

## SOBOBA BAND OF LUISEÑO INDIANS SETTLEMENT ACT

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MAY 15, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. RAHALL, from the Committee on Natural Resources,  
submitted the following

### R E P O R T

[To accompany H.R. 4841]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4841) to approve, ratify, and confirm the settlement agreement entered into to resolve claims by the Soboba Band of Luiseño Indians relating to alleged interferences with the water resources of the Tribe, to authorize and direct the Secretary of the Interior to execute and perform the Settlement Agreement and related waivers, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

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

#### SEC. 2. FINDINGS AND PURPOSES.

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

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

(2) The Tribe’s water rights have not been quantified, and the Tribe has asserted claims for interferences with the water resources of its Reservation, which the Tribe maintains have rendered much of the Tribe’s Reservation useless for habitation, livestock, or Agriculture. On April 20, 2000, the Tribe filed a lawsuit against The Metropolitan Water District of Southern California for interference with the Tribe’s water resources and damages to its Reservation allegedly caused by Metropolitan’s construction and operation of the San Jacinto Tunnel, which is part of the Colorado River Aqueduct. The lawsuit, styled

Soboba Band of Luiseño Indians v. Metropolitan Water District of Southern California, No. 00–04208 GAF (MANx), is pending in the United States District Court for the Central District of California.

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

(4) After negotiations, which included participation by representatives of the Tribe, the United States on behalf of the Tribe, The Metropolitan Water District of Southern California, Eastern Municipal Water District, and Lake Hemet Municipal Water District, a Settlement Agreement has been developed to determine the Tribe's water rights, resolve all of its claims for interference with the water resources of, and damages to, its Reservation, provide for the construction of water projects to facilitate the exercise of the Tribe's rights, and resolve the lawsuit referenced in paragraph (2) of this section.

(5) The Settlement Agreement provides that—

(A) Eastern Municipal Water District and Lake Hemet Municipal Water District acknowledge and assure the Tribe's prior and paramount right, superior to all others, to pump 9,000 acre-feet of water annually from the San Jacinto River basin in accordance with the limitations and other conditions set forth in the Settlement Agreement;

(B) Eastern Municipal Water District and The Metropolitan Water District of Southern California will contract to supply water to Eastern Municipal Water District and Eastern Municipal Water District will use this water to recharge water supplies into the basin; and

(C) the three water districts will make substantial additional contributions to the settlement, including the conveyance of certain replacement lands and economic development funds to the Tribe, to carry out the Settlement Agreement's provisions.

(b) PURPOSES.—The purposes of this Act are—

(1) to approve, ratify, and confirm the Settlement Agreement entered into by the Tribe and non-Indians entities;

(2) to achieve a fair, equitable, and final settlement of all claims of the Soboba Band of Luiseño Indians, its members, and the United States on behalf of the Tribe and its members, to the water of the San Jacinto River basin;

(3) to authorize and direct the Secretary of the Interior to execute and perform all obligations of the Secretary under the Settlement Agreement; and

(4) to authorize the actions and appropriations necessary to meet obligations of the United States under the Settlement Agreement and this Act.

### SEC. 3. DEFINITIONS.

In this Act:

(1) RESTORATION FUND.—The term “Restoration Fund” means the San Jacinto Basin Restoration Fund established by section 6.

(2) DEVELOPMENT FUND.—The term “Development Fund” means the Soboba Band of Luiseño Indians Water Development Fund established by section 7.

(3) RESERVATION.—

(A) IN GENERAL.—The term “Reservation” means the Soboba Indian Reservation created by Executive Order dated June 19, 1883, and enlarged and modified as of the date of enactment of this Act by Executive Orders and an Act of Congress.

(B) EXCLUSIONS.—For the purposes of this Act, the term “Reservation” does not include—

(i) the 950 acres northwest of and contiguous to the Reservation known as the “Jones Ranch”, purchased by the Soboba Tribe in fee on July 21, 2001, and placed into trust on January 13, 2003;

(ii) the 535 acres southeast of and contiguous to the Reservation known as the “Horseshoe Grande”, purchased by the Soboba Tribe in fee in seven separate transactions in June and December 2001, December 2004, June 2006, and January 2007; and

(iii) the 478 acres north of and contiguous to the Reservation known as “The Oaks”, purchased by the Soboba Tribe in fee on April 4, 2004.

