal claims, the value of water, federal trust responsibilities, economic efficiency measures, and the overall promotion of good public policy. An additional critical component of our analysis is cost-sharing.

The Department of the Interior has a Federal negotiation team that has been working with the parties on the settlement. The relationship among the team and all the parties has been, and continues to be, very productive. We are confident that all the parties are willing to continue to work with us to try to craft a settlement that can be fully supported by the Administration. The Pechanga Band, in particular, has been very active in recent weeks reaching out to the Administration in efforts to resolve Federal concerns. At this point, good faith discussions

among the Federal negotiation team and the settlement parties have resulted in an outline of the fundamental components of the proposed settlement that need additional negotiation. We believe that identifying these key components is an important milestone in coming to a consensus on the settlement.

Overview of the Proposed Settlement

H.R. 5413 would approve the Pechanga Band of Luiseno Mission Indians Water Rights Settlement Agreement negotiated among the Pechanga Band of Mission Indians (Band) and the Rancho California Water District (RCWD), the Eastern Municipal Water District (EMWD), and the Metropolitan Water District (MWD). The settlement would resolve water rights claims for the Band that the United States brought nearly 60 years ago in *United States v. Fallbrook Public Utility District*, the general stream adjudication of the Santa Margarita river system. The United States also brought water rights claims for two other Indian tribes in the same river system, the Cahuilla Band of Mission Indians and the Ramona Band of Cahuilla Mission Indians. Separate settlement discussions are underway with respect to those claims.

The Pechanga settlement as proposed in H.R. 5413 would recognize a tribal water right to 4,994 acre-feet per year (afy) of water, provided from various sources: 1) 1,575 afy of local groundwater; 2) 525 to 700 afy of imported recycled water; and 3) up to 3,000 afy of imported potable water. H.R. 5413 calls for a Federal settlement contribution of \$50,242,000 for a number of purposes, including \$25.38 million to assist the Pechanga Band in purchasing potable water imported from MWD and \$24.86 million for infrastructure that would treat and deliver imported water to the Reservation.

Water Conflicts in the Santa Margarita Basin

Before discussing the Administration's concerns with the proposed settlement, it is important to provide background on the disputes that led to the settlement. The Pechanga Indian Reservation is located primarily in the Santa Margarita River basin in southern California. The original reservation was reserved by Executive Order in 1882, and additional lands were added in 1893, 1907, 1931, 1988, 2003, and 2008. In 1951, the United States initiated the *Fallbrook* general stream adjudication and in 1958 amended its complaint to include reserved water right claims for other Federal interests, including those of the Pechanga Band and two other Indian tribes, the Cahuilla and the Ramona Bands. The court issued a series of interlocutory judgments in the 1960s that resolved some questions but intentionally left others unresolved. For example, the court found that the United States intended to and did reserve surface and groundwater of the Santa Margarita River stream system that, under natural conditions, would be available to the Reservation and "sufficient for the present and future needs of the Indians residing thereon," but declined to quantify the Reservation's Federal reserved water rights. The court retained jurisdiction to revisit these findings and quantify the Reservation's water rights, if necessary, at a future time. The affected Bands and the United States are in agreement that the time to finally quantify Federal Indian reserved water rights has come. Despite severe water shortages in the basin, development in area surrounding the Reservation has surged since the 1960s, with much of the water currently used in the area being pumped locally by RCWD or imported from MWD.

Competition over scarce resources has sharpened, and coordinated groundwater management is needed to ensure the safe yield of the basin is considered as use of water supplies is maximized.

Federal Concerns

The Administration is currently analyzing a number of important issues raised by the proposed settlement. A fundamental issue is the cost to supply the Reservation with the quantity of water proposed in the settlement. Because of scarcity and tremendous competition, water rights in southern California are extremely expensive. In these circumstances, great care must be given to the decision to import water.

