

Calendar No. 572

104<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 1893**

[Report No. 104-360]

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## **A BILL**

To provide for the settlement of issues and claims related to the trust lands of the Torres-Martinez Desert Cahuilla Indians, and for other purposes.

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SEPTEMBER 3, 1996

Reported without amendment

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IN THE SENATE OF THE UNITED STATES

JUNE 19, 1996

Mrs. FEINSTEIN (for herself and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

SEPTEMBER 3, 1996

Reported by Mr. MCCAIN, without amendment

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## A BILL

To provide for the settlement of issues and claims related to the trust lands of the Torres-Martinez Desert Cahuilla Indians, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Torres-Martinez  
5 Desert Cahuilla Indians Claims Settlement Act”.

1 **SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds and declares  
3 that:

4 (1) In 1876, the Torres-Martinez Indian Res-  
5 ervation was created, reserving a single, 640-acre  
6 section of land in the Coachella Valley, California, at  
7 the northern end of the Salton Sink. The Reserva-  
8 tion was expanded in 1891 by Executive Order, pur-  
9 suant to the Mission Indian Relief Act of 1891, add-  
10 ing about 12,000 acres to the original 640-acre res-  
11 ervation.

12 (2) Between 1905 and 1907, flood waters of the  
13 Colorado River filled the Salton Sink, creating the  
14 Salton Sea, inundating approximately 2,000 acres of  
15 the 1891 reservation lands.

16 (3) In 1909 an additional 12,000 acres of land,  
17 9,000 of which were then submerged under the  
18 Salton Sea, were added to the reservation under a  
19 Secretarial Order issued pursuant to a 1907 amend-  
20 ment of the Mission Indian Relief Act. Due to reced-  
21 ing water levels in the Salton Sea through the proc-  
22 ess of evaporation, at the time of the 1909 enlarge-  
23 ment of the reservation, there were some expecta-  
24 tions that the Salton Sea would recede within a pe-  
25 riod of 25 years.

1           (4) Through the present day, the majority of  
2 the lands added to the reservation in 1909 remain  
3 inundated due in part to the flowage of natural run-  
4 off and drainage water from the irrigation systems  
5 of the Imperial, Coachella, and Mexicali Valleys into  
6 the Salton Sea.

7           (5) In addition to those lands that are unin-  
8 dated, there are also tribal and individual Indian  
9 lands located on the perimeter of the Salton Sea  
10 that are not currently irrigable due to lack of proper  
11 drainage.

12           (6) In 1982, the United States brought an ac-  
13 tion in trespass, United States of America, in its  
14 own right and on behalf of Torres-Martinez Band of  
15 Mission Indians and the Allottees therein v. the Im-  
16 perial Irrigation District and Coachella Valley Water  
17 District, Case No. 82-1790 K (M) (referred to in  
18 this section as the “United States Suit”) on behalf  
19 of the Torres-Martinez Indian Tribe and affected In-  
20 dian allottees against the two water districts seeking  
21 damages related to the inundation of tribal-owned  
22 and allottee-owned lands and injunctive relief to pre-  
23 vent future discharge of water on such lands.

24           (7) On August 20, 1992, the Federal District  
25 Court for the Southern District of California entered

1 a judgment in the United States Suit requiring the  
2 Coachella Valley Water District to pay \$212,908.41  
3 in past and future damages and the Imperial Irriga-  
4 tion District to pay \$2,795,694.33 in past and fu-  
5 ture damages in lieu of the United States request  
6 for a permanent injunction against continued flood-  
7 ing of the submerged lands.

8 (8) The United States, the Coachella Valley  
9 Water District, and the Imperial Irrigation District  
10 have filed notices of appeal with the United States  
11 Court of Appeals for the Ninth Circuit from the dis-  
12 trict court's judgment in the United States Suit  
13 (Case numbers 93-55389, 93-55398, and 93-  
14 55402), and the Torres-Martinez Indian Tribe has  
15 filed a notice of appeal from the district court's de-  
16 nial of its motion to intervene as a matter of right  
17 (Case number 92-55129).

18 (9) The Court of Appeals for the Ninth Circuit  
19 has stayed further action on the appeals pending the  
20 outcome of settlement negotiations.

