

Written Testimony
Chairman Mark Macarro
Pechanga Band of Luiseño Mission Indians
Senate Committee on Indian Affairs
S. 2956
July 22, 2010

Good morning Chairman Dorgan, Vice Chairman Barrasso, and members of the Committee. Thank you for scheduling a hearing on S. 2956 and the opportunity to provide testimony on behalf of the Pechanga Band of Luiseño Mission Indians.

I first want to thank Senator Boxer, along with co-sponsor Senator Feinstein, for their introduction and strong support of this important piece of legislation.

This water settlement has been decades in the making. It will settle once and for all the Band's longstanding water claims in the Santa Margarita River Watershed and provide the resources to meet the Band's current and future water needs. Not only does the settlement provide certainty as to the Band's water rights but it also provides certainty for all water users in the Santa Margarita River Watershed. This settlement is the product of a great deal of effort by all of the parties and reflects a desire by the parties to settle their differences through negotiation rather than litigation.

I. BACKGROUND

A. Background on the Pechanga Band

The Pechanga Band of Luiseño Mission Indians (the "Band" or "Pechanga") is a federally recognized Indian tribe with a reservation of over 6,000 acres located northwest of San Diego, California, near the city of Temecula.¹ Pechanga Creek, a tributary of the Santa Margarita River, runs through the length of the Pechanga Reservation.

The Band has called the Temecula Valley home for more than 10,000 years. Ten thousand years from now tribal elders will share with tribal youth, as they do today, the story of the Band's creation in this place. Since time immemorial, through periods of plenty, scarcity and adversity, the Pechanga people have governed ourselves and cared for our lands.

The history of the Band begins with our ancestral home village of Temeeku, which was a center for all the Payomkawichum, or Luiseño people. After the establishment of the state of California in 1850, a group of Temecula Valley ranchers petitioned the District Court in San Francisco for a Decree of Ejection of Indians living on the land in Temecula Valley, which the court granted in 1873. In 1875 the sheriff of San Diego County began three days of evictions. The Luiseño people were taken into the hills south of the Temecula River.

¹ See Map of Pechanga Reservation (attached as Exhibit 1).

Being strong of spirit, most of our dispossessed ancestors moved upstream to a small, secluded valley, where they built new homes and re-established their lives. A spring located two miles upstream in a canyon provided them with water; the spring we have always called Pechaa'a (from pechaq = to drip). This spring is the namesake for Pechaa'anga or Pechaanga, which means "at Pechaa'a, at the place where water drips."

On June 27, 1882, seven years after being evicted, the President of the United States issued an Executive Order establishing the Pechanga Indian Reservation.² Several subsequent trust acquisitions were made in 1893,³ 1907,⁴ 1931,⁵ 1971,⁶ 1988,⁷ and 2008,⁸ each one increasing the size of the reservation. At present, the total land area of the Pechanga Reservation is 6,724 acres.

Water is central to who we are as a people. Today, our tribal government operations, such as our environmental monitoring and natural resource management programs, exist to fully honor and protect the land and our culture upon it. In particular, we are concerned about watershed and wellhead protection for our surface and ground water resources and the availability of water for our community. Accordingly, it is of utmost importance to the Band that our water rights are federally recognized in order to protect our water in the basin and ensure that the basin will continue to provide for generations of Pechanga people in the future.

B. History of Pechanga's Efforts to Protect its Water Rights

The Band has been engaged in a struggle for recognition and protection of our federally reserved water rights for decades. In 1951, the United States initiated litigation over water rights in the Santa Margarita River Watershed known as *United States v. Fallbrook*.⁹ The *Fallbrook* litigation eventually expanded to include all water users within the Santa Margarita Watershed, including three Indian Tribes – Pechanga, Ramona Band of Cahuilla Indians ("Ramona"), and Cahuilla Band of Indians ("Cahuilla").

The United States, as trustee, represented all three Tribes before the *Fallbrook* Court. In a series of Interlocutory Judgments that were eventually wrapped into the Court's Modified Final Judgment and Decree,¹⁰ the Court examined and established water rights for various water users

² Executive Order (June 27, 1882).

³ Trust Patent (Aug. 29, 1893).

⁴ Executive Order (Jan. 9, 1907) and Little Temecula Grant, Lot E (Mar. 11, 1907)(commonly referred to as the Kelsey Tract).

⁵ Trust Patent (May 25, 1931).

⁶ Trust Patent (Aug. 12, 1971).

⁷ Southern California Indian Land Transfer Act, P.L. 110-581 (Nov. 1, 1988).

⁸ Pechanga Band of Luiseno Mission Indians Land Transfer Act, P.L. 110-383 (Oct. 10, 2008).

⁹ *United States v. Fallbrook Public Utility District et al.*, Civ. No. 3:51-cv-01247 (S.D.C.A.).

¹⁰ 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).

involved in the case. In Interlocutory Judgment 41 (“IJ 41”),¹¹ the Court concluded that each of the three Tribes has a recognized federally reserved water right without specifying the amount of each of the Tribe’s water right. Although the Court did examine some facts in IJ 41 and developed “prima facie” findings with respect to each of the Tribes’ quantifiable water rights, final quantified rights were never established as a matter of law. As a result of IJ 41, all three Tribes have “Decreed” but “unquantified” federally reserved water rights.¹²

In 1974, Pechanga filed a motion with the *Fallbrook* Court to intervene as a plaintiff-intervenor and a party to the proceeding on its own behalf. In 1975 the Court granted Pechanga’s Motion and Pechanga filed a complaint to enjoin certain defendants from using more than their respective entitlements under the *Fallbrook* Decree. This complaint was subsequently resolved and the Band has remained a party to the *Fallbrook* proceedings ever since. Pechanga has not filed a motion to finally quantify its federally reserved water rights.

Until recently, we sought to avoid litigation and instead work with those entities around Pechanga to develop mutual private agreements for sharing the limited water resources in our basin. Specifically, in an effort to collaboratively develop a means of providing assured water supplies and cooperative management of a common water basin, the Band adopted an approach of negotiation and reconciliation with the primary water users in its portion of the Santa Margarita River Watershed, primarily the Rancho California Water District (“RCWD”) and the Eastern Municipal Water District (“EMWD”).

These efforts at negotiated management of water resources were successful and resulted in the Groundwater Management Agreement between the Band and RCWD in 2006, and a Recycled Water Agreement between EMWD and the Band in 2007, with the recycled water being delivered to the Band by RCWD. Both of these agreements have been successfully implemented and are in effect today. Significantly, though successful, neither of these agreements sought to address the scope of the Band’s overall water rights to the Santa Margarita River Watershed or settle its various claims related to the *Fallbrook* Decree.

Beginning in 2006 and continuing throughout 2007, the other two tribes in the Santa Margarita River Watershed, Ramona Band of Cahuilla Indians and Cahuilla Band of Indians sought to intervene in the *Fallbrook* case to, among other things, quantify their respective water rights to the Santa Margarita River Watershed.¹³ These efforts intersected the Band’s otherwise successful efforts at negotiated management of joint water supplies and forced the Band to address in *Fallbrook* the scope of its own claims to water or risk being injured by the actions of the other two Tribes.¹⁴

¹¹ Interlocutory Judgment 41, *United States v. Fallbrook Public Utility District et al.*, Civ. No. 3:51-cv-01247 (S.D.C.A.)(Nov. 8, 1962) (attached as Exhibit 2).

¹² The Court in *Fallbrook* fixed the quantity of Pechanga’s federally reserved right at 4,994 AFY, on a prima facie basis.

¹³ Ramona and Cahuilla are located within the Anza-Cahuilla Sub-Basin of the Santa Margarita River Watershed while Pechanga is located within the Wolf Valley Sub-Basin of the Santa Margarita River Watershed.

¹⁴ Pechanga periodically filed status reports with the *Fallbrook* court apprising the Court of its progress towards reaching settlement. Pechanga also filed documents with the Court requesting that Pechanga be afforded

In addition to participating as a litigant in the proceedings initiated by Ramona and Cahuilla, the Band also immediately started efforts to reach a settlement of its claims to water and claims for injuries to water rights relating to the Santa Margarita River Watershed. As part of its efforts to seek settlement of its claims to water, on March 13, 2008, Pechanga requested that the Secretary of the Interior seek settlement of the water rights claims involving Pechanga, the United States, and non-Federal third parties through the formation of a Federal Negotiation Team under the Criteria and Procedures for Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims.¹⁵ The Secretary agreed to form a Federal Negotiation Team on August 1, 2008.

Since that time Pechanga has been working closely with the Federal Negotiation Team to effectively negotiate the terms of the settlement with the other parties and to resolve its claims against the United States in connection with the development and protection of Pechanga's water rights. Pechanga and the Federal Negotiation Team carefully examined the overarching Settlement Agreement, along with the exhibits, and have continued to have a productive dialogue to resolve questions and concerns that the Federal Negotiation Team raised. The Federal Negotiation Team has presented its assessment report to the Administration Working Group, comprised of policy members from the Administration. Pechanga has also met with members of the Administration Working Group to discuss the Administration's outstanding concerns. In Pechanga's perspective, all of these meetings with the Federal Negotiation Team and the Administration Working Group have been extremely productive. Pechanga is committed to continuing these discussions with the Administration to resolve, if possible, any remaining Administration's concerns.

This settlement legislation before the Committee is the result of the Band's settlement efforts. Pechanga continues to meet with Magistrate Judge Brooks, who was assigned by the *Fallbrook* Court to oversee the settlement negotiations among Pechanga, RCWD and the United States. Most recently, at the request of the court, Pechanga filed a proposed process for approval of the Pechanga Settlement Agreement, as the court will eventually need to approve the settlement as approved by Congress. The court is carefully and actively supervising the settlement process and is very supportive of approving the Pechanga settlement in the near future.

C. Legislative History

On December 11, 2009, Congresswoman Bono Mack (R-CA), along with co-sponsors Congressman Calvert (R-CA), Congressman Issa (R-CA), Congresswoman Richardson (D-CA), Congressman Grijalva (D-AZ) and Congressman Baca (D-CA) introduced H.R. 4285 in the House. As the Committee is aware, on January 26, 2010, Senator Boxer (D-CA), along with co-sponsor Senator Feinstein (D-CA) introduced an identical bill in the Senate, S. 2956, which is now before the Committee. Subsequently, the bill was reintroduced in the House (H.R. 5413) by Congressman Baca, along with co-sponsors Congressman Boren (D-OK), Congressman Grijalva,

the opportunity to weigh in when the Court considered issues of law and legal interpretations of IJ 41 with respect to Ramona and Cahuilla.

¹⁵ 55 Fed. Reg. 9223.

Congressman Honda (D-CA), Congressman Kildee (D-MI), Congressman Lujan (D-NM) and Congresswoman Richardson in an effort to resolve some of the issues that the Administration raised with the legislation.

II. STRUCTURE OF SETTLEMENT

The Pechanga Settlement Agreement is a comprehensive settlement agreement among the United States, RCWD and EMWD, that incorporates a number of agreements as exhibits to the overarching settlement agreement. The Pechanga Settlement Agreement includes the following agreements as exhibits:

- A. Amended and Restated Groundwater Management Agreement (“Amended GMA”);
- B. Recycled Water Agreement and Amendment No. 1 to the Recycled Water Agreement;
- C. Recycled Water Transfer Agreement;
- D. Recycled Water Scheduling Agreement;
- E. Recycled Water Infrastructure Agreement;
- F. Extension of Service Area Agreement;
- G. ESAA Capacity Agreement; and
- H. ESAA Water Delivery Agreement.

Together, the Pechanga Settlement Agreement and corresponding exhibits provide the necessary agreements to resolve Pechanga’s longstanding claims to water rights in the Santa Margarita River Watershed, secure necessary water supplies to meet Pechanga’s current and future water needs and provide sufficient terms to make the settlement work for RCWD and its customers. S. 2956 approves the Pechanga Settlement Agreement, including all its exhibits.

A. Recognition of Tribal Water Right

A critical element of the settlement is recognition of the Band’s federal reserved right to water (the “Tribal Water Right”). Both the Pechanga Settlement Agreement and this federal legislation recognize the Band’s Tribal Water Right as being the same as it was established on a “prima facie” basis in the original *Fallbrook* Decree in 1965, which is equal to 4,994 acre feet of water per year for the benefit of the Band and allottees that may be used for any purpose on the Pechanga Reservation.¹⁶

The Tribal Water Right is broken down by priority date as follows:

¹⁶ The Band’s analysis revealed that its water right claims for its existing reservation exceed 4,994 acre-feet, analysis challenged by RCWD, among others. The Band’s settlement fixes its water rights entitlements in the Santa Margarita River Basin at 4,994 acre-feet per year in recognition of the fact that this amount is judicially established on a prima facie basis and therefore a number that could form the basis for ready agreement by all parties to the settlement.

- 1) the priority date for 3,019 AFY of the Tribal Water Right shall be June 27, 1882;
- 2) the priority date for 182 AFY of the Tribal Water Right shall be August 29, 1893;
- 3) the priority date for 729 AFY of the Tribal Water Right shall be January 9, 1907;
- 4) the priority date for 563 AFY of the Tribal Water Right shall be March 11, 1907; and
- 5) the priority date for 501 AFY of the Tribal Water Right shall be May 25, 1931.

