

114TH CONGRESS
2D SESSION

H. R. 5984

To authorize the Pechanga Band of Luiseño Mission Indians Water Rights Settlement, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 9, 2016

Mr. CALVERT (for himself and Mr. HUNTER) introduced the following bill;
which was referred to the Committee on Natural Resources

A BILL

To authorize the Pechanga Band of Luiseño Mission Indians
Water Rights Settlement, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Pechanga Band of Luiseño Mission Indians Water
6 Rights Settlement Act”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.
- Sec. 4. Approval of the Pechanga Settlement Agreement.
- Sec. 5. Tribal Water Right.

- Sec. 6. Satisfaction of claims.
- Sec. 7. Waiver of claims.
- Sec. 8. Water facilities.
- Sec. 9. Pechanga Settlement Fund.
- Sec. 10. Miscellaneous provisions.
- Sec. 11. Authorization of appropriations.
- Sec. 12. Expiration on failure of enforceability date.
- Sec. 13. Antideficiency.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to achieve a fair, equitable, and final settle-
4 ment of claims to water rights and certain claims for
5 injuries to water rights in the Santa Margarita
6 River Watershed for—

7 (A) the Band; and

8 (B) the United States, acting in its capac-
9 ity as trustee for the Band and Allottees;

10 (2) to achieve a fair, equitable, and final settle-
11 ment of certain claims by the Band and Allottees
12 against the United States;

13 (3) to authorize, ratify, and confirm the
14 Pechanga Settlement Agreement to be entered into
15 by the Band, RCWD, and the United States;

16 (4) to authorize and direct the Secretary—

17 (A) to execute the Pechanga Settlement
18 Agreement; and

19 (B) to take any other action necessary to
20 carry out the Pechanga Settlement Agreement
21 in accordance with this Act; and

1 (5) to authorize the appropriation of amounts
2 necessary for the implementation of the Pechanga
3 Settlement Agreement and this Act.

4 **SEC. 3. DEFINITIONS.**

5 In this Act:

6 (1) **ADJUDICATION COURT.**—The term “Adju-
7 dication Court” means the United States District
8 Court for the Southern District of California, which
9 exercises continuing jurisdiction over the Adjudica-
10 tion Proceeding.

11 (2) **ADJUDICATION PROCEEDING.**—The term
12 “Adjudication Proceeding” means litigation initiated
13 by the United States regarding relative water rights
14 in the Santa Margarita River Watershed in United
15 States v. Fallbrook Public Utility District et al., Civ.
16 No. 3:51–cv–01247 (S.D.C.A.), including any litiga-
17 tion initiated to interpret or enforce the relative
18 water rights in the Santa Margarita River Water-
19 shed pursuant to the continuing jurisdiction of the
20 Adjudication Court over the Fallbrook Decree.

21 (3) **ALLOTTEE.**—The term “Allottee” means an
22 individual who holds a beneficial real property inter-
23 est in an Indian allotment that is—

24 (A) located within the Reservation; and

25 (B) held in trust by the United States.

1 (4) BAND.—The term “Band” means Pechanga
2 Band of Luiseño Mission Indians, a federally recog-
3 nized sovereign Indian tribe that functions as a cus-
4 tom and tradition Indian tribe, acting on behalf of
5 itself and its members, but not acting on behalf of
6 members in their capacities as Allottees.

7 (5) CLAIMS.—The term “claims” means rights,
8 claims, demands, actions, compensation, or causes of
9 action, whether known or unknown.

10 (6) EMWD.—The term “EMWD” means East-
11 ern Municipal Water District, a municipal water dis-
12 trict organized and existing in accordance with the
13 Municipal Water District Law of 1911, Division 20
14 of the Water Code of the State of California, as
15 amended.

16 (7) EMWD CONNECTION FEE.—The term
17 “EMWD Connection Fee” has the meaning set forth
18 in the Extension of Service Area Agreement.

19 (8) ENFORCEABILITY DATE.—The term “en-
20 forceability date” means the date on which the Sec-
21 retary publishes in the Federal Register the state-
22 ment of findings described in section 7(e).

23 (9) ESAA CAPACITY AGREEMENT.—The term
24 “ESAA Capacity Agreement” means the “ESAA

1 Capacity Agreement”, among the Band, RCWD, and
2 the United States.

3 (10) ESAA WATER.—The term “ESAA Water”
4 means imported potable water that the Band re-
5 ceives from EMWD and MWD pursuant to the Ex-
6 tension of Service Area Agreement and delivered by
7 RCWD pursuant to the ESAA Water Delivery
8 Agreement.

9 (11) ESAA WATER DELIVERY AGREEMENT.—
10 The term “ESAA Water Delivery Agreement”
11 means the agreement among EMWD, RCWD, and
12 the Band, establishing the terms and conditions of
13 water service to the Band.

14 (12) EXTENSION OF SERVICE AREA AGREE-
15 MENT.—The term “Extension of Service Area
16 Agreement” means the “Extension of Service Area
17 Agreement”, among the Band, EMWD, and MWD,
18 for the provision of water service by EMWD to a
19 designated portion of the Reservation using water
20 supplied by MWD.

21 (13) FALLBROOK DECREE.—

22 (A) IN GENERAL.—The term “Fallbrook
23 Decree” means the “Modified Final Judgment
24 And Decree”, entered in the Adjudication Pro-
25 ceeding on April 6, 1966.

1 (B) INCLUSIONS.—The term “Fallbrook
2 Decree” includes all court orders, interlocutory
3 judgments, and decisions supplemental to the
4 “Modified Final Judgment And Decree”, in-
5 cluding Interlocutory Judgment No. 30, Inter-
6 locutory Judgment No. 35, and Interlocutory
7 Judgment No. 41.

8 (14) FUND.—The term “Fund” means the
9 Pechanga Settlement Fund established by section 9.

10 (15) INDIAN TRIBE.—The term “Indian tribe”
11 has the meaning given the term in section 4 of the
12 Indian Self-Determination and Education Assistance
13 Act (25 U.S.C. 5304).

14 (16) INJURY TO WATER RIGHTS.—The term
15 “injury to water rights” means an interference with,
16 diminution of, or deprivation of water rights under
17 Federal or State law.

