

PECHANGA BAND OF LUISEÑO MISSION INDIANS WATER  
RIGHTS SETTLEMENT ACT

NOVEMBER 14, 2016.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,  
submitted the following

R E P O R T

[To accompany H.R. 5984]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 5984) to authorize the Pechanga Band of Luiseño Mission Indians Water Rights Settlement, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 5984 is to authorize the Pechanga Band of Luiseño Mission Indians Water Rights Settlement.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 5984 helps bring finality to decades of litigation and uncertainty involving the Pechanga Band of Luiseño Mission Indians, local water districts in southern California and the United States. The bill is intended to resolve Indian water rights claims and their associated uncertainty while representing a net benefit to the American taxpayer.

The Pechanga Band's claims stem from longstanding legal precedent. Specifically, the 1908 Supreme Court decision in *Winters v. United States* (207 U.S. 564 (1908)) held that the federal government implicitly reserved water rights sufficient to fulfill the purposes of an Indian reservation. In 1951, the United States initiated the *United States v. Fallbrook Public Utility District et al.* litigation to protect the federal water rights of the United States in the Santa Margarita River watershed (Civ. No. 3:51-cv-01247

(S.D.C.A.)(Apr. 6, 1966)). In 1958, the *Fallbrook* litigation was expanded to include claims for three Indian tribes within the watershed—the Pechanga, Ramona Band of Cahuilla Indians and the Cahuilla Band of Indians. In 1963, the Court issued an order affirming that each of the three Indian tribes has reserved rights to surface and groundwater in the watershed. The judgment, however, did not quantify the tribe’s water rights. Instead, all three tribes have a “decreed” federally reserved water right.

The Pechanga Band subsequently entered into negotiations with the watershed’s primary water users, including the Rancho California Water District (RCWD) and the Eastern Municipal Water District (EMWD). These negotiations resulted in two agreements: the Groundwater Management Agreement between the Band and RCWD in 2006; and the Recycled Water Agreement between EMWD and the Band in 2007. While these agreements addressed a number of disputes, the negotiations did not address the broader scope of the Band’s overall water rights or settle any claims related to the *Fallbrook* decree.

In March 2008, the Pechanga requested that the Secretary of the Interior appoint a Federal Negotiating Team to seek settlement of its water right claims vis-à-vis the United States and non-federal third parties. The Secretary appointed a Federal Negotiating Team in August 2008. A settlement agreement and other third-party agreements were reached on April 8, 2016, between the Band, the United States and the RCWD.

This bill is the result of a process aimed at improving transparency and determining the appropriate amount of federal funding in these types of settlements. Historically, there have been questions over the level of how much or whether specific settlements should receive federal funding and whether there was a “net benefit” to the American taxpayer in settling claims. In some cases, prior Administrations that have negotiated these settlements did not adequately answer these questions. To help facilitate answers, House Natural Resources Committee Chairman Rob Bishop sent a letter in February 2015 to Secretary of the Interior Sally Jewell and former Attorney General Eric Holder outlining a process for the consideration of future Indian water rights legislation in the House. The process requires the Administration to convey support for a specific settlement, forward the settlement and the proposed authorizing legislation with specific spending levels, and list the claims being resolved. In addition, the letter requests that the Administration specifically affirm that a settlement meets long-standing criteria and procedures requiring that the “total cost of a settlement to all parties should not exceed the value of the existing claims as calculated by the Federal Government.” In response, the Administration transmitted two letters (May 17, 2016 and June 22, 2016) and the proposed “Pechanga Band of Luiseño compared to the consequences and costs of not settling the litigation related to the Tribes’ water rights claims.”

According to the May 17, 2016, letter, the Settlement Act recognizes and establishes a tribal water right for the Band of up to 4,994 acre feet per year, and settles all of the Band’s water rights claims in the Santa Margarita River watershed. In return, the Tribe agrees to waive all claims against the U.S. related to water rights in, or water of, the Santa Margarita River watershed. The

Tribe can receive up to \$28.5 million (with approximately \$4 million in adjustments related to future construction costs, according to the Congressional Budget Office) in federal funding to construct infrastructure necessary to develop these water rights. H.R. 5984 approves, ratifies and brings this Settlement Agreement to fruition while also relieving the federal government and American taxpayer from some future federal liability.

