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U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

June 17, 2019

Re: DOJ-2017-005954 (OLA)
DRH:ERH

This responds to your Freedom of Information Act (FOIA) request dated July 5, 2017, and received in this Office on August 9, 2017, in which you requested "a copy of each Views Letter provided to Congress during the 114th Congress."

Please be advised that a search has been conducted in the Office of Legislative Affairs, and fifteen pages of material were located that are responsive to your request. I have determined that this material is appropriate for release without excision and copies are enclosed.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552 (2012 & Supp. V 2017). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison, Douglas Hibbard, for any further assistance and to discuss any aspect of your request at: Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001; telephone at 202-514-3642; or facsimile at 202-514-1009.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal at https://foiaonline.gov/foiaonline/action/public/home. Your appeal must be postmarked or electronically submitted within ninety

days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

Douglas R. Hibbard
Chief, Initial Request Staff

Enclosures

NOV 29 2016

The Honorable Rob Bishop
Chairman, Committee on Natural Resources
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

We write to provide our views on Section 8002 of S. 2848, the Choctaw Nation of Oklahoma and the Chickasaw Nation Water Settlement, which would approve 1) a settlement agreement among the Choctaw Nation of Oklahoma and the Chickasaw Nation (collectively Nations), State of Oklahoma (State), City of Oklahoma City (City), and the United States, and 2) a collateral agreement between the State, City, and Oklahoma City Water Utility Trust. The Administration supports the consensus legislative language reached between the Administration and the local parties. This consensus language is identified in a revised version of Section 8002, enclosed hereto (hereinafter the Settlement).

The Settlement resolves the water rights claims of the Nations and their members, ensures that water remains in the various basins, and provides a mechanism for tribal input in future water management. The Settlement will bring to successful conclusion years of conflict and uncertainty over water rights in southeastern Oklahoma and years of negotiations among the parties. The Settlement resolves the Nations' water rights claims, recognizes the Nations' existing water uses, provides procedures for expanded water use by the Nations in the future, and protects and provides certainty to the City, the State, and all water users in southeastern Oklahoma.

The Administration supports this Settlement because it fulfills important Federal trust obligations, promotes tribal self-sufficiency, supports stability for all interested parties, and provides economic benefits to the State, the City, Nations, and all the people living in the affected area by encouraging cooperative and efficient water management. The Settlement adheres to the 1990 *Criteria and Procedures*, including Criteria 4 and 5, and represents a net benefit to the American taxpayer as compared to the costs of not settling the underlying litigation, described in more detail below.

Background

The Nations are federally recognized Indian tribes whose historic treaty territories are located in southeastern Oklahoma. Because of their unique histories, the Nations do not have reservations like other Indian tribes. Nevertheless, the Nations still own a significant amount of land, some of which the United States now holds in trust for the Nations.

This Settlement resolves litigation in two related cases: 1) a lawsuit the Nations brought in Federal district court in 2011 claiming ownership and regulatory authority over all waters within their historic treaty territory,[1] and 2) a water rights adjudication the State initiated in the Oklahoma Supreme Court in response to the Nations' suit.[2] The United States removed the State's lawsuit to Federal district court, and both cases have been stayed since 2012 to facilitate settlement negotiations among the parties.

The Nations, State, and City negotiated for approximately three and a half years, and reached an agreement in principle before inviting the United States to join the negotiations. Since 2015, the Department of Justice, Department of the Interior, and the United States Army Corps of Engineers (Army Corps) have worked with the other parties to further refine the Settlement.

Unlike most Indian water rights settlement contexts, in which water resources are typically scarce, this Settlement concerns a part of the country that is relatively wet. The Nations' claims in their 2011 lawsuit are estimated to encompass in excess of 61 million acre-feet (af) of water per year. Under this Settlement, the Nations relinquish their claims to this water in exchange for various assurances including the guarantee that sufficient water will remain in Sardis Reservoir in southeastern Oklahoma to protect important recreation and fish and wildlife resources that are vital to the economies of the Nations and southeastern Oklahomans.

