

**Statement of Majel M. Russell  
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  
On  
H.R. 4841**

**March 13, 2008**

Madam Chairwoman and members of the Subcommittee, my name is Majel M. Russell and I am the Principal Deputy Assistant Secretary - Indian Affairs at the Department of the Interior. I appreciate the opportunity to appear today to present the Administration's views on H.R. 4841, the "Soboba Band of Luiseño Indians Settlement Act."

The Administration supports H.R. 4841, provided that the Settlement Agreement that the bill approves is modified to be fully consistent with the language included in H.R. 4841 and the agreements among the parties and the United States. Passage of this bill would bring to an end almost sixty years of sporadic litigation and over ten years of settlement negotiations. Parties to the Settlement Agreement include the Soboba Band of Luiseño Indians (Soboba Tribe) and three water districts active in the San Jacinto water basin in Riverside County, California, where the Soboba Reservation is located: the Eastern Municipal Water District (EMWD), the Lake Hemet Municipal Water District (LHMWD), and the Metropolitan Water District of Southern California (MWD). Approval by Congress of this Settlement Agreement would resolve contentious questions of liability and ownership of water rights that have hindered the Soboba Tribe's efforts to stimulate economic growth and provide an adequate standard of life for its people as well as regional efforts to achieve sustainable water management in the over-drafted San Jacinto basin.

This settlement provides a just resolution that protects the Soboba Tribe's water rights, avoids protracted litigation, and advances the interests of the entire San Jacinto basin.

The fact that all parties are making significant contributions indicates the importance of this settlement to everyone involved. The value of the non-Federal contribution that is provided for in the Settlement Agreement exceeds \$80 million, which is approximately four times the Federal cost share of \$21 million that would be authorized by H.R. 4841. Under the Settlement Agreement, the Soboba Tribe is also contributing by agreeing to forbear in its use of a portion of its water rights for the next fifty years. By gradually phasing in increased water use, the Soboba Tribe is giving two local water districts the time they need to develop and implement a groundwater management plan to cure the current overdraft in the San Jacinto basin. The Soboba Tribe's forbearance has a monetary value of over \$58 million and this contribution, combined with the Federal monetary support, was key to convincing the three water districts involved to agree to make their own significant contributions.

A crucial provision of the settlement is the agreement by MWD to deliver 7,500 acre-feet of water each year for the next 30 years to the two local water districts, EMWD and the LHMWD, to use to recharge the San Jacinto groundwater basin. Recharging the depleted basin should help not only to fulfill the Band's water rights but also to terminate chronic groundwater overdrafts that, if left unaddressed, would eventually lead to further degradation of the basin's environment. When implemented, the groundwater management plan that is being developed will restore groundwater levels to close to the historic norm and ensure that the rate at which water is being withdrawn from the aquifer does not exceed the rate at which the aquifer is being recharged, thus supporting the conditions for a sustainable water budget and long-term health of the valley ecosystem. We believe that this settlement illustrates the potential of negotiated settlements to resolve Indian water rights claims in a manner that both recognizes local needs and provides for long-term improvements in regional water management.

## **Background**

Water use in the San Jacinto Valley by the Tribe predates American settlement in the 1860s; the earliest known diversion of water from the San Jacinto River was from the

Soboba Ditch used by the Soboba Tribe. The Soboba Indian Reservation was created by Executive Order in 1883. Until non-Indian diversions from the River began in the late 1800s, the San Jacinto River flowed through the Reservation year-round. Construction of the Hemet Dam on the South Fork of the San Jacinto River in 1893 together with diversion of surface flows effectively stopped the summer and autumn flow of the San Jacinto River to the Soboba Indian Reservation. This left the Soboba Tribe without surface water for irrigation of its main valley lands. Since that time, groundwater has been the main source of water supply to the Reservation.

Construction of the San Jacinto Tunnel by the MWD, which took place between 1933 and 1939 as part of the Colorado River Aqueduct System, resulted in the interception of significant amounts of groundwater that used to naturally recharge the aquifer under the Soboba Reservation. The tunnel reduced the number of springs on the Reservation from 40 to just a few. Groundwater pumping in the basin has subsequently lowered the water table to over 200 feet below the land surface, and presently it is estimated that the basin groundwater overdraft is about 10,000 acre-feet per year.

Litigation involving Indian water rights in the basin began as far back as 1950 when the Soboba Tribe brought claims before the Indian Claims Commission (ICC) against the United States for failing to protect the Tribe's water resources. A 1976 ICC ruling found that the Soboba Reservation "has been transformed from an oasis into a desert, completely unsuitable for the purposes for which it was established." In 1992, the United States reached a settlement with the Soboba Tribe for \$12 million for damages for failure to protect the Tribe's water through 1991.

