

MINUTES OF THE SPECIAL MEETING OF THE  
BOARD OF DIRECTORS OF THE  
VISTA IRRIGATION DISTRICT

December 8, 2014

A Special Meeting of the Board of Directors of Vista Irrigation District was held on Monday, December 8, 2014, at the offices of the District, 1391 Engineer Street, Vista, California.

**1. CALL TO ORDER**

President Dorey called the meeting to order at 4:01 p.m.

**2. ROLL CALL**

Directors present: Miller, Vásquez, Dorey, Franklin, and MacKenzie.

Directors absent: None.

Staff present: Roy Coox, General Manager; Lisa Soto, Secretary of the Board; Eldon Boone, Assistant General Manager; Don Smith, Director of Water Resources; and Marian Schmidt, Administrative Assistant. General Counsel Joel Kuperberg was also present.

Other attendees: VID Special Counsel, John Carter of Horton, Knox, Carter, and Foote.

**3. APPROVAL OF AGENDA**

14-12-103	<i>Upon motion by Director Franklin, seconded by Director Vásquez and unanimously carried (5 ayes: Miller, Vásquez, Franklin, MacKenzie, and Dorey), the Board of Directors approved the agenda as presented.</i>
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**4. PUBLIC COMMENT TIME**

No public comments were presented on items not appearing on the agenda.

**5. CLOSED SESSION FOR CONFERENCE WITH LEGAL COUNSEL**

President Dorey adjourned the meeting to closed session at 4:02 p.m. for a conference with legal counsel per Paragraph (1) of subdivision (d) of Government Code section 54956.9 to discuss the following pending litigation:

A. San Luis Rey Indian Water Rights Litigation (Settlement)

The meeting reconvened in open session at 4:36 p.m. President Dorey declared that no reportable action had been taken.

**6. SETTLEMENT OF INDIAN WATER RIGHTS LITIGATION**

See staff report attached hereto.

14-12-104 *Upon motion by Director Vasquez, seconded by Director MacKenzie, the Board of Directors adopted Resolution No. 14-32:*

1. *Approving the following agreements and authorizing the President, General Manager and Board Secretary to execute final agreements in substantially the same form and substance:*
  - A. *Implementing Agreement among the City of Escondido, California, on its own behalf and as Successor to the Escondido Mutual Water Company, the Vista Irrigation District, the San Luis Rey River Indian Water Authority, and the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians pursuant to the San Luis Rey Indian Water Rights Settlement Act, Public Law 100-675, as amended.*
  - B. *Settlement Agreement between the United States and the La Jolla, Rincon, Pala, Pauma and San Pasqual Band of Mission Indians and the San Luis Rey Indian Water Authority and the City of Escondido and Vista Irrigation District.*
2. *Authorizing District officers, staff and legal counsel to file pleadings, make representations and take other actions necessary to conclude the San Luis Rey River water rights litigation and related FERC proceedings.*

*By the following roll call vote:*

*AYES: Directors Miller, Vásquez, Franklin, MacKenzie, and Dorey*  
*NOES: None*  
*ABSTAIN: None*  
*ABSENT: None*

*A copy of Resolution No. 14-32 is on file in the official Resolution Book of the District.*

The Board noted a few oddities in the wording of the Implementing Agreement, on pages 41 and 64 which were believed to have no effect on the meaning, and were left unchanged.

Relevant to the above action to adopt Resolution 14-32, Special Counsel John Carter requested the minutes reflect the following statement:

*The Settlement Agreement takes effect pursuant to Paragraph 12.0 which includes Section 104 of the San Luis Rey Indian Water Rights Settlement Act. The Settlement Agreement will not take effect until all of those conditions are satisfied. With respect to the Implementing Agreement, it will take effect only if all of the conditions of section 4A of the Implementing Agreement are satisfied and that acceptable exhibits are attached thereto.*

14-12-105 *Upon motion by Director MacKenzie, seconded by Director Miller and unanimously carried (5 ayes: Miller, Vásquez, Franklin, MacKenzie, and Dorey), the Board of Directors approved the inclusion in the minutes of the statement made by Special Counsel John Carter regarding the adoption of Resolution 14-32.*

General Manager Roy Coox congratulated the Board on this historic action. He commended and thanked Special Counsel John Carter for the phenomenal job in guiding the District towards closure of this matter. The Board thanked Mr. Carter for his work on this agreement. Mr. Carter responded that it has been an honor to help with this very important water rights settlement. He thanked the Board for its patience in the process.

**7. RESOLUTION HONORING DIRECTOR JOHN B. FRANKLIN**

See staff report attached hereto.

14-12-106 *Upon motion by Director Miller, seconded by Director MacKenzie, the Board of Directors adopted Resolution No. 14-33 honoring Director John B. Franklin for his service on the Vista Irrigation District Board of Directors since December 11, 2012, by the following roll call vote:*

*AYES: Directors Miller, Vásquez, MacKenzie, and Dorey*  
*NOES: None*  
*ABSTAIN: Director Franklin*  
*ABSENT: None*

*A copy of Resolution No. 14-33 is on file in the official Resolution Book of the District.*

Director Franklin thanked the Board for the honor of the resolution and for the honor of serving with the other four members. The Board congratulated Director Franklin and wished him well.

**8. COMMENTS BY DIRECTORS**

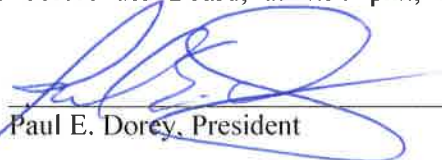
Director MacKenzie made a brief inquiry regarding the interview process, should the Board choose to consider applicants for appointment to the Division 4 seat Board position left vacant by the departure of Director Franklin. General Counsel Kuperberg responded briefly, noting that this matter will be on the agenda to be discussed in detail at the upcoming December 17, 2014 Board meeting.

**9. COMMENTS BY GENERAL MANAGER**

Mr. Coox informed the Board that as is the case each year, the District once again had a float in the Vista Holiday Parade the past Saturday. He passed around photos of the float for the Board's perusal.

**10. ADJOURNMENT**

There being no further business to come before the Board, at 4:50 pm., President Dorey adjourned the meeting.

  
Paul E. Dorey, President

ATTEST:  


Lisa R. Soto, Secretary  
Board of Directors  
VISTA IRRIGATION DISTRICT



**Agenda Item: 5**

**STAFF REPORT**

**Board Meeting Date: December 8, 2014**  
**Prepared By: Roy Coox**

SUBJECT: CLOSED SESSION FOR CONFERENCE WITH LEGAL COUNSEL

SUMMARY: Conference with legal counsel per paragraph (1) of subdivision (d) of Government Code section 54956.9 to discuss the following existing litigation:

- A. San Luis Rey Indian Water Rights Litigation (Settlement)



## STAFF REPORT

Agenda Item: 6

**Board Meeting Date:** December 8, 2014  
**Prepared By:** Don Smith  
**Approved By:** Roy Coox

**SUBJECT:** SETTLEMENT OF INDIAN WATER RIGHTS LITIGATION

**RECOMMENDATION:** Adopt a resolution:

1. Approving the following agreements and authorizing the President, General Manager and Board Secretary to execute final agreements in substantially the same form and substance:
  - A. Implementing Agreement among the City of Escondido, California, on its own behalf and as Successor to the Escondido Mutual Water Company, the Vista Irrigation district, the San Luis Rey River Indian Water Authority, and the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians pursuant to the San Luis Rey Indian Water Rights Settlement Act, Public Law 100-675, as amended.
  - B. Settlement Agreement between the United States and the La Jolla, Rincon, Pala, Pauma and San Pasqual Band of Mission Indians and the San Luis Rey Indian Water Authority and the City of Escondido and Vista Irrigation District.
2. Authorizing District officers, staff and legal counsel to file pleadings, make representations and take other actions necessary to conclude the San Luis Rey River water rights litigation and related FERC proceedings.

**PRIOR BOARD ACTION:** On April 25, 2012, the Board Approved in Principle, and authorized execution of, a Settlement Agreement (now renamed the "Implementing Agreement") among the United States, the Bands and the Local Entities.

**FISCAL IMPACT:** The Implementing Agreement requires, among other things: 1) the City of Escondido (Escondido) and the Vista Irrigation District (Vista) each to pay \$3.85 million, indexed to 2008, to the Indian Water Authority; and 2) the Local Entities to construct a pipeline to underground the Escondido Canal where it crosses the San Pasqual Indian Reservation, the cost of which was estimated in 2010 to be \$20 million, to be shared equally by Escondido and Vista. By settling this dispute, all Parties avoid the certainty of a lengthy, expensive litigation, saving the District millions of dollars in legal fees, and the potential for an adverse litigation outcome, which could also cost the District millions of dollars and the potential diminution or loss of rights to Local Water.

**SUMMARY:** These agreements, together with an agreement with the City of Escondido and the San Luis Rey Indian Water Rights Settlement Act as amended (Settlement Act), resolve long-standing disputes regarding rights to the waters of the San Luis Rey River and rights-of-way for the facilities that convey that water between the San Luis Rey River and Lake Wohlford. It is anticipated that these fully executed agreements will be included in legislation to amend the Settlement Act for approval by the Congress of the United States as early as December 10<sup>th</sup> of this year.