The quality of water in the basin is also of concern. In general, the existing groundwater that can be produced from Pechanga wells is of high quality, with the possible exception of arsenic, for which there is limited data. Total dissolved solids (TDS), which affect yields for crops and the taste of drinking water, average about 380 mg/l, below the EPA secondary standard of 500 mg/l. In contrast, the Band also purchases from EMWD some recycled water which averages about 650 mg/l TDS, and must be blended with local groundwater before it can be used for irrigation. The proposed settlement includes building new infrastructure to reduce the salinity concentration of the recycled water, bringing its quality up to a level that can be used for irrigation without blending the recycled water with higher quality local groundwater. Freeing higher quality groundwater for potable uses is a sound management proposal. The treated recycled water will also be of sufficient quality that it can be used to recharge local aquifers. The proposed settlement agreement contemplates that RCWD will build a demineralization facility which will treat the Band's recycled water if the United States contributes \$4.46 million to cover the Band's share of the facility's construction costs. The Administration believes that there may be more cost efficient ways to deal with the salinity of the Band's settlement water, and discussions about that issue are on-going among the Band, RCWD and the Federal Team.

The waivers and releases authorized in the bill also are of concern to the Administration. As currently structured, the waivers do not adequately protect the United States from future liability and do not provide the measure of certainty and finality that the Federal contribution contained in the bill should afford. We believe that the issues raised are not irreconcilable and discussions are also on-going on this subject.

In addition, as proposed, this settlement would cover only the Band's water rights in the Santa Margarita basin. The Band's Reservation also includes a small portion of land the San Luis Rey watershed. We are considering whether principles of finality would be better achieved by including water rights for that parcel in the settlement.

The Administration strongly believes that Indian water settlements should be a shared responsibility between the States, the non-Federal parties, the Tribes, and the Federal government. Given the complexity of this settlement, it is important to continue to analyze and assess the Settlement beneficiaries' ability to pay, the Federal government's capital and O&M investments, the roles and responsibilities of other non-Federal parties, the costs and benefits of the Settlement, and the claims that could potentially could still be asserted against the Federal government.

Finally, one of the Administration's fundamental principles is that settlements should include appropriate cost-sharing proportionate to the benefits received by all non-tribal parties benefiting from the settlement. We would like to continue to work with the parties and the sponsors to address non-Federal cost share concerns that could make this a settlement that the Administration could support.

We have been in discussions with key stakeholders about ways to work through these issues and will continue to engage in dialogue with interested parties to see if mutually acceptable solutions can be found.

Conclusion

This legislation has to be analyzed and understood within the context of the large numbers of Indian water rights settlements which were introduced during the course of the 111th Congress and are expected to be introduced in the 112th Congress. While the settling parties have worked closely with the Federal team since before and have continued a productive dialogue after this legislation was introduced, the Administration still needs to complete its analysis of the settlement and the settlement costs need to be discussed and negotiated to ensure that the benefits of the settlement justify its costs. Furthermore, we need to explore alternative funding mechanisms that will provide a realistic chance for this settlement to be implemented in a way that fulfills the promise that it represents to the Tribe and to others for a comprehensive settlement.

The Pechanga settlement is the product of a cooperative spirit among the Band and its neighboring water users to deal with tremendous growth in their respective communities and to resolve their differences through negotiation rather than litigation. Settlement of the Band's water rights would fulfill the multiple goals of securing a water supply for the Band, stabilizing groundwater deficits and alleviating chronic water shortages in the basin. Overall, the proposed settlement would provide some innovative mechanisms for managing water in Santa Margarita River basin.

The Administration wants to put an end to water rights litigation filed a half century ago. While the settlement would dispose of only some of the claims in the *Fallbrook* case, it would serve as an example of how parties can compromise and work together to achieve common goals. The Administration is committed to working with Congress and all parties concerned in developing a settlement that the Administration can fully support.

Madam Chairwoman, this concludes my statement. I would be pleased to answer any questions the Subcommittee may have.