The United States has analyzed the water rights for the Pechanga Reservation on at least two occasions. First, in 1958, the Bureau of Indian Affairs provided a water rights study of the Pechanga Indian Reservation within the Santa Margarita River Watershed.¹⁷ Second, in 1997, the United States' hydrological expert provided a report summarizing his findings of a Practicably Irrigable Acreage ("PIA") study (irrigation water claim) for the Pechanga Reservation.¹⁸ Both reports support a prima facie claim of 4,994 AFY for the Pechanga Reservation and further support the need for supplementary water supplies in addition to groundwater on the Pechanga Reservation.

The Tribal Water Right will also be adopted and confirmed by decree by the *Fallbrook* federal district court. This is especially important for the Band as it constitutes the full recognition of its water entitlements under the *Fallbrook* Decree.

B. Protection of Allottee Rights

During negotiations, Pechanga worked closely with the Federal Negotiation Team to ensure that the allottee rights on the Pechanga Reservation were accurately protected in S. 2956. First, pursuant to Section 5(a) of S. 2956, allottees will receive benefits that are equivalent to or exceed the benefits they currently possess.¹⁹ Furthermore, in accordance with Section 5(d) of S. 2956, 25 U.S.C. 381 (governing use of water for irrigation purposes) shall specifically apply to the allottees' rights. Under S. 2956, the Tribal Water Code also provides protections for allottees—the Tribal Water Code must provide that:

- tribal allocations of water to allottees shall be satisfied with water from the Tribal Water Right;
- charges for delivery of water for irrigation purposes for allottees be assessed on a just and equitable basis;
- there is a process for an allottee to request that the Band provide water for irrigation use to the allottee;

¹⁷ See 1958 Bureau of Indian Affairs Water Rights Studies, October 28, 1958 (attached as Exhibit 3).

¹⁸ The PIA study findings are confidential.

¹⁹ See Sec. 5(a).

- there is a due process system for the Band to consider a request by an allottee (appeal and adjudication of any denied or disputed distribution of water and resolution of any contested administrative decision).²⁰

The inclusion of these provisions reflects the United States' most recent allottee language as was included in other recent Indian water settlements. As a result, the allottee language is consistent with other Indian water settlements pending before Congress, and provides allottees with the same protections provided to other tribal allottees.

C. Contractual Acceptance of Guaranteed Water Sources to Fulfill the Tribal Water Right

Unfortunately, there is insufficient groundwater within the Santa Margarita River Watershed to fulfill the entire Tribal Water Right.²¹ To account for the limited water sources within the Santa Margarita River Watershed, additional water sources are needed to fulfill the Tribal Water Right. Accordingly, pursuant to the Pechanga Settlement Agreement and the corresponding exhibits, though the Tribal Water Right is confirmed and decreed, the Band's actual water needs will be fulfilled through a number of contractual agreements. The Band further agrees that it shall not enforce its Tribal Water Right so long as it receives its water in accordance with these various contractual arrangements.

There are three major components of the settlement:

1. Amended Groundwater Management Agreement ("Amended GMA")

The Amended GMA, between Pechanga and RCWD, is an integral part of the Pechanga Settlement Agreement, as it sets forth the terms and conditions governing the parties' joint management of groundwater pumping from the Wolf Valley Basin and establishes an allocation of the safe yield of the basin. As part of the Amended GMA, the parties established, through technical review, that the safe yield of the Wolf Valley Basin is 2,100 AFY. The parties agreed that Pechanga is entitled to 75% (1575 AFY) of the basin and RCWD is entitled to 25% (525 AFY) of the basin. Additionally, in an effort to raise the level of water in the Wolf Valley Basin and provide storage water in years of water shortage, the Amended GMA establishes a Carryover Account between Pechanga and RCWD that provides for use of the Wolf Valley Basin as a storage aquifer for a defined amount of water to be used in shortage years. Thus, the Amended GMA not only satisfies 1575 acre feet of water per year of the Tribal Water Right, but it also provides benefits to the entire region by improving the water levels in the Wolf Valley Basin.

2. Recycled Water Agreements

²⁰ See Sec. 5(f).

²¹ The need to import water to the Reservation is a fact that has been recognized by the federal team for a long period of time. Over pumping in the basin has significantly reduced water levels over time, which is one cause for the insufficient groundwater to satisfy the Band's federally reserved water rights. One important aspect of the settlement is the establishment of groundwater pumping limits to protect the basin now and in the future.

Another essential element of the Pechanga Settlement Agreement is RCWD's ability to use Pechanga's recycled water in partial consideration for their surrender of a portion of their current potable water supply as pumped from the Wolf Valley Basin. In particular, Amendment No. 1 to Pechanga's Recycled Water Agreement²² allows RCWD to utilize the unused portion of the entitlement Pechanga currently has pursuant to the Recycled Water Agreement and provides an extension of the term of the Recycled Water Agreement for 50 years with 2 additional 20 year extensions.

In conjunction with Amendment No. 1, the Pechanga Settlement Agreement incorporates the Recycled Water Transfer Agreement, the Recycled Water Scheduling Agreement and the Recycled Water Infrastructure Agreement. Together, these three agreements provide for the mechanisms and infrastructure necessary to provide RCWD with the ability to utilize Pechanga's unused portion of recycled water. More specifically, the Recycled Water Transfer Agreement provides that Pechanga agrees to transfer a portion (not less than 300 AFY, and not more than 475 AFY) of the EMWD recycled water Pechanga is entitled to RCWD. The Recycled Water Infrastructure Agreement provides for the development and construction of a Storage Pond and Demineralization and Brine Disposal Project, both of which are necessary for RCWD to utilize the recycled water allocated to it pursuant to the settlement. Lastly, the Recycled Water Scheduling Agreement provides the protocol for ordering and delivering the portion of Pechanga's allocation of EMWD recycled water to RCWD.

3. Imported Water Agreements

Because the water supplies in the Band's portion of the Santa Margarita Basin are either too depleted to fulfill the Band's entire water needs in the medium to long term or are being used by other parties (primarily RCWD), the Band has agreed to not enforce its Tribal Water Right against other water users and instead use replacement water for the majority of its water uses in future. Accordingly, another significant component of the Pechanga Settlement Agreement is comprised of the agreements necessary to provide MWD imported potable water to Pechanga to provide for the Band's water needs on a permanent basis. The Extension of Service Area Agreement ("ESAA"), is the primary agreement for providing MWD water to be used on the Reservation. The ESAA is a contractual agreement among Pechanga, EMWD and MWD that extends MWD's existing service area within the Band's Reservation to a larger portion of the Reservation, such that Pechanga will receive MWD water to augment its local pumped supplies.

In order to implement the ESAA, two additional agreements were necessary—the ESAA Capacity Agreement and the ESAA Water Delivery Agreement. The ESAA Capacity Agreement establishes the terms and conditions for RCWD to provide water delivery capacity of the ESAA water to Pechanga. The ESAA Water Delivery Agreement addresses service issues and billing issues related to the delivery of ESAA water to Pechanga.

III. JUSTIFICATION OF FEDERAL CONTRIBUTION

²² The Recycled Water Agreement, between Pechanga and EMWD, was executed on January 8, 2007 and provides Pechanga with 1,000 AFY of recycled water from EMWD.

Pechanga recognizes that the United States is always concerned in Indian water settlements with the overall cost of an Indian water rights settlement, and more specifically, the Federal contribution to such settlements. The Band further recognizes that Federal funds are limited and that we are living in extremely difficult economic times. Accordingly, Pechanga has worked very hard to ensure that the Federal contribution to the Pechanga Settlement Agreement is justified and properly reflects the United States' liability and programmatic responsibility to the Band.

A. Federal Programmatic Responsibility to the Band

The Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims ("Criteria and Procedures") provides that Federal contributions to a settlement may include costs related to the Federal trust or programmatic responsibilities.²³ The United States argued in the *Fallbrook* proceedings that Pechanga has an entitlement to 4,994 acre feet per year in the Santa Margarita River Watershed, and the court adopted the United States' position on a prima facie basis. Moreover, as recognized by the United States, local water supplies, both on the Reservation and in adjacent areas were adequate and capable of being developed in an economically feasible manner to fulfill at least the 4,994 acre-feet per year that the United States had argued for in the *Fallbrook* proceedings in 1958.

As discussed above, the Band must obtain some imported water from MWD as a replacement for its entitlement to local water from the Santa Margarita River Watershed. In accordance with the Criteria and Procedures the United States has a programmatic responsibility to ensure that the Band's federally reserved water right entitlement is fulfilled through replacement water if existing water on or near the Pechanga Reservation is not currently available. The United States must also ensure that there is sufficient infrastructure for the Band to receive the replacement water. The primary source of replacement water in this case is water from the MWD pursuant to the ESAA.

In order for the Band to receive replacement water, the parties must enhance the capacity for delivery of ESAA Water (water from MWD) through infrastructure development as necessary to allow for deliveries to the Band. The parties negotiated a number of agreements, the various components of which achieve this goal.

Accordingly, the Pechanga Water Settlement Act provides funding for the necessary infrastructure to fulfill the United States' trust and programmatic responsibility to deliver adequate replacement water to the Band to fulfill its entitlement. The Pechanga Water Settlement Act also provides for a subsidy fund that will bring down somewhat the cost of the expensive ESAA Water, which is an element that is consistent with the United States' contribution to most other Indian water rights settlements.

B. Potential Federal Liability to the Band

²³ See Working Group in Indian Water Settlements; Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims, 55 Fed. Reg. 9223 (Mar. 12, 1990).

In addition to its programmatic responsibilities, the federal government has an obligation to every federally recognized Indian tribe to protect its land and water resources. Indeed, a core principle of Federal Indian law is that when the United States sets aside and reserves land for Indian tribes, such reservation includes all the water necessary to make their reservations livable as permanent homelands.²⁴ The United States in turn holds these reserved water rights in trust for an Indian Tribe.²⁵

Congress has expressly found that “the Federal Government recognizes its trust responsibilities to protect Indian water rights and assist Tribes in the wise use of those resources.”²⁶ The Department of Interior has similarly found that “Indian water rights are vested property rights for which the United States has a trust responsibility, with the United States holding legal title to such water in trust for the benefit of the Indians.”²⁷ Courts have also recognized the federal trust responsibility for Indian water rights.²⁸

Accordingly, a tribe may recover substantial monetary damages from the United States if it can be shown that the tribe suffered a loss of water or water rights.²⁹

Since establishing the Pechanga Reservation, the United States has systematically failed to protect and adequately manage the Band’s water resources. This failure has resulted in the loss of Tribal water use and other Reservation resources, and has prevented the Band from fulfilling the purposes of the Reservation. In addition to this general overarching claim, which has the potential on its own, of reaching into the tens of millions of dollars, the Band also has numerous, very specific claims that it is waiving, with an estimated potential value for each, that, in combination with the United States’ programmatic responsibility to the Tribe as outlined above, provides substantial justification for the overall Federal contribution.

²⁴ See generally, *Winters v. United States*, 207 U.S. 564 (1908); *In re General Adjudication of All Rights to Use Water in the Gila River System and Source (“Gila V”)*, 35 P.3d 68 (Ariz. 2001).

²⁵ *Id.*

²⁶ See e.g. Reclamation Projects Authorization and Adjustment Act of 1992, Pub. L. No. 102-575, § 3002(9), 106 Stat. 4600, 4695 (codified by reference at 43 U.S.C. § 371 (2000)).

²⁷ See Working Group in Indian Water Settlements; Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims, 55 Fed. Reg. 9223 (Mar. 12, 1990).

²⁸ See *Pyramid Lake Paiute Tribe of Indians v. Morton*, 354 F.Supp. 252 (D.D.C. 1972).

²⁹ See e.g. *N. Paiute Nation v. United States*, 30 Ind. Cl. Comm’n. 210, 215-217 (1973); *Pyramid Lake Paiute Tribe v. United States*, 36 Ind. Cl. Comm’n. 256 (1975); see also, Cohen’s Handbook of Federal Indian Law § 19.06, at 1225 n. 400. For instance, in *Pyramid Lake Paiute Tribe*, the court held that the Secretary of Interior was obligated to fulfill its trust responsibility to the tribe in allocating the excess waters of the Truckee River between the federal reclamation project and the reservation and not to reconcile competing claims to water. In *Gila River Pima-Maricopa Indian Community v. United States*, the tribe was able to establish its right to relief based on the federal government’s failure to take action when upstream diversions interfered with the water supply to the Gila River Reservation. The Claims Court specifically held that “the actions taken by the United States in establishing the reservation in 1859 and in enlarging it thereafter, together with repeated recognition of the need to preserve or restore the water supply utilized by the Pimas and Maricopas in maintaining their commendable self-sufficient status, are consistent only with the existence of a special relationship between these Indians and the United States concerning the protection of their lands and the water supply they utilized on these lands.”

We discuss these claims and the potential monetary liability of the Federal Government below.

