

MINUTES OF THE SPECIAL MEETING OF THE
BOARD OF DIRECTORS OF
VISTA IRRIGATION DISTRICT

August 26, 2016

A Special Meeting of the Board of Directors of Vista Irrigation District was held on Friday, August 26, 2016, at the offices of the District, 1391 Engineer Street, Vista, California.

1. CALL TO ORDER

President Vásquez called the meeting to order at 2:02 p.m.

2. ROLL CALL

Directors present: Miller, Vásquez, Dorey, and MacKenzie.

Directors absent: Reznicek.

Staff present: Eldon Boone, General Manager; Lisa Soto, Secretary of the Board; Brett Hodgkiss, Assistant General Manager; Don Smith, Director of Water Resources. Special Counsel John Carter was also present.

Other attendees: None.

3. PLEDGE OF ALLEGIANCE

Director Vásquez led the pledge of allegiance.

4. APPROVAL OF AGENDA

16-08-93	<i>Upon motion by Director MacKenzie, seconded by Director Dorey and unanimously carried (4 ayes: Miller, Vásquez, Dorey, and MacKenzie; 1 absent: Reznicek), the Board of Directors approved the agenda as presented.</i>
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5. PUBLIC COMMENT TIME

No public comments were presented on items not appearing on the agenda.

6. SAN LUIS REY INDIAN WATER RIGHTS SETTLEMENT

See staff report attached hereto.

General Manager Eldon Boone said that the reason for this Special Board meeting was for the Board to consider approving an amendment to the San Luis Rey Settlement Agreement. Mr. Boone explained that this amendment incorporates an “exhaustion option” which means that after the Settlement takes effect, the Indian Water Authority (Bands) will be paid \$3.7 million per year from the San Luis Rey Tribal Development Fund, until all of the funds are exhausted. Mr. Boone noted that progress has also been made in finalizing the Stipulation Agreement.

Special Counsel John Carter recalled that the San Luis Rey Settlement Agreement was approved by the Board in December 2014. Mr. Carter said that in addition to the “exhaustion option” mentioned by Mr. Boone, this amendment also provides technical revisions to make it consistent with House Resolution 1296. Mr. Carter said that the amendment has been approved by all of the attorneys, and it is in the process of being approved by all of the Bands. Mr. Carter said that the Assistant Attorney General John Cruden signed the amendment earlier that day, as did Secretary of the Interior Sarah Margaret Roffey Jewell. Mr. Carter advised that City of Escondido City Council approved the amendment on Wednesday and it is now in the process of being signed. Mr. Carter said that he just received word that the Pauma Band signed the amendment, and the Pala Band will sign the amendment later in the day. Mr. Carter said that the San Pasqual Band is expected to sign the amendment on Sunday, and the Rincon Band will sign the amendment on Monday.

16-08-94 *Upon motion by Director MacKenzie, seconded by Director Miller and unanimously carried (4 ayes: Miller, Vásquez, Dorey, and MacKenzie; 1 absent: Reznicek), the Board of Directors approved and authorized the execution of Amendments to the January 30, 2015 San Luis Rey Settlement Agreement.*

Director MacKenzie requested that if there are to be future amendments, that they be numbered sequentially to make them easier to track. Mr. Carter agreed.

Mr. Carter updated the Board regarding the Stipulation Agreement. He stated that the main issue at hand is getting the Secretary of Interior to agree to a provision that if the local entities decide in the future to abandon operation of the local water system, one or more of the bands will be allowed to take it over.

7. DIRECTOR COMMENTS

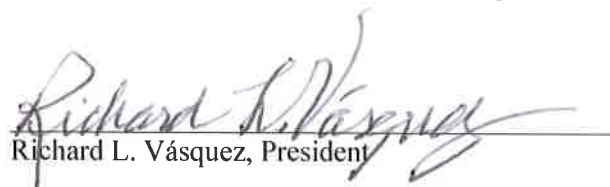
None were presented.

8. COMMENTS BY GENERAL MANAGER

None were presented.

9. ADJOURNMENT

There being no further business to come before the Board, President Vásquez adjourned the meeting at 2:25 p.m.


Richard L. Vásquez, President

ATTEST:



Lisa R. Soto, Secretary
Board of Directors
VISTA IRRIGATION DISTRICT



STAFF REPORT

Agenda Item: 6

Board Meeting Date: August 26, 2016
Prepared By: Don A. Smith
Approved: Eldon Boone

SUBJECT: SAN LUIS REY INDIAN WATER RIGHTS SETTLEMENT

RECOMMENDATION: Approve and authorize the execution of Amendments to the January 30, 2015 San Luis Rey Settlement Agreement.