**Statement of George Skibine,
Acting Principal Deputy Assistant Secretary
for Indian Affairs
U.S. Department of the Interior
before the
Subcommittee on Water and Power
Committee on Natural Resources
U.S. House of Representatives**

**September 16, 2010
HR 5039**

Madam Chairwoman and Members of the Subcommittee, I am George Skibine, Acting Principal Deputy Assistant Secretary for Indian Affairs. I am pleased to provide the views of the Department of the Interior (Department) on H.R. 5039.

H.R. 5039 would amend the Reclamation Wastewater and Groundwater Study and Facilities Act (Public Law 102-575, 43 U.S.C. 390h *et seq.*), commonly called Title XVI, to authorize the Secretary of the Interior to participate in the design, planning, and construction of permanent facilities needed to reclaim, reuse, and treat wastewater in Orange County, California. The project is being implemented by the Orange County Water District (District).

The District completed construction of its Groundwater Replenishment (GWR) System in 2008. These facilities have the capacity to reclaim 70 million gallons of wastewater per day. The recycled water is treated to highly advanced levels, and is then delivered for beneficial use, primarily for recharging the groundwater basin that provides a major portion of the region's potable water supply.

Section 1624 of Public Law 104-266, which was enacted in 1996, amended Title XVI to authorize Reclamation to participate in the design, planning, and construction of Phase 1 of the Orange County Regional Water Reclamation Project, which became known as the GWR System, not to exceed 25 percent of the total cost or \$20 million, whichever is less. Beginning in Fiscal Year 2000, Congress included this Orange County project in the annual appropriations. The Fiscal Year 2009 appropriation brought the total to \$20 million, and Reclamation's participation was complete.

The GWR System has been successful, and the District is implementing an expansion project that would increase the capacity to 88 million gallons per day. The estimated cost is about \$120 million. Reclamation approved the feasibility study for the original project in 2000, but the District has not provided a feasibility study for the expansion that is proposed to be authorized for Federal funding under this bill.

H.R. 5039 would authorize the expansion project under Title XVI for Federal funding not to exceed 25 percent or \$26 million, whichever is less. This would be in addition to the \$20 million that was provided for the original GWR System.

While the Department supports efforts to increase local water supplies and increase recycled water use, this project would compete for funds with other needs within the Reclamation program, including other Title XVI projects currently under construction. In general, the Department supports the Title XVI Reclamation and Reuse program. The fiscal year (FY) 2011 budget proposal includes funding for the Department's WaterSMART Program, and Title XVI is an important element of that program. Specifically, the FY 2011 budget proposal includes \$29 million for the Title XVI program, a 113% increase over the 2010 enacted level.

As part of this total, the Department is requesting \$20 million for Title XVI projects to be selected using criteria to identify activities most closely aligned with Title XVI statutory and program goals. In March of this year, Reclamation posted an announcement inviting comment on draft funding criteria for Title XVI projects. After these criteria are finalized with comments received, Reclamation will review and rank Title XVI project proposals received based on those criteria, subject to appropriations in FY 2011.

Separately, last year the Department announced the allocation of approximately \$135 million in grants for specific authorized Title XVI projects using funds from the American Recovery and Reinvestment Act, or ARRA. We recognize that water reuse is an essential tool in stretching the limited water supplies in the West, and I believe the FY 2011 Budget request on top of the ARRA funding has demonstrated the emphasis placed on this Program by this Administration. However, given that there are 53 previously authorized Title XVI projects and numerous competing mission priorities and demands on Reclamation's budget, the Department cannot support the authorization of new Title XVI projects or extensions of existing cost ceilings at this time.

Reclamation will, however, continue to work with project proponents to evaluate the completeness of feasibility studies of their projects.

Madam Chairwoman, this concludes my statement. Thank you for the opportunity to comment on H.R. 5039. I would be pleased to answer any questions at this time.