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104TH CONGRESS }
2d Session }

SENATE

{ REPORT
104-360

PROVIDING FOR THE SETTLEMENT OF ISSUES AND CLAIMS RELATED TO
THE TRUST LANDS OF THE TORRES-MARTINEZ DESERT CAHUILLA INDI-
ANS, AND FOR OTHER PURPOSES

SEPTEMBER 3, 1996.—Ordered to be printed

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

REPORT

[To accompany S. 1893]

The Committee on Indian Affairs, to which was referred the bill (S. 1893) to provide for the settlement of issues and claims related to the trust lands of the Torres-Martinez Desert Cahuilla Indians, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 1893 is to provide for the settlement of issues and claims related to the trust lands of the Torres-Martinez Desert Cahuilla Indians of California.

BACKGROUND

The Torres-Martinez Desert Cahuilla Indians have lived in the Coachella Valley area of Southern California for hundreds of years. The Tribe currently numbers more than 500 members, who live on or in the vicinity of the more than 40 separate land parcels that comprise the Torres-Martinez Reservation.

The Torres-Martinez Indian Reservation was created in 1876 in Coachella Valley north of the Salton Sink. In 1891, an Executive Order expanded the original 640-acre reservation by about 12,000 acres. Between 1905 and 1907, flood waters of the Colorado River filled the Salton Sink, creating the Salton Sea and inundating

about 2,000 acres of the 1891 reservation lands. In 1909, a Secretarial Order transferred another 12,000 acres of land to the Reservation. About 9,000 acres of these lands were submerged under the Salton Sea; however, it was expected at the time of the transfer that the Salton Sea would recede from these lands within 25 years. Contrary to expectations, the Salton Sea did not recede, in large part due to natural runoff and drainage water flowing into it from the irrigation systems of the Imperial, Coachella, and Mexicali Valleys. This irrigation drainage was facilitated by various actions by the federal government, including construction of the Coachella Canal in the 1940's. Currently, 11,800 acres of the Tribe's 25,000-acre reservation are either under water or are not irrigable due to lack of proper drainage.

In 1982, the United States brought an action in trespass in the Federal District Court of Southern California on behalf of the Tribe and its affected allottee landowners against the Imperial Irrigation District and the Coachella Valley Water District. This suit sought damages related to the inundation of Indian lands and injunctive relief against further flooding of those lands. On August 25, 1992, the court entered a final judgment which found the two districts liable for trespass but denied the United States' request for injunctive relief and ejectment. The Court ordered the two districts to pay the Tribe a total of \$3,008,602 in past and future damages in lieu of a permanent injunction against continued flooding of the submerged lands.

The United States, the two districts and the Tribe appealed the District Court's decision to the Ninth Circuit Court of Appeals. Subsequently, the Interior and Justice Departments entered into negotiations with the Tribe and the two districts in an effort to avoid a lengthy and costly appellate process and finally to resolve the dispute. Another objective of the negotiations was to resolve similar claims brought by the Tribe and affected allottees in a separate lawsuit against the United States and the two districts. To facilitate settlement negotiations, the court stayed action on the appeals as well as initial action on the Indians' separate suit.

On June 18, 1996, after months of difficult negotiations, representatives of the United States, the Tribe, the Imperial Irrigation District and the Coachella Valley Water District signed a Settlement Agreement that resolves their conflicting claims and provides for dismissal of litigation. Enactment of Federal legislation is necessary to ratify this Agreement and to authorize the actions and appropriations necessary for its implementation. Accordingly, on June 16, 1996, Representative Sonny Bono (R-CA) introduced H.R. 3640 in the House of Representatives, and on June 18, 1996, Senators Diane Feinstein (D-CA) and Barbara Boxer (D-CA) introduced S. 1893 in the Senate.

SUMMARY OF SETTLEMENT PROVISIONS

S. 1893 ratifies the Settlement Agreement and provides for its implementation. The bill provides for the establishment of trust accounts in the U.S. Treasury for the benefit of the Tribe and its affected allottee landowners. It authorizes payment of \$10,200,000 in federal funds—\$4.2 million from the Justice Department's Judgment Fund and \$6 million in appropriated funds, to be paid into

the tribal and allottee trust accounts. Coachella Valley Water District will pay \$388,000 and Imperial Irrigation District will pay \$3,671,000 into these accounts, making the settlement payments total \$14,200,000.

The Settlement Agreement and S. 1893 provide for the Interior Department to take into trust status up to 11,800 acres of land (an amount equal to the flooded area) purchased or otherwise acquired by the Tribe within two separate acquisition areas located roughly within the west and east boundaries of the Coachella Valley, subject to certain conditions. Trust acquisitions within the secondary area are limited to 640 acres and must be consolidated into not more than two separate parcels. Trust acquisitions in the primary area are limited to 11,800 acres minus the number of acres acquired in the secondary acquisition area.

The settlement further provides that land acquired by the Tribe in the secondary acquisition area will be taken into trust only if the governing body of a city in whose incorporated area the land is located, or Riverside County if the land is located in an unincorporated area, does not object to such trust acquisition. The same restriction will apply to land acquired by the Tribe within the boundaries of an incorporated city or an unincorporated area located in the primary acquisition area. Lands located within either area and situated within a one mile radius of the reservation lands of any other Indian tribe will not be eligible for conveyance into trust absent the consent of the affected Indian tribe.

The Tribe's right to conduct gaming on lands taken into trust pursuant to the settlement is limited and restricted to one gaming operation on one physical site. Any gaming on these lands must be conducted consistent with the requirements of the Indian Gaming Regulatory Act (25 U.S.C. 2701; 102 Stat. 2467). Lands taken into trust for the Tribe shall be considered as if they were acquired in 1909 except with respect to water rights. Lands acquired by the Tribe will be subject to all valid water rights existing at the time of acquisition, and the Tribe will obtain all valid water rights appurtenant to acquired lands.

The settlement also provides that the Tribe and the United States will convey to the water districts a permanent flowage easement over all Indian trust lands (approximately 11,800 acres), and all Federal lands (approximately 110,000 acres) located within and below the minus 220' contour of the Salton Sink.

LEGISLATIVE HISTORY

S. 1893 was introduced by Senators Diane Feinstein (D-CA) and Barbara Boxer (D-CA) on June 19, 1996. The Committee on Indian Affairs held a hearing on the bill on July 18, 1996, at which supporting testimony was received from Senator Feinstein, Representative Sonny Bono (R-CA), Michael Anderson, Deputy Assistant Secretary for Indian Affairs, Bureau of Indian Affairs, Mary Belardo, Chairwoman, Torres-Martinez Tribe, Tom Levy, General Manager, Coachella Valley Water District, and William R. Condit, President, Board of Directors, Imperial Irrigation District. The Committee also received resolutions or letters of support for the legislation from the Riverside County Board of Supervisors, the City of Coachella, the City of Desert Hot Springs, Cathedral City,

the Agua Caliente Band of Cahuilla Indians, and the Augustine, Cahuilla, Jamul, Manzanita, Morongo, Soboba, and Twenty-Nine Palms Bands of Mission Indians. Four of these Indian bands currently operate gaming facilities in the Coachella Valley. The Committee also received letters from the Coachella Valley. The Committee also received letters from the City of Palm Desert and the City of Indian Wells expressing conditional support for the settlement, and letters from the Cabazon Band of Mission Indians, which also operates a gaming facility in the Coachella Valley, opposing the trust land selection provisions of S. 1893.

In the House of Representatives, Congressman Sonny Bono (R-CA) introduced H.R. 3640 on June 16, 1996. The bill was referred to the Committee on Resources. On June 19, 1996, the Subcommittee on Native American and Insular Affairs held a hearing on H.R. 3640. The Full Committee on Resources marked up and ordered the bill favorably reported to the House of Representatives on August 1, 1996.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On July 24, 1996, the Committee on Indian Affairs, in an open business session, considered S. 1893 and ordered it reported, without amendment, with a recommendation that the bill be passed.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section cites the short title of S. 1893 as the “Torres-Martinez Desert Cahuilla Indians Claims Settlement Act of 1996”.