If this Settlement is not authorized and approved through legislation, the United States, Nations, State, and City would resume the currently-stayed litigation addressing a number of divisive, conflicting, and expensive claims, including the Nations' claim of ownership of and regulatory authority over all surface water in southeastern Oklahoma.

Consistency with the Criteria and Procedures, including Criteria 4 and 5(a) and (b).

The Settlement is consistent with the United States trust responsibilities and will secure to the Nations the right to use and benefit from water resources within their historic treaty territories. It will also secure water rights to tribal allottees. Our evaluation of the settlements also adheres to the general principles set forth in the Criteria & Procedures.

The Settlement provides benefits to the United States, both fiscal and otherwise, by securing a final resolution of this controversy, including the waiver of claims. The Federal contribution to this Settlement consists of the forgiveness of a $51 million repayment obligation associated with the Future Use Pool in Sardis Reservoir that, under current law, would eventually be owed to the Army Corps if and when the Future Use Pool would be first drawn upon.[3] This repayment obligation is not yet due – and might never come due. Moreover, the maximum Future Use storage at Sardis Reservoir that could legally be used by the City under the Settlement would be a small amount – less than 9 percent of the pool (12,824 af of the 155,500 af pool). The Army

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[1] *Nations v. Fallin*, 5:11-cv-000927-W (W.D. Okla.) (seeking to enjoin the export of Sardis Lake water outside the Nations' historic treaty territories).

[2] *OWRB v. US*, Civ. 12-275-W (W.D. Okla.)

[3] Subsection (d)(5) provides for forgiveness of any repayment obligations (including interest) relating to the Future Use Pool in Sardis Reservoir effective on January 1, 2050, provided that the City does not make use of the Future Use Pool before that date.

Corps, owner of Sardis Reservoir, was closely involved in negotiating the portions of the Settlement relating to Sardis Reservoir operations.

In addition, this Settlement includes non-Federal cost-sharing that is proportionate to the benefits received by the non-Federal parties. The City and Nations will be funding a $10 million Atoka and Sardis Conservation Projects Fund. This cost share ratio is favorable when compared to other enacted settlements.

Entering into this Settlement would save the Federal Government, other Settlement parties, and affected individuals a substantial amount of money by avoiding the costly and complex litigation necessary to confirm and quantify the Nations' water rights, other Federal reserved water rights including those for the Chickasaw National Recreation Area and the Ouachita National Forest, and other related issues. This Settlement will resolve the two major Federal lawsuits discussed above. Most pertinent to the United States, it will resolve the litigation filed by the State that named the United States as a defendant and sought to initiate an adjudication of water rights claimed by or potentially affected by the Nations. Adjudication proceedings to determine the Nations' water rights would cover all or portions of 30 hydrological basins and 22 counties in Oklahoma and include hundreds or possibly thousands of landowners and water users who would be expected to participate in the adjudication. Because of the broad geographic scope, time to prepare and litigate claims, and the questions of first impression regarding potentially applicable legal theories we expect that such legal proceedings would take many years and would cost Federal taxpayers millions of dollars.

In addition to the costs avoided through settlement of the pending litigation, approval of this Settlement could avoid other potential expenses related to the Endangered Species Act (ESA). The U.S. Fish and Wildlife Service previously determined that an earlier proposal to reduce Sardis Reservoir releases and resulting flows in the Kiamichi River would have potentially affected endangered mussel species and therefore required formal consultation under Section 7 of the ESA. By locking in specified Reservoir levels and environmentally beneficial flow levels below the Reservoir, this Settlement could avoid the costs associated with formal ESA consultation, potential litigation over preservation of ESA-protected species, and the costs and impediments that arise when a species is listed under the ESA.

Finally, and as noted above, the Settlement will resolve any and all claims of the Nations against the United States regarding water rights, regulatory authority, or ownership.

Approval in Writing of Settlement Agreement and Draft Legislation

The local parties have agreed to the Settlement and will execute the settlement agreement before the Settlement is enacted. The Settlement provides for a post-enactment signing by the United States. All potential settlement signatories have agreed to the enclosed legislative text.

Conveyance to Court of Settlement.

The local parties notified the court of the Settlement Agreement.

List of claims being settled.

