

**PALA'S OPPOSITION TO SAN DIEGO COUNTY AND OCEANSIDE'S REQUEST
FOR A BOUNDARY MODIFICATION TO THE PALA/PAUMA VALLEY
GROUNDWATER BASIN**

Edward Raybal, attorney for

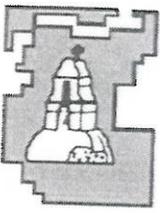
Good Afternoon, my name is ~~Howard Maxcy, vice-chairman~~ of the Pala Band of Mission Indians, and on behalf of the Band I would like to submit the following for the record.

In addition to our July 11th Letter of Opposition, Pala has the following comments:

1. Pala did not receive adequate notice.
 - a. In fact, Pala was alerted to the Modification request in mid-May by a third party.
2. While the Groundwater Sustainability Act protect federal and Indian water rights,
3. The Boundary Modification adversely affects the federally reserved water rights of Pala, and, the other San Luis Rey River Indian tribes: Pauma, Rincon, La Jolla, and San Pasqual.
4. The Modification divides the Pala Reservation and Pala's other fee lands into two separate groundwater basins
 - a. Pala comprises approximately 50% of the land area in the Pala/Pauma basin
 - b. In Pala's case, the groundwater and surface water are interconnected with the upper basin groundwater feeding and recharging the Pala portion of the basin.
 - c. Therefore, Pala wants just **ONE** sustainably managed groundwater basin.
5. The modification requests should also be rejected pursuant to 22 C.C.R. section 345.2 as demonstrated in our July 11th letter.

6. Two groundwater basins would create a regulatory nightmare
 - a. There would be **Two** different local Groundwater Sustainability Agencies (“GSAs”)
 - b. With possibly, **Multiple** different regulatory standards
 - c. With different management, monitoring, and enforcement rules.
7. Pala wants just **ONE** GSA with **ONE** set of standards and rules to address local concerns.
8. Please note that Pala **wants** to cooperate with its neighbors on sustainable groundwater, and we understand the need for groundwater regulation and management, which the Act provides.
9. But this initial Modification – splitting the Basin and ignoring the hydrologic realities doesn’t make sense.
10. Such modification defeats the purpose of the Act by making it impossible for Pala’s reserved water rights to be recognized and protected.

THANK YOU



**PALA BAND OF
MISSION INDIANS**

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July 11, 2016

Mr. Timothy Godwin
California Department of Water Resources
1416 9th Street
Sacramento, CA 95814

Re: The Pala Band of Mission Indians' ("Pala") Second Notice of Opposition to Basin Boundary Request for the San Luis Rey Valley Groundwater Basin, DWR Basin 9-7

Dear Mr. Godwin:

As you know, Pala is opposed to the San Diego County and City of Oceanside requests for boundary modifications ("Proposal") to the San Luis Rey Valley Groundwater Basin. The primary mandate of the California Groundwater Sustainability Management Act ("Act") is for local stakeholders to form their own local agencies for the implementation and management of the Act. § 10720.1. As stated previously, Pala has approximately 15,500 acres within the Upper San Luis Rey Valley Groundwater Basin ("Pala/Pauma basin"), which equates to about 50% of the basin – more than any other single landowner. Thus, Pala is a significant stakeholder in the Basin and should have been provided proper notice regarding any request affecting its groundwater interests.

Under the Act, federal law and tribal water rights have a significant role in the creation of a local Groundwater Sustainability Agency ("GSA"). In this case, there is a strong tribal interest with respect to the San Luis Rey River Valley and the hydrologically connected Pala and Pauma groundwater subbasins because of the five San Luis Rey River Indian tribes: Pala, Pauma, Rincon, La Jolla, and San Pasqual. Moreover, the tribes federally reserved water rights are an important consideration under § 10720.3 of the Act.

Furthermore, the modification proposal meets the 23 C.C.R. §345.2 standards to deny such a boundary modification. As demonstrated below, the proposal would limit the likelihood of efficient and cost effective groundwater information sharing, monitoring, management, and enforcement. As a result, the proposal could limit substantial compliance with the Act. Finally, we also reiterate some other water quality concerns regarding the boundary modification requests.

