

THE HISTORY OF THE SAN LUIS REY INDIAN WATER AUTHORITY

Background History

The La Jolla, Rincon, San Pasqual, Pauma and Pala Indian Reservations were established along and in the vicinity of the San Luis Rey River in northern San Diego County pursuant to the Mission Indian Relief Act (MIRA) in 1891. MIRA's legislative history is replete with descriptions of Mission Indian communities being driven from their land by settlers who flocked to California following the 1848 Treaty of Guadalupe Hidalgo and the ensuing Gold Rush. MIRA expressly protected the Tribes' rights to water on those reservations.

However, in 1895, the neighboring Escondido Irrigation District (later known as the Escondido Mutual Water Company and now the City of Escondido) constructed a "rock and brush" canal on the San Luis Rey River and La Jolla Indian Reservation that diverted water away from the Bands and towards Escondido.

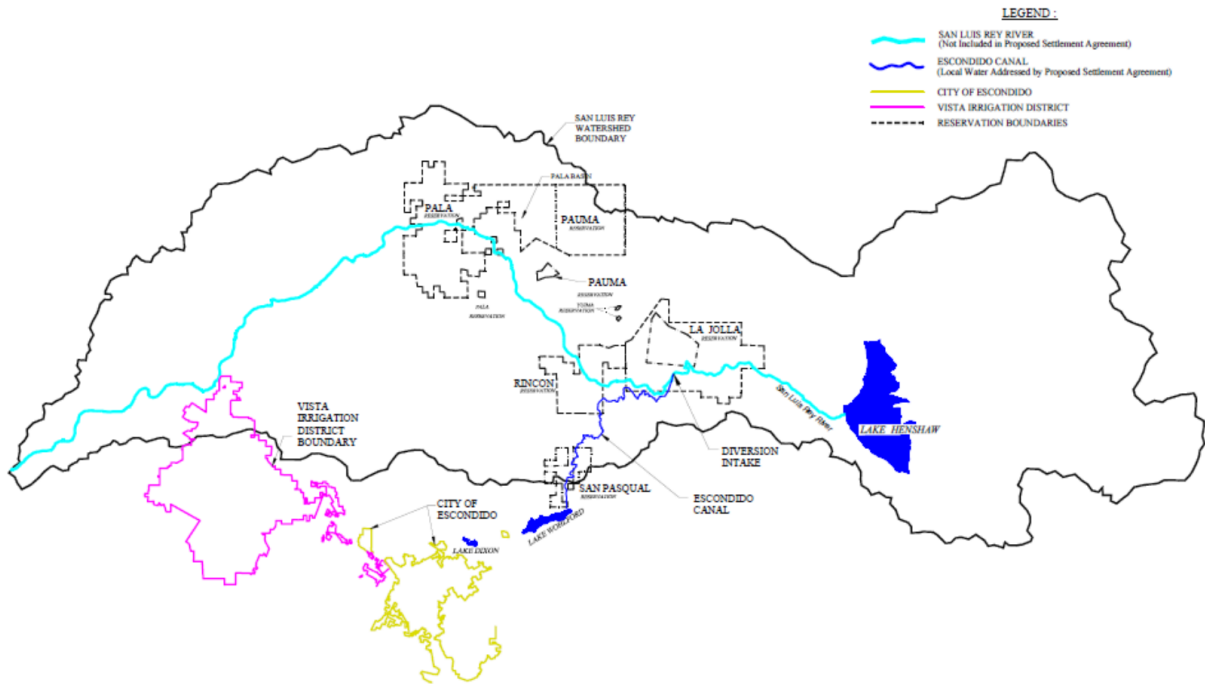
Then, in 1900, William G. Henshaw acquired approximately 41,000 acres in Warner Ranch with visions of constructing a dam on the San Luis Rey river and selling the water to the cities of Escondido and Vista. In February 1914, the United States acted on behalf of the Rincon Band without Tribal leadership signatures and entered into a contract with the Escondido Mutual Water Company (EMWC) that allowed for the Escondido Canal to be built through the Rincon Reservation illegally.

Justification for this contract was that the canal would provide electricity to the Pauma Valley, as EMWC wanted to construct two power plants; one on the Rincon Reservation and the other below Lake Wohlford.



