

San Luis Rey Water Settlement
Protection of Federally Reserved Water Rights



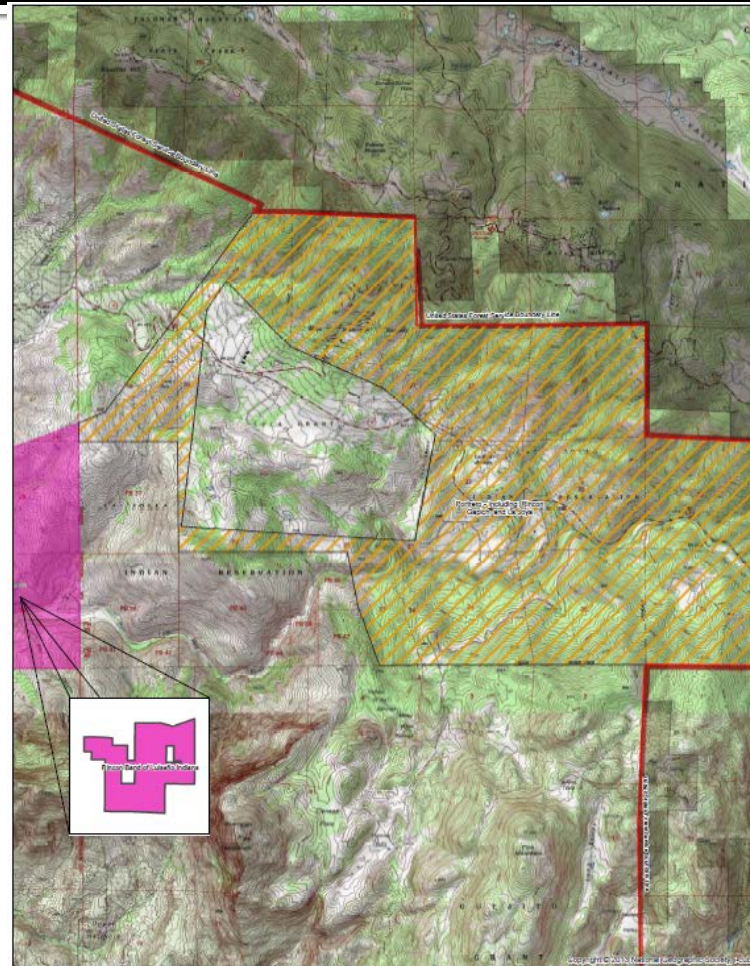


San Luis Rey Water Settlement Protection of Federally Reserved Water Rights

- Mission Indian Relief Act of 1891
- Pending Litigation (from 1969 to 1985)
- 1988 Settlement Act/Packard Amendment
- H.R. 1296 - Amendment to Settlement Act of 1988
- Draft Settlement Agreement
- Stipulation on ROWs



U.S. GRANT E.O. DECEMBER 27, 1875



- Portrero - Including, Rincon, Gapiich, and La Joya
- United States Forest Service Boundary Line
- Rincon Reservation

Including Rincon, Gapiich, and La Joya
Township 13 North, Range 1 East
Sections 18, 23, 25, 26, 30, 31, 32, 33, 34, 35, 36, and
fractional sections 17, 19, 20, 21, 22, 27, 28, and
29