Deficient Notice

First, as noted in our May 25, 2016 letter, Pala was never provided with notice of the boundary modification requests from San Diego County ("County"), Oceanside, or the Department of Water Resources until May 12, 2016, when a third party brought the modification requests to our

attention. Furthermore, neither San Diego County nor Oceanside consulted with Pala regarding their respective proposals. Because Pala was not provided proper notice, thereby adversely affecting our opportunity to respond in a timely manner, we respectfully request that any deadline to respond and/or oppose such modifications be extended to allow for Pala and other interested parties to respond.

The Pala/Pauma Groundwater Basin is Unique because it Encompasses Four Indian Reservations, including Pala

As you know, Pala is one of the four Indian Reservations, including the Rincon, La Jolla, and Pauma Bands (collectively "the Bands"), which overlie a significant portion of Department of Water Resources Groundwater Basin 9-7 identified as the "San Luis Rey Valley Groundwater Basin." The Pala Reservation comprises approximately 50% of the Pala Basin area of Basin 9-7. Moreover, the Pala and Rincon Bands are entirely dependent on groundwater from Basin 9-7 as their source of water and, Basin 9-7 is also a significant source of water for the Pauma Band.

Strong Federal Interest in one Groundwater Basin for Pala and the Other San Luis Rey River Valley Indian Tribes

As we noted previously, under the Supreme Court's landmark decision in *Winters v. United States*, 207 U.S. 564 (1908), the Five Indian Bands (Pala, Pauma, Rincon, La Jolla, and San Pasqual) of the San Luis Rey Indian Water Authority ("SLRIWA") have reserved rights to the waters of the San Luis Rey River watershed that are established, recognized and protected under federal law. Those rights include groundwater as well as surface water. See, e.g., the recent decision of the United States District Court for the Central District of California in *Aqua Caliente Band of Cahuilla Indians v. Coachella Valley Water District*, No. EDCV 13-883-JGB, 2015 WL 1600005 (C.D. Cal. March 20, 2015 (currently on appeal to the Ninth Circuit Court of Appeals).

Pala, along with the other Indian tribes have spent decades and significant resources to establish, protect, and preserve their federally protected reserved and other rights to the waters of the San Luis Rey River. After fifteen years of litigation, including a decision of the United States Supreme Court in 1984, Congress enacted the Settlement Act in 1988 to provide for the settlement of that litigation. All of the parties to the litigation reached an agreement to settle the litigation in January of 2015. Congress is now considering a bill, H.R. 1296 (114th Cong. 1st Sess.), to amend and clarify certain terms of the 1988 Settlement Act and to approve and ratify the January 15, 2015 Settlement Agreement. Under the agreed upon settlement, the SLRIWA and the Bands will be able to utilize the waters of the upper part of the San Luis Rey watershed that have historically been diverted out of the watershed for use on their reservations and to recharge the Pauma and Pala Basins. The SLRIWA and the Bands anticipate that Congress will enact H.R. 1296 before the end of the 114th Congress in January of 2017 and that the San Luis Rey Indian Water Rights Settlement will take effect within the next year.

The parameters of the Bands' groundwater rights will be defined primarily, if not exclusively, under federal, not state, law. California Water Code § 10720.3 states that "in the management of a groundwater basin or subbasin by a groundwater sustainability agency or by the Board, federally reserved rights to groundwater shall be respected in full." Consequently, the boundaries of the various subbasins within the San Luis Rey Valley Groundwater Basin should

not be predicated on the distinction recognized under California law between subterranean flow and percolating groundwater. Federal law, not state law, will be dominant and controlling in determining the nature, priority, and extent of the Bands' reserved rights to the groundwater underlying their reservations.

More importantly, the Pauma and Pala Groundwater Basins should be sustainably managed as a single unit due to the prevalence and importance of the federally reserved groundwater rights of the Pala, Rincon, Pauma Bands, and the critical water management role of the SLRIWA. Integrating the management of the Pauma and Pala Basins also would enable the SLRIWA and the Bands to implement the settlement that is now pending before Congress.

DWR Should Reject the Proposed Boundary Change for the Pala Basin at Frey Creek Pursuant to 23 C.C.R. §345.2 Based upon the Following Reasons:

1. The Proposal may reduce the likelihood of sustainable groundwater management in the proposed basin. Section 345.2(a)(1).
 - a. The Act does not mandate Pala's participation in the GSA.