In 1924, Henshaw, EMWC, and the Vista Irrigation District (VID) entered into an agreement to convert the canal to a concrete diversion dam. In that same year, the Federal Power Commission (FPC), which later became the Federal Energy Regulatory Commission (FERC), licensed the project after ignoring the provisions stated in Section 8 of MIRA. The construction of the dam was carried out from 1924-1929.

Upper San Luis Rey River Basin Water Boundary Map



Source: Rincon Band of Luiseño Indians

The next significant development was a drought in the 1940s that made the cities of Escondido and Vista completely dependent on water from the San Luis Rey River. Escondido and Vista embarked on a pumping program at the wellfield above Lake Henshaw and entered into various agreements to share the water that would be pumped from that wellfield.

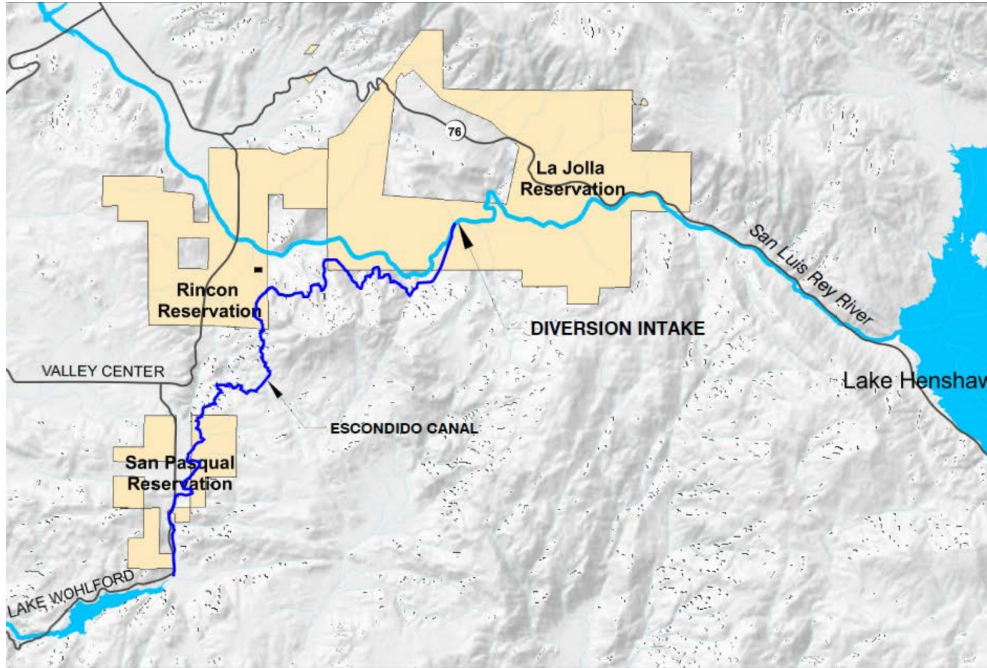
When the groundwater was pumped from the wellfield, it created storage space underground that was recharged by water that would normally have flowed into the reservoir (Lake Henshaw). If the groundwater had not been pumped, it would have flowed from the tributaries and recharged the reservoir and the San Luis Rey river basin.

Because of this pumping, the water system was altered and affected the calculation or any determination of the Rincon Right, which was a part of the original agreements between the United States and Escondido and Vista that guaranteed the delivery of 6 cubic feet per second (cfs) of water to the Rincon Reservation. Altering the protected flow of water also meant that less water went downstream to Pala and Pauma to recharge those groundwater basins.



Because of the diversion of 90% of the San Luis Rey River for almost 50 years, the Rincon Band's wells were drying up. Thus, Patricia Duro from the Rincon Band, went to the Bureau of Indian Affairs in Riverside in 1968 and approached attorney Robert Pelcyger (Bob). This led to litigation and the beginning of the San Luis Rey Indian Water Rights lawsuit.

Water Diversion Map of the Upper San Luis Rey River



Source: Rincon Band of Luiseño Indians





The Lawsuit

In 1969, Bob Pelcyger filed a lawsuit on behalf of the Rincon and La Jolla Bands against the EMWC and the City of Escondido to determine who was entitled to use the waters of the San Luis Rey River. The Pauma, San Pasqual, and Pala Bands eventually joined the lawsuit over a period of years as the Bands learned it was in their best interest to work together. The original lawsuit against the EMWC claimed damages since the EMWC was diverting the water under invalid contracts. Bob also filed this suit in the Federal Court, suing the Secretary of the Interior and the Attorney General of the United States.