DETAILED REPORT: In April of 2012, it was envisioned that a single settlement agreement among the United States, the Bands, and the Local Entities (collectively the Parties) would be executed. After considerable subsequent negotiation among the Parties, however, it was determined that the settlement would be bifurcated into a new, much shorter Settlement Agreement (to include the United States as a signatory) and a longer Implementing Agreement (which the United States recognizes, but to which it is not a signatory). That decision is responsible for all substantive changes between these documents and what the Board reviewed and approved in 2012.

The history of the Parties' involvement with the waters of the San Luis Rey River, and their disputes to the rights to that water, are captured in Article II of the Implementing Agreement. The 1988 San Luis Rey Indian Water Rights Settlement Act (Public Law 100-765, as amended) provides the key assets that enable the settlement of those disputes by making available 16,000 acre-feet of Supplemental Water (derived from the water conserved from the lining of the All American and Coachella Canals) for the benefit of the Settlement Parties and by establishing a trust fund for the Bands, among other things.

Under the terms of the Settlement and Implementing Agreements:

- 1) Escondido and Vista will receive approximately the same amount of water, at approximately the same cost, as they would have if they had continued to operate the Local Water System for their own benefit under substantially the same conditions as in the past;
- 2) The Bands secure the right to trade Supplemental Water delivered to the Local Entities for Local Water (derived from the San Luis Rey River watershed) delivered at points along the Local Water System, or to sell Supplemental Water that is surplus to their needs to the Local Entities at the same cost that the Local Entities would otherwise pay for water obtained from the San Diego County Water Authority; and
- 3) A long-term cooperative arrangement to provide for the delivery of Supplemental and Local Water, and to provide for the operation of the Local Water System for the mutual benefit of the Bands and Local Entities, is established.

Once the legislative amendment has been approved by Congress and these agreements are fully executed, there are a number of conditions that must be fulfilled before they become effective, as described in section 12.0 of the Settlement Agreement and section 4.A of the Implementing Agreement. It is estimated that it may take between 6 and 12 months to fulfill all those conditions. In addition, a side agreement between Escondido and Vista must be executed. The deal points of this side agreement have been agreed to by the negotiators, but drafting remains to make it consistent with the terms of the Implementing and Settlement Agreements and to articulate the relation of this new agreement to a series of complicated historical agreements. A side agreement among the Bands may be required as well.

ATTACHMENTS:

1. Implementing Agreement (without exhibits)
2. Settlement Agreement (latest version)
3. Draft Resolution

**IMPLEMENTING AGREEMENT AMONG**  
**THE CITY OF ESCONDIDO, CALIFORNIA, ON ITS OWN BEHALF**  
**AND AS SUCCESSOR TO THE ESCONDIDO MUTUAL WATER COMPANY,**  
**THE VISTA IRRIGATION DISTRICT,**  
**THE SAN LUIS REY RIVER INDIAN WATER AUTHORITY,**  
**AND**  
**THE LA JOLLA, RINCON, SAN PASQUAL, PAUMA, AND PALA**  
**BANDS OF MISSION INDIANS**  
**PURSUANT TO**  
**THE SAN LUIS REY INDIAN WATER RIGHTS SETTLEMENT ACT,**  
**PUBLIC LAW 100-675, AS AMENDED.**

This Implementing Agreement (Agreement) dated December 5, 2014 is entered into among the City of Escondido, California, a city organized under the provisions of the general laws of the State of California, hereinafter referred to as “Escondido”; the Vista Irrigation District, an irrigation district organized and incorporated under the Irrigation District Law of the State of California, hereinafter referred to as “Vista”; and the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians, acting through the governing bodies of each respective Band as duly recognized by the Secretary, hereinafter referred to individually as “La Jolla,” “Rincon,” “San Pasqual,” “Pauma,” and “Pala” and collectively as “Bands”; and the San Luis Rey River Indian Water Authority, a permanent intertribal entity established pursuant to duly adopted ordinances of the Bands recognized and approved in Public Law 100-675, hereinafter referred to as “Indian Water Authority.” Each of the above is sometimes referred to individually as “Party,” Escondido and Vista are sometimes collectively referred to as the “Local Entities,” and all of the above are sometimes collectively referred to as “Parties.”

In consideration of the mutual covenants herein, the Parties agree as follows:

## **Implementing Agreement Among Escondido, Vista, the Indian Water Authority, and La Jolla, Rincon, San Pasqual, Pauma and Pala Bands of Mission Indians**

### **Article I. Definitions**

1.A. “Agreement” means this Implementing Agreement, which, together with the Settlement Agreement among the Parties and the United States, is entered into for the purpose of implementing the San Luis Rey Indian Water Rights Settlement Act of 1988 (“Settlement Act”), as amended, and providing for the complete resolution of all claims, controversies, and issues involved in all of the pending proceedings among the parties in the United States District Court for the Southern District of California and before the Federal Energy Regulatory Commission in satisfaction of the requirement of paragraph (1) of section 104 of the Settlement Act.

1.B. “Allocation Agreement” means the agreement entered into by the United States and others to allocate the water conserved from the All American Canal Lining Project and the Coachella Canal Lining Project.

1.C. “Bands” mean the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians, acting through the governing bodies of each respective Band as duly recognized by the Secretary.

1.D. “Bear Valley Power Plant” means the hydro-power generating facility, associated substation and 25-foot buffer surrounding the power plant and substation, located below Lake Wohlford on land owned by Escondido.

1.E. “Carryover Storage” means Local Water that is stored in Lake Henshaw on October 1 of any Year and is carried over in Lake Henshaw after that.

1.F. “Common Surplus Pool” means up to 3,000 acre-feet of Unallocated Local Water in excess of 2,500 of storage in Lake Henshaw as of October 1 of each year that is managed to provide water shortage protection for the Rincon Water Entitlement allocation, the Escondido Canal/Lake Wohlford allocation, the Vista Tier 1 allocation and a portion of the Bands’ requested Local Exchange Water.



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1.G. “Conduit Exemption License” means the license issued by FERC for the Bear Valley Power Plant, a small conduit hydroelectric facility as defined by 18 CFR §4.30(b)(28) (Subpart D) (2009), pursuant to 16 U. S. C. § 823a and 18 CFR §§ 4.90 et seq. (Subpart J) (2009).

1.H. “Current Year Water Production” means Local Water exclusive of Carryover Storage that becomes available for use by the Parties between October 1 of the prior Year and September 30 of the current Year.

1.I. “Direct Supplemental Water” means that portion of Supplemental Water delivered directly to any of the Reservations of the Bands for their use, or indirectly for use on their Reservations by exchange with Third Parties.

1.J. “Diversion Dam” means the facility located on the La Jolla Indian Reservation that diverts Local Water from the San Luis Rey River into the Escondido Canal.

1.K. “Effective Date” is defined in section 4.A.

1.L. “Escondido” means the City of Escondido.

1.M. “Escondido Canal” means the approximately 14 mile water conveyance system which transports water across portions of the La Jolla, Rincon and San Pasqual Reservations and federal and private lands to Lake Wohlford.

1.N. “Existing Reservation” or “Existing Reservations” means the reservation or reservations of the La Jolla, Rincon, San Pasqual, Pauma and Pala Bands of Mission Indians within the exterior boundaries that exist as of the date on which this Agreement is executed by all of the Parties.

1.O. “FERC” means the Federal Energy Regulatory Commission, or any successor thereto.

1.P. “Forman Deeds” means the contracts, deeds or other documents under which the owners of rights to water within the San Luis Rey River watershed conveyed to agents of the owner of Warner Ranch certain rights to water appurtenant to their land.

**Implementing Agreement Among Escondido, Vista, the Indian Water Authority, and La Jolla, Rincon, San Pasqual, Pauma and Pala Bands of Mission Indians**

1.Q. “Imported Water” means water delivered to the Local Entities from sources other than the Escondido Creek watershed, Local Water or Supplemental Water.

1.R. “Indian First Refusal Water” means that portion of the Vista Tier 1 and/or Tier 2 Water to which the Indian Water Authority or any of the Bands has obtained rights by exercising its right of first refusal for transactions proposed by Vista involving the use of 250 acre-feet or more of Vista Tier 1 and/or Tier 2 water for use on the Warner Ranch as described in section 9.F.6.

1.S. “Indian Interruptible Option Water” means that portion of Vista Interruptible Water which the Indian Water Authority has purchased from Vista as described in section 9.F.3(b).

1.T. “Indian Surplus Option Water” means that portion of Local Water which the Indian Water Authority has purchased from the Local Entities when the amount of water projected to be remaining in Lake Henshaw as of October 1 exceeds 2,500 acre-feet as described in section 9.I.

1.U. “Indian Water Authority” means the San Luis Rey River Indian Water Authority, a permanent intertribal entity established pursuant to duly adopted ordinances of the Bands recognized and approved by the Settlement Act.

1.V. “Lake Henshaw” means the reservoir above the dam (“Henshaw Dam”) owned and operated by Vista which stores surface and pumped water from the upper 206 square miles of the San Luis Rey River watershed.

1.W. “Lake Wohlford” means the reservoir above the Bear Valley Dam (sometimes referred to as Lake Wohlford Dam) which serves as the terminal storage facility for Local Water.

1.X. “Local Entities” means Escondido and Vista.

1.Y. “Local Exchange Water” means Local Water delivered to the Indian Water Authority pursuant to this Agreement in exchange for an equivalent amount of Supplemental Water delivered to the Local Entities.