#### SECTION-BY-SECTION ANALYSIS OF THE BILL

##### *Section 1. Short title; Table of contents*

This section establishes the short title of the bill as the “Pechanga Band of Luiseño Mission Indians Water Rights Settlement Act” and provides a table of contents.

##### *Section 2. Purposes*

This section states that the purpose of this Act is to achieve a final settlement of claims in the Santa Margarita River watershed; achieve final settlement of certain claims by the Band and allottees against the United States; authorize, ratify and confirm the Settlement Agreement; authorizes the Secretary of the Interior to implement the Settlement Agreement; and authorize necessary funds to implement the Settlement Agreement and the Act.

##### *Section 3. Definitions*

This section defines key terms in the Act.

##### *Section 4. Approval of Pechanga Settlement Agreement*

This section authorizes, ratifies and confirms the Pechanga Settlement Agreement entered into by the Band, the RCWD and the United States. The section directs the Secretary of the Interior to execute the Settlement Agreement, and stipulates that the Settlement Agreement does not constitute a federal action under the National Environmental Policy Act of 1969.

##### *Section 5. Tribal water right*

This section confirms a tribal water right of up to 4,994 acre-feet of water per year that, under normal conditions, is physically available on the Reservation and requires the tribal water right to be held in trust by the United States on behalf of the Band and the allottees. In addition, the Settlement Agreement authorizes the allottees to lease their lands together with any water right. The section also requires the Band to enact a Pechanga Water Code that governs the storage, recovery and use of the tribal water right, subject to the Department of the Interior’s approval.

##### *Section 6. Satisfaction of claims*

This section confirms that the benefits provided to the Band and allottees under the Settlement Agreement are in complete replacement of, complete substitution for, and full satisfaction of all claims against the United States.

##### *Section 7. Waiver of claims*

This section directs the Band and the United States (acting in its capacity as trustee for the Band) to waive all claims for water

rights within the watershed; waives specified claims against the RCWD; and authorizes the waiver of claims by the Band against the United States regarding specified water rights and damages.

*Section 8. Water facilities*

This section authorizes the Secretary to provide funds for the construction of a storage pond and for the construction of other infrastructure necessary for various other agreements within the Settlement Agreement.

*Section 9. Pechanga Settlement Fund*

This section establishes a Pechanga Settlement Fund in the United States Treasury. This Fund includes an authorization of \$28.5 million for four different sub-accounts listed in section 11 of the bill.

*Section 10. Miscellaneous provisions*

This section contains a number of miscellaneous provisions including the affirmation that nothing in this Act waives the sovereign immunity of the United States. In addition, nothing in the Settlement Act will adversely affect any tribes other than the Band, and the United States shall not submit any claim for reimbursement for carrying out this Act and the Settlement Agreement.

*Section 11. Authorization of appropriations*

This section authorizes federal appropriations for the Pechanga Recycled Water Infrastructure Account; Pechanga ESAA Delivery Capacity Account; Pechanga Water Fund Account; and the Pechanga Water Quality Account.

*Section 12. Expiration on failure of enforceability date*

This section voids this Act no later than May 1, 2021, or the day after the later date agreed to by the Band and the Secretary if the Secretary does not publish applicable findings by April 30, 2021, or the alternative date. All appropriations and unexpended amounts will be returned to the general fund of the Treasury.

*Section 13. Antideficiency*

This section states that the United States will not be liable for any failure to carry out the Act if adequate appropriations are not provided to carry out this Act.

COMMITTEE ACTION

H.R. 5984 was introduced on September 9, 2016, by Congressman Ken Calvert (R-CA). The bill was referred to the Committee on Natural Resources. Previously, on June 23, 2016, the Subcommittee on Water, Power and Oceans held a hearing on a discussion draft version of the bill. On September 21, 2016, the Natural Resources Committee met to consider the bill. No amendments were offered, and the bill was ordered favorably reported to the House of Representatives by unanimous consent on September 22, 2016.