Section 2. Congressional findings and purpose

This section sets forth Congressional findings and purpose. Subsection (a) states findings and declarations that:

(1) in 1876, 640 acres north of the Salton Sink in the Coachella Valley, California, were designated as the Torres-Martinez Indian Reservation; in 1891, an Executive Order issued pursuant to the Mission Relief Act of 1891 added another 12,000 acres to the reservation;

(2) between 1905 and 1907, Colorado River flood waters filled the Salton Sink, creating the Salton Sea and inundating approximately 2,000 acres of the 1891 reservation lands;

(3) in 1909, a Secretarial Order, issued pursuant to a 1907 amendment to the Mission Relief Act, added 12,000 acres of land, 9,000 of which were then submerged under the Salton Sea, to the reservation, with the expectation that the sea would recede from the submerged acreage within 25 years;

(4) a majority of the lands added to the reservation in 1909 remain inundated due in part to the flowage of natural runoff and drainage water from irrigation systems of the Imperial, Coachella, and Mexicali Valleys into the Salton Sea;

(5) in addition to the inundated lands, other tribal and individual Indian lands located on the perimeter of the Salton Sea are not irrigable due to the lack of proper drainage;

(6) in 1982, the United States, in its own right and on behalf of the Tribe and Allottees, brought an action in trespass seeking dam-

ages and injunctive relief (the United States Suit) against the Imperial Irrigation District (IID) and Coachella Valley Water District (CVWD);

(7) in 1992, a federal court entered judgment in the United States Suit requiring CVWD to pay \$212,908, and IID to pay \$2,795,694, in past and future damages to the Tribe in lieu of a permanent injunction against continued flooding of submerged lands;

(8) the United States, CVWD and IID and the Tribe filed notices of appeal regarding the United States Suit;

(9) the Court of Appeals for the Ninth Circuit stayed further action on appeals pending the outcome of settlement negotiations;

(10) in 1991, the Tribe, for itself and for an individual Allottee in her own right and as class representative of all other affected Indian allottees, brought suit (the Indian Suit) against the two water districts;

(11) the Indian Suit was stayed by the court to facilitate settlement negotiations;

Subsection (b) states the purpose of the bill is to facilitate and implement the Settlement Agreement reached by the United States, the Tribe, CVWD and IID.

Section 3. Definitions

This section provides definitions of the terms “allottees”; “permanent flowage easement”; “Salton Sea”; “Secretary”; “Settlement Agreement”; and “Tribe”.

Section 4. Ratification of Settlement Agreement

This section states that the United States approves, ratifies and confirms the Settlement Agreement.

Section 5. Settlement funds

Subsection (a) provides for one tribal and two allottee settlement trust fund accounts to be established in the United States Treasury for the Tribe and Allottees, deposits into which shall be available to the Secretary for distribution to the Tribe and Allottees in accordance with subsection 5(c).

Subsection (b) provides for CVWD to pay \$337,908 and IID to pay \$3,670,694 to the United States for the benefit of the Tribe and Allottees; for such payments to be allocated to the three trust fund accounts pursuant to the Settlement Agreement; for the United States to pay \$4,200,000 from the Department of Justice Judgment Fund and \$6,000,000 to be appropriated by Congress into the three trust fund accounts; for CVWD or IID to pay an additional amount on any delinquent payment; and for CVWD, IID and the United States to be severally, not jointly, liable for its respective obligations to make payments under this subsection (b).

Subsection (c) requires the Secretary to administer the three trust fund accounts established under subsection (a) in accordance with the terms and conditions of the Settlement Agreement.

Section 6. Trust land acquisition and status

Subsection (a) provides that the Tribe shall have the right to acquire and to have conveyed into trust status up to 11,800 acres of

land in accordance with the Settlement Agreement, and that such lands shall be considered as if they were acquired in 1909 except with respect to water rights.

Lands may be acquired in a primary area, next to existing Tribal land, and a secondary acquisition area, north of the reservation. Not more than 640 acres of the total 11,800 acres can be acquired in the secondary acquisition area. The Secretary shall not convey proposed trust lands located in the primary acquisition area into trust if by majority vote of the governing body of the city in whose incorporated city boundaries the proposed trust lands lie objects to the proposed acquisition and notifies the Secretary of such objection within 60 days of receiving the Tribe's proposal.

Lands in the secondary acquisition area shall not be conveyed into trust if by majority vote of either the city in whose incorporated boundaries the proposed trust lands lie, or of the governing body of Riverside County (if the proposed trust lands do not lie within incorporated boundaries) objects to the proposed acquisition and notifies the Secretary within 60 days of receiving the Tribe's proposal.

Subsection (b) provides that the Tribe may conduct gaming on only one site within the lands acquired under this section using the acquisition process established under the Settlement Agreement.

Subsection (c) provides that all lands acquired by the Tribe shall be subject: (1) to all valid water rights existing at the time of acquisition; (2) to the paramount rights of any person who recharges or stores water in a groundwater basin; and (3) to all valid water rights appurtenant to the land at the time immediately prior to tribal acquisition.

Section 7. Permanent flowage easements

This section provides that the United States, as trustee for the Tribe and individual Indian allotment owners, and the Tribe shall convey to the CVWD and to the IID a permanent flowage easement as to all Indian trust lands (approximately 11,800 acres) located within and below the minus 200-foot contour of the Salton Sink. It further provides that the United States, in its own right, shall convey to CVWD and the IID a permanent flowage easement as to all Federal lands (approximately 110,000 acres), located within and below the minus 200-foot contour of the Salton Sink, all in accordance with the terms and conditions of the Settlement Agreement.

Section 8. Satisfaction of claims, waivers, and releases

This section states that the benefits available to the Tribe and allottees under the Settlement Agreement and this Act shall constitute full and complete satisfaction of all claims by the Tribe and the allottees arising from or related to the inundation and lack of drainage of tribal and allottee lands. The section states that the United States approves and confirms the releases and waivers required by the Settlement Agreement and this Act.

Section 9. Miscellaneous provisions

Subsection (a) provides that nothing in the Act or the Settlement Agreement shall affect the eligibility of the Tribe or its members

for any federal program or diminish the trust responsibility of the United States to the Tribe and its members.

Subsection (b) provides that no payment made pursuant to this Act shall result in the reduction or denial of any Federal services or programs to the Tribe or its members to which they are entitled or eligible because of their status as a federally recognized Tribe or member thereof.

Subsection (c) provides that except for rights specially waived in the Act or the Settlement Agreement, nothing in this Act shall affect or diminish any right to which the Tribe is entitled under existing law.

Subsection (d) provides that none of the moneys to be paid to or lands acquired by the Tribe or allottees under this Act shall be taxable under federal or state law.

Subsection (e) states that the Settlement Agreement may be amended in accordance with its own terms.

Section 10. Authorization of appropriations

This section authorizes the appropriation of such sums as are necessary to carry out this Act.

Section 11. Effective dates

This section provides that this Act shall become effective on the date of enactment, except that Sections 4, 5, 6, 7, and 8 shall take effect on the date on which the Secretary determines that the Tribe, CVWD, and IID have agreed to the Settlement Agreement and the provisions of this Act, and that the Tribe has executed the waivers and releases required by the Settlement Agreement and this Act.

COST AND BUDGETARY CONSIDERATION

The cost and budgetary impact of S. 1893, as evaluated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 9, 1996.

Hon. JOHN MCCAIN,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1893, the Torres-Martinez Desert Cahuilla Indians Claims Settlement Act.

Enacting S. 1893 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1893.
2. Bill title: Torres-Martinez Desert Cahuilla Indians Claims Settlement Act.
3. Bill status: As ordered reported by the Senate Committee on Indian Affairs on July 24, 1996.
4. Bill purpose: S. 1893 would ratify a settlement agreement entered into by the Department of Justice, the Imperial Irrigation District, the Coachella Valley Water District, and the Torres-Martinez Desert Cahuilla Indian Tribe. The settlement agreement is designed to provide compensation to the tribe for the flooding of reservation lands and relief against further inundation of those lands. According to the agreement, the tribe would receive monetary compensation from the United States and the two water districts. In addition, the Interior Department would take into trust up to 11,800 acres of land acquired by the tribe, and the tribe would be permitted to conduct gaming on lands taken into trust pursuant to the agreement.
5. Estimated cost to the Federal Government: The bill would authorize an appropriation of \$6 million to the tribe and its member landowners. Assuming enactment by the end of fiscal year 1996 and appropriation of the funds for fiscal year 1997, CBO estimates that the tribe would spend out the money over the next three years.