- Claims to the ownership of water in Oklahoma;
- Claims to water rights and rights to use water diverted or taken from a location within Oklahoma;
- Claims to authority over the allocation and management of water and administration of water rights, including authority over third-party ownership of or rights to use water diverted or taken from a location within Oklahoma;
- Claims that the State lacks authority over the allocation and management of water and administration of water rights, including authority over the ownership of or rights to use water diverted or taken from a location within the State;
- Any other claim related to the ownership of water, regulation of water, or authorized diversion, storage, or use of water diverted or taken from within Oklahoma, which claims are based on the "Five Tribes Theory";
- Claims for damages, losses, or injuries to water rights or water, or claims of interference with, diversion, storage, taking, or use of water (including claims for injury to land resulting from the damages, losses, injuries, interference with, diversion, storage, taking, or use of water) attributable to any action by the State, Oklahoma Water Resources Board, or any water user authorized pursuant to State law to take or use water in the State, including the City, the accrued during the period ending on the enforceability date;
- All claims and objections relating to the amended permit applications and the City permit;
- All claims and objections relating to the approval by the Secretary of the Army of the assignment of the 1974 storage contract pursuant to the amended storage contract;
- All claims relating to the United States' litigation, prior to the Enforceability Date, of the Nations' water rights in the State of Oklahoma; and
- All claims relating to the negotiation, execution, or adoption of the Settlement Agreement (including exhibits) or this Act.

The settlement and proposed legislation do not include financial authorization for claims already settled by Congress or claims that have no legal basis.

The claims that will be settled as part of this settlement have a legal basis, have not previously been settled by Congress, and were not settled in prior cases against the United States.

Sincerely,

Alletta D. Belin
Senior Counselor to the Deputy Secretary
Department of the Interior

Peter Kadzik
Assistant Attorney General
Office of Legislative Affairs
Department of Justice

cc: The Honorable Tom Cole
House of Representatives

The Honorable Markwayne Mullin
House of Representatives

MAY 17 2016

The Honorable Rob Bishop
Chairman, Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

We write to provide our views on S. 1983, the Pechanga Band of Luiseño Mission Indians Water Rights Settlement Act ("Pechanga Settlement"). The Administration is supportive of the Pechanga Settlement if it is amended to conform to the attached redline of S. 1983 as reported out of the Senate Committee on Indian Affairs on February 3, 2016. S. 1983 would authorize and approve an agreement among the Pechanga Band of Luiseño Indians, ("Pechanga" or "Band"), Rancho California Water District ("RCWD"), and the United States, and certain collateral agreements, including agreements with Eastern Municipal Water District ("EMWD"), and Metropolitan Water District ("MWD") ("Agreements"). The Pechanga Settlement, if amended, will bring to successful conclusion decades of conflict and uncertainty over water rights and years of negotiations through a comprehensive settlement that resolves the Band's water-rights claims and secures sufficient water to meet the Band's current and future water needs while protecting the legitimate interests of RCWD and its customers.

Although the Pechanga Settlement is a creative and forward-looking settlement that fulfills important Federal trust obligations, encourages cooperative and efficient water management, and provides important benefits to the American taxpayer, the Office of Management and Budget advises that it is still assessing and evaluating the information necessary for it to definitively conclude whether the proposed settlement meets all of the *Criteria and Procedures.*[1]

1. Background

Pechanga is a federally recognized Indian tribe with a reservation of over 6,000 acres located northeast of San Diego, California, near the city of Temecula. Pechanga Creek, a tributary of the Santa Margarita River, runs through the length of the Pechanga Reservation. In 1951, the United States initiated the *Fallbrook* litigation[2] to protect the Federal water rights of the United States adding claims for three Indian tribes – Pechanga, the Ramona Band of Cahuilla Indians

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[1] *Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims* (*Criteria and Procedures*) (55 FR 9223, March 12, 1990)

[2] *United States v. Fallbrook Public Utility District et al.,* Civ. No. 3:51-cv-01247 (S.D.C.A.).

