

## Calendar No. 1081

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SENATE

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TO TRANSFER CERTAIN LAND IN RIVERSIDE COUNTY, CALIFORNIA, AND SAN DIEGO COUNTY, CALIFORNIA, FROM THE BUREAU OF LAND MANAGEMENT TO THE UNITED STATES TO BE HELD IN TRUST FOR THE PECHANGA BAND OF LUISEÑO MISSION INDIANS, AND FOR OTHER PURPOSES

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SEPTEMBER 25 (legislative day, SEPTEMBER 17), 2008.—Ordered to be printed

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Mr. DORGAN, from the Committee on Indian Affairs,  
submitted the following

### R E P O R T

[To accompany H.R. 2963]

The Committee on Indian Affairs, to which was referred the bill (H.R. 2963) to transfer certain land in Riverside County, California, and San Diego County, California, from the Bureau of Land Management to the United States to be held in trust for the Pechanga Band of Luiseño Mission Indians, and for other purposes, having considered the same, report favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

#### PURPOSE

The purpose of H.R. 2963 is to transfer certain land in Riverside County and San Diego County, California, from the Bureau of Land Management to the United States to be held in trust for the Pechanga Band of Luiseño Mission Indians, and for other purposes.

#### BACKGROUND

H.R. 2963 would transfer approximately 1,178 acres of public land (including improvements), in four parcels, currently administered by the Bureau of Land Management (BLM) to the Pechanga Band of Luiseño Mission Indians (“Tribe”). The lands, located in Riverside County and San Diego County, California, will be held in trust by the United States for the benefit of the Tribe.

The lands are located in an area known as the Temecula Valley where the members of the Pechanga Band of Luiseño Indians and their ancestors have resided for thousands of years. The Tribe’s ancestral home village of Temeeeku was a center for all the Payomkawichum, or Luiseño people.

Testimony provided at a May 15, 2008 hearing before the Committee established the following facts. 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 the Luiseño Indians living on the land in the Temecula Valley. The court granted the decree in 1873. In 1875, over a period of three days, the sheriff of San Diego County ejected the Luiseño people living on the lands.

The Luiseño Indians were taken into the hills south of the Temecula River. Most of the dispossessed Luiseño moved upstream to a small, secluded valley, where they built new homes and re-established their lives.

On June 27, 1882, the President of the United States issued an Executive Order establishing the Pechanga Indian Reservation. Several subsequent trust acquisitions were made in 1893, 1907, 1931, 1971, 1988, and 2003, each one increasing the size of the reservation.

The total land area of the current Pechanga reservation is approximately 5,500 acres. However, the ancestral territory of the Tribe spreads from the center of the Temecula Valley out 60 miles north and south and approximately 45 miles east to west. These lands are home to important cultural resources, including pictographs and petroglyphs unique to the Luiseño territory. The Tribe seeks passage of H.R. 2963 to protect and preserve its history and cultural affiliation with the lands to be transferred, as well as the wildlife resources located thereon.

The larger parcel of land to be transferred (approximately 958 acres) is adjacent to the existing Pechanga Reservation. It consists mainly of jagged, mountainous terrain that contains ancestral sites of import to the Tribe. Two additional parcels (consisting of approximately 200 acres) are located adjacent to each other and to the Pechanga Reservation, and also consist mainly of similar jagged terrain, and contain important cultural and ancestral sites. A smaller parcel (approximately 20 acres) is 12 miles from the Tribe's reservation near land acquired in fee by the Tribe several years ago from Riverside County. This parcel also contains an important ancestral archaeological site, and is currently managed by the Tribe pursuant to a memorandum of understanding with the Bureau of Land Management. The Tribe seeks to manage all the properties to preserve their cultural values and the wildlife on the lands. The Tribe has enacted tribal laws and ordinances to achieve this goal.

The Tribe has also entered into intergovernmental agreements that will continue to apply to the Tribe's administration of the transferred land. The Tribe entered into a habitat conservation plan with Riverside County (the "Western Riverside County Multiple Species Habitat Conservation Plan" or "MSHCP"), which applies to the lands in Riverside County.

#### SUMMARY OF THE AMENDMENT

At its September 23, 2008 business meeting, the Committee adopted an amendment to H.R. 2963. The amendment was adopted for three primary reasons.

First, the amendment clarifies that the lands transferred pursuant to H.R. 2963 will be administered in accord with a memorandum of understanding ("MOU") that was entered into on No-

vember 11, 2005 between the Tribe and the Bureau of Land Management and the United States Fish and Wildlife Service.

Second, the amendment requires that the transferred land be maintained as open space, used only for the maintenance of the archaeological, cultural, and wildlife resources. The amendment would permit the construction or maintenance of structures consistent with this purpose.

Finally, the amendment prohibits the Tribe from conducting gaming activities on the transferred land as a matter of inherent authority or authority provided to Tribes pursuant to the Indian Gaming Regulatory Act.

