

**PUBLIC COMMENT SUBMITTED TO THE CALIFORNIA
WATER COMMISSION CONCERNING PROPOSED
BOUNDARY MODIFICATIONS FOR THE SAN LUIS REY
VALLEY GROUNDWATER BASIN (9-7)**

Submitted by:

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Introduction

I am here today in two capacities, as the Chairman of the Rincon San Luiseno Band of Indians and as the President of the San Luis Rey Indian Water Authority (IWA). The IWA was created by the La Jolla, Rincon, San Pasqual, Pauma and Pala Bands to preserve and protect our precious rights to the surface and groundwaters of the San Luis Rey watershed. We have been working collaboratively together in that effort for almost 50 years.

Point 1. I want to commend Governor Brown and his Administration and the California Legislature for having the strength and courage to finally tackle California's longest, messiest and most difficult natural resource issue, establishing a program for the sustainable management of California's essential groundwater resources.

Point 2. I also want to express my appreciation to all of those who worked so hard to draft and enact the Sustainable Groundwater Management Act and for recognizing the critical importance of sustainable management of groundwater to Indian tribes, for providing tribes the opportunity to participate in developing and implementing sustainable groundwater management plans and, most of all, for enshrining in California law the principles that "federally reserved water rights to groundwater shall be respected in full" and that "in case of conflict between federal and state law in that adjudication or management, federal law shall prevail."

Point 3. The reason it is so important for California to recognize and "respect in full" federally reserved rights to groundwater and the primacy of federal is that the water rights of Indian tribes are based on Federal law, not state law. They are entirely different from rights to groundwater that are based on state law. The California Legislature has

directed the Department of Water Resources to recognize that Indian rights to groundwater are different, to respect those federally based rights “in full,” and to recognize that, in case of conflict, federal law will prevail over state law.

Point 4. Unfortunately, however, DWR has not followed the direction of the California Legislature with regard to the groundwater in the upper San Luis Rey Basin. The Pala Indian Reservation occupies the heart of the Pala Subbasin and approximately fifty percent of the land in the Pala Subbasin. The sustainability of the Pala Subbasin depends on receiving sufficient recharge from the upstream Pauma Subbasin. The La Jolla, Rincon and Pauma Reservations occupy substantial portions of the Pauma Subbasin. Any sustainable groundwater management plan must take into account, recognize and “respect in full” the federally reserved rights of all four Bands to the groundwater in the Pauma and Pala Subbasins and must give full effect to federal law if there is any conflict with state law.

Point 5. DWR’s recommendation to sever the Pala and Pauma Subbasins is based entirely on the dubious distinction recognized in state law between percolating groundwater and groundwater that flows in defined channels (or subterranean streams). But federally reserved rights to groundwater are based on the amount of water that is needed to fulfill the purposes for which the reservation was created. It has nothing whatsoever to do with whether the underlying groundwater percolates or flows in defined channels. So SGMA required DWR to give full effect to the Pala Band’s federally reserved water rights and to recognize that federal law overrides any state law that in any way conflicts with those federally reserved rights. In other words, DWR cannot allow the state law distinction between percolating groundwater and subterranean streams to

undermine, interfere with or detract from its obligation to “respect in full” the Pala Band’s federally reserved water rights.

Point 6. The IWA is ready, willing and able to work cooperatively and collaboratively with DWR, the State Water Resources Control Board, the California Water Commission, San Diego County and the water users in the Pauma and Pala Subbasins to find a solution that provides for sustainable groundwater management in a manner that fully respects the Bands’ federally reserved water rights and recognizes that federal law prevails over conflicting state law.

Thank you very much for providing this opportunity to comment on DWR’s recommended boundary modification of the San Luis Rey Valley Groundwater Basin.