(By fiscal years, in millions of dollars)

	1997	1998	1999	2000	2001	2002
SPENDING SUBJECT TO APPROPRIATION						
Authorization level	6
Estimated outlays	3	2	1

The costs of this bill fall within budget function 450.

The tribe also would receive a payment of \$4.2 million from the Claims and Judgments Fund. This payment would not represent a new obligation of the U.S. government, but would simply satisfy a commitment already made. That commitment stems from court action begun in 1982 and ultimately resolved by the settlement agreement negotiated by the parties to two separate suits, both of which have been suspended pending the outcome of such negotiations. The agreement entered into by the Department of Justice, the water districts, and the tribe calls for payment by the U.S. government of \$4.2 million to the tribe. (The agreement also calls for payments by the two water districts to the tribe). Because the settlement agreement commits the U.S. government to the \$4.2 million payment, enacting S. 1893 would not cause any increase in direct spending from the Claims and Judgments Fund.

6. Basis of estimate: Funds that the tribe would receive may be spent on attorney fees, per capita payments, land acquisition, and other activities as stipulated by the settlement agreement. CBO expects that some of the funds would be spent quickly, while other activities such as the purchase of land would take longer. As a result, we estimate that about one-half of the \$6 million would be spent in the year that funds are appropriated, with the remainder spread over the subsequent two years.

7. Pay-as-you-go considerations: None.

8. Estimated impact on State, local, and tribal governments: S. 1983 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) and would impose no costs on state, local, or tribal governments. Any costs resulting from the settlement agreement covered by this bill would be incurred voluntarily by state, local, and tribal governments as parties to the agreement.

9. Estimated impact on the private sector: This bill would impose no new private-sector mandates as defined in Public Law 104-4.

10. Previous CBO estimate: None.

11. Estimate prepared by: Federal Cost Estimate: Rachel Robertson. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Amy Downs.

12. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1893 will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The statement presented by the Department of the Interior at the July 18, 1996 hearing is set forth below:

TESTIMONY OF MICHAEL ANDERSON, DEPUTY ASSISTANT SECRETARY OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman, I am here today on behalf of the Administration to testify in favor of S. 1893, which, if enacted, will ratify the June 18, 1996 settlement agreement resolving claims and issues related to lands held in trust by the United States for the benefit of the Torres-Martinez Indians. Before I begin, I would like to first thank you and the Committee for so promptly holding this hearing after the introduction of S. 1893. The resolution of this long-standing dispute between the tribe and two water districts in Southern California is long overdue and the Committee is to be commended for its efforts to implement the underlying agreement as is Senator Feinstein for her efforts in introducing S. 1893.

H.R. 3640, the House companion bill to S. 1893 introduced last month by Congressman Bono, is expected to be favorably voted out of the House Committee on Natural Resources within the next few days. Given the spirit of bipartisanship demonstrated by the House committee and reflected in the sponsorship of the two bills, we are confident that S. 1893 will receive the same broad support given to H.R. 3640. Indeed, everyone involved in the effort to reach a settlement of this matter has gone to great

lengths to secure this support of those parties who stand to be affected by implementation of the agreement. For its part, the Department of the Interior engaged in widespread discussions with federal, tribal and local governmental authorities on the impact of the settlement. Letters of support for the settlement have been received by each of the neighboring tribes to the Torres-Martinez reservation, with the exception of the Cabazon Tribe which was inadvertently omitted from the list of tribes contacted about the settlement. Since the hearing on this bill before the House Native American Affairs subcommittee, the Department has explained the settlement to officials of the Cabazon Tribe.

The Torres-Martinez Indian Reservation, located in the vicinity of the Salton Sink in the Coachella Valley, California, was first established by executive order in 1876 and enlarged under executive orders in 1891 and 1909. The origins of the dispute may be traced back to the years 1905 to 1907 when flood waters of the Colorado River filled the Salton Sink, inundating a portion of the Torres-Martinez Reservation and creating what is today known as the Salton Sea. At the time, it was expected that the water level of the Salton Sea would recede through the process of evaporation within a period of twenty five years and that previously flooded lands would dry out. However, due to natural runoff and agricultural drainage water from the Imperial, Coachella Valley and Mexicali irrigation systems that flow into the Salton Sea, approximately 11,800 acres of tribal and allotted lands were, and have remained, inundated from as early as 1924.

In 1982, the United States brought an action in trespass against the Imperial Irrigation District and Coachella Valley Water District on behalf of the Torres-Martinez Tribe. On August 25, 1992, the court entered a final judgment which found the irrigation districts liable for trespass but denied the United States' request for injunctive relief and ejectment. Subsequent to the judgment, the Department and the Department of Justice engaged in negotiations with the tribe and irrigation districts in an effort to correct what the agencies believe is an inequitable judicial result and to avoid a lengthy and costly appeal. A second objective of the settlement negotiations was the resolution of claims brought by the tribe in a separate lawsuit against the United States and the districts, as well as potential claims against the United States.

After several years of difficult and contentious negotiations among the parties and countless discussions with entities that stand to be affected by resolution of this historical wrong, the parties have reached a settlement which the Department believes is a significant step toward fulfilling the Torres-Martinez Tribe's quest for self sufficiency.

In its present form, S. 1893 accurately reflects the essential provisions of the settlement agreement negotiated and executed by the parties. In addition to approving, ratifying,

and confirming the settlement agreement in its entirety, the bill specifically provides for the following essential terms of the agreement:

Monetary contribution of approximately \$14 million from the U.S. and irrigation districts to the tribe. Of the \$10.2 million to be paid by the U.S., the bill authorizes a payment of \$4.2 million from the Judgment Fund and \$6 million from appropriated monies.

Subject to certain conditions specified in the bill and Agreement, the Department would take into trust up to 11,800 acres of land (any amount equal to the flooded area) purchased or otherwise acquired by the Tribe within two separate acquisition areas. The primary area of acquisition extends from the Riverside—Imperial County line north to just north of the thermal airport. The secondary acquisition area extends from the northern boundary of the primary area to just south of Cathedral City. Both areas lie roughly within the west and east boundaries of the Coachella Valley. Trust acquisitions within the secondary area is limited to 640 acres and must be consolidated into no more than two separate parcels. Trust acquisitions in the primary area would be limited to 11,800 acres minus the number of acres acquired in trust in the secondary acquisition area.

Land purchased or otherwise acquired by the Tribe in the secondary acquisition area would be taken into trust only if the local governing body or Riverside County did not object to such trust acquisition. The same restriction for taking land into trust would apply to land acquired by the Tribe within the boundaries of an incorporated city located in the primary acquisition area. In this regard, it is noted that both the Agreement and the bill are intended to provide the Tribe and local authorities the opportunity and flexibility required to reach agreements to address particular concerns related to taking land into trust. For instance, nothing in the bill prohibits the Tribe and a particular city from negotiating an agreement providing for the rights and obligations of each with regard to certain issues that may arise after the land is in trust. Such an agreement, properly entered into, would be an enforceable contract in a court of competent jurisdiction.

Lands located within either area and situated within a one mile radius of the reservation lands of any other Indian tribe would be eligible for conveyance into trust only with the consent of the affected Indian tribe.

The irrigation districts would be granted an easement in perpetuity as to all lands within the

– 220' contour of the Salton Sink. The Agreement would not affect the ability of the United States to initiate actions to enforce applicable water rights or environmental laws.

The Tribe's right to conduct gaming on lands taken into trust pursuant to the Agreement is limited and restricted to one gaming operation on one physical site.

Any and all rights which the Tribe now enjoys under existing law are not affected by the bill or the provisions of the Agreement.

This concludes my statement. I will be happy to answer any questions the Committee may have.

