

**WRITTEN TESTIMONY
OF
CHAIRMAN BO MAZZETTI, RINCON BAND OF MISSION INDIANS
AND
VICE PRESIDENT, SAN LUIS REY INDIAN WATER AUTHORITY
FOR THE
OCTOBER 28, 2015 HEARING
BEFORE THE
SUBCOMMITTEE ON WATER, POWER AND OCEANS
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES
ON
H.R. 1296, LEGISLATION TO AMEND THE SAN LUIS REY
INDIAN WATER RIGHTS SETTLEMENT ACT OF 1988**

On January 30, 2015, acting through the Secretary of the Interior and the Assistant Attorney General for Environment and Natural Resources, the United States approved a settlement agreement with five Mission Bands whose reservations are located in northern San Diego County, California, and with the City of Escondido and the Vista Irrigation District.

This legislation which provides Congressional approval of the settlement agreement will enable the parties to petition the U.S. District Court for the Southern District of California to enter a final judgment and dismiss the legal actions pending before that court, as well as to bring a close to related proceedings currently pending before the Federal Energy Regulatory Commission.

Background

The underlying litigation that the San Luis Rey Indian Water Rights Settlement Act of 1988 sought to resolve arose out of these circumstances:

- The United States reserved water for the five San Luis Rey Mission Bands when the government established reservations for each of the Bands in the late 1800s.
- Later, the United States entered into contracts with the predecessors of the City of Escondido and the Vista Irrigation District which authorized the same water to be used to fulfill those contracts. In exercising their contract rights, the predecessors of the City and the District diverted water away from the reservations – with the average annual diversion resulting in the loss of 90% of the water from the upper portion of the San Luis Rey River that had been reserved for the Bands’ reservations.
- This inevitable conflict over competing claims to the same sources of water led to litigation that the United States subsequently joined in its capacity as trustee for the Bands’ Federally-reserved water rights.

San Luis Rey Indian Water Rights Settlement Act of 1988

The 1988 Settlement Act authorized the United States to provide 16,000 acre-feet of supplemental water on an annual basis for the use of the Bands, the City of Escondido, and the Vista Irrigation District. The City and the District are referred to as “the Local Entities.”

The Act also authorized the establishment of an economic development fund for the Bands, and the appropriation of \$30 million for that fund – which was to be administered by the San Luis Rey Indian Water Authority, as authorized and recognized as a tribal entity in the Act.

Finally, the Act authorized the parties to enter into a Settlement Agreement following the enactment of the legislation – which, once approved and signed by all parties, would completely resolve all claims in the litigation and provide for the entry of final judgments in the U.S.

District Court for the Southern District of California and before the Federal Energy Regulatory Commission.

Settlement Agreement

Because the 1988 Settlement Act requires the parties to the litigation to develop and sign a settlement agreement, the United States, the Bands and the Local Entities spent several years negotiating the terms of a settlement agreement, but were unable to reach a consensus. In the interim, the Bands and the Local Entities completed their work on an implementing agreement for the management and sharing of water resources within the San Luis Rey River basin as well as the supplemental water, and their agreement was approved by the Bands and Local Entities in April of 2012. A key term of the implementing agreement is that all parties retain their existing rights to San Luis Rey water, but agree to exercise those rights only in accordance with the requirements of the settlement agreement. The United States is not a party to the implementing agreement.

In 2014, the Deputy Secretary for the Department of the Interior, Michael Connor, suggested a new approach as a means for the parties to come to an agreement, and negotiations amongst the parties were resumed in the fall of 2014. Under the new approach, the government would agree to the recognition by the Congress that the Bands had, have, and will continue to possess Federally-reserved rights to water sufficient to fulfill the purposes for which their reservations were established, provided that if there were to be a challenge to the Bands' water rights, the Bands would be responsible for asserting, enforcing, and defending their Federally-reserved water rights, and the United States would not be deemed to be a required party to any such litigation.

The Settlement Agreement, as approved by Interior Secretary Jewell and Assistant Attorney General John Cruden on January 30, 2015, represents a consensus amongst the Bands, the Local Entities, and the United States. The parties also worked together in the development of

proposed legislative language to memorialize the terms of the Settlement Agreement, and upon approval by the Congress, to implement the Settlement Agreement.

Legislation

H.R. 1296, a bill to amend the San Luis Rey Indian Water Rights Settlement Act of 1988 in order to authorize the approval of the Settlement Agreement by the Congress, was introduced in the U.S. House of Representatives on March 4, 2015, by Representative Duncan Hunter, with other members of the House serving as original co-sponsors of the legislation, and was referred to the Subcommittee on Water, Power and Oceans of the House Natural Resources Committee on March 23, 2015.

The bill provides for the implementation of the Settlement through Findings of the Congress and additional provisions, including:

- Approval and ratification of all of the provisions of the Settlement Agreement, including waivers and releases of the liability of the United States, a provision regarding allottees, and a provision entitled “Effect of the Settlement Agreement and Act”;
- A declaration by the Congress that notwithstanding any other provision of law, including any provisions of H.R. 1296, the Bands had, have, and continue to possess Federally-reserved rights to water and other water rights held in trust by the United States. That declaration is followed by a proviso that the United States shall not be a required party in any proceeding involving the assertion, enforcement or defense of the Bands’ water rights, and that any decision by the United States relative to participation in such a proceeding shall not be subject to judicial review or give rise to any claim for relief against the United States; and

- A final statement that nothing in the Act shall be construed or interpreted as a precedent for litigation or settlement of Indian reserved water rights.

On behalf of the Bands and the Local Entities, we want to express our appreciation to former Congressman Ron Packard for his leadership in securing the enactment of the 1988 Settlement Act into law.

We also want to thank Michael Connor, Deputy Secretary of the Department of the Interior, for his role in identifying a path forward that has enabled all of the parties to come together and reach agreement.

Finally, last but certainly not least, we are grateful to Congressman Duncan Hunter for his willingness to assure that the provisions of the 1988 Settlement Act will be fully realized, should the Congress act to approve this measure.