21 (10) In 1991, the Torres-Martinez Indian Tribe  
22 brought its own lawsuit, Torres-Martinez Desert  
23 Cahuilla Indians, et al., v. Imperial Irrigation Dis-  
24 trict, et al., Case No. 91-1670 J (LSP) (referred to  
25 in this section as the "Indian Suit") in the United

1 States District Court, Southern District of Califor-  
2 nia, against the two water districts, and amended  
3 the complaint to include as a plaintiff, Mary  
4 Resvaloso, in her own right, and as class representa-  
5 tive of all other affected Indian allotment owners.

6 (11) The Indian Suit has been stayed by the  
7 District Court to facilitate settlement negotiations.

8 (b) PURPOSE.—The purpose of this Act is to facili-  
9 tate and implement the settlement agreement negotiated  
10 and executed by the parties to the United States Suit and  
11 Indian Suit for the purpose of resolving their conflicting  
12 claims to their mutual satisfaction and in the public inter-  
13 est.

14 **SEC. 3. DEFINITIONS.**

15 For the purposes of this Act:

16 (1) ALLOTTEES.—The term “allottees” means  
17 those individual members of the Tribe, their succes-  
18 sors, heirs, and assigns, who have individual owner-  
19 ship of allotted Indian trust lands within the Torres-  
20 Martinez Indian Reservation.

21 (2) PERMANENT FLOWAGE EASEMENT.—The  
22 term “permanent flowage easement” means the per-  
23 petual right by the water districts to use the de-  
24 scribed lands in the Salton Sink within and below  
25 the minus 220-foot contour as a drainage reservoir

1 to receive and store water from their respective  
2 water and drainage systems, including flood water,  
3 return flows from irrigation, tail water, leach water,  
4 operational spills and any other water which over-  
5 flows and floods such lands, originating from lands  
6 within such water districts.

7 (3) SALTON SEA.—The term “Salton Sea”  
8 means the inland body of water located in Riverside  
9 and Imperial counties in California, which serves as  
10 a drainage reservoir for water from precipitation,  
11 natural runoff, irrigation return flows, wastewater,  
12 floods, and other inflow from within its watershed  
13 area.

14 (5) SECRETARY.—The term “Secretary” means  
15 the Secretary of the Interior.

16 (6) SETTLEMENT AGREEMENT.—The term  
17 “Settlement Agreement” means the Agreement of  
18 Compromise and Settlement Concerning Claims to  
19 Lands of the United States Within and on the Pe-  
20 rimeter of the Salton Sea Drainage Reservoir Held  
21 in Trust for the Torres-Martinez Indians executed  
22 on June 18, 1996.

23 (7) TRIBE.—The term “Tribe” means the  
24 Torres-Martinez Desert Cahuilla Indians, a federally

1 recognized Indian tribe with a reservation located in  
2 Riverside and Imperial Counties, California.

3 **SEC. 4. RATIFICATION OF SETTLEMENT AGREEMENT.**

4 The United States hereby approves, ratifies, and con-  
5 firms the Settlement Agreement.

6 **SEC. 5. SETTLEMENT FUNDS.**

7 (a) ESTABLISHMENT OF TRIBAL AND ALLOTTEES  
8 SETTLEMENT TRUST FUNDS ACCOUNTS.—

9 (1) IN GENERAL.—There are established in the  
10 Treasury of the United States 3 settlement trust  
11 fund accounts to be known as—

12 (A) the Torres-Martinez Settlement Trust  
13 Funds Account;

14 (B) the Torres-Martinez Allottees' Settle-  
15 ment Account I; and

16 (C) the Torres-Martinez Allottees' Settle-  
17 ment Account II.

18 (2) AVAILABILITY.—Amounts held in the  
19 Torres-Martinez Settlement Trust Funds Account,  
20 the Torres-Martinez Allottees' Settlement Account I,  
21 and the Torres-Martinez Allottees' Settlement Ac-  
22 count II shall be available to the Secretary for dis-  
23 tribution to the Tribe and affected allottees in ac-  
24 cordance with subsection (c).