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

## COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, October 31, 2016.*

Hon. ROB BISHOP,  
*Chairman, Committee on Natural Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5984, the Pechanga Band of Luiseño Mission Indians Water Rights Settlement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

KEITH HALL.

Enclosure.

*H.R. 5984—Pechanga Band of Luiseño Mission Indians Water Rights Settlement Act*

Summary: H.R. 5984 would ratify the Pechanga Settlement Agreement among the Pechanga Band of Luiseño Mission Indians in California, the federal government, and local water districts. The legislation also would establish the Pechanga Settlement Fund to pay for the development and maintenance of water infrastructure for the tribe and would authorize the appropriation of funds for those purposes.

CBO estimates that enacting H.R. 5984 would cost \$33 million over the 2017–2021 period, assuming appropriation of the necessary amounts. Enacting H.R. 5984 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 5984 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would require the tribe to enact a tribal water code. CBO estimates that the cost of the mandate would be small and well below the threshold established in UMRA for intergovernmental mandates (\$77 million in 2016, adjusted annually for inflation).

The bill contains no private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 5984 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development) and 300 (natural resources and environment).

|  | By fiscal year, in millions of dollars— |      |      |      |      |           |
|--|---|------|------|------|------|-----------|
|  | 2017                                    | 2018 | 2019 | 2020 | 2021 | 2017–2021 |
| INCREASES IN SPENDING SUBJECT TO APPROPRIATION |   |      |      |      |      |           |
| Estimated Authorization Level .....            | 33                                      | 0    | 0    | 0    | 0    | 33        |
| Estimated Outlays .....                        | 33                                      | 0    | 0    | 0    | 0    | 33        |

Basis of estimate: CBO assumes that H.R. 5984 will be enacted before the end of calendar year 2016. The legislation would ratify the Pechanga Settlement Agreement among the tribe, the federal government, and the Rancho California and Eastern Municipal water districts in Riverside County, California.

H.R. 5984 would establish the Pechanga Settlement Fund and authorize the appropriation of about \$3 million to be deposited into the fund to construct a storage pond. The bill also would authorize the appropriation of about \$26 million plus an adjustment for the increase in construction costs over the 2009–2017 period to build interim and permanent capacity for water storage, and for other purposes. CBO estimates that the adjustment for increases in construction costs would be about \$4 million. Thus, in total the bill would authorize the appropriation of \$33 million to be deposited into the settlement fund.

Payments to certain tribal trust funds that are held and managed in a fiduciary capacity by the federal government on behalf of Indian tribes are treated as payments to a nonfederal entity. As a result, CBO expects that the entire amount deposited into this trust fund would be recorded as budget authority and outlays at the time of the deposit. The Secretary of the Interior would be required to invest the funds in government securities until those funds are expended by the tribe. Those subsequent expenditures would not be considered budgetary transactions.

Pay-As-You-Go considerations: None

Increase in long-term direct spending and deficits: CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

Estimated impact on State, Local, and Tribal Governments: H.R. 5984 would require the tribe to enact water policies that would govern tribal water rights as detailed in the agreement. That requirement would be an intergovernmental mandate as defined in UMRA because it would place a statutory requirement on the tribe that is separate from provisions of the agreement. CBO estimates that the cost of the mandate would be small and well below the threshold established in UMRA for intergovernmental mandates (\$77 million in 2016, adjusted annually for inflation).

Other provisions of the bill would benefit the tribe. Any costs to the tribe from those provisions would be incurred voluntarily as a result of entering into the settlement agreement.

Estimated impact on the private sector: The bill contains no private-sector mandates as defined in UMRA.

Previous CBO estimate: On July 5, 2016, CBO transmitted a cost estimate for S. 1983, the Pechanga Band of Luiseño Mission Indians Water Rights Settlement Act, as ordered reported by the Senate Committee on Indian Affairs on February 3, 2016. The two pieces of legislation are similar and CBO's estimates of their budgetary effects are the same.

Estimate prepared by: Federal Costs: Robert Reese; Impact on State, Local, and Tribal Governments: Rachel Austin; Impact on the Private Sector: Amy Petz.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to authorize the Pechanga Band of Luiseño Mission Indians Water Rights Settlement.

#### EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

#### COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

#### COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

#### PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

#### CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.