

110TH CONGRESS
1ST SESSION

H. R. 1276

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.

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 2007

Mrs. BONO (for herself, Mr. LEWIS of California, Mr. BACA, and Mr. KILDEE) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

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.

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

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. FINDINGS AND PURPOSES.**

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

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

14 (2) The Tribe’s water rights have not been
15 quantified, and the Tribe has longstanding unre-
16 solved claims for interferences with the water re-
17 sources of its Reservation, which the Tribe main-
18 tains have rendered much of the Tribe’s Reservation
19 useless for habitation, livestock, or agriculture. On
20 April 20, 2000, the Tribe filed a lawsuit against the
21 Metropolitan Water District of Southern California
22 for interference with the Tribe’s water resources and
23 damages to its Reservation allegedly caused by Met-
24 ropolitan Water District of Southern California’s
25 construction and operation of the San Jacinto Tun-
26 nel, which is part of the Colorado River Aqueduct.

1 The lawsuit, titled Soboba Band of Luiseño Indians
2 v. Metropolitan Water District of Southern Cali-
3 fornia, No. 00–04208 GAF (MANx), is pending in
4 the United States District Court for the Central
5 District of California.

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

12 (4) Recognizing that the final resolution of its
13 water rights and claims through litigation will take
14 many years and entail great expense to all parties,
15 continue to limit the Tribe’s access to water with
16 economic, social, and cultural consequences to the
17 Tribe, prolong uncertainty as to the availability of
18 water supplies, and seriously impair the long-term
19 economic planning and development of all parties,
20 the Tribe and non-Indian entities have sought to set-
21 tle their water-related disputes and reduce the bur-
22 dens of litigation.

23 (5) After negotiations, which included participa-
24 tion by representatives of the Tribe, the United
25 States, the Metropolitan Water District of Southern

1 California, the Eastern Municipal Water District,
2 and Lake Hemet Municipal Water District, the par-
3 ties have entered into a Settlement Agreement to de-
4 termine the Tribe's water rights, resolve all of its
5 claims for interference with the water resources of,
6 and damages to, its Reservation, and provide for the
7 construction of water projects to facilitate the exer-
8 cise of the Tribe's rights.

9 (6) Pursuant to the Settlement Agreement,
10 Eastern Municipal Water District and Lake Hemet
11 Municipal Water District acknowledge and assure
12 the Tribe's prior and paramount right, superior to
13 all others, to pump 9,000 acre-feet of water annually
14 from the San Jacinto River basin. To provide water
15 to the Tribe and to reduce the overdraft of the
16 basin, the two water districts and the Metropolitan
17 Water District of Southern California will contract
18 to import and recharge supplemental water supplies
19 into the basin. The water districts also will make
20 substantial additional contributions to the settle-
21 ment, including the conveyance of certain replace-
22 ment lands and economic development funds to the
23 Tribe, to carry out the Settlement Agreement's pro-
24 visions.

1 (7) It is appropriate that the United States
2 participate in the implementation of the Settlement
3 Agreement, and contribute funds to enable the Tribe
4 to use its water entitlement in developing its Res-
5 ervation, and to assist the neighboring non-Indian
6 entities in the construction, operation, and mainte-
7 nance of the facilities required to recharge the im-
8 ported water.

9 (b) PURPOSES.—The purposes of this Act include—

10 (1) to approve, ratify, and confirm the Settle-
11 ment Agreement entered into by the Tribe and non-
12 Indians entities;

13 (2) to authorize and direct the Secretary of the
14 Interior to execute and perform the Settlement
15 Agreement and related waivers; and

16 (3) to authorize the actions, agreements, and
17 appropriations as provided in the Settlement Agree-
18 ment and this Act.

19 **SEC. 3. DEFINITIONS.**

20 In this Act, the following definitions apply:

21 (1) DEVELOPMENT FUND.—The term “Devel-
22 opment Fund” means the Soboba Band of Luiseño
23 Indians Water Development Fund established by
24 section 7.

1 (2) RESERVATION.—The term “Reservation”
2 means the Soboba Indian Reservation created by an
3 Executive Order dated June 19, 1883, and enlarged
4 and modified by subsequent Executive Orders, pur-
5 chases, and an Act of Congress, excluding the 950
6 acres northwest of and contiguous to the Reserva-
7 tion known as the “Jones Ranch,” purchased by the
8 Soboba Tribe in fee on July 21, 2001, and placed
9 into trust on January 13, 2003, the 129.19 acres
10 southeast of and contiguous to the Reservation
11 known as the “Horseshoe Properties,” purchased by
12 the Soboba Tribe in fee in four separate transactions
13 in June and December 2001, and the 478 acres
14 north of and contiguous to the Reservation known as
15 “Kwiili,” purchased by the Soboba Tribe in fee on
16 April 4, 2004.