1. The Band's claims for mismanagement and failure to protect and promote the Band's water resources

In *Fallbrook*, the court held in IJ 41, that the United States “intended to reserve, and did reserve rights to the waters of the Santa Margarita River stream system which under natural conditions would be physically available on the Pechanga Indian Reservation, including rights to the use of ground waters sufficient for the present and future needs of the Indians residing thereon with priority dates of June 27, 1882, for those lands established by the Executive Order of that date; January 9, 1907 for those lands transferred by the Executive Order of that date; August 29, 1893 for those lands added to the Reservation by Patent on that date; and May 25, 1931, for those lands added to the Reservation by Patent of that date.”³⁰ Based on IJ 41, the United States recognized reserved water rights for the Pechanga. Similar to the *Gila River* case,³¹ the federal government has a compensable fiduciary duty to Pechanga with respect to the Band's water rights.

Indeed, although the government has failed to satisfy this obligation, its actions indicate that it has recognized this duty. For instance, the United States through the Bureau of Indian Affairs (“BIA”) recognized that Pechanga had a paramount right to water which impacted BIA's actions on behalf of the Band.³² Further, as part of this special relationship, Pechanga requested on numerous occasions for the BIA to conduct water supply studies and take other action in order to protect the Band's water rights and water supply.³³

In the face of the Band's requests however, the United States Government took no action to protect the Band's water rights or if they did finally take action, it was delayed to the point where the action was ineffective. For instance, in response to the Band's resolution with respect to Rancho California's pumping activities, the Interior Department officially requested the Justice Department to advise Rancho California that its pumping activities were in violation of a 1940 Stipulated Agreement.³⁴ The Justice Department however declined to advise Rancho

³⁰ *Supra* note 11 at 13-14 .

³¹ *Id.*

³² See Pechanga Summary at 41 (Letter from BIA Sacramento Area Director to Regional Director which protested that the Regional Director's Report on the Santa Margarita Project of 1970 “did not recognize the rights of Indian reservations to underground water supplies that had been established in *Winters v. United States*, 1908, 207 US 564 and confirmed in several subsequent cases...and that the Indians had a paramount right.”).

³³ For example, on November 18, 1969, the Pechanga Band passed a resolution calling upon the BIA to conduct an economic development and land use study of the reservation, to inform RCWD that it was not permitted, under the terms of the 1940 Stipulated Agreement to pump water from the Temecula Murrieta ground water basin, and that the Band would oppose any modification of that Judgment until the Band's water rights and water supply were at least as well protected as under that judgment and the Band was provided with the means to make beneficial use of the water needed to fulfill its economic and land use goals. See Pechanga Summary at 38-39.

³⁴ On December 26, 1940, a judgment was rendered in the Superior Court of the State of California on a case between Rancho Santa Margarita, a corporation, *Plaintiff v. N.R. Vail et al.* (Vail family descendants), Defendants, with Guy Bogart et al, (individuals with riparian rights to Santa Margarita River waters), as Intervenors. The court found that defendants, plaintiffs, and intervenors had rights to the waters of the Temecula-Santa Margarita

California of its unlawful action because of an objection by the United States Navy. Furthermore, the Bureau of Reclamation's plans for construction of the Santa Margarita Project on the Santa Margarita River to benefit the Fallbrook Public Utility District and Camp Pendleton included an allowance of only 1,000 acre feet of water from the Murrieta-Temecula groundwater basin for Pechanga Reservation, despite the BIA's estimation that the reservation would need 5,000 acre feet.³⁵

In response to the Santa Margarita Project's failure to adequately account for the Pechanga's water rights, the Band passed two resolutions with respect to their water supply. The first requested that the Secretary of Interior "withhold approval of the Santa Margarita Project until adequate provision has been made for protection and development of the Pechanga Band's *Winters Doctrine* rights."³⁶ The second asked the United States Attorney General to reopen *United States v. Fallbrook* "to restructure the decree in accordance with the instructions from the Ninth Circuit of Appeal to the end that the decree may become, as it was intended, an instrument for the protection of the *Winters Doctrine* rights of the Pechanga Band."³⁷

The BIA Sacramento Area Director agreed with the Band.³⁸ He recommended that "the Secretary demand Justice to stop all pumping of the groundwater now in violation of the existing decree and stipulation until such time as the Pechanga Band and the Secretary have documentary evidence that the pumping by Rancho California is not affecting the groundwater rights of the Pechanga Band. The United States as trustee for these water rights has no alternative!"³⁹ In response to the BIA Area Director's recommendation, the Solicitor's Office stated that "[t]he Department of Justice points out that where the Department of Defense is the beneficial holder of the right and refuses to have that right interfered with that the United States can bring the action only if we can demonstrate that the reserved right of the Indians is being jeopardized."⁴⁰ Again, the Sacramento Area Director recommended that the Secretary of Interior demand that the Justice Department stop groundwater pumping until it was proved that the pumping had not affected the groundwater rights of the Indians.⁴¹ It was not until January 26, 1973 that funds were finally made available for United States Geological Services to undertake a water resources study of Pechanga Reservation.⁴²

Given this clear history of the U.S. Government's failure to protect the Band's water rights, the Pechanga Band, and several other California tribes in similar circumstances, successfully sued the federal government in the Indian Claims Commission for, among other

and its tributaries. It spelled out the rights of each, and provided that a number of gaging stations and meters be set up to measure the flow of water. *See Pechanga Water Summary* at 29.

³⁵ *Id.* at 45.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 47 ("We are in complete agreement with the Band.").

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 49 ("Why does the burden of proof rest with the Indian people when it is the trustee's obligation to protect these rights?").

⁴² *Id.* at 52.

things, its failure to protect and preserve the plaintiffs' reserved water rights from non-Indian interference, failure to provide or maintain necessary reservation irrigation systems, and the improper taking of aboriginal water rights. The case was settled in 1993 when six of the Tribes, including Pechanga, accepted \$7,500,000.00 in settlement of the pending claims. Notwithstanding the payment of this claim in satisfaction of these breaches of trust, since 1993, the government has continued to breach its trust obligation to the Band by failing to protect and preserve the plaintiffs' reserved water rights from non-Indian interference and by failing to provide necessary water to the Pechanga Reservation. In other words, the government has not protected the Band's water rights despite its admitted failure to do so.

This failure has now been compounded by the fact that since 1993, there has been tremendous population growth in the area. Accordingly, significant additional non-Indian diversions and groundwater pumping from the Band's water resources has damaged the primary aquifer that would otherwise help serve the water needs of the Reservation. In particular, continuous over-pumping beyond the yearly safe yield by non-Indian parties has damaged the aquifer and severely limited the amount of water the Band can now pump itself to serve the purposes of the Reservation. As a result, the Band has had to enter into a series of agreements on its own, without the assistance of the United States, to secure an adequate water supply for the Pechanga homeland but is still short of fulfilling the purposes of the Reservation.⁴³

The aggregate sum of the potential exposure and liability of the United States stretches into the hundreds of millions for these claims. Nevertheless, the Band conservatively estimates that these claims would likely result in a potential recovery of \$72 million.

2. Trust Accounting Claim Pending in the United States District Court for the District of Columbia

On December 26, 2006, Pechanga filed a general trust accounting claim against the United States in the District Court for the District of Columbia. *See* Docket No. 06-2206, U.S. District Court for the District of Columbia, Dec. 26, 2006. In its amended complaint, the Band added more details regarding its claims for trust accounting, including reference to the judgment it received in Docket 80-A-2. In addition to its claims for general trust fund and property mismanagement, which are substantial, the Band alleged that the government breached its fiduciary duties by failing to properly invest the funds it received in the ICC judgment for Docket 80-A-2. *See First Amended Complaint*, Docket No. 06-2206, Feb. 12, 2008, at 12.

While the Band is not seeking money damages in this action, the potential liability of the government is substantial and would likely set the stage for a large monetary award, either as equitable relief in the District Court, or as part of a separate action in the Court of Federal Claims. Wherever a recovery is had, the Band conservatively estimates that the Government's

⁴³ For instance, in 2006, the Band entered into the Groundwater Management Agreement with Rancho California Water District to provide for management of the Wolf Valley Water Basin and in 2007 the Band entered into the Recycled Water Agreement with Eastern Municipal Water District to provide for 1,000 AFY of recycled water to the Band.

liability would stretch into the millions. In particular, the original ICC judgment fund of \$439,420.00, properly managed and invested, should be over \$4,000,000.00. Instead, there is only approximately \$700,000 in the account at present. Thus, liability for this mismanagement is at least \$3,300,000 at present and will continue to grow as the government continues to resist the Band's efforts to reform its trust fund management system.

Moreover, the general trust and property mismanagement claims will likely prove even more costly to the government given the pervasive history of mismanagement, especially with the damage to the aquifer sustained since 1993.

3. A claim for the water the Band is giving up under the *Fallbrook* adjudication decree

Despite the government's failure to adequately represent the Band's interest in the *Fallbrook* adjudication and its failure to fully quantify and deliver water to the Pechanga Reservation, the Band has "paper" water rights under the final *Fallbrook* Decree. In IJ 41 (November, 8 1962), which became part of the final decree, the court held that Pechanga, and other nearby Tribes, had a federally reserved water right on their respective reservations. Specifically, the Court decreed that Pechanga had a "prima facie" entitlement to approximately 4,994 acre-feet of water per year for the Pechanga Reservation. Despite this legal entitlement, the Band has not received their entitlement in the form of actual water.

Under the proposed settlement, the Band will be waiving all of the claims described above against the United States to the lands described in IJ 41. The Band is also waiving claims for additional acreage that was not part of the Reservation at the time of IJ 41. As a result, the Band is giving up the right to adjudicate its water rights for the additional land, rights that would equate to a similar "prima facie" entitlement as IJ 41. Accordingly, the Tribal Water Right could potentially be more than twice the 4,994 AFY for which the Band is settling under the proposed settlement. The Band estimates that the value of these claims to water rights for the additional land being included in the Settlement is \$45-50 million.

C. The Band's Waivers against the United States

As part of the settlement, and subject to the retention of claims, the Pechanga Settlement Agreement and the legislation provide that the parties agree to waive their respective claims to water rights, claims to injuries to water rights, and claims to subsidence damage.

The Pechanga Settlement Agreement further provides that the Band will not seek enforcement of the Tribal Water Right as long as the Pechanga Settlement Agreement, including any of its Exhibits, remains in force and effect. With respect to its claims against the United States, subject to the retention of rights, the Band is waiving the following claims:

- (1) all claims against the United States, its agencies, or employees relating to claims for water rights in or water of the Santa Margarita River Watershed or any other river systems outside of the Santa Margarita River Watershed that the United States acting in its capacity as trustee for the Band

asserted, or could have asserted, in any proceeding, including but not limited to *Fallbrook*;

- (2) all claims against the United States, its agencies, or employees relating to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including but not limited to damages, losses or injuries to hunting, fishing, gathering or cultural rights due to loss of water or water rights; claims relating to interference with, diversion or taking of water or water rights; or claims relating to failure to protect, acquire, replace, or develop water, water rights or water infrastructure) in the Santa Margarita River Watershed that first accrued at any time up to and including June 30, 2009;
- (3) all claims against the United States, its agencies, or employees encompassed within the case *Pechanga Band of Luiseño Indians v. Salazar*, Civ. No. 1:06-cv-02206 (D.D.C.);
- (4) all claims against the United States, its agencies, or employees relating to the pending litigation of claims relating to the Band's water rights in *Fallbrook*; and
- (5) all claims against the United States, its agencies, or employees relating to the negotiation, execution or the adoption of the Pechanga Settlement Agreement, exhibits thereto, or the Act.

Thus, in exchange for the benefits received in the Pechanga Settlement Agreement and the Pechanga Water Rights Settlement Act, the Pechanga Settlement Agreement represents a complete replacement of, substitution for, and full satisfaction of, all the claims by Pechanga and the United States on behalf of Pechanga and allottees as set forth above.

In recent discussions with the Administration Working Group, the Department raised issues with the content of the waivers. Pechanga is willing to further engage in these discussions regarding revising the waiver package if the United States is able to demonstrate that as a result, the scope of the waivers more accurately corresponds to the Federal contribution.

D. Breakdown of Federal Contribution

In exchange for the Band's waivers against the United States and in recognition of the United States programmatic responsibility to the Band, the total Federal contribution as authorized by the S. 2956 is \$50,242,000. The Federal contribution is comprised of 3 major components:

1. Pechanga Recycled Water Infrastructure--\$6,960,000.

Section 11(a)(1) and Section 8(c) provide that funds from the Pechanga Recycled Water Infrastructure Account will be used to pay for the Storage Pond (\$2,500,000) and the Demineralization and Brine Disposal Project (\$4,460,000), as are required under the Recycled

Water Infrastructure Agreement to fulfill Pechanga's obligations to provide RCWD with a share of Pechanga's recycled water which Pechanga receives pursuant to the Recycled Water Agreement with EMWD.

2. Pechanga ESAA Delivery Capacity--\$17,900,000.

Section 11(a)(2) and Section 8(d) provide that funds from the Pechanga ESAA Delivery Capacity Account will be used to pay for Interim Capacity (\$1,000,000) and Permanent Capacity (\$16,900,000) in accordance with the ESAA Capacity Agreement in order for RCWD to provide the requisite capacity to deliver groundwater and ESAA water to Pechanga.