CHANGES IN EXISTING LAW

S. 1893, as reported, makes no changes in existing law.

APPENDIX I

The text of the Agreement of Compromise and Settlement Concerning Claims to Lands of the United States Within and on the Perimeter of the Salton Sea Drainage Reservoir Held in Trust for the Torres-Martinez Indians, dated June 18, 1996, is set forth below:

AGREEMENT OF COMPROMISE AND SETTLEMENT CONCERNING CLAIMS TO LANDS OF THE UNITED STATES WITHIN AND ON THE PERIMETER OF THE SALTON SEA DRAINAGE RESERVOIR HELD IN TRUST FOR THE TORRES-MARTINEZ INDIANS

This Agreement of Compromise and Settlement (hereinafter "Agreement") is made this 18th day of June, 1996 between the United States of America, in its own right and as Trustee on behalf of the Torres-Martinez Band of Mission Indians and affected Indian allotment owners (hereinafter "United States"), acting through the Secretary of the Interior (hereinafter "Secretary"); the Torres-Martinez Desert Cahuilla Indians (hereinafter "Tribe"); the Imperial Irrigation District (hereinafter "IID"); the Coachella Valley Water District (hereinafter "CVWD"); and Mary Resvaloso, in her own right and as class representative of all other affected Indian allotment owners; sometimes referred to collectively as the "Parties."

RECITALS

WHEREAS, the Torres-Martinez Indian Reservation (hereinafter "Reservation"), located in the Coachella Valley, California, at the northern end of the Salton Basin, was established by Executive Order on May 15, 1876, reserving a single section (640 acres) of land for the use and benefit of the Tribe; and

WHEREAS, the Reservation was expanded by an Executive Order issued on December 19, 1891, pursuant to the Mission Indian Relief Act of 1891, adding to the Reservation about 12,000 acres of lands situated between the mountain foothills and the Salton Sink which at its lowest point measures at approximately 275 feet below sea level; and

WHEREAS, from 1905–1907, the flood waters of the Colorado River filled the Salton Sink, creating the Salton Sea and inundating a portion of the 1891 reservation lands; and

WHEREAS, in 1909 an additional 12,000 acres of land, 9,000 of which were then submerged under the Salton Sea, were added to the Reservation under an Executive Order issued pursuant to a 1907 amendment of the Mission Indian Relief Act; and

WHEREAS, due to receding water levels in the Salton Sea through the process of evaporation at the time of the second en-

largement of the Reservation in 1909, there were some expectations that the Salton Sea would recede within a period of 25 years; and

WHEREAS, the United States, the Tribe and the affected Indian allotment owners contend that agricultural drainage waters from the Imperial, Mexicali and Coachella Valleys irrigation systems flow into the Salton Sea, and that these waters commingle with natural runoff and precipitation causing both inundation of Reservation and allottee-owned lands under the Salton Sea (approximately 11,800 acres) and damages to Reservation and allottee-owned lands on or near the perimeter of the Salton Sea (approximately 4,700 acres) due to saturation (hereinafter “perimeter lands”); and

WHEREAS, in 1982, the U.S. brought an action in trespass entitled *United States of America, in its own right and on behalf of Torres-Martinez Band of Mission Indians and the Allottees therein v. The Imperial Irrigation District and Coachella Valley Water District*, Case No. 82-1790 K (M) (hereinafter “U.S. Suit”) on behalf of the Torres-Martinez Indian Tribe and affected Indian allottees against IID and CVWD for past damages related to the inundation of Reservation and allottee-owned lands and injunctive relief to prevent future discharge of water on such lands; and

Whereas, on August 20, 1992, the Federal District Court, Southern District of California entered a judgment in the U.S. Suit requiring CVWD to pay \$70,238.41 in past damages and \$142,670 in future damages for a total of \$212,908.41 and IID, \$940,984.33 in past damages and \$1,854,710 in future damages, for a total of \$2,795,694.33, resulting in a combined total of \$3,008,608.74; and

Whereas, the United States, IID and CVWD have filed notices of appeal with United States Court of Appeals for the Ninth Circuit from the district court’s judgment in the U.S. Suit (No’s. 93-55389, 93-55398 and 93-55402) and the Tribe has filed a notice of appeal from the district court’s denial of its motion to intervene as a matter of right (No. 92-55129);

Whereas, the Court of Appeals for the Ninth Circuit has stayed further action on the appeals pending the outcome of settlement negotiations; and

Whereas, in 1991, the Tribe brought its own lawsuit, *Torres-Martinez Desert Cahuilla Indians, et al., v. Imperial Irrigation District, et al.*, Case No. 91-1670 J (LSP) (hereinafter “Indian Suit”) in the United States District Court, Southern District of California against the two districts, and amended the complaint to include as an additional plaintiff, Mary Resvaloso, in her own right and as class representative of all other affected Indian allotment owners; and

Whereas, the *Indian Suit* has been stayed by the District Court to facilitate settlement negotiations.

Whereas, The United States, the Tribe, IID, CVWD and Mary Resvaloso on behalf of all affected Indian allotment owners, believe it is in their best interests to enter into this Agreement as a compromise and final settlement of all issues and claims in both the *U.S. Suit* and the *Indian Suit*;

Now Therefore, in consideration of the following terms, conditions, and promises, the Parties agree as follows:

TERMS OF AGREEMENT

I. Effectiveness of Agreement

The Parties hereby agree that this Agreement shall take effect and be binding upon the Parties on the date the Secretary issues a written notice to all parties stating that all of the following actions have been performed and completed:

(a) the Agreement is approved and duly executed by the Secretary;

(b) the Agreement is approved and duly executed by the Chairperson of the Tribe on behalf of the Tribe in accordance with and pursuant to a tribal resolution authorizing the Chairperson of the Tribe to execute the Agreement;

(c) the Agreement is approved and duly executed by IID;

(d) the Agreement is approved and duly executed by CVWD;

(e) the Agreement is approved and duly executed by Mary Resvaloso and the procedures set forth in section XI of the Agreement have been accomplished;

(f) the United States Congress enacts and the President signs legislative acts (i) authorizing and ratifying the Agreement (hereinafter "Settlement Legislation") and (ii) appropriating the funds called for by subsection II(c)(ii) of the Agreement (hereinafter, "Appropriation Legislation"), provided that such legislative acts do not alter the essential terms and conditions of the Agreement;

(g) the Parties file and the U.S. Court of Appeals for the Ninth Circuit grants, motions to dismiss their respective appeals;

(h) the United States, IID and CVWD, upon dismissal of their respective appeals, file a joint motion in the district court requesting that the court vacate its judgment in the U.S. Suit; and

(i) the Tribe files and the U.S. District Court, Southern District of California grants, a motion to dismiss with prejudice the Indian suit.

II. Monetary contributions

(a) *Cash Payments by CVWD.* (1) Not later than thirty (30) days following the date on which the Agreement becomes effective, CVWD shall deliver to the Secretary a warrant in the amount of \$337,908.41, payable to the United States, for the benefit of the Tribe and any affected Indian allotment owners.

(2) Such amount shall be deposited by the United States into the appropriate trust account(s) provided for and in accordance with section IX of the Agreement.

(3) If any portion of the sum described in subparagraph (a)(i) is not paid by the date that payment of such sum is due, CVWD shall pay an additional amount equal to ten percent (10%) interest per annum on the amount outstanding, compounded yearly on the thirty-first of December of each respective year until all amounts due are paid.

(4) Upon delivery of the amount(s) described in subparagraphs (a)(1) and/or (a)(3) above to the Secretary, CVWD shall have no further liability, obligation, or responsibility to any party for handling,

disposition or distribution of the said amount(s), including, without limitation, disposition of such amount(s) in the trust account(s) provided for in section IX of this Agreement.

(5) CVWD shall have no liability or obligation to any party for the amounts agreed to be paid by either IID pursuant to paragraph (b) of this section or the United States, pursuant to paragraph (c) of this section.

(b) *Cash Payments by IID.* (1) Not later than thirty (30) days following the date on which the Agreement becomes effective, IID shall deliver to the Secretary a warrant in the amount of \$3,670,694.33, payable to the United States, for the benefit of the Tribe and any affected Indian allotment owners.

(2) Such amount shall be deposited by the United States into the appropriate trust account(s) provided for and in accordance with section IX of this Agreement.