**Implementing Agreement Among Escondido, Vista, the Indian Water Authority, and La Jolla, Rincon, San Pasqual, Pauma and Pala Bands of Mission Indians**

1.Z. “Local Rincon Water” means Local Water delivered to the Rincon Reservation pursuant to section 9.D of this Agreement.

1.AA. “Local Water” means (1) water in the watershed of the San Luis Rey River that originates above the Diversion Dam, and (2) water that originates above the Escondido Canal and is susceptible to being captured in the Escondido Canal.

1.AB. “Local Water System” means the facilities operated by the Local Entities to develop and convey Local Water from the Warner Ranch to the Bear Valley Power Plant, including but not limited to the Warner Wellfield, Lake Henshaw, Henshaw Dam, the Diversion Dam, the Escondido Canal, the Wohlford Penstock, the Bear Valley Power Plant, Lake Wohlford, and the roads, trails, rights-of-way, and related facilities used by the Local Entities to gain access to those facilities in connection with their operation, maintenance, and repair.

1.AC. “Metropolitan” means The Metropolitan Water District of Southern California, a metropolitan water district organized and incorporated under the Metropolitan Water District Act of the State of California, 1969 Cal. Stat., ch. 209; West’s Cal. Water Code, Appendix ch.109 (as amended).

1.AD. “Parties” mean the Bands, the Indian Water Authority, and the Local Entities.

1.AE. “Reservation” or “Reservations” mean the reservation or reservations of the Bands with the exterior boundaries that exist when this Agreement takes effect and as those boundaries may change in the future.

1.AF. “Rincon Penstock” means the pipeline that delivers water from the Escondido Canal to the Rincon Reservation.

1.AG. “Rincon Power Plant” means the hydro-power generating facilities that were constructed in about 1915 on the Rincon Reservation.

1.AH. “Rincon Supplemental Exchange Water” means Supplemental Water that is exchanged for Local Rincon Water as described in section 9.D.4.

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1.AI. “Rincon Water Entitlement” means Rincon’s entitlement to the waters of the Local Water System as described in section 9.D of this Agreement.

1.AJ. “SDCWA” means the San Diego County Water Authority, a county water authority, organized and incorporated under the County Water Authority Act of the State of California, 1943 Cal. Stat., ch. 545; West’s Cal. Water Code, Appendix ch. 45 (as amended).

1.AK. “San Pasqual Undergrounding Project” means the project to relocate and replace with an underground pipeline most of that portion of the Escondido Canal, which as of the Effective Date, traverses land within and in the vicinity of the San Pasqual Reservation.

1.AL. “Secretary” means the Secretary of the Interior of the United States of America.

1.AM. “Settlement Act” means Title I of Public Law 100-675, enacted on November 17, 1988, 102 Stat. 4000, Title I (as amended by section 117 of the Act of November 13, 1991, Public Law 102-154, 105 Stat. 990, 1012-1013; section 1017 of the Act of October 14, 1998, Public Law 105-256, 112 Stat. 1896, 1899; and section 211 of the Act of October 27, 2000, Public Law 106-377 Appendix B, 114 Stat. 1441A-70) and any other amendments thereto, known more fully as the “San Luis Rey Indian Water Rights Settlement Act.”

1.AN. “Settlement Agreement” means the Agreement dated December \_\_, 2014, entered into among the United States of America, acting by and through its Secretary of the Interior and Attorney General and the Parties, for the purposes of implementing the Settlement Act, as amended, and providing, together with this Implementing Agreement, for the complete resolution of all claims, controversies, and issues involved in all of the pending proceedings among the parties in the United States District Court for the Southern District of California and before the Federal Energy Regulatory Commission in satisfaction of the requirement of paragraph (1) of section 104 of the Settlement Act.

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1.AO. “Supplemental Exchange Water” means Supplemental Water provided to the Local Entities by the Indian Water Authority in exchange for an equal amount of Local Water (called “Local Exchange Water”) provided by the Local Entities to the Bands.

1.AP. “Supplemental Water” means water provided for the use and benefit by the Parties pursuant to section 106 of the Settlement Act.

1.AQ. “Surplus Supplemental Water” means Supplemental Water that the Bands do not use directly on their Reservations or in exchange for Local Exchange Water or for Local Rincon Water as described in section 8.A.

1.AR. “Surrender Application” means the application conditionally granted by FERC to surrender FERC jurisdiction over the previously licensed facilities of the Local Water System except the Bear Valley Power Plant.

1.AS. “Third Party” or “Third Parties” means persons or entities that are not Parties to this Agreement.

1.AT. “Unallocated Local Water” means Local Water stored or to be stored in Lake Henshaw that is not specifically allocated for use by any Party under any provision of this Agreement.

1.AU. “Uncontrollable Force” means: an action of the elements, such as fire, earthquake, flood or other natural disasters (excluding severe and/or prolonged drought or low-flow conditions in the watershed of the Colorado River or the watershed of the San Luis Rey River); terrorism; the act or threat of any public enemy; Acts of God; court or agency order; war and war defense conditions; strikes or other labor disputes; or other causes beyond the control of one or more Parties.

1.AV. “United States” means the United States of America.

1.AW. “Vista” means the Vista Irrigation District.

1.AX. “Vista Interruptible Water” means the Local Water which Vista has proposed to use on the Warner Ranch when the amount of water projected to be remaining in Lake Henshaw as of October 1 exceeds 1,000 acre-feet as described in section 9.F.3.

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1.AY. “Vista Tier 1 Water” means that Local Water used at Lake Henshaw and on the Warner Ranch as described in section 9.F.4.

1.AZ. “Vista Tier 2 Water” means that Local Water used on the Warner Ranch by exchange as described in section 9.F.5.

1.BA. “Warner Ranch” means the approximately 43,000 acres of land in San Diego County owned by Vista as of the Effective Date on which Henshaw Dam, Lake Henshaw, and the Warner Wellfield are located.

1.BB. “Warner Wellfield” means the facilities operated by Vista on the Warner Ranch to pump groundwater, including wells, pumps, canals, pipelines, and related appurtenances, both as these exist at the time of execution of this Agreement, and as they may be modified in the future by the abandonment of existing wells, canals, pipelines, and related appurtenances, or the addition of new ones, or by construction of replacement or substitute facilities.

1.BC. “Wohlford Penstock” means the pipeline which delivers water from Lake Wohlford to the Bear Valley Power Plant.

1.BD. “Year” means a calendar year commencing on January 1 and ending on December 31, unless otherwise specified.

**Article II. Explanatory Recitals**

2.A. WHEREAS, the San Luis Rey River is located in the northern part of San Diego County, California;

2.B. WHEREAS, beginning in about 1875, the Indian Reservations for the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians along or in the vicinity of the San Luis Rey River were set aside by actions of the United States;

2.C. WHEREAS, commencing in the 1890s, Escondido's predecessors (the Escondido Irrigation District and the Escondido Mutual Water Company) began diverting San Luis Rey River water from a point located on the La Jolla (formerly known as “Potrero”) Indian Reservation through the Escondido Canal (which traverses portions of the

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La Jolla, Rincon, and San Pasqual Indian Reservations) to a storage reservoir (Lake Wohlford) from which the water was then released for use in the Escondido service area. Since 1916, a portion of the flow in the Escondido Canal, usually not exceeding the first six cubic feet per second (“6 cfs”) of natural flow, has been delivered for use on the Rincon Indian Reservation. Since 1915, some of the water released from Lake Wohlford has generated electricity at the Bear Valley Power Plant;

2.D. WHEREAS, commencing in 1922, Vista and its predecessors (William G. Henshaw and the San Diego County Water Company) have impounded the water originating in the upper portion of the San Luis Rey River watershed behind Henshaw Dam in Lake Henshaw. Lake Henshaw has been used by Vista, Escondido, and their predecessors to store runoff from the watershed above Henshaw Dam for subsequent release. It further allowed carryover storage from wet years through periods of drought. Since about 1926, a portion of the water diverted through the Escondido Canal and the Bear Valley Power Plant has been delivered to Vista's service area.

2.E. WHEREAS, in 1924, the Federal Power Commission (now FERC) issued a license for some of the facilities of the Local Water System that, among other things, authorized the use of federal and Indian lands for those facilities;

2.F. WHEREAS, along with Lake Henshaw, Vista owns the Warner Ranch. Since the early 1950s, Vista, in conjunction with Escondido, has pumped ground water from the Warner Basin underlying Warner Ranch and stored the pumped water in Lake Henshaw for release into the San Luis Rey River and diversion into the Escondido Canal;

2.G. WHEREAS, the United States facilitated the diversion and use of the waters of the San Luis Rey River by the Local Entities and the use of tribal lands of the La Jolla, Rincon and San Pasqual Reservations and federal lands administered by the Bureau of Land Management for the conveyance of that water from the San Luis Rey River to the Local Entities' service areas;

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2.H. WHEREAS, the waters of the San Luis Rey River are insufficient to supply the needs of the Bands and the Local Entities;

2.I. WHEREAS, litigation involving the Bands, the United States on behalf of the Bands, and the Local Entities was filed in the United States District Court for the Southern District of California to determine, among other things, the respective rights of the Bands and the Local Entities to certain waters of the San Luis Rey River, and related matters among the same parties has been contested before FERC;

2.J. WHEREAS, Congress enacted the Settlement Act in 1988 to provide for the resolution of the disputes that were the subject of the above-referenced federal district court litigation and the related FERC proceedings;

2.K. WHEREAS, pursuant to the Settlement Act, the United States is authorized to arrange for a supplemental water supply for the Parties of not more than 16,000 acre-feet per year from one or more of the following sources: (1) water developed from public lands within the State of California outside the service area of the Central Valley Project, (2) water conserved through projects to line portions of the All-American Canal and its Coachella Branch, authorized in Title II of Public Law 100-675, and (3) water obtained through a contract with Metropolitan;

2.L. WHEREAS, subsection 109(a) of the Settlement Act provides among other things that any future license issued by FERC for any part of the system that diverts the waters of the San Luis Rey River originating above the intake to the Escondido Canal shall be subject to all of the terms of the Settlement Agreement, and shall not in any way interfere with, impair, or affect the ability of the Bands, the Local Entities, and the United States to implement, perform, and comply fully with all the terms, conditions, and provisions of the Settlement Agreement.