To fulfill Pechanga's full entitlement of 4,994 AFY, Pechanga will need the Wolf Valley Basin groundwater and MWD imported potable water. In order to receive delivery of MWD imported potable, the MWD water would need to be delivered to Pechanga through offsite conveyance capacity. Available import delivery capacity in the region is limited, and thus posed a challenge. However, the parties were able to negotiate the ESAA Capacity Agreement such that RCWD will ensure that requisite capacity exists in RCWD's system to deliver Wolf Valley ground water and MWD imported water to Pechanga. Together, the Interim Capacity and Permanent Capacity funds will finance the necessary RCWD conveyance capacity. If RCWD is unable to ensure that there is sufficient capacity for groundwater and MWD deliveries to Pechanga, the Settlement Act provides that the funds in the ESAA Delivery Capacity Account shall be available to Pechanga to find alternative capacity.

3. Pechanga Water Fund--\$25,382,000.

Section 11(a)(3) of the Act authorizes an appropriation of \$25,382,000 for deposit in the Pechanga Water Fund Account. In accordance with Section 9(d)(3)(D) of the Act, the Pechanga Water Fund Account will be used for: (1) payment of the EMWD Connection Fee (approximately \$332,000); (2) payment of the MWD Connection Fee (approximately \$1,900,000); and (3) any expenses, charges or fees incurred by Pechanga in connection with the delivery or use of water pursuant to the Settlement Agreement.

In order to receive MWD water there are certain fees associated with connection to EMWD and MWD, in addition to the cost of the expensive MWD water. Hence, the Pechanga Water Fund Account provides the funds necessary for Pechanga to receive MWD water. Those fees are as follows:

a. EMWD Connection Fee

The EMWD Connection Fee, approximately \$332,000, will be paid to EMWD as an in-lieu payment instead of standby charges which normally would be collected on an annual basis through the owner's property tax bill. Rather than have any fees that could be considered a tax on Pechanga, EMWD has agreed to a one-time payment by Pechanga for connection to EMWD.

b. MWD Connection Fee

Similar to the EMWD Connection Fee, MWD normally provides extension of their service through annexations. Rather than go through a normal annexation because of tribal

sovereignty concerns, however, the ESAA will be governed by the terms and conditions of the agreement such that Pechanga will contractually commit to adhere to rules and regulations applicable to its activities as a customer of EMWD and MWD but that additional terms and conditions will be included to avoid infringement of Pechanga's sovereignty whereby EMWD and MWD will have alternative means to exercise their responsibilities. Under the ESAA Pechanga has agreed to pay a one-time connection fee that amounts to approximately \$1,900,000.

c. Expenses, Fees, and Charges Associated with MWD Replacement Water

As discussed above, as a result of the depletion of the Santa Margarita Basin water supply, Pechanga must obtain imported water from MWD as a replacement for its water from the Santa Margarita Basin. The United States has a programmatic responsibility to ensure that Pechanga's entitlement is fulfilled through replacement water, such as the MWD imported water, if existing water is unavailable.⁴⁴ The Pechanga Water Fund provides a subsidy to bring down the cost of the expensive MWD imported water. The Pechanga Water Fund will provide funds to cover 25% of the cost of MWD water. This percentage is much less than that provided in other Tribal water settlements. In comparison, the Arizona Water Settlement Tribes receive 58-60% of the cost for Central Arizona Project water, their alternate water supply. Further, while the absolute cost of MWD water is significantly higher than that in neighboring states, the percentage to be provided by the Pechanga Water Fund is significantly lower than comparable settlements in further recognition of the unique economic times we are experiencing.

IV. NON-FEDERAL CONTRIBUTION

Pechanga is cognizant that in addition to the Federal contribution, the non-Federal contribution to an Indian water settlement should be proportionate to the benefits received by the non-Federal parties under the settlement. The Band has insisted on such non-Federal contribution from non-Indian parties throughout the negotiations for this settlement and successfully obtained, with the support and assistance of the Federal Negotiation Team, substantial non-Federal contributions to the settlement.

For purposes of the Committee's understanding, we outline each of the non-Federal contributions to the settlement, including Pechanga's own contribution to the settlement.

A. RCWD Contribution

As discussed above, the Pechanga Settlement Agreement is a carefully structured settlement with the United States, RCWD and EMWD. Substantial efforts were made by all

⁴⁴ For example, the Gila River Indian Community Water Rights Settlement Act of 2004 (Pub. L. 108-451) included the Lower Colorado River Basin Development Fund that provided for a payment "to pay annually the fixed operation, maintenance, and replacement charges associated with the delivery of Central Arizona Project water held under long-term contracts for use by Arizona Indian tribes (as defined in section 2 of the Arizona Water Settlements Act) in accordance with clause 8(d)(i)(1)(i) of the Repayment Stipulation (as defined in section 2 of the Arizona Water Settlement Act)". See Sec. 107 (a)(2)(A).

parties in order to reach settlement. One of the largest issues of contention during negotiations was the allocation of the groundwater in the Wolf Valley Basin. The previous Groundwater Management Agreement allocated 50% of the water to each party. For Pechanga, it was absolutely critical that the Settlement Agreement provide the Band with the majority of the safe yield. Thus, RCWD agreed to allocate an additional 25% of the Wolf Valley Basin to Pechanga as part of the settlement. Additionally, RCWD will wheel the MWD water under the ESAA to Pechanga in perpetuity and RCWD agrees to provide desalination and brine disposal for water utilized in the Wolf Valley, which will improve groundwater quality in the Wolf Valley Basin for both RCWD and Pechanga. RCWD's contribution to the Pechanga Settlement Agreement, therefore, involves more than a foregoing of its assertion of water rights, but, rather, involves the implementation of a partnership to utilize, convey and improve the quality of both local and imported water for both RCWD and Pechanga.

The monetary quantification of RCWD's contribution, measured exclusively upon its agreement to forego the right to 25% of groundwater in the Wolf Valley Basin, has been calculated at \$33,630,332. This calculation assumes that 25% of the Wolf Valley Basin equals 525 acre feet per year, one-fourth of the agreed upon amount of the safe yield in the Wolf Valley Basin. It further assumes that RCWD's contribution will be equal to the rate it must pay for MWD water (as replacement for its share of groundwater from the Wolf Valley Basin), inflated at 3% per year, and an effective earnings rate on the amount expended of 3.5%. Utilizing these assumptions, the present value of RCWD's contribution is \$33,630,332.

B. Pechanga Contribution

As with many other Indian water rights settlements, the Pechanga Water Fund Account provides for a subsidy payment that partially fulfills the United States' programmatic responsibility to provide Pechanga with replacement water.

The Pechanga Water Fund Account amount was developed using the following financial assumptions:

- The Account is to be used to partially subsidize the cost of MWD water to reduce the cost of the water using interest earned by the account.
- The Account will pay twenty-five percent (25%) of the cost of the water and Pechanga will pay seventy-five percent (75%).
- The cost of MWD water was projected based on the published rates for an acre-foot of MWD Tier 2 Treated Water plus the EMWD charge of \$127.80 in 2010, escalated at four percent (4%) per year thereafter.
- The Account is projected to accrue interest at an average four percent (4%) rate of return.
- The amount of MWD water to be purchased each year was based on a general estimate of the projected water use in the proposed MWD service area (*i.e.*, commercial enterprises in the service area such as the Casino/Hotel complex,

administrative facilities, golf course potable water needs, and cultural, educational, and recreational facilities that lie within the proposed MWD service area) that cannot be met from other sources.

While most subsidy funds for Tribes provide funds that will bring the cost of the imported water in line with local water, the Pechanga Water Settlement only seeks to subsidize 25% of MWD water such that Pechanga is bearing 75% of the cost of imported water.

C. EMWD Contribution

While the Band has not completely calculated EMWD's contribution to the Settlement, EMWD's contribution is certainly proportionate to the benefits it will receive from the Settlement. Namely, the ESAA with MWD and EMWD is an absolutely critical component of the Settlement, without which it would be impossible to fulfill the Band's water entitlements. Moreover, EMWD agreed to extend the term of the Recycled Water Agreement with Pechanga and allow Pechanga to sell its unused portion of recycled water to RCWD, both of which were necessary to effectively settle with RCWD. In return for these contributions, EMWD will receive \$332,000 as Pechanga's connection fee to EMWD (discussed in further detail above). This benefit to EMWD is proportionate to the efforts EMWD has made in securing the ESAA with MWD and the amendments to the Recycled Water Agreement.

D. MWD Contribution

Although MWD is not a party to the actual Settlement Agreement, MWD is a party to the ESAA, which as discussed above, is an exhibit to the Settlement Agreement. The ESAA is essentially the contractual equivalent of an annexation to MWD and EMWD, with the Band's sovereignty issues protected by contract in the ESAA. In 2009, Governor Schwarzenegger issued a State of Emergency for the State of California's drought situation. In response, MWD issued a press release recognizing the severe water supply challenges in California. MWD's press release further stated that MWD has taken a number of critical steps to address the drought, including the reduction of water supplies to member agencies and mandatory water conservation. As a result of California's drought and MWD's efforts to address these problems it is unlikely that MWD will be approving any annexations in the near future.

Accordingly, the ESAA with MWD and EMWD, which has already been approved in principle by the MWD Board is extremely important, without such agreement it would be nearly impossible for Pechanga to "annex" to MWD and receive water supplies to fulfill the Band's water entitlements. Moreover, under the ESAA, Pechanga will become a customer of MWD just like any other customer, such that Pechanga will be able to acquire water from MWD for its future water needs as those needs change. Therefore, as part of the Settlement and in order to fulfill the ESAA, MWD will receive \$1,900,000 as a connection fee from Pechanga to MWD. The value of becoming part of MWD's service area capable of receiving MWD water is invaluable and undoubtedly represents a proportionate contribution to the benefit, if any, MWD will receive.

V. Conclusion

As outlined above, the Band is settling its longstanding claims against the United States and other parties, and is accepting less water than it could otherwise obtain in exchange for a commitment for the delivery of “wet” water in replacement for its “paper” water rights. The Federal contribution is commensurate with the Federal government’s unfulfilled responsibilities with respect to the Band’s water rights and its liabilities relating to the same.

Chairman Dorgan and members of this Committee, in closing, I would like to thank the Committee for holding a hearing on this important piece of legislation.

EXHIBIT 1



Pechanga Tribal Government
Legal Department
Pechanga Indian Reservation

-  Pechanga Indian Reservation
-  Sections
-  Kelsey Tract
-  Original Boundary
-  Counties
-  Highways



Map Area: This map is a general overview of the region and does not show detailed features. The map is not intended to be used for legal purposes. The map is not intended to be used for legal purposes. The map is not intended to be used for legal purposes.



EXHIBIT 2

Original FILED

FILED

NOV - 1962

LODGED

NOV - 1 1962

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
By *[Signature]* DEPUTY

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
By *[Signature]* DEPUTY

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

ENTERED

NOV - 1962

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
By *[Signature]* Deputy Clerk

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FALLBROOK PUBLIC UTILITY
DISTRICT, et al.,

Defendants.

No. 1247-SD&C

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND INTERLOCUTORY JUDG-
MENT NO. 41 CONCERNING THE
RIGHTS TO THE USE OF WATERS OF
SANTA MARGARITA RIVER STREAM
SYSTEM HELD IN TRUST BY THE
U.S.A. IN CONNECTION WITH THE
RAMONA, CAHUILLA AND PECHANGA
INDIAN RESERVATIONS.

FINDINGS OF FACT

RAMONA INDIAN RESERVATION

1.

The Ramona Indian Reservation was established by
Executive Order dated December 29, 1891, and is situated in
Riverside County, State of California and comprised of lands
described as follows:

North Half of the Southwest Quarter (N $\frac{1}{2}$ of SW $\frac{1}{4}$), South-
east Quarter of the Southwest Quarter (SE $\frac{1}{4}$ of SW $\frac{1}{4}$), and
the South Half of the Southeast Quarter (S $\frac{1}{2}$ of SE $\frac{1}{4}$) of
Section Thirty-two (32); the Southwest Quarter of the
Southwest Quarter (SW $\frac{1}{4}$ of SW $\frac{1}{4}$) of Section Thirty-three
(33) all in Township Six (6) South, Range Three (3)
East, San Bernardino Base & Meridian.

1 Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ of NW $\frac{1}{4}$)
2 of Section Four (4); Northeast Quarter of the Northeast
3 Quarter (NE $\frac{1}{4}$ of NE $\frac{1}{4}$) of Section Five (5); all in
4 Township Seven (7) South, Range Three (3) East,
5 San Bernardino Base & Meridian.

6 2.

7 The Ramona Indian Reservation is located in the most
8 northeasterly portion of the Santa Margarita River watershed
9 and in fact the Santa Margarita River watershed line traverses
10 the Ramona Indian Reservation roughly on a line extending
11 diagonally from the southwest to the northeast across the
12 North Half (N $\frac{1}{2}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section 32,
13 Township 6 South, Range 3 East, S.B.B.M.

14 3.