In general, State law does not apply to Indian tribes. More specifically, the Act does not mandate the participation of Indian tribes. §10720.3. The Act states that:

The federal government or any federally recognized Indian tribe, appreciating the shared interest in assuring the sustainability of the groundwater resources, *may voluntarily agree* to participate in the preparation or administration of a groundwater sustainability plan or groundwater management plan under this part through joint powers authority or other agreement with local agencies in the basin. A participating tribe shall be eligible to participate fully in planning, financing, and management under this part ***

In an adjudication of rights to the use of groundwater, and in the management of a groundwater basin or subbasin by a groundwater sustainability agency or by the board, federally reserved rights to groundwater shall be respected in full. In case of conflict between federal and state law in that adjudication or management, *federal law shall prevail*. The voluntary or involuntary participation of a holder of rights in that adjudication or management shall not subject that holder to state law regarding other proceedings or matters not authorized by federal law. This subdivision is declaration of existing law. (Emphasis added).

Based upon federal law principles, as well as the Act's own language, Pala is not required to join a local GSA. Pala can voluntarily choose to participate with the objective of creating sustainable groundwater management in the Pala/Pauma basin. In our case, the Pala Reservation and other Pala lands comprise about 13,500 acres which lies within the Pala subbasin. Pala also has approximately 2000 acres within the Pauma subbasin. Thus, it would seem most sensible for the San Luis Rey Basin to be divided between upper and lower basins with the upper basin consisting of the Pala and Pauma subbasins being subject to the Act.

- b. The Proposal would create a regulatory nightmare.

To reiterate, while State law distinguishes surface water from groundwater (based upon a 117 year-old court case), federal law makes no such distinction. In fact, federally reserved water rights encompass both surface and groundwater because there is no hydrological separation. According to §10720.3, federal law controls any GSA conflict with State law with regard to the Pala Band's federally reserved water rights.

The practical consequence of the County's proposed boundary modification at Frey Creek would result in several different regulatory entities and rules for water flowing in and around Pala lands with: (1) Pala having Reservation lands in both the Pala and Pauma basins; (2) Pala having fee lands in both the Pala and Pauma basins; (3) groundwater flowing through and across the Pala Indian Reservation; (4) groundwater flowing across non-Reservation fee lands; (5) water flowing in (under) the San Luis Rey River through the Pala Reservation; (6) water flowing in (under) non-Reservation lands in and around the San Luis Rey River. See map of Pala's checkboard Reservation lands along the San Luis Rey River and Pala groundwater basin. Therefore, it seems that the above scenarios would certainly fall under the standard that the proposal "may" reduce the likelihood of sustainable groundwater management in the new basins.

As you can see, the County's request to bifurcate the San Luis Rey Basin based on the distinction between subterranean streams and percolating groundwater will only create a regulatory, management, and enforcement nightmare. If the County's modification is approved, Pala would have land and water subject to two basins, under three regulatory schemes (Tribal, federal, and State) for six different water types flowing in, under, and across Pala lands. One cannot believe that such regulatory bifurcation and confusion was the purpose of the Act. On the other hand, the Board could apply 23 C.C.R. §345.2 (a)(1) which would result in all of Pala's 15,500 acres falling within one upper groundwater basin with one regulatory management and enforcement scheme.

2. The Proposal may reduce the likelihood of groundwater management in other basins or subbasins. Section 345.2(a)(2).

For the same reasons as noted above, separating Pala's Reservation and fee lands into two basins would reduce the quality and efficiency of groundwater management in both basins because of the added and redundant information reporting, monitoring, management, and enforcement coordination problems. Having Pala in one basin would eliminate the problematic sustainable groundwater management issues, and would make the management much more efficient and cost effective.

3. The Proposal may reduce groundwater storage or recharge in the proposed or adjacent basins or subbasins. Section 345.2(a)(3).

As mentioned above, Pala has the option to join and participate with the local GSA. If Pala does not voluntarily join, that would mean approximately 13,000 acres of Pala Reservation - a significant area of the Pala/Pauma groundwater basin - would fall *outside* the jurisdiction and scope of the local GSA. Consequently, Pala would be able to pump significant amounts of groundwater without regard to the local GSA mandates for sustainable groundwater storage, recharge, and use in the basin. Moreover, Pala would not have to adhere to the GSA's reporting, monitoring, management, and enforcement provisions of the local GSA. The effect would be that, contrary to the purposes of the Act, the County's proposal not only may, but almost

certainly would, reduce groundwater storage and recharge in the Pala/Pauma groundwater subbasin and the subbasin would not and could not be effectively regulated to achieve the purposes of the Act.

