

**TESTIMONY OF MATTHEW G. STONE
GENERAL MANAGER, RANCHO CALIFORNIA WATER DISTRICT
BEFORE THE
HOUSE NATURAL RESOURCES SUBCOMMITTEE ON WATER AND POWER**

**LEGISLATIVE HEARING
TO CONSIDER H.R. 5413, THE PECHANGA BAND OF LUISEÑO MISSION INDIANS
WATER RIGHTS SETTLEMENT ACT OF 2010**

September 16, 2010

Good morning Chairwoman Napolitano, Ranking Member McClintock, and other distinguished Members of the Subcommittee. My name is Matt Stone and I am the General Manager of Rancho California Water District (RCWD) in Riverside County, California. I appreciate the opportunity to appear on behalf of RCWD to present testimony regarding H.R. 5413, the Pechanga Band of Luiseño Mission Indians Water Rights Settlement Act of 2010 (Settlement) between the Pechanga, RCWD, Eastern Municipal Water District (EMWD), and the United States.

Thank you, Madam Chairwoman, Mr. Ranking Member, and Members of the Subcommittee for this honor of testifying before the Subcommittee. I would like to thank the Subcommittee staff for their able assistance in preparing for this hearing. As always, your experienced staff have been extremely helpful in the efforts that lead to today's legislative hearing to discuss these important issues. And special thanks to the bill's sponsor, Congressman Joe Baca and original cosponsors Congressman Dan Boren (OK-2), Congressman Raul Grijalva (AZ-7), Congressman Mike Honda (CA-15), Congressman Dale Kildee (MI-5), Congressman Ben Ray Lujan (NM-3), and Congresswoman Laura Richardson (CA-37). I also would like to thank Congresswoman Mary Bono Mack, who had originally sponsored legislation, H.R. 4285, in 2009, authorizing this water rights settlement as well as the original cosponsors of that bill: Congressman Joe Baca (CA-43), Congressman Ken Calvert (CA-44), Congressman Raul Grijalva (AZ-7), Congressman Darrell Issa (CA-49), and Congresswoman Laura Richardson (CA-37). We appreciate the bi-partisan support we have received on this legislation.

Additionally, as the Subcommittee Members are likely aware, a companion bill was introduced in the Senate, S.2956, by Senator Barbara Boxer and cosponsored by Senator Dianne Feinstein. A hearing was held in the Senate Committee on Indian Affairs on July 22, 2010, at which I had the opportunity to testify as well.

My testimony provides background information and an overview of the terms of the Settlement and its benefits.

I. BACKGROUND

RCWD was formed in 1965 and provides water supply, wastewater collection and treatment, and water recycling services to over 130,000 people in an area encompassing 160

square miles in southwest Riverside County, California, including the City of Temecula and portions of the City of Murrieta. [See Figure 1.]



RCWD currently delivers 80,000 acre feet per year (AFY) for domestic, commercial, agricultural and landscape uses. Customers include a significant agricultural industry that produces avocados, citrus, and wine grape products, which add significantly to the local and regional economy. In addition, RCWD services residential, business and manufacturing customers in Temecula and Murrieta and unincorporated areas of Riverside County. Larger employers in the service area include Abbott Vascular, International Rectifier, and Professional Hospital Supply. There is a wide range of local businesses, which thrive on tourism in our wine region, historic old town, and the Pechanga casino and hotel. But the region has suffered from the impacts of the housing downturn, as Riverside was once the third fastest growing county in the nation.

The District has 940 miles of water mains, 36 storage reservoirs, one surface reservoir (Vail Lake), 47 groundwater wells, and over 40,000 service connections. RCWD's existing water supplies include: Groundwater - Temecula and Pauba groundwater basins; Imported Water – MWD's Colorado River Aqueduct and the State Water Project; Recycled Water – Santa Rosa Water Reclamation Facility operated by RCWD, and the Temecula Valley Regional Water Reclamation Facility operated by EMWD.

Local water is obtained from sources within the Santa Margarita Watershed that encompass an area of approximately 750 square miles (475,000 acres) in southwest Riverside and north San Diego Counties in Southern California. Drainage in the basin is provided by the Santa Margarita River with flows from Temecula and Murrieta Creeks in the upper watershed. Major tributaries of Temecula Creek include Pechanga Creek and Wilson Creek via Vail Lake. Major tributaries of Murrieta Creek include Saint Gertrudis, Tocalota (via Lake Skinner), and Warm Springs Creeks. After the convergence of Temecula and Murrieta Creeks, other major tributaries to the River include De Luz, Sandia, Rainbow, and Fallbrook Creeks. Major lakes in the watershed include Skinner, Vail, Diamond Valley, and O'Neil Lakes. A coastal lagoon lies at the mouth of the River on the U.S. Marine Corps Base (USMC) at Camp Pendleton.