15 The lands of the Ramona Indian Reservation within
16 the Santa Margarita River watershed are as follows: Those lands
17 within the North Half (N $\frac{1}{2}$) of the Southwest Quarter (SW $\frac{1}{4}$) of
18 Section Thirty-two (32) lying south and west of the watershed
19 line as above described; the Southeast Quarter of the Southwest
20 Quarter (SE $\frac{1}{4}$ of SW $\frac{1}{4}$) of Section Thirty-two (32); Southwest
21 Quarter of the Southwest Quarter (SW $\frac{1}{4}$ of SW $\frac{1}{4}$) of Section Thirty-
22 three (33), all in Township 6 South, Range 3 East, S.B.B.M.;
23 Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ of NW $\frac{1}{4}$),
24 Section 4; Northeast Quarter of Northeast Quarter (NE $\frac{1}{4}$ of NE $\frac{1}{4}$)
25 of Section 5, all in Township 7 South, Range 3 East, S.B.B.M.

26 4.

27 The Ramona Indian Reservation consists of approxi-
28 mately 560 acres of which approximately 321 acres lie within
29 the Santa Margarita River watershed.

30 5.

31 Within the Santa Margarita River watershed there are
approximately 104 acres of irrigable land within the Ramona
Indian Reservation.

-2-

3250

8

1

6.

2 At the present time no Indians reside on the Ramona
3 Indian Reservation, but Indians of the Cahuilla Indian Reserva-
4 tion are using said lands for stock raising purposes.

5

7.

6 All the lands of the Ramona Indian Reservation within
7 the watershed of the Santa Margarita River with the exception
8 of the area of basement complex in the Southwest Quarter of
9 Section 33, Township 6 South, Range 3 East, overlie the shallow
10 aquifer of the Anza Ground Water Basin as discussed more fully
11 in Findings of Fact, Conclusions of Law and Interlocutory Judg-
12 ment No. 33. All ground waters contained in the older alluvial
13 deposits on the Ramona Indian Reservation within the Santa Mar-
14 garita River watershed are a part of the shallow aquifer of the
15 Anza Ground Water Basin, and do in fact add to, contribute to
16 and support the Santa Margarita River stream system.

17

8.

18 All ground waters contained within the deposits of
19 basement complex in the Southwest Quarter (SW $\frac{1}{4}$) of Section 33
20 Township 6 South, Range 3 East and within the Ramona Reserva-
21 tion are vagrant, local, percolating waters, not a part of the
22 Santa Margarita River stream system, and said ground waters do
23 not add to, contribute to nor support the Santa Margarita River
24 or any tributary thereto.

25

9.

26 There is a spring situated in the Northwest Quarter
27 (NW $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section 4, Township 7
28 South, Range 3 East.

29

10.

30 Climate in the Ramona Indian Reservation is semi-arid,
31 with warm to hot, dry summers and generally moist winters.

-3-

3251

9

1 Rainfall usually occurs during the period from November 1 to
2 April 1. Freezing temperatures or below freezing temperatures
3 may be expected during that period.

4 11.

5 The amount of surface waters which flow over and
6 upon the Ramona Indian Reservation within the Santa Margarita
7 River watershed is extremely limited in that such surface
8 waters only exist during or immediately after periods of
9 substantial rainfall.

10 12.

11 The United States of America when it established
12 said Ramona Indian Reservation on December 29, 1891, intended
13 to reserve rights to the use of the waters of the Santa Mar-
14 garita River stream system which under natural conditions
15 would be physically available on the Ramona Reservation, in-
16 cluding rights to the use of ground waters, sufficient for
17 the present or future needs of the Indians residing thereon.

18 There is no issue presently presented which requires
19 this Court to make findings of fact, conclusions of law or
20 interlocutory judgment provisions concerned with the amount
21 of water required for the Indians' use, the rights of any
22 future assignees or successors in interest to said lands, and
23 other related factors. As this Court will keep continuing
24 jurisdiction of this cause, this Court can, if the occasion
25 should arise in the future, make such findings and judgment
26 provisions as may then be required on these issues.

27 CAHUILLA INDIAN RESERVATION

28 13.

29 The Cahuilla Indian Reservation was established
30 pursuant to Executive Order dated December 27, 1875, and is
31 situated in Riverside County, State of California, and

1 comprised of the following described lands:

2 Section Twenty-five (25), Section Twenty-six (26),
3 Section Twenty-seven (27), Section Twenty-eight (28),
4 Section Thirty-three (33), Section Thirty-four (34),
5 Section Thirty-five (35) and Section Thirty-six (36),
6 all in Township Seven (7) South, Range Two (2) East,
7 SBBM;

8 Section Twenty-six (26), Section Twenty-seven (27),
9 Section Twenty-eight (28), Section Twenty-nine (29),
10 Section Thirty (30), Section Thirty-one (31), Section
11 Thirty-two (32), Section Thirty-three (33), Section
12 Thirty-four (34) and Section Thirty-five (35), all
13 in Township 7 South, Range Three (3) East, SBBM;

14 Section One (1), Section Two (2), Section Three (3)
15 and Section Four (4) all in Township Eight (8) South,
16 Range Two (2) East, SBBM;

17 Section Two (2), Section Three (3), Section Four (4),
18 Section Five (5), Section Six (6), all in Township
19 Eight (8) South, Range Three (3) East, SBBM.

20 In addition to the above-described lands there was
21 added to the Cahuilla Indian Reservation by Executive Order
22 dated March 14, 1887, the following lands:

23 Section 23, Township 7 South, Range 2 East.

24 On December 29, 1891, by Executive Order there was
25 likewise added to the Cahuilla Indian Reservation the South
26 Half ($S\frac{1}{2}$) of Section 14, Township 7 South, Range 2 East.

27 On or about January 25, 1927, the North Half ($N\frac{1}{2}$)
28 of Lot 3, in Section 8, Township 8 South, Range 3 East, S.B.B.M.
29 was acquired by the Secretary of Interior by deed, and added
30 to the Cahuilla Indian Reservation. Said deed is recorded in
31 Book 703 of Deeds, page 133, Riverside County, California.

14.

26 By Findings of Fact, Conclusions of Law and Inter-
27 locutory Judgment No. 33 the nature and extent of the shallow and
28 deep aquifers of the Anza Ground Water Basin have been deter-
29 mined. Said Anza Ground Water Basin consists of the younger
30 and older alluvial deposits within Anza Valley upstream from
31 a line which is drawn on U. S. Exhibit 278 in Section 29,

1 Township 7 South, Range 3 East. The surface extent of said
2 younger and older alluvial deposits which comprise the Anza
3 Ground Water Basin is depicted on said U. S. Exhibit 278
4 incorporated herein by reference.

5 As determined in Findings of Fact, Conclusions of
6 Law and Interlocutory Judgment No. 33 the ground waters con-
7 tained within the shallow aquifer of the Anza Ground Water
8 Basin are percolating waters and add to, contribute to and
9 support the Santa Margarita River stream system. To the
10 extent that any lands of the Cahuilla Indian Reservation con-
11 sist of the younger or older alluvial deposits of the shallow
12 aquifer of the Anza Ground Water Basin as determined in
13 Findings of Fact, Conclusions of Law and Interlocutory Judg-
14 ment No. 33 said lands are a part of the shallow aquifer of
15 the Anza Ground Water Basin.

16 16.

17 Those lands of the Cahuilla Indian Reservation which
18 overlie the deep aquifer of the Anza Ground Water Basin as
19 determined in Findings of Fact, Conclusions of Law and Inter-
20 locutory Judgment No. 33 do in fact contain ground waters which
21 are a part of the deep aquifer of the Anza Ground Water Basin.
22 Said lands of the Cahuilla Indian Reservation which do in
23 fact overlie the deep aquifer of the Anza Ground Water Basin
24 are located in the Northeast Quarter of Section 28, and the
25 West One-Half ($W\frac{1}{2}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section 27,
26 Township 7 South, Range 3 East, S.B.B.M. and are depicted on
27 U. S. Exhibit 278.

28 17.

29 All ground waters contained within the deep aquifer
30 of the Anza Ground Water Basin and within the Cahuilla Indian
31 Reservation are not a part of the Santa Margarita River stream

-6-

3254

12

1 system nor do said ground waters add to, contribute to or
2 support the Santa Margarita River or any tributary thereto.

3 18.

4 Cahuilla Creek does flow over lands which comprise
5 a portion of the Cahuilla Indian Reservation and there is a
6 perennial flow of Cahuilla Creek in the Southwest Quarter
7 (SW $\frac{1}{4}$) of Sections 23 and 27, Township 7 South, Range 2 East.
8 All surface waters of Cahuilla Creek and its tributaries within
9 the Cahuilla Reservation are a part of the Santa Margarita
10 River stream system.

11 19.

12 There are a total of 18,292 acres in the Cahuilla
13 Indian Reservation of which 17,312 acres are within the
14 watershed of the Santa Margarita River. Of these, 12,998 acres
15 are under present conditions irrigable.

16 20.

17 At present the waters contained upon or within the
18 lands which comprise the Cahuilla Indian Reservation are
19 primarily used for limited domestic use and livestock purposes.
20 There are at the present time approximately 94 Indians in
21 the Cahuilla Tribe of which 32 are now residing on the Cahuilla
22 Indian Reservation.

23 21.

24 There is situated in the Southwest Quarter of the
25 Southwest Quarter (SW $\frac{1}{4}$ of SW $\frac{1}{4}$) of Section 14, Township 7
26 South, Range 3 East, sixteen (16) acres which overlie the
27 Cahuilla Ground Water Basin and which have been irrigated with
28 waters from a spring situated slightly north and east of the
29 irrigated land.

30 22.

31 There are within the Cahuilla Indian Reservation in

-7-

3255

13

1 the North Half of the Northwest Quarter ($N\frac{1}{2}$ of $NW\frac{1}{4}$) of
2 Section 26, Township 7 South, Range 2 East, thirty-five
3 (35) acres of land which have been irrigated. The waters
4 for this irrigation come from a spring located slightly north
5 and east of the irrigated lands and both the lands irrigated
6 and the spring are located in the Cahuilla Ground Water Basin
7 as said basin is defined in Findings of Fact, Conclusions of
8 Law and Interlocutory Judgment No. 33.

9 23.

10 In the East Half of the Northeast Quarter ($E\frac{1}{2}$ of $NE\frac{1}{4}$)
11 of Section 6, Township 8 South, Range 3 East, within the
12 Cahuilla Indian Reservation approximately 20 acres of lands
13 have been irrigated with waters from a spring situated near
14 the West Quarter corner of Section 5 Township 8 South, Range 3
15 East

16 24.

17 Climate in the Cahuilla Indian Reservation is similar
18 to that which exists in the Ramona Indian Reservation, and ex-
19 cept where springs or perennial flow of surface waters exist
20 as found hereinabove, surface water is apparent only during or
21 immediately after periods of rainfall.

22 25.

23 That a portion of the lands which comprise the
24 Cahuilla Indian Reservation overlie the Cahuilla Ground Water
25 Basin as said basin has been determined in Findings of Fact,
26 Conclusions of Law and Interlocutory Judgment No. 33; said
27 ground water basin and said Indian Reservation are depicted
28 on U. S. Exhibit 278 incorporated herein by reference. All
29 ground waters contained within the lands of the Cahuilla
30 Indian Reservation which are a part of the Cahuilla Ground
31 Water Basin add to, contribute to and support the Santa Mar-
garitya River stream system.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

26.

The United States of America, when it created the Cahuilla Indian Reservation by Executive Orders dated December 27, 1875, March 14, 1887, and December 29, 1891, intended to reserve rights to the use of the waters of the Santa Margarita River stream system which under natural conditions would be physically available on the Indian Reservation, including rights to the use of the ground waters, sufficient for the present or future needs of the Indians residing thereon. There is no issue presently presented which requires this Court to make findings of fact, conclusions of law or judgment provisions concerning the amount of water required for the Indians' use on said lands or the rights of any future assignees or successors in interest to said lands. As this Court will keep continuing jurisdiction of this cause, this Court can, if the occasion should arise in the future, make such findings of fact, conclusions of law and interlocutory judgment provisions as may be required on those issues.

PECHANGA INDIAN RESERVATION

27.

In the Executive Orders and related documents establishing the Pechanga Indian Reservation, the reservation is sometimes referred to as the Temecula Indian Reservation and the Indians residing thereon referred to as the Temecula Indian Mission Band.

28.

The Pechanga Indian Reservation was established by an Executive Order, dated June 27, 1882. The lands which presently comprise that Reservation are situated in Riverside County, State of California, described as follows:

Section Twenty-six (26), Section Twenty-seven (27) except for the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ of NW $\frac{1}{4}$). Section Thirty-Four (34)

1 except for Lot 16, Section Thirty-five (35), Lot 7
2 and Southeast Quarter of the Southwest Quarter
(SE $\frac{1}{4}$ of SW $\frac{1}{4}$) of Section Twenty-eight (28), all in
3 Township Eight (8) South, Range Two (2) West, SBBM.

4 29.

5 There was added to the Pechanga Indian Reservation:
6 Section Twenty-five (25), Township Eight (8) South,
7 Range Two (2) West, SBBM,

8 by Executive Order dated January 9, 1907, of the Secretary of
9 the Interior.