(3) If any portion of the sum described in subparagraph (b)(i) is not paid by the date that payment of such sum is due, IID shall pay an additional amount equal to ten percent (10%) interest per annum on the amount outstanding, compounded yearly on the thirty-first of December of each respective year until all amounts due are paid.

(4) Upon delivery of the amount(s) described in subparagraphs (b)(1) and/or (b)(3) above to the Secretary, IID shall have no further liability, obligation, or responsibility to any party for handling, disposition or distribution of the said amount(s), including, without limitation, disposition of such amount(s) in the trust account(s) provided for in section IX of this Agreement.

(5) IID shall have no liability or obligation to any party for the amounts agreed to be paid by either CVWD pursuant to paragraph (b) of this section or the United States, pursuant to paragraph (c) of this section.

(c) *Cash Payments by the United States.* Subject to the authorization and appropriation of funds, the United States agrees to contribute to the Tribe and any affected allottees the sum of \$10,200,000 in settlement of potential money claim exposure against the United States as follows:

(1) The sum of \$4,200,000 shall be contributed by the United States in settlement of potential money claim exposure against the United States. This amount will be deposited into the appropriate trust accounts provided for and in accordance with section IX of this Agreement, no later than one hundred and twenty (120) days following the effective date of this Agreement or as soon thereafter as the deposits of said amount reasonably can be accomplished.

(2) The sum of \$6,000,000 shall be contributed by the United States from funds appropriated to the Department of the Interior for this purpose and deposited into the appropriate trust accounts provided for and in accordance with section IX of this Agreement, no later than one hundred and twenty (120) days after the date on which legislation appropriating said funds is enacted into law.

(3) The United States shall have no liability or obligation to any party for the amounts agreed to be paid by CVWD and IID under paragraphs (a) and (b) of this section.

III. Stays of court proceedings

The parties shall cooperate in securing court approval to stay or continue all proceedings in the pending lawsuits, until such time as the lawsuits shall have been dismissed as provided in sections I and IV of this Agreement or the Agreement shall have terminated.

IV. Mutual release and satisfaction of all claims

(a) The Parties mutually understand and agree that the benefits to be received under the Agreement and the Settlement Legislation shall constitute full and complete satisfaction of all claims by each Party against any other Party alleged in either the U.S. Suit or the Indian Suit. More particularly, (1) the United States agrees to refrain forever from instituting, maintaining, prosecuting, or continuing to maintain or prosecute any suit or action against CVWD or IID (and their respective administrators, successors, agents, assigns, representatives, employees, officers, and directors) based upon either (i) any claim, demand, action, cause of action or liability that was alleged in the U.S. Suit or the Indian Suit or (ii) past or future damages to the perimeter lands; (2) the Tribe agrees to refrain forever from instituting, maintaining, prosecuting, or continuing to maintain or prosecute any suit or action against CVWD or IID (and their respective administrative, employees, officers and directors) based upon either (i) any claim, demand, action, cause of action or liability that was alleged in the U.S. Suit or the Indian Suit or (ii) past or future damages to the perimeter lands; (3) the Tribe agrees to refrain forever from instituting, maintaining, prosecuting, or continuing to maintain or prosecute any suit or action against the United States based upon either (i) any claim, demand, action, cause of action or liability that was the subject of either the U.S. Suit or the Indian Suit or (ii) past or future damages to the perimeter lands; (4) CVWD and IID agree to refrain forever from instituting, maintaining, prosecuting, or continuing to maintain or prosecute any suit or action against the United States or the Tribe (and their respective administrators, successors, agents, assigns, representatives and employees), based upon either (i) any claim, demand, action, cause of action or liability that was alleged in the U.S. Suit or the Indian Suit or (ii) past or future damages to the perimeter lands; and (5) Mary Resvaloso on her own behalf and as class representative of all other affected Indian allotment owners, agrees to refrain forever from instituting, maintaining, prosecuting, or continuing to maintain or prosecute any suit or action against the United States, CVWD or IID (and their respective administrators, successors, agents, assigns, representatives, employees, officers or directors), based upon either (i) any claim, demand, action, cause of action or liability that was alleged in the U.S. Suit or the Indian Suit or (ii) past or future damages to the perimeter lands.

(b) The Parties mutually understand and agree that the disputes giving rise to and being resolved by this Agreement and the Settlement Legislation have concerned the inundation of specified Indian lands, and have not concerned either water rights or the enforcement of federal or state environmental laws, statutes, and regulations. Further, the parties mutually understand and agree that nothing in this section or any other section of this Agreement may

be construed as barring the initiation of suits or actions to enforce applicable water rights, environmental laws, statutes, or regulations.

(c) The Parties mutually understand and agree that nothing in this Agreement is intended to compromise the collateral estoppel or res judicata effect of the district court's judgment in the *U.S. Suit* as if said judgment was not vacated.

(d) The Parties agree to file [a] motions[s] to dismiss the *U.S. Suit* and the *Indian Suit* as, where and in a manner and form appropriate and necessary to accomplish the dismissal of the suits, within 30 days following either the date this Agreement is enacted into law by the Settlement Legislation, or the date this Agreement is approved by the District Court in accordance with Section XI, whichever of the two dates is later.

V. Permanent flowage easement

Not later than thirty (30) days following the effective date of this Agreement:

(a) The United States, in its capacity as trustee for the Tribe as well as for any affected Indian allotment owners, and their successors and assigns, and the Tribe in its own right and that of its successors and assigns, shall grant and convey to CVWD a permanent flowage easement as to all lands in trust for the benefit of the Tribe and any affected Indian allotment owners located within and below the -220' contour of the Salton Sink (approximately 11,800 acres), in the form attached hereto as Exhibit "A", which upon acceptance by CVWD pursuant to California Government Code § 27281 shall be recorded in the Office of County Recorder of Riverside County, California and the Office of County Recorder of Imperial County, California, and evidence of said easement shall be entered upon the land records of the Bureau of Land Management and the Bureau of Indian Affairs; and

(b) The United States, in its own right shall, notwithstanding any prior or present reservation or withdrawal of land of any kind, grant and convey to CVWD a permanent flowage easement as to all Federal lands located within and below the -220' contour of the Salton Sink (approximately 110,000 acres), in the form attached hereto as Exhibit "A", which upon acceptance by CVWD pursuant to California Government Code § 27281 shall be recorded in the Office of County Recorder of Riverside County, California and the Office of County Recorder of Imperial County, California, and evidence of said easement shall be entered upon the land records of the Bureau of Land Management and the Bureau of Indian Affairs.

(c) The United States, in its capacity as trustee for the Tribe as well as for any affected Indian allotment owners, and their successors and assigns, and the Tribe in its own right and that of its successors and assigns, shall grant and convey to IID a permanent flowage easement as to all lands held in trust for the benefit of the Tribe and any affected Indian allotment owners located within and below the -220' contour of the Salton Sink (approximately 11,800 acres), in the form attached hereto as Exhibit "A", which upon acceptance by IID pursuant to California Government Code § 27281 shall be recorded in the Office of County Recorder of Riverside

County, California and the Office of County Recorder of Imperial County, California, and evidence of said easement shall be entered upon the land records of the Bureau of Land Management.

(d) The United States, in its own right shall, notwithstanding any prior or present reservation or withdrawal of land of any kind, grant and convey to IID a permanent flowage easement as to all Federal lands located within and below the -220' contour of the Salton Sink (approximately 110,000 acres), in the form attached hereto as Exhibit "A", which upon acceptance by IID pursuant to California Government Code §27281 shall be recorded in the Office of County Recorder of Riverside County, California and the Office of County Recorder of Imperial County, California, and evidence of said easement shall be entered upon the land records of the Bureau of Land Management.

(e) For this purposes of this Agreement, the term "permanent flowage easement" shall mean the perpetual right by the water districts to use the prescribed lands within and below the -220' contour as a drainage reservoir to receive and store water from their respective water and drainage systems including flood water, return flows from irrigation, tail water, leach water, operational spills, and any other water which overflows and floods said lands originating from lands within said water districts.

VI. Acquisition and placement of lands into trust status

The United States, acting through the Secretary, shall convey into trust status for the benefit of the Tribe certain lands which the Tribe may purchase or otherwise acquire pursuant to this agreement subject to the limitations, terms and conditions of this Agreement and the provisions of the Settlement Legislation.

