

One Hundred Tenth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Thursday,
the third day of January, two thousand and eight*

An Act

To approve, ratify, and confirm the settlement agreement entered into to resolve claims by the Soboba Band of Luiseno Indians relating to alleged interferences with the water resources of the Tribe, to authorize and direct the Secretary of the Interior to execute and perform the Settlement Agreement and related waivers, and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Soboba Band of Luiseño Indians Settlement Act”.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds the following:

(1) The Soboba Band of Luiseño Indians is a federally recognized Indian tribe whose Reservation of approximately 6,000 acres, extending east and north from the banks of the San Jacinto River in Riverside County, California, was created by an Executive Order dated June 19, 1883, and enlarged and modified by subsequent Executive Orders, purchases, and an Act of Congress.

(2) The Tribe’s water rights have not been quantified, and the Tribe has asserted claims for interferences with the water resources of its Reservation, which the Tribe maintains have rendered much of the Tribe’s Reservation useless for habitation, livestock, or Agriculture. On April 20, 2000, the Tribe filed a lawsuit against The Metropolitan Water District of Southern California for interference with the Tribe’s water resources and damages to its Reservation allegedly caused by Metropolitan’s construction and operation of the San Jacinto Tunnel, which is part of the Colorado River Aqueduct. The lawsuit, styled Soboba Band of Luiseño Indians v. Metropolitan Water District of Southern California, No. 00–04208 GAF (MANx), is pending in the United States District Court for the Central District of California.

(3) The Tribe also has made claims against Eastern Municipal Water District and Lake Hemet Municipal Water District, located adjacent to the Reservation, seeking to secure its water rights and damages arising from alleged past interference with the Tribe’s water resources.

(4) After negotiations, which included participation by representatives of the Tribe, the United States on behalf of the Tribe, The Metropolitan Water District of Southern California, Eastern Municipal Water District, and Lake Hemet Municipal

Water District, a Settlement Agreement has been developed to determine the Tribe's water rights, resolve all of its claims for interference with the water resources of, and damages to, its Reservation, provide for the construction of water projects to facilitate the exercise of the Tribe's rights, and resolve the lawsuit referenced in paragraph (2) of this section.

(5) The Settlement Agreement provides that—

(A) Eastern Municipal Water District and Lake Hemet Municipal Water District acknowledge and assure the Tribe's prior and paramount right, superior to all others, to pump 9,000 acre-feet of water annually from the San Jacinto River basin in accordance with the limitations and other conditions set forth in the Settlement Agreement;

(B) Eastern Municipal Water District and The Metropolitan Water District of Southern California will contract to supply water to Eastern Municipal Water District and Eastern Municipal Water District will use this water to recharge water supplies into the basin; and

(C) the three water districts will make substantial additional contributions to the settlement, including the conveyance of certain replacement lands and economic development funds to the Tribe, to carry out the Settlement Agreement's provisions.

(b) PURPOSES.—The purposes of this Act are—

(1) to approve, ratify, and confirm the Settlement Agreement entered into by the Tribe and non-Indians entities;

(2) to achieve a fair, equitable, and final settlement of all claims of the Soboba Band of Luiseño Indians, its members, and the United States on behalf of the Tribe and its members, to the water of the San Jacinto River basin;

(3) to authorize and direct the Secretary of the Interior to execute and perform all obligations of the Secretary under the Settlement Agreement; and

(4) to authorize the actions and appropriations necessary to meet obligations of the United States under the Settlement Agreement and this Act.

SEC. 3. DEFINITIONS.

In this Act:

(1) RESTORATION FUND.—The term “Restoration Fund” means the San Jacinto Basin Restoration Fund established by section 6.

(2) DEVELOPMENT FUND.—The term “Development Fund” means the Soboba Band of Luiseño Indians Water Development Fund established by section 7.

(3) RESERVATION.—

(A) IN GENERAL.—The term “Reservation” means the Soboba Indian Reservation created by Executive Order dated June 19, 1883, and enlarged and modified as of the date of enactment of this Act by Executive Orders and an Act of Congress.

