

**Statement of Dionne Thompson,  
Deputy Commissioner for External and Intergovernmental Affairs  
Bureau of Reclamation  
United States Department of the Interior  
Before the  
Subcommittee on Water, Power and Oceans  
Committee on Natural Resources  
House of Representatives  
on  
Discussion Draft HR\_\_\_, The Pechanga Band of Luiseño Indians  
Water Rights Settlement Act**

**June 23, 2016**

Chairman Fleming, Ranking Member Huffman and Members of the Subcommittee. My name is Dionne Thompson, Deputy Commissioner for External and Intergovernmental Affairs at the Bureau of Reclamation at the Department of the Interior (Department). I am here today to provide the Department's position on the discussion draft HR \_\_\_\_, which would provide approval for, and authorizations to carry out, a settlement of the water rights claims of the Pechanga Band of Luiseño Mission Indians. The Department supports the discussion draft, and looks forward to working with the Committee to consider this legislation.

The Department supports resolving Indian water rights claims through negotiated settlement. Our general policy of support for negotiations is premised on a set of *Criteria and Procedures*,<sup>1</sup> including general principles 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 have concluded, in concurrence with the Office of Management and Budget, that both the Pechanga settlement, and the Blackfeet settlement, adhere to the Criteria and Procedures.

Disputes over Indian water rights are expensive and divisive. In many instances, Indian water rights disputes, which can last for decades, are a tangible barrier to progress for tribes and significantly hinder the rational and beneficial management of water resources. Settlements of Indian water rights disputes break down these barriers and help create conditions that improve water resources management by providing certainty as to the rights of all water users who are parties to the dispute. That certainty provides opportunities for economic development, improves relationships, and encourages collaboration among neighboring communities. This has been proven time and again throughout the West as the United States has pursued a policy of settling Indian water rights disputes whenever possible. Indian water rights settlements are also

---

<sup>1</sup> *Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims (Criteria and Procedures)* (55 FR 9223, March 12, 1990)

consistent with the Federal trust responsibility to American Indians and with Federal policy promoting Indian self-determination and economic self-sufficiency.

Today, implementing existing settlements and reaching new agreements is more important than ever given the need for water on many Indian reservations and throughout the West and the uncertainty regarding its availability due to drought, climate change, and increasing demands for this scarce resource.

The discussion draft would authorize and approve an agreement among the Pechanga Band of Luiseño Indians, (“Pechanga” or “Band”), Rancho California Water District (“RCWD”), and the United States, and certain collateral agreements, including agreements with Eastern Municipal Water District (“EMWD”), and Metropolitan Water District (“MWD”) (“Agreements”). The Pechanga Band of Luiseno Mission Indians water settlement and accompanying Agreements (“Pechanga Settlement”), if enacted through the discussion draft, would successfully conclude decades of conflict and uncertainty over water rights and years of negotiations through a comprehensive settlement that resolves the Band’s water-rights claims and secures sufficient water to meet their current and future water needs while protecting the legitimate interests of RCWD and its customers.

The Pechanga Settlement is a creative and forward-looking settlement that fulfills important Federal trust obligations, encourages cooperative and efficient water management, and provides important benefits to the American taxpayer.

Pechanga is a federally recognized Indian tribe with a reservation of over 6,000 acres located northeast of San Diego, California, near the city of Temecula. Pechanga Creek, a tributary of the Santa Margarita River, runs through the length of the Pechanga Reservation. In 1951, the United States initiated the *Fallbrook* litigation<sup>2</sup> to protect the Federal water rights of the United States adding claims for three Indian tribes – Pechanga, the Ramona Band of Cahuilla Indians (“Ramona”), and the Cahuilla Band of Indians (“Cahuilla”) in 1958.<sup>3</sup> In 1963, the Court issued an order, Interlocutory Judgment 41 (“IJ 41”), finding that each of the three Indian tribes had reserved rights to surface and groundwater in the Santa Margarita River watershed.<sup>4</sup> The Court did not quantify the tribes’ water rights but made certain *prima facie* findings regarding the nature and extent of each of the tribe’s water rights.<sup>5</sup> As a result, all three tribes have “decreed” but “unquantified” federally reserved water rights. The discussion draft quantifies Pechanga’s

---

<sup>2</sup> *United States v. Fallbrook Public Utility District et al.*, Civ. No. 3:51-cv-01247 (S.D. Calif.).