(a) The Secretary, in accordance with the terms and conditions of this Agreement and the provisions of the Settlement Legislation, shall convey up to 11,800 acres of land into trust status for the benefit of the Tribe.

(b) The Tribe and the United States understand and agree that only lands purchased or otherwise acquired by the Tribe within either of the two designated acquisition areas defined and described in paragraphs (c) and (d) of this section shall be eligible for conveyance into trust status under the terms and conditions of this Agreement and the Settlement Legislation.

(c) *Primary Acquisition Area.* The Primary Acquisition Area shall lie within the area bounded on the south by the Riverside County Line commencing at the northwest corner of Section 6, T9S, R9E; thence running east along the Riverside County Line to the point at which the Riverside County Line intersects the western shoreline of the Salton Sea; thence running north along the western shoreline of the Salton Sea; thence running in an easterly direction along the northern shoreline of the Salton Sea and continuing until its intersection with the northwest corner of the southwest quarter of Section 34, T7S, R10E; thence running northeasterly in a straight line to northeast corner of Section 26, T7S, R10E; then continuing in a northeasterly direction to its intersection with the Coachella Canal; thence running northwesterly along the Coachella Canal until its intersection with the northern boundary of Section 19, T6S, R9E; thence running west in a straight line to the north-

west corner of Section 20, T6S, R7E (hereinafter, “northern boundary of the Primary Acquisition Area”); thence running southeasterly in a straight line to the northwest corner of Section 6, T9S, R9E. Attached hereto and incorporated herein as Exhibit “B” is a map outlining the Primary Acquisition Area. The total number of acres of land within the Primary Acquisition Area that may be conveyed into trust status in accordance with this Agreement and pursuant to the Settlement Legislation shall not exceed 11,800 less the number of acres of land situated within the Secondary Acquisition Area and conveyed into trust status in accordance with this Agreement and pursuant to the Settlement Legislation.

(d) *Secondary Acquisition Area.* The Secondary Acquisition Area shall lie within the area bounded on the south by the northern boundary of the Primary Acquisition Area; thence commencing at the point at which the Coachella Canal intersects the northern boundary of Section 19, T6S, R9E running northwesterly along the Coachella Canal to its intersection with the eastern boundary of Section 3, T5S, R7E; thence running north along the eastern boundary of Section 3, T5S, R7E and continuing north in a straight line into Section 34, T4S, R7E to its intersection with the powerline; thence running northwesterly along the powerline until its intersection with the eastern boundary of Section 15, T4S, R6E; thence running northwesterly in a straight line to the northwest corner of Section 15, T4S, R6E; thence running southwesterly in a straight line to the southwest corner of Section 17, T5S, R5E; thence running southeasterly in a straight line to the southwest corner of Section 18, T6S, R7E; thence running east along the southern boundary of Section 18, T6S, R7E, to the northwest corner of Section 20, T6S, R7E. Attached hereto and incorporated herein as Exhibit “B” is a map outlining the Secondary Acquisition Area. The total number of acres of land within the Secondary Acquisition Area that may be conveyed into trust status in accordance with this Agreement and pursuant to the Settlement Legislation shall not exceed 640.

(e) With regard to all lands which the Tribe purchases or otherwise acquires within the Primary and Secondary Acquisition Areas for purposes of having said lands placed into trust status in accordance with this Agreement and pursuant to the Settlement Legislation, the Tribe shall submit to the Secretary a written request to convey such lands into trust. Such request shall include the following information: the identity of the parties from whom the land was acquired; the location and legal description of the land at issue; a description of how the Tribe plans to use the land; a statement concerning the financial impact, if any, which the removal of such lands from the tax rolls may have on local government; and any other information which the Secretary may deem necessary or appropriate. The Secretary shall provide a copy of such request to (a) the local government whose incorporated boundaries the subject lands are situated within or (b) the County of Riverside California, in the event such lands are located within unincorporated areas.

(f) With regard to lands acquired by the Tribe within the Primary Acquisition Area for conveyance into trust status pursuant to this Agreement, the Tribe agrees to acquire contiguous parcels of land which are contiguous to the Tribe’s reservation lands to the

maximum extent practicable. To the extent the Tribe acquires lands within the Primary Acquisition Area pursuant to this Agreement which are not contiguous to its reservation lands, the Tribe further agrees to acquire parcels of at least 40 acres in size and to cluster such parcels as close as possible to one another to the maximum extent practicable.

(g) Lands acquired by the Tribe in the Primary Acquisition Area pursuant to and in accordance with the terms and conditions of this Agreement shall be conveyed and held by the United States in trust for the sole use and benefit of the Tribe within 180 days following the date on which all of the following conditions and actions have been demonstrated to have been satisfied, performed and/or completed:

(1) the Tribe files with the Secretary a written request to convey such lands into trust in accordance with paragraph (e) of this section;

(2) the number of acres per request for conveyance into trust equals or exceeds 160 acres;

(3) compliance with part 151.12 of title 25, Code of Federal Regulations;

(4) the Secretary has not received written notification from the local governing body of any incorporated city which is incorporated on or prior to the date of this Agreement whose incorporated boundaries (as those boundaries were established as of the date of this Agreement) the subject lands are situated within, formally notifying the Secretary that such governing body, by majority vote, objects to the Tribe's request to convey the subject lands into trust and so notifies the Secretary within sixty (60) days of receiving a copy of the Tribe's request from the Secretary in accordance with paragraph (e) of this section; and

(5) compliance with all applicable provisions of this section.

(h) With regard to lands that may be acquired by the Tribe within the Secondary Acquisition Area for conveyance into trust status pursuant to this Agreement, the Tribe agrees that it shall limit its acquisitions to parcels of lands which are contiguous to one another and to consolidate such parcels in no more than two separate composite clusters of contiguous parcels of land, the combined total acreage of which shall not exceed 640 acres.

(i) All lands acquired by the Tribe in the Secondary Acquisition Area pursuant to and in accordance with the terms and conditions of this Agreement shall be conveyed and held by the United States in trust for the sole use and benefit of the Tribe within 180 days following the date on which all of the following conditions and actions have been demonstrated to have been satisfied, performed and/or completed:

(1) the Tribe files with the Secretary a written request to convey such lands into trust in accordance with paragraph (g) of this section;

(2) compliance with part 151.12 of title 25, Code of Federal Regulations;

(3) compliance with all applicable provisions of this section;

(4) the Secretary has not received written notification from (a) the local governing body of the incorporated city whose in-

corporated boundaries the subject lands are situated within or (b) the governing body of Riverside County, California, in the event that such lands are located within an unincorporated area, formally notifying the Secretary that such governing body, by majority vote, objects to the Tribe's request to convey the subject lands into trust and so notifies the Secretary of such objection within sixty days (60) of receiving a copy of the Tribe's request from the Secretary in accordance with paragraph (e) of this section; and

(5) compliance with all applicable provisions of this section.

It is further agreed and understood that the Tribe shall submit no more than three separate written requests to convey lands it has acquired within the Secondary Acquisition Area into trust status and that the Secretary shall grant no more than three such requests.

(j) The provisions of paragraphs (g) and (i) notwithstanding, the United States and the Tribe understand and agree that lands located within either the Primary or Secondary Acquisition Areas and situated within a one (1) mile radius of the reservation lands of any other federally-recognized Indian tribe shall not be conveyed into trust for the benefit of the Tribe absent the consent of the appropriate officials or governing body of the affected Indian tribe or tribes.

(k) With respect to the acreage and contiguity standards established by this section as prerequisites to the conveyance of land into trust, the Secretary may in his discretion waive such requirements upon request of the Tribe and upon a satisfactory showing that such waiver is reasonably necessary to facilitate the Tribe's proposed use of the lands at issue.

(l) Concurrently with the submission of any written request to the Secretary to convey lands into trust in accordance with paragraph (e), the Tribe agrees to record an acknowledgment in the form of Exhibit "C".

(m) The United States and the Tribe hereby acknowledge and agree that IID and CVWD have no responsibility or liability with respect to the purchase or acquisition of lands, including, without limitation, the responsibility to convey such lands into trust or any other responsibility set forth in this section.