(4) SECRETARY.—The term “Secretary” means the Secretary of the Interior or a designee of the Secretary.

(5) SETTLEMENT AGREEMENT.—The term “Settlement Agreement” means that agreement dated June 7, 2006, as amended to be consistent with this Act, together with all exhibits thereto. The parties to the Settlement Agreement are the Soboba Band of Luiseño Indians and its members, the United States on behalf of the Tribe and its members, The Metropolitan Water District of Southern

California, Eastern Municipal Water District, and Lake Hemet Municipal Water District.

(6) **TRIBE, SOBOBA TRIBE, OR SOBOBA BAND OF LUISEÑO INDIANS.**—The terms “Tribe”, “Soboba Tribe”, or “Soboba Band of Luiseño Indians” means the body politic and federally recognized Indian tribe, and its members.

(7) **WATER MANAGEMENT PLAN.**—The term “Water Management Plan” means the plan, approved by the Soboba Tribe and the Secretary, developed pursuant to section 4.8, paragraph A of the Settlement Agreement to resolve the overdraft of the San Jacinto basin.

#### **SEC. 4. RATIFICATION OF SETTLEMENT AGREEMENT; AUTHORIZATION.**

(a) **IN GENERAL.**—The United States hereby approves, ratifies, and confirms the Settlement Agreement, except to the extent it conflicts with the provisions of this Act.

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

#### **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

(a) **RESTORATION FUND.**—There is authorized to be appropriated to the San Jacinto Basin Restoration Fund established in section 6 of this Act the amount of \$5,000,000 for each of fiscal years 2010 and 2011 to pay or reimburse the costs associated with constructing, operating, and maintaining the portion of the basin recharge project that the United States is responsible for under the Settlement Agreement. These costs are described in section 4.5 of the Settlement Agreement and are necessary to accommodate deliveries of the supplemental imported water under section 4.4 of the Settlement Agreement.

(b) **DEVELOPMENT FUND.**—There is authorized to be appropriated to the Soboba Band of Luiseño Indians Water Development Fund established in section 7 of this Act the amount of \$5,500,000 for each of fiscal years 2010 and 2011 to pay or reimburse costs associated with constructing, operating, and maintaining water and sewage infrastructure, and other water-related development projects.

(c) **LIMITATION.**—No funding of any construction, operation, maintenance, or replacement other than those funds authorized under subsections (a) and (b) shall be the responsibility of the Federal Government under the Settlement Agreement or this Act.

#### **SEC. 6. RESTORATION FUND.**

(a) **ESTABLISHMENT.**—There shall be established within the Treasury of the United States a non-interest bearing account to be known as the “San Jacinto Basin Restoration Fund”, consisting of the amounts authorized to be appropriated in section 5(a) of this Act.

(b) **ADMINISTRATION.**—The Restoration Fund shall be administered by the Secretary for the purposes set forth in subsection (d) of this section.

(c) **AVAILABILITY.**—The funds authorized to be appropriated pursuant to section 5(a) of this Act shall be available for expenditure or withdrawal only after the effective date set forth in section 10(a).

(d) **EXPENDITURES AND WITHDRAWALS.**—

(1) **EXPENDITURE PLAN.**—

(A) **IN GENERAL.**—Eastern Municipal Water District, on behalf of the Water Management Plan, shall submit to the Secretary for approval an expenditure plan for use of the Restoration Fund.

(B) **REQUIREMENTS.**—The expenditure plan shall require that any funds be expended or reimbursed in accordance with the purposes described in section 5(a) of this Act.

(2) **WITHDRAWALS.**—On approval by the Secretary of the expenditure plan described in this section, Eastern Municipal Water District, on behalf of the Water Management Plan, may expend or be reimbursed monies from the Restoration Fund as provided in the plan.

(3) **ENFORCEMENT.**—The Secretary may take judicial or administrative action to enforce the provisions of any expenditure plan to ensure that monies expended or reimbursed from the Restoration Fund under the plan are used in accordance with this Act.