17 (3) RESTORATION FUND.—The term “Restora-
18 tion Fund” means the San Jacinto Basin Restora-
19 tion Fund established by this Act.

20 (4) SECRETARY.—The term “Secretary” means
21 the Secretary of the Interior or the Secretary’s des-
22 ignee.

23 (5) SETTLEMENT AGREEMENT.—The term
24 “Settlement Agreement” means that agreement
25 dated June 7, 2006, together with all exhibits there-

1 to. The parties to the Settlement Agreement are the
2 Soboba Band of Luiseño Indians and its members,
3 the United States on behalf of the Tribe and its
4 members, the Metropolitan Water District of South-
5 ern California, Eastern Municipal Water District,
6 and Lake Hemet Municipal Water District.

7 (6) **TRIBE, SOBOBA TRIBE, OR SOBOBA BAND**
8 **OF LUISEÑO INDIANS.**—The terms “Tribe”, “Soboba
9 Tribe”, or “Soboba Band of Luiseño Indians”
10 means the body politic and federally recognized In-
11 dian tribe, and its members.

12 (7) **WATER MANAGEMENT PLAN.**—The term
13 “Water Management Plan” means the plan, ap-
14 proved by the Soboba Tribe and the Secretary, de-
15 veloped pursuant to Section 4.8, paragraph A of the
16 Settlement Agreement to resolve the overdraft of the
17 San Jacinto basin.

18 **SEC. 4. RATIFICATION OF SETTLEMENT AGREEMENT; AU-**
19 **THORIZATION.**

20 (a) **IN GENERAL.**—The United States hereby ap-
21 proves, ratifies, and confirms the Settlement Agreement,
22 except to the extent it conflicts with the provisions of this
23 Act, and consents to be made a party to the pending ac-
24 tion described in section 2(a)(2) for the purpose of enter-

1 ing the judgment and decree attached to the Settlement
2 Agreement as Exhibit H.

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

9 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

10 (a) RESTORATION FUND.—There is authorized
11 \$10,000,000 to be appropriated to the San Jacinto Basin
12 Restoration Fund established in this Act to pay or reim-
13 burse costs associated with constructing, operating, and
14 maintaining the portion of the basin recharge project, de-
15 scribed in Section 4.5 of the Settlement Agreement, nec-
16 essary to accommodate deliveries of the supplemental im-
17 ported water under Section 4.4 of the Settlement Agree-
18 ment.

19 (b) DEVELOPMENT FUND.—There is authorized
20 \$11,000,000 to be appropriated to the Soboba Band of
21 Luiseño Indians Water Development Fund to pay or reim-
22 burse costs associated with constructing, operating, and
23 maintaining water and sewage infrastructure, and other
24 water-related development projects.

1 **SEC. 6. RESTORATION FUND.**

2 (a) ESTABLISHMENT.—There is established within
3 the Treasury of the United States a non-interest bearing
4 account to be known as the “San Jacinto Basin Restora-
5 tion Fund”, consisting of the amounts authorized to be
6 appropriated in section 5(a).

7 (b) ADMINISTRATION.—The Restoration Fund shall
8 be administered by the Secretary for the purposes set
9 forth in subsection (d).

10 (c) AVAILABILITY.—The funds authorized to be ap-
11 propriated pursuant to section 5(a) shall be available for
12 expenditure or withdrawal only after the requirements set
13 forth in section 9(e) and subsection (d) of this section have
14 been met.

15 (d) EXPENDITURES AND WITHDRAWALS.—

16 (1) EXPENDITURE PLAN.—

17 (A) IN GENERAL.—Eastern Municipal
18 Water District, on behalf of the Water Manage-
19 ment Plan, shall submit to the Secretary for ap-
20 proval an expenditure plan for use of the Res-
21 toration Fund.

22 (B) REQUIREMENTS.—The expenditure
23 plan shall require that any funds be expended
24 or reimbursed in accordance with the purposes
25 described in section 5(a).

1 (C) APPROVAL.—The Secretary shall ap-
2 prove the expenditure plan if it is reasonable
3 and not inconsistent with this Act.

4 (2) WITHDRAWALS.—On approval by the Sec-
5 retary of the expenditure plan described in this sec-
6 tion, the Eastern Municipal Water District, on be-
7 half of the Water Management Plan, may withdraw
8 monies from the Restoration Fund as provided in
9 the plan.