2.M. WHEREAS, the Settlement Act was amended in 2000 by adding subsection 106(f), which directed the Secretary, acting through the Commissioner of Reclamation, to fulfill the government's trust responsibility to the Bands, by furnishing annually to the



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Parties: (1) a permanent supply of up to 16,000 acre-feet of the water conserved by lining certain unlined portions of the All-American Canal and its Coachella Branch; and (2) a permanent supply of power capacity and energy at no cost and at no further expense to the United States and the Parties in an amount sufficient to convey the Parties' portion of the conserved water from Lake Havasu through the Colorado River Aqueduct to the places of use on the Reservations and in the service areas of Escondido and Vista;

2.N. WHEREAS, the Parties entered into agreements with the United States that provide for the permanent delivery by the Secretary of up to a maximum of 16,000 acre-feet of water per year to the Indian Water Authority (for the benefit of the Bands), Escondido, and Vista;

2.O. WHEREAS, Supplemental Water has become available from the lining of the All American Canal and its Coachella Branch;

2.P. WHEREAS, agreements have been made for the delivery of the Supplemental Water to the service areas of Escondido and Vista and to the vicinity of the Bands' Reservations;

2.Q. WHEREAS, section 104 of the Settlement Act states that sections 106 and 109 of the Settlement Act shall take effect only when:

(1) the United States; the City of Escondido, California; the Escondido Mutual Water Company; the Vista Irrigation District; and the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians have entered into a settlement agreement providing for the complete resolution of all claims, controversies, and issues involved in all of the pending proceedings among the parties in the United States District Court for the Southern District of California and the Federal Energy Regulatory Commission; and

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(2) stipulated judgments or other appropriate final dispositions have been entered in said proceedings.

2.R. NOW THEREFORE, the Parties are entering into this Agreement in good faith for the purpose of providing, together with the Settlement Agreement, for the complete resolution of all claims, controversies, and issues involved in all of the pending proceedings among the parties in the United States District Court for the Southern District of California and FERC in satisfaction of the requirement of paragraph (1) of section 104 of the Settlement Act.

**Article III. Central Principles Regarding the Allocation, Delivery and Use of Local Water and Supplemental Water Among the Parties**

3.A. Escondido and Vista to Receive Same Approximate Amount of Water at Same Approximate Cost. Under this Agreement Escondido and Vista will receive Local Water and Supplemental Exchange Water in approximately the same total amount as the amount of Local Water they have historically received at approximately the same overall cost as they would incur under the historic arrangements unless they permanently discontinue operation of the Local Water System pursuant to Article XI.

3.B. No Substantial Changes in the Operation of the Local Water System. No substantial changes as a direct result of this Agreement are anticipated in the operation of the Local Water System except that neither the Rincon Power Plant nor any other hydroelectric power plant connected to the Local Water System and located on an Indian Reservation shall be operated or rebuilt without the mutual consent and agreement of the affected Parties. Escondido and Rincon will enter into a separate agreement that provides for the reconstruction and operation of the Rincon Penstock.

3.C. Anticipated Change in Water Use and Facilities on Reservations. It is anticipated that more Supplemental Water and Local Water will be needed and used by the Bands on their Reservations as those Reservations continue to develop. Those future needs and uses are not currently known and may require additional facilities and/or agreements,

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which will be subject to compliance with then applicable laws. The Indian Water Authority or any of the Bands, acting through the Indian Water Authority, may construct facilities to receive Local Water from the Local Water System, subject to consultation with the Local Entities to assure the continued integrity of the facilities of the Local Water System that may be affected by such construction.

3.D. Local Entities Expected to Receive Less Local Water Over Time. The Local Entities are expected to obtain less Local Water in the future than they have historically obtained from the San Luis Rey watershed as the Bands increase their use of Local Water, but those reductions of Local Water will be offset by an equivalent amount of Supplemental Water or other consideration.

3.E. Agreements Between the Local Entities. The allocation of the duties and responsibilities between Escondido and Vista pursuant to this Agreement for the operation of the Local Water System, the delivery of the Local Rincon Water to the Rincon Reservation, the delivery of the Local Exchange Water to the Bands in return for Supplemental Exchange Water, and the payments to the Indian Water Authority in return for Surplus Supplemental Water and other matters shall be governed by a separate agreement or agreements between the Local Entities. Such separate agreement or agreements may include an allocation of Local Water between them. Such agreement or agreements shall not supersede, modify or affect the terms and conditions of the Settlement Agreement or this Agreement, including the commitments and obligations of the Local Entities to the Bands and the Indian Water Authority. The Local Entities generally shall be jointly and severally liable and responsible for satisfying their obligations and responsibilities under this Agreement as provided in Article XVIII.

3.F. Local Water System. The Local Water System will be operated for the benefit of the Local Entities and the Bands.

3.G. Local and Supplemental Water. All Local and Supplemental Water shall be devoted to the exclusive use and benefit of the Parties pursuant to this Agreement and shall

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not be used for any other purpose.

### **3.H Cooperation.**

3.H.1 General Cooperation. Each Party shall cooperate in accommodating the reasonable requests of other Parties pertaining to the implementation of this Agreement, including without limitation requests for information pertaining to actual and planned water use.

3.H.2 Cooperation in the Sharing of Local and Supplemental Water. To avoid or minimize the adverse effects of water shortages or disruptions and to meet the Parties' urgent and immediate water needs to the maximum possible extent, the Parties agree to work together and to cooperate in good faith to make voluntary temporary arrangements to share the available Local and/or Supplemental Water. Such arrangements may include payments of money, debits and/or credits of Local and/or Supplemental Water or any other mutually agreed upon terms.

3.I. Other Sources of Water. This Agreement defines the rights, obligations and responsibilities of and as between the Parties with respect to Local Water and Supplemental Water. Except as provided in section 7.D.1, this Agreement does not affect, and shall not be construed to affect, the rights, obligations and responsibilities of any Party with respect to any other sources of water.

## **Article IV. Conditions, Effectiveness, and Term**

4.A. Conditions Necessary for Agreement to Become Effective. This Agreement shall take effect when: (i) it has been duly executed by all of the Parties; (ii) the Settlement Agreement has been duly executed by all of the Parties and the United States; (iii) this Agreement and the Settlement Agreement have been approved by the United States District Court for the Southern District of California after the Court has ascertained in open court and on the record that: (a) this Agreement and the Settlement Agreement provide fair and reasonable terms for the use of Local and Supplemental Water by the Parties and for financial and other consideration among the Parties; and (b) all Parties understand and agree

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with the terms of this Agreement and the Settlement Agreement and represent that they have received adequate legal representation in reaching that conclusion; (iv) a stipulated judgment or other appropriate final disposition has been entered in the litigation involving the United States, the Bands, and the Local Entities in all of the proceedings among the Parties and the United States pending in the United States District Court for the Southern District of California and FERC; (v) FERC has issued the Conduit Exemption License and has approved the Surrender Application; and (vi) the Secretary has issued all necessary rights-of-way for the Local Water System in accordance with section 109(b) of the Settlement Act. The date when all these conditions have been satisfied shall be the Effective Date.

4.B. Perpetuity. Once effective, this Agreement shall remain in effect in perpetuity.

4.C. Obligations and Responsibilities under the Allocation Agreement. In accordance with section 9.8 of the Allocation Agreement, the Parties agree to cooperate, collaborate and use their best efforts to insure that the purposes, terms and conditions of the Allocation Agreement are effectuated and carried out to the maximum legally feasible extent.

### **Article V. Financial and Other Consideration**

5.A. No Annual Charges or Other Fees. The Parties agree that the consideration provided in the Settlement Act, the Settlement Agreement, and this Agreement is provided in lieu of all past, present and future annual charges or other fees under section 10(e) of the Federal Power Act, [16 U.S.C. §803(e)], and under any other applicable law, for the Local Entities' use, as part of the Local Water System, of certain designated rights-of-way on tribal land within the Reservations and other federal lands subject to authority of the Secretary.

5.B. Other Conditions. The Parties agree that the terms and conditions of the Settlement Act, the Settlement Agreement, and this Agreement provide for the adequate protection and utilization of the Reservations consistent with the requirements of section

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4(e) of the Federal Power Act [16 U.S.C. §797(e)] and under any other applicable law and that no other conditions are required or shall be imposed.