VII. Status of lands taken into trust

The Secretary and the Tribe agree that any and all lands which are conveyed into trust for the benefit of the Tribe pursuant to and in accordance with the terms and conditions of this Agreement shall be deemed to have been taken into trust as of 1909, subject to the following exceptions, conditions, restrictions and limitations:

(a) With respect to any gaming that may be conducted by the Tribe on such lands, the Tribe agrees:

(1) that the conduct of any gaming on such lands shall forever be limited and restricted to occur on no more than one specific site at any one time;

(2) to provide the Secretary with a tribal resolution which states that the Tribe is exercising its right under this Agreement to conduct gaming on a single site situated on lands ac-

quired and conveyed into trust pursuant to this Agreement and identifies the site by location and size in terms of acreage;

(3) to submit such resolution to the Secretary at the time the Tribe submits to the Secretary its request to convey the subject land into trust in accordance with Section VI of this Agreement; and

(4) the Tribe shall have the right to relocate any such gaming operation from a site situated on lands acquired and conveyed into trust pursuant to this Agreement to any other site situated on such lands, provided that all gaming activity at the first site is terminated prior to or simultaneously with the commencement of gaming activity on the second site.

(b) With respect to water rights, all lands taken into trust pursuant to this Agreement shall be:

(1) subject to all valid water rights existing at the time such lands are acquired by the Tribe, including, but not limited to, all rights under any permit or license issued under the laws of the State of California to commence an appropriation of water, to appropriate water, or to increase the amount of water appropriated;

(2) subject to all paramount rights of any person who at any time recharges or stores water in a groundwater basin to recapture or recover the recharged or stored water or to authorize others to recapture or recover the recharged or stored water; and

(3) entitled to the benefit of all valid water rights appurtenant to the land existing immediately prior to the time the Tribe acquires such lands.

VIII. Water issues

(a) *Groundwater Replenishment Assessments.* The Tribe hereby agrees that it shall be subject to all applicable groundwater replenishment assessments levied by or on behalf of CVWD or the United States government, by and through CVWD, for all lands owned by or on behalf of the Tribe, whether in fee or otherwise, which are acquired after the effective date of this Agreement, provided that:

(1) the land is situated within the boundaries of Improvement District No. 1, is such as defined and described in paragraph (b) of this section; and

(2) the assessments are uniform and nondiscriminatory as established from time to time by the Board of Directors of CVWD, in accordance with CVWD's rules and regulations.

(b) *Improvement District No. 1.* With regard to Improvement District No. 1, formed by CVWD on or about October 15, 1934, and set out in the map attached hereto and incorporated herein as Exhibit "D", CVWD and the Tribe hereby agree that:

(1) the Tribe shall use canal water, instead of domestic water or well water, for any land acquired by or on behalf of the Tribe or any allotment owners of the Tribe when CVWD determines in its sole discretion to provide canal water for irrigation purposes; provided that:

(A) such land is within the boundaries of Improvement District No. 1; and

- (B) the assessments are uniform and nondiscriminatory as established from time to time by the Board of Directors of CVWD, in accordance with CVWD's rules and regulations;
- (2) the Tribe shall use canal water when CVWD determines in its sole discretion to provide canal water in place of ground water for irrigation purposes. Provided CVWD provides canal water, as set forth herein, the Tribe shall not pump or allow others, except CVWD, to pump water from wells on land owned or controlled by the Tribe, excepting only to the extent that such canal water is of insufficient quality for particular uses to be made of such land which determination shall be made by CVWD in its reasonable discretion;
- (3) CVWD shall serve canal water to the Tribes pursuant to CVWD's prevailing policies, rules and regulations governing the provision of service of canal water, as they may be amended from time to time by CVWD's Board of Directors;
- (4) all charges for delivery of canal water to the Tribe shall be paid by the Tribe based on the uniform and non-discriminatory rate schedules estimated from time to time by the Board of Directors of CVWD, in accordance with the CVWD rules and regulations; and
- (5) the Tribe shall accept full and exclusive responsibility for the management and use of the canal water delivered by CVWD to the Tribe, at the point of delivery agreed to by the Tribe.
- (c) *Assessments Outside of Improvement District No. 1.* Notwithstanding anything contained to the contrary herein, the Tribe hereby agrees that the Tribe shall be subject to all replenishment assessments levied by the CVWD outside of Improvement District No. 1 and within Riverside County for any lands acquired by or on behalf of the Tribe on or after the effective date of this Agreement; provided, that the assessments are uniform and nondiscriminatory established from time to time by the Board of Directors of CVWD, in accordance with CVWD's rules and regulations.

IX. Trust accounts and disposition of funds

- (a) *Tribal Settlement Trust Funds Account.* No later than thirty (30) days following the enactment of the Settlement Legislation, the United States shall establish in the Treasury of the United States a trust funds account for the benefit of the Tribe to be known as the "Torres Martinez Settlement Trust Funds Account" (hereinafter, "Tribal Settlement Account").
- (b) *Allottees Settlement Trust Funds Accounts.* No later than thirty (30) days following the enactment of the Settlement Legislation, the United States shall establish in the Treasury of the United States the following two trust funds account:
- (1) "Torres Martinez Allottees Settlement Account I" for the benefit of those allottees having a property interest in trust lands located within and below the -220' contour of the Salton Sink (hereinafter, "Allottees Account I"); and
- (2) "Torres Martinez Allottees Settlement Account II" for the benefit of those allottees having property interest in those certain trust lands located on the perimeter of the Salton Sink

about the -220' contour which were damaged due to the raised watertable (hereinafter, "Allottees Account II").

(c) *Allocation and Deposit of Monetary Contributions.* The Parties understand and agree that the Indian trust lands which are at issue in the *U.S. Suit* and the *Indian Suit* are comprised of both tribal lands and allotted lands and that the monetary contributions made by CVWD, IID, and the United States for the benefit of the Tribe and affected allottees pursuant to section II of the Agreement shall be allocated between the Tribe and affected allottees on a proportionate acreage basis and deposited into the appropriate trust funds accounts as follows:

(1) 75% of the total amount of monetary payments paid to the United States for the benefit of the Tribe and affected allottees by CVWD and IID pursuant to section II of the Agreement shall be deposited in the Tribal Settlement Account and Allottees Account I in amounts proportionate to the total number of acres in which the beneficiaries of such trust accounts have a property interest.

(2) 25% of the total amount of monetary payments paid to the United States for the benefit of the Tribe and affected allottees by CVWD and IID pursuant to section II of the Agreement shall be deposited into the Tribal Settlement Account, Allottees Account I and Allottees Account II in amounts proportionate to the total number of affected acres in which the beneficiaries of such trust account have a property interest.

(3) 50% of the total amount of monetary payments paid by the United States for the benefit of the Tribe and affected allottees pursuant to subsection II(c)(i) of the Agreement shall be deposited into the Tribal Settlement Account and Allottees Account I in amounts proportionate to the total number of affected area in which the beneficiaries of such trust accounts have a property interest.

(4) 50% of the total amount of monetary payments paid by the United States for the benefit of the Tribe and affected allottees pursuant to subsection II(c)(i) of the Agreement shall be deposited into the Tribal Settlement Account, Allottees Account I and Allottees Account II in amounts proportionate to the total number of affected acres in which the beneficiaries of such trust accounts have a property interest.

(5) 100% of the total amount of monetary payments paid by the United States for the benefit of the Tribe and affected allottees pursuant to subsection II(c)(ii) of the Agreement shall be deposited into the Tribal Settlement Account, Allottees Account I and Allottees Account II in amounts proportionate to the total number of affected acres in which the beneficiaries of such trust account have property interest.

(d) *Investment of Monetary Contributions.* The Secretary agrees to invest all sums deposited into, accruing to, and remaining in, the Tribal Trust Account, Suspension Account I and Suspension Account II in accordance with 25 U.S.C. Sec. 162(a).

(e) *Distribution of Sums Held in Trust Accounts.*

(1) The Secretary and the Tribe agree that any and all sums held in the Tribal Settlement Account shall be available for

distribution to the Tribe as may be requested by the Tribe subject to the following terms and conditions:

(A) The Tribe shall use such sums only for the purposes of education, land acquisition, economic development, youth and elderly programs, or other tribal purposes, including, but not limited to, the payment of attorney fees for legal services rendered to the Tribe in connection with the *U.S. Suit*, the *Indian Suit* and the settlement of the same, in accordance with plans and budgets developed by the Tribe and approved by the Secretary.