(B) EXCLUSIONS.—For the purposes of this Act, the term “Reservation” does not include—

(i) the 950 acres northwest of and contiguous to the Reservation known as the “Jones Ranch”, purchased by the Soboba Tribe in fee on July 21, 2001, and placed into trust on January 13, 2003;

(ii) the 535 acres southeast of and contiguous to the Reservation known as the “Horseshoe Grande”, purchased by the Soboba Tribe in fee in seven separate transactions in June and December 2001, December 2004, June 2006, and January 2007; and

(iii) the 478 acres north of and contiguous to the Reservation known as “The Oaks”, purchased by the Soboba Tribe in fee on April 4, 2004.

(4) SECRETARY.—The term “Secretary” means the Secretary of the Interior or a designee of the Secretary.

(5) SETTLEMENT AGREEMENT.—The term “Settlement Agreement” means that agreement dated June 7, 2006, as amended to be consistent with this Act, together with all exhibits thereto. The parties to the Settlement Agreement are the Soboba Band of Luiseño Indians and its members, the United States on behalf of the Tribe and its members, The Metropolitan Water District of Southern California, Eastern Municipal Water District, and Lake Hemet Municipal Water District.

(6) TRIBE, SOBOBA TRIBE, OR SOBOBA BAND OF LUISEÑO INDIANS.—The terms “Tribe”, “Soboba Tribe”, or “Soboba Band of Luiseño Indians” means the body politic and federally recognized Indian tribe, and its members.

(7) WATER MANAGEMENT PLAN.—The term “Water Management Plan” means the plan, approved by the Soboba Tribe and the Secretary, developed pursuant to section 4.8, paragraph A of the Settlement Agreement to resolve the overdraft of the San Jacinto basin.

SEC. 4. RATIFICATION OF SETTLEMENT AGREEMENT; AUTHORIZATION.

(a) IN GENERAL.—The United States hereby approves, ratifies, and confirms the Settlement Agreement, except to the extent it conflicts with the provisions of this Act.

(b) AUTHORIZATION.—The Secretary is authorized and directed to execute, and take such other actions as are necessary to implement, the Settlement Agreement and any amendments approved by the parties necessary to make the Settlement Agreement consistent with this Act.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

(a) RESTORATION FUND.—There is authorized to be appropriated to the San Jacinto Basin Restoration Fund established in section 6 of this Act the amount of \$5,000,000 for each of fiscal years 2010 and 2011 to pay or reimburse the costs associated with constructing, operating, and maintaining the portion of the basin recharge project that the United States is responsible for under the Settlement Agreement. These costs are described in section 4.5 of the Settlement Agreement and are necessary to accommodate deliveries of the supplemental imported water under section 4.4 of the Settlement Agreement.

(b) DEVELOPMENT FUND.—There is authorized to be appropriated to the Soboba Band of Luiseño Indians Water Development Fund established in section 7 of this Act the amount of \$5,500,000 for each of fiscal years 2010 and 2011 to pay or reimburse costs associated with constructing, operating, and maintaining water and sewage infrastructure, and other water-related development projects.

(c) LIMITATION.—No funding of any construction, operation, maintenance, or replacement other than those funds authorized under subsections (a) and (b) shall be the responsibility of the Federal Government under the Settlement Agreement or this Act.

SEC. 6. RESTORATION FUND.

(a) ESTABLISHMENT.—There shall be established within the Treasury of the United States a non-interest bearing account to be known as the “San Jacinto Basin Restoration Fund”, consisting of the amounts authorized to be appropriated in section 5(a) of this Act.

(b) ADMINISTRATION.—The Restoration Fund shall be administered by the Secretary for the purposes set forth in subsection (d) of this section.

(c) AVAILABILITY.—The funds authorized to be appropriated pursuant to section 5(a) of this Act shall be available for expenditure or withdrawal only after the effective date set forth in section 10(a).

(d) EXPENDITURES AND WITHDRAWALS.—

(1) EXPENDITURE PLAN.—

(A) IN GENERAL.—Eastern Municipal Water District, on behalf of the Water Management Plan, shall submit to the Secretary for approval an expenditure plan for use of the Restoration Fund.

(B) REQUIREMENTS.—The expenditure plan shall require that any funds be expended or reimbursed in accordance with the purposes described in section 5(a) of this Act.

(2) WITHDRAWALS.—On approval by the Secretary of the expenditure plan described in this section, Eastern Municipal Water District, on behalf of the Water Management Plan, may expend or be reimbursed monies from the Restoration Fund as provided in the plan.

