Statement of
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U.S. Department of the Interior
before the
Committee on Natural Resources
Subcommittee on Water, Power and Oceans
United States House of Representatives
on
HR 1296 – a bill to amend the San Luis Rey Indian Water Rights Settlement Act to clarify certain settlement terms, and for other purposes
October 28, 2015

Chairman Fleming, Ranking Member Huffman and Members of the Subcommittee, I am Letty Belin, Counselor to the Deputy Secretary of the Department of the Interior (Department). Thank you for the opportunity to provide the views of the Department on HR 1296, a bill to amend the San Luis Rey Indian Water Rights Settlement Act to clarify certain settlement terms, and for other purposes. I am pleased to have the opportunity to speak briefly about the Administration's efforts to address the needs of Native Communities and fulfil the Federal trust responsibility to American Indians through Indian water rights settlements, and to provide our views on HR 1296, which would approve and ratify the 2014 "Settlement Agreement Between the United States and the La Jolla, Rincon, Pala, Pauma, and San Pasqual Bands of Mission Indians and the San Luis Rey Indian Water Authority and the City of Escondido and Vista Irrigation District" (2014 Settlement Agreement), thus resolving this longstanding water rights dispute addressed in the San Luis Rey Indian Water Rights Settlement Act (1988 Settlement Act).

I want to start off by briefly touching upon the Administration's efforts to negotiate and implement Indian water rights settlements. 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. Settlements resolve long-standing claims to water; provide reliability with respect to supplies; facilitate the development of much-needed infrastructure; improve environmental and health conditions on reservations; and promote collaboration between Tribes, states, and local communities. Settlements have been, and should remain, a top priority for the Federal government.

This Administration's active involvement in settlement negotiations has resulted in both significant improvements in the terms of the settlements and substantial reduction in their Federal costs. Our support for settlements clearly demonstrates that settling Indian water rights disputes is a high priority for this Administration and confirms that we stand ready to support Indian water settlements that result from negotiations with all stakeholders, including the Federal government, include appropriate share contributions from states and other benefitting parties, and represent a good use of taxpayer dollars.

HR 1296

Turning to HR 1296, as we noted in our September 11, 2015 views letter co-authored by the Department of Justice, the Administration supports the 2014 Settlement Agreement, if Congress enacts legislation substantively identical to the draft amendment to the 1988 Settlement Act that the Settlement Parties agreed upon in Exhibit C to the Settlement Agreement (draft Amendment). HR 1296 is substantively identical to the draft Amendment. As articulated in our views letter, I will summarize the 2014 Settlement Agreement and then discuss issues raised in your letter of February 26, 2015, regarding Indian water rights settlements (February 26th letter). Neither the 2014 Settlement Agreement nor the draft Amendment would require any new federal spending authorizations. Rather, these documents implement and clarify the 1988 Settlement Act.

Congress enacted the 1988 Settlement Act to "provide for the settlement of the reserved water rights claims of the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians [the Bands] in San Diego County, California in a fair and just manner which . . . provides the Bands with a reliable supply sufficient to meet their present and future needs." Congress recognized that the reservations established for the Bands needed a reliable source of water and that the San Luis Rey River basin lacked sufficient water to supply the needs of the Bands as well as the City of Escondido, its water company, and the Vista Irrigation District (defined in the Act as the "Local Entities"). To address this problem and facilitate a settlement, the 1988 Settlement Act established a fund for the Bands and provided for importation of 16,000 acre-feet per year of supplemental water into the San Luis Rey Basin. Specifically, Congress established the San Luis Rey Tribal Development Fund and appropriated $30 million for that Fund (with interest accruing) for the benefit of the San Luis Rey Indian Water Authority (SLRIWA), an intertribal entity whose establishment was recognized in the 1988 Settlement Act. Congress also authorized and directed the Secretary of the Interior to "arrange for the development [and delivery] of not more than 16,000 acre-feet per year of supplemental water," to be obtained by lining the All-American Canal, which delivers water from the Colorado River to Southern California.

By its own terms, the 1988 Settlement Act becomes effective only when the United States, the Bands, and the Local Entities enter into "a settlement agreement providing for the complete resolution of all claims, controversies, and issues involved" in proceedings that were pending in federal district court as well as before the Federal Energy Regulatory Commission (FERC), and final judgments or dispositions are entered in those proceedings.

For more than two decades, the United States, the Bands, and the Local Entities were unable to agree on a settlement implementing the Settlement Act due to conflicting interpretations of the intent of the Act. The United States interpreted the Settlement Act as resolving all of the Bands' claims to federal reserved water rights by providing 16,000 acre-feet per year of supplemental water from outside the Basin and funds in substitution for the Bands' federally reserved water rights in the Basin. The Bands and Local Entities, in contrast, interpreted the Act as providing supplemental water and a tribal development fund to remedy past damages, but still allowing the Bands to assert claims for federally reserved water rights. Notwithstanding these conflicting views, the parties have engaged in extensive negotiations to reach a mutually acceptable resolution that involves amending the 1988 Settlement Act. The Settlement Agreement and draft Amendment are collaborative documents that reflect Administration input rather than proposals that are predominantly the work of the Administration.