In 1974, the year that Escondido and Vista's FPC licenses were up for renewal, the Secretary of the Interior brought an action before the Federal Power Commission (later the Federal Energy Regulatory Commission in 1977) on behalf of the Bands claiming that Escondido had violated the terms of its license. In 1977, Judge Ellis issued his initial decision stating that the Lake Henshaw and Escondido Canal project should never have been licensed because it was not a power project.

Escondido Mutual Water Company (1904-1970)



Source: Rincon Band of Luiseño Indians (2017)

However, in 1979, the FERC Commissioners appealed the decision and granted new licenses to Escondido and Vista that included the Henshaw facilities and underground water basin with the condition that the Bands could get water from the facilities that crossed their reservations but would have to apply to FERC to obtain water from the canal and facilities with additional annual charges.

The Bands appealed FERC's decision and brought it to the United States Court of Appeals for the Ninth Circuit in California. The case went all the way to the Supreme Court in 1984 where they issued a split-decision, ultimately stating the case had to go back to FERC and start all over again with no end in sight.

At that point, the parties, including the United States, concluded that a negotiated, congressionally approved settlement provided the best opportunity for a reasonable and timely settlement.



The Settlement Act

In 1984, Congressman Ron Packard (CA-R), representative of the 43rd district, became the primary sponsor of the negotiations between the parties, and in 1988 the San Luis Rey Indian Water Rights Settlement Act (Settlement Act) was passed and the San Luis Rey Indian Water Authority (SLRIWA) was formed.

The Settlement Act authorized and directed the Secretary of the Interior to arrange for the development of 16,000 acre-feet of supplemental water for the use and benefit of the five Bands, Escondido, and Vista. Congress also authorized the appropriation of \$32 million for use by the SLRIWA and for economic development of the reservations. The money was appropriated and deposited in an interest bearing Treasury account in 1990.

The task of locating 16,000 acre-feet of water for the Bands was challenging, as it took another 11 years to determine where the supplemental water would come from. In 1998, the California Legislature enacted a law that appropriated \$230 million for the lining of the All-American Canal and Coachella Branch of the Colorado River. In 2000, Congressman Packard amended the Settlement Act, which directed the Secretary of the Interior to permanently furnish 16,000 acre-feet of the water conserved by the All American and Coachella Branch Lining Project to the Bands. All documents were signed in 2003 and the first supplemental water became available in 2006.

Once the water was identified in 2003, the Bands had to negotiate the terms and conditions to transport it from the Colorado River to Northern San Diego County. To do this, the Settlement Act was composed of three agreements between the Bands, the city of Escondido, the Vista Irrigation District (VID), the Coachella Valley Water District, the Metropolitan Water District (MWD), and the San Diego County Water Authority (SDCWA). They are the following:

- **Allocation Agreement** – the allocation of water saved by the lining of the All-American and Coachella Canals would be divided as follows:
 - The first 16,000 acre-feet would be received by the San Luis Rey Settlement Parties annually
 - The remaining saved water, approximately 77,000 acre-ft/year, would be allocated to (SDCWA).
- **Water Delivery Agreement** – Transfer of the conserved Colorado River water from Lake Havasu, located on the border between California and Arizona, to northern San Diego County would be completed by MWD.
- **Water Conveyance Agreement** – Transfer of the settlement water from northern San Diego County to the San Luis Rey Settlement Parties would be completed by SDCWA. The Indian Bands may sell any water not needed to Escondido and Vista.



Under this agreement, Escondido and Vista would be provided with the same water they would have gotten from MWD and SDCWA, but had to pay the Bands for that water instead, which would add a source of a continuous income for the Bands.

However, in 2004, the government was going through the very large and costly Cobell Case, which accused the government of mismanaging tribal trust responsibilities, and cost the government billions of dollars. Because of this, the government told the Department of the Interior to limit future responsibility and settlements. Thus, the Department of the Interior invalidated the Allocation Agreement by claiming that the supplemental water would take the place of the original reserve water rights to the San Luis Rey water and the Bands would have to give up their reserved water rights and relieve the government of any future responsibility.