(4) **LIABILITY.**—If Eastern Municipal Water District, on behalf of the Water Management Plan, exercises the right to expend or be reimbursed monies from the Restoration Fund, neither the Secretary nor the Secretary of the Treasury shall have any liability for the expenditure or reimbursement.

(5) ANNUAL REPORT.—Eastern Municipal Water District shall submit to the Tribe and the Secretary an annual report that describes all expenditures or reimbursements from the Restoration Fund during the year covered by the report.

**SEC. 7. DEVELOPMENT FUND.**

(a) ESTABLISHMENT.—There shall be established within the Treasury of the United States a fund to be known as the “Soboba Band of Luiseño Indians Water Development Fund”, to be managed and invested by the Secretary consisting of the amounts authorized to be appropriated in section 5(b).

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

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

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

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

(3) subsection (b) of this section.

(d) AVAILABILITY.—The funds authorized to be appropriated pursuant to section 5(b) of this Act shall be available for expenditure or withdrawal only after the effective date set forth in section 10(a).

(e) EXPENDITURES AND WITHDRAWALS.—

(1) TRIBAL MANAGEMENT PLAN.—

(A) IN GENERAL.—The Tribe may withdraw all or part of the Development Fund on approval by the Secretary of a tribal management plan as described in the Trust Fund Reform Act.

(B) REQUIREMENTS.—In addition to the requirements under the Trust Fund Reform Act, the tribal management plan shall require that any funds be expended or reimbursed in accordance with the purposes described in section 5(b) of this Act.

(C) ENFORCEMENT.—The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that monies withdrawn from the Development Fund under the plan are used in accordance with this Act.

(D) LIABILITY.—If the Tribe exercises the right to withdraw monies from the Development Fund, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment.

(2) EXPENDITURE PLAN.—

(A) IN GENERAL.—The Tribe shall submit to the Secretary for approval an expenditure plan for any portion of the amounts made available under section 5(b) that the Tribe does not withdraw under this subsection.

(B) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, amounts of the Tribe remaining in the Funds will be used.

(C) APPROVAL.—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this Act and the Agreement.

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

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

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

(a) TRIBE AND UNITED STATES AUTHORIZATION.—The Tribe, on behalf of itself and its members, and the Secretary, on behalf of the United States in its capacity as trustee for the Tribe and its members, are authorized, as part of the performance of their obligations under the Settlement Agreement, to execute a waiver and release for claims under Federal, State, or other law against The Metropolitan Water District of Southern California, Eastern Municipal Water District, and Lake Hemet Municipal Water District, for any and all—

(1) past, present, and future claims to surface water and groundwater rights for the Reservation arising from time immemorial through the effective date described in section 10 of this Act and anytime thereafter, except claims to enforce the Settlement Agreement or claims based on water rights acquired after the effective date described in section 10 of this Act;

(2) past, present, and future claims for injury of any kind arising from interference with surface water and groundwater resources and water rights of the

Reservation, including, but not limited to, all claims for injury to the Tribe's use and enjoyment of the Reservation, economic development, religion, language, social structure and culture, and injury to the natural resources of the Reservation, from time immemorial through the effective date described in section 10 of this Act;

(3) past, present, and future claims for injury of any kind arising from, or in any way related to, continuing interference with surface water and groundwater resources and water rights of the Reservation, including the full scope of claims defined in section 5.1, paragraph A(2) of the Settlement Agreement, to the extent that such continuing interference began prior to the effective date described in section 10 of this Act, from time immemorial through the effective date described in section 10 of this Act and anytime thereafter;

(4) past, present, and future claims for injury of any kind arising from, or in any way related to, seepage of water into the San Jacinto Tunnel, including the full scope of claims defined in section 5.1, paragraph A(2) of the Settlement Agreement, from time immemorial through the effective date described in section 10 of this Act and anytime thereafter; and

(5) past, present, and future claims for injury of any kind arising from, or in any way related to, the Water Management Plan as approved in accordance with the Settlement Agreement, from time immemorial through the effective date described in section 10 of this Act and anytime thereafter.