RCWD also manages the water storage rights in Vail Lake, which was created through the construction of the Vail Dam on Temecula Creek in 1949. Storm runoff stored annually in Vail Lake is released during subsequent months into groundwater recharge basins. Specific water rights in the watershed have not been adjudicated. However, the Stipulated Judgment assigns two-thirds of all natural waters to the United States of America (Camp Pendleton) and the remaining one-third to RCWD. Rights to utilize the water and groundwater stored in Vail Lake are defined in the 1940 Stipulated Judgment in the case of Santa Margarita versus Vail and Appropriations Permit 7032 issued by the State Water Resources Control Board. RCWD has a surface water storage permit in Vail Lake for up to 40,000 AF from November 1 to April 30. During these months, RCWD releases available water from Vail Lake to the Valle de los Caballos spreading basins, about 1.5 miles downstream, for groundwater recharge. From May through October, existing State permits prohibit storage and require inflow to pass through Vail Lake to Temecula Creek and ultimately to the lower watershed. RCWD must meet Gorge flow requirements as set by the Cooperative Water Resource Management Agreement between the United States on behalf of Camp Pendleton and RCWD. RCWD currently meets this requirement by discharging untreated water from MWD into Murrieta Creek.

Eight sub-basins within the Temecula and Pauba Basins provide RCWD with groundwater. The amount of groundwater produced annually from these basins varies depending on rainfall, recharge, and the amount and location of pumping. However, besides RCWD, others pump from the eight sub-basins, including: Western Municipal Water District (WMWD), the Pechanga, and other private pumpers. Groundwater extractions are under court oversight in the watershed. Groundwater basins in the upper watershed are not adjudicated.

Multiple studies have indicated that the Santa Margarita Watershed is the largest and best example of a riparian and estuarine system in Southern California. The watershed contains a variety of nearly undisturbed natural habitats including chaparral-covered hillsides, riparian woodlands, and coastal marshes, drained by the Santa Margarita River, which is formed near the

City of Temecula at the confluence of the Temecula and Murrieta Creek systems. Upstream, the Temecula and Murrieta Creeks are fed by a number of smaller tributaries. Downstream, the Santa Margarita River flows into San Diego County and through the USMC base at Camp Pendleton, emptying into the ocean at the Santa Margarita lagoon.

The watershed currently faces significant water supply issues and challenges, which are common throughout Southern California, including rapid population and water demand growth; significant reliance on imported water supply; and water quality issues arising from excessive inputs of nutrients from a variety of sources including agriculture, nursery operations, municipal wastewater discharges, urban runoff, septic systems, and golf course operations. Surface water and groundwater supporting surface water in the Santa Margarita Watershed have been under some form of court jurisdiction since 1928. A “Watermaster” has been assigned by the United States District Court for the Southern District of California to oversee all water uses within the Santa Margarita Watershed.

RCWD continually faces increasing water demands, variability in water supplies due to successive years of drought and imported water shortages, and water quality challenges necessitating more creative and innovative solutions to meet the water needs of its customers. RCWD receives imported water (treated and untreated) through six Metropolitan Water District of Southern California (MWD) water turnouts (three in EMWD’s service area and three in WMWD’s service area). To further address the supply issues in the region, RCWD is in the process of implementing its Water Reclamation Project, which will substantially expand the use of recycled and raw water in Riverside County in order to meet local water demands through 2050. In 2009, Congress passed the Reclamation Wastewater and Groundwater Study and Facilities Act (Act) amending Title XVI to include funding for RCWD in the “design, planning, and construction of permanent facilities for water recycling, demineralization, and desalination, and distribution of non-potable water supplies in Southern Riverside County, California.” (43 U.S.C. § 390h-32.) Under the Act, the federal share of the costs of RCWD’s project “shall not exceed 25 percent of the total costs of the project or \$20,000,000, whichever is less.” The Water Reclamation Project is funded in part under the Title XVI Water Reclamation and Reuse Program administered by the United States Department of the Interior Bureau of Reclamation. (43 U.S.C. § 390h-32.)

