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2d Session }

SENATE

{ REPORT  
113-215

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TO AUTHORIZE THE PECHANGA BAND OF LUISEÑO MIS-  
SION INDIANS WATER RIGHTS SETTLEMENT, AND FOR  
OTHER PURPOSES

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JULY 22, 2014.—Ordered to be printed

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

### R E P O R T

[To accompany S. 1219]

The Committee on Indian Affairs, to which was referred the bill (S. 1219) to authorize the Pechanga Band of Luiseño Mission Indians Water Rights Settlement, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

#### PURPOSE

The purpose of S. 1219 is to provide for the Pechanga Bands of Luiseño Mission Indians' (the Band) water rights, and provide funding for infrastructure development to allow the Band to put their water rights to actual use.

#### BACKGROUND

The Pechanga Indian Reservation was originally established in 1882 by an Executive Order of President Chester A. Arthur. The Reservation is currently comprised of 6,724 acres located near the city of Temecula, northeast of San Diego, California. Approximately 500 of the Band's 1,600 members reside on the Reservation.

The Reservation lies within the Santa Margarita River Watershed, which also affects two other Indian tribes, as well as the Rancho California Water District and the Eastern Municipal Water District. The Band currently uses water on the Reservation for commercial, agricultural, domestic and municipal purposes, and expects demand to increase in the coming years.

### *Pechanga Water Rights*

The settlement of the Band's water rights stems from litigation, *United States v. Fallbrook*, which the United States initiated in 1951 over water rights in the Santa Margarita River Watershed. The *Fallbrook* litigation eventually expanded to include all water users within the Santa Margarita Watershed, including three Indian tribes—the Pechanga Band of Luiseño Indians, the Ramona Band of Cahuilla Indians, and the Cahuilla Band of Indians.

The United States, as trustee, represented all three Tribes before the *Fallbrook* Court. At trial, the United States made a factual presentation to the Court based on a report (prepared by the United States in 1958) that demonstrated the United States' formal position on the practicably irrigable acres claim for reserved water rights for the Pechanga Reservation, which the United States asserted was 4,994 acre-feet per year.

In a series of Interlocutory Judgments that were eventually wrapped into the Court's Modified Final Judgment and Decree, the Court examined and established water rights for various water users involved in the case. In Interlocutory Judgment 41, the Court concluded that each of the three Tribes has a recognized federally reserved water right without specifying the amount of each of the Tribe's water rights.

As to the Pechanga Reservation, the Court accepted the United States' formal position of practicably irrigable acres on the Pechanga Reservation and set the federally reserved water right at the amount of 4,994 acre-feet per year, but only on a "prima facie" basis. The "prima facie" nature of the findings meant that, though they are binding until successfully challenged, the findings were not final.

Final quantified rights were never established thereafter for the Pechanga Band or any of the other tribes in the *Fallbrook* case. As a result, all three Tribes have "decreed," but "unquantified," federally reserved water rights.

In 1974, the Pechanga Band filed a motion with the *Fallbrook* Court to intervene as a plaintiff-intervener and a party to the proceeding on its own behalf. In 1975 the Court granted the Band's Motion and the Band filed a complaint to enjoin certain defendants from using more than their respective entitlements under the *Fallbrook* Decree. The Band has remained a party to the *Fallbrook* proceedings ever since. The Band has not yet filed a motion to finally quantify its federally reserved water rights, but is now facing pressure to do so due to the growing scarcity of water supplies in the region.

### *Pechanga Water Rights Settlement*

Until recently, the Pechanga Band sought to avoid litigation and instead worked with those entities around the Band to develop mutual private agreements for sharing the limited water resources in the Wolf Valley Basin. As a result, in 2006, the Band and the Rancho California Water District (RCWD) entered into a Groundwater Management Agreement, and in 2007, the Band and Eastern Municipal Water District entered into a Recycled Water Agreement. Neither of these agreements, however, addressed the Band's water rights in the Santa Margarita River Watershed, or settled the Band's claims related to the *Fallbrook* Decree or its claims against

the United States related to water and development of water resources.