18 (17) INTERIM CAPACITY.—The term “Interim
19 Capacity” has the meaning set forth in the ESAA
20 Capacity Agreement.

21 (18) INTERIM CAPACITY NOTICE.—The term
22 “Interim Capacity Notice” has the meaning set
23 forth in the ESAA Capacity Agreement.

24 (19) INTERLOCUTORY JUDGMENT NO. 41.—The
25 term “Interlocutory Judgment No. 41” means Inter-

1 locutory Judgment No. 41 issued in the Adjudica-
2 tion Proceeding on November 8, 1962, including all
3 court orders, judgments, and decisions supplemental
4 to that interlocutory judgment.

5 (20) MWD.—The term “MWD” means the
6 Metropolitan Water District of Southern California,
7 a metropolitan water district organized and incor-
8 porated under the Metropolitan Water District Act
9 of the State of California (Stats. 1969, Chapter 209,
10 as amended).

11 (21) MWD CONNECTION FEE.—The term
12 “MWD Connection Fee” has the meaning set forth
13 in the Extension of Service Area Agreement.

14 (22) PECHANGA ESAA DELIVERY CAPACITY AC-
15 COUNT.—The term “Pechanga ESAA Delivery Ca-
16 pacity account” means the account established by
17 section 9(c)(2).

18 (23) PECHANGA RECYCLED WATER INFRA-
19 STRUCTURE ACCOUNT.—The term “Pechanga Recy-
20 cled Water Infrastructure account” means the ac-
21 count established by section 9(c)(1).

22 (24) PECHANGA SETTLEMENT AGREEMENT.—
23 The term “Pechanga Settlement Agreement” means
24 the Pechanga Settlement Agreement, dated April 8,
25 2016, together with the exhibits to that agreement,

1 entered into by the Band, the United States on be-
 2 half of the Band, its members and Allottees, MWD,
 3 EMWD, and RCWD, including—

4 (A) the Extension of Service Area Agree-
 5 ment;

6 (B) the ESAA Capacity Agreement; and

7 (C) the ESAA Water Delivery Agreement.

8 (25) PECHANGA WATER CODE.—The term
 9 “Pechanga Water Code” means a water code to be
 10 adopted by the Band in accordance with section 5(f).

11 (26) PECHANGA WATER FUND ACCOUNT.—The
 12 term “Pechanga Water Fund account” means the
 13 account established by section 9(c)(3).

14 (27) PECHANGA WATER QUALITY ACCOUNT.—
 15 The term “Pechanga Water Quality account” means
 16 the account established by section 9(c)(4).

17 (28) PERMANENT CAPACITY.—The term “Per-
 18 manent Capacity” has the meaning set forth in the
 19 ESAA Capacity Agreement.

20 (29) PERMANENT CAPACITY NOTICE.—The
 21 term “Permanent Capacity Notice” has the meaning
 22 set forth in the ESAA Capacity Agreement.

23 (30) RCWD.—

24 (A) IN GENERAL.—The term “RCWD”
 25 means the Rancho California Water District or-

1 organized pursuant to section 34000 et seq. of
2 the California Water Code.

3 (B) INCLUSIONS.—The term “RCWD” in-
4 cludes all real property owners for whom
5 RCWD acts as an agent pursuant to an agency
6 agreement.

7 (31) RECYCLED WATER INFRASTRUCTURE
8 AGREEMENT.—The term “Recycled Water Infra-
9 structure Agreement” means the “Recycled Water
10 Infrastructure Agreement” among the Band,
11 RCWD, and the United States.

12 (32) RECYCLED WATER TRANSFER AGREE-
13 MENT.—The term “Recycled Water Transfer Agree-
14 ment” means the “Recycled Water Transfer Agree-
15 ment” between the Band and RCWD.

16 (33) RESERVATION.—

17 (A) IN GENERAL.—The term “Reserva-
18 tion” means the land depicted on the map at-
19 tached to the Pechanga Settlement Agreement
20 as Exhibit I.

21 (B) APPLICABILITY OF TERM.—The term
22 “Reservation” shall be used solely for the pur-
23 poses of the Pechanga Settlement Agreement,
24 this Act, and any judgment or decree issued by

1 the Adjudication Court approving the Pechanga
2 Settlement Agreement.

3 (34) SANTA MARGARITA RIVER WATERSHED.—
4 The term “Santa Margarita River Watershed”
5 means the watershed that is the subject of the Adju-
6 dication Proceeding and the Fallbrook Decree.

7 (35) SECRETARY.—The term “Secretary”
8 means the Secretary of the Interior.

9 (36) STATE.—The term “State” means the
10 State of California.

11 (37) STORAGE POND.—The term “Storage
12 Pond” has the meaning set forth in the Recycled
13 Water Infrastructure Agreement.

14 (38) TRIBAL WATER RIGHT.—The term “Tribal
15 Water Right” means the water rights ratified, con-
16 firmed, and declared to be valid for the benefit of
17 the Band and Allottees, as set forth and described
18 in section 5.

19 **SEC. 4. APPROVAL OF THE PECHANGA SETTLEMENT**
20 **AGREEMENT.**

21 (a) RATIFICATION OF PECHANGA SETTLEMENT
22 AGREEMENT.—

23 (1) IN GENERAL.—Except as modified by this
24 Act, and to the extent that the Pechanga Settlement
25 Agreement does not conflict with this Act, the

1 Pechanga Settlement Agreement is authorized, rati-
2 fied, and confirmed.

3 (2) AMENDMENTS.—Any amendment to the
4 Pechanga Settlement Agreement is authorized, rati-
5 fied, and confirmed, to the extent that the amend-
6 ment is executed to make the Pechanga Settlement
7 Agreement consistent with this Act.

8 (b) EXECUTION OF PECHANGA SETTLEMENT AGREE-
9 MENT.—

10 (1) IN GENERAL.—To the extent that the
11 Pechanga Settlement Agreement does not conflict
12 with this Act, the Secretary is directed to and
13 promptly shall execute—

14 (A) the Pechanga Settlement Agreement
15 (including any exhibit to the Pechanga Settle-
16 ment Agreement requiring the signature of the
17 Secretary); and

18 (B) any amendment to the Pechanga Set-
19 tlement Agreement necessary to make the
20 Pechanga Settlement Agreement consistent with
21 this Act.