(b) TRIBAL WAIVERS AGAINST THE UNITED STATES.—

(1) IN GENERAL.—The Tribe is authorized, as part of the performance of its obligations under the Settlement Agreement, to execute a waiver and release for claims against the United States (acting in its capacity as trustee for the Tribe or its members, or otherwise acting on behalf of the Tribe or its members), including any agencies, officials, or employees thereof, for any and all—

(A) claims described in subsection (a) of this section;

(B) past, present, and future claims for failure to acquire or develop water rights and water resources of the Reservation arising from time immemorial through the effective date described in section 10 of this Act and anytime thereafter;

(C) past, present, and future claims for failure to protect water rights and water resources of the Reservation arising from time immemorial through the effective date described in section 10 of this Act, and any past, present, and future claims for any continuing failure to protect water rights and water resources of the Reservation, arising from time immemorial through the effective date described in section 10 of this Act and, to the extent that such continuing failure to protect began before the effective date described in section 10 of this Act, anytime thereafter;

(D) past, present, and future claims arising from the failure of any non-Federal Party to fulfill the terms of the Settlement Agreement at anytime; and

(E) past, present, and future claims arising out of the negotiation of the Settlement Agreement or the negotiation and enactment of this Act, or any specific terms of provisions thereof, including, but not limited to, the Tribe's consent to limit the number of participant parties to the Settlement Agreement.

(2) EFFECTIVENESS OF WAIVERS AGAINST THE UNITED STATES.—

(A) IN GENERAL.—The waiver and release contained in this subsection shall take effect on the date on which all of the amounts authorized under sections 5(a) and 5(b) are appropriated.

(B) PERIODS OF LIMITATION; EQUITABLE CLAIMS.—

(i) IN GENERAL.—All periods of limitation and time-based equitable defenses applicable to the claims set forth in paragraph (1) are tolled for the period between the date of enactment of this Act until the date on which the amounts authorized under sections 5(a) and 5(b) are appropriated.

(ii) EFFECT OF SUBPARAGRAPH.—This subparagraph neither revives any claim nor tolls any period of limitation or time-based equitable defense that may have expired before the date of enactment of this Act.

(C) DEFENSE.—The making of the amounts of appropriations authorized under sections 5(a) and 5(b) shall constitute a complete defense to any claim which involves the claims set forth in paragraph (b)(1) pending in any court of the United States on the date on which the appropriations are made.

**SEC. 9. MISCELLANEOUS PROVISIONS.**

(a) JURISDICTION.—

(1) NO EFFECT ON SUBJECT MATTER JURISDICTION.—Nothing in the Agreement or this Act restricts, enlarges, or otherwise determines the subject matter jurisdiction of any Federal, State, or Tribal court.

(2) JUDGMENT AND DECREE.—The United States consents to jurisdiction in the United States District Court for the Central District of California case known as Soboba Band of Luiseño Indians v. Metropolitan Water District of Southern California, No. 00–04208 for the purpose of obtaining approval for a judgment and decree substantially the same as the judgment and decree attached to the Settlement Agreement as exhibit H.

(3) EFFECT OF SUBSECTION.—Nothing in this subsection confers jurisdiction on any State court to—

(A) enforce Federal environmental laws regarding the duties of the United States; or

(B) conduct judicial review of Federal agency action.

(b) USE OF WATER.—

(1) TRIBAL USE.—With respect to water rights made available under the Settlement Agreement—

(A) the Tribe may use water made available to it under the Settlement Agreement for any use it deems advisable on the Reservation and on any other lands it owns or may acquire, in fee or in trust, contiguous to the Reservation or within the area of the groundwater basin described in section 2.4 of the Settlement Agreement;

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

(C) State law shall not apply to the Tribe's use of water made available to it under the Settlement Agreement.

(2) NON-TRIBAL USE.—

(A) CONTRACTS AND OPTIONS.—Subject to the limitations in subparagraph (B), the Tribe may enter into contracts and options to lease or contracts and options to exchange water made available to it under the Settlement Agreement, or enter into contracts and options to postpone existing water uses or postpone undertaking new or expanded water uses.