PRIOR BOARD ACTION: On December 8, 2014, the Board passed Resolution 14-32, approving both the Implementing and Settlement Agreements, authorizing their execution, and authorizing the filing of pleadings, making of representations, and taking other actions necessary to conclude the San Luis Rey River water rights litigation and related FERC proceedings.

FISCAL IMPACT: There are no fiscal impacts to the District associated with the proposed Amendments.

SUMMARY: The proposed “Amendments to the January 30, 2015, San Luis Rey Settlement Agreement among the Bands, the Indian Water Authority, the Local Entities, and the United States” (Amendments) contains one substantive provision, namely Item 5, inserting a new section 7.1.5 to the Settlement Agreement, approving an amendment to the Settlement Act. The amendment to the Settlement Act addressed in Item 5 of the Amendments allows the Congressional Budget Office to assign a score of zero to the pending House of Representatives bill HR 1296, thereby fulfilling House rules with respect to budgetary compliance. The Amendments also make several other clean-up and/or technical amendments to the Settlement Agreement.

ATTACHMENTS:

1. Amendments to the Settlement Agreement
2. Settlement Agreement (without exhibits)

**AMENDMENTS TO THE JANUARY 30, 2015,
SAN LUIS REY SETTLEMENT AGREEMENT AMONG
THE BANDS, THE INDIAN WATER AUTHORITY,
THE LOCAL ENTITIES, AND THE UNITED STATES**

The La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians; the San Luis Rey River Indian Water Authority; the City of Escondido, California; the Vista Irrigation District; and the United States (collectively referred to hereafter as the Parties) hereby make the following amendments to their settlement agreement dated January 30, 2015:

1. Change the number of the paragraph that defines “Local Water System” from 2.3 to 2.3.5.
2. Change “112(b)” in section 3.1 of the agreement to “112(d)(1).”
3. Insert “or the Local Water System” after “Project No. 176” in section 7.1(3).
4. Revise section 7.3(1)C. so that it reads: “other than those waived in section 7.1(3), all claims, known or unknown, relating to damages, losses, or injuries to land or other resources that were not asserted, or subject to assertion, in (1) the pending proceedings among the Parties in the United States District Court for the Southern District of California in *Rincon Band of Mission Indians v. Escondido Mutual Water Company*, Civ. Nos. 69-217-S, 72-271-S, and 72-276-S or (2) all pending proceedings before FERC involving Project 176”.
5. Insert the following section after section 7.1 and before section 7.2:

“7.1.5. APPROVAL OF AMENDMENT TO SECTION 105(b)(1) OF THE SETTLEMENT ACT. The Parties acknowledge and agree that, as part of the settlement, the legislation referred to in section 12(2) of this Agreement will amend Section 105(b)(1) of the Settlement Act to provide that after the settlement takes effect, no more than \$3,700,000 per year (in principal, interest, or both) from the San Luis Rey Tribal Development Fund shall be allocated and made available to the Indian Water Authority. The Parties further agree that, as part of the settlement, all claims or interests the Bands or the Indian Water Authority may have pursuant to said amendment to Section 105(b)(1), including any claim or entitlement to receive more than \$3,700,000 per year (in principal, interest, or both) from the Fund, are waived and released.”

6. Change “112(c)” in section 8.3(3) of the agreement to “112(e).”
7. Change “parties” in section 12(2) of the agreement to “Parties.”

UNITED STATES OF AMERICA

By: _____ Date: _____
Secretary of the Interior*

By: _____ Date: _____
Attorney General or her designee*

SAN LUIS REY INDIAN WATER AUTHORITY

By: _____ Date: _____

LA JOLLA BAND OF MISSION INDIANS

By: _____ Date: _____

RINCON BAND OF MISSION INDIANS

By: _____ Date: _____

SAN PASQUAL BAND OF MISSION INDIANS

By: _____ Date: _____

LA JOLLA BAND OF MISSION INDIANS

By: _____ Date: _____

PAUMA BAND OF MISSION INDIANS

By: _____ Date: _____

* The signatures on behalf of the United States are effective only if the 114th Congress enacts legislation substantively identical to the language which is attached to this document as Exhibit 1. Satisfaction of this condition is deemed to satisfy the condition on the signatures of the United States to the settlement agreement dated January 30, 2015.