Congress has authority to amend the 1988 Settlement Act to resolve the ongoing dispute. In light of this, the parties agreed in 2014 to negotiate a settlement agreement premised on Congress amending the 1988 Settlement Act to resolve the outstanding dispute. The 2014 Settlement Agreement, therefore, is contingent upon Congress enacting legislation substantively identical to the draft Amendment.

Settlement Agreement and Draft Amendment

The Administration supports the Settlement Agreement, if Congress enacts legislation substantively identical to the draft Amendment. The 1988 Settlement Act was passed to provide "the basis for a mutually beneficial, lasting, and cooperative partnership among the Bands and the [L]ocal [E]ntities to replace the adversarial relationships that have existed for several decades" and to "foster[] the development of an independent economic base for the Bands." The draft Amendment and Settlement Agreement would accomplish those purposes and allow the parties to resolve the litigation and disputes that led Congress to enact the 1988 Settlement Act. Key components of the Settlement Agreement include provisions that: allow the Bands to protect and enforce their reserved water rights; address the fair allocation of water among the Bands; protect the water rights of allottees; resolve outstanding disputes regarding rights-of-way and other lands; and fully release and waive all claims against the United States. The Settlement Agreement will allow for dismissal of both the federal district court and FERC proceedings. The Settlement Agreement is premised on the draft Amendment, which will resolve the dispute concerning the effect of the Act on the Bands' federally reserved water rights. The draft Amendment is a critical piece of the 2014 Settlement Agreement because it clarifies the 1988 Act, resolving the dispute over the meaning of that Act. Congress has this authority pursuant to its plenary power to address Indian affairs.

We appreciate this Committee's support of the longstanding policy of the United States that disputes regarding Indian water rights should be resolved through negotiated settlement rather than through litigation, as noted in the Committee's February 26th correspondence. Because HR 1296 is not a new water rights settlement and does not require any new funding, it does not implicate the fiscal concerns raised in the Committee's February 26th correspondence. Indeed, the Settlement Agreement and draft Amendment would provide 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, at no additional cost to the Federal government. While our September 11 views letter on HR 1296 responds in greater detail to the information the Committee seeks when evaluating legislation authorizing settlements, I wanted to take a moment to cover a few particular matters raised in that letter.

First, the draft Amendment and the Settlement Agreement reflect the principles set out in the *Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims*. The 2014 Settlement Agreement resolves the dispute regarding interpretation of the 1988 Settlement Act; allows the parties to move past the longstanding dispute regarding the dewatering of the Bands' reservations; resolves related land-use and trespass disputes that are central to water delivery and use; promotes long-term harmony and cooperation among the parties in the San Luis Rey Basin; promotes economic efficiency by allowing construction of vital infrastructure to deliver water to support residential and economic activities of the Bands while also allowing non-Indian water uses to continue; supports tribal self-

sufficiency by allowing the Bands to protect and enforce their federal reserved water rights as necessary in the future.

Second, all parties have signed the 2014 Settlement Agreement, with the signatures of the Secretary of the Interior and of the Attorney General's designee subject to the caveat that they are effective "if and only if the 114th Congress enacts legislation substantively identical to the" draft Amendment. The draft Amendment was approved in writing by all settling parties, as shown by its attachment to the Settlement Agreement.

Third, neither the 2014 Settlement Agreement nor the draft Amendment has been provided to a court since the district court administratively dismissed the underlying action. In addition, FERC has granted the Local Entities a project license exemption and surrender that is expressly conditioned on a signed settlement agreement. If Congress approves the draft Amendment, the parties will move to reopen the district court case and seek its dismissal with prejudice pursuant to the 2014 Settlement Agreement and will file the 2014 Settlement Agreement with FERC so that it can take any actions necessary to complete both the current exemption/surrender proceeding and the original license proceeding that has been pending since the 1970s.

Fourth, in addition to resolving the longstanding dispute over the interpretation of the 1988 Settlement Act and remedying the century-old dewatering of the Bands' reservations, the Agreement resolves among the parties all claims that gave rise to the 1988 Settlement Act, The Bands waive all past claims against the United States regarding water rights and breach of trust relating to water rights, the United States is relieved of future obligations to assert reserved rights on behalf of the Bands or allottees, and the draft Amendment would confirm that the "benefits to allottees in the Settlement Agreement, including the remedies and provisions requiring that any rights of allottees will be satisfied from supplemental water and other water available to the Bands or the [SLRIWA], are equitable and fully satisfy the water rights of the allottees."

Conclusion

In conclusion, I want to underscore the importance of these settlements to this Administration. Indian water rights settlements, when they are done right, produce critical benefits for Tribes and bring together communities to improve water management practices in some of the most stressed water basins in the country. Moreover, Indian water settlements help ensure that Indian people have safe, reliable water supplies and the means to develop their homelands, and that neighboring communities receive needed certainty in water resources to foster economic development and growth. I hope that I have a chance to work with this Committee on additional settlements that can accomplish these worthy goals.