(B) LIMITATIONS ON NON-TRIBAL USE.—

(i) CONSISTENCY WITH WATER MANAGEMENT PLAN.—Any water made available under subparagraph (A) shall only be used by participants in, or other users within the area of, the Water Management Plan described in section 2.32 of the Settlement Agreement.

(ii) PROHIBITION ON PERMANENT ALIENATION.—No contract under subparagraph (A) shall be for a term exceeding one hundred years, nor shall any contract under subparagraph (A) provide for permanent alienation of any portion of the water rights made available under the Settlement Agreement.

(C) LIABILITY.—The Secretary shall not be liable to any party, including the Tribe, for any term of, or any loss or other detriment resulting from, a lease or contract entered into pursuant to this subparagraph.

(c) RETENTION OF RIGHTS.—

(1) In the event the waivers and releases set out in section 8 of this Act do not become effective pursuant to section 10(a) of this Act, the Soboba Tribe and the United States shall retain the right to assert all rights and claims enumerated in section 8, and any claims or defenses of the parties to the Settlement Agreement shall also be retained.

(2) The parties expressly reserve all rights not specifically granted, recognized, waived, or released by the Settlement Agreement or this Act.

(3) Notwithstanding the waivers and releases set forth in section 8(a), the United States retains all claims relating to violations of the Clean Water Act, the Safe Drinking Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act, Resource Conservation and Recovery Act, and the regulations implementing these Acts, including, but not limited to claims related to water quality.

(d) PRECEDENT.—Nothing in this Act establishes any standard for the quantification or litigation of Federal reserved water rights or any other Indian water claims of any other Indian tribes in any other judicial or administrative proceeding.

(e) OTHER INDIAN TRIBES.—Nothing in the Settlement Agreement or this Act shall be construed in any way to quantify or otherwise adversely affect the water rights, claims, or entitlements to water of any Indian tribe, band, or community, other than the Soboba Tribe.

(f) ENVIRONMENTAL COMPLIANCE.—

(1) Signing by the Secretary of the Settlement Agreement does not constitute major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) The Secretary is directed to carry out all environmental compliance required by Federal law in implementing the Agreement.

#### SEC. 10. EFFECTIVE DATE.

(a) IN GENERAL.—The waivers and releases authorized in subsection (a) of section 8 of this Act shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of findings that—

(1) this Act has been enacted;

(2) to the extent that the Settlement Agreement conflicts with this Act, the Settlement Agreement has been revised to conform with the Act;

(3) the Settlement Agreement, revised as necessary, and the waivers and releases described in article 5 of the Settlement Agreement and section 8(a) of this Act have been executed by the parties and the Secretary;

(4) warranty deeds for the property to be conveyed to the Tribe described in section 4.6 of the Settlement Agreement have been placed in escrow;

(5) the Tribe and the Secretary have approved the Water Management Plan; and

(6) the judgment and decree attached to the Settlement Agreement as exhibit H or a judgment and decree substantially the same as exhibit H has been approved by the United States District Court, Eastern Division of the Central District of California, and that judgment and decree has become final and non-appealable.

(b) DEADLINE FOR EFFECTIVE DATE.—If the conditions precedent required under subsection (a) of this section have not been fulfilled by March 1, 2012, the Settlement Agreement and this Act shall not thereafter be effective and shall be null and void, and any funds and the interest accrued thereon appropriated pursuant to section 5 shall revert to the general fund of the United States Treasury.

#### PURPOSE OF THE BILL

The purpose of H.R. 4841 is to approve, ratify, and confirm the settlement agreement entered into to resolve claims by the Soboba Band of Luiseno Indians relating to alleged interferences with the water resources of the Tribe, to authorize and direct the Secretary of the Interior to execute and perform the Settlement Agreement and related waivers, and for other purposes.

#### BACKGROUND AND NEED FOR LEGISLATION

The Soboba Band of Luiseno Indians (Soboba) is comprised of nearly 900 members that live on or near the Soboba Reservation, located in the western foothills of San Jacinto Mountains of Southern California about 80 miles east of Los Angeles. The Soboba Reservation was established on June 19, 1883 and encompasses about 9.2 square miles. The San Jacinto River is the major surface water feature on the Reservation. The tribe relied on the river for its agricultural needs until surface water diversions were built upstream of the river. The tribe then relied on groundwater as its primary source of water.