PALA BAND OF MISSION INDIANS

By: _____

Date: _____

CITY OF ESCONDIDO

By: _____

Date: _____

Mayor

By: _____

Date: _____

City Clerk

Approved as to form by: _____

Date: _____

City Attorney

Approved as to form by: _____

Date: _____

Special Counsel

VISTA IRRIGATION DISTRICT

By: _____

Date: _____

President, Board of Directors

By: _____

Date: _____

General Manager

By: _____

Date: _____

Board Secretary

Approved as to form by: _____

Date: _____

Special Counsel

By: _____

Date: _____

Director

By: _____

Date: _____

Director

By: _____

Date: _____

Director

**San Luis Rey
Indian Water Rights
Settlement Agreement**

January 30, 2015

Among

The United States of America,

The La Jolla, Rincon, San Pasqual, Pauma, and Pala
Bands of Mission Indians,

The San Luis Rey River Indian Water Authority,

The City of Escondido, California,

and

The Vista Irrigation District

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SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES
AND
THE LA JOLLA, RINCON, PALA, PAUMA AND SAN PASQUAL BANDS OF
MISSION INDIANS
AND
THE SAN LUIS REY INDIAN WATER AUTHORITY
AND
THE CITY OF ESCONDIDO
AND
VISTA IRRIGATION DISTRICT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting by and through its Secretary of the Interior (“Secretary”) and Attorney General acting pursuant to their authority under section 108 of Public Law 100-675 as amended (the “Settlement Act”), hereinafter referred to as “United States”; the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians, acting through the governing bodies of each respective Band as duly recognized by the Secretary, hereinafter referred to collectively as “Bands”; the San Luis Rey River Indian Water Authority, a permanent intertribal entity established pursuant to duly adopted ordinances of the Bands recognized and approved in Public Law 100-675, hereinafter referred to as “Indian Water Authority”; the City of Escondido, California, a city organized under the provisions of the general laws of the State of California, hereinafter referred to as “Escondido”, and the Vista Irrigation District, an irrigation district organized and incorporated under the Irrigation District Law of the State of California, hereinafter

referred to as “Vista”. Each of the above is sometimes referred to individually as “Party”, Escondido and Vista are sometimes collectively referred to as the “Local Entities”, and all of the above are sometimes collectively referred to as “Parties.”

1.0 PURPOSE

This Agreement is entered into for the purposes of fully and finally implementing the San Luis Rey Indian Water Rights Settlement Act of 1988 (“Settlement Act”), as amended, and, together with the Implementing Agreement as to the parties thereto, achieving the complete resolution of all claims, controversies, and issues involved in all of the pending proceedings among the parties in the United States District Court for the Southern District of California and the Federal Energy Regulatory Commission in satisfaction of the requirement of paragraph (1) of section 104 of the Settlement Act.

This Agreement, which is premised on Congress amending the Settlement Act, clarifies the role and responsibilities of the United States with respect to all water rights of the Bands in light of the Settlement Act.

2.0 DEFINITIONS

2.1 “Bands” mean the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians, acting through the governing bodies of each respective Band as duly recognized by the Secretary.

2.2 “Implementing Agreement” means the agreement between the City of Escondido, California, the Vista Irrigation District, the San Luis Rey River Indian Water Authority and the Bands dated December 5, 2014.

2.3 “Indian Water Authority” means the San Luis Rey River Indian Water Authority, a permanent intertribal entity established pursuant to duly adopted ordinances of the Bands recognized and approved by the Settlement Act.

2.3 “Local Water System” means the facilities operated by the Local Entities to develop and convey water from the Warner Ranch to the Bear Valley Power Plant, and the roads, trails, rights-of-way, and related facilities used by the Local Entities to gain access to those facilities in connection with their operation, maintenance, and repair.

2.4 “San Pasqual Undergrounding Project” means the project to relocate and replace with an underground pipeline most of that portion of the Escondido Canal, which as of the Effective Date, traverses land within and in the vicinity of the San Pasqual reservation.

2.5 “Secretary” means the Secretary of the Interior of the United States of America.

2.6 “Supplemental Water” means the water delivered by the United States pursuant to Section 106 of the Settlement Act.

2.7 “Settlement Act” means Title I of Public Law 100-675, enacted on November 17, 1988, 102 Stat. 4000, Title I (as amended by section 117 of the Act of November 13, 1991, Public Law 102-154, 105 Stat. 990, 1012-1013; section 1017 of the Act of October 14, 1998, Public Law 105-256, 112 Stat. 1896, 1899; and section 211 of the Act of October 27, 2000, Public Law 106-377 Appendix B, 114 Stat. 1441A-70) and

any other amendments thereto, known more fully as the “San Luis Rey Indian Water Rights Settlement Act.”

2.8 “United States” means the United States of America.

3.0 GENERAL PROVISIONS

3.1. CONTINUED FEDERALLY RESERVED AND OTHER WATER RIGHTS. The United States recognizes that, as directed by Congress in section 112(b) of the Act, notwithstanding any other provision of law, including anything in the Act as amended, the Bands had, have, and continue to possess federally reserved rights and other water rights held in trust by the United States.