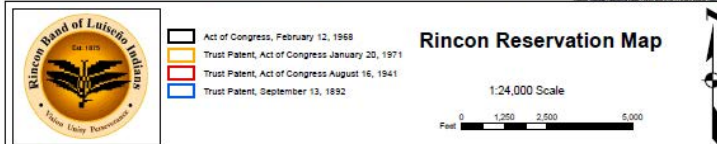
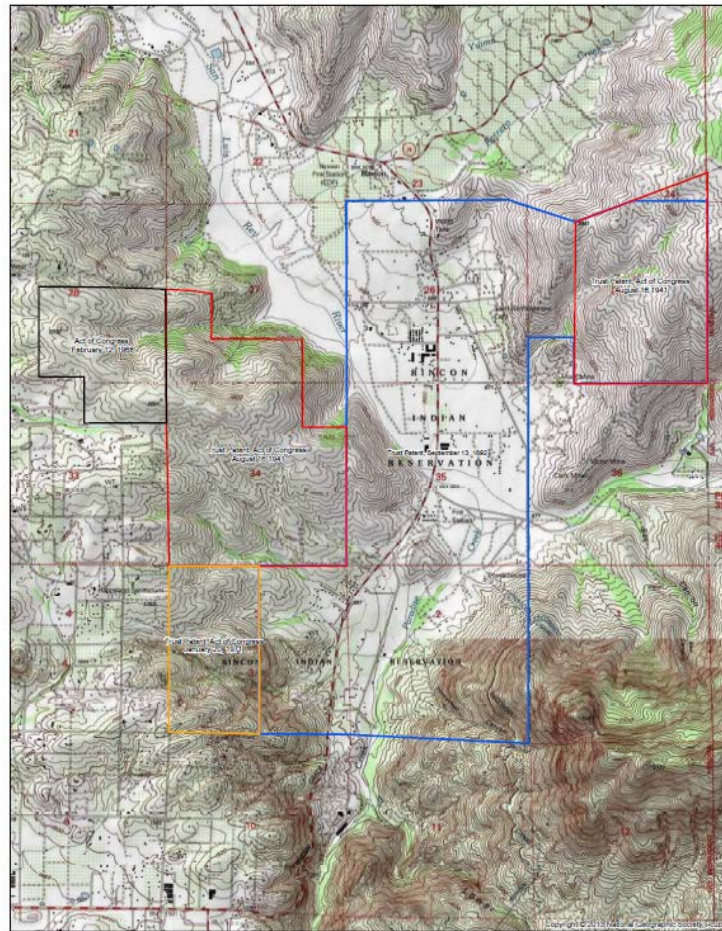
U.S. Grant Executive Mansion December 27, 1875

1:40,000 Scale
0 2,000 4,000 8,000
Feet





RINCON RESERVATION MAP 1892, 1941, 1968 & 1971





San Luis Rey Water Settlement Mission Indian Relief Act (1891) Congressional Concern Re: Land & Water Rights

The impetus for the MIRA was to address:

- Reported suffering by Interior of hunger, disease and neglect that Southern California Indians endured since 1848 when California became part of the US, and
- A House Committee of Indian Affairs report that legislation was needed to protect their land and water.