<sup>3</sup> Although the reservations of the three bands are all located within the Santa Margarita River watershed, Cahuilla and Ramona are located in the upper part of the watershed, which is hydrologically distinct from the area where Pechanga is located. As a result, Cahuilla and Ramona are negotiating a separate settlement involving entirely different parties than those involved in the Pechanga Settlement.

<sup>4</sup> Modified Final Judgment and Decree, *United States v. Fallbrook Public Utility District et al.*, Civ. No. 3:51-cv-01247 (S.D. Calif.)(Apr. 6, 1966).

<sup>5</sup> The Court recognized various overlying rights for RCWD, as set forth in Interlocutory Judgments 30 and 35.

water rights in a manner that is consistent with the Court's *prima facie* findings in IJ 41 and protects existing water uses.

The Secretary of the Interior appointed a Federal negotiation team in 2008 to support Pechanga's efforts to negotiate a settlement of its water rights claims. Since then, the United States has been working closely with the Band to negotiate the terms of the settlement and resolve Pechanga's claims against the United States regarding the development and protection of Pechanga's water rights. In addition to quantifying the Band's reserved water rights in the Santa Margarita watershed, the discussion draft settles the Band's claims against the United States, including a breach of the Federal trust responsibility, in connection with Pechanga's water rights.

Through negotiations, the Band has been able to engage its neighbors in a multi-year process of building mutual trust and understanding, resulting in a settlement that benefits all of the parties by securing adequate water supplies for the Band and encouraging cooperative water resource management among all parties. Living in Southern California, the settling parties were faced with a tremendous challenge to identify available water resources and protect each party's legitimate rights and expectations. As discussed in detail below, the Band will obtain a commitment for the delivery of water through sharing the locally available water supply and agreeing to arrangements that would allow all of the parties to benefit from the delivery of other water sources outside the basin; in return, the Band would commit to not assert its full rights. As a result, the Band will have an adequate supply of water while at the same time maximizing the use and the protection of local sources.

If their Agreements are not authorized and approved through legislation, the United States, Pechanga, and the local water districts would in all likelihood resume litigating a number of divisive, conflicting and expensive claims. All parties would miss an opportunity to seize upon the cooperative relationships the parties in the basin fostered during the course of their negotiations.

The Pechanga Reservation lies in a rapidly urbanizing part of Riverside County, with neighbors in close proximity. Pechanga and RCWD have had a groundwater management agreement in place since 2006 to address concerns with over-pumping in the Wolf Valley Basin, which underlies the Reservation and RWCD's off-reservation service area. The groundwater management agreement will be amended to allow the Band to increase its use of the basin's safe water yield from 50 percent to 75 percent. As a result, the Band will obtain a greater share of the local high-quality groundwater. In exchange for agreeing to provide the Band with a larger share of high-quality groundwater, RCWD will receive recycled water under an agreement with the Band and EMWD. The Pechanga Settlement includes plans for the construction of the infrastructure necessary for these arrangements.

We are pleased that through negotiations with the parties our previous concerns about costs, water quality, and the extent of Federal responsibilities have now been addressed. The total Federal cost of the discussion draft is \$28.5 million, substantially less than the approximately

\$50 million price tag of the legislation as originally introduced.<sup>6</sup> Our concerns about the quality of the water that would be included as part of the Band's water right also have been addressed, as explained above. Federal responsibilities in the discussion draft have been addressed in a way that resolves concerns that we had previously expressed about the lack of clarity regarding the United States' responsibility in implementing the Pechanga Settlement. On June 16, 2016, the United States, the Band and other settling parties filed a status report with the adjudication court informing the court of the status of congressional settlement efforts including the May 17, 2016, letter from the Departments of Justice and the Interior of the United States to this Committee and further attaching a copy of the proposed Settlement Agreement and ratifying legislation.