3.2 AUTHORITY OF BANDS. Each Band has the authority and responsibility to assert, enforce, or defend the federally reserved and other water rights held in trust for each Band by the United States, as provided in and consistent with the Settlement Act.

3.3 DISCRETION OF THE UNITED STATES; NO CLAIMS BASED ON EXERCISE OF SAME. Any exercise of the United States’ discretion regarding whether and how to participate in any proceeding involving the assertion, enforcement, or defense of the Bands’ claims to federally reserved and other water rights held in trust by the United States shall not be subject to judicial review and shall not give rise to any claim for relief against the United States; *provided, however*, that (1) the United States, in its capacity as the Bands’ trustee, shall not take a position in such a proceeding adverse to the Bands with respect to their water rights claims unless the Secretary determines in her non-delegable discretion that doing so is consistent with (a) the trust relationship,

including the principle of working to avoid or resolve conflicts to the maximum extent possible in a manner that accommodates and protects trust and restricted fee lands, trust resources, and treaty and similarly recognized rights; and (b) other federal law; and (2) the ability of the United States, in any other capacity, to take positions in litigation or other proceedings is not affected by this subsection.

3.4 LAW GOVERNING FUTURE DISPUTES. Any proceeding involving the assertion, enforcement, or defense of claims to federally reserved and other water rights held in trust for the Bands by the United States shall be governed by the same law and rules, both substantive and procedural, as any other proceeding involving Indian water rights held in trust by the United States; *provided, however*, that:

(1) The United States shall not be a required party in any such proceeding in its capacity as trustee for any Band; and

(2) If the United States, after notice, does not participate in any such proceeding in a court of competent jurisdiction in said capacity as trustee for any Band, any claim, defense, or counter-claim properly asserted by any party in the proceeding may nonetheless be resolved with complete finality and full preclusive effect against the United States in its capacity as trustee for any Band, by such court, provided that the appropriate Band is provided with adequate notice regarding the proceeding.

4.0 WATER DELIVERY AND ALLOCATION.

4.1 DELIVERY OF SUPPLEMENTAL WATER. As authorized and directed in the Settlement Act, the United States agrees to deliver 16,000 acre-feet per year of Supplemental Water to the Bands and the Local Entities.

4.2 ALLOCATION OF WATER AMONG THE BANDS. The United States recognizes that the Bands have agreed on the process (Art. IV(6)) by which the available water will be allocated amongst themselves and any disputes shall be resolved pursuant to the dispute resolution provision provided therein (Art. XIII), in duly enacted ordinances adopted by each of the Bands. Those ordinances were recognized and approved by Congress in section 107(a)(1) of the Settlement Act and cannot be amended without the approval of the Secretary, pursuant to section 107(a)(2) of the Settlement Act.

5.0 RELATIONSHIP TO AGREEMENT AMONG BANDS, INDIAN WATER AUTHORITY, AND LOCAL ENTITIES. The United States recognizes that the Bands and the Indian Water Authority have entered into the Implementing Agreement, which is attached as Exhibit A to this Agreement. The Implementing Agreement sets forth the arrangements between and among the Bands, the Indian Water Authority, and the Local Entities resolving their disputes relating to the use of certain land and water rights in or near the San Luis Rey River watershed. Except as otherwise provided in this Agreement, the Secretary will exercise any discretion she has regarding actions that could interfere with the Implementing Agreement in a manner consistent with the trust relationship, including the principle of working to avoid or resolve conflicts to the maximum extent possible in a manner that accommodates and protects trust and restricted fee lands, trust resources, and treaty and similarly recognized rights.

6.0. RESOLUTION OF DISPUTES AMONG THE PARTIES OVER CERTAIN WATER RIGHTS, RIGHTS-OF-WAY, AND OTHER USES OF TRIBAL AND OTHER FEDERAL LANDS SUBJECT TO THE AUTHORITY OF THE SECRETARY.

6.1 In order to resolve the land and water disputes referenced in Paragraph 1 above, the Parties hereby agree that:

(1) Commencing with the Effective Date, the Local Entities shall exercise the water rights at issue in the pending litigation among the Parties and their rights to use and occupy land and rights-of way in connection with the operation of the Local Water System vis-à-vis any other Party to this Agreement in accord with the terms of the Settlement Act, this Agreement, the Conduit Exemption License, rights-of-way granted by the Secretary, and the Implementing Agreement as to the parties thereto. No rights or obligations between or among the Parties shall remain in effect pursuant to the following documents: (A) Agreement dated June 4, 1894, between the Escondido Irrigation District and the Potrero Band or Village of Mission Indians; (B) Memorandum of Agreement dated February 2, 1914, between the United States, for and on behalf of the Rincon Indians, and the Escondido Mutual Water Company; (C) Agreement dated June 28, 1922, between William G. Henshaw and the United States by the Secretary of the Interior for the Indians of the Rincon and Pala Reservations; and (D) any permit or license issued prior to the Effective Date by FERC other than the Conduit Exemption License.