("Ramona"), and the Cahuilla Band of Indians ("Cahuilla") in 1958.[3] In 1963, the Court issued an order, Interlocutory Judgment 41 ("IJ 41"), finding that each of the three Indian tribes had reserved rights to surface and groundwater in the Santa Margarita River watershed.[4] The Court did not quantify the tribes' water rights but made certain *prima facie* findings regarding the nature and extent of each of the tribe's water rights.[5] As a result, all three tribes have "decreed" but "unquantified" federally reserved water rights. S. 1983 quantifies Pechanga's water rights in a manner that is consistent with the Court's *prima facie* findings in IJ 41 and protects existing water uses.

The Secretary of the Interior appointed a Federal negotiation team in 2008 to support Pechanga's efforts to negotiate a settlement of its water rights claims. Since then the United States has been working closely with the Band to negotiate the terms of the settlement and resolve Pechanga's claims against the United States regarding the development and protection of Pechanga's water rights. In addition to quantifying the Band's reserved water rights in the Santa Margarita watershed, S.1983 settles the Band's claims against the United States, including a breach of the Federal trust responsibility, in connection with Pechanga's water rights.

Through negotiations, the Band has been able to engage its neighbors in a multi-year process of building mutual trust and understanding, resulting in a settlement that benefits all of the parties by securing adequate water supplies for the Band and encouraging cooperative water resource management among all parties.[6] Living in Southern California, the settling parties were faced with a tremendous challenge to identify available water resources and protect each party's legitimate rights and expectations. As discussed in detail below, the Band will obtain a commitment for the delivery of water through sharing the locally available water supply and agreeing to arrangements that would allow all of the parties to benefit from the delivery of other water sources outside the basin; in return, the Band would commit to not claim their full rights. As a result, the Band will have an adequate supply of water while at the same time maximizing the use and the protection of local sources.

If their Agreements are not authorized and approved through legislation, the United States, Pechanga, and the local water districts would in all likelihood resume litigating a number of divisive, conflicting and expensive claims. All parties would miss an opportunity to seize upon the cooperative relationships the parties in the basin fostered during the course of their negotiations.

The Pechanga Reservation lies in a rapidly urbanizing part of Riverside County, with neighbors in close proximity. Pechanga and RCWD have had a groundwater management agreement in

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[3] Although the reservations of the three bands are all located within the Santa Margarita River watershed, Cahuilla and Ramona are located in the upper part of the watershed, which is hydrologically distinct from the area where Pechanga is located. As a result, Cahuilla and Ramona are negotiating a separate settlement involving entirely different parties than those involved in the Pechanga Settlement.

[4] Modified Final Judgment and Decree, *United States v. Fallbrook Public Utility District et al.*, Civ. No. 3:51-cv-01247 (S.D.C.A.)(Apr. 6, 1966).

[5] The Court recognized various overlying rights for RCWD, as set forth in Interlocutory Judgments 30 and 35.

[6] *Criteria and Procedures*, No. 10.

place since 2006 to address concerns with over-pumping in the Wolf Valley Basin, which underlies the Reservation and RWCD's off-reservation service area. The groundwater management agreement will be expanded to allow the Band to increase its use of the basin's safe water yield from 50 percent to 75 percent. As a result, the Band will obtain a greater share of the local high-quality groundwater. In exchange for agreeing to provide the Band with a larger share of high-quality groundwater, RCWD will receive recycled water under an agreement with the Band and EMWD. The Pechanga Settlement includes plans for the construction of infrastructure necessary for these arrangements.

We are pleased that through negotiations with the parties our previous concerns about costs, water quality, and the extent of Federal responsibilities have now been addressed. The total Federal cost of S. 1983, as amended in February 2016, is $28.5 million, substantially less than the approximately $50 million price tag of the legislation as originally introduced. [7] Our concerns about the quality of the water that would be included as part of the Band's water right also have been addressed, as explained above. Federal responsibilities in S. 1983 have been addressed in a way that resolves concerns that we had previously expressed about the lack of clarity regarding the United States' responsibility in implementing the Pechanga Settlement.

The Band and its neighbors are to be credited for successfully negotiating a settlement of their dispute. After decades of conflict, this settlement not only resolves the Band's Federal reserved water-rights claims, but also achieves other goals such as effective management and conservation of groundwater, addressing water quality issues, and alleviating water shortages in the basin.