(3) ENFORCEMENT.—The Secretary may take judicial or administrative action to enforce the provisions of any expenditure plan to ensure that monies expended or reimbursed from the Restoration Fund under the plan are used in accordance with this Act.

(4) LIABILITY.—If Eastern Municipal Water District, on behalf of the Water Management Plan, exercises the right to expend or be reimbursed monies from the Restoration Fund, neither the Secretary nor the Secretary of the Treasury shall have any liability for the expenditure or reimbursement.

(5) ANNUAL REPORT.—Eastern Municipal Water District shall submit to the Tribe and the Secretary an annual report that describes all expenditures or reimbursements from the Restoration Fund during the year covered by the report.

SEC. 7. DEVELOPMENT FUND.

(a) ESTABLISHMENT.—There shall be established within the Treasury of the United States a fund to be known as the “Soboba Band of Luiseño Indians Water Development Fund”, to be managed and invested by the Secretary consisting of the amounts authorized to be appropriated in section 5(b).

(b) MANAGEMENT.—The Secretary shall manage the Development Fund, make investments, and make monies available for distribution consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.) (referred

to in this section as the “Trust Fund Reform Act”), this Act, and the Settlement Agreement.

(c) INVESTMENT.—The Secretary shall invest amounts in the Development Fund in accordance with—

(1) the Act of April 1, 1880 (21 Stat. 70, ch. 41, 25 U.S.C. 161);

(2) the first section of the Act of June 24, 1938 (52 Stat. 1037, ch. 648, 25 U.S.C. 162a); and

(3) subsection (b) of this section.

(d) AVAILABILITY.—The funds authorized to be appropriated pursuant to section 5(b) of this Act shall be available for expenditure or withdrawal only after the effective date set forth in section 10(a).

(e) EXPENDITURES AND WITHDRAWALS.—

(1) TRIBAL MANAGEMENT PLAN.—

(A) IN GENERAL.—The Tribe may withdraw all or part of the Development Fund on approval by the Secretary of a tribal management plan as described in the Trust Fund Reform Act.

(B) REQUIREMENTS.—In addition to the requirements under the Trust Fund Reform Act, the tribal management plan shall require that any funds be expended or reimbursed in accordance with the purposes described in section 5(b) of this Act.

(C) ENFORCEMENT.—The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that monies withdrawn from the Development Fund under the plan are used in accordance with this Act.

(D) LIABILITY.—If the Tribe exercises the right to withdraw monies from the Development Fund, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment.

(2) EXPENDITURE PLAN.—

(A) IN GENERAL.—The Tribe shall submit to the Secretary for approval an expenditure plan for any portion of the amounts made available under section 5(b) that the Tribe does not withdraw under this subsection.

(B) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, amounts of the Tribe remaining in the Funds will be used.

(C) APPROVAL.—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this Act and the Agreement.

(3) ANNUAL REPORT.—The Tribe shall submit to the Secretary an annual report that describes all expenditures from the Development Fund during the year covered by the report.

(4) NO PER CAPITA DISTRIBUTIONS.—No part of the Development Fund shall be distributed on a per capita basis to members of the Tribe.

SEC. 8. WAIVERS AND RELEASES.

(a) TRIBE AND UNITED STATES AUTHORIZATION.—The Tribe, on behalf of itself and its members, and the Secretary, on behalf of the United States in its capacity as trustee for the Tribe and its members, are authorized, as part of the performance of their

obligations under the Settlement Agreement, to execute a waiver and release for claims under Federal, State, or other law against The Metropolitan Water District of Southern California, Eastern Municipal Water District, and Lake Hemet Municipal Water District, for any and all—

(1) past, present, and future claims to surface water and groundwater rights for the Reservation arising from time immemorial through the effective date described in section 10 of this Act and anytime thereafter, except claims to enforce the Settlement Agreement or claims based on water rights acquired after the effective date described in section 10 of this Act;

(2) past, present, and future claims for injury of any kind arising from interference with surface water and groundwater resources and water rights of the Reservation, including, but not limited to, all claims for injury to the Tribe's use and enjoyment of the Reservation, economic development, religion, language, social structure and culture, and injury to the natural resources of the Reservation, from time immemorial through the effective date described in section 10 of this Act;