1 (b) CONTRIBUTIONS TO THE SETTLEMENT TRUST  
2 FUNDS.—

3 (1) IN GENERAL.—Amounts paid to the Sec-  
4 retary for deposit into the trust fund accounts estab-  
5 lished by subsection (a) shall be allocated among  
6 and deposited in the trust accounts in the amounts  
7 determined by the tribal-allottee allocation provisions  
8 of the Settlement Agreement.

9 (2) CASH PAYMENTS BY COACHELLA VALLEY  
10 WATER DISTRICT.—Within the time, in the manner,  
11 and upon the conditions specified in the Settlement  
12 Agreement, the Coachella Valley Water District shall  
13 pay the sum of \$337,908.41 to the United States for  
14 the benefit of the Tribe and any affected allottees.

15 (3) CASH PAYMENTS BY IMPERIAL IRRIGATION  
16 DISTRICT.—Within the time, in the manner, and  
17 upon the conditions specified in the Settlement  
18 Agreement, the Imperial Irrigation District shall pay  
19 the sum of \$3,670,694.33 to the United States for  
20 the benefit of the Tribe and any affected allottees.

21 (4) CASH PAYMENTS BY THE UNITED  
22 STATES.—Within the time and upon the conditions  
23 specified in the Settlement Agreement, the United  
24 States shall pay into the three separate tribal and

1 allottee trust fund accounts the total sum of  
2 \$10,200,000, of which sum—

3 (A) \$4,200,000 shall be provided from  
4 moneys appropriated by Congress under section  
5 1304 of title 31, United States Code, the condi-  
6 tions of which are deemed to have been met, in-  
7 cluding those of section 2414 of title 28, United  
8 States Code; and

9 (B) \$6,000,000 shall be provided from  
10 moneys appropriated by Congress for this spe-  
11 cific purpose to the Secretary.

12 (5) ADDITIONAL PAYMENTS.—In the event that  
13 any of the sums described in paragraphs (2) or (3)  
14 are not timely paid by the Coachella Valley Water  
15 District or the Imperial Irrigation District, as the  
16 case may be, the delinquent payor shall pay an addi-  
17 tional sum equal to 10 percent interest annually on  
18 the amount outstanding daily, compounded yearly on  
19 December 31 of each respective year, until all out-  
20 standing amounts due have been paid in full.

21 (6) SEVERALLY LIABLE FOR PAYMENTS.—The  
22 Coachella Valley Water District, the Imperial Irriga-  
23 tion District, and the United States shall each be  
24 severally liable, but not jointly liable, for its respec-

1       tive obligation to make the payments specified by  
2       this subsection.

3       (c) ADMINISTRATION OF SETTLEMENT TRUST  
4 FUNDS.—The Secretary shall administer and distribute  
5 funds held in the Torres-Martinez Settlement Trust  
6 Funds Account, the Torres-Martinez Allottees' Settlement  
7 Account I, and the Torres-Martinez Allottees' Settlement  
8 Account II in accordance with the terms and conditions  
9 of the Settlement Agreement.

10 **SEC. 6. TRUST LAND ACQUISITION AND STATUS.**

11       (a) ACQUISITION AND PLACEMENT OF LANDS INTO  
12 TRUST.—

13           (1) IN GENERAL.—The Secretary shall convey  
14 into trust status lands purchased or otherwise ac-  
15 quired by the Tribe within the areas described in  
16 paragraphs (2) and (3) in an acreage amount not to  
17 exceed 11,800 acres in accordance with the terms,  
18 conditions, criteria, and procedures set forth in the  
19 Settlement Agreement and this Act. Subject to such  
20 terms, conditions, criteria, and procedures, all lands  
21 purchased or otherwise acquired by the Tribe and  
22 conveyed into trust status for the benefit of the  
23 Tribe pursuant to the Settlement Agreement and  
24 this Act shall be considered as if such lands were so

1 acquired in trust status in 1909 except as to water  
2 rights as provided in subsection (c).

3 (2) PRIMARY ACQUISITION AREA.—

4 (A) IN GENERAL.—The primary area with-  
5 in which lands may be acquired pursuant to  
6 paragraph (1) are those certain lands located in  
7 the Primary Acquisition Area, as defined in the  
8 Settlement Agreement. The amount of acreage  
9 that may be acquired from such area is 11,800  
10 acres less the number of acres acquired and  
11 conveyed into trust by reason of paragraph (3).