22 (2) MODIFICATIONS.—Nothing in this Act pre-
23 cludes the Secretary from approving modifications to
24 exhibits to the Pechanga Settlement Agreement not
25 inconsistent with this Act, to the extent those modi-

1 fications do not otherwise require congressional ap-
2 proval pursuant to section 2116 of the Revised Stat-
3 utes (25 U.S.C. 177) or other applicable Federal
4 law.

5 (c) ENVIRONMENTAL COMPLIANCE.—

6 (1) IN GENERAL.—In implementing the
7 Pechanga Settlement Agreement, the Secretary shall
8 promptly comply with all applicable requirements
9 of—

10 (A) the National Environmental Policy Act
11 of 1969 (42 U.S.C. 4321 et seq.);

12 (B) the Endangered Species Act of 1973
13 (16 U.S.C. 1531 et seq.);

14 (C) all other applicable Federal environ-
15 mental laws; and

16 (D) all regulations promulgated under the
17 laws described in subparagraphs (A) through
18 (C).

19 (2) EXECUTION OF THE PECHANGA SETTLE-
20 MENT AGREEMENT.—

21 (A) IN GENERAL.—Execution of the
22 Pechanga Settlement Agreement by the Sec-
23 retary under this section shall not constitute a
24 major Federal action under the National Envi-

1 ronmental Policy Act of 1969 (42 U.S.C. 4321
2 et seq.).

3 (B) COMPLIANCE.—The Secretary is di-
4 rected to carry out all Federal compliance nec-
5 essary to implement the Pechanga Settlement
6 Agreement.

7 (3) LEAD AGENCY.—The Bureau of Reclama-
8 tion shall be designated as the lead agency with re-
9 spect to environmental compliance.

10 **SEC. 5. TRIBAL WATER RIGHT.**

11 (a) INTENT OF CONGRESS.—It is the intent of Con-
12 gress to provide to each Allottee benefits that are equal
13 to or exceed the benefits Allottees possess as of the date
14 of enactment of this Act, taking into consideration—

15 (1) the potential risks, cost, and time delay as-
16 sociated with litigation that would be resolved by the
17 Pechanga Settlement Agreement and this Act;

18 (2) the availability of funding under this Act;

19 (3) the availability of water from the Tribal
20 Water Right and other water sources as set forth in
21 the Pechanga Settlement Agreement; and

22 (4) the applicability of section 7 of the Act of
23 February 8, 1887 (25 U.S.C. 381), and this Act to
24 protect the interests of Allottees.

25 (b) CONFIRMATION OF TRIBAL WATER RIGHT.—

1 (1) IN GENERAL.—A Tribal Water Right of up
2 to 4,994 acre-feet of water per year that, under nat-
3 ural conditions, is physically available on the Res-
4 ervation is confirmed in accordance with the Find-
5 ings of Fact and Conclusions of Law set forth in In-
6 terlocutory Judgment No. 41, as affirmed by the
7 Fallbrook Decree.

8 (2) USE.—Subject to the terms of the
9 Pechanga Settlement Agreement, this Act, the
10 Fallbrook Decree, and applicable Federal law, the
11 Band may use the Tribal Water Right for any pur-
12 pose on the Reservation.

13 (c) HOLDING IN TRUST.—The Tribal Water Right,
14 as set forth in subsection (b), shall—

15 (1) be held in trust by the United States on be-
16 half of the Band and the Allottees in accordance
17 with this section;

18 (2) include the priority dates described in Inter-
19 locutory Judgment No. 41, as affirmed by the
20 Fallbrook Decree; and

21 (3) not be subject to forfeiture or abandonment.

22 (d) ALLOTTEES.—

23 (1) APPLICABILITY OF ACT OF FEBRUARY 8,
24 1887.—The provisions of section 7 of the Act of Feb-
25 ruary 8, 1887 (25 U.S.C. 381), relating to the use

1 of water for irrigation purposes shall apply to the
2 Tribal Water Right.

3 (2) ENTITLEMENT TO WATER.—Any entitle-
4 ment to water of an Allottee under Federal law shall
5 be satisfied from the Tribal Water Right.

6 (3) ALLOCATIONS.—Allotted land located within
7 the exterior boundaries of the Reservation shall be
8 entitled to a just and equitable allocation of water
9 for irrigation and domestic purposes from the Tribal
10 Water Right.

11 (4) EXHAUSTION OF REMEDIES.—Before as-
12 serting any claim against the United States under
13 section 7 of the Act of February 8, 1887 (25 U.S.C.
14 381), or any other applicable law, an Allottee shall
15 exhaust remedies available under the Pechanga
16 Water Code or other applicable tribal law.

17 (5) CLAIMS.—Following exhaustion of remedies
18 available under the Pechanga Water Code or other
19 applicable tribal law, an Allottee may seek relief
20 under section 7 of the Act of February 8, 1887 (25
21 U.S.C. 381), or other applicable law.

22 (6) AUTHORITY.—The Secretary shall have the
23 authority to protect the rights of Allottees as speci-
24 fied in this section.

25 (e) AUTHORITY OF BAND.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the Band shall have authority to use, al-
3 locate, distribute, and lease the Tribal Water Right
4 on the Reservation in accordance with—

5 (A) the Pechanga Settlement Agreement;

6 and

7 (B) applicable Federal law.

8 (2) LEASES BY ALLOTTEES.—

9 (A) IN GENERAL.—An Allottee may lease
10 any interest in land held by the Allottee, to-
11 gether with any water right determined to be
12 appurtenant to that interest in land.

13 (B) WATER RIGHT APPURTENANT.—Any
14 water right determined to be appurtenant to an
15 interest in land leased by an Allottee shall be
16 used on such land on the Reservation.

17 (f) PECHANGA WATER CODE.—

18 (1) IN GENERAL.—Not later than 18 months
19 after the enforceability date, the Band shall enact a
20 Pechanga Water Code, that provides for—

21 (A) the management, regulation, and gov-
22 ernance of all uses of the Tribal Water Right
23 in accordance with the Pechanga Settlement
24 Agreement; and

1 (B) establishment by the Band of condi-
2 tions, permit requirements, and other limita-
3 tions relating to the storage, recovery, and use
4 of the Tribal Water Right in accordance with
5 the Pechanga Settlement Agreement.