RCWD’s Title XVI funding will be used to fund a portion of the Water Reclamation Project consisting of the following three components:

- Component One – RCWD will construct a 48-inch pipeline to transport raw water from MWD’s aqueduct system to Vail Lake in order to store more water during low demand and high supply winter periods.
- Component Two – RCWD will convert its east side agricultural delivery system to a combined recycled and raw water system to allow recycled water, untreated water stored in Vail Lake, or raw water purchased from MWD to be used for agricultural irrigation. RCWD will build a delivery system to transport water from Vail Lake in order to convert vineyard and citrus agriculture to non-potable water and link the east side non-potable system to recycled water.

- Component Three – RCWD will construct a demineralization/desalination plant to lower total dissolved solids (TDS) levels of recycled water from EMWD’s wastewater reclamation facility below 500 parts TDS and convert RCWD’s west side agricultural delivery system to a non-potable system. Lowering the TDS limits below 500 parts TDS will allow RCWD to utilize recycled water that is currently being disposed of in the Santa Ana River (RCWD cannot reuse this water because the current level of 750 parts TDS exceeds State Water Control Board limits of 500 parts TDS). RCWD will run 50 percent of the recycled water through a micro filtration and reverse osmosis process that will lower TDS levels below the current basin standard of 500 parts TDS and will allow up to 16,000 AF of recycled water to be retained in basin annually for reuse.

The purpose and intent of the Title XVI funds received for the Water Reclamation Project is separate from the federal contribution under the proposed Settlement. This issue is discussed below in greater detail.

II. OVERVIEW OF SETTLEMENT

The Settlement would assist in the resolution of decades of litigation initiated in 1951 by the United States regarding water rights in the Santa Margarita River Watershed (*United States v. Fallbrook Public Utility District et al.*, Civ No. 3:51-cv-01247 (S.D.C.A)). The *Fallbrook* litigation eventually expanded to include all water users within the Santa Margarita Watershed, including three Indian Tribes (the Pechanga Band of Luiseño Mission Indians, the Ramona Band of Cahuilla Indians, and the Cahuilla Band of Indians). The United States, as trustee, represents all three Tribes before the *Fallbrook* Court.

In Interlocutory Judgment 41, 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. However, the Court developed “prima facie” findings with respect to each of the Tribe’s quantifiable water rights. The prima facie evidence established the reserved right and set forth the number of acres to which the reserved water right applied. The Pechanga believe that, based on the prima facie evidence established in Interlocutory Judgment 41, the Pechanga reserved water rights are at least 4,994 AFY. The Pechanga requested that the Secretary of the Interior seek settlement of the water rights claims involving the Pechanga, the United States, and non-Federal third parties through a Federal Negotiation Team formed in August 2008. Consistent with the United States’ policy to resolve Indian water rights settlements expeditiously whenever possible, in less than two years the parties have managed to reconcile their disagreement over the Pechanga’s water rights claims.

Under the terms of the Settlement, RCWD has agreed to allocate an additional 25 percent of the Wolf Valley Groundwater Basin to the Pechanga. Under the current interim settlement, RCWD and the Pechanga share equally the groundwater in Wolf Valley. This amounts to approximately 525 acre feet under the safe yield. In exchange, RCWD will receive the right to purchase between 300 and 475 AFY of recycled water, which the Pechanga are currently entitled to purchase from EMWD, depending on availability. In addition, the Settlement includes a

number of additional components as consideration for RCWD undertaking other commitments to assist in the delivery of imported water to the Pechanga and as the Pechanga's share of facilities to address water quality issues in the Wolf Basin.

Commitment for Interim and Permanent Capacity

In addition to resolution of the water rights, RCWD has agreed to become a partner in the delivery of imported water to the Pechanga. Under the proposed settlement, RCWD will wheel imported water made available to the Pechanga under an Extension of Service Area Agreement (ESAA) with MWD. The imported water will be delivered through MWD's existing San Diego Pipeline No. 3 Bypass to MWD's EM-20 Turnout (referred to as the ESAA delivery point), then to an existing portion of RCWD's 1305 Pressure Zone Distribution System, and finally to a delivery point at the Pechanga Reservation to the south of RCWD's service area.

Several alternatives were evaluated to move water from MWD's ESAA delivery point to the Pechanga. RCWD offered to provide capacity in its 1305 Pressure Zone Distribution System should plans for future recycled water system expansion envisioned in its Integrated Resources Plan move forward. If this plan does not move forward, RCWD will need to expand imported water delivery capacity to serve its own needs or serve increased delivery capacity needs through pursuit of alternative means. Thus, in the Settlement, the capacity was valued based on the proportional cost of creating available 1305 Zone peak delivery capacity relative to the cost of a portion of the proposed recycled water project.