2. Consistency with the *Criteria and Procedures*, including Criteria 4 and 5(a) and (b).

The Pechanga Settlement is consistent with the United States' responsibility as trustee to Indians and will secure to the Band the right to use and benefit from Reservation water resources, thus ensuring the Band will receive equivalent benefits for claims it will waive as part of the Pechanga Settlement.[8] The *Criteria and Procedures* reflect Federal policy that disputes over Indian water rights should be resolved through negotiated settlements rather than litigation and establish the framework for the United States' participation in settlement negotiations of Indian reserved water-rights claims. Indian water rights are vested property rights for which the United States has a trust responsibility. Under S. 1983, the Band will receive equivalent benefits for claimed rights which it, and the United States as trustee, will release as part of the proposed Pechanga Settlement. S. 1983 will bring to conclusion decades of effort by the Band and the United States to achieve water security for the Pechanga people.

Early in its history, the Band had desirable lands and sufficient water, but because of encroachments by settlers who did not respect tribal interests in land or water, the Band was pushed off its valuable aboriginal lands up into rocky barrens where the Pechanga Reservation was first established in 1882. Water was in scarce supply on the Reservation and, during the

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[7] The amount of the Federal contribution is set forth in the Act, as a total of all authorizations of appropriations, at $28.5 million in 2009 dollars. The Congressional Budget Office has scored the cost to the Federal Government in 2015 dollars at $33 million.

[8] *Criteria and Procedures*, Preamble.

next few decades, the United States secured additional land and water resources in an effort to improve conditions for the Band. In recent years, at the request of the Band, the Federal negotiation team has worked closely with the Band to support its efforts to negotiate a settlement that secures a sufficient water supply to make the Pechanga Reservation sustainable as a permanent homeland for the Pechanga people.

The Band worked collaboratively with the local parties and United States to target funding for initiatives that will allow the Band to manage Reservation water resources and promote economic self-sufficiency. To account for the limited water sources within the Santa Margarita River watershed, the parties developed a settlement with creative and innovative solutions. The parties structured their Agreements to use all available water resources, including groundwater, recycled water and imported water, in a way that provides Pechanga with a means of meeting its current and future water needs in the most economical and equitable manner. In addition to the contractual elements that provide "wet" water to Pechanga and make the overall arrangement work for the other parties, a critical element of the Pechanga Settlement is final quantification of the Band's Federal reserved rights to water (the "Tribal Water Right"). The Pechanga Settlement recognizes a Tribal Water Right for the Band of up to 4,994 acre feet per year, an amount consistent with the *Fallbrook* Court's findings. The *Fallbrook* Court's findings included a limitation on the Tribal Water Right, such that the right is limited to water that under natural conditions is physically available on the Reservation. The Pechanga Settlement follows that approach and references the exact language included in IJ 41.

The Pechanga Settlement provides significant benefits to the United States, both fiscal and otherwise, by securing a final resolution of a decades-long controversy, including the waiver of claims, in exchange for a commensurate Federal contribution of $28.5 million over a five-year period. The United States will fund infrastructure development in order to facilitate the sharing arrangements agreed to by the parties and will help offset costs associated with imported water. The Band's and the local parties' contributions to the settlement are significant. The Band bears primary responsibility for paying for the water it will import from MWD and it estimates that the present value of its costs will exceed $44 million. RCWD estimates the value of its contribution, based upon its agreement to forgo the right to use 25 percent of the high quality groundwater that the Band will be entitled to use, at more than $33 million. The parties, including the Bands and the United States, have expended decades of effort to secure a fair and reasonable allocation of the limited supply of water available in the basin.

As originally introduced in 2010, the Federal contribution to the Pechanga Settlement was in excess of $50 million. The Administration scrutinized Federal costs and worked closely with the Band and the local parties to reduce the overall cost of the Pechanga Settlement to the Federal Government to the current cost of $28.5 million. The Administration notes that the non-Federal contribution, including both the Band's and RCWD's contributions, represents substantially more than the total Federal contribution to the settlement.

3. Approval in writing of Settlement Agreement and draft Amendment.

The settling parties do not intend to execute the Agreements before the settlement is approved by Congress. The settling parties have agreed to the legislative text and are working on technical edits to the text of their settlement agreement.