(2) Pursuant to section 109(b) of the Settlement Act, the Secretary has determined that the Indian land or other land subject to the authority of the Secretary, as described in Exhibit G Maps attached as Exhibit B to this Agreement, is used, or may be useful, in connection with the operation, maintenance, repair, replacement, or use of the Local Water System. The La Jolla, Rincon and San Pasqual Bands have agreed in the Implementing Agreement

to provide the necessary approvals for the Secretary's exercise of authority pursuant to section 109 of the Settlement Act. The Secretary recognizes existing rights-of-way or other interests in Indian land and other federal land subject to the authority of the Secretary (collectively, "authorizations") that are necessary to operate the Local Water System, and will take the following steps:

(A) The Secretary has conducted a preliminary review to verify the validity of existing authorizations, including FERC authorizations, for known and existing facilities of the Local Water System ("facilities"). The Secretary agrees to complete a final review of such known and existing authorizations that will include the identification of any known and existing facilities found to be beyond the scope of existing authorizations. The Secretary will make every effort to complete this verification process within six months of the execution of this Agreement. The Secretary will produce a map showing the locations of all existing facilities and authorizations addressed in this sub-section, and will issue or produce other documentation confirming the authorizations for all known and existing facilities.

(B) For any known and existing facilities identified through the verification process described in (i) as beyond the scope of existing authorizations, the Secretary will consult with the Bands and the Local Entities regarding a process to review such facilities and, consistently with applicable federal law and regulation, take necessary steps to bring them under a valid authorization. The Secretary will make

every effort to complete any process(es) under this sub-section within one year of the execution of this Agreement.

(C) For the purposes of this Agreement, the San Pasqual Undergrounding Project will be treated as known and existing and the Secretary will make every effort to complete any process(es) under this subsection within one year of this Agreement.

(D) For any unknown facilities that are identified after completion of, and that were not reviewed during, the processes described in (A) or (B), the Secretary will review such unknown facilities using the processes described in (A) and (B). The Secretary will complete any process(es) under this sub-section as expeditiously as possible.

(3) The Local Entities and the Bands will consult with the Secretary regarding all future proposed changes or new actions on Indian land or other federal land subject to the authority of the Secretary prior to commencing such changes or actions. The Secretary, in coordination with the Bands and the Local Entities, will determine whether future proposed changes or new actions are within the scope of existing, valid authorizations. For those future proposed changes or new actions requiring new authorizations, the Secretary will comply with all applicable federal laws and regulations in reviewing proposed authorizations for such changes or actions.

(4) The Parties agree that such exercise of authority by the Secretary shall be effective upon the satisfaction of the conditions set forth in section 104 of the Settlement Act.

(5) Since the terms and conditions of the Settlement Act and the Implementing Agreement as to the parties thereto provide adequate consideration and protection for the use of the above mentioned rights-of-way and other interests in tribal land and other federal land subject to the authority of the Secretary, no fees or other conditions are required or shall be imposed, unless required by federal law or regulation, with respect to existing facilities and uses verified in accordance with (2)(A), (2)(B), and (2)(C) of this section, except that individual Indians or allottees whose land is subjected to a lease, grant or title transfer of rights-of-way and other property interests by the Secretary shall be entitled to receive just compensation. However, any payment of such compensation shall be made by the Indian Water Authority and no additional consideration or compensation shall be due from the Local Entities for the use of such allotted or individually owned land.

6.2 The Secretary shall take the steps, consistent with federal law, regulation, and the trust relationship, including the principle of working to avoid or resolve conflicts to the maximum extent possible in a manner that accommodates and protects trust and restricted fee lands, trust resources, and treaty and similarly recognized rights as she may deem necessary or appropriate to support implementation of paragraph (1) of this section.

6.3 By waiving and releasing its claims in the pending federal district court and FERC proceedings, as stated in section 10.0 of this Agreement, and by satisfying the claims asserted by the Local Entities in those proceedings, as also stated in section 10.0 of this Agreement, the United States recognizes and agrees that the Local Entities retain the land and water rights at issue in the proceedings described in Section 10 of this

Agreement, on which they have relied to operate and maintain the Local Water System except as expressly provided in the Settlement Act, this Agreement, and the Implementing Agreement as to the parties thereto.

6.4 After the Effective Date the Parties acknowledge that the Local Water System will be operated for the joint use and benefit of the Bands and the Local Entities in accordance with the terms of the Settlement Act, this Agreement and the Implementing Agreement as to the parties thereto.

