

CITY COUNCIL

For City Clerk's Use:

☐ **APPROVED** ☐ **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 11

Date: August 24, 2016

TO: Honorable Mayor and Members of the City Council

FROM: Jeffrey R. Epp, City Attorney

SUBJECT: Amendment to San Luis Rey Settlement Agreement

RECOMMENDATION:

Approve Resolution 2016-130 authorizing the Mayor and City Clerk to execute an Amendment to the San Luis Rey Settlement Agreement.

BACKGROUND:

On December 3, 2014, the City Council adopted Resolution 2014-181, which authorized the Mayor and City Clerk to execute a Settlement Agreement and an Implementing Agreement to resolve the decades old dispute over waters of the San Luis Rey River. The Agreements were fully executed by all parties later that month.

The terms of the Settlement Agreement required Congressional ratification. Congressman Duncan Hunter graciously worked with the Settlement Parties and introduced H.R. 1296. After being approved by the House Natural Resources Committee subcommittee on Water, Power, and the Oceans, the bill moved to the House floor. However, prior to consideration on the House floor, the Congressional Budget Office "scored" the legislation as having a fiscal impact because the Settlement would enable the Bands to fully deplete the San Luis Rey Tribal Development Fund which had been created by the original legislation. Because of the positive score, passage of the legislation was effectively blocked.

The proposed amendment to the Settlement Agreement provides that the Band's access to the San Luis Rey Tribal Development Fund must occur incrementally and cannot exceed \$3.7 million per year. This Amendment will secure a score of "zero" from the Congressional Budget Office, which will enable the legislation to proceed.

A second amendment to the Settlement Agreement states that the rights of way that are being validated as part of the settlement allow for future assignments without prior approval from the Bureau of Indian Affairs or the Bureau of Land Management. The assignments in question relate to the possibility—addressed in the separate agreement between the Bands and the Local Entities—that the Local Entities may one day stop operating the local water system, with one or more Bands taking on that responsibility.

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The third and fourth amendments each correct a provision of the Settlement Agreement that refers to H.R. 1296, but refers to the wrong subsection of the bill. A fifth amendment corrects the fact that there are two paragraphs in the Settlement Agreement numbered 2.3; the second of these is renumbered 2.3.5.

Respectfully submitted,

A handwritten signature in blue ink that reads "Jeffrey R. Epp" followed by a stylized monogram or initials.

Jeffrey R. Epp
City Attorney

RESOLUTION NO. 2016-130

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZING THE MAYOR AND CITY CLERK
TO EXECUTE, ON BEHALF OF THE CITY, AN
AMENDMENT TO THE SETTLEMENT
AGREEMENT RESOLVING DISPUTES
REGARDING THE WATERS OF THE SAN
LUIS REY RIVER

WHEREAS, in November 1988, by Public Law 100-675, the United States Congress enacted as Title I, the "San Luis Rey Indian Water Rights Settlement Act" which was designed to settle litigation between five local Indian Bands, the City of Escondido and the Vista Irrigation District; and

WHEREAS, the San Luis Rey Settlement Parties and the United States subsequently executed a Settlement Agreement and Implementing Agreement designed to provide one of the legal components to achieve that purpose; and

WHEREAS, certain amendments to the Settlement Agreement are necessary to enable passage of ratifying legislation in the United States Congress; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve the Amendment to the Settlement Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.

2. That the Mayor and City Clerk are hereby authorized to execute, on behalf of the City and subject to final approval by the City Attorney, an Amendment to the Settlement Agreement which is attached and incorporated by this reference as Exhibit 1.

**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: _____
Secretary of the Interior*

Date: _____

By: _____
Attorney General or her designee*

Date: _____

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

By: _____

Date: _____

Director