10 (3) ENFORCEMENT.—The Secretary may take
11 judicial or administrative action to enforce the provi-
12 sions of any expenditure plan to ensure that monies
13 withdrawn from the Restoration Fund under the
14 plan are used in accordance with this Act.

15 (4) LIABILITY.—If the Eastern Municipal
16 Water District, on behalf of the Water Management
17 Plan, exercises the right to withdraw monies from
18 the Restoration Fund, neither the Secretary nor the
19 Secretary of the Treasury shall retain any liability
20 for the expenditure or investment of the monies
21 withdrawn.

22 (5) ANNUAL REPORT.—Eastern Municipal
23 Water District shall submit to the Tribe and the
24 Secretary an annual report that describes all ex-

1 penditures from the Restoration Fund during the
2 year covered by the report.

3 **SEC. 7. DEVELOPMENT FUND.**

4 (a) ESTABLISHMENT.—There is established within
5 the Treasury an interest bearing account to be known as
6 the “Soboba Band of Luiseño Indians Water Development
7 Fund”, to be managed and invested by the Secretary, con-
8 sisting of the amounts authorized to be appropriated in
9 section 5(b).

10 (b) MANAGEMENT.—The Secretary shall manage the
11 Development Fund, make investments, and make monies
12 available for distribution consistent with the American In-
13 dian Trust Fund Management Reform Act of 1994 (25
14 U.S.C. 4001 et seq.) (referred to in this section as the
15 “Trust Fund Reform Act”), this Act, and the Settlement
16 Agreement.

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

19 (1) the Act of April 1, 1880 (21 Stat. 70, ch.
20 41, 25 U.S.C. 161);

21 (2) the first section of the Act of June 24,
22 1938 (52 Stat. 1037, ch. 648, 25 U.S.C. 162a); and

23 (3) subsection (b).

24 (d) AVAILABILITY.—The funds authorized to be ap-
25 propriated pursuant to section 5(b) shall be available for

1 expenditure or withdrawal only after the requirements set
2 forth in section 9(e) and subsection (e) have been met.

3 (e) EXPENDITURES AND WITHDRAWALS.—

4 (1) TRIBAL MANAGEMENT PLAN.—

5 (A) IN GENERAL.—The Tribe may with-
6 draw all or part of the Development Fund on
7 approval by the Secretary of a tribal manage-
8 ment plan as described in the Trust Fund Re-
9 form Act.

10 (B) REQUIREMENTS.—In addition to the
11 requirements under the Trust Fund Reform
12 Act, the tribal management plan shall require
13 that any funds be expended or reimbursed in
14 accordance with the purposes described in sec-
15 tion 5(b).

16 (2) ENFORCEMENT.—The Secretary may take
17 judicial or administrative action to enforce the provi-
18 sions of any tribal management plan to ensure that
19 monies withdrawn from the Development Fund
20 under the plan are used in accordance with this Act.

21 (3) LIABILITY.—If the Tribe exercises the right
22 to withdraw monies from the Development Fund,
23 neither the Secretary nor the Secretary of the Treas-
24 ury shall retain any liability for the expenditure or
25 investment of the monies withdrawn.

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

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

8 **SEC. 8. WAIVERS AND RELEASES.**

9 (a) TRIBE AND UNITED STATES AUTHORIZATION.—
10 The Tribe, on behalf of itself and its members, and the
11 Secretary, on behalf of the United States in its capacity
12 as trustee for the Tribe and its members, are authorized,
13 as part of the performance of their obligations under the
14 Settlement Agreement, to execute a waiver and release for
15 claims under Federal, State, or other law against the Met-
16 ropolitan Water District of Southern California, the East-
17 ern Municipal Water District, and the Lake Hemet Munic-
18 ipal Water District, for any and all of the following:

19 (1) Past, present, and future claims to surface
20 and groundwater rights for the Reservation from
21 time immemorial through the effective date de-
22 scribed in section 10 and anytime thereafter.

23 (2) Past, present, and future claims for injury
24 of any kind, whether to person, property, or other
25 right or interest, arising from, or in any way related

1 to, interference with surface and groundwater rights
2 and resources of the Reservation, including, but not
3 limited to, all claims for injury to the Tribe's use
4 and enjoyment of the Reservation, economic develop-
5 ment, religion, language, social structure and cul-
6 ture, and injury to the natural resources of the Res-
7 ervation, from time immemorial through the effec-
8 tive date described in section 10.