5.C. San Pasqual Undergrounding Project. The San Pasqual Undergrounding Project will remove, relocate, and replace with an underground pipeline most or all of that portion of the Escondido Canal and its appurtenant structures, facilities, and rights-of-way that currently occupy land within the San Pasqual Reservation. The San Pasqual Undergrounding Project includes reclamation of the land occupied by the replaced canal by means of demolition, debris removal, grading, and reestablishment of drainage, as well as any associated mitigation of environmental impacts that may be required.

5.C.1. Local Entities to Implement. Escondido and Vista shall be jointly responsible for implementing the San Pasqual Undergrounding Project, the cost of which will be equally divided between them.

5.C.2. Cooperation by San Pasqual and Grant of Easement. San Pasqual will cooperate with and support Escondido and Vista in the implementation of the San Pasqual Undergrounding Project. In addition, San Pasqual will consent to the grant of an easement for the portion of the San Pasqual Undergrounding Project that will occupy San Pasqual Reservation land. There will be no charge for the easement.

5.C.3. Local Entities to Provide Access. In order to provide San Pasqual access to Local Exchange Water from the San Pasqual Undergrounding Project, during construction of the San Pasqual Undergrounding Project Escondido and Vista will install at their expense four stub sections of pipeline capped with blind flanges. The location of the four stub sections will be determined by San Pasqual in consultation with the Local Entities. In addition, San Pasqual will otherwise be provided access to Local Exchange Water from the Escondido Canal and the San Pasqual Undergrounding Project pipeline south of the northern boundary of the San Pasqual Reservation pursuant to the terms of this Agreement.

5.C.4. Schedule for Completion of Project and Remedies. Subject to Uncontrollable Force, the Local Entities shall implement the San Pasqual Undergrounding

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Project in good faith and with reasonable diligence. The Local Entities shall use their best efforts to complete the San Pasqual Undergrounding Project not later than six years from the Effective Date. If the Local Entities have not completed the San Pasqual Undergrounding Project within six years of the Effective Date, and to the extent that they have not been impaired by Uncontrollable Force, the Local Entities agree to compensate San Pasqual at the rate of \$1,000 per day from the expiration of the six-year deadline. Upon completion of the San Pasqual Undergrounding Project, no further charges shall be paid by the Local Entities to San Pasqual.

5.D. Indian Water Authority to Receive Parker-Davis Benefits for First 20 Years.

The Indian Water Authority is entitled to all of the economic benefits from the initial 20 year allotment of Parker-Davis power from the Western Area Power Administration commencing October 1, 2008. Subsequent to the Effective Date, these economic benefits will be used for water supply, quality, infrastructure and other water-related operations and improvements.

5.D.1. Allocation of Parker- Davis Benefits After the First 20 Years. At the end of the initial 20 year term, the Indian Water Authority, the Bands, Escondido and Vista will jointly apply in good faith for a renewal of the Parker-Davis allotment. Whatever allotment is obtained, the economic benefits will be divided 50% to the Indian Water Authority and Bands, 25% to Escondido, and 25% to Vista. The Indian Water Authority will use its and the Bands' share of the economic benefits for water supply, quality, infrastructure and other water-related operations and improvements and Escondido and Vista will each use their shares of the economic benefits for the Local Water System. In addition to this joint application for Parker-Davis power, each Party may make and pursue its own separate application(s) for any other allotments of Parker-Davis power after the initial 20 year allotment that commences October 1, 2008. This section 5.D.1 shall not apply if and when the Local Entities exercise their right under Article XI to discontinue their responsibility to operate the Local Water System.

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5.E. Additional Payments by Local Entities to the Indian Water Authority.

Escondido and Vista each agree to pay the Indian Water Authority \$3.85 million (“Settlement Payment”). The Settlement Payment shall be adjusted from October 1, 2008 to the Effective Date by the change in the Consumer Price Index, All Urban Consumers, San Diego published by the United States Department of Labor, Bureau of Labor Statistics (“Index”). The Settlement Payment shall be adjusted by the change in the Index from July 1, 2008 (the value of which was 242.440 as of that date) to the Index published immediately prior to the Effective Date, provided that the Settlement Payment shall not be less than \$3.85 million. At the discretion of the Local Entities, the Settlement Payment may be paid either in a lump sum, or amortized over 20 years at 5% interest per annum, or paid over 20 years commencing five years after the Effective Date at 6% interest per annum on the unpaid balance. The lump sum payment shall be due and payable on the Effective Date. All annual payments shall be due and payable on the Effective Date or its anniversary. Any scheduled payment may be prepaid without a prepayment penalty.

5.E.1. Example of Escalation of Settlement Payment to Effective Date.

Assume, for the purpose of this example, an August 1, 2010 Effective Date. The value of the Index was 242.440 on July 1, 2008 (the value published immediately preceding October 1, 2008). The value of the Index was 244.242 on July 1, 2010 (the value published immediately preceding the Effective Date of this example). Therefore, the Settlement Payment of \$3,850,000 is adjusted to \$3,878,616.15 ( $\$3,850,000 \times 244.242 / 242.440$ ) as of the Effective Date, August 1, 2010 (in this example).

5.E.2. Settlement Payment Amortization Schedules. See Exhibit 1 for illustrative examples of typical amortization schedules.

5.F. Use of San Luis Rey Tribal Development Fund. The Indian Water Authority and the Bands shall have exclusive control of the disbursement, distribution and use of the funds from the San Luis Rey Tribal Development Fund in accordance with section 105 of the Settlement Act. When this Agreement becomes effective, the Indian Water Authority



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and the Rincon, San Pasqual, Pauma and Pala Bands shall immediately cause to be made a one-time payment of two million, five hundred thousand dollars (\$2,500,000.00) from the San Luis Rey Tribal Development Fund to La Jolla pursuant to sections 105 and 107(b)(4) of the Settlement Act in consideration of the La Jolla's unique circumstances and contributions to this Agreement.

5.G. Use of Trust Fund Established Pursuant to the Agreement with Metropolitan.

The Indian Water Authority shall have exclusive control of the disbursement, distribution and use of the funds from the trust fund established pursuant to paragraph 7 of the Agreement Relating to Supplemental Water among the Metropolitan Water District of Southern California, the Parties and the United States dated October 10, 2003.

**Article VI. Rights to Use and Occupy Various Land and Rights-of-Way**

6.A. Party's Property Rights vis-à-vis Third Parties. This Agreement shall not affect the right of any Party to use and occupy land and rights-of-way based on its various ownership rights (including without limitation its easements, contracts, federal and state permits and any license issued pursuant to the Federal Power Act, including any Conduit Exemption License for the Bear Valley Power Plant) vis-à-vis Third Parties. Those rights shall provide a legal basis for each Party's exercise of rights to use and occupy various land and rights-of-way vis-à-vis Third Parties.

6.B. Party's Property Rights vis-à-vis Each Other. Commencing with the Effective Date, each Party shall exercise its rights to use and occupy land and rights-of-way vis-à-vis any other Party in accordance with the terms and conditions of the Settlement Act, the Settlement Agreement, this Agreement, the Conduit Exemption License, rights-of-way granted by the Secretary and any other settlement documents. No rights or obligations between or among the Parties shall remain in effect pursuant to the following documents: (i) Agreement dated June 4, 1894 between the Escondido Irrigation District and the Potrero Band or Village of Mission Indians; (ii) Memorandum of Agreement dated February 2, 1914 between the United States, for and on behalf of the Rincon Indians, and the Escondido

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Mutual Water Company; (iii) Agreement dated June 28, 1922 between William G. Henshaw and the United States by the Secretary of the Interior for the Indians of the Rincon and Pala Reservations; and (iv) any permit or license issued by FERC other than the Conduit Exemption License.

6.C. Renewal or Extension of the Conduit Exemption License. The Local Entities shall have the right to seek renewal or extension of the Conduit Exemption License or any other license which authorizes a power generation facility at Bear Valley, subject to the terms and conditions of this Agreement. The Bands agree to cooperate with the Local Entities in any such future applications by the Local Entities. As provided in the Settlement Act, the Parties agree that any license issued by FERC shall be subject to all the terms, conditions, and provisions of the Settlement Agreement and this Agreement and shall not in any way interfere with, impair, or affect the ability of the Parties to implement, perform, and comply fully with all of the terms, conditions, and provisions of the Settlement Agreement and this Agreement. If the Conduit Exemption License is terminated or ends, and there has been no abandonment pursuant to Article XI, all other rights, obligations or responsibilities of the Parties pursuant to the Settlement Agreement and this Agreement shall not be affected.

6.C.1 Rincon Power Plant and Penstock. The disposition of the Rincon Power Plant and arrangements for the reconstruction of the Rincon Penstock are being addressed in a separate agreement between Escondido and Rincon.

6.D. Secretary's Exclusive Authority to Grant Rights-of-Way. As provided in sections 104 and 109(b) of the Settlement Act, when this Agreement becomes effective the Secretary is exclusively authorized to lease or grant rights-of-way across Indian tribal or allotted land or to lease, grant rights-of-way across, or transfer title to, any federally owned land subject to the authority of the Secretary, which is used, or may be useful, in connection with the operation, maintenance, repair or replacement of the Local Water System.

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6.D.1. No Additional Consideration or Compensation to be Paid for the Grants of Rights-of-Way. With respect to the Local Water System, La Jolla, Rincon and San Pasqual agree that there shall be no consideration or compensation for the issuance of any rights-of-way across their tribal land beyond that otherwise provided for in this Agreement.