4. The Proposal may limit coordination of management activities and sharing of data across basin boundaries. Section 345.2(a)(4).

As illustrated above, the practical effect of the County's proposal would put Pala in two separate groundwater basins. If Pala, then, chooses not to voluntarily participate in one or both basins, the impact will be that a stakeholder with approximately 15,500 acres in both basins will *not* be sharing information about its groundwater pumping and use in both basins. One can image that such an outcome – lack of information – would adversely affect the management, monitoring, and enforcement activities of two basins. The County's proposal, therefore, would limit coordination of management activities and sharing of data across basin boundaries.

5. The Proposal could result in the isolation of areas with known groundwater management problems, or areas, including disadvantaged communities, that may lack the institutional infrastructure or economic resources to form an effective GSA. Section 345.2(e).

As you know, the San Luis Rey Groundwater Basin is a medium priority basin, which means there are known groundwater management problems. In addition, the Basin includes four Indian tribes that may lack the institutional infrastructure and/or the economic resources to form an effective GSA. The standard stated in the GSA section 345.2(e) is “may,” which means a possibility that the proposal would reduce groundwater storage and recharge in the Pala basin. In this case, the County's proposal, therefore, *would* (not just “could”) meet the test above resulting in isolation of areas within the GSA.

6. The Proposal could result in the creation of unmanaged areas. Section 345.2(f).

If the Proposal is approved, the regulation of the Pala/Pauma subbasins would not be effective. If Pala decides decided not to participate due to the boundary modification, large areas of the subbasins would fall outside the jurisdiction and scope of the local GSA.

7. The Proposal would be inconsistent with the objectives of the Act. Section 345.2(h).

The standard for all of the aforementioned tests is that the County's request “may” limit the opportunity or likelihood of the above management principles. As evidenced by the above analysis, the County's proposal should be rejected under each one of the six tests to reject the boundary modification request. These sound regulatory reasons are far more important, on balance, than the “Scientific Internal modification” requested by San Diego County.

Water Quality Considerations

As also previously mentioned, there are significant water quality differences between the Pala Basin and the adjacent downstream Bonsall Basin which the proposed boundary modification seeks to join together as a single basin and would preclude from sustainable groundwater management. Unlike the Bonsall Basin, the quality of the groundwater in the Pala Basin is generally suitable for domestic and agricultural uses. Both the Pala and Pauma basins should be jointly managed to prevent further deterioration of water quality in the upper basin.

Conclusion

Based on the information described above, the proposed basin modification separating the Pala and Pauma Basins should not be implemented. Alternatively, the boundary of Basin 9-7 should be modified to separate the San Luis Rey River Basin at Interstate 15, thereby creating an upper basin that includes the Pala and Pauma Basins with better groundwater quality and greater groundwater use, and, a lower basin with poorer water quality and less groundwater use. This modification also will enable Pala and the SLRIWA to better protect and utilize their San Luis Rey water rights that are reserved and recognized under federal law, and to implement the settlement that we expect will soon be approved by Congress. The Proposal should be rejected in order to enable the Pala subbasin to be managed conjunctively with the Pauma subbasin so as to protect and preserve the Pala subbasin's better water quality.

Moreover, the Proposal meets the Section 345.2 standards to deny such a boundary modification. As demonstrated above, the proposal would limit the likelihood of efficient and cost effective groundwater information sharing, monitoring, management, and enforcement. As a result, the Proposal would limit substantial compliance with the Act.