Because completion of the recycled water expansion project is contingent upon other factors, to address the Pechanga's concerns that the Title XVI infrastructure may not be completed within the necessary time frame (if at all) and since RCWD is in a position to determine whether or not capacity could be created by other means at a date certain, the Settlement provides for RCWD to deliver both interim and permanent capacity to the Pechanga. RCWD will provide interim capacity to the Pechanga for delivery of imported water beginning on the date that deliveries commence under the ESAA in exchange for \$1 million. RCWD will provide permanent capacity to the Pechanga as soon as RCWD's distribution system is physically capable of providing such capacity but no later than five years after the Secretary publishes its findings regarding the Settlement. RCWD will receive \$16.9 million (plus interest) for providing permanent capacity to the Pechanga. Thus, in exchange for its commitment to provide interim and permanent capacity, RCWD will receive a total of \$17.9 million. In the event RCWD does not provide such capacity, the funds would be available to the Pechanga to construct the facilities necessary to deliver the imported water from MWD's EM-20 Turnout to the Reservation. The estimated cost of these facilities is in excess of \$23 Million.

Share of Cost to Construct Recycled Water Pond

The Settlement provides for \$2.5 million as the Pechanga share of the costs for RCWD to design and construct an additional recycled water storage pond. Funding for the recycled water pond is part of RCWD's agreement to reduce its share of the safe yield of the Wolf Valley Groundwater Basin from 50 percent to 25 percent (approximately 525 AFY of the current total safe yield of 2,100 AFY). In exchange, RCWD will receive the Pechanga's right to purchase

recycled water from EMWD. The recycled water pond funding is needed to enable RCWD to actually use the EMWD recycled water it is entitled to receive under the settlement. In other words, regardless of whether the larger Title XVI project goes forward, RCWD will need to complete this pond to utilize the recycled water it receives as part of the Settlement. As such, the funding that RCWD would receive under the Settlement is entirely separate from any funding it receives under Title XVI for the recycled water expansion portion of the Water Reclamation Project.

Share of Cost to Construct Demineralization & Brine Disposal Project

Under the Settlement, RCWD will receive \$4.46 million as the Pechanga contribution for a demineralization and brine disposal project. The federal contribution serves as the Pechanga share of the costs associated with the design and construction of the facilities. The facilities are needed to address salinity management and brine disposal issues resulting from the use of recycled water in the Wolf Valley Groundwater Basin, including the Pechanga's use of recycled water for its landscape and golf course. Thus, the need for the project is, in part, based on projected recycled water used by the Pechanga.

RCWD's receipt of these funds under the Settlement is contingent upon completion of the project in a manner that lowers the salinity of demineralized recycled water received by the Pechanga from EMWD. In the event RCWD does not complete the demineralization and brine disposal project within five years after the Secretary publishes findings regarding the Settlement, then the funds would be made available to the Pechanga for an alternative salinity management solution. Thus, the purpose of the funding received by RCWD under the Settlement for the demineralization and brine disposal facilities is intended to address the Pechanga's share of the cost of dealing with water quality issues in the basin and is distinguishable from and separate from the Title XVI funding allocated to RCWD for the Water Reclamation Project.

In conclusion, none of the funds RCWD would receive under the Settlement are duplicative of funds it has or will receive under Title XVI as part of the Water Reclamation Project. Instead, the funds anticipated to be received by RCWD under the proposed Settlement Agreement are in exchange and consideration for its settlement of water rights and additional commitments to assist in the delivery of imported water to the Pechanga and as the Pechanga's share of costs associated with addressing water quality issues in the basin.

The Settlement will bring closure to disputed water rights and provide for mutual waivers of claims for water rights in the Santa Margarita River Watershed to prevent future disputes between the parties over the Pechanga water rights claims. The Settlement is beneficial for all parties involved in that it promotes a reliable water supply for the Pechanga by incorporating it into RCWD's water distribution system, improves the quality and reliability of recycled and groundwater supplies for RCWD, and fosters a regional solution to the Pechanga's water rights claims by incorporating EMWD and MWD. It is important to note—especially considering current fiscal constraints—that the federal monetary contribution of \$50 million to the Settlement is relatively modest compared to other recent Indian water rights settlements. The Settlement would also avoid many additional years of litigation at great expense to the parties and the uncertainty concerning the availability of scarce water supplies in the region.

III. CONCLUSION

Thank you again, Madam Chairwoman, Mr. Ranking Member, and other Members of the Subcommittee for the opportunity to present this important Indian water rights settlement, which will significantly improve the reliability and quality of local water supplies for RCWD and the Pechanga. RCWD would greatly appreciate your support of H.R. 5413 to move the bill one step closer to final approval.