6.D.1(a). Compensation to Individual Indians or Allottees for the Use of their Land. Individual Indians or allottees whose land is subjected to a lease, grant or title transfer of rights-of-way and other property interests by the Secretary shall be entitled to receive just compensation. The Indian Water Authority agrees that any payment of such compensation shall be made by the Indian Water Authority and no additional consideration or compensation shall be due from the Local Entities for the use of such allotted or individually owned land.

6.D.2 Grant of Property Interests Subject to Terms of This Agreement. The Bands agree that their consent to any such leases, grants and title transfers of rights-of-way and other property interests by the Secretary shall include a condition that they are subject to the terms, conditions and provisions of the Settlement Agreement and this Agreement, and shall not be construed or applied in a manner that impairs or affects the ability of the Parties to implement, perform, and comply fully with all of the terms, conditions and provisions of the Settlement Agreement and this Agreement.

6.E. Grants of Land and Rights of Way for Local Water System. As provided in section 109(b) of the Settlement Act, the Bands and the Indian Water Authority agree that the Indian tribal or allotted land or other land subject to the authority of the Secretary as shown on the maps attached to this Agreement as Exhibit 2 is used, or may be useful, in connection with the operation, maintenance, repair, replacement, or use of the Local Water System. La Jolla, Rincon and San Pasqual agree to exercise their authority to consent to the grant of rights-of-way across, or other interests in, the Indian tribal or allotted land; to advocate for the issuance of rights-of-way across or other interests in other land subject to the authority of the Secretary, as described in Exhibit 2, to the Local Entities; and to

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execute the appropriate instruments needed to permit the Local Entities' continued use of such property in connection with the operation, maintenance, repair, replacement, or use of the Local Water System. La Jolla, Rincon and San Pasqual agree to provide the necessary approvals for the Secretary's exercise of authority pursuant to section 109 of the Settlement Act.

6.F. Future Replacement or Relocation. In the event that the location of any portion of the Local Water System or appurtenant facilities or rights-of-way located on tribal or allotted land or other land subject to the authority of the Secretary needs to be changed in the future, whether because of failure of any of the existing facilities, replacement of a portion of the Escondido Canal with a pipeline, siphon, or tunnel, or for other good cause, the Band whose property rights are affected agrees to cooperate in defining and granting the necessary deeds, rights-of-way grants or other instruments and will not unreasonably withhold or refuse to grant its consent or refuse to grant its approval of those changes.

6.F.1. Additional Consideration. If the relocated facilities or rights-of-way for the Local Water System do not use substantially more tribal land than the facilities or rights-of-way replaced and/or do not interfere with existing improvements on said lands or other lands, no additional consideration will be required for the property used in connection with these relocated facilities or rights-of-way. In all other cases, the affected Band will negotiate in good faith to determine the need for and extent of any additional consideration. If future uses of allotted land are approved by the Secretary and/or the rights to such allotted land are otherwise obtained by the Local Entities, the governing Band with jurisdiction over the allotment shall grant its approval for such future uses pursuant to section 109(c) of the Settlement Act without additional cost or consideration to that Band.

### **Article VII. Exercise of Water Rights**

7.A. Retention of Parties' Water Rights. Each Party retains all of its water rights under state or federal law including, without limitation, its reserved, appropriative, riparian,

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prescriptive and contractual rights, to the surface and ground waters within the watershed of the San Luis Rey River. Each Party's retained rights to use Local Water provide the legal basis for each Party's use of Local Water pursuant to this Agreement.

7.B. Parties' Rights to Use Local Water vis-à-vis Third Parties. Each Party's retained rights to use Local Water provide the legal basis for any claim a Party may make against the use or proposed use of Local Water by Third Parties.

7.C. Parties' Rights to Use Local Water vis-à-vis Other Parties. Each Party shall exercise its retained rights to store, divert and use Local Water vis-à-vis any other Party in accordance with the terms and conditions of the Settlement Act, the Settlement Agreement, this Agreement, and any other settlement documents. No rights or obligations between or among the Parties shall remain in effect pursuant to the following documents: (i) Agreement dated June 4, 1894 between the Escondido Irrigation District and the Potrero Band or Village of Mission Indians; (ii) Memorandum of Agreement dated February 2, 1914 between the United States, for and on behalf of the Rincon Indians, and the Escondido Mutual Water Company; and (iii) Agreement dated June 28, 1922 between William G. Henshaw and the United States by the Secretary of the Interior for the Indians of the Rincon and Pala Reservations.

7.D. No Action to Adversely Affect Other Parties' Rights to Local Water. Except as otherwise provided in this Agreement, no Party shall take any action or seek to take any action that impairs, diminishes or otherwise adversely affects the rights of any other Party to store, divert and use Local Water as provided in this Agreement. To the extent that there may be any conflict between such rights under this Agreement and any other water rights any Party may retain, claim, have or acquire, the rights to store, divert and use Local Water as provided by this Agreement shall take precedence. This section shall not prevent any Party from using Local Water on land acquired by that Party up to the amount of Local Water that was put to use by any of that Party's predecessors-in-interest as of the date on which this Agreement is executed by all of the Parties.

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7.D.1. Protection of Rights to Other Water Available to the Parties. Except as otherwise provided in this Agreement, the Indian Water Authority and the Bands shall not take any action that conflicts with the rights of Vista and Escondido to store, divert or use water that has historically been captured in Lake Wohlford and originates from the watershed of Escondido Creek. Similarly, except as otherwise provided in this Agreement, Escondido and Vista shall not take any action that conflicts with the rights of any of the Bands to store, divert, extract, or use surface or ground water that may be available for use on their Reservations and that has not historically been available for conveyance through or diversion into the Escondido Canal.

7.E. Forman Deeds. When this Agreement becomes effective, Vista, as the successor-in-interest to the grantees of the Forman Deeds, shall assign to the Indian Water Authority and to each of the Bands the right to enforce any and all rights or interests Vista may have under the Forman Deeds, which conveyed to Vista's predecessors-in-interest certain rights to ground and/or surface waters within the watershed of the San Luis Rey River. The provisions of this section shall not affect the right of Vista to enforce independently whatever rights or interests it may have under the Forman Deeds. At the request of the Indian Water Authority or any of the Bands, Vista agrees to cooperate with the Indian Water Authority and the Bands to protect the rights or interests of the Bands against actions adverse to their rights or interests made by the grantors of the Forman Deeds and their successors. Moreover, if Vista is found by a court of competent jurisdiction to be a necessary party to any legal proceeding brought by the Indian Water Authority or any of the Bands to enforce any right or interest assigned by Vista pursuant to this section 7.E, other than Vista's right to or interest in Local Water, Vista agrees to join that legal proceeding as a party at the written request of the Indian Water Authority or any of the Bands. The Indian Water Authority agrees to reimburse Vista for any and all costs, including fees for attorneys selected by Vista, incurred by Vista in any such legal proceedings or in assisting the Indian Water Authority or any of the Bands to protect any

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rights or interests assigned hereunder. The Indian Water Authority agrees to indemnify and hold Vista harmless from any adverse consequences incurred in or resulting from any such cooperation or legal proceedings.

The assignment of rights under the Forman Deeds to the Indian Water Authority and the Bands pursuant to this section 7.E shall not affect Vista's rights or interests under the Forman Deeds or any of the other rights and obligations of the Parties under this Agreement.

Vista makes no representation and provides no warranty as to what rights it has under the Forman Deeds.

7.F. No Effect on Allottee Water Rights. Nothing in this Agreement shall affect the water rights of the owners of allotments within the La Jolla, Rincon and Pala Reservations pursuant to 25 U.S.C. § 381. The Parties agree that the satisfaction of such water rights is not the responsibility of the Local Entities, and that claims to such water rights must first be directed to the tribal government that exercises jurisdiction over the Reservation in which the allotment is located. Decisions regarding these water rights by tribal governments may be reviewed by the Secretary pursuant to her authority under 25 U.S.C. § 381. Judicial review of decisions of the Secretary may be sought under the Administrative Procedure Act, 5 U.S.C. §§ 701 et seq.

7.G. Protection and Exercise of Rights to Supplemental Water. Each Party shall exercise its rights to store, divert and use Supplemental Water vis-à-vis any other Party in accordance with the terms and conditions of the Settlement Act, the Settlement Agreement, this Agreement and the other agreements signed by all Parties pertaining to Supplemental Water. Except as otherwise provided in this Agreement, no Party shall take any action or seek to take any action that impairs, diminishes or otherwise adversely affects the rights of any other party to store, divert and use Supplemental Water as provided in this Agreement.

7.H. Bands' Water Rights Enhanced by Settlement. The Parties acknowledge and agree that the rights of the Bands to receive and use Local Water and Supplemental Water on their Reservations pursuant to the Settlement Act, the Settlement Agreement, this

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Agreement and the other agreements implementing the Settlement Act enhance the quantity and reliability of the water supplies available for use on their Reservations as compared to the quantity and reliability of the water supplies that otherwise would have been available for use on their Reservations.