12 (B) CONDITION OF ACQUISITION.—Lands  
13 may not be acquired under this paragraph if, by  
14 majority vote, the governing body of the city  
15 within whose incorporated boundaries (as such  
16 boundaries exist on the date of the execution of  
17 the Settlement Agreement) such lands are situ-  
18 ated—

19 (i) objects to the request of the Tribe  
20 to convey such lands into trust; and

21 (ii) notifies the Secretary of any such  
22 objection in writing within 60 days after  
23 receiving a copy of the request of the Tribe  
24 in accordance with the Settlement Agree-  
25 ment.

1 (3) SECONDARY ACQUISITION AREA.—

2 (A) IN GENERAL.—Not more than 640  
3 acres of land may be acquired pursuant to  
4 paragraph (1) from those certain lands located  
5 in the Secondary Acquisition Area, as defined  
6 in the Settlement Agreement.

7 (B) EFFECT OF OBJECTION BY CERTAIN  
8 GOVERNING BODIES.—Lands referred to in sub-  
9 paragraph (A) may not be acquired pursuant to  
10 paragraph (1) if, by majority vote—

11 (i) the governing body of the city  
12 whose incorporated boundaries the subject  
13 lands are situated within; or

14 (ii) the governing body of Riverside  
15 County, California, in the event that such  
16 lands are located within an unincorporated  
17 area,

18 formally objects to the request of the Tribe to  
19 convey the subject lands into trust and notifies  
20 the Secretary of such objection in writing with-  
21 in 60 days after receiving a copy of the request  
22 of the Tribe in accordance with the Settlement  
23 Agreement.

24 (b) RESTRICTIONS ON GAMING.—The Tribe shall  
25 have the right to conduct gaming on only 1 site within

1 the lands acquired pursuant to subsection (a)(1) (as pro-  
 2 vided more particularly in the Settlement Agreement).

3 (c) WATER RIGHTS.—All lands acquired by the Tribe  
 4 under subsection (a) shall—

5 (1) be subject to all valid water rights existing  
 6 at the time of tribal acquisition, including all rights  
 7 under any permit or license issued under the laws of  
 8 the State of California to—

9 (A) commence an appropriation of water;

10 (B) appropriate water; or

11 (C) increase the amount of water appro-  
 12 priated;

13 (2) be subject to the paramount rights of any  
 14 person who at any time recharges or stores water in  
 15 a ground water basin to recapture or recover the re-  
 16 charged or stored water or to authorize others to re-  
 17 capture or recover the recharged or stored water;  
 18 and

19 (3) continue to enjoy all valid water rights ap-  
 20 purtenant to the land existing immediately prior to  
 21 the time of tribal acquisition.

22 **SEC. 7. PERMANENT FLOWAGE EASEMENTS.**

23 (a) CONVEYANCE OF EASEMENT TO COACHELLA  
 24 VALLEY WATER DISTRICT.—

1           (1) TRIBAL INTEREST.—The United States, in  
2           its capacity as trustee for the Tribe, as well as for  
3           any affected Indian allotment owners, and their suc-  
4           cessors and assigns, and the Tribe in its own right  
5           and that of its successors and assigns, shall convey  
6           to the Coachella Valley Water District a permanent  
7           flowage easement as to all Indian trust lands (ap-  
8           proximately 11,800 acres) located within and below  
9           the minus 220-foot contour of the Salton Sink, in  
10          accordance with the terms and conditions of the Set-  
11          tlement Agreement.

12          (2) UNITED STATES INTEREST.—The United  
13          States, in its own right shall, notwithstanding any  
14          prior or present reservation or withdrawal of land of  
15          any kind, convey to Coachella Valley Water District  
16          a permanent flowage easement as to all Federal  
17          lands (approximately 110,000 acres) located within  
18          and below the minus 220-foot contour of the Salton  
19          Sink, in accordance with the terms and conditions of  
20          the Settlement Agreement.