4. Conveyance to court of Settlement Agreement and draft Amendment.

The settling parties plan to file a joint status report with the *Fallbrook* Court to alert the Court that the settling parties have reached a settlement.

5. List of claims being settled.

- All of the Band's water rights claims in the Santa Margarita Basin would be settled as part of the proposed Pechanga Settlement.
- Pechanga is waiving all claims against the United States relating to water rights in, or water of, the Santa Margarita River Watershed that the United States asserted or could have asserted in any proceeding, including the *Fallbrook* case, except to the extent that those rights are recognized in the Agreements or the legislation.
- Pechanga is also waiving all claims against the United States relating to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights in the Santa Margarita River Watershed.
- Pechanga is waiving all claims against the United States relating to the pending litigation of claims relating to the water rights of Pechanga in the *Fallbrook* case.
- Pechanga is waiving all claims against the United States relating to the negotiation or execution of the Pechanga Settlement Agreement or the negotiation or execution of the legislation.
- RCWD is waiving all claims for water rights within the Santa Margarita River Watershed that RCWD asserted or could have asserted in any proceeding, including the Adjudication Proceeding, except to the extent that such rights are recognized in the Fallbrook Decree.
- RCWD also is waiving:
  - Claims for Injuries to Water Rights in the Santa Margarita River Watershed for lands located outside the Pechanga Reservation arising or occurring at any time up to and including June 30, 2009;
  - Claims for Injuries to Water Rights in the Santa Margarita River Watershed for lands located outside the Pechanga Reservation arising or occurring at any time after June 30, 2009, resulting from the diversion or use of the Tribal Water Right or any other water in a manner not in violation of this Agreement or the Act;
  - Claims for subsidence damage to lands located outside the Pechanga Reservation arising or occurring at any time up to and including June 30, 2009;
  - Claims for subsidence damage arising or occurring after June 30, 2009, to lands located outside the Pechanga Reservation resulting from the diversion of underground water in a manner not in violation of this Agreement or the Act; and
  - Claims arising out of or relating in any manner to the negotiation or execution of this Agreement or the negotiation or execution of the Act.

6. **The settlement and proposed legislation do not include financial authorizations for claims already settled by Congress or claims that have no legal basis.**

The Administration has carefully reviewed S. 1983 to ensure that the legislation does not include any financial authorizations for claims that have already been settled by Congress or claims that have no legal basis. All of the authorized appropriations and the claims being settled in S. 1983 are a matter of first impression that have not been previously addressed or authorized.

We look forward to working with you and the Committee to complete the Pechanga Settlement.

Sincerely,

Alletta D. Belin
Chair, Working Group on
Indian Water Settlements
Department of the Interior

for
Peter J. Kadzik
Assistant Attorney General
for Legislative Affairs
Department of Justice

The Honorable Rob Bishop
Chairman, Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

SEP 11 2015

Dear Mr. Chairman:

This letter provides the views of the Administration on H.R. 1296, a bill to amend the San Luis Rey Indian Water Rights Settlement Act (the 1988 Settlement Act) to clarify certain settlement terms, and for other purposes. H.R. 1296 would approve and ratify the 2014 "Settlement Agreement Between the United States and the La Jolla, Rincon, Pala, Pauma, and San Pasqual Bands of Mission Indians and the San Luis Rey Indian Water Authority and the City of Escondido and Vista Irrigation District" (the 2014 Settlement Agreement), thus resolving this longstanding water rights dispute addressed in the 1988 Settlement Act. The Administration supports the 2014 Settlement Agreement, if Congress enacts legislation substantively identical to the draft amendment to the 1988 Settlement Act that the Settlement Parties agreed upon in Exhibit C to the Settlement Agreement ("the draft Amendment"). H.R. 1296 is substantively identical to the draft Amendment. This letter provides a summary of the 2014 Settlement Agreement and a discussion of issues raised in your letter of February 26, 2015, regarding Indian water rights settlements ("February 26th letter"). Neither the 2014 Settlement Agreement nor the draft Amendment would require any new Federal spending authorizations. Rather, these documents implement the 1988 Settlement Act.