Lake Wohlford



Source: San Diego Union Tribune

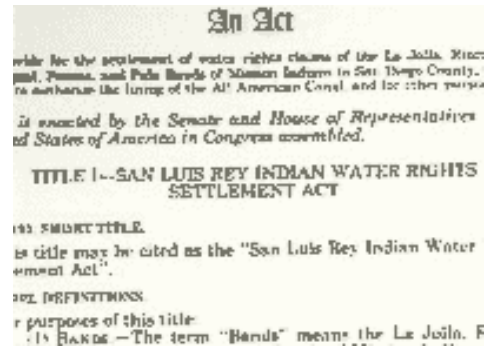
The Bands firmly said no because four of the five Bands were entirely dependent on their reserved rights to local San Luis Rey water for domestic, agricultural, and business uses on their reservations. Also, the very expensive new infrastructure that would be required to deliver supplemental water to the reservations would have been unnecessary when that supplemental water could readily be delivered to Escondido and Vista through existing pipelines.

Resolving the dispute with the United States government took another twelve years, so during this standstill, the Bands were able to negotiate with Escondido and Vista on their agreements. The negotiations entailed arrangements of water exchanges, canal operations, payments, and wellfield operations. By 2008, the San Luis Rey Indian Water Authority (SLRIWA) became actively and formally involved. The parties came to an agreement in 2012 that did not include the federal government.



Eventually the dispute with the United States government required a compromise carefully crafted by Deputy Interior Secretary Mike Connor as an amendment to the 1988 Settlement Act. The amendment was included as Section 3605 of the Water Infrastructure Improvements for the Nation (WINN) Act enacted in December of 2016. The agreement was signed after the Bands agreed not to hold the government responsible for intervening with Escondido, Vista, SLRIWA, and the Bands regarding local water or other items within the implementation agreement.

The San Luis Rey Indian Water Rights Settlement Act of 1988



Source: San Luis Rey Indian Water Authority

Once the Federal District Court and FERC approved the accompanying settlement documents and terminated the proceedings in May 2017, the cases were finally closed and the settlement took effect.

Important Settlement Features

- When the settlement became effective, the Indian Water Authority received approximately \$100 million for its future operations and economic development of the five reservations from the funds previously appropriated by Congress and from the Metropolitan Water District of Southern California for the supplemental water it received before the settlement took effect in 2017.
- The five Bands, Escondido, and Vista have rights to share and use both San Luis Rey water and the supplemental water imported from the Colorado River on the Bands' reservations and Escondido and Vista's service areas pursuant to the terms of the settlement.
- Escondido and Vista continue to be responsible for operating, maintaining, repairing and replacing the facilities of the local water system.
- Through a one-for-one exchange and/or cash, the Bands compensate Escondido and Vista for additional San Luis Rey water provided for use on their reservations.
- The Bands pay the costs associated with conveying the 16,000 acre-feet of supplemental water from the Colorado River to northern San Diego County.
- Escondido and Vista pay the Bands for the supplemental water delivered to them what they would otherwise pay the San Diego County Water Authority. The amount of those payments is expected to increase as the price of imported water in Southern California continues to rise.
- The SLRIWA makes periodic distributions of money to the Bands for economic development.



References

"An Act for the Relief of the Mission Indians in the State of California, Statutes at Large 1891." Native American Documents Project, <https://public.csusm.edu/nadp/a1891b.htm>.

"Century Old Tribal Water Dispute Will Be Settled Soon." The Rincon Band of Luiseño Indians, 27 Aug. 2019, <https://rincon-nsn.gov/century-old-tribal-water-dispute-will-be-settled-soon/>.

"H. Rept. 114-747 - AMENDING THE SAN LUIS REY INDIAN WATER RIGHTS SETTLEMENT ACT TO CLARIFY CERTAIN SETTLEMENT TERMS, AND FOR OTHER PURPOSES." Congress.gov, United States Congress, <https://www.congress.gov/congressional-report/114th-congress/house-report/573/>

"History." San Luis Rey Indian Water Authority, <https://www.slrwa.org/history>.

"Litigation." San Luis Rey Indian Water Authority, <https://www.slrwa.org/litigation>.

"San Luis Rey Water Settlement: Protection of Federally Reserved Water Rights." Modern Tribal Governments, https://www.calindianlaw.org/uploads/2/8/4/5/28458371/san_luis_rey_water_settlment_-_denise_turner_walsh.pdf.

"Symposium on the Settlement of Indian Reserved Water Rights Claims." Combined Packet Materials for Symposium on the Settlement of Indian Reserved Water Rights Claims, Western States Water, <http://www.westernstateswater.org/wp-content/uploads/2019/08/Combined-Packet-Materials-1.pdf>.