9 (3) Past, present, and future claims for injury
10 of any kind, whether to person, property, or other
11 right or interest, arising from, or in any way related
12 to, continuing interference with surface and ground-
13 water rights and resources of the Reservation, in-
14 cluding the full scope of claims defined in Section
15 5.1, paragraph A(2) of the Settlement Agreement, to
16 the extent that such continuing interference began
17 prior to the effective date described in section 10 of
18 this Act, from time immemorial through the effective
19 date described in section 10 of this Act and anytime
20 thereafter.

21 (4) Past, present, and future claims for injury
22 of any kind, whether to person, property, or other
23 right or interest, arising from, or in any way related
24 to, seepage of water into the San Jacinto Tunnel, in-
25 cluding the full scope of claims defined in Section

1 5.1, paragraph A(2) of the Settlement Agreement,
2 from time immemorial through the effective date de-
3 scribed in section 10 of this Act and anytime there-
4 after.

5 (b) TRIBAL WAIVERS AGAINST THE UNITED
6 STATES.—The Tribe is authorized, as part of the perform-
7 ance of its obligations under the Settlement Agreement,
8 to execute a waiver and release for claims against the
9 United States (acting in its capacity as trustee for the
10 Tribe or its members, or otherwise acting on behalf of the
11 Tribe or its members), including any agencies, officials,
12 or employees thereof, for any and all of the following:

13 (1) Claims described in subsection (a).

14 (2) Past, present, and future claims for failure
15 to acquire or develop water rights and resources of
16 the Reservation from time immemorial through the
17 effective date described in section 10 of this Act and
18 anytime thereafter.

19 (3) Past, present, and future claims for failure
20 to protect water rights and resources of the Reserva-
21 tion from time immemorial through the effective
22 date described in section 10 of this Act, and any
23 past, present, and future claims for any continuing
24 failure to protect water rights and resources of the
25 Reservation, from time immemorial through the ef-

1 fective date described in section 10 of this Act and,
2 to the extent that such continuing failure to protect
3 began before the effective date described in section
4 10 of this Act, anytime thereafter.

5 (4) Past, present, and future claims arising
6 from the failure of any non-federal Party to fulfill
7 the terms of the Settlement Agreement at anytime.

8 (5) Past, present, and future claims arising out
9 of the negotiation of the Settlement Agreement or
10 the negotiation and enactment of this Act, or any
11 specific terms or provisions thereof, including, but
12 not limited to, the Tribe's consent to limit the num-
13 ber of participant parties to the Settlement Agree-
14 ment.

15 **SEC. 9. MISCELLANEOUS PROVISIONS.**

16 (a) WAIVER OF SOVEREIGN IMMUNITY.—If any party
17 to the Settlement Agreement brings an action or other
18 proceeding in any court of the United States relating only
19 and directly to the interpretation or enforcement of this
20 Act or the Settlement Agreement and names the United
21 States or the Soboba Tribe as a party—

22 (1) the United States, the Tribe, or both, may
23 be joined in any such action; and

24 (2) any claim by the United States or the Tribe
25 to sovereign immunity from the action is waived,

1 other than with respect to claims for monetary
2 awards, for the limited and sole purpose of such in-
3 terpretation or enforcement.

4 (b) TRIBAL USE OF WATER.—

5 (1) IN GENERAL.—With respect to water rights
6 made available under the Settlement Agreement—

7 (A) the Tribe may use water made avail-
8 able to it under the Settlement Agreement for
9 any use it deems advisable on the Reservation
10 and on any other lands it owns or may acquire,
11 in fee or in trust, contiguous to the Reservation
12 or within the area of the groundwater basin de-
13 scribed in Section 2.4 of the Settlement Agree-
14 ment;

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

19 (C) State law shall not apply to the Tribe's
20 use of water made available to it under the Set-
21 tlement Agreement.

22 (2) LIMITATION.—

23 (A) IN GENERAL.—Except as provided in
24 subparagraph (B), the Tribe shall not sell or

1 lease water made available to it under the Set-
2 tlement Agreement.

3 (B) EXCEPTION.—The Tribe may enter
4 into contracts and options to lease, contracts
5 and options to exchange, or contracts and op-
6 tions to forbear the use of water made available
7 to it under the Settlement Agreement or post-
8 pone undertaking new or expanded water uses,
9 provided that any such contract or option for a
10 term greater than five years shall require the
11 approval of the Secretary. Any such water
12 thereby made available to others shall only be
13 used by participants in, or other users within
14 the area of, the Water Management Plan de-
15 scribed in Section 2.32 of the Settlement Agree-
16 ment. No contract shall be for a term exceeding
17 100 years, nor shall any contract provide for
18 permanent alienation of any portion of the
19 water rights made available under the Settle-
20 ment Agreement.