6 (2) INCLUSIONS.—Subject to the approval of
7 the Secretary, the Pechanga Water Code shall pro-
8 vide—

9 (A) that allocations of water to Allottees
10 shall be satisfied with water from the Tribal
11 Water Right;

12 (B) that charges for delivery of water for
13 irrigation purposes for Allottees shall be as-
14 sessed on a just and equitable basis;

15 (C) a process by which an Allottee may re-
16 quest that the Band provide water for irrigation
17 or domestic purposes in accordance with this
18 Act;

19 (D) a due process system for the consider-
20 ation and determination by the Band of any re-
21 quest by an Allottee (or any successor in inter-
22 est to an Allottee) for an allocation of such
23 water for irrigation or domestic purposes on al-
24 lotted land, including a process for—

1 (i) appeal and adjudication of any de-
2 nied or disputed distribution of water; and

3 (ii) resolution of any contested admin-
4 istrative decision; and

5 (E) a requirement that any Allottee with a
6 claim relating to the enforcement of rights of
7 the Allottee under the Pechanga Water Code or
8 relating to the amount of water allocated to
9 land of the Allottee must first exhaust remedies
10 available to the Allottee under tribal law and
11 the Pechanga Water Code before initiating an
12 action against the United States or petitioning
13 the Secretary pursuant to subsection (d)(4).

14 (3) ACTION BY SECRETARY.—

15 (A) IN GENERAL.—The Secretary shall ad-
16 minister the Tribal Water Right until the
17 Pechanga Water Code is enacted and approved
18 under this section.

19 (B) APPROVAL.—Any provision of the
20 Pechanga Water Code and any amendment to
21 the Pechanga Water Code that affects the
22 rights of Allottees—

23 (i) shall be subject to the approval of
24 the Secretary; and

1 (ii) shall not be valid until approved
2 by the Secretary.

3 (C) APPROVAL PERIOD.—The Secretary
4 shall approve or disapprove the Pechanga
5 Water Code within a reasonable period of time
6 after the date on which the Band submits the
7 Pechanga Water Code to the Secretary for ap-
8 proval.

9 (g) EFFECT.—Except as otherwise specifically pro-
10 vided in this section, nothing in this Act—

11 (1) authorizes any action by an Allottee against
12 any individual or entity, or against the Band, under
13 Federal, State, tribal, or local law; or

14 (2) alters or affects the status of any action
15 pursuant to section 1491(a) of title 28, United
16 States Code.

17 **SEC. 6. SATISFACTION OF CLAIMS.**

18 (a) IN GENERAL.—The benefits provided to the Band
19 under the Pechanga Settlement Agreement and this Act
20 shall be in complete replacement of, complete substitution
21 for, and full satisfaction of all claims of the Band against
22 the United States that are waived and released pursuant
23 to section 7.

1 (b) ALLOTTEE CLAIMS.—The benefits realized by the
2 Allottees under this Act shall be in complete replacement
3 of, complete substitution for, and full satisfaction of—

4 (1) all claims that are waived and released pur-
5 suant to section 7; and

6 (2) any claims of the Allottees against the
7 United States that the Allottees have or could have
8 asserted that are similar in nature to any claim de-
9 scribed in section 7.

10 (c) NO RECOGNITION OF WATER RIGHTS.—Except
11 as provided in section 5(d), nothing in this Act recognizes
12 or establishes any right of a member of the Band or an
13 Allottee to water within the Reservation.

14 (d) CLAIMS RELATING TO DEVELOPMENT OF WATER
15 FOR RESERVATION.—

16 (1) IN GENERAL.—The amounts authorized to
17 be appropriated pursuant to section 11 shall be used
18 to satisfy any claim of the Allottees against the
19 United States with respect to the development or
20 protection of water resources for the Reservation.

21 (2) SATISFACTION OF CLAIMS.—Upon the com-
22 plete appropriation of amounts authorized pursuant
23 to section 11, any claim of the Allottees against the
24 United States with respect to the development or

1 protection of water resources for the Reservation
2 shall be deemed to have been satisfied.

3 **SEC. 7. WAIVER OF CLAIMS.**

4 (a) IN GENERAL.—

5 (1) WAIVER OF CLAIMS BY THE BAND AND THE
6 UNITED STATES ACTING IN ITS CAPACITY AS TRUST-
7 EE FOR THE BAND.—

8 (A) IN GENERAL.—Subject to the retention
9 of rights set forth in subsection (c), in return
10 for recognition of the Tribal Water Right and
11 other benefits as set forth in the Pechanga Set-
12 tlement Agreement and this Act, the Band, and
13 the United States, acting as trustee for the
14 Band, are authorized and directed to execute a
15 waiver and release of all claims for water rights
16 within the Santa Margarita River Watershed
17 that the Band, or the United States acting as
18 trustee for the Band, asserted or could have as-
19 serted in any proceeding, including the Adju-
20 dication Proceeding, except to the extent that
21 such rights are recognized in the Pechanga Set-
22 tlement Agreement and this Act.

23 (B) CLAIMS AGAINST RCWD.—Subject to
24 the retention of rights set forth in subsection
25 (c) and notwithstanding any provisions to the

1 contrary in the Pechanga Settlement Agree-
2 ment, the Band and the United States, on be-
3 half of the Band and Allottees, fully release, ac-
4 quit, and discharge RCWD from—

5 (i) claims for injuries to water rights
6 in the Santa Margarita River Watershed
7 for land located within the Reservation
8 arising or occurring at any time up to and
9 including June 30, 2009;

10 (ii) claims for injuries to water rights
11 in the Santa Margarita River Watershed
12 for land located within the Reservation
13 arising or occurring at any time after June
14 30, 2009, resulting from the diversion or
15 use of water in a manner not in violation
16 of the Pechanga Settlement Agreement or
17 this Act;

18 (iii) claims for subsidence damage to
19 land located within the Reservation arising
20 or occurring at any time up to and includ-
21 ing June 30, 2009;

22 (iv) claims for subsidence damage
23 arising or occurring after June 30, 2009,
24 to land located within the Reservation re-
25 sulting from the diversion of underground

1 water in a manner consistent with the
2 Pechanga Settlement Agreement or this
3 Act; and

4 (v) claims arising out of, or relating in
5 any manner to, the negotiation or execu-
6 tion of the Pechanga Settlement Agree-
7 ment or the negotiation or execution of
8 this Act.