### **Article VIII. Allocation and Delivery of Supplemental Water**

8.A. In General. The Bands have the right to use or exchange all Supplemental Water in accordance with the terms of this Agreement. Subject to the availability of Supplemental Water provided by the United States and Metropolitan and conveyance provided by the SDCWA, all of the Supplemental Water provided by the Indian Water Authority to the Local Entities shall be delivered in accordance with schedules for deliveries of untreated and/or treated Supplemental Water prepared by the Local Entities. To the extent that the Bands do not use all of the Supplemental Water, either directly on their Reservations or by exchange for Local Exchange Water, or for Local Rincon Water, the Indian Water Authority shall cause the remainder of the Supplemental Water to be delivered to the Local Entities as Surplus Supplemental Water. The Local Entities are obligated to take delivery of, and to pay for, all of the Surplus Supplemental Water that is made available to them by the Indian Water Authority up to a maximum of 16,000 acre-feet per year. The Local Entities shall compensate the Indian Water Authority for such Surplus Supplemental Water as provided in section 8.E.2. The statutory, contractual and other rights of the Bands and the Local Entities to Supplemental Water shall be in addition to the rights of the Bands and the Local Entities to other water supplies available for use on the Bands' reservations and in the Local Entities' service areas.

8.A.1. Role of Indian Water Authority. The Bands, acting through the Indian Water Authority, may use Supplemental Water directly on the Reservations (Direct Supplemental Water) or by exchange, provide it to the Local Entities in exchange for Local Water (Supplemental Exchange Water and Rincon Supplemental Exchange Water), and/or deliver the Supplemental Water to the Local Entities (Surplus Supplemental Water). The



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Indian Water Authority shall be responsible for scheduling deliveries of Supplemental Water with Metropolitan, SDCWA, the Local Entities, and any other persons and agencies whose facilities are needed for conveyance of that water.

8.A.2. Cooperation to Provide Access to Supplemental Water. Each Band and the Indian Water Authority agrees to: (i) cooperate and collaborate with the other Bands and the Indian Water Authority to allow the other Bands to obtain reasonable rights-of-way without charge across tribally owned trust or fee land to construct, operate, utilize and maintain facilities necessary to convey Supplemental Water for use on their respective reservations; and (ii) provide the other Bands with the opportunity to acquire additional capacity at a reasonable cost in, and/or the right to jointly use, any new facilities constructed to convey Supplemental Water for use on their respective reservations. Each Band and the Indian Water Authority also agree to consult, cooperate and collaborate in good faith with the other Bands, the Local Entities and the Indian Water Authority in planning, constructing and maintaining any new water conveyance and related facilities for any Band's benefit or for their collective joint use and benefit. Each Band agrees not to seek to deprive any other Band of fair and reasonable access to Supplemental Water for use either directly or by exchange on their respective reservations.

8.B. Use of Supplemental Water. All Supplemental Water shall be devoted to the exclusive use and benefit of the Parties pursuant to this Agreement and shall not be used for any other purpose.

8.C. Direct Supplemental Water. The Indian Water Authority shall coordinate the needs of each Band for the use of Direct Supplemental Water. The Indian Water Authority shall give notice to the Local Entities by October 1 of each Year of its best estimates of the amounts of Supplemental Water that each of the Bands intends to have delivered for either direct use or through Third Party exchange for use on their Reservations during the succeeding Year and shall provide updates of those estimates in conjunction with its updates for the delivery of Local Exchange Water as described in section 9.L.1(a).

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8.D. Supplemental Exchange Water. The Bands, acting through the Indian Water Authority, are entitled to receive Local Exchange Water from the Local Entities in return for providing Supplemental Exchange Water to the Local Entities in accordance with the terms and conditions of this section 8.D. The Indian Water Authority shall give notice to the Local Entities by October 1 of each Year of its best estimate of the amount of Supplemental Exchange Water that each of the Bands intends to exchange with the Local Entities for Local Exchange Water. The Indian Water Authority shall update those estimates in conjunction with its updates for the delivery of Local Exchange Water as described in section 9.L.1(a).

8.D.1. Basis for Exchanges. All exchanges shall be made on the basis of one acre-foot of Local Exchange Water for one acre-foot of Supplemental Exchange Water. The Local Exchange Water shall be measured as provided in Article IX. The Supplemental Exchange Water shall be measured at the point of delivery of the Supplemental Exchange Water to the Local Entities from the facilities of SDCWA. The Local Entities shall not be obligated to pay for their Supplemental Exchange Water except that if the Local Entities choose to receive treated Supplemental Exchange Water, the Local Entities shall pay for the cost of such treatment.

8.E. Surplus Supplemental Water. All Supplemental Water available to the Indian Water Authority in excess of the sum of Direct Supplemental Water, Supplemental Exchange Water, and Rincon Supplemental Exchange Water shall be delivered to the Local Entities as Surplus Supplemental Water.

8.E.1. Annual Accounting of Water Deliveries. Within 15 days following the end of each Year, the Local Entities shall prepare an annual accounting of the water deliveries made the preceding Year. That annual accounting and reconciliation shall adjust the quantities of Supplemental Exchange Water and Rincon Supplemental Exchange Water

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estimated to have been delivered to the Local Entities such that they shall be equal to the actual amounts of Local Exchange Water and that portion of Local Rincon Water designated by Rincon for exchange with Supplemental Water delivered to the Reservations during that Year, respectively. All of the remaining Supplemental Water provided to the Local Entities shall be considered and treated as Surplus Supplemental Water.

8.E.2. Payments by the Local Entities for Surplus Supplemental Water. The Local Entities shall pay the Indian Water Authority for the Surplus Supplemental Water they receive. Unless the Local Entities purchase Imported Water during the Year from a source other than the SDCWA which has a unit cost, including delivery, that is less than the unit cost of Imported Water delivered by the SDCWA, the amount the Local Entities shall pay to the Indian Water Authority for the delivery of Surplus Supplemental Water shall be the sum of the monthly amounts that the Local Entities otherwise would have paid SDCWA for the same amounts of untreated Imported Water in the same months that the Surplus Supplemental Water was delivered to the Local Entities. If in the future the Local Entities gain access to a source of Imported Water that is less expensive than SDCWA Imported Water, the Local Entities shall pay to the Indian Water Authority a unit cost for Surplus Supplemental Water that is the weighted average of the unit cost for SDCWA untreated imported water and the less expensive alternative source that they received that Year. The Local Entities shall deduct from their payment to the Indian Water Authority any payments that the Local Entities are required to make to the SDCWA for the delivery of Supplemental Water. If the Local Entities choose to receive treated Surplus Supplemental Water, the Local Entities shall pay for the cost of such treatment. In consideration of the potential for increased evaporative loss of Local Water due to the scheduling of Local Water for the use of the Bands, the payment for all Surplus Supplemental Water delivered during any Year shall occur in a single lump sum due on January 31 of the following Year. Nothing in this Agreement precludes the Parties from agreeing to carry over debits and/or credits of

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Supplemental Exchange Water or Surplus Supplemental Water from Year-to-Year. See Exhibit 3 for illustrative examples of the Local Entities' payment for Surplus Supplemental Water under various conditions.

8.E.3. Corrections to Annual Accounting and Payment. The Local Entities shall prepare a corrected accounting of any Year's deliveries of Supplemental and/or Local Water within 30 days of discovering any inaccuracies in previous accountings. When such corrections result in an adjustment of the payments due by any Party, such Party or Parties shall make the payment correction within 30 days of the date of the corrected annual accounting.

8.F. Scheduling Deliveries of Supplemental Water to the Local Entities. Subject to the availability of Supplemental Water provided by the United States and the Metropolitan and the provision of conveyance by the SDCWA, as soon as possible during each calendar year the Indian Water Authority shall cause the delivery of Supplemental Water not used directly on their Reservations to be available to supply all untreated water delivered to the Local Entities by the SDCWA. Providing that there is no harm to the Local Entities, the first untreated water delivered to the Local Entities from the SDCWA during each calendar year shall be treated and accounted for as Supplemental Water to the extent that such water has been made available to the Local Entities by the Indian Water Authority. Subject to their annual obligation under section 8.A, the Local Entities shall not be obliged to receive or purchase Supplemental Water at times when they cannot use it because of the lack of demand for water within their service areas or when infrastructure limitations prevent its delivery.

8.G. Division of Local Exchange Water, Supplemental Exchange Water, Rincon Supplemental Exchange Water and Surplus Supplemental Water Between the Local Entities. Unless the Local Entities otherwise agree, and such agreement does not harm the

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Indian Water Authority or any of the Bands, to the maximum extent practicable in any Year, Escondido and Vista each shall be obligated to provide the Indian Water Authority with 50 percent of Local Exchange Water and 50 percent of Local Rincon Water provided to the Indian Water Authority and to Rincon during that Year and shall each be entitled and obligated to receive 50 percent of the Supplemental Exchange Water, 50 percent of the Surplus Supplemental Water, and 50 percent of the Rincon Supplemental Exchange Water provided to the Local Entities during that Year. Escondido and Vista shall attempt to maintain approximate equality of the total amounts of Supplemental Water provided to each of them during the course of each Year.

To the maximum amount practicable in any Year, to the extent that one of the Local Entities is unable to provide 50 percent of the Local Exchange Water and 50 percent of Local Rincon Water scheduled for and needed by the Bands, the other of the Local Entities shall make good faith effort to provide the balance of such water, such that together the Local Entities satisfy their obligation to provide Local Exchange Water and Local Rincon Water. In that event, the percentages and amounts of Supplemental Water shall be adjusted accordingly.