7.0 WAIVER OF CLAIMS AGAINST THE UNITED STATES; EFFECT ON RIGHTS; RESERVATION OF RIGHTS.

7.1 WAIVER OF CLAIMS AGAINST THE UNITED STATES. Subject to the provisions of 7.3, the Bands and the Indian Water Authority hereby waive and release any and all claims, including breach of trust claims, against the United States for:

(1) any and all water rights, whether surface or ground water, whether reserved, trust or otherwise, including but not limited to claims related to injuries; loss or deprivation of use; failure to assert, defend, acquire, or develop; negotiation and execution of this settlement, including the Settlement Agreement and the Settlement Act; and allocation of water and money between and among the Bands pursuant to the Bands' ordinances;

(2) damages, losses, or injuries to land or other resources due to loss of water or water rights (including hunting, fishing, gathering, or cultural rights);

(3) damages, losses, or injuries to water, land, or other resources of the La Jolla, Rincon, San Pasqual, Pala, and Pauma Indian Reservations arising out of, resulting from, or relating in any manner to Project No. 176; and,

(4) all claims relating in any manner to the management, investment, distribution, or allocation of funds by the United States, upon receipt of such funds from the Secretary of the Treasury, of the San Luis Rey Tribal Development Fund established by Section 105 of the Settlement Act first arising prior to the Effective Date; and

(5) as provided in Section 107(b)(3) of the Settlement Act, all claims relating in any manner to the management, investment, distribution, or allocation of funds by the Indian Water Authority, upon receipt of such funds of the San Luis Rey Tribal Development Fund established by Section 105 of the Settlement Act.

provided, however, that, to the extent that the United States in any legal proceeding asserts any claim to San Luis Rey surface or ground water rights other than in its capacity as trustee for any Band, any Band and/or the Indian Water Authority may defend against any such claim in that proceeding, including by asserting the federally reserved and other trust rights referred to in paragraph 3.1 in response to the claims asserted by the United States.

7.2 NO THIRD PARTY RIGHTS. Except as provided in paragraph 8, nothing in this Agreement shall be construed to confer any substantive or procedural right on any person or entity other than the Bands, the Indian Water Authority, Escondido, Vista and the United States.

7.3 RESERVATION OF RIGHTS AND RETENTION OF CLAIMS.

(1) Notwithstanding the waivers and releases in this Agreement, the Bands, the Indian Water Authority and the United States, acting as trustee for each Band and allottees, retain -

- A. all claims for enforcement of this Agreement and the Settlement Act;
- B. all claims relating to activities affecting the quality of water, including any claims under—
 - i. the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), including for damages to natural resources;
 - ii. the Safe Drinking Water Act (42 U.S.C. 300f et seq.);
 - iii. the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and
 - iv. any regulations implementing the Acts described in subparagraphs (A) through (C);
- C. all claims relating to damages, losses, or injuries to land or other resources; and
- D. all rights, remedies, privileges, immunities, and powers not specifically waived and released pursuant to this Agreement;
- E. any future claims arising from water rights acquired by the Bands or Indian Water Authority and taken into trust after the Effective Date of this Settlement Agreement as provided in subparagraph 9.2; and

F. any and all future challenges to final agency action, either before an agency or in the federal courts pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701-706 (“APA”), where the challenge asserts that the agency action would impair federally reserved water rights or other water rights held in trust for a Band or the Bands; provided that, this retention is inapplicable to the agency actions or decisions that under any other section of this Agreement are not subject to judicial review or review under a different standard.

(2) Notwithstanding the waivers and releases in this Agreement, the Bands and the Indian Water Authority also retain all claims against any person or entity other than the United States and the Local Entities.

8.0 ALLOTTEES

8.1 PURPOSE. It is the intent and expectation of the United States and the other Parties that, as a result of this Agreement, the Settlement Act, and actions taken pursuant thereto, the quantity and reliability of the water supplies available for use on the Bands’ reservations, including the water available to satisfy the needs of the allottees with allotments within the La Jolla, Rincon, and Pala reservations, will be enhanced as compared to the quality and reliability of the water that otherwise would have been available for use on the Bands’ reservations taking into consideration, among other things

--

(1) the potential risks, cost, and time delay associated with litigation that is resolved by this Agreement and the Settlement Act;

(2) the benefits provided by the Settlement Act, including the availability of the 16,000 acre-feet per year of Supplemental Water authorized and required under section 106 of the Act to be permanently delivered for use by the Bands and the Local Entities; and

(3) the applicability of section 7 of the Act of February 8, 1887 (25 U.S.C. 381) and this title to protect the interests of allottees.