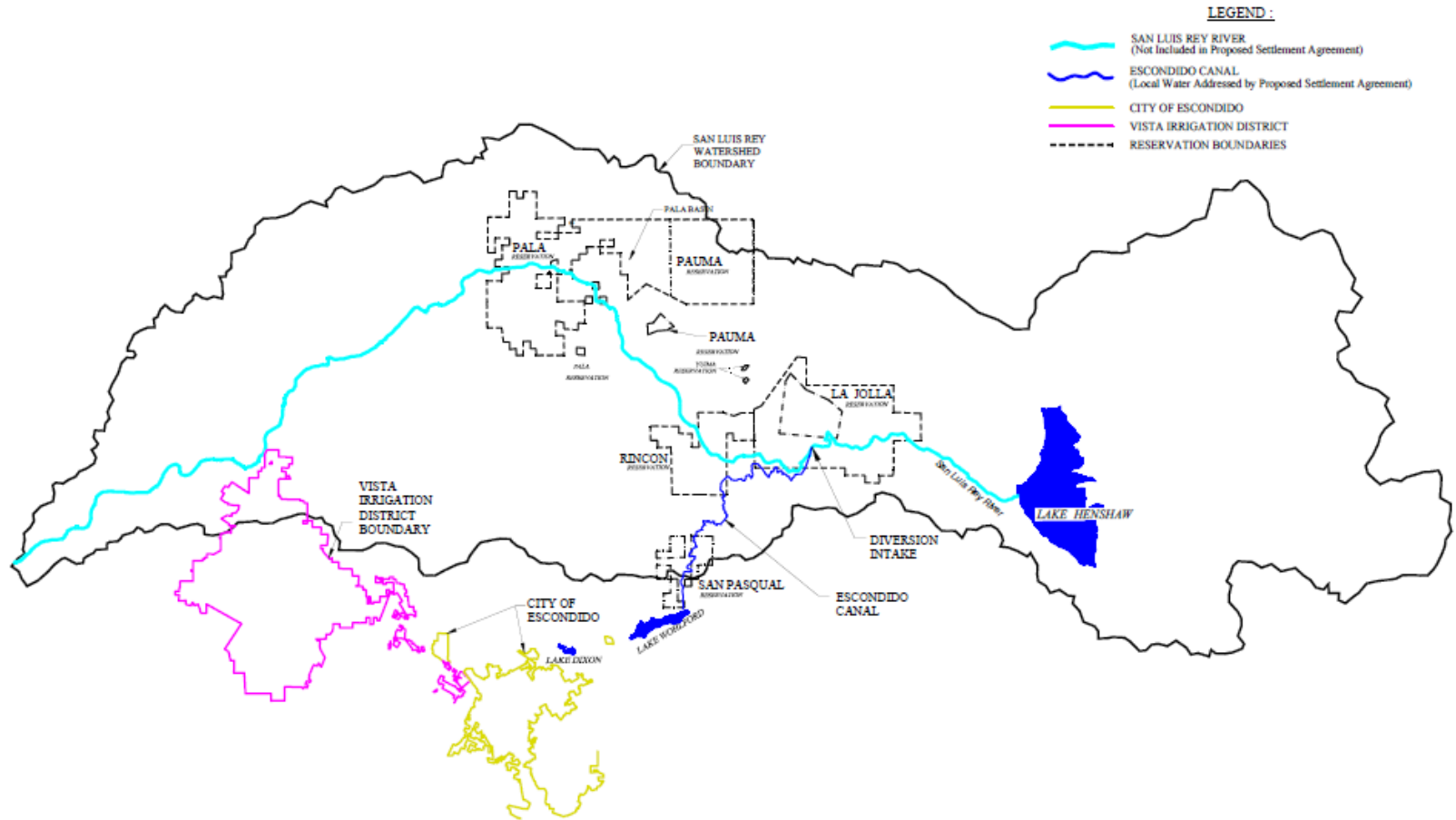
San Luis Rey Water Settlement Mission Indian Relief Act of 1891 Water Rights – Section 8

Operative Provision of the MIRA:

Section 8 authorized ROWs for conveyance facilities to be constructed over the reservations prior to the issuance of trust patents *subject to the condition that the Indians who own and occupy the land be supplied with sufficient water for domestic and irrigation use*. Once the trust patents were issued, contracts to construct ditches, canals and flumes were authorized provided consent of the band and approval of the Secretary was obtained.