10 30.

11 In addition to the lands comprising the Pechanga Indian
12 Reservation as above described, there was added on August 29,
13 1893, to that Reservation by an unnumbered Patent:

14 The North Half of the Northwest Quarter (N $\frac{1}{2}$ of NW $\frac{1}{4}$),
15 Southeast of the Northwest Quarter (SE $\frac{1}{4}$ of NW $\frac{1}{4}$),
16 Northwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ of
NE $\frac{1}{4}$) of Section Thirty-six (36), Township Eight (8)
South, Range Two (2) West, SBBM.

17 There was likewise added to the Pechanga Indian
18 Reservation

19 Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ of NE $\frac{1}{4}$),
20 East Half of the Northeast Quarter (E $\frac{1}{2}$ of NE $\frac{1}{4}$), South
21 Half (S $\frac{1}{2}$) of Section Thirty-six (36), Township Eight (8)
22 South, Range Two (2) West, SBBM,

23 by a patent dated May 25, 1931.

24 Also added to the Pechanga Indian Reservation is the
25 so-called Kelsey Tract, Lot E of the Little Temecula Grant, by
26 a deed dated March 11, 1907.

27 31.

28 Pechanga Creek

29 Pechanga Creek is an intermittent stream which rises
30 in the Cleveland National Forest, Section 30, Township 8 South,
31 Range 1 West, SBBM. It proceeds in a generally northwesterly
direction, entering the Pechanga Indian Reservation in the

1 Northeast Quarter (NE $\frac{1}{4}$) of Section 25, Township 8 South,
2 Range 2 West SBBM, and leaves the Reservation near the North-
3 west corner of the Southeast Quarter of the Southwest Quarter
4 (SE $\frac{1}{4}$ of SW $\frac{1}{4}$) of Section 28, Township 8 South, Range 2 West,
5 SBBM. Continuing its general course as above described, the
6 stream proceeds across lands in private ownership for a dis-
7 tance of approximately one-half (1/2) mile where it enters
8 the so-called Kelsey Tract, described as Lot E of the Little
9 Temecula Rancho, which is part of the Pechanga Reservation.
10 Proceeding across that tract of Reservation Land, the stream
11 continues its course to the point where it enters Temecula
12 Creek approximately one (1) mile east from where the stream
13 last mentioned joins Murrieta Creek to form the Santa Mar-
14 garita River. Said Pechanga Creek is a tributary to Temecula
15 Creek one of the two principal tributaries of the Santa Mar-
16 garita River. Pechanga Creek is intermittent and flows only
17 during and immediately after periods of rainfall.

18 Murrieta-Temecula Ground Water Area

19 The exterior boundaries of the Murrieta-Temecula
20 Ground Water Area was established by the Findings of Fact,
21 Conclusions of Law and Interlocutory Judgment No. 30, entered
22 the 8th day of March, 1962.

23 33.

24 The following described lands situated within the
25 Pechanga Indian Reservation are part of the Murrieta-Temecula
26 Ground Water Area and those lands have been found to overlie
27 ground waters within that area:

28 All of Section Twenty-six (26) all of Section Thirty-
29 five (35); North Half of the South Half (N $\frac{1}{2}$ of S $\frac{1}{2}$),
30 North Half (N $\frac{1}{2}$) of Section Thirty-four (34), all of
31 Section Twenty-seven (27), within Pechanga Indian
Reservation, all of Section Twenty-eight (28) within
Pechanga Indian Reservation, and Lot E of Little
Temecula Rancho within Pechanga Indian Reservation.

1 34.

2 Geology of Murrieta-Temecula Ground
3 Water Area Within Pechanga Indian
4 Reservation

5 The lands within the Pechanga Indian Reservation above
6 described which are part of the Murrieta-Temecula Ground Water
7 Area are comprised of older continental alluvium and conform
8 generally to the description of the ground water area which
9 is more fully described in the Findings of Fact, Conclusions
10 of Law and Interlocutory Judgment No. 30 and entered March 8,
11 1962. In the general area through which Pechanga Creek has
12 its course, the older continental alluvium is overlain with
13 a thin layer of younger alluvium. The younger alluvium is
14 the erosion from and redistribution of the older alluvium as
15 well as erosion from the surrounding basement complex.

16 35.

17 There is a complex of faults through the Pechanga
18 Indian Reservation intersecting and traversing the alluvial
19 fill above described. Result of that faulting has been to
20 control in some but undetermined degree the movement of the
21 ground water within the Reservation. Generally, however, it
22 is found that those ground waters are moving towards the mouth
23 of Temecula Canyon through which flows the Santa Margarita
24 River.

25 36.

26 Ground waters, if any, found in the basement complex or
27 weathered basement complex within the Pechanga Indian Reserva-
28 tion are vagrant, local and percolating, not a part of the
29 Santa Margarita River streamsystem. Said deposits of basement
30 complex or weathered basement complex are depicted on
31 U. S. Exhibit 15L.

1 37.
2 Climate, Crops, Duty of Water,
3 Irrigable Acreage Within Pechanga
4 Indian Reservation

4 Climate in the Pechanga Indian Reservation is semi-
5 arid, with warm to hot, dry summers, and cool and generally
6 moist winters. Rainfall usually occurs during the period from
7 the first of November to the first of April. There are
8 occasional rain showers during the irrigation season which
9 is roughly from April to October. As a consequence, the
10 period of the greatest demand for water is the period of
11 shortest supply, whereas the period of greatest supply occurs
12 when the demands are very slight. The irrigable portions of
13 the Pechanga Indian Reservation are subject to frost damage.

14 38.

15 There are a total of 3787 acres of land in the
16 Pechanga Indian Reservation within Santa Margarita River water-
17 shed. Of these 3787 acres, 1694 acres are irrigable. Of
18 these 1694 acres, 559 are Class VI lands which are not suitable
19 for cultivation but because of their other characteristics are
20 suitable for irrigated but non-cultivated crops.

21 39.

22 At the present time, the waters contained in the
23 Pechanga Indian Reservation are used largely for stock raising
24 and domestic purposes and the extent of the water use is negli-
25 gible in that there are at the present time only approximately
26 six (6) Indians residing on the Reservation. The Pechanga
27 Indian Tribe consists of 194 Indians.

28 40.

29 The United States of America when it withdrew the
30 Indian Lands above described to form the Pechanga Indian
31 Reservation, intended to reserve rights to the use of the

1 waters of the Santa Margarita River stream system which under
2 natural conditions would be physically available on the
3 Indian Reservation, including rights to the use of ground
4 waters sufficient for the present or future needs of the
5 Indians residing thereon. There is no issue presently pre-
6 sented which requires this Court to make findings of fact,
7 conclusions of law and interlocutory judgment provisions
8 concerned with the amount of water required for the Indians'
9 use or the rights of any future assignees or successors in
10 interest to said lands. As this Court will keep continuing
11 jurisdiction of this cause this Court can, if the occasion
12 should arise in the future, make such findings of fact,
13 conclusions of law and interlocutory judgment provisions as
14 may be required on those issues.

15 41.

16 Water Duty

17 Under present conditions and generally on the
18 Ramona, Cahuilla and Pechanga Indian Reservations and through-
19 out this area a reasonable water duty for crops is as follows:

	<u>Irrigation Requirements</u> <u>Acre-Feet Per Acre Per Year</u>
22 Row Crops	4.00
23 Irrigated Pasture	3.83
24 Alfalfa	3.00
25 Deciduous Fruit	1.07
26 Small Grains	1.75
27 Avocados	2.35
28 Citrus	1.86

29 To the irrigation requirements shown above, there
30 should be added 10% for delivery losses. That type of loss occurs
31 between the point of supply and the point of use.

32 This Court finds that the above set forth general
33 water duty requirements and all findings herein concerned with
34 irrigable acreage are supported by the evidence in this case.

1 However, in this case there was no issue of apportionment
2 presented and such findings concerning water duty and
3 irrigable acreage as set forth in these findings shall be
4 prima facie evidence as to these facts in any future pro-
5 ceedings wherein the question of water duty or irrigable
6 acreage is relevant. As used herein, prima facie evidence
7 shall mean that which suffices for the proof of a particular
8 fact until contradicted or overcome by other evidence.

9
10 42.

11 That no use of any surface waters which flow over
12 and upon any of the lands within the Santa Margarita River
13 watershed and within the Ramona, Cahuilla and Pechanga
14 Indian Reservations has been open, notorious or adverse,
15 and there are no prescriptive rights to the use of any
16 waters of the Santa Margarita River stream system on any
17 lands which comprise said Indian Reservations

18 43.

19 That no appropriative rights exist to the use of
20 the waters of the Santa Margarita River stream system or
21 waters which add to and support said Santa Margarita River
22 stream system on any of the lands which comprise the Ramona,
23 Cahuilla and Pechanga Indian Reservations.

24 44.

25 That except as expressly provided hereinabove there
26 are no rights to the use of the waters of the Santa Margarita
27 River and its tributaries or waters which add to and support
28 said River and its tributaries owned or held by the United
29 States of America in trust for the Indians or in trust as to
30 said Indian Reservations

31 - - -

- - -

1 CONCLUSIONS OF LAW

2 RAMONA INDIAN RESEPVATION

3 1.

4 The United States of America when it established the
5 Ramona Indian Reservation intended to reserve, and did reserve,
6 rights to the use of the waters of the Santa Margarita River
7 stream system which under natural conditions would be available
8 on the Ramona Indian Reservation, including rights to the use
9 of ground waters, sufficient for the present and future needs
10 of the Indians residing thereon with a priority date of
11 December 29, 1891.

12 2.

13 All lands of the Ramona Indian Reservation within the
14 watershed of the Santa Margarita River with the exception of an
15 area of basement complex in the Southwest Quarter (SW $\frac{1}{4}$) of
16 Section 33, Township 6 South, Range 3 East, overlie the
17 shallow aquifer of the Anza Ground Water Basin and the ground
18 waters contained within said lands add to, contribute to and
19 support the Santa Margarita River stream system.

20 3.

21 All ground waters contained within the deposits of
22 basement complex in the Southwest Quarter (SW $\frac{1}{4}$) of Section 33,
23 Township 6 South, Range 3 East, and within the Ramona Indian
24 Reservation are vagrant, local, percolating waters not a part
25 of the Santa Margarita River stream system and said ground
26 waters do not add to, contribute to nor support the Santa
27 Margarita River or any tributary thereto.

28 CAHUILLA INDIAN RESERVATION

29 4.

30 The United States of America intended to reserve, and
31 did reserve, rights to the use of the waters of the Santa

1 Margarita River stream system which under natural conditions
2 would be physically available on the Cahuilla Indian Reserva-
3 tion including rights to the use of the ground waters, suf-
4 ficient for the present and future needs of the Indians re-
5 siding thereon with priority dates of December 27, 1875, for
6 lands transferred by the Executive Order of that date;
7 March 14, 1887, for lands transferred by Executive Order of that
8 date; December 29, 1891, for lands transferred by Executive
9 Order of that date

10

5.

11 Ground waters contained within the lands of Cahuilla
12 Indian Reservation and within the younger or older alluvial
13 deposits which are a part of the shallow aquifer of the Anza
14 Ground Water Basin are percolating waters and add to, contribute
15 to and support the Santa Margarita River stream system.

16

6.

17 Ground waters contained within the deep aquifer of the
18 Anza Ground Water Basin in the Northeast Quarter (NE $\frac{1}{4}$) of
19 Section 28, and the West One-half (W $\frac{1}{2}$) of the Northwest Quarter
20 (NW $\frac{1}{4}$) of Section 27, Township 7 South, Range 3 East, and within
21 the Cahuilla Indian Reservation, are a part of the deep aquifer
22 of the Anza Ground Water Basin, and said ground waters do not
23 add to, support nor contribute to the Santa Margarita River
24 stream system.

25

7.

26 Ground waters contained within the lands of the
27 Cahuilla Indian Reservation which were determined to be a
28 part of the Cahuilla Ground Water Basin in Findings of Fact,
29 Conclusions of Law and Interlocutory Judgment No. 33 add to,
30 support and contribute to the Santa Margarita River stream.
31 system.

1 PECHANGA INDIAN RESERVATION

2

8.

3 United States of America intended to reserve and did
4 reserve rights to the use of the waters of the Santa Margarita
5 River stream system which under natural conditions would be
6 available on the Pechanga Indian Reservation including rights
7 to the use of ground waters sufficient for the present and
8 future needs of the Indians residing thereon with priority
9 dates of June 27, 1882, for those lands established by Execu-
10 tive Order of that date; January 9, 1907 for those lands
11 transferred by the Executive Order of that date; August 29,
12 1893 for those lands added to the reservation by Patent on
13 that date; May 25, 1931, for those lands added to the reserva-
14 tion by Patent of that date.

15

9.

16 That those lands specifically described in Findings
17 of Fact No. 33 are within the Murrieta-Temecula Ground Water
18 Area as said ground water area has been determined in Findings
19 of Fact, Conclusions of Law and Interlocutory Judgment No. 30,
20 and ground waters contained therein, add to, contribute to
21 and support the Santa Margarita River stream system.