8.2 IN GENERAL. In addition to serving the needs of the Bands, the 16,000 acre-feet per year of Supplemental Water and other water available for use on the Bands' Reservations shall serve, either through direct use or exchange, current and future reasonable domestic use by allottees and for irrigation purposes of the allottees for allotments on the La Jolla, Rincon and Pala reservations. The provisions of Section 7 of the Act of February 8, 1887 (25 U.S.C. 381) shall apply to the 16,000 acre-feet per year of Supplemental Water and to other water available for use on the La Jolla, Rincon and Pala Reservations.

8.3 ALLOTTEE CLAIM PROCEDURES; SATISFACTION OF CLAIMS.

The La Jolla, Rincon and Pala Bands shall satisfy any rights of the allottees with allotments on their respective reservations from the Supplemental Water or other water available to the Bands or the Indian Water Authority in accordance with the following procedures:

(1) Claims to water by allottees on allotments within the La Jolla, Rincon and Pala Indian Reservations first must be presented to the tribal government that exercises jurisdiction over the reservation in which the allotment

is located. In deciding such claims, the La Jolla, Rincon and Pala Bands shall provide the claimants with a full and fair opportunity to be heard.

(2) Following the exhaustion of available tribal remedies, a decision of the tribal government regarding an allottee claim to water is subject to review by the Secretary under section 7 of the Act of February 8, 1887 (25 U.S.C. § 381). The Secretary shall have the authority to protect the rights of allottees as specified in that section.

(3) In accordance with section 112(c) of the Settlement Act, and pursuant to Congress' intent to provide full satisfaction of the water rights of allottees and to ensure final resolution of all potential claims, the remedial procedures set forth in paragraph 8.3(1) of this Agreement, including the right to review under Section 381, shall replace any and all claims, including breach of trust claims, of the allottees against the United States regarding: (1) any and all water rights, whether surface or ground water, whether reserved or otherwise, including but not limited to claims related to injuries, loss or deprivation of use, or failure to assert, defend, acquire, or develop such rights; (2) damages, losses, or injuries to land or resources due to loss of water; or (3) negotiation and execution of this Settlement, including the Settlement Agreement and the Settlement Act, and the allocation of the Supplemental Water between and among the Bands. The intent of this Agreement and Settlement Act is to fully satisfy all rights of allottees with allotments on their respective reservations. Nothing in this section alters an allottees' rights under Section 381 as set forth herein.

9.0 EFFECT OF SETTLEMENT AGREEMENT AND ACT

9.1 OTHER LAWS, STATE JURISDICTION AND CLAIMS NOT AFFECTED.

Nothing in this Settlement Agreement—

(1) affects the ability of the United States, acting as sovereign, to take actions authorized by law, including but not limited to, any laws relating to health, safety, or the environment, such as—

(A) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(B) the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(D) the Endangered Species Act (16 U.S.C. 1531 et seq.); and

(E) any regulations implementing the Acts described in subparagraphs (A) through (D);

Provided that, to the extent any such action is within the discretion of the United States, the United States, consistent with Executive Order 13175, shall upon request, consult with the Bands and Indian Water Authority with respect to the impacts on the Settlement Act, Settlement Agreement or the Implementing Agreement, and take into full consideration its trust responsibilities to the Bands and how any such action would impact implementation of the Act.

Provided further that, to the extent any such action is within the discretion of the Secretary, the Secretary shall exercise that discretion consistent with the

trust relationship, including the principle of working to avoid or resolve conflicts to the maximum extent possible in a manner that accommodates and protects trust and restricted fee lands, trust resources, and treaty and similarly recognized rights.

(2) affects the ability of the United States to take actions in its capacity as trustee for any other Indian tribe or allottee of any other Indian tribe;

(3) confers jurisdiction on any State court, including (without limitation) any jurisdiction—

(A) to interpret Federal law regarding health, safety, or the environment;

(B) to determine the duties of the United States or other parties pursuant to Federal law regarding health, safety, or the environment;

or

(C) to conduct judicial review of Federal agency action; or

(4) waives any claim of a member of the Band in an individual capacity that does not derive from a right of the Band.

9.2 ACQUISITION OF ADDITIONAL LANDS AND WATERS.

Nothing in this Settlement Agreement affects the ability of any of the Bands or the Indian Water Authority to acquire additional lands and/or water rights and to seek to have such acquired lands and/or rights held in trust by the United States, consistent with applicable law.

9.3 OTHER INDIAN TRIBES AND FEDERAL AGENCIES.

Nothing in this Settlement Agreement shall be construed in any way to quantify or otherwise adversely affect any land or water right, or any claim or entitlement to land

or water, of any Indian tribe, pueblo, band, or community, or any federal agency other than the Department of the Interior. Nor shall anything in this Agreement be construed to prevent any Band, the Indian Water Authority, or either Local Entity from defending against any such claim, except that no defense shall lie that the tribe, pueblo, band, community, or federal agency other than the Department of Interior is precluded by section 10 of this agreement from bringing such claim.