#### SECTION-BY-SECTION ANALYSIS OF H.R. 2963, AS AMENDED

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

The short title of this Act is the “Pechanga Band of Luiseño Mission Indians Land Transfer Act of 2008.”

##### *Section 2. Transfer of land in trust for Pechanga Band of Luiseño Mission Indians*

Section 2 identifies the lands to be transferred into trust with the United States for the benefit of the Pechanga Band of Luiseño Mission Indians from the Bureau of Land Management and provides for limitations to and exemptions from the transfer.

Subsection (a) provides for the transfer of the land into trust status for the benefit of the Pechanga Band of Luiseño Mission Indians, with the exception of approximately 12.82 acres of land in San Diego County, upon which an existing electrical transmission line now rests. Subsection (a) requires the transferred lands to be administered in a manner consistent to those of other trust lands and in conformity with a Memorandum of Understanding entered into between the Pechanga Band of Luiseño Mission Indians, the United States Bureau of Land Management and the United States Fish and Wildlife Service. Subsection (a) requires the parties to notify Congress of any termination or violation of the Memorandum of Understanding within 45 days, unless the termination is due to the termination of the Western Riverside County Multiple Species Habitat Conservation Plan.

Subsection (a) further provides that the approximately 12.82 acres of excepted lands will be sold to San Diego Gas & Electric Company after the completion of a cadastral survey required in subsection (c) and an appraisal required by subsection (d).

Subsection (b) provides a description of the approximately 1,178 acres of land to be transferred to the Pechanga Band of Luiseño Mission Indians, and refers to a map provided to the Congress by the Bureau of Land Management.

Subsection (c) directs the Bureau of Land Management, Office of Cadastral Survey, to complete a survey of the lands to be transferred and sold within 180 days of the date of enactment of H.R. 2963 for the purpose of establishing the appropriate boundaries of the lands.

Subsection (d) provides for the conveyance of the 12.82 acres excepted from the tribal transfer to the San Diego Gas & Electric Company, for a utility corridor. The corridor lands will be conveyed upon the completion of the survey required in subsection (c), the

receipt by the Secretary of all rents and other fees due for use of the utility corridor (if any are due), and the receipt of payment by the Secretary from the San Diego Gas & Electric Company of consideration in an amount equal to the fair market value of the utility corridor as determined by an appraisal.

Subsection (d) provides for an appraisal, done in conformity with the Uniform Appraisal Standards for Federal Lands Acquisitions, of the approximately 12.82 acres within 90 days of the completion of the survey required in subsection (c). Once the survey is completed, San Diego Gas and Electric Company will be required to pay the appraised value of the 12.82 acres and the costs associated with the survey and appraisal.

Subsection (d) also requires the Secretary, upon receiving the proceeds from the sale of the 12.82 acres for the utility corridor, to deposit them in the Federal Land Disposal Account.

Subsection (e) requires the map created by the Bureau of Land Management to be retained and filed with the Bureau of Land Management.

Subsection (f) requires that upon completion of the cadastral survey required in subsection (c), and its approval by the Tribal Council of the Pechanga Band of Luiseño Mission Indians, the publication of the legal description of boundary lines and the lands transferred pursuant to subsection (a). Subsection (f) directs that the legal descriptions become effective as of the date of publication.

Subsection (g) states that no existing right of the Pechanga Band of Luiseño Mission Indians is affected by H.R. 2963, and that no previous existing water right is affected. Additionally, this subsection provides that no rights-of-way or right-of-use existing prior to the date of enactment of H.R. 2963 are affected.

Finally, subsection (g) prohibits the Tribe from developing the transferred land, and limits the use of the land except as open space. Gaming is specifically prohibited on the transferred lands.

#### LEGISLATIVE HISTORY

H.R. 2963 was introduced on July 10, 2007, by Representative Darrell Issa (R-CA), and is co-sponsored by Representative Joe Baca (D-CA). The bill was referred to the House Committee on Natural Resources.

On July 30, 2007, the House Natural Resources Committee discharged the bill. On July 30, 2007, the bill was considered by the House under unanimous consent and passed without objection. The bill was received in the Senate on July 30, 2007, and referred to the Committee on Indian Affairs on August 3, 2007. On May 15, 2008, the Committee on Indian Affairs held a hearing to consider H.R. 2963.

#### COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On September 23, 2008, the Committee, in an open business meeting, considered H.R. 2963. By a voice vote, the Committee ordered the bill reported to the full Senate with the recommendation that the bill pass with an amendment.

## COST AND BUDGETARY CONSIDERATIONS

On September 24, 2008, the Committee transmitted this bill to the Congressional Budget Office and requested it to conduct an estimate of the costs incurred in carrying out its provisions. The Committee will publish in the Congressional Record information on 5-year projections for H.R. 2963 when such information is available from the Congressional Budget Office.

## REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that the regulatory and paperwork impacts of H.R. 2693 should be *de minimis*.

## EXECUTIVE COMMUNICATION

The Committee has received no official executive communication from the Administration on H.R. 2963.

## CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by H.R. 2963.