22

10.

23 That all surface waters which flow over and upon any
24 of the lands within the Santa Margarita River watershed and
25 which are a part of the Ramona, Cahuilla and Pechanga Indian
26 Reservations are a part of the Santa Margarita River stream
27 system.

28

11.

29 That there are no prescriptive rights to the use of
30 the waters of the Santa Margarita River and its tributaries or to

31 - - -

1 the use of the waters which add to and support said River and
2 its tributaries owned or held in trust by the United States
3 for the Indians' use or in trust as to said Indian Reservations.

4 12.

5 That there are no appropriative rights to the use of
6 the waters of the Santa Margarita River and its tributaries or
7 to the use of the waters which add to and support said River and
8 its tributaries owned or held in trust by the United States of
9 America for the Indians' use or in trust as to said Reservations.

10 13.

11 That except as provided in Findings of Fact 12, 26,
12 and 40 herein, there are no rights to the use of the Santa Mar-
13 garita River or its tributaries or waters which add to and sup-
14 port said River and its tributaries owned by the United States
15 in trust for the Indians' use or in trust for use upon the
16 said Indian Reservations.

17 INTERLOCUTORY JUDGMENT

18 1.

19 IT IS ORDERED, ADJUDGED AND DECREED that the United
20 States of America when it established the Ramona Indian Reserva-
21 tion intended to reserve and did reserve rights to the use of
22 the waters of the Santa Margarita River stream system which
23 under natural conditions would be physically available on the
24 Ramona Reservation, including rights to the use of ground waters,
25 sufficient for the present and future needs of the Indians re-
26 siding thereon with a priority date of December 29, 1891.

27 2.

28 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all
29 lands of the Ramona Indian Reservation within the watershed
30 of the Santa Margarita River with the exception of the area
31 of basement complex in the Southwest Quarter (SW $\frac{1}{4}$)

1 of Section 33, Township 6 South, Range 3 East, which is de-
2 picted on U. S. Exhibit 278 incorporated herein by reference,
3 overlie the shallow aquifer of the Anza Ground Water Basin
4 as determined in Findings of Fact, Conclusions of Law and
5 Interlocutory Judgment No. 33, and the ground waters con-
6 tained therein add to, contribute to and support the Santa
7 Margarita River stream system.

8 CAHUILLA INDIAN RESERVATION

9

3.

10 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
11 United States of America intended to reserve and did reserve
12 rights to the use of the waters of the Santa Margarita River
13 which under natural conditions would be physically available
14 on the Cahuilla Indian Reservation, including rights to the
15 use of ground waters, sufficient for the present and future
16 needs of the Indians residing thereon with priority dates of
17 December 27, 1875, for lands transferred by the Executive
18 Order of that date; March 14, 1887, for lands transferred by
19 the Executive Order of that date; December 29, 1891 for lands
20 transferred by the Executive Order of that date.

21

4.

22 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
23 ground waters contained within the lands of the Cahuilla
24 Indian Reservation and within the younger or older alluvial
25 deposits which are a part of the shallow aquifer of the Anza
26 Ground Water Area are percolating waters and add to, contribute
27 to and support the Santa Margarita River stream system.

28

5.

29 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
30 ground waters contained within the deep aquifer of the Anza
31 Ground Water Basin, in the Northeast Quarter (NE $\frac{1}{4}$) of

1 Section 28 and the West One-half ($W\frac{1}{2}$) of the Northwest
2 Quarter ($NW\frac{1}{4}$) of Section 27, Township 7 South, Range 3
3 East, and within the Cahuilla Indian Reservation, are a
4 part of the deep aquifer of the Anza Ground Water Basin and
5 said ground waters do not add to, support nor contribute to
6 the Santa Margarita River stream system.

7 6.

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
9 ground waters contained within the lands of the Cahuilla
10 Indian Reservation which are a part of the Cahuilla Ground
11 Water Basin add to, contribute to and support the Santa Mar-
12 garita River stream system.

13 PECHANGA INDIAN RESERVATION

14 7.

15 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
16 the United States of America intended to reserve, and did re-
17 serve, rights to the use of the waters of the Santa Margarita
18 River stream system which under natural conditions would be
19 physically available on the Pechanga Indian Reservation,
20 including rights to the use of ground waters sufficient for
21 the present and future needs of the Indians residing thereon
22 with priority dates of June 27, 1882, for those lands
23 established by the Executive Order of that date; January 9,
24 1907 for those lands transferred by the Executive Order of
25 that date; August 29, 1893 for those lands added to the
26 Reservation by Patent on that date; and May 25, 1931, for
27 those lands added to the Reservation by Patent of that date.

28 8.

29 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
30 those lands specifically described in Findings of Fact No.33
31 are within the Murrieta-Temecula Ground Water Area as said

1 ground water area has been determined in Findings of Fact,
2 Conclusions of Law and Interlocutory Judgment No.30.

3 9.

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED That
5 all surface waters which flow over and upon any of the lands
6 within the Santa Margarita River watershed and which are a
7 part of the Ramona, Cahulla and Pechanga Indian Reservations
8 are a part of the Santa Margarita River stream system.

9 10.

10 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
11 the use of any waters, surface or ground, by the Indians on
12 the Ramona, Cahulla and Pechanga Reservations is subject to
13 the continuing jurisdiction of this Court.

14 11.

15 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all
16 ground waters contained within deposits of basement complex
17 or weathered basement complex and within the Santa Margarita
18 River watershed and within the Ramona, Cahulla and Pechanga
19 Indian Reservations as said deposits are depicted on U. S. Ex-
20 hibit 278 and U. S. Exhibit 15L are vagrant, local, percola-
21 ting waters not a part of the Santa Margarita River or any
22 tributary thereto. It is further ordered, adjudged and
23 decreed that the rights of the United States of America as
24 the owner in trust of said lands are forever quieted against
25 all parties claiming rights to the waters of the Santa Mar-
26 garita River and/or its tributaries. It is further ordered,
27 adjudged and decreed that the United States of America as
28 owner in trust of said lands is forever restrained from
29 asserting rights in or to the waters of the Santa Margarita
30 River or its tributaries concerning said lands excepting
31 rights to surface waters which flow over and upon said lands.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

12.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there are no prescriptive rights owned by the United States of America in trust for the Indians or Indian lands to the use of the waters of the Santa Margarita River or its tributaries or waters which add to and support said River and its tributaries.

13.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there are no appropriative rights owned by the United States of America in trust for the Indians or Indian lands to the use of the waters of the Santa Margarita River or its tributaries or waters which add to and support said River and its tributaries.

14.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that except as expressly provided in Paragraphs 1, 4 and 7 of this interlocutory Judgment there are no rights to the use of the waters of the Santa Margarita River and its tributaries or to the waters which add to and support said River and its tributaries owned by the United States of America in trust for the Indians or Indian lands on the Ramona, Cahulla and Pechanga Reservations.

15.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that based upon the decision of the United States Court of Appeal, Ninth Circuit, California v. United States, 235 Fed.2d 647 that this is not a final decree but is interlocutory in nature and by reason of the order by this Court that all parties are adverse one to the other, thus dispensing with cross pleadings, all parties to this proceeding may object to

1 these findings of fact, conclusions of law and interlocutory
2 judgments and will be given full opportunity upon due notice
3 to interpose their objections to these findings of fact,
4 conclusions of law and interlocutory judgments prior to the
5 entry of final judgment in this case.

6

16

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there
8 is no issue presently presented which requires this Court to
9 make findings of fact, conclusions of law or interlocutory
10 judgment provisions concerned with the amount of water required
11 for the Indians use, the rights of any future assignees or
12 successors in interest to said lands, and other related factors.
13 Jurisdiction is reserved by this Court to make such findings of
14 fact, conclusions of law and judgment provisions in the future
15 should the need occur.

16

17

17 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this
18 Interlocutory Judgment is not appealable, is not final and
19 shall not be operative until made a part of the final judgment
20 in this case, and this Court expressly reserves jurisdiction
21 to modify or vacate it either upon its own motion or upon
22 motion of any party to this proceeding until such time as
23 final judgment in this cause is entered.

24

Dated:

25

11.8.62

26

27

28

29

30

31

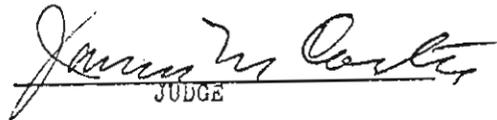

JUDGE

EXHIBIT 3

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

WATER RIGHTS STUDIES

PECHANGA INDIAN RESERVATION

Within Watershed of
Santa Margarita River, California

SACRAMENTO AREA OFFICE
Leonard M. Hill, Area Director
October 28, 1958

WATER RIGHTS STUDY
PECHANGA INDIAN RESERVATION

Reservation History

On August 29, 1893, an unnumbered Trust Patent was issued to the Pechanga Band of Mission Indians conveying 2840 acres.

On August 31, 1897, allotments were made and Trust Patents were issued to individual members of the band for 1324 acres of the reservation area.

On January 9, 1907, the Secretary of the Interior ordered the withdrawal of an additional 640 acres for the use of the Pechanga Band.

Additional purchases and patents were added to the reservation until 1928, when the total area of the reservation 4155 acres was reached.

Trust restrictions have been removed from two of the allotments totaling about 30 acres, making the present reservation area about 4125 acres.

The following is an excerpt from the Smiley Commission Report". 1/

"Temecula

"This Reservation, as created by executive order, comprised Sections twenty-six (26), twenty-seven (27), twenty-eight (28), thirty-four (34) and thirty-five (35),

1/ Report to the Secretary of the Interior, File No. 34993-1908 Rec. May 25, 1908. The Smiley Commission was authorized by the Congress under the provisions of the Act of January 12, 1891 (26 Stat. 712) to recommend the setting aside of lands or reservations for the various bands of Mission Indians. The report and recommendations of the Commission were approved Dec. 29, 1891.

in Township eight (8) South, Range two (2) West, S.B.M. Owing to an almost entire lack of water the land is suitable only for dry farming, and can be utilized alone for such grains as barley and wheat, which are made by the winter rains.

"The Indians, being unwilling to remove, the Commission recommends the setting apart of these Sections as a permanent Reservation for them, believing that, with such crops as they will be able to raise, and the wages they can earn as laborers on the adjoining ranches, they can make a comfortable living. The little water they have has its rise on Section thirty-six one hundred and sixty acres of which ought to be added to the selections the Commission has made. The former Agency Clerk and Physician, Dr. Ferrebee,) Purchased. purchased this land from the State, that it might) See deed be held for this purpose, and is willing to sell) Miss. rec. it to the Government for what it cost him in-) Book #3 cluding taxes and interest, and the Commission) Page 191 recommends that it be purchased and added to the Reservation

"This land is described as follows:

"The north half (1/2) of the North-west quarter (1/4); the South-east quarter (1/4) of the North-west quarter (1/4); and the South-west quarter (1/4) of the North-east quarter (1/4) of Section thirty-six (36), Township eight (8) South, Range two (2) West, S. B. M. This purchase can be made, we believe, for a sum not exceeding Five Hundred Dollars.

"There are, at this place, about one hundred and sixty Indians, being a remnant of those who were ejected from the Temecula Valley some years ago.

"The Commission recommends that the government pipe the water from the above mentioned quarter sections to the schoolhouse, and to a central point of the village, under the supervision of the Indian Agent, at an estimated cost of Two Thousand Dollars."

Irrigation History

Apparently there has been little or no irrigation development on the Pechanga Reservation. One spring has been developed but produces

sufficient water for domestic purposes only. Several small wells have been drilled in the past. Some were dry holes and some produced low yield. As much as 160 acres of farming in 1927 were reported but mostly under dry farming practices, including grain and small areas of grapes and fruit trees.

Population

The Pechanga Indian population as reported on the Bureau of Indian Affairs records shows a decline since 1929. However, the number of Indians that might claim an interest in the reservation is still unknown. Following is the population as listed in the files of the Bureau of Indian Affairs:

<u>Year</u>	<u>Number of Indians</u>
1914	212 <u>1/</u>
1917	212 <u>1/</u>
1929	219 <u>2/</u>
1940	218 <u>2/</u>
1950	194 <u>2/</u>
1958	175 <u>2/</u>

Land Classification

The lands of the Pechanga Indian Reservation were mapped and classified according to recognized standards used by Federal and State agencies. The soil classifications were determined in the field and detailed on aerial photographs of the reservation. The attached map indicates those areas within the Santa Margarita watershed which are susceptible to agricultural development by irrigation. The following

1/ From Annual Irrigation Reports, BIA.

2/ From Census Rolls kept by the Riverside Area Field Office, BIA.

table and the attached map indicate the various areas of the entire reservation:

<u>Area</u>	<u>Acres</u>			
	<u>Susceptible to Irrigation</u>	<u>Cl. I-IV</u>	<u>Cl. VI</u>	<u>Total</u>
Area "A"	984	528		1512
Area "B"	151	31		<u>182</u>
Subtotal				1694 ←
<u>Non-Irrigable Lands</u>				
<u>Inside of the Watershed</u>				
Area "A"				2040
Area "B"				53
<u>Outside of Watershed</u>				
				<u>338</u>
Total Reservation				
				4125

The Pechanga Indian Reservation is in two separate parts. Area "A" is the main or larger part of the reservation. Area "B" is that part known as the Kelsey Tract.