In the 1930s, the Metropolitan Water District of Southern California (MWD) dug a 13-mile tunnel through the San Jacinto Mountains, about 3½ miles northwest of the Reservation. The tunnel was part of the Colorado River Aqueduct constructed to bring drinking water to Southern California. During construction, the tunnel pierced underground faults and fractures in the mountains that dammed large amounts of groundwater underneath the Reservation. Groundwater flooded into the tunnel drying up springs, creeks and wells on the Reservation that were fed by an underground aquifer.

Soboba sued the federal government in the Indian Claims Commission for failing to protect the Reservation's water resources in 1950 (*Soboba Band of Mission Indians v. United States*). The federal government settled the lawsuit in 1991 for \$12,000,000. Similarly, in 2000 Soboba sued the MWD, Eastern Municipal Water District, and Lake Hemet Water District in the United States District Court, alleging that the underground tunnel built by MWD drained much of the water supply to the Soboba Reservation.

In June 2007, the tribe and water districts entered into a settlement to resolve these legal claims. Specifically, the settlement gave a final resolution of Soboba's water rights and claims and guaranteed the tribe 7,500 acre-feet per year of reduced cost water from MWD until 2035. In addition, the three water agencies combined will pay \$17 million to the tribe for access to any of the tribe's unused water. The tribe, in return, has agreed to limit its water use to 4,100 acre-feet of the 9,000 acre-feet quantified allocation for 50 years.

#### COMMITTEE ACTION

H.R. 4841 was introduced on March 3, 2008 by Rep. Mary Bono Mack (R-CA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water and Power. On March 13, 2008, the Subcommittee held a hearing on the bill.

On April 23, 2008, the Subcommittee met to mark up the bill. Subcommittee Ranking Member Cathy McMorris Rodgers (R-WA) offered an en bloc amendment that modified the bill by changing the required payment years to FY 2010 and FY 2011, since the FY 2009 budget cycle is near completion. The amendment also clarifies that the Development Fund is a "non-interest" bearing account to conform with House PAYGO rules. It was adopted by unanimous consent. The bill, as amended, was then forwarded to the Full Committee by unanimous consent.

On April 30, 2008, the Full Natural Resources Committee met to consider the bill. Rep. Cathy McMorris Rodgers offered an amendment to change the Development Fund from a "non-interest" account to a "fund" for the purpose of further meeting House PAYGO rules. It was adopted by unanimous consent. The bill as amended was then ordered favorably reported to the House of Representatives by unanimous consent.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

Section 1 provides that this act may be cited as the "Soboba Band of Luiseno Indians Act."

##### *Section 2. Findings and purposes*

Section 2 states the findings and purposes of H.R. 4841. The findings provide historic and legal background for the Soboba Band of Luiseno Indians, including the lawsuit against Metropolitan Water District and their claims against Eastern and Lake Hemet Municipal Water Districts. The findings also outline the negotiation process and settlement conditions, including an acknowledgment from the three water districts that Soboba's water right is



“superior” to all others and is quantified at 9,000 acre-feet. The purposes section outlines the intent of this legislation, including to approve, ratify, confirm and implement the settlement agreement.

### *Section 3. Definitions*

Section 3 provides definitions for commonly used terms within the act.

### *Section 4. Ratification of settlement agreement; authorization*

Section 4 provides that the United States ratifies and confirms the June 6, 2006 agreement and authorizes the Secretary of Interior to execute and implement the settlement agreement.

### *Section 5. Authorization of appropriations*

Section 5 outlines the total authorized appropriations within this act. The San Jacinto Basin Restoration Fund is authorized to be appropriated \$5,000,000 for fiscal years 2010 and 2011. The Soboba Band of Luiseno Indians Water Development Fund is authorized to be appropriated \$5,500,000 for fiscal years 2010 and 2011. The total authorized appropriation for both funds is \$21,000,000.