9 (2) CLAIMS BY THE UNITED STATES ACTING IN
10 ITS CAPACITY AS TRUSTEE FOR ALLOTTEES.—Sub-
11 ject to the retention of claims set forth in subsection
12 (c), in return for recognition of the Tribal Water
13 Right and other benefits as set forth in the
14 Pechanga Settlement Agreement and this Act, the
15 United States, acting as trustee for Allottees, is au-
16 thorized and directed to execute a waiver and release
17 of all claims for water rights within the Santa Mar-
18 garita River Watershed that the United States, act-
19 ing as trustee for the Allottees, asserted or could
20 have asserted in any proceeding, including the Adju-
21 dication Proceeding, except to the extent such rights
22 are recognized in the Pechanga Settlement Agree-
23 ment and this Act.

24 (3) CLAIMS BY THE BAND AGAINST THE
25 UNITED STATES.—Subject to the retention of rights

1 set forth in subsection (c), the Band, is authorized
2 to execute a waiver and release of—

3 (A) all claims against the United States
4 (including the agencies and employees of the
5 United States) relating to claims for water
6 rights in, or water of, the Santa Margarita
7 River Watershed that the United States, acting
8 in its capacity as trustee for the Band, as-
9 serted, or could have asserted, in any pro-
10 ceeding, including the Adjudication Proceeding,
11 except to the extent that those rights are recog-
12 nized in the Pechanga Settlement Agreement
13 and this Act;

14 (B) all claims against the United States
15 (including the agencies and employees of the
16 United States) relating to damages, losses, or
17 injuries to water, water rights, land, or natural
18 resources due to loss of water or water rights
19 (including damages, losses or injuries to hunt-
20 ing, fishing, gathering, or cultural rights due to
21 loss of water or water rights, claims relating to
22 interference with, diversion, or taking of water
23 or water rights, or claims relating to failure to
24 protect, acquire, replace, or develop water,
25 water rights, or water infrastructure) in the

1 Santa Margarita River Watershed that first ac-
2 crued at any time up to and including the en-
3 forceability date;

4 (C) all claims against the United States
5 (including the agencies and employees of the
6 United States) relating to the pending litigation
7 of claims relating to the water rights of the
8 Band in the Adjudication Proceeding; and

9 (D) all claims against the United States
10 (including the agencies and employees of the
11 United States) relating to the negotiation or
12 execution of the Pechanga Settlement Agree-
13 ment or the negotiation or execution of this
14 Act.

15 (b) EFFECTIVENESS OF WAIVERS AND RELEASES.—
16 The waivers under subsection (a) shall take effect on the
17 enforceability date.

18 (c) RESERVATION OF RIGHTS AND RETENTION OF
19 CLAIMS.—Notwithstanding the waivers and releases au-
20 thorized in this Act, the Band, on behalf of itself and the
21 members of the Band, and the United States, acting in
22 its capacity as trustee for the Band and Allottees, retain—

23 (1) all claims for enforcement of the Pechanga
24 Settlement Agreement and this Act;

1 (2) all claims against any person or entity other
2 than the United States and RCWD, including claims
3 for monetary damages;

4 (3) all claims for water rights that are outside
5 the jurisdiction of the Adjudication Court;

6 (4) all rights to use and protect water rights ac-
7 quired on or after the enforceability date; and

8 (5) all remedies, privileges, immunities, powers,
9 and claims, including claims for water rights, not
10 specifically waived and released pursuant to this Act
11 and the Pechanga Settlement Agreement.

12 (d) EFFECT OF PECHANGA SETTLEMENT AGREE-
13 MENT AND ACT.—Nothing in the Pechanga Settlement
14 Agreement or this Act—

15 (1) affects the ability of the United States, act-
16 ing as a sovereign, to take actions authorized by law,
17 including any laws relating to health, safety, or the
18 environment, including—

19 (A) the Comprehensive Environmental Re-
20 sponse, Compensation, and Liability Act of
21 1980 (42 U.S.C. 9601 et seq.);

22 (B) the Safe Drinking Water Act (42
23 U.S.C. 300f et seq.);

24 (C) the Federal Water Pollution Control
25 Act (33 U.S.C. 1251 et seq.); and

1 (D) any regulations implementing the Acts
2 described in subparagraphs (A) through (C);

3 (2) affects the ability of the United States to
4 take actions acting as trustee for any other Indian
5 tribe or an Allottee of any other Indian tribe;

6 (3) confers jurisdiction on any State court—

7 (A) to interpret Federal law regarding
8 health, safety, or the environment;

9 (B) to determine the duties of the United
10 States or other parties pursuant to Federal law
11 regarding health, safety, or the environment; or

12 (C) to conduct judicial review of Federal
13 agency action;

14 (4) waives any claim of a member of the Band
15 in an individual capacity that does not derive from
16 a right of the Band;

17 (5) limits any funding that RCWD would other-
18 wise be authorized to receive under any Federal law,
19 including, the Reclamation Wastewater and Ground-
20 water Study and Facilities Act (43 U.S.C. 390h et
21 seq.) as that Act applies to permanent facilities for
22 water recycling, demineralization, and desalination,
23 and distribution of nonpotable water supplies in
24 Southern Riverside County, California;

1 (6) characterizes any amounts received by
2 RCWD under the Pechanga Settlement Agreement
3 or this Act as Federal for purposes of section 1649
4 of the Reclamation Wastewater and Groundwater
5 Study and Facilities Act (43 U.S.C. 390h–32); or

6 (7) affects the requirement of any party to the
7 Pechanga Settlement Agreement or any of the exhib-
8 its to the Pechanga Settlement Agreement to comply
9 with the National Environmental Policy Act of 1969
10 (42 U.S.C. 4321 et seq.) or the California Environ-
11 mental Quality Act (Cal. Pub. Res. Code 21000 et
12 seq.) prior to performing the respective obligations
13 of that party under the Pechanga Settlement Agree-
14 ment or any of the exhibits to the Pechanga Settle-
15 ment Agreement.