9.4 PRECEDENT.

Nothing in the Act or this Settlement Agreement shall be construed or interpreted as a precedent for the litigation or settlement of Indian reserved water rights.

10.0 RESOLUTION AND SATISFACTION OF ALL PENDING CLAIMS, CONTROVERSIES AND ISSUES.

In fulfillment of the requirement of section 104(1) of the Settlement Act, the Local Entities, Bands, Indian Water Authority and United States in its capacity as a party to all proceedings described in this paragraph acknowledge, certify, agree and represent that the terms, provisions, conditions and benefits provided under the Settlement Act; the Implementing Agreement; and this Agreement provide, as of the Effective Date, for a final and complete resolution of all claims and controversies asserted, or subject to assertion, in (1) the pending proceedings among the Parties in the United States District Court for the Southern District of California in Rincon Band of Mission Indians v. Escondido Mutual Water Company, Civ. Nos. 69-217-S, 72-271-S, and 72-276-S and (2) all pending proceedings before FERC involving Project 176, and all such claims are waived, relinquished, and satisfied as of the Effective Date.

11.0 DISPUTE RESOLUTION

Any dispute concerning this Agreement, or claimed breach thereof, may be brought by any Party to the United States District Court for the Southern District of California pursuant to its continuing jurisdiction in the consolidated actions in Rincon Band of Mission Indians v. Escondido Mutual Water Company, Civ. Nos. 69-217-S, 72-271-S, and 72-276-S, solely to interpret and enforce the provisions of this Agreement.

12.0 EFFECTIVE DATE

This Agreement takes effect only if the following:

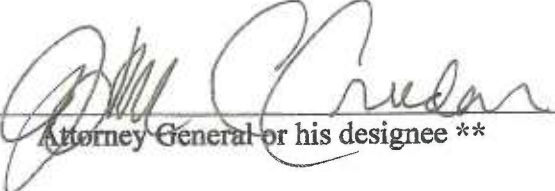
- (1) The Agreement is signed by the Secretary of the Interior, the Attorney General or his designee, the Tribal Chair of each of the five Bands pursuant to the appropriate approval by the Council of each of the Five Bands, the Mayor of Escondido, the President of the Vista Irrigation District Board, and by the President of the Indian Water Authority;
- (2) Federal legislation consistent with the understanding of the parties is enacted and ratifies this Agreement; and
- (3) the requirements of Paragraph 6.1(2)(A), 6.1(2)(B), and 6.1(2)(C) of this Agreement and Section 104 of Title I of Public Law 100-675 are satisfied, and all rights-of-way and other land rights subject to the authority of the Secretary which are used, in connection with the operation, maintenance, repair or replacement of the Local Water System are authorized and in place.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the dates set forth below:

**The signature of John C. Cruden, Assistant Attorney General, is effective if and only if the 114th Congress enacts legislation substantively identical to the language agreed upon by the parties dated 11-25-14, which is attached to this document as Exhibit C.

UNITED STATES OF AMERICA

By:  DATE: DEC 22 2014
Secretary of the Interior *

By:  DATE: 1/30/2015
Attorney General or his designee **

SAN LUIS REY RIVER INDIAN WATER AUTHORITY

By:  DATE: 12/15/14

LA JOLLA BAND OF MISSION INDIANS

By:  DATE: 12-5-14

RINCON BAND OF MISSION INDIANS

By:  DATE: 12-5-14

SAN PASQUAL BAND OF MISSION INDIANS

By:  DATE: 12-5-14

* "The above signature of the Secretary of the Interior is effective if and only if the 114th Congress enacts legislation substantively identical to the language agreed upon by the parties, dated 11-25-14, which is attached to this document as Exhibit C."

PAUMA BAND OF MISSION INDIANS

By:  DATE: 12-5-14

PALA BAND OF MISSION INDIANS

By:  DATE: 12/5/14

CITY OF ESCONDIDO

By:  DATE: 12/5/14
Mayor

By:  DATE: 12-8-14
City Clerk

Approved as to form by:  DATE: 12-8-14
City Attorney

Approved as to form by:  DATE: 12-8-14
Special Counsel

VISTA IRRIGATION DISTRICT

By:  DATE: 12-8-14
President, Board of Directors

By:  DATE: 12/8/14
General Manager

By:  DATE: 12/8/14
Board Secretary

Approved as to form by: [Signature] DATE: 12/8/14
Special Counsel

By: [Signature] DATE: 12/8/14
Director

By: [Signature] DATE: 12/8/14
Director

By: [Signature] DATE: 12/8/14
Director

By: [Signature] DATE: 12/08/2014
Director