21          (b) CONVEYANCE OF EASEMENT TO IMPERIAL IRRI-  
22          GATION DISTRICT.—

23          (1) TRIBAL INTEREST.—The United States, in  
24          its capacity as trustee for the Tribe, as well as for  
25          any affected Indian allotment owners, and their suc-

1 cessors and assigns, and the Tribe in its own right  
2 and that of its successors and assigns, shall grant  
3 and convey to the Imperial Irrigation District a per-  
4 manent flowage easement as to all Indian trust  
5 lands (approximately 11,800 acres) located within  
6 and below the minus 220-foot contour of the Salton  
7 Sink, in accordance with the terms and conditions of  
8 the Settlement Agreement.

9 (2) UNITED STATES.—The United States, in its  
10 own right shall, notwithstanding any prior or  
11 present reservation or withdrawal of land of any  
12 kind, grant and convey to the Imperial Irrigation  
13 District a permanent flowage easement as to all  
14 Federal lands (approximately 110,000 acres) located  
15 within and below the minus 220-foot contour of the  
16 Salton Sink, in accordance with the terms and con-  
17 ditions of the Settlement Agreement.

18 **SEC. 8. SATISFACTION OF CLAIMS, WAIVERS, AND RE-**  
19 **LEASES.**

20 (a) SATISFACTION OF CLAIMS.—The benefits avail-  
21 able to the Tribe and the allottees under the terms and  
22 conditions of the Settlement Agreement and the provisions  
23 of this Act shall constitute full and complete satisfaction  
24 of the claims by the Tribe and the allottees arising from  
25 or related to the inundation and lack of drainage of tribal

1 and allottee lands described in section 2 of this Act and  
2 further defined in the Settlement Agreement.

3 (b) APPROVAL OF WAIVERS AND RELEASES.—The  
4 United States hereby approves and confirms the releases  
5 and waivers required by the Settlement Agreement and  
6 this Act.

7 **SEC. 9. MISCELLANEOUS PROVISIONS.**

8 (a) ELIGIBILITY FOR BENEFITS.—Nothing in this  
9 Act or the Settlement Agreement shall affect the eligibility  
10 of the Tribe or its members for any Federal program or  
11 diminish the trust responsibility of the United States to  
12 the Tribe and its members.

13 (b) ELIGIBILITY FOR OTHER SERVICES NOT AF-  
14 FECTED.—No payment pursuant to this Act shall result  
15 in the reduction or denial of any Federal services or pro-  
16 grams to the Tribe or to members of the Tribe, to which  
17 they are entitled or eligible because of their status as a  
18 federally recognized Indian tribe or member of the Tribe.

19 (c) PRESERVATION OF EXISTING RIGHTS.—Except  
20 for the rights specifically waived by this Act or the Settle-  
21 ment Agreement, nothing in this Act shall affect or dimin-  
22 ish any right to which the Tribe is entitled under existing  
23 law.

24 (d) TAX TREATMENT.—None of the moneys paid to,  
25 or any of the lands acquired and placed into trust for,

1 the Tribe or allottees under this Act shall be deemed to  
2 be taxable under Federal or State law, nor shall such pay-  
3 ments or transfers be taxable events.

4 (e) AMENDMENT OF SETTLEMENT AGREEMENT.—  
5 The Settlement Agreement may be amended from time to  
6 time in accordance with its terms and conditions.

7 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

8 There are authorized to be appropriated such sums  
9 as are necessary to carry out this Act.

10 **SEC. 11. EFFECTIVE DATE.**

11 (a) IN GENERAL.—Except as provided by subsection  
12 (b), this Act shall take effect on the date of enactment  
13 of this Act.

14 (b) EXCEPTION.—Sections 4, 5, 6, 7, and 8 shall take  
15 effect on the date on which the Secretary of the Interior  
16 determines the following conditions have been met:

17 (1) The Tribe agrees to the Settlement Agree-  
18 ment and the provisions of this Act and executes the  
19 releases and waivers required by the Settlement  
20 Agreement and this Act.

21 (2) The Coachella Valley Water District agrees  
22 to the Settlement Agreement and to the provisions  
23 of this Act.

1           (3) The Imperial Irrigation District agrees to  
2           the Settlement Agreement and to the provisions of  
3           this Act.