16 (e) ENFORCEABILITY DATE.—The enforceability date
17 shall be the date on which the Secretary publishes in the
18 Federal Register a statement of findings that—

19 (1) the Adjudication Court has approved and
20 entered a judgment and decree approving the
21 Pechanga Settlement Agreement in substantially the
22 same form as Appendix 2 to the Pechanga Settle-
23 ment Agreement;

24 (2) all amounts authorized by this Act have
25 been deposited in the Fund;

1 (3) the waivers and releases authorized in sub-
2 section (a) have been executed by the Band and the
3 Secretary;

4 (4) the Extension of Service Area Agreement—

5 (A) has been approved and executed by all
6 the parties to the Extension of Service Area
7 Agreement; and

8 (B) is effective and enforceable in accord-
9 ance with the terms of the Extension of Service
10 Area Agreement; and

11 (5) the ESAA Water Delivery Agreement—

12 (A) has been approved and executed by all
13 the parties to the ESAA Water Delivery Agree-
14 ment; and

15 (B) is effective and enforceable in accord-
16 ance with the terms of the ESAA Water Deliv-
17 ery Agreement.

18 (f) TOLLING OF CLAIMS.—

19 (1) IN GENERAL.—Each applicable period of
20 limitation and time-based equitable defense relating
21 to a claim described in this section shall be tolled for
22 the period beginning on the date of enactment of
23 this Act and ending on the earlier of—

1 (A) April 30, 2030, or such alternate date
2 after April 30, 2030, as is agreed to by the
3 Band and the Secretary; or

4 (B) the enforceability date.

5 (2) EFFECTS OF SUBSECTION.—Nothing in this
6 subsection revives any claim or tolls any period of
7 limitation or time-based equitable defense that ex-
8 pired before the date of enactment of this Act.

9 (3) LIMITATION.—Nothing in this section pre-
10 cludes the tolling of any period of limitations or any
11 time-based equitable defense under any other appli-
12 cable law.

13 (g) TERMINATION.—

14 (1) IN GENERAL.—If all of the amounts author-
15 ized to be appropriated to the Secretary pursuant to
16 this Act have not been made available to the Sec-
17 retary by April 30, 2030—

18 (A) the waivers authorized by this section
19 shall expire and have no force or effect; and

20 (B) all statutes of limitations applicable to
21 any claim otherwise waived under this section
22 shall be tolled until April 30, 2030.

23 (2) VOIDING OF WAIVERS.—If a waiver author-
24 ized by this section is void under paragraph (1)—

1 (A) the approval of the United States of
2 the Pechanga Settlement Agreement under sec-
3 tion 4 shall be void and have no further force
4 or effect;

5 (B) any unexpended Federal amounts ap-
6 propriated or made available to carry out this
7 Act, together with any interest earned on those
8 amounts, and any water rights or contracts to
9 use water and title to other property acquired
10 or constructed with Federal amounts appro-
11 priated or made available to carry out this Act
12 shall be returned to the Federal Government,
13 unless otherwise agreed to by the Band and the
14 United States and approved by Congress; and

15 (C) except for Federal amounts used to ac-
16 quire or develop property that is returned to the
17 Federal Government under subparagraph (B),
18 the United States shall be entitled to set off
19 any Federal amounts appropriated or made
20 available to carry out this Act that were ex-
21 pended or withdrawn, together with any interest
22 accrued, against any claims against the United
23 States relating to water rights asserted by the
24 Band or Allottees in any future settlement of
25 the water rights of the Band or Allottees.

1 **SEC. 8. WATER FACILITIES.**

2 (a) IN GENERAL.—The Secretary shall, subject to the
3 availability of appropriations, using amounts from the des-
4 ignated accounts of the Fund, provide the amounts nec-
5 essary to fulfill the obligations of the Band under the Re-
6 cycled Water Infrastructure Agreement and the ESAA Ca-
7 pacity Agreement, in an amount not to exceed the
8 amounts deposited in the designated accounts for such
9 purposes plus any interest accrued on such amounts from
10 the date of deposit in the Fund to the date of disburse-
11 ment from the Fund, in accordance with this Act and the
12 terms and conditions of those agreements.

13 (b) NONREIMBURSABILITY OF COSTS.—All costs in-
14 curred by the Secretary in carrying out this section shall
15 be nonreimbursable.

16 (c) RECYCLED WATER INFRASTRUCTURE.—

17 (1) IN GENERAL.—The Secretary shall, using
18 amounts from the Pechanga Recycled Water Infra-
19 structure account, provide amounts for the Storage
20 Pond in accordance with this section.

21 (2) STORAGE POND.—

22 (A) IN GENERAL.—The Secretary shall,
23 subject to the availability of appropriations,
24 using amounts from the Pechanga Recycled
25 Water Infrastructure account provide the
26 amounts necessary for a Storage Pond in ac-

1 cordance with the Recycled Water Infrastruc-
2 ture Agreement, in an amount not to exceed
3 \$2,656,374.

4 (B) PROCEDURE.—The procedure for the
5 Secretary to provide amounts pursuant to this
6 section shall be as set forth in the Recycled
7 Water Infrastructure Agreement.

8 (C) LIABILITY.—The United States shall
9 have no responsibility or liability for the Stor-
10 age Pond.

11 (d) ESAA DELIVERY CAPACITY.—

12 (1) IN GENERAL.—The Secretary shall, using
13 amounts from the Pechanga ESAA Delivery Capac-
14 ity account, provide amounts for Interim Capacity
15 and Permanent Capacity in accordance with this
16 section.

17 (2) INTERIM CAPACITY.—

18 (A) IN GENERAL.—The Secretary shall,
19 subject to the availability of appropriations,
20 using amounts from the ESAA Delivery Capac-
21 ity account, provide amounts necessary for the
22 provision of Interim Capacity in accordance
23 with the ESAA Capacity Agreement in an
24 amount not to exceed \$1,000,000.

1 (B) PROCEDURE.—The procedure for the
2 Secretary to provide amounts pursuant to this
3 section shall be as set forth in the ESAA Ca-
4 pacity Agreement.

5 (C) LIABILITY.—The United States shall
6 have no responsibility or liability for the In-
7 terim Capacity to be provided by RCWD or by
8 the Band.

