

**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.