The standards used for land classification do not always allow for special crops and practices, that are possible and often used, found in some of the more intensely farmed areas. These exceptions include the growing of high value crops such as citrus and avocados under suitable climatic conditions. For instance, land slopes on which such crops are grown often exceed 30 percent, and stony lands are successfully used.

The gross area of 1694 acres of Pechanga Indian Reservation lands considered susceptible to irrigation includes all Class I through Class

IV lands and includes Class VI lands which do not have rock outcropping or soils less than 20 inches in depth.

The decision to include these Class VI lands followed the study of existing avocado and citrus groves in the general vicinity and their plotting on U.S.G.S. quadrangle sheets of the area. Elevations, exposures, and air drainage were given consideration. From this study, it was concluded that such crops could be grown on portions of the reservation lands with special practices.

It is recognized that irrigation water for these lands will be expensive. Successful farming of the area will require high-value crops.

Net Irrigation Area

Not all lands within an area susceptible to irrigation can be cropped. There must be service roads, farmsteads, ditches, drains, and other land uses, which eliminates the possibility of their being farmed. For the Pechanga Indian Reservation, it is estimated that about 3% of the gross susceptible area will be needed for incidental non-agricultural purposes. This percentage, although lower than generally used in other areas, is considered reasonable because of the large percentage of the area classified as not suitable for farming. It is expected that many of the non-agricultural uses will be on the lands not suitable for farming.

Three percent of the gross area amounts to 54 acres. Of this, 49 acres will be deducted from Area "A", and 5 acres will be deducted from Area "B". Thus the potential net irrigation areas are 1463 acres for Area "A" and 177 acres for Area "B", which total 1640 acres.

Water Supply

Available surface water for irrigating lands of the Pechanga Reservation may be estimated by standard hydrologic methods. Available records of stream flow have been published in Vol. 1 of State of California Department of Water Resources Report No. 57. The average annual per acre runoff above the gauging station in the Santa Margarita River at Temecula is 0.55" for the 592 square miles of the drainage area. This equals 17,000 acre feet. Deduct from this total the runoff above the Temecula Creek gauging station at Temecula, which is 0.42 inches for the 319 square miles, or 8670 acre feet, and the runoff above the Murrietta Creek gauging station at Temecula, which is 0.64 inches for the 220 square miles, or 7490 acre feet, and the remainder is 840 acre feet which can only come from Pechanga Creek. This remainder amounts to 0.3" depth runoff for the approximate 53 square miles of drainage area.

The watershed of Pechanga Creek, including Area "A" of the reservation and the area to the east, approximates 12 square miles. At the rate of 0.3" per acre, annual runoff from this area will be about 200 acre feet. Precipitation records on the Pechanga Reservation indicate an average annual rainfall of 18.5 inches. From this, we might expect about 1.5 inches runoff as either surface or underground flow. This rate of runoff from 12 square miles would amount to about 900 acre feet per annum. Since the surface runoff approximates 200 acre feet, the annual underground recharge might approximate 700 acre feet.

From available geological data, it is indicated that no appreciable ground water basin exists under Area "A" of the Pechanga

Reservation. The Kelsey Tract, or Area "B", does appear to be a part of the area which overlies the underground basin at the junction of the Pechanga Creek and Temecula River. It appears that all of the water required thereon may be extracted from this underground basin. For Area "A" it appears that only the non-agricultural water requirements as indicated can be supplied from wells and natural springs which appear on the reservation. Irrigation water requirements for Area "A" will need to be met by an imported supply.

Irrigation Water Requirements

Irrigation development on the main portion of the Pechanga Indian Reservation is believed to be largely dependent upon the importation of expensive water, probably from the proposed Barona Aquaduct, and the lifting of this water as much as 1000 feet or more above the aquaduct. Under these conditions, any permanent irrigation agriculture will be dependent upon the production of high value crops. Water for the Kelsey tract may be obtained by pumping from ground water underlying the tract.

From an analysis of cropping practices in areas surrounding this reservation, it appears that, from a climatic standpoint, avocados can be grown on areas of the reservation lying between 1500 and 2400 feet in elevation. The citrus belt in this basin appears to be between 1200 and 1600 feet elevation. Deciduous fruits, vegetables, and other crops can be raised on the lower slopes and the valley bottom lands.

Because of the water costs involved and the climatic conditions, water requirements are based on the areas that appear to be suitable

for the three above mentioned crop groups and their unit requirements.

Precipitation on the Pechanga Reservation averages about 18.5 inches per annum. The maximum probably reaches 25 inches in the southeast corner, and the minimum is about 16 inches at the west boundary. This rainfall is largely absorbed into the soil and supports a fairly heavy cover of trees and shrubs with little surface runoff. This indicates that the amount of effective rainfall available for crop use is relatively high.

Irrigation water requirements have been studied by the Department of Agriculture, the Bureau of Reclamation and the State of California. Such studies were considered in compiling the requirements for this area. These requirements were computed by the Blaney-Criddle method. The computations are shown in Table I.

Table II compares the water requirements for these lands as computed by the BIA with the requirements assumed by the Marine Corps and with certain measurements by the U. S. Department of Agriculture which are taken from the California Division of Water Resources Bulletin No. 57.

Cropping Pattern

From an analysis of the land classification map, topographic maps, and crop patterns on surrounding lands, it appears that the following crops and acreages can be planned for on the Pechanga Indian Reservation:

<u>Crop</u>	<u>Acreage</u>	<u>Diversion Water Requirements</u>	
		<u>Acre Feet per acre ^{1/}</u>	<u>Acre Feet</u>
Avocados	300	3.10	930
Citrus	880	2.84	2499
Deciduous Orchard	100	3.10	310
Truck & Miscellaneous	<u>360</u>	2.72 ^{2/}	<u>979</u>
Total	<u>1640</u> ←		4718

Total Water Requirements

In order to fully irrigate the 1640 acres of net irrigable land, using the computed average use rate of 2.88 acre feet per acre for the above cropping pattern, approximately 4718 acre feet per annum will be required. Area "A" will require about 4222 acre feet, and Area "B" will require about 496 acre feet. In addition to the water required for irrigation purposes, an amount is essential for the non-agricultural uses. This is estimated to be 2% of that required for agriculture, or 94 acre feet per annum. These non-agricultural requirements for both areas "A" and "B" can probably be obtained from the underground supply and existing springs. Therefore, the total water requirements for Area "A" will be 4306 acre feet and for Area "B", 506 acre feet; the total will be 4812 acre feet per annum. Reference is made to the attached Table No. III.

^{1/} Consumptive use as computed by the Blaney-Criddle method using climatic data from Escondido with an overall efficiency of 67 per cent.

^{2/} Assumes double cropping on all truck lands.

Annotations

The United States Navy aerial photographs of the Pechanga Indian Reservation, on which are shown the classifications of the reservation lands both within and outside of the Santa Margarita watershed, were used in this study.

The soil surveys and land classifications were made by a team headed by Everett Randall, Soil Scientist, Bureau of Indian Affairs. The surveys and classifications were checked by Lt. Col. A. C. Bowen, United States Marine Corps, Camp Pendleton, California.

The water requirements were computed by Wayne D. Criddle, Consultant, Bureau of Indian Affairs.

The location maps and engineering surveys were provided by Milton A. Logsdon, Irrigation Engineer, Bureau of Indian Affairs.

The narration and overall supervision of the study were by Lyle F. Warnock, General Engineer, Bureau of Indian Affairs.

TABLE NO. 1

W. B. Station: Escondido County: San Diego State: California

Sta. No.: 2871 Elevation: 750 Feet Latitude: 33° 09' North

Approximate Frost-free period: March 9 to November 25

OBSERVED MONTHLY TEMPERATURES, PRECIPITATION, PERCENT OF DAYLIGHT HOURS AND CALCULATED CONSUMPTIVE USE FACTOR

Month	t	p	f	R	Growing season							
					Full season 4/1 - 10/31*		4 months 4/1-7/31		3 months 4/1-6/30		2 months to	
					f	R	f	R	f	R	f	R
	F°	%	Inches		Inches		Inches		Inches		Inches	
Jan.	51.0	7.14	3.65	3.43								
Feb.	52.6	6.94	3.64	3.54								
Mar.	55.2	8.36	4.50	2.77								
Apr.	58.3	8.78	5.12	0.80	5.12	0.80	5.12	0.80	5.12	0.80		
May	62.6	9.68	6.05	0.60	6.05	0.60	6.05	0.60	6.05	0.60		
June	67.2	9.66	6.50	0.09	6.50	0.09	6.50	0.09	6.50	0.09		
July	71.9	9.83	7.07	0.03	7.07	0.03	7.07	0.03				
Aug.	72.2	9.37	6.76	0.13	6.76	0.13						
Sept.	69.0	8.36	5.78	0.16	5.78	0.16						
Oct.	63.1	9.87	4.97	0.79	4.97	0.79						
Nov.	57.3	6.96	4.00	1.15								
Dec.	52.2	6.98	3.65	2.83								
Total	61.0			16.32	42.25	2.60	24.74	1.52	17.67	1.49		

*Note: Growing season for perennial crops is somewhat longer but winter precipitation meets water needs

COMPUTED CONSUMPTIVE WATER REQUIREMENT

Use	K	Total F.	C. U.	R	C.U. minus R	
			Inches	Inches	Inches	Feet
Irrigated crops:						
Alfalfa or clover	0.85	42.25	35.9	2.60	33.3	2.78
Beans	0.65	24.74	16.1	1.52	14.6	1.22
Corn						
Grains, small	0.75	17.67	13.3	1.49	11.8	0.98
Grass hay or pasture	0.90	42.25	38.1	2.60	35.5	2.96
Orchard	0.65	42.25	27.5	2.60	24.9	2.08
Peas						
Potatoes	0.70	24.74	17.3	1.52	15.8	1.32
Small truck crops	0.70	17.67	12.4	1.49	10.9	0.91
Sugar beets						
Avocados	0.65	42.25	27.5	2.60	24.9	2.08
Citrus	0.60	42.25	25.4	2.60	22.8	1.90

t = Mean monthly temperatures
p = Monthly percent of annual
daytime hours

f = t x p = monthly use factor
R = Mean monthly precipitation
K = Consumptive use coefficient
C.U. = Crop consumptive use for season

TABLE II

Water Requirements for Pechanga Indian
Reservation Lands, Santa Margarita River
Basin, California

Crops	Computed water requirements ^{1/}				Assumed ^{2/} Water Requirements		Measured Consumptive use of water by USDA	Location
	Consumptive Use ^{4/}		Diversion Requirements		Farm Head-gate	Diversion		
	Total	Net	67% Effic.	75% Effic.				
Alfalfa	2.99	2.78	4.15	3.70	3.00	3.33	(2.91 (2.29 (2.90	Temecula Murrieta Aguanga
Avocados	2.29	2.08	3.10	2.77	2.35	2.61	2.01	Fallbrook
Beans	1.34	1.22	1.82	1.63				
Citrus	2.12	1.90	2.84	2.53	1.86	2.07		
Grains, small	1.11	0.98	1.46	1.30	1.75	1.94		
Grass, pasture	3.18	2.96	4.42	3.95	3.83	4.25	{ 3.12 2.94	Anza Murrieta
Orchard, Decid.	2.29	2.08	3.10	2.77	1.07	1.14		
Potatoes	1.44	1.32	1.97	1.76	2.00	2.22		
Small Truck	1.03	0.91	1.36	1.28	1.67	1.86		

^{1/} Computed by BIA.

^{2/} Assumed and used by US Marine Corps in overall valley studies

^{3/} Reported in Calif. Div. of Water Resources Bul. No. 57, p. C-47 to C-55, Vol. II

^{4/} See computations on Table I.

Lands Susceptible to Irrigation
and
Computed Irrigation Water Requirements
for Indian Lands within
Santa Margarita Watershed

TABLE NO. 3

Location	Gross Areas Mapped	Net Agricultural Areas	Average Unit sumptive Uses	Ac. ft./Ac	Average Unit Di- version Reqm'ts	Normal Project Diversion Re- quirements	Probable Max. Unit Diversion Reqm'ts	Ac. Ft./Ac	
								1/	5/
								2/	3/
								4/	5/
								(324)	
Coahuilla Reservation	17292	12400	1.74	2.61	32688	4.2			
Ramona Reservation	321	104	1.74	2.61	(3)	4.2			
Pechanga Reservation					274				
Area "A"	3552	1463	1.94	2.89	(84)	4.2			
Area "B"	235	177	1.88	2.80	4306	4.2			
Public Domain Allotment	40	21	2.71	4.0	(10)	4.2			
					506				
					(1)				
Totals	21440	14165	--	--	85	4.2			
					(422)				
					37859				

- 1/ From Soils Survey Field Sheets
- 2/ Based upon diversified cropping pattern
- 3/ Area efficiency - 67%
- 4/ Total includes non-agricultural uses of 1% except for Pechanga Reservation where 2% was included
- 5/ Suggested uniform maximum unit diversion rate.