### *Section 6. Restoration fund*

Section 6 establishes the Restoration Fund. The San Jacinto Basin Restoration Fund will be established within the Treasury of the United States and administered by the Secretary of the Interior. Eastern Municipal Water District must submit an expenditure plan that must be approved by the Secretary for any payment or reimbursement of costs. Eastern Municipal is also required to submit an annual report to the Secretary that describes all costs. Funds are available for use after March 1, 2012.

### *Section 7. Development fund*

Section 7 establishes the Development Fund. The Soboba Band of Luiseno Indians Water Development Fund will be established within the Treasury of the United States to be managed and invested by the Secretary of the Interior. The Tribe may withdraw all or part of the fund, but must submit a tribal management plan that must be approved by the Secretary of the Interior. The Secretary of the Interior and the Secretary of the Treasury are not liable for the way in which monies withdrawn from the fund are spent or invested. In addition, the Tribe must submit an expenditure plan that must be approved by the Secretary for any payment or reimbursement of costs. The tribe is required to submit an annual report to the Secretary that describes all costs. No part of the funds shall be distributed on a per capita basis to tribal members. Funds are available for use after March 1, 2012.

### *Section 8. Waivers and releases*

Section 8 outlines the tribe’s waiver and release of claims against the Metropolitan Water District, the Eastern Municipal Water District, the Lake Hemet Municipal Water District and the United States. The waivers release the three districts for any and all past, present, and future claims to surface water and groundwater rights, injury and interference with surface and groundwater rights, continuing interference with surface water and groundwater

rights, injury arising from water seepage into the San Jacinto Tunnel, and injury related to the water management plan. The waiver releases the United States from any and all past, present, and future claims for failure to acquire and develop reservation water rights and resources, for failure to protect reservation water rights and resources, failure of any non-federal party to fulfill the terms of the settlement agreement at anytime, and for past, present and future claims related to the negotiation of the settlement agreement.

The waiver and release for the United States will take effect when the authorized funds are appropriated.

#### *Section 9. Miscellaneous provisions*

This section outlines miscellaneous provisions regarding jurisdiction, use of water and retention of rights. Section 9 also states that nothing in this act establishes a precedent for the federal quantification or litigation of reserved water rights. Language in this section also clarifies that nothing in this act quantifies or adversely harms other tribes and the Secretary's signature to the settlement agreement does not constitute compliance with the National Environmental Policy Act.

#### *Section 10. Effective date*

Section 10 lists the necessary criteria for the waivers and releases to be effective. The deadline for the effective date is March 1, 2012. If implementation does not occur by March 1, 2012, the Settlement Agreement and this Act are null and void, and all appropriated funds revert to the general fund of the United States Treasury.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

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

#### CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

#### COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to approve, ratify, and confirm the settlement agreement entered into to resolve claims by the Soboba Band of Luiseno Indians relating to alleged interferences with the water resources of the Tribe, to authorize and direct the Secretary of the Interior to execute and perform the Settlement Agreement and related waivers.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

*H.R. 4841—Soboba Band of Luiseno Indians Settlement Act*

Summary: H.R. 4841 would approve and ratify a water rights settlement agreement among the Soboba Band of Luiseno Indians and its members, the United States, and three water districts in Riverside County, California, provided that certain conditions are met. As part of the agreement, H.R. 4841 would create two funds—the San Jacinto Basin Restoration Fund and the Soboba Band of Luiseno Indians Water Development Fund. Under the bill, money in those funds could not be spent until the agreement is approved by all parties involved and other requirements have been met.

Based on information from the Department of the Interior (DOI), CBO estimates that implementing H.R. 4841 would cost \$21 million over the 2010–2011 period, assuming appropriation of the authorized amounts. Enacting the legislation would have no significant impact on direct spending and would not affect revenues.

H.R. 4841 would restrict the tribe’s ability to use and lease water it receives as part of the settlement agreement, and that restriction would be an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the mandate would impose no new costs on the tribe, and therefore, the threshold established in UMRA (\$68 million in 2008, adjusted annually for inflation) would not be exceeded.