21 (c) ACCEPTANCE OF LAND INTO TRUST.—The Sec-
22 retary shall accept into trust for the benefit of the Tribe
23 the lands conveyed to the Tribe pursuant to Section 4.6
24 of the Settlement Agreement.

1 (d) HABITAT CONSERVATION.—The United States,
2 in its capacity as trustee for the Tribe, and the Tribe in
3 its own right shall make available, including, if necessary,
4 by conveyance of a permanent easement to the United
5 States Fish and Wildlife Service or other agency of the
6 United States, up to 98 acres of Reservation land for habi-
7 tat conservation related to the portion of the basin re-
8 charge project necessary to accommodate deliveries of the
9 supplemental imported water described in Section 4.4 of
10 the Settlement Agreement.

11 (e) AVAILABILITY OF APPROPRIATIONS.—The funds
12 authorized to be appropriated under section 5 of this Act
13 shall not be available for expenditure or withdrawal until
14 the requirements of section 10(a) of this Act have been
15 met and the waivers and releases set out in section 8 of
16 this Act become effective.

17 (f) RETENTION OF RIGHTS.—In the event the waiv-
18 ers and releases set out in section 8 of this Act do not
19 become effective pursuant to section 10(a) of this Act, the
20 Soboba Tribe and the United States shall retain the right
21 to assert all rights and claims enumerated in section 8,
22 and any claims or defenses of the parties to the Settlement
23 Agreement shall also be retained. The parties expressly re-
24 serve all rights not specifically granted, recognized,

1 waived, or released by the Settlement Agreement or this
2 Act.

3 (g) PRECEDENT.—Nothing in this Act shall be con-
4 strued or interpreted as a precedent for the quantification
5 or litigation of Federal reserved water rights or the inter-
6 pretation or administration of future water settlement
7 Acts.

8 (h) OTHER INDIAN TRIBES.—Nothing in the Settle-
9 ment Agreement or this Act shall be construed in any way
10 to quantify or otherwise adversely affect the water rights,
11 claims, or entitlements to water of any Indian tribe, band,
12 or community, other than the Tribe.

13 (i) ENVIRONMENTAL COMPLIANCE.—Signing by the
14 Secretary of the Settlement Agreement does not constitute
15 major Federal action under the National Environmental
16 Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Sec-
17 retary shall comply with all aspects of the National Envi-
18 ronmental Policy Act of 1969 (42 U.S.C. 4321 et seq.),
19 and other applicable environmental laws, in implementing
20 the terms of the Settlement Agreement and this Act.

21 **SEC. 10. EFFECTIVE DATE.**

22 (a) IN GENERAL.—The waiver and release authoriza-
23 tions contained in subsections (b) and (c) of section 8 shall
24 become effective on the date that the Secretary causes to

1 be published in the Federal Register a statement of find-
2 ings that—

3 (1) to the extent that the Settlement Agreement
4 conflicts with this Act, the Settlement Agreement
5 has been revised to conform with the Act;

6 (2) the Settlement Agreement, revised as nec-
7 essary, and the waivers and releases described in Ar-
8 ticle 5 of the Settlement Agreement and section 8 of
9 this Act have been executed by the parties and the
10 Secretary;

11 (3) warranty deeds for the property to be con-
12 veyed to the Tribe described in section 4.6 of the
13 Settlement Agreement have been placed in escrow;

14 (4) the Tribe and the Secretary have approved
15 the Water Management Plan;

16 (5) the judgment and decree attached to the
17 Settlement Agreement as Exhibit H has been ap-
18 proved by the United States District Court, Eastern
19 Division of the Central District of California, and
20 that judgment and decree have become final and
21 nonappealable; and

22 (6) the payment of the funds authorized by sec-
23 tion 5 of this Act have been appropriated and depos-
24 ited into the Restoration Fund and the Development
25 Fund.

1 (b) DEADLINE FOR EFFECTIVE DATE.—If the condi-
2 tions precedent required under paragraph (a) have not
3 been fulfilled by December 31, 2008, the Settlement
4 Agreement and this Act shall not thereafter be effective
5 and shall be null and void, any funds and the interest ac-
6 crued thereon appropriated pursuant to section 5 shall re-
7 vert to the general fund of the United States Treasury
8 on October 1, 2009.

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