In 2006 and continuing throughout 2007, the other two tribes in the Santa Margarita River Watershed, the Ramona Band of Cahuilla Indians and the Cahuilla Band of Indians sought to intervene in the *Fallbrook* case to, among other things, quantify their respective water rights to the Santa Margarita River Watershed. These efforts forced the Pechanga Band to become more actively engaged in the *Fallbrook* proceedings in order to protect its own claims to water or risk being injured by the actions of the other two Tribes.

In addition to participating as a litigant in the proceedings initiated by the Ramona and Cahuilla, the Pechanga Band began its efforts to reach a settlement of its claims to water and claims for injuries to water rights relating to the Santa Margarita River Watershed. On March 13, 2008, the Band requested that the Secretary of the Interior seek settlement of the water rights claims involving the Band, the United States, and non-Federal third parties through the formation of a Federal Negotiation Team under the Criteria and Procedures for Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims. The Secretary agreed to form a Federal Negotiation Team on August 1, 2008.

Since formation of the Federal Negotiation Team, the Pechanga Band has been working closely with all of the parties to negotiate the terms of the Pechanga Settlement Agreement and to resolve its claims against the United States in connection with the development and protection of the Band's water rights. The Band's settlement is a broad settlement agreement with the United States and the RCWD. The Pechanga Settlement Agreement would be confirmed, authorized and ratified by S. 1219.

S. 1219 would provide final closure for the Band regarding its water rights, which have been at issue since the United States first initiated litigation over the Band's water rights in 1951. The bill would recognize the Band's right of up to 4,994 acre feet of water per year and ratify the Pechanga Settlement Agreement that would be entered into by the Band, the United States, and several California state water districts. In return for recognition of the water rights contained in the bill, many of the Band's legal claims against the United States would be waived or released.

In addition to the quantified water right, S. 1219 would provide approximately \$28.5 million in federal funding to improve infrastructure to allow the Band to fully utilize its water rights. The bill also ratifies various agreements that have already been completed or will be completed between the Band and the various California water districts. These agreements detail how the Band would receive its water from the various California water districts, particularly in instances where there is insufficient supply for all users on the system.

## SECTION-BY-SECTION ANALYSIS

*Section 1—Short title; table of contents*

This section sets forth the table of contents and states this Act may be cited as the “Pechanga Band of Luiseño Mission Indians Water Rights Settlement Act”.

*Section 2—Purposes*

Section 2 states the purposes of the Act as achieving a fair, equitable and final settlement of water rights and certain claims in the Santa Margarita Watershed; achieving a final settlement of claims by the Band and allottees against the United States; approving the Pechanga Settlement Agreement to be entered into by the Band, the Rancho California Water District, and the United States; authorizing the Secretary of the Interior to implement the Settlement Agreement; and authorizing the funds necessary to implement the Settlement Agreement and the Act.

*Section 3—Definitions*

Section 3 defines key terms used throughout the Act.

*Section 4—Approval of the Pechanga Settlement Agreement*

Section 4 authorizes, ratifies and confirms the Pechanga Settlement Agreement and authorizes and directs the Secretary of the Interior to carry out the terms of the Settlement Agreement and the Act. Section 4(c) designates the Bureau of Reclamation as the lead agency for environmental compliance during implementation of the Settlement Agreement and the Act.

*Section 5—Tribal water right*

Section 5 confirms the Band’s water right of up to 4,994 acre-feet per year and mandates the water right be held in trust by the United States. Section 5 also describes the intent of Congress to protect any water rights held by individual allottees. Section 5 requires the Band to enact a Water Code and defines the authority of the Band to use its water.

*Section 6—Satisfaction of claims*

Section 6 states that the benefits provided to the Band and allottees under the Settlement Agreement and Act fully satisfy the claims that are waived in Section 7 of the Act.

*Section 7—Waiver of claims*

Section 7 describes the claims that are waived by the Band, allottees, and the United States. Section 7 also lists a small number of claims that are not waived, such as enforceability of the Settlement Agreement, and other claims not subject to the Settlement Agreement or the Act. Finally, Section 7 nullifies the waivers if the Act is not fully appropriated by 2030.

