

AMENDING THE SAN LUIS REY INDIAN WATER RIGHTS
SETTLEMENT ACT TO CLARIFY CERTAIN SETTLEMENT
TERMS, AND FOR OTHER PURPOSES

SEPTEMBER 15, 2016.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 1296]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1296) to amend the San Luis Rey Indian Water Rights Settlement Act to clarify certain settlement terms, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 1296 is to amend the San Luis Rey Indian Water Rights settlement Act to clarify certain settlement terms.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 1296 helps bring closure to the decades-old San Luis Rey Water Settlement and related litigation and uncertainty in southern California.

Beginning in 1969, the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians (the Bands) sued the City of Escondido, California and the Vista Irrigation district (Local Entities) on the grounds that the federal government improperly signed over the Bands' water rights to the Local Entities. Decades of litigation surrounding the Bands' water rights claims ensued until 1988, when Congress enacted the San Luis Rey Indian Water Rights Settlement Act (the 1988 Settlement Act, Public Law 100-675). It is one of 29 Indian water rights settlements that have been approved by Congress.

The 1988 Settlement Act, among other things, directed the Secretary of the Interior to provide 16,000 acre-feet of water annually to the Bands. An acre foot of water is equivalent to approximately 326,000 gallons or enough to cover a football field with a foot of water. 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 all the pending proceedings among the parties”. Public Law 100–675 also established the San Luis Rey Tribal Development Fund that authorized up to \$30 million in federal appropriations.

One of the main hurdles to resolution of a settlement agreement was whether the 16,000 acre-feet of water would be deemed supplemental water or would be classified as water reserved under the Winters Doctrine, which holds that the federal government implicitly reserved water rights sufficient to fulfill the purposes of an Indian reservation (based on the 1908 Supreme Court decision in *Winters v. United States*). In January 2015, the parties signed a settlement agreement that stipulated that the 16,000 acre-feet of water would be deemed supplemental. This designation kept the Bands’ Winters Doctrine rights intact, allowing them the ability to pursue those rights at a later time if necessary. However, the settlement agreement also relieved the federal government as a future supporting party to the Bands’ Winters Doctrine rights, effectively resolving some future federal liability. H.R. 1296 approves and ratifies this settlement agreement, which provides that Congressional approval is required for the agreement, and thus the settlement, to take effect. The Departments of the Interior and Justice submitted a letter and testimony to the House Natural Resources Committee conveying support for the January 2015 settlement agreement and this legislation.

Following Committee consideration of H.R. 1296, it was discovered that the trust fund established for the San Luis Rey Indian Water Rights Settlement under Public Law 100–675 was still considered part of the federal budget. Therefore, to avoid scoring issues associated with the distributions from that trust fund already funded by the Congress, the Committee will need to further modify the reported text before it can be considered by the House of Representatives.

SECTION-BY-SECTION ANALYSIS OF THE BILL

Section 1. Section 1 amends Public Law 100–675 by approving and ratifying all provisions of the January 30, 2015, Settlement Agreement entered into by the parties and the United States. The Secretary of the Interior and the Attorney General are authorized to execute and implement the agreement and any amendments approved by the parties that are necessary to make it consistent with this Act (and such execution shall not constitute a major Federal action under the National Environmental Policy Act). The Bands will continue to possess federally reserved rights and other rights held in trust by the United States. However, the United States shall not be a required party and any decision by the United States regarding participation in any such proceeding shall not be subject to judicial review or give rise to any claim for relief against the United States in these water rights claims.