Post-MIRA San Luis Rey River Watershed Boundary



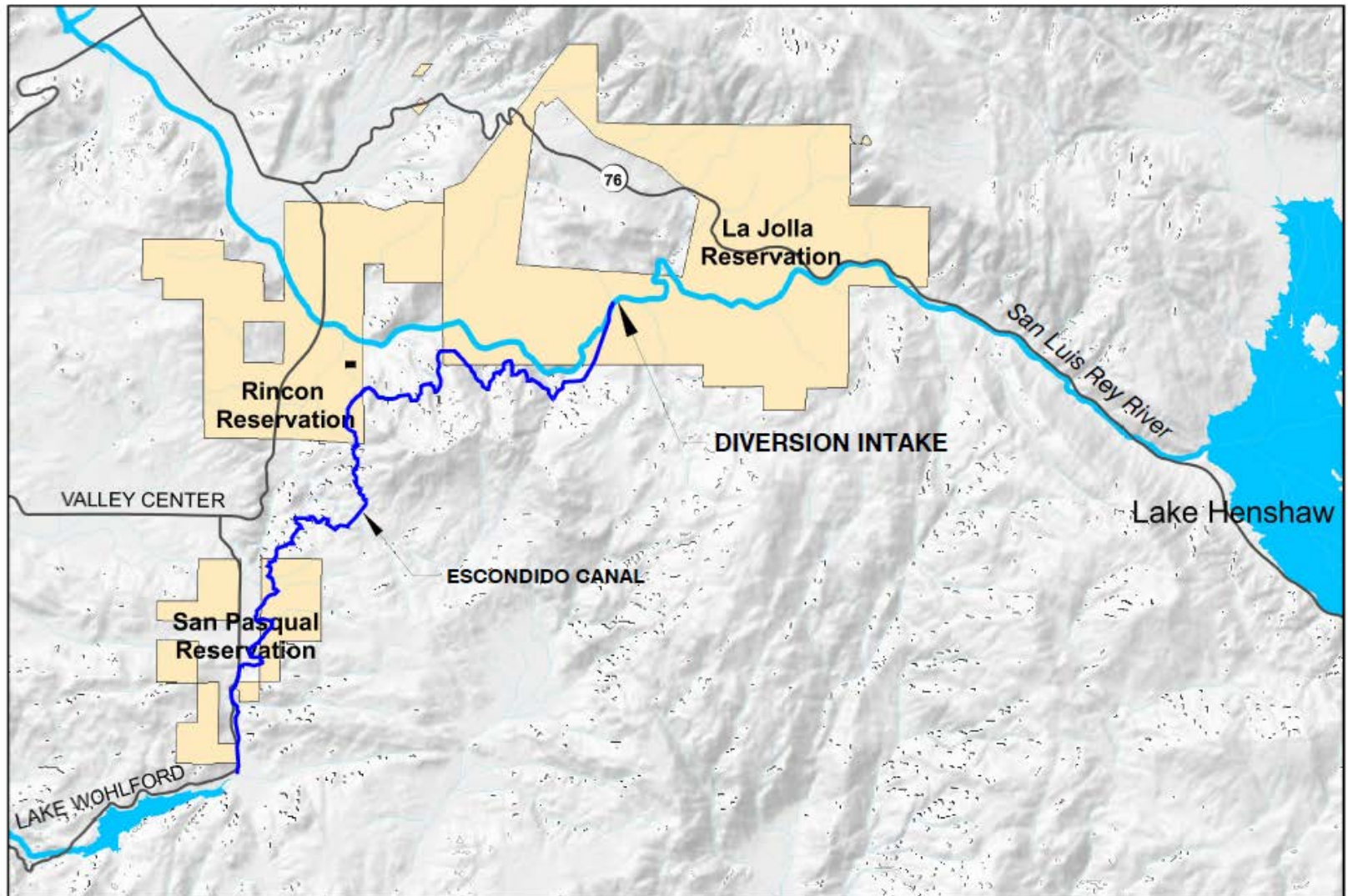


Post-MIRA San Luis Rey Water Settlement

Over the next several decades the United States approved contracts with the local entities (1894, 1914 and 1922), issued several permits and ROWs that allowed a hydroelectric plant to be constructed on the Rincon Reservation and issued a license to impound water at Lake Henshaw and divert SLR water on the La Jolla Reservation through a system of canals south to Escondido.



Post-MIRA San Luis Rey River Diversion & Escondido Canal





San Luis Rey Water Settlement District Court Litigation

1969 - two of the Bands sued Escondido and Escondido Mutual Water Company to stop the diversion of SLR water.

1972 - the Bands filed suit against Vista and the United States filed its own suit.



San Luis Rey Water Settlement FERC Litigation 1969-1984

When Escondido applied for a new license, the Bands and the United States opposed that application seeking to take over the license and operate the facilities for the benefit of the Bands.

Escondido Mut. Water Co. v. La Jolla Band of Mission Indians, 466 U.S. 765 (1984).



San Luis Rey Water Settlement Act of 1988 (S. 795 and H.R. 1699)

- The Act required the Bands and local entities to enter into an agreement following enactment of legislation, which once approved and signed by all parties, would completely resolve all claims and controversies in the pending district court and FERC proceedings;
- Upon execution of such agreement, the Act authorized payment of \$30M to the Bands and delivery of up to 16,000 af of supplemental water annually. *See id.* §§ 105(b)(1), 106(a).
- Packard Amendment (2000)



San Luis Rey Water Settlement U.S. Demands Waiver of Federally Reserved Water Rights

The United States adopted the position that the 1988 Act requires the Bands to treat the \$30M fund and supplemental water provided under the Act as an even exchange for, and extinguishment of, the Band's Federally reserved water rights in the SLR watershed.



San Luis Rey Post-Act Settlement Agreement

In 2009, the United States agrees to review the draft settlement but does not change its position of attempting to obtain broad waivers of past and future claims against the United States and non-parties to the settlement.