Background

Congress enacted the 1988 Settlement Act to "provide for the settlement of the reserved water rights claims of the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians ['the Bands'] in San Diego County, California in a fair and just manner which . . . provides the Bands with a reliable supply sufficient to meet their present and future needs." Section 103(b). Congress recognized that the reservations established for the Bands "need a reliable source of water," and that the San Luis Rey River basin lacked sufficient water to supply the needs of the Bands as well as the City of Escondido, its water company, and the Vista Irrigation District (defined in the Act as the "Local Entities"). Section 103(a)(1), (3). To address this problem and facilitate a settlement, the 1988 Settlement Act established a fund for the Bands and provided for importation of 16,000 acre-feet per year of supplemental water into the San Luis Rey Basin. Specifically, Congress established the San Luis Rey Tribal Development Fund and appropriated $30 million for that Fund (with interest accruing) for the benefit of the San Luis Rey Indian Water Authority (SLRIWA), an intertribal entity whose establishment was recognized in the 1988 Settlement Act. Sections 105, 107. Congress also authorized and directed the Secretary of the Interior to "arrange for the development [and delivery] of not more than 16,000 acre-feet per year of supplemental water," to be obtained by lining the All-American Canal, which delivers water from the Colorado River to Southern California. Sections 106(a), 203(a).

By its own terms, the 1988 Settlement Act becomes effective only when the United States, the Bands, and the Local Entities enter into "a settlement agreement providing for the complete resolution of all claims, controversies, and issues involved" in proceedings that were pending in federal district court as well as before the Federal Energy Regulatory Commission (FERC), and final judgments or dispositions are entered in those proceedings. Sections 104, 105.

For more than two decades, the United States, the Bands, and the Local Entities were unable to agree on a settlement implementing the Settlement Act due to conflicting interpretations of the intent of the Act. The United States interpreted the Settlement Act as resolving all of the Bands' claims to Federal reserved water rights by providing 16,000 acre-feet per year of supplemental water from outside the Basin and funds in substitution for the Bands' federally reserved water rights in the Basin. The Bands and Local Entities, in contrast, interpreted the Act as providing supplemental water and a tribal development fund to remedy past damages, but still allowing the Bands to assert claims for federally reserved water rights. Notwithstanding these conflicting views, the parties have engaged in extensive negotiations to reach a mutually acceptable resolution that involves amending the 1988 Settlement Act. The Settlement Agreement and draft Amendment are collaborative documents that reflect Administration input rather than proposals that are predominantly the work of the Administration.

Congress has authority to amend the 1988 Settlement Act to resolve the ongoing dispute. In light of this, the parties agreed in 2014 to negotiate a settlement agreement premised on Congress amending the 1988 Settlement Act to resolve the outstanding dispute. The enclosed 2014 Settlement Agreement, therefore, is contingent upon Congress enacting legislation substantively identical to the draft Amendment.

Settlement Agreement and Draft Amendment

The Administration supports the Settlement Agreement, if Congress enacts legislation substantively identical to the draft Amendment. The 1988 Settlement Act was passed to provide "the basis for a mutually beneficial, lasting, and cooperative partnership among the Bands and the [L]ocal [E]ntities to replace the adversary relationships that have existed for several decades" and to "foster[] the development of an independent economic base for the Bands." The draft Amendment and Settlement Agreement would accomplish those purposes and allow the parties to resolve the litigation and disputes that led Congress to enact the 1988 Settlement Act. Key components of the Settlement Agreement include provisions that: allow the Bands to protect and enforce their reserved water rights; address the fair allocation of water among the Bands; protect the water rights of allottees; resolve outstanding disputes regarding rights-of-way and other lands; and fully release and waive all claims against the United States. The Settlement Agreement will allow for dismissal of both the Federal district court and FERC proceedings. The Settlement Agreement is premised on the draft Amendment, which will resolve the dispute concerning the effect of the Act on the Bands' federally reserved water rights. The draft Amendment is a critical piece of the 2014 Settlement Agreement and is consistent with Congress's plenary power to address Indian affairs.