(B) Nothing in this subsection or other section of this Agreement may be construed as prohibiting the Tribe from using a portion of the sums held for the purpose of making per-capita payments to members of the Tribe; *provided*, that such portion shall not exceed twenty five percent (25%) of the total amount of the sum held in the Tribal Settlement Account.

(2) The Secretary agrees to promptly distribute the sums held in Allottees Account I and Allottees Account II to owners of the allotted lands at issue in the *U.S. Suit*, and the *Indian Suit*, as their interests appear on the date the Agreement is executed. In order to make such distributions as promptly as possible the Secretary further agrees to take appropriate action to identify all eligible allottees and to calculate their appropriate shares expeditiously.

(f) *Waiver.* The Parties understand and agree that IID and CVWD shall have no responsibility or liability for the Tribal Settlement Account, Allottees Account I, or Allottees Account II, including but not limited to, the establishment of such accounts, determination of the allocation of funds between such accounts, distribution of monies to or from such accounts, and the investment of monies in such accounts.

X. Settlement legislation

All parties agree to support the introduction and enactment of legislation to implement this Agreement which is substantially the same in text and form as that proposed legislation attached hereto as Exhibit "E". This Agreement shall be effective only if the Settlement Legislation does not alter the essential terms of the Agreement.

XI. Settlement litigation

(a) The Parties all mutually intend that this Agreement shall fully, fairly and finally resolve all claims pertaining to all Indian trust lands covered by this Agreement, including not only tribal lands owned by the Tribe but also allotted lands owned by a large number of individual Indian trust beneficiaries or their assigns. Some of the affected allottees are represented in the *U.S. Suit* by their federal trustee, the United States. All affected allottees are represented in the *Indian Suit* by Mary Resvaloso, an individual allottee and class representative. The party representatives of the absent allottees are satisfied that the Agreement fully and fairly compensates all affected landowners, whether tribal or individual, and that it is necessary and proper to make this agreement finally

conclusive and binding upon all such landowners. Consequently, the Parties to the Agreement stipulate that:

(1) within 5 days of signing the Agreement or as soon thereafter as is possible, they shall file a joint motion in the United States Court of Appeals for the Ninth Circuit for a limited remand of the U.S. Suit for purposes of class certification and approval of settlement;

(2) within 5 days of an order by the court of appeals granting a limited remand, the Parties shall file a motion or joint motions in the United States District Court for the Southern District of California, seeking the following actions from the court:

(A) Consolidation of the *U.S. Suit* and the *Indian Suit* for purposes of class certification for settlement purpose only, approval of settlement and notice of same.

(B) Approval by the court of a form of notice to be given to allottee class members pursuant to the notice requirements of Federal Rule of Civil Procedure 23(c) ("Rule 23(c)") and Rule 23(e), concerning future actions to be taken in the two consolidated lawsuits, including the certification of a class for settlement purposes only under Rule 23(b)(3) and approval of the Agreement under Rule 23(e).

(C) Issuance of an order requiring all interested parties and putative class members to appear at a time certain and show cause why the court should not certify for settlement purposes only a defined class of affected allottee landowners under Rule 23(b)(3) and approve the Agreement under Rule 23(e).

(D) Conduct of a hearing by the court with respect to the matters set forth in preceding subparagraph (C), to be held no sooner than sixty (60) days after notice to the parties of the date set by the court for such hearings.

(E) Entry by the court of orders certifying for settlement purposes only a defined allottee class under Rule 23(b)(3) and approving the Agreement under Rule 23(e).

(b) Within five days of receiving notice of the hearing referred to in subparagraph (a)(2)(D) above, the United States shall provide notice to putative class members in the form approved by the court pursuant to subparagraph (a)(2)(B) above, which notice the United States presently expects will require publication and individual mailings to the last known addresses of all owners of affected allotments (or of fractional interests therein), as revealed by the Bureau of Indian Affairs (BIA) realty records regarding such allottee ownership. At the hearing, the United States shall be prepared to describe to the court the manner in which it attempted to notify all affected allotment owners.

(c) If a significant number of the putative class whose interests in the perimeter lands elect to be excluded from the class, the Parties retain the right to repudiate the Agreement. For purposes of this paragraph, "a significant number" is equal to those allottees or their heirs whose interests in these lands aggregates to a total of 470 acres, or more, which is 10 percent or more of the total perimeter lands.

(d) If within one hundred twenty (120) days following the date on which the court issues an order approving the form of notice filed by the Parties with the motion set forth in paragraph (a)(2) above, the court shall fail to certify a class of affected allottees for settlement purposes only under Rule 23(b)(3) or should fail to approve the Agreement under Rule 23(e) as being fair and reasonable, each party reserves the right to timely withdraw from the Agreement after the expiration of such four-month period, by giving written notice to the other parties of such withdrawal; provided, that if no notice of withdrawal is given by any party within five months of the filing of said motion or motions, the Parties shall be deemed to have waived their right of withdrawal under this paragraph.

XII. General provisions

(a) *Compromise Agreement.* The Parties understand and agree that this Agreement is the result of a compromise among the Parties and shall not at any time or for any purpose be considered as an admission of liability or responsibility, nor shall the payment of money in consideration for the execution of this Agreement constitute or be construed as an admission of any liability whatsoever by any of the Parties.

(b) *Modification of Agreement.* The terms and conditions of this Agreement may be modified by mutual agreement of the Parties provided that the modifications are duly approved by each of the Parties and that any such modifications are not inconsistent with the settlement legislation enacted by the United States Congress.

(c) *Existing Rights.* This Agreement is not intended to diminish rights which the Tribe would otherwise have under existing law, either with respect to the Tribe's present right to acquire trust land under currently applicable federal statutes and regulations or with respect to the Tribe's present right to conduct gaming on trust land within or contiguous to the boundaries of the Tribe's reservation as said boundaries existed in 1988 provided such land is acquired in trust under currently applicable federal statutes and regulations.

(d) *Parties To Bear Own Expenses.* Each party shall bear its own costs, attorney's fees and expenses in connection with the pending lawsuits, this Agreement and the implementation thereof.

Dated: June 13, 1996, United States of America.

By ADA E. DEER.

Dated: June 18, 1996, United States of America.

By LOIS J. SHIFFER.

Dated: June 17, 1996, Torres-Martinez Desert Cahuilla Indians.

By MARY E. BELARDO.

Dated: June 17, 1996, Imperial Irrigation District.

By JESSE P. SILVA.

Dated: June 17, 1996, Coachella Valley Water District.

By TOM LEVY.

MARY L. RESVALOSO.

MARY L. RESVALOSO for
other affected Indian allottees.

This instrument was acknowledged before me on this 13 day of June, 1996 by Ada Deer as Assistant Secretary-Indian Affairs, Department of the Interior of the United States of America.

BARBARA J. DIEHL.

My Commission Expires: November 30, 1998.

This instrument was acknowledged before me on this 18th day of June, 1996 by Lois J. Schiffer, Assistant Attorney General, Department of Justice, United States of America.

GEORGIA A. KOWLESSOR.

My Commission Expires September 14, 2000.

This instrument was acknowledged before me on this 17th day of June, 1996 by Mary Belardo, Chairperson, Torres-Martinez Band of Mission Indians.

JORGE E. ZUNIGA.

My Commission Expires: November 2, 1998.

This instrument was acknowledged before me on this 17th day of June, 1996 by Jesse P. Silva, Deputy General Manager, Imperial Irrigation District.

GLORIA A. RIVERA.

My Commission Expires: April 25, 1997.

This instrument was acknowledged before me on this 17th day of June, 1996 by Tom Levy, general manager-chief engineer, Coachella Valley Water District.

CYNTHIA R. PARKS.

My Commission Expires: February 26, 1997.

This instrument was acknowledged before me on this 17th day of June, 1996 by Mary Resvaloso, in her own right and as class representative of all other affected Indian allotment owners.

JORGE E. ZUNIGA.

My Commission Expires: November 2, 1998.