In 1995, a Federal Negotiation Team was appointed to seek a settlement of the Soboba Tribe's water rights claims and to find mechanisms to prevent further damage to the Reservation. The Team has worked with the Soboba Tribe and the other parties to this settlement consistent with the *Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims*

(Criteria), found at 55 Fed. Reg. 9223 (1990), to develop the Agreement that would be approved through the passage of H.R. 4841.

The parties did not all come to the negotiating table at once. In 2000, the Soboba Tribe filed a lawsuit against MWD in United States District Court seeking damages and injunctive relief on the grounds that the construction and operation of the San Jacinto Tunnel have interfered with the Soboba Tribe's water resources and its rights to the beneficial use and enjoyment of the Reservation. This litigation provided the impetus MWD needed to join the water rights negotiations and the active participation of the three water districts, MWD, EMWD, and LHMWD, proved crucial to the agreement underlying this settlement.

### **Details of the Agreement and Current Status**

Under the Settlement Agreement reached among the parties, the water districts will guarantee the delivery of 7,500 acre-feet per year for 30 years to recharge the San Jacinto basin. In addition, to resolve claims of past damages to the Tribe, MWD and EMWD together are also contributing 128 acres of land, with an estimated value of \$55 million. EMWD together with LHMWD are providing \$30 million in a combination of monetary and in-kind contributions to the settlement (waiving the usual fee for water hookups and providing habitat mitigation land for recharge project development).

The Settlement Agreement provides for a basin recharge plan and the development of a Water Management Plan to stop the current overdraft in the San Jacinto basin. The United States would provide funding in the amount of \$10,000,000 for only a portion of the basin recharge plan; most of the funding would come from local sources. The agreement also includes Federal funding in the amount of \$11,000,000 for the Soboba Tribe for rehabilitating and maintaining water and sewage infrastructure and other water-related development projects. No Federal money will be available for expenditure until the Settlement Agreement becomes effective under section 10(a) of H.R. 4841.

The Settlement Agreement releases the parties from potential damage claims: MWD is released from damage claims related to the San Jacinto tunnel and LHMWD and EMWD are both released from damage claims based on interference with the Soboba Tribe's water rights. Implementation of the settlement will release the United States from any potential damage claims that could be asserted by the Soboba Tribe with respect to failure to protect the Tribe's water rights and will relieve the Federal government of the obligation to litigate the Soboba Tribe's water rights claims at substantial Federal expense.

As referenced in H.R. 4841, all the parties except the United States signed a Settlement Agreement in June of 2006. Enactment of H.R. 4841 will allow the United States to join in the Settlement Agreement after modifications are made to the agreement consistent with the provisions of H.R. 4841 and understandings among the parties. The water districts that are parties to the settlement and the Soboba Tribe have all been actively participating in activities consistent with the settlement over the last year. Notably, the Soboba Tribe has already started work on rehabilitating its existing water and sewer system, and the water districts have already made progress in planning and design work for the new water delivery infrastructure required under the Settlement Agreement.

## **Conclusion**

It is most significant that the Settlement Agreement ratified by H.R. 4841 includes provisions, particularly those related to the recharge and restoration of the San Jacinto basin aquifer, that could not be achieved through litigation. Negotiating a settlement rather than facing each other in court allowed the parties to develop a settlement that went beyond zero-sum battles over a disappearing groundwater resource. Not only does this settlement provide the Soboba Tribe with an assured water right, but it also provides the framework for regional groundwater management that will help to restore the groundwater flows to some of the dry springs on the Soboba Reservation and to prevent the current overdraft situation from continuing in the future.

Enactment of this legislation will ensure the future water supply of the Soboba people as well as providing for the needs of the valley's non-Indian inhabitants and providing a legally sound basis for future water management decisions by the three water districts that participated in these negotiations. We believe that the Federal participation and contribution contemplated in H.R. 4841 is appropriate to resolve the Soboba Tribe's water rights claims. This settlement illustrates how negotiated agreements among Indian tribes, states, local parties, and the Federal government can resolve reserved water right claims, provide assured water supplies for present and future tribal generations, and wisely manage an increasingly scarce resource. It also illustrates the gains that can be made when all stakeholders, including non-Indian and non-Federal parties, are willing to make substantial contributions to achieve long-term solutions of their water management dilemmas.

This concludes my statement. I would be happy to answer any questions that the Subcommittee may have.