*Section 8—Water facilities*

Section 8 describes the water infrastructure that is provided for in the Settlement Agreement, including a storage pond to hold recycled water and infrastructure to increase water delivery capacity

both permanently and in the interim. The Bureau of Reclamation is designated the lead agency for these projects.

*Section 9—Pechanga Settlement Fund*

Section 9 directs the Secretary of the Interior to manage and invest the Pechanga Settlement Fund, and directs how the Fund should be distributed among several accounts, and under what conditions funds can be withdrawn and expended.

*Section 10—Miscellaneous provisions*

Section 10 discusses the limited waiver of sovereign immunity by the United States and states that nothing in the Act affects any other Indian tribe, band or community other than the Pechanga Band. Section 10 also states that the United States will not submit any claim to reimburse costs of the Act on any Indian-owned lands within the Pechanga Reservation.

*Section 11—Authorization of appropriations*

Section 11 authorizes a total of \$28,500,027 to be appropriated and deposited across four accounts within the Pechanga Settlement Fund.

*Section 12—Repeal on failure of enforceability date*

Section 12 states that the Act will be repealed on May 1, 2021, if the Secretary does not publish a statement of findings in the Federal Register by April 30, 2021, setting forth that: (1) the Settlement Agreement has been approved by the United States District Court for the Southern California District; (2) all amounts authorized under the Act have been deposited into the Fund; (3) all waivers have been executed; (4) the Extension of Service Area Agreement has been approved and is effective; and (5) the Water Delivery Agreement has been approved and is effective.

*Section 13—Antideficiency*

Section 13 states that the United States will not be liable for any failure to carry out the Act if adequate appropriations are not provided.

LEGISLATIVE HISTORY

S. 1219 was introduced on June 25, 2013, by Senator Barbara Boxer (D–CA) and Senator Dianne Feinstein (D–CA). The bill was referred to the Committee on Indian Affairs. On September 10, 2013, the Committee held a legislative hearing on the bill. On April 2, 2014, the Committee met to consider the bill. One substitute amendment was offered, and the bill, as amended, was adopted and ordered favorably reported to the Senate by voice vote.

SUMMARY OF THE AMENDMENT

Senator Jon Tester (D–MT) offered an amendment in the nature of a substitute. The amendment primarily addressed concerns expressed by the Department of the Interior and reflects the recent agreements made between the Pechanga Band and the Department. While the majority of the amendments are technical in nature, the substantive changes primarily reflect agreement on revised waiver of claims language that is consistent with other past

tribal water settlements, changes in the overall cost of the bill, and the treatment of individual allottees' rights vis-à-vis the Band's water right. The amendment decreases the amount of federal obligations to \$28.5 million, which is an \$11.5 million decrease from the bill as introduced.

#### COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated May 30, 2014, was prepared for S. 1219:  
Enclosure.

#### *S. 1219—Pechanga Band of Luiseño Mission Indians Water Rights Settlement Act*

Summary: S. 1219 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, subject to the availability of appropriated funds, for the development and maintenance of water infrastructure for the tribe. Pay-as-you-go procedures do not apply to this legislation because it would not affect direct spending or revenues.

S. 1219 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 (\$76 million in 2014, adjusted annually for inflation).

S. 1219 contains no private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary effect of S. 1219 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

	By fiscal year, in millions of dollars—					
	2015	2016	2017	2018	2019	2015–2019
CHANGES 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: For this estimate, CBO assumes that S. 1219 will be enacted near the end of 2014. 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.

S. 1219 would establish and authorize the deposit of funds into the Pechanga Settlement Fund to construct a storage pond, build interim and permanent capacity for imported water delivery, and pay local water district connection fees. CBO estimates that the legislation would authorize the deposit of about \$33 million to that fund in 2015, subject to the availability of appropriated funds.

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 to 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.

Pay-As-You-Go considerations: None.

Estimated impact on state, local, and tribal governments: S. 1219 would require the tribe to enact water policies that would govern the use of 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 (\$76 million in 2014, 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: S. 1219 contains no private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Martin von Gnechten; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Marin Burnett.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1219 will have a minimal impact on regulatory or paperwork requirements.

#### EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 1219.

#### CHANGES IN EXISTING LAW

In accordance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that the enactment of S. 1219 will not make any changes in existing law.