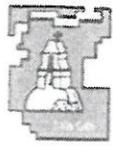
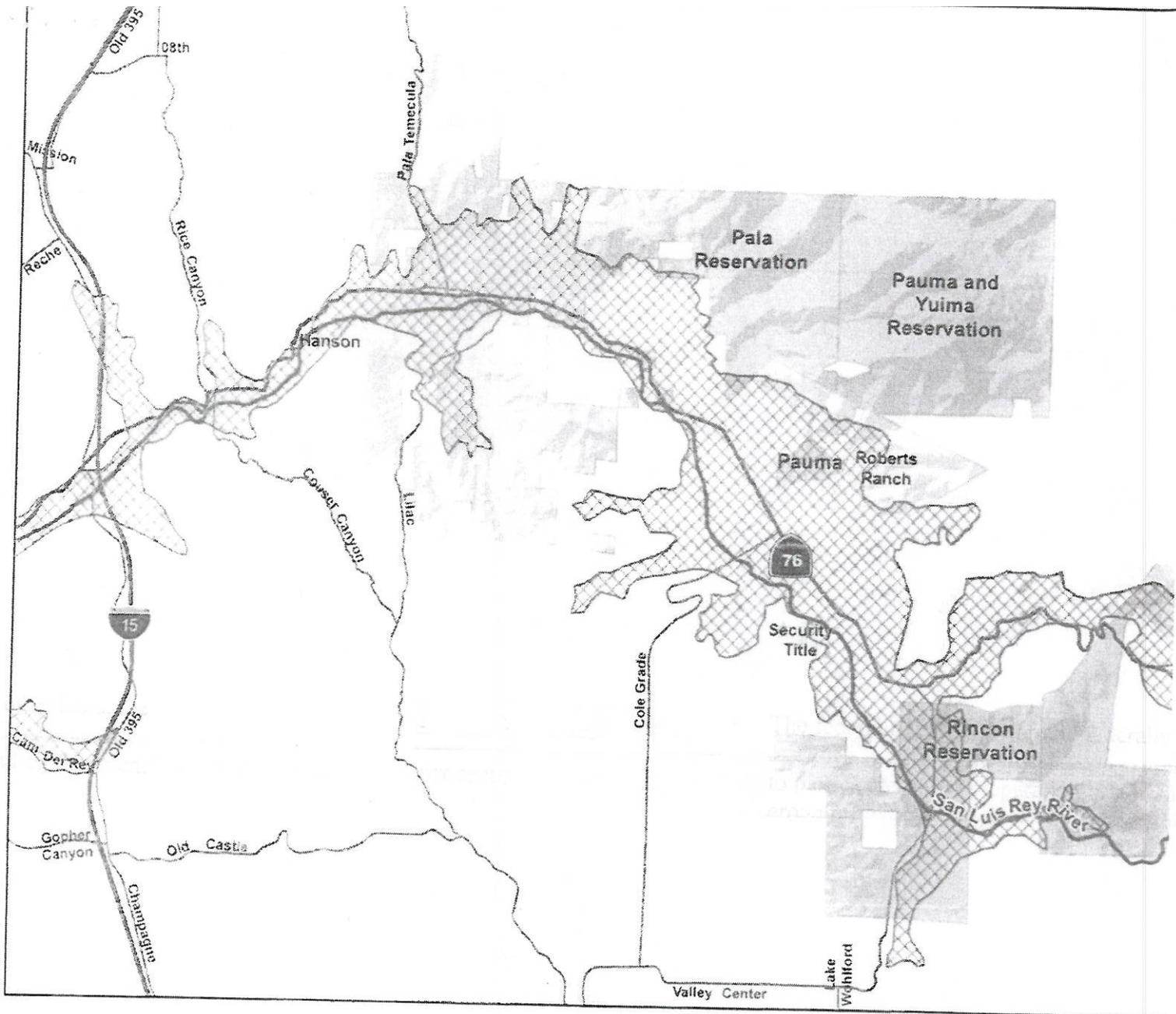
As requested before, please include Pala in any future notices and correspondence related to the San Luis Rey Valley Groundwater Basin so that we may engage in government-to-government consultation. Thank you for your consideration of our position. If you have any questions on this information, please call me at (760) 891- 3500.

Sincerely,



Robert Smith, Chairman
Pala Band of Mission Indians

cc: Bo Mazzetti, San Luis Rey Indian Water Authority
Mark Wardlaw, San Diego County
Cari Dale, City of Oceanside
David Gutierrez
Anacita Augustinez
James Riley
Robert Pelcyger
Jeff Helsley



This map was created as a geographic representation of data. Neither the Pala Band of Mission Indians, nor the Pala GIS Office, makes any guarantee or accepts any liability for its accuracy.

San Luis Rey Valley Ground Water Basin and Reservations

Legend

-  Highways
-  Major Road
-  San Luis Rey River