9 (D) TRANSFER TO BAND.—If RCWD does
10 not provide the Interim Capacity Notice re-
11 quired pursuant to the ESAA Capacity Agree-
12 ment by the date that is 60 days after the date
13 required under the ESAA Capacity Agreement,
14 the amounts in the Pechanga ESAA Delivery
15 Capacity account for purposes of the provision
16 of Interim Capacity and Permanent Capacity,
17 including any interest that has accrued on those
18 amounts, shall be available for use by the Band
19 to provide alternative interim capacity in a
20 manner that is similar to the Interim Capacity
21 and Permanent Capacity that the Band would
22 have received had RCWD provided such Interim
23 Capacity and Permanent Capacity.

24 (3) PERMANENT CAPACITY.—

1 (A) IN GENERAL.—The Secretary shall,
2 subject to the availability of appropriations,
3 using amounts from the ESAA Delivery Capac-
4 ity account, provide amounts necessary for the
5 provision of Permanent Capacity in accordance
6 with the ESAA Capacity Agreement.

7 (B) PROCEDURE.—The procedure for the
8 Secretary to provide funds pursuant to this sec-
9 tion shall be as set forth in the ESAA Capacity
10 Agreement.

11 (C) LIABILITY.—The United States shall
12 have no responsibility or liability for the Perma-
13 nent Capacity to be provided by RCWD or by
14 the Band.

15 (D) TRANSFER TO BAND.—If RCWD does
16 not provide the Permanent Capacity Notice re-
17 quired pursuant to the ESAA Capacity Agree-
18 ment by the date that is 5 years after the en-
19 forceability date, the amounts in the Pechanga
20 ESAA Delivery Capacity account for purposes
21 of the provision of Permanent Capacity, includ-
22 ing any interest that has accrued on those
23 amounts, shall be available for use by the Band
24 to provide alternative Permanent Capacity in a
25 manner that is similar to the Permanent Ca-

1 capacity that the Band would have received had
2 RCWD provided such Permanent Capacity.

3 **SEC. 9. PECHANGA SETTLEMENT FUND.**

4 (a) ESTABLISHMENT.—There is established in the
5 Treasury of the United States a fund to be known as the
6 “Pechanga Settlement Fund”, to be managed, invested,
7 and distributed by the Secretary and to be available until
8 expended, and, together with any interest earned on those
9 amounts, to be used solely for the purpose of carrying out
10 this Act.

11 (b) TRANSFERS TO FUND.—The Fund shall consist
12 of such amounts as are deposited in the Fund under sec-
13 tion 11(a) of this Act, together with any interest earned
14 on those amounts, which shall be available in accordance
15 with subsection (e).

16 (c) ACCOUNTS OF PECHANGA SETTLEMENT FUND.—
17 The Secretary shall establish in the Fund the following
18 accounts:

19 (1) Pechanga Recycled Water Infrastructure ac-
20 count, consisting of amounts authorized pursuant to
21 section 11(a)(1).

22 (2) Pechanga ESAA Delivery Capacity account,
23 consisting of amounts authorized pursuant to section
24 11(a)(2).

1 (3) Pechanga Water Fund account, consisting
2 of amounts authorized pursuant to section 11(a)(3).

3 (4) Pechanga Water Quality account, consisting
4 of amounts authorized pursuant to section 11(a)(4).

5 (d) MANAGEMENT OF FUND.—The Secretary shall
6 manage, invest, and distribute all amounts in the Fund
7 in a manner that is consistent with the investment author-
8 ity of the Secretary under—

9 (1) the first section of the Act of June 24,
10 1938 (25 U.S.C. 162a);

11 (2) the American Indian Trust Fund Manage-
12 ment Reform Act of 1994 (25 U.S.C. 4001 et seq.);
13 and

14 (3) this section.

15 (e) AVAILABILITY OF AMOUNTS.—Amounts appro-
16 priated to, and deposited in, the Fund, including any in-
17 vestment earnings accrued from the date of deposit in the
18 Fund through the date of disbursement from the Fund,
19 shall be made available to the Band by the Secretary be-
20 ginning on the enforceability date.

21 (f) WITHDRAWALS BY BAND PURSUANT TO THE
22 AMERICAN INDIAN TRUST FUND MANAGEMENT REFORM
23 ACT.—

24 (1) IN GENERAL.—The Band may withdraw all
25 or part of the amounts in the Fund on approval by

1 the Secretary of a tribal management plan sub-
2 mitted by the Band in accordance with the American
3 Indian Trust Fund Management Reform Act of
4 1994 (25 U.S.C. 4001 et seq.).

5 (2) REQUIREMENTS.—

6 (A) IN GENERAL.—In addition to the re-
7 quirements under the American Indian Trust
8 Fund Management Reform Act of 1994 (25
9 U.S.C. 4001 et seq.), the tribal management
10 plan under paragraph (1) shall require that the
11 Band shall spend all amounts withdrawn from
12 the Fund in accordance with this Act.

13 (B) ENFORCEMENT.—The Secretary may
14 carry out such judicial or administrative actions
15 as the Secretary determines to be necessary to
16 enforce the tribal management plan to ensure
17 that amounts withdrawn by the Band from the
18 Fund under this subsection are used in accord-
19 ance with this Act.

20 (g) WITHDRAWALS BY BAND PURSUANT TO AN EX-
21 PENDITURE PLAN.—

22 (1) IN GENERAL.—The Band may submit an
23 expenditure plan for approval by the Secretary re-
24 questing that all or part of the amounts in the Fund
25 be disbursed in accordance with the plan.

1 (2) REQUIREMENTS.—The expenditure plan
2 under paragraph (1) shall include a description of
3 the manner and purpose for which the amounts pro-
4 posed to be disbursed from the Fund will be used,
5 in accordance with subsection (h).

6 (3) APPROVAL.—If the Secretary determines
7 that an expenditure plan submitted under this sub-
8 section is consistent with the purposes of this Act,
9 the Secretary shall approve the plan.

10 (4) ENFORCEMENT.—The Secretary may carry
11 out such judicial or administrative actions as the
12 Secretary determines necessary to enforce an ex-
13 penditure plan to ensure that amounts disbursed
14 under this subsection are used in accordance with
15 this Act.