Because H.R. 1296 is not a new water rights settlement and does not require any new funding, it does not implicate the fiscal concerns raised in the Committee's February 26th correspondence.

Indeed, the Settlement Agreement and draft Amendment would provide significant benefits to the United States, both fiscal and otherwise, by securing a final resolution of a decades-long controversy, including the waiver of claims, at no additional cost to the Federal Government. Nevertheless, and consistent with our letter of May 19 responding to your February 26 letter, we address below particular matters raised in that letter.

- **Consistency with the *Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims* (55 FR 9223, March 12, 1990) (*Criteria and Procedures*), including Criteria 4 and 5(a) and (b).** At the outset, an affirmation of consistency with the *Criteria and Procedures* is not applicable here since the 1988 Settlement Act—enacted before the *Criteria and Procedures* were issued—committed the necessary funds and provided for settlement. The draft Amendment does not involve any new financial authorizations but merely allows the 1988 Settlement Act to reach fruition. That said, we note that the draft Amendment and the Settlement Agreement reflect the principles set out in the *Criteria and Procedures*. The 2014 Settlement Agreement not only resolves the dispute regarding interpretation of the 1988 Settlement Act but also allows the parties to move past the longstanding dispute—dating back to the early 1900s—regarding the dewatering of the Bands' reservations that led to the litigation addressed in the 1988 Settlement Act. The 2014 Settlement Agreement also resolves related land-use and trespass disputes that are central to water delivery and use. The 2014 Settlement Agreement thus promotes long-term harmony and cooperation among the five Bands, the United States, and the Local Entities. In addition, the 2014 Settlement Agreement promotes economic efficiency by allowing construction of vital infrastructure to deliver water to support residential and economic activities of the Bands while also allowing non-Indian water uses to continue. It also supports tribal self-sufficiency by allowing the Bands to protect and enforce their federal reserved water rights as necessary in the future.

- **Approval in writing of Settlement Agreement and draft Amendment.** All parties have signed the 2014 Settlement Agreement, with the signatures of the Secretary of the Interior and of the Attorney General's designee subject to the caveat that they are effective "if and only if the 114th Congress enacts legislation substantively identical to the" draft Amendment. The draft Amendment was approved in writing by all settling parties, as shown by its attachment to the Settlement Agreement.

- **Conveyance of settlement and legislative text to court.** Neither the 2014 Settlement Agreement nor the draft Amendment has been provided to a court since the district court administratively dismissed the underlying action. In addition, FERC has granted the Local Entities a project license exemption and surrender that is expressly conditioned on a signed settlement agreement. If Congress approves the draft Amendment, the parties will move to reopen the district court case and seek its dismissal with prejudice pursuant to the 2014 Settlement Agreement and will file the 2014 Settlement Agreement with FERC so that it can take any actions necessary to complete both the current exemption/surrender proceeding and the original license proceeding that has been pending since the 1970s.

- **Legal claims being settled.** In addition to resolving the longstanding dispute over the interpretation of the 1988 Settlement Act and remedying the century-old dewatering of the

Bands' reservations, the Agreement resolves among the parties all claims that gave rise to the 1988 Settlement Act. Agreement ¶¶ 7.0 and 10.0. The Bands also waive all past claims against the United States regarding water rights and breach of trust relating to water rights. Agreement ¶ 7.1 (subject to the reservations in ¶ 7.3). Further, the United States is relieved of future obligations to assert reserved rights on behalf of the Bands or allottees. Agreement ¶ 3.3. Finally, the draft Amendment would confirm that the "benefits to allottees in the Settlement Agreement, including the remedies and provisions requiring that any rights of allottees will be satisfied from supplemental water and other water available to the Bands or the [SLRIWA], are equitable and fully satisfy the water rights of the allottees." Draft Amendment § 1 (creating new § 112(c)).

We look forward to working with you and the Committee to complete this settlement.

Sincerely,

Alletta D. Belin
Chair, Working Group on
Indian Water Settlements
Department of the Interior

Peter J. Kadzik
Assistant Attorney General
for Legislative Affairs
Department of Justice

cc: The Honorable Raul Grijalva
Ranking Member
Committee on Natural Resources