(3) past, present, and future claims for injury of any kind arising from, or in any way related to, continuing interference with surface water and groundwater resources and water rights of the Reservation, including the full scope of claims defined in section 5.1, paragraph A(2) of the Settlement Agreement, to the extent that such continuing interference began prior to the effective date described in section 10 of this Act, from time immemorial through the effective date described in section 10 of this Act and anytime thereafter;

(4) past, present, and future claims for injury of any kind arising from, or in any way related to, seepage of water into the San Jacinto Tunnel, including the full scope of claims defined in section 5.1, paragraph A(2) of the Settlement Agreement, from time immemorial through the effective date described in section 10 of this Act and anytime thereafter; and

(5) past, present, and future claims for injury of any kind arising from, or in any way related to, the Water Management Plan as approved in accordance with the Settlement Agreement, from time immemorial through the effective date described in section 10 of this Act and anytime thereafter.

(b) TRIBAL WAIVERS AGAINST THE UNITED STATES.—

(1) IN GENERAL.—The Tribe is authorized, as part of the performance of its obligations under the Settlement Agreement, to execute a waiver and release for claims against the United States (acting in its capacity as trustee for the Tribe or its members, or otherwise acting on behalf of the Tribe or its members), including any agencies, officials, or employees thereof, for any and all—

(A) claims described in subsection (a) of this section;

(B) past, present, and future claims for failure to acquire or develop water rights and water resources of the Reservation arising from time immemorial through the effective date described in section 10 of this Act and anytime thereafter;

(C) past, present, and future claims for failure to protect water rights and water resources of the Reservation

arising from time immemorial through the effective date described in section 10 of this Act, and any past, present, and future claims for any continuing failure to protect water rights and water resources of the Reservation, arising from time immemorial through the effective date described in section 10 of this Act and, to the extent that such continuing failure to protect began before the effective date described in section 10 of this Act, anytime thereafter;

(D) past, present, and future claims arising from the failure of any non-Federal Party to fulfill the terms of the Settlement Agreement at anytime; and

(E) past, present, and future claims arising out of the negotiation of the Settlement Agreement or the negotiation and enactment of this Act, or any specific terms of provisions thereof, including, but not limited to, the Tribe's consent to limit the number of participant parties to the Settlement Agreement.

(2) EFFECTIVENESS OF WAIVERS AGAINST THE UNITED STATES.—

(A) IN GENERAL.—The waiver and release contained in this subsection shall take effect on the date on which all of the amounts authorized under sections 5(a) and 5(b) are appropriated.

(B) PERIODS OF LIMITATION; EQUITABLE CLAIMS.—

(i) IN GENERAL.—All periods of limitation and time-based equitable defenses applicable to the claims set forth in paragraph (1) are tolled for the period between the date of enactment of this Act until the date on which the amounts authorized under sections 5(a) and 5(b) are appropriated.

(ii) EFFECT OF SUBPARAGRAPH.—This subparagraph neither revives any claim nor tolls any period of limitation or time-based equitable defense that may have expired before the date of enactment of this Act.

(C) DEFENSE.—The making of the amounts of appropriations authorized under sections 5(a) and 5(b) shall constitute a complete defense to any claim which involves the claims set forth in paragraph (b)(1) pending in any court of the United States on the date on which the appropriations are made.

SEC. 9. MISCELLANEOUS PROVISIONS.

(a) JURISDICTION.—

(1) NO EFFECT ON SUBJECT MATTER JURISDICTION.—Nothing in the Agreement or this Act restricts, enlarges, or otherwise determines the subject matter jurisdiction of any Federal, State, or Tribal court.

(2) JUDGMENT AND DECREE.—The United States consents to jurisdiction in the United States District Court for the Central District of California case known as Soboba Band of Luiseño Indians v. Metropolitan Water District of Southern California, No. 00–04208 for the purpose of obtaining approval for a judgment and decree substantially the same as the judgment and decree attached to the Settlement Agreement as exhibit H.

(3) EFFECT OF SUBSECTION.—Nothing in this subsection confers jurisdiction on any State court to—

(A) enforce Federal environmental laws regarding the duties of the United States; or

(B) conduct judicial review of Federal agency action.

