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SENATE

{ REPORT
{ 112-207

A BILL TO MAKE TECHNICAL CORRECTIONS TO THE LEGAL DESCRIPTION
OF CERTAIN LAND TO BE HELD IN TRUST FOR THE BARONA BAND OF
MISSION INDIANS, AND FOR OTHER PURPOSES

—————
AUGUST 28, 2012.—Ordered to be printed

Filed, under authority of the order of the Senate of August 2, 2012

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Mr. AKAKA, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 3193]

The Committee on Indian Affairs, to which was referred the bill (S. 3193) to make technical corrections to the legal description of certain land to be held in trust for the Barona Band of Mission Indians, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 3193 is to amend the Native American Technical Corrections Act of 2004 (Public Law 108-204; 118 Stat. 544) to revise the description of the land to be held in trust for the Barona Band of Mission Indians of California to remove any doubt relating to the specific parcels of land that Congress has placed into trust, so that private, non-Indian land excluded from the revised description will not be considered to be held in trust for the Band or considered to be part of its reservation.

BACKGROUND

Among other provisions, the Native American Technical Corrections Act of 2004 includes a provision that declares a certain described parcel of land to be held in trust by the United States for the benefit of the Barona Band of Mission Indians, for the purposes of construction of a pipeline for conveying water to the Band's reservation and other stated purposes. The intent of section 121 of the 2004 Act was to put certain lands held by the Band in fee into

trust status for the benefit of the Band. Unfortunately, the Act misidentified the lands in question, creating uncertainty as to which lands were to be held in trust.

NEED FOR THE LEGISLATION

The erroneous legal description of the land set forth in section 121 of Pub. L. 108–204 appears to affect the title to land of another landowner, who is reportedly unable to sell or modify his property without permission from the Band and the Department of the Interior, nor can the Band proceed with its plans to construct the pipeline. This legislation is needed to correct the erroneous legal description and clear title to the landowner’s and the Band’s respective properties.

LEGISLATIVE HISTORY

On May 16, 2012, Senator Feinstein, for herself, Senator Boxer and Senator Akaka, introduced S. 3193, which was referred to the Committee on Indian Affairs.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section states that the short title of the Act is the “Barona Band of Mission Indians Land Transfer Clarification Act of 2012.”

Section 2. Findings; purposes

This section lays out Congressional findings including that the legal description of land previously taken into trust by the United States for the benefit of the Barona Band of Mission Indians may be interpreted to refer to private, nontribal land, and that there is an unresolved disagreement between the Barona Band of Mission Indians and certain off-reservation property owners relating to the causes of diminishing native groundwater. This section further states the purpose of the Act.

Section 3. Land transfer

This section amends the Native American Technical Corrections Act of 2004 by making technical and clarifying changes to the definition of “Land” and clarifying the intent of the original enactment in 2004.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

In an open business meeting on June 28, 2012, the Committee on Indian Affairs, by voice vote, adopted S. 3193 and ordered the bill reported to the Senate, with the recommendation that the Senate do pass S. 3193 as reported.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated July 13, 2012, was prepared for S. 3193:

S. 3193—Barona Band of Mission Indians Land Transfer Clarification Act of 2012

S. 3193 would amend the legal description of lands taken into federal trust for the benefit of the Barona Band of Mission Indians in California to exclude private property that was included in the lands taken into trust under the Native American Technical Corrections Act of 2004. Based on information provided by the Department of the Interior, CBO estimates that the bill would have no significant impact on the federal budget. Enacting S. 3193 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 3193 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Martin von Gnechten. The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that the regulatory impact of S. 3193 will be minimal.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 3193.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 3193 as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman):

SEC. 121. BARONA BAND OF MISSION INDIANS; FACILITATION OF CONSTRUCTION OF PIPELINE TO PROVIDE WATER FOR EMERGENCY FIRE SUPPRESSION AND OTHER PURPOSES.

(a) **IN GENERAL.**—Notwithstanding any other provision of law, subject to valid existing rights under Federal and State law, and to any easements or similar restrictions which may be granted to the city of San Diego, California, for the construction, operation and maintenance of a pipeline and related appurtenances and facilities for conveying water from the San Vicente Reservoir to the Barona Indian Reservation, or for conservation, wildlife or habitat protection, or related purposes, the land described in subsection (b), fee title to which is held by the Barona Band of Mission Indians of California (referred to in this section as the “Band”)—(1) is declared to be held in trust by the United States for the benefit of the Band; and (2) shall be considered to be a portion of the reservation of the Band.

[(b) **LAND.**—The land referred to in subsection (a) is land comprising approximately 85 acres in San Diego County, California,

and described more particularly as follows: San Bernardino Base and Meridian; T. 14 S., R. 1 E.; sec. 21: W $\frac{1}{2}$ SE $\frac{1}{4}$, 68 acres; NW $\frac{1}{4}$ NW $\frac{1}{4}$, 17 acres.】

(b) *DESCRIPTION OF LAND.*—*The land referred to in subsection (a) is land comprising approximately 86.87 acres in San Diego County, California, and described more particularly as follows: T. 14 S., R. 1 E. San Bernardino Meridian; Section 21, SW $\frac{1}{4}$ SW $\frac{1}{4}$, excepting the north 475 ft.; W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, excepting the north 475 ft.; E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, excepting the north 350 ft.; Together with that portion W $\frac{1}{2}$ SE $\frac{1}{4}$, lying southwesterly of the following line: Beginning at the intersection of the southerly line of said SE $\frac{1}{4}$ Section 21 with the westerly boundary of Rancho Canada De San Vicente Y Mesa Del Padre Barona as shown on United States Government Resurvey approved January 21, 1939; thence northwesterly along said boundary to an intersection with the westerly line of said SE $\frac{1}{4}$; containing 68.75 acres more or less; Section 28, NW $\frac{1}{4}$ NW $\frac{1}{4}$, excepting the east 750 ft.; containing 17.02 acres more or less.*

(c) *GAMING.*—*The land taken into trust by subsection (a) shall neither be considered to have been taken into trust for gaming, nor be used for gaming (as that term is used in the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.)).*

(d) *CLARIFICATIONS.*—

(1) *EFFECT ON SECTION.*—*The provisions of subsection (c) shall apply to the land described in subsection (b), as in effect on the day after the date of enactment of the Barona Band of Mission Indians Land Transfer Clarification Act of 2012.*

(2) *EFFECT ON PRIVATE LAND.*—*The parcel of private, non-Indian land referenced in subsection (a) and described in subsection (b), as in effect on the day before the date of enactment of the Barona Band of Mission Indians Land Transfer Clarification Act of 2012, but excluded from the revised description of the land in subsection (b) was not intended to be—*

(A) *held in trust by the United States for the benefit of the Band; or*

(B) *considered to be a part of the reservation of the Band.*