16 (h) USES.—Amounts from the Fund shall be used by
17 the Band for the following purposes:

18 (1) PECHANGA RECYCLED WATER INFRASTRUC-
19 TURE ACCOUNT.—The Pechanga Recycled Water In-
20 frastructure account shall be used for expenditures
21 by the Band in accordance with section 8(c).

22 (2) PECHANGA ESAA DELIVERY CAPACITY AC-
23 COUNT.—The Pechanga ESAA Delivery Capacity
24 account shall be used for expenditures by the Band
25 in accordance with section 8(d).

1 (3) PECHANGA WATER FUND ACCOUNT.—The
2 Pechanga Water Fund account shall be used for—

3 (A) payment of the EMWD Connection
4 Fee;

5 (B) payment of the MWD Connection Fee;
6 and

7 (C) any expenses, charges, or fees incurred
8 by the Band in connection with the delivery or
9 use of water pursuant to the Pechanga Settle-
10 ment Agreement.

11 (4) PECHANGA WATER QUALITY ACCOUNT.—
12 The Pechanga Water Quality account shall be used
13 by the Band to fund groundwater desalination ac-
14 tivities within the Wolf Valley Basin.

15 (i) LIABILITY.—The Secretary and the Secretary of
16 the Treasury shall not be liable for the expenditure of,
17 or the investment of any amounts withdrawn from, the
18 Fund by the Band under subsection (f) or (g).

19 (j) NO PER CAPITA DISTRIBUTIONS.—No portion of
20 the Fund shall be distributed on a per capita basis to any
21 member of the Band.

22 **SEC. 10. MISCELLANEOUS PROVISIONS.**

23 (a) WAIVER OF SOVEREIGN IMMUNITY BY THE
24 UNITED STATES.—Except as provided in subsections (a)
25 through (c) of section 208 of the Department of Justice

1 Appropriation Act, 1953 (43 U.S.C. 666), nothing in this
2 Act waives the sovereign immunity of the United States.

3 (b) OTHER TRIBES NOT ADVERSELY AFFECTED.—

4 Nothing in this Act quantifies or diminishes any land or
5 water right, or any claim or entitlement to land or water,
6 of an Indian tribe, band, or community other than the
7 Band.

8 (c) LIMITATION ON CLAIMS FOR REIMBURSEMENT.—

9 With respect to Indian land within the Reservation—

10 (1) the United States shall not submit against
11 any Indian-owned land located within the Reserva-
12 tion any claim for reimbursement of the cost to the
13 United States of carrying out this Act and the
14 Pechanga Settlement Agreement; and

15 (2) no assessment of any Indian-owned land lo-
16 cated within the Reservation shall be made regard-
17 ing that cost.

18 (d) EFFECT ON CURRENT LAW.—Nothing in this
19 section affects any provision of law (including regulations)
20 in effect on the day before the date of enactment of this
21 Act with respect to preenforcement review of any Federal
22 environmental enforcement action.

23 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

24 (a) AUTHORIZATION OF APPROPRIATIONS.—

1 (1) PECHANGA RECYCLED WATER INFRASTRUC-
2 TURE ACCOUNT.—There is authorized to be appro-
3 priated \$2,656,374, for deposit in the Pechanga Re-
4 cycled Water Infrastructure account, to carry out
5 the activities described in section 8(c).

6 (2) PECHANGA ESAA DELIVERY CAPACITY AC-
7 COUNT.—There is authorized to be appropriated
8 \$17,900,000, for deposit in the Pechanga ESAA De-
9 livery Capacity account, which amount shall be ad-
10 justed for changes in construction costs since June
11 30, 2009, as is indicated by ENR Construction Cost
12 Index, 20-City Average, as applicable to the types of
13 construction required for the Band to provide the in-
14 frastructure necessary for the Band to provide the
15 Interim Capacity and Permanent Capacity in the
16 event that RCWD elects not to provide the Interim
17 Capacity or Permanent Capacity as set forth in the
18 ESAA Capacity Agreement and contemplated in sec-
19 tions 8(d)(2)(D) and 8(d)(3)(E) of this Act, with
20 such adjustment ending on the date on which funds
21 authorized to be appropriated under this section
22 have been deposited in the Fund.

23 (3) PECHANGA WATER FUND ACCOUNT.—There
24 is authorized to be appropriated \$5,483,653, for de-
25 posit in the Pechanga Water Fund account, which

1 amount shall be adjusted for changes in appropriate
2 cost indices since June 30, 2009, with such adjust-
3 ment ending on the date of deposit in the Fund, for
4 the purposes set forth in section 9(h)(3).

5 (4) PECHANGA WATER QUALITY ACCOUNT.—
6 There is authorized to be appropriated \$2,460,000,
7 for deposit in the Pechanga Water Quality account,
8 which amount shall be adjusted for changes in ap-
9 propriate cost indices since June 30, 2009, with
10 such adjustment ending on the date of deposit in the
11 Fund, for the purposes set forth in section 9(h)(4).

12 **SEC. 12. EXPIRATION ON FAILURE OF ENFORCEABILITY**
13 **DATE.**

14 If the Secretary does not publish a statement of find-
15 ings under section 7(e) by April 30, 2021, or such alter-
16 native later date as is agreed to by the Band and the Sec-
17 retary, as applicable—

18 (1) this Act expires on the later of May 1,
19 2021, or the day after the alternative date agreed to
20 by the Band and the Secretary;

21 (2) any action taken by the Secretary and any
22 contract or agreement pursuant to the authority pro-
23 vided under any provision of this Act shall be void;

24 (3) any amounts appropriated under section 11,
25 together with any interest on those amounts, shall

1 immediately revert to the general fund of the Treas-
2 ury; and

3 (4) any amounts made available under section
4 11 that remain unexpended shall immediately revert
5 to the general fund of the Treasury.

6 **SEC. 13. ANTIDEFICIENCY.**

7 (a) **IN GENERAL.**—Notwithstanding any authoriza-
8 tion of appropriations to carry out this Act, the expendi-
9 ture or advance of any funds, and the performance of any
10 obligation by the Department in any capacity, pursuant
11 to this Act shall be contingent on the appropriation of
12 funds for that expenditure, advance, or performance.

13 (b) **LIABILITY.**—The Department of the Interior
14 shall not be liable for the failure to carry out any obliga-
15 tion or activity authorized by this Act if adequate appro-
16 priations are not provided to carry out this Act.

○