COMMITTEE ACTION

H.R. 1296 was introduced on March 4, 2015, by Congressman Duncan Hunter (R-CA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Power and Oceans. On October 28, 2015, the Subcommittee held a hearing on the bill. On February 2, 2016, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered, and the bill was ordered favorably reported to the House of Representatives by unanimous consent on February 3, 2016.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for the bill from the Director of the Congressional Budget Office:

H.R. 1296—A bill to amend the San Luis Rey Indian Water Rights Settlement Act to clarify certain settlement terms, and for other purposes

Summary: H.R. 1296 would amend current law and ratify a settlement agreement negotiated in 2014 between the United States and other parties in southern California including the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians (collectively known as the Bands), the City of Escondido, the San Luis Rey Indian Water Authority (the Authority), and the Vista Irrigation District. The 2014 settlement clarifies certain issues regarding the Bands' water rights and the federal government's legal responsibilities and if ratified would transfer control and ownership of the funds in the San Luis Rey Indian Trust Fund from the federal government to the Authority.

Based on information from the Department of the Interior (DOI), CBO estimates that enacting the legislation would increase net direct spending by \$18 million over the 2017–2026 period; therefore, pay-as-you-go procedures apply. Enacting H.R. 1296 would not affect revenues.

CBO estimates that enacting the bill would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 1296 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would benefit the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians. Any costs to local and tribal governments would be incurred voluntarily as a result of entering into the settlement agreement ratified in the bill.

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 1296 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—											
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017–2021	2017–2026
INCREASE OR DECREASE (–) IN DIRECT SPENDING												
Transfer Ownership of San Luis Rey Trust												
Fund balances												
Estimated Budget Authority	55	0	0	0	0	0	0	0	0	0	55	55
Estimated Outlays	55	0	0	0	0	0	0	0	0	0	55	55
Changes in Interest Disbursements from the trust fund												
Estimated Budget Authority	–4	–4	–4	–4	–4	–4	–4	–4	–4	–4	–19	–37
Estimated Outlays	–4	–4	–4	–4	–4	–4	–4	–4	–4	–4	–19	–37
Total Changes												
Estimated Budget Authority	51	–4	–4	–4	–4	–4	–4	–4	–4	–4	37	18
Estimated Outlays	51	–4	–4	–4	–4	–4	–4	–4	–4	–4	37	18

Note: Components may not sum to totals because of rounding.

Basis of estimate: For this estimate, CBO assumes that H.R. 1296 will be enacted at the end of fiscal year 2016. Based on information from the Department of the Interior (DOI), CBO estimates that implementing the legislation would increase net direct spending by \$18 million over the 2017–2026 period.

In 1990, \$30 million was appropriated to capitalize the San Luis Rey Indian Trust Fund, which was established by Public Law 100–675, the San Luis Rey Indian Water Rights Settlement Act (1988 Settlement Act). The San Luis Rey Indian Water Authority was also established by the Bands as an intertribal entity pursuant to that Settlement. The Authority negotiates on behalf of the Bands regarding water supply and use in the San Luis Rey River Basin. Under current law, the federal government retains ownership of and fiduciary responsibility for the San Luis Rey Indian Trust Fund until all parties reach agreement under the 1988 Settlement Act at which time the fund will be transferred to the Authority. Until ownership of the Fund is transferred, the U.S. Treasury is authorized to disburse a portion of interest credited to the fund to the Authority for annual expenses related to facilitating and negotiating a final agreement. In the last few years, those disbursements have averaged \$3.7 million annually and CBO expects that under current law those disbursements will continue.

The parties have been unable to reach agreement under the 1988 Settlement Act because of differing interpretations of the Bands' future claims to federally reserved water in the San Luis Rey River Basin. Enacting H.R. 1296 would amend the 1988 Settlement Act to clarify that the Bands' right to federally reserved water in the basin would remain intact; the legislation also would waive certain legal claims against the federal government and ratify a settlement agreement entered into by all these parties in 2014.