(b) USE OF WATER.—

(1) TRIBAL USE.—With respect to water rights made available under the Settlement Agreement—

(A) the Tribe may use water made available to it under the Settlement Agreement for any use it deems advisable on the Reservation and on any other lands it owns or may acquire, in fee or in trust, contiguous to the Reservation or within the area of the groundwater basin described in section 2.4 of the Settlement Agreement;

(B) such water rights shall be held in trust by the United States in perpetuity, and shall not be subject to forfeiture or abandonment; and

(C) State law shall not apply to the Tribe's use of water made available to it under the Settlement Agreement.

(2) NON-TRIBAL USE.—

(A) CONTRACTS AND OPTIONS.—Subject to the limitations in subparagraph (B), the Tribe may enter into contracts and options to lease or contracts and options to exchange water made available to it under the Settlement Agreement, or enter into contracts and options to postpone existing water uses or postpone undertaking new or expanded water uses.

(B) LIMITATIONS ON NON-TRIBAL USE.—

(i) CONSISTENCY WITH WATER MANAGEMENT PLAN.—Any water made available under subparagraph (A) shall only be used by participants in, or other users within the area of, the Water Management Plan described in section 2.32 of the Settlement Agreement.

(ii) PROHIBITION ON PERMANENT ALIENATION.—No contract under subparagraph (A) shall be for a term exceeding one hundred years, nor shall any contract under subparagraph (A) provide for permanent alienation of any portion of the water rights made available under the Settlement Agreement.

(C) LIABILITY.—The Secretary shall not be liable to any party, including the Tribe, for any term of, or any loss or other detriment resulting from, a lease or contract entered into pursuant to this subparagraph.

(c) RETENTION OF RIGHTS.—

(1) In the event the waivers and releases set out in section 8 of this Act do not become effective pursuant to section 10(a) of this Act, the Soboba Tribe and the United States shall retain the right to assert all rights and claims enumerated in section 8, and any claims or defenses of the parties to the Settlement Agreement shall also be retained.

(2) The parties expressly reserve all rights not specifically granted, recognized, waived, or released by the Settlement Agreement or this Act.

(3) Notwithstanding the waivers and releases set forth in section 8(a), the United States retains all claims relating to violations of the Clean Water Act, the Safe Drinking Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act, Resource Conservation and Recovery

Act, and the regulations implementing these Acts, including, but not limited to claims related to water quality.

(d) PRECEDENT.—Nothing in this Act establishes any standard for the quantification or litigation of Federal reserved water rights or any other Indian water claims of any other Indian tribes in any other judicial or administrative proceeding.

(e) OTHER INDIAN TRIBES.—Nothing in the Settlement Agreement or this Act shall be construed in any way to quantify or otherwise adversely affect the water rights, claims, or entitlements to water of any Indian tribe, band, or community, other than the Soboba Tribe.

(f) ENVIRONMENTAL COMPLIANCE.—

(1) Signing by the Secretary of the Settlement Agreement does not constitute major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) The Secretary is directed to carry out all environmental compliance required by Federal law in implementing the Agreement.

SEC. 10. EFFECTIVE DATE.

(a) IN GENERAL.—The waivers and releases authorized in subsection (a) of section 8 of this Act shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of findings that—

(1) this Act has been enacted;

(2) to the extent that the Settlement Agreement conflicts with this Act, the Settlement Agreement has been revised to conform with the Act;

(3) the Settlement Agreement, revised as necessary, and the waivers and releases described in article 5 of the Settlement Agreement and section 8(a) of this Act have been executed by the parties and the Secretary;

(4) warranty deeds for the property to be conveyed to the Tribe described in section 4.6 of the Settlement Agreement have been placed in escrow;

(5) the Tribe and the Secretary have approved the Water Management Plan; and

(6) the judgment and decree attached to the Settlement Agreement as exhibit H or a judgment and decree substantially the same as exhibit H has been approved by the United States District Court, Eastern Division of the Central District of California, and that judgment and decree has become final and nonappealable.

(b) DEADLINE FOR EFFECTIVE DATE.—If the conditions precedent required under subsection (a) of this section have not been fulfilled by March 1, 2012, the Settlement Agreement and this Act shall not thereafter be effective and shall be null and void, and any funds and the interest accrued thereon appropriated pursuant to

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section 5 shall revert to the general fund of the United States Treasury.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*