

**TESTIMONY OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON
S. 1219, THE PECHANGA BAND OF LUISEÑO INDIANS
WATER RIGHTS SETTLEMENT ACT**

SEPTEMBER 10, 2013

Good afternoon Madam Chairwoman, Vice-Chairman Barrasso, and Members of the Committee. My name is Kevin Washburn. I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). I am here today to provide the Department's views on S. 1219, the Pechanga Band of Luiseño Indians Water Rights Settlement Act, which would provide approval for, and authorizations to carry out, a settlement of all water rights claims of the Pechanga Band of Luiseño Indians (Band) in the Santa Margarita River Basin in southern California. At this point, we are unable to support S. 1219. However, based on the progress by the parties to date, the Administration is committed to achieving a settlement that can be supported by all parties.

I. Introduction

Negotiating settlements of Indian water rights claims has been and remains a high priority for this Administration. Indian water rights settlements help to ensure that Indian people have safe, reliable water supplies and are in keeping with the United States' trust responsibility to tribes. They promote cooperation in the management of water resources and encourage communities to work together to resolve difficult water supply problems. The Administration's policy on negotiated Indian water settlements has been set forth in detail in our support for the settlements enacted into law in the Claims Resolution Act of 2010, Pub. L. No. 111-291 (Dec. 9, 2010), which benefitted seven tribes in three different states, and in the testimony I gave before this Committee in May 2013 on the proposed Blackfeet Water Rights Settlement Act of 2013. I will not restate this policy or the principles that underlie it, except to note that Secretary Jewell continues to make the negotiation and implementation of Indian water rights settlements a high priority for the Department. The Department understands that Indian water rights and related resources are trust assets of tribes, that water rights settlements enable the Federal government to protect and enhance those assets, and that when Congress enacts an Indian water rights settlement it is fulfilling its unique obligation to Indian tribes. The Department is committed to working with the Band, the State of California, the local parties, this Committee, and the sponsors of S. 1219 to craft a settlement that we all can support.

The Department is still in the process of analyzing S. 1219 and is able to offer only preliminary comments on the bill at this time. Before I discuss the settlement agreement and address Federal concerns, however, I do want to recognize the significant efforts of the Band over many years to protect its water rights and to secure a safe and adequate supply of water for its community.

These efforts have led to this proposed settlement, which reflects a creative and cooperative approach to solving problems of water supply and water quality on and near the Pechanga Reservation. One of the most positive features of this settlement is how it builds upon prior agreements to establish a long term cooperative arrangement for sustainable ground water management in the Santa Margarita basin.

S. 1219 would approve a settlement negotiated among the Band and the Rancho California Water District (RCWD), the Eastern Municipal Water District (EMWD), the Metropolitan Water District (MWD), and the United States. 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 and our Federal Team, which has been in place since 2008, is working closely with each of the Bands.

II. Federal Concerns

We testified about the complexity of this settlement and the issues that need to be addressed on September 16, 2010. I won't repeat our testimony on that earlier version of the legislation, H.R. 5413, other than to say that we will continue to analyze those issues as well as the related issue of non-Federal cost share. S. 1219 includes some positive changes and we appreciate that the Band is willing to work with the Department to address our concerns, including our concerns with Federal obligations, cost, cost share, water quantity, and water quality.

The proposed legislation would recognize a Federal reserved water right in the Band in the amount of 4,994 acre feet, to be made up of water from various sources, including imported water and recycled water that would be furnished under contracts between the Band and the local parties. These various sources include 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. S. 1219 calls for a Federal settlement contribution of \$40.19 million for a number of purposes, including \$12.23 million to assist the Band in purchasing potable water imported from MWD and \$27.96 million for infrastructure that would treat and deliver imported recycled and potable water to the Reservation.

Overall, the requested Federal monetary contribution in S. 1219 is down just over \$10 million from prior versions of the legislation (\$50.242 million to \$40.192 million. Other changes in the legislation include the elimination of the demineralization and brine disposal facility, which had been a critical element of the settlement previously. Funding for that facility now appears to have been transferred to a general water quality account "to fund groundwater desalination activities" by the Band. The Department has requested that the Band provide more information about the rationale supporting these changes.

In addition, the Band's Reservation also includes a small portion of land in the San Luis Rey watershed. In the interest of achieving a comprehensive settlement of all of the Bands water

rights claims, we are weighing whether principles of finality would better be achieved by including water rights for that parcel of land 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 include imported and recycled water as part of the Band's Federal reserved water rights. We are continuing to examine cost and other issues associated with how the settlement treats imported water. While we are unable to support S. 1219, based on the progress by the parties to date, the Administration is committed to working with the Band and the local parties to achieving a settlement that can be supported by all parties.

III. Conclusion

The Pechanga Band and its neighbors are to be credited for working towards a negotiated settlement of their dispute over water rights. After years of litigation, this settlement lays out a potential framework for resolving the Band's Federal reserved water rights claims, and achieving other goals such as managing groundwater, addressing water quality issues, and alleviating water shortages in the basin.

We look forward to working with the Band and the local parties to finalize a settlement that appropriately secures the Band's water rights and defines clearly the roles and responsibilities of each party to the settlement.