H.R. 4841 contains no private-sector mandate as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4841 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

	By fiscal year, in millions of dollars—				
	2009	2010	2011	2012	2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION <sup>1</sup>					
Restoration Fund:					
Authorization Level .....	0	5	5	0	0
Estimated Outlays .....	0	5	5	0	0
Development Fund:					
Authorization Level .....	0	6	6	0	0
Estimated Outlays .....	0	0	11	0	0
Total Changes:					
Estimated Authorization Level .....	0	11	11	0	0
Estimated Outlays .....	0	5	16	0	0

<sup>1</sup> Enacting H.R. 4841 also would increase direct spending by an insignificant amount in 2011, from interest on appropriation balances.

Basis of estimate: For this estimate, CBO assumes that H.R. 4841 will be enacted near the end of 2008 and that the amounts authorized will be appropriated each year. In 2006, the Soboba Band and three water districts in Riverside County, California, signed a settlement agreement to resolve a water rights dispute. (The water districts include the Eastern Municipal Water District, the Lake Hemet Municipal Water District, and the Metropolitan Water District.) The United States would become party to the agreement upon enactment of H.R. 4841, provided that the settlement agreement is modified to be consistent with requirements specified by the bill and other conditions are met. Based on information from DOI, CBO assumes that, in 2010, the settlement agreement will be finalized and all parties will have executed their responsibilities under the settlement.

As part of the settlement agreement, H.R. 4841 would create two funds—the San Jacinto Basin Restoration Fund (Restoration Fund) and the Soboba Band of Luiseno Indians Water Development Fund (Development Fund)—to restore water to the tribe’s reservation and to ensure an adequate water supply to the San Jacinto basin area in Riverside County. Assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 4841 would cost \$21 million over the 2010–2011 period.

#### *Restoration Fund*

H.R. 4841 would authorize the appropriation of \$5 million a year over the 2010–2011 period for the Restoration Fund to cover a portion of the costs for the San Jacinto basin recharge project. Under the bill, the Eastern Municipal Water District would have the authority to spend monies provided in the Restoration Fund or seek reimbursement from the fund for the necessary construction activities, provided that certain conditions are met. Appropriated funds, however, could not be spent until the settlement is agreed to by all parties and certain conditions are met. Unless all conditions are met by March 1, 2012, any funds appropriated to implement H.R. 4841 would be returned to the Treasury.

According to DOI, some construction work has begun for the basin recharge project, and the Eastern Municipal Water District would likely seek reimbursement for its work soon after the settlement is finalized and funds are appropriated. Because all components of the settlement will likely be completed in 2010, CBO estimates that implementing the bill would result in spending of \$5 million in both 2010 and 2011.

#### *Development Fund*

H.R. 4841 would authorize the appropriation of \$5.5 million each year over the 2010–2011 period for the Development Fund to benefit the Soboba Tribe. The Secretary of the Interior would be required to invest those amounts in Treasury obligations until those funds are expended. Funds would be used to restore, rehabilitate, and maintain water and sewage infrastructure and other related development projects. Similar to the Restoration Fund, amounts in this fund could not be spent by the tribe until the settlement is finalized and certain conditions are met. Unless all conditions of the settlement are met by March 1, 2012, any funds appropriated to implement H.R. 4841 would be returned to the Treasury.

Trust funds that are held and managed in a fiduciary capacity by the federal government on behalf of Indian tribes are treated in the budget as nonfederal funds. As a result, outlays would be recorded on the budget in the year that all funds are provided to the tribe and the settlement agreement is final. Therefore, CBO estimates that this provision would result in discretionary spending of \$11 million in 2011. Once the settlement is final, subsequent use of those funds by the tribe would have no further impact on the federal budget.

Estimated impact on state, local, and tribal governments: H.R. 4841 would restrict the tribe's ability to use and lease water it receives as part of the settlement agreement, and that restriction would be an intergovernmental mandate as defined in UMRA. Because the tribe has voluntarily agreed to that restriction in the settlement, CBO estimates that the mandate would impose no new costs on the tribe, and therefore, the threshold established in UMRA would not be exceeded.

Estimated impact on the private sector: H.R. 4841 contains no private-sector mandate as defined in UMRA.

Estimate prepared by: Federal Costs: Leigh Angres; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on Private Sector: MarDestinee Perez.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

#### EARMARK STATEMENT

H.R. 4841 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

#### PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

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

#### CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