The Band and its neighbors are to be credited for successfully negotiating a settlement of their dispute. After decades of conflict, this settlement not only resolves the Band's Federal reserved water-rights claims, but also achieves other goals such as effective management and conservation of groundwater, addressing water quality issues, and alleviating water shortages in the basin.

The Pechanga Settlement will secure to the Band the right to use and benefit from Reservation water resources, thus ensuring the Band will receive equivalent benefits for claims it will waive as part of the Pechanga Settlement. Indian water rights are vested property rights for which the United States has a trust responsibility. Under the discussion draft, the Band will receive equivalent benefits for claimed rights which it, and the United States as trustee, will release as part of the proposed Pechanga Settlement. The discussion draft will bring to conclusion decades of effort by the Band and the United States to achieve water security for the Pechanga people.

Early in its history, the Band had desirable lands and sufficient water, but because of encroachments by settlers who did not respect tribal interests in land or water, the Band was pushed off its valuable aboriginal lands up into rocky barrens where the Pechanga Reservation was first established in 1882. Water was in scarce supply on the Reservation and, during the next few decades, the United States secured additional land and water resources in an effort to improve conditions for the Band. In recent years, at the request of the Band, the Federal negotiation team has worked closely with the Band to support its efforts to negotiate a settlement that secures a sufficient water supply to make the Pechanga Reservation sustainable as a permanent homeland for the Pechanga people.

The Band worked collaboratively with the local parties and United States to target funding for initiatives that will allow the Band to manage Reservation water resources and promote economic self-sufficiency. To account for the limited water sources within the Santa Margarita River watershed, the parties developed a settlement with creative and innovative solutions. The parties structured their Agreements to use all available water resources, including groundwater, recycled water and imported water, in a way that provides Pechanga with a means of meeting its current and future water needs in the most economical and equitable manner. In addition to the

---

<sup>6</sup> The amount of the Federal contribution is set forth in the Act, as a total of all authorizations of appropriations, at \$28.5 million in 2009 dollars. The Congressional Budget Office has scored the cost to the Federal Government in 2015 dollars at \$33 million.

contractual elements that provide “wet” water to Pechanga and make the overall arrangement work for the other parties, a critical element of the Pechanga Settlement is final quantification of the Band’s Federal reserved rights to water (the “Tribal Water Right”). The Pechanga Settlement recognizes a Tribal Water Right for the Band of up to 4,994 acre feet per year, an amount consistent with the *Fallbrook* Court’s findings. The *Fallbrook* Court’s findings included a limitation on the Tribal Water Right, such that the right is limited to water that under natural conditions is physically available on the Reservation. The Pechanga Settlement follows that approach and references the exact language included in IJ 41.

The Pechanga Settlement provides significant benefits to the United States, both fiscal and otherwise, by securing a final resolution of a decades-long controversy, including the waiver of claims, in exchange for a commensurate Federal contribution of \$28.5 million over a five-year period. The United States will fund infrastructure development in order to facilitate the sharing arrangements agreed to by the parties and will help offset costs associated with imported water. The Band’s and the local parties’ contributions to the settlement are significant. The Band bears primary responsibility for paying for the water it will import from MWD and it estimates that the present value of its costs will exceed \$44 million. RCWD estimates the value of its contribution, based upon its agreement to forgo the right to use 25 percent of the high-quality groundwater that the Band will be entitled to use, at more than \$33 million. The parties, including the Bands and the United States, have expended decades of effort to secure a fair and reasonable allocation of the limited supply of water available in the basin.

This concludes my written statement. I would be pleased to answer questions at the appropriate time.