In 2012, the Bands and the local entities approved a comprehensive draft settlement agreement that closely approximates the provisions of the Act and the relief the government was seeking for almost 40 years:

- The local entities are made whole (same amount of water at same cost), and
- The Bands share the SLR water plus the supplemental water and use of the existing canals for water delivery.



San Luis Rey Water Settlement U.S. Demands Limits on Obligation to Protect Federally Reserved Water Rights

Refusal to join the settlement stems not from the 1988 Act but from the government's desire to secure certain benefits for itself.



San Luis Rey Water Settlement Act Response to United States' Position on Federally Reserved Water Rights

- Statutory Construction - the text of the Settlement Act was not a settlement of claims or disposition of rights – it was the settlement of litigation requiring resolution of claims in the pending proceedings (court and agency) among the parties.
- The Settlement Act contained no ambiguity or delegation of interpretative authority to the United States.
- Gila River Indian Community Water Rights Settlement Act of 2004, Pub. L. No. 108-451.



San Luis Rey Water Settlement Act Trust Commission - Final Report 2013 Waivers of Federal Trust Responsibility

The Commission heard considerable testimony regarding tribal waivers of prospective damages claims against the federal government for actions related to approval of a given negotiated settlement. Limited waivers in that context might be appropriate, but in some cases we heard of insistence on waivers of claims for future claims to water against non-parties when a final settlement was not contemplated as part of a particular negotiation. The Commission is not in a position to referee disputes between particular Indian tribes and the United States, but **correspondence we reviewed regarding the San Luis Rey Indian Water Settlement indicates a federal attitude geared more toward shedding responsibility to Indian tribes than the vigorous enforcement expected of a trustee.**

Trust Commission's Final Report (p.27).



San Luis Rey Water Settlement Act United States' Final Approach Federal Trust Responsibility

The United States would agree to recognize the Bands' Federally reserved water rights in the Amendment to the 1988 Settlement Act sufficient to accomplish the purposes for which the reservations were created provided that if there were to be a challenge to the Band's water rights, the Bands would be responsible for asserting, enforcing and defending their Federally-reserved water rights, and the United States would not be deemed to be a required party to any such litigation.



San Luis Rey Water Settlement Act

Draft Amendment H.R. 1296

United States' Insistence on Reduced Federal Role

“(d) Continued Federally Reserved and Other Water Rights-

- (1)** In General – Notwithstanding any other provision of law, including and provisions in this Act, the Bands had, have, and continue to possess federally reserved rights and other water rights held in trust by the United States.
- (2)** Future Proceedings – In any proceeding involving the assertion, enforcement, or defense of rights described in this subsection, the United States, in its capacity as trustee for any Band, shall not be a required party and any decision by the United States regarding participation in any such proceeding shall not be subject to judicial review or give rise to any claim for relief against the United States.”



San Luis Rey Water Settlement Act Draft Amendment H.R. 1296

H.R. 1296 resolves:

- The conflicting interpretations of the 1988 Settlement Act,
- Recognizes that the Bands' federally reserved water rights are held in trust by the United States, and
- Satisfies the United States' interest in limiting the future risks of litigation.



San Luis Rey Water Final Settlement Agreement

- United States is not a party to the Implementing Agreement;
- Terminates all water and land rights granted to Local Entities in 1894, 1914, 1922 and FERC license;
- Authorizes existing ROWs for the Local Water System and recognizes the land and water rights of the Local Entities;
- Waives all claims, including breach of trust claims, against the United States for water rights;
- Preserves the right of the Band and IWA to defend against any claim brought by the United States with respect to SLR water;
- Satisfaction of all allottee claims and requires Rincon, La Jolla and Pala Bands agree to satisfy water needs of allottees out of the Supplemental Water and provide due process for any claims to water subject to review by Secretary.



San Luis Rey Water Settlement Stipulation to Address ROWs

The settling parties plan to enter into a stipulation that will be filed with the District Court to:

- verify and confirm the existing rights-of-way over La Jolla, Rincon and San Pasqual in favor of Escondido and Vista to maintain water impoundment and delivery systems, and
- allow for continuing jurisdiction of the court in the event of abandonment in the future.

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