Based on information from the DOI, CBO expects that upon enactment of H.R. 1296, which we assume would occur in fiscal year 2017, ownership of the balance in the trust fund would be transferred to the Authority that year. CBO estimates that the amount

transferred would total \$55 million and would include \$30 million of principle and \$25 million in accrued interest. Following enactment of the bill, the Treasury would discontinue annual disbursements of interest to the Authority, thus reducing federal spending by \$37 million over the 2017–2026 period. In total, CBO estimates that enacting H.R. 1296 would increase net direct spending by \$18 million over the 2017–2026 period.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

	By fiscal year, in millions of dollars—													2016– 2021	2016– 2026
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026				
	NET INCREASE OR DECREASE (–) IN THE DEFICIT														
Statutory Pay-As-You-Go Impact	0	51	–4	–4	–4	–4	–4	–4	–4	–4	–4	–4	37	18	

Increase in long term direct spending and deficits: CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

Intergovernmental and private-sector impact: H.R. 1296 contains no intergovernmental or private-sector mandates as defined in UMRA and would benefit the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians. Any costs to local and tribal governments would be incurred voluntarily as a result of entering into the settlement agreement as ratified in the bill.

Estimate prepared by: Federal Costs: Aurora Swanson; Impact on State, Local, and Tribal Governments: Rachel Austin; Impact on the Private Sector: Amy Petz.

Estimate approved by: Samuel H. Papenfuss, Deputy Assistant Director for Budget Analysis.

2. **General Performance Goals and Objectives.** As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the San Luis Rey Indian Water Rights settlement Act to clarify certain settlement terms.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

**SAN LUIS REY INDIAN WATER RIGHTS SETTLEMENT
ACT**

**TITLE I—SAN LUIS REY INDIAN WATER
RIGHTS SETTLEMENT ACT**

SEC. 101. SHORT TITLE.

This title may be cited as the “San Luis Rey Indian Water Rights Settlement Act”.

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SEC. 112. IMPLEMENTATION OF SETTLEMENT.

(a) *FINDINGS.—Congress finds and recognizes as follows:*

(1) *The City of Escondido, California, the Vista Irrigation District, the San Luis Rey River Indian Water Authority, and the Bands have approved an agreement, dated December 5, 2014, resolving their disputes over the use of certain land and water rights in or near the San Luis Rey River watershed, the terms of which are consistent with this Act.*

(2) *The Bands, the San Luis Rey River Indian Water Authority, the City of Escondido, California, the Vista Irrigation District, and the United States have approved a Settlement Agreement dated January 30, 2015 (hereafter in this section referred to as the “Settlement Agreement”) that conforms to the requirements of this Act.*

(b) *APPROVAL AND RATIFICATION.—All provisions of the Settlement Agreement, including the waivers and releases of the liability of the United States, the provisions regarding allottees, and the provision entitled “Effect of Settlement Agreement and Act,” are hereby approved and ratified.*

(c) *AUTHORIZATIONS.—The Secretary and the Attorney General are authorized to execute, on behalf of the United States, the Settlement Agreement and any amendments approved by the parties as necessary to make the Settlement Agreement consistent with this*

Act. Such execution shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Secretary is further authorized and directed to take all steps that the Secretary may deem necessary or appropriate to implement the Settlement Agreement and this Act.

(d) CONTINUED FEDERALLY RESERVED AND OTHER WATER RIGHTS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, including any provisions in this Act, the Bands had, have, and continue to possess federally reserved rights and other water rights held in trust by the United States.

(2) FUTURE PROCEEDINGS.—In any proceeding involving the assertion, enforcement, or defense of the rights described in this subsection, the United States, in its capacity as trustee for any Band, shall not be a required party and any decision by the United States regarding participation in any such proceeding shall not be subject to judicial review or give rise to any claim for relief against the United States.

(e) ALLOTTEES.—Congress finds and confirms that the benefits to allottees in the Settlement Agreement, including the remedies and provisions requiring that any rights of allottees shall be satisfied from supplemental water and other water available to the Bands or the Indian Water Authority, are equitable and fully satisfy the water rights of the allottees.

(f) NO PRECEDENT.—Nothing in this Act shall be construed or interpreted as a precedent for the litigation or settlement of Indian reserved water rights.