8.H. Financial Responsibility for Supplemental Water. The Indian Water Authority shall be responsible for making all payments and expenses associated with obtaining and delivering Supplemental Water to its point of use on the Reservations or to the Local Entities' points of delivery from SDCWA's facilities. If the Local Entities choose to take Supplemental Water as treated water, the Local Entities shall pay for the cost of such treatment.

8.I. Right of Local Entities to Cure. In the event that the Indian Water Authority fails to make any payments referenced in section 8.H or otherwise goes into default with respect to any obligation associated with obtaining and delivering Supplemental Water, the

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Local Entities shall have the right, but not the obligation, to make such payment or to cure such default. The Indian Water Authority shall reimburse the Local Entities within 90 days for any such payments; provided however, the Local Entities shall be responsible for paying or for reimbursing the Indian Water Authority for the cost of treating any treated Supplemental Water delivered to the Local Entities where the treatment was requested by the Local Entities. If the Indian Water Authority fails to reimburse the Local Entities within 90 days, the Local Entities may at their option continue to cure and receive the Supplemental Water without further payment to the Indian Water Authority until full reimbursement, including the reimbursement of any penalties or other costs and interest as described in section 12.B, has been made. Full reimbursement shall be made within five years of the date of the Indian Water Authority's default. If such full reimbursement has been made to the Local Entities within five years of the default, they shall pay the Indian Water Authority for the Surplus Supplemental Water they received in accordance with sections 8.E.1 and 8.E.2 without interest. If full reimbursement is not made within five years of the date of the Indian Water Authority's default, the Indian Water Authority shall not be due any reimbursement for the Supplemental Water taken by the Local Entities between the period when they initiated the cure under this provision and the time that the Indian Water Authority resumes its obligations under section 8.H.

**Article IX. Local Water System and Local Water Use and Allocation**

9.A. Local Water System. The Local Water System will be operated for the benefit of the Local Entities and the Bands. The Local Entities may operate the Local Water System to maximize the annual yield. Any Local Water not allocated to the Rincon Water Entitlement, delivered as Local Exchange Water, or obtained by the Bands and the Indian Water Authority's option rights as described herein shall be allocated to the Local Entities for their use pursuant to this Agreement.

9.A.1. Management of Local Water System. The Local Water System shall be

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operated, maintained, repaired and replaced by the Local Entities to carry out the terms and conditions of this Agreement in substantially the same manner as it has in the past. To the extent that changes from past practices are needed to provide and deliver Local Water pursuant to the provisions of this Agreement, including for the use of the Bands on their Reservations, the Local Entities shall negotiate in good faith with the Indian Water Authority and use their best efforts to implement the necessary changes. In carrying out their obligations and responsibilities with respect to the Local Water System under this Agreement, the Local Entities shall do so in accordance with best management practices insofar as those practices may reasonably be implemented after taking into account the age, condition and location of the facilities and the agreements referenced in section 3.E regarding the operation of the Local Water System and use of Local Water.

9.A.2. Financial Responsibility for Local Water System. The Local Entities will continue to be responsible for all costs associated with the development and delivery of the Local Water, including the operation, maintenance, repair and, if necessary, replacement of the Local Water System. Rincon and Escondido will cooperate to pay for and implement the reconstruction of the Rincon Penstock.

9.A.3. Cooperation to Provide Access to Local Water. Each Band and the Indian Water Authority agree to: (i) cooperate and collaborate with the other Bands and the Indian Water Authority to allow the other Bands to obtain reasonable rights-of-way without charge across tribally owned trust or fee land to construct, operate, utilize and maintain facilities necessary to convey Local Water for use on their respective reservations; and (ii) provide the other Bands with the opportunity to acquire additional capacity at a reasonable cost in, and/or the right to jointly use, any new facilities constructed to convey Local Water for use on their respective reservations. Each Band and the Indian Water Authority also agree to consult, cooperate and collaborate in good faith with the other Bands, the Local Entities and the Indian Water Authority in planning, constructing and maintaining any new water conveyance and related facilities for any Band's benefit or for their collective joint

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use and benefit. Each Band agrees not to seek to deprive any other Band of fair and reasonable access to Local Water for use either directly or by exchange on their respective reservations.

9.B. Use of Local Water. All Local Water shall be devoted to the exclusive use and benefit of the Parties pursuant to this Agreement and shall not be used for any other purpose.

9.B.1. Right to Divert and Convey Local Water. Except as otherwise provided in this Agreement, the Local Entities have the right to divert all of the Local Water that is physically capable of being diverted into, and conveyed through, the Escondido Canal for the use and benefit of the Local Entities and the Bands. Except as otherwise provided in this Agreement, the Local Entities' right to use Local Water is subject only to the rights of the Bands, acting through the Indian Water Authority, to have Local Water delivered to the Bands' Reservations either through the Escondido Canal or by conveyance through the channel of the San Luis Rey River.

9.B.2. Protection of Local Water Quality. All Parties agree to cooperate to preserve the quality of Local Water so as to maintain the beneficial uses to which that water is put as of the Effective Date.

9.B.3 Standards for the Use of Local Water. In carrying out the requirements of section 3.H.2, the Parties agree to apply the following standards to maximize the beneficial use of Local Water by all of the Parties and to minimize the adverse impacts of shortages insofar as possible without materially impairing the interests served by their respective allocations.

9.B.3(a). Not a Reliable and Dependable Water Supply. The Local Water System cannot always deliver a reliable and dependable water supply due to uncontrollable factors such as fires, floods, mudslides, and earthquakes. The Parties shall account for these factors in their plans and expectations for the use of Local Water.

9.B.3(b). Scheduled to Meet Multiple Uses and Needs. The



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delivery of Local Water shall be scheduled to meet multiple uses and needs. For example, releases of Local Water from Lake Henshaw may be scheduled to satisfy La Jolla's non-consumptive instream flow use, the needs of the Escondido Canal and either the Rincon Water Entitlement or flows to Lake Wohlford.

9.B.3(c). Scheduled to Accommodate Time Sensitive Needs. The delivery of Local Water shall be scheduled to accommodate needs that are time sensitive. For example, and without limitation, groundwater recharge and the recreational and water quality needs of Lake Wohlford may be satisfied on a more flexible schedule than certain agricultural needs or Escondido Canal needs.

9.B.3(d). Water Efficiency Measures. Measures to enhance the efficiency of water use, such as up-to-date irrigation practices and aeration devices to enhance water quality in Lake Wohlford, shall be followed.

9.B.3(e). Financial Cooperation to Mitigate Water Shortages. The Parties shall work together and cooperate in good faith to make reasonable financial arrangements to offset or mitigate the adverse consequences of shortage, such as one or more of the Bands agreeing to reimburse the Local Entities for the materially greater cost for repairing the Escondido Canal as a result of water being provided for a lower priority use.

9.B.3(f). Flexible Management of High Priority Allocations of Water to Accommodate Urgent and Immediate Needs. The Parties shall manage their needs for Local Water for: 1) essential recreational uses and essential water quality needs at Lake Wohlford; 2) the Rincon Water Entitlement; and 3) water used for the recreational pool at Lake Henshaw and their allocations of Local Water for those purposes with flexibility to enable urgent and immediate needs to be met. For example: 1) the Local Entities shall manage the inflows and outflows to and from Lake Wohlford to minimize the need for Local Water; 2) to the extent the Rincon Water Entitlement is not needed to satisfy the urgent and immediate needs of Rincon, it shall be used to satisfy the urgent and immediate

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needs of other Bands with arrangements for appropriate reimbursement to Rincon; and 3) the Vista Tier 1 water used for the recreation pool at Lake Henshaw shall be managed with flexibility to enable the urgent and immediate needs of the Parties to be met.

9.B.3(g). Management to Provide High Priority Water Allocations.

The Local Water System shall be managed and operated to provide that all requested deliveries of Local Water for the Escondido Canal/Lake Wohlford, the Rincon Water Entitlement, Vista Tier 1 Water, and Indian Local Exchange Water shall be satisfied in accordance with their respective priorities and consistent with the terms of this Agreement .

9.C. Allocation of Local Water and Priorities for Escondido Canal Capacity.

9.C.1. Allocation of Local Water. The Local Water shall generally be allocated as follows: (1) the Rincon Reservation shall receive the Rincon Water Entitlement calculated and delivered as described in section 9.D; and (2) the Local Entities shall have the right to take and use the remainder of the Local Water subject to the right of the Bands to divert and use Local Water through an acre-foot for acre-foot exchange for Supplemental Water or other consideration as described in this Agreement.

9.C.2. Priorities for Escondido Canal Capacity. The capacity of the Escondido Canal for deliveries of Local Water through the Escondido Canal shall be prioritized as follows: (i) runoff that originates below Lake Henshaw and above either the Diversion Dam or above the Escondido Canal; (ii) Current Year Water Production released from Lake Henshaw and any Carryover Storage used to satisfy current year allocations; (iii) 12 cfs of capacity divided equally between the Local Entities' Carryover Storage and the Bands' Carryover Storage; (iv) the Local Entities' Carryover Storage; and (v) the Bands' Carryover Storage. Notwithstanding these priorities governing the capacity of the Escondido Canal, deliveries of Local Water from the Escondido Canal at all times shall be consistent with the priorities for the use of Local Water set forth in section 9.K.3.

9.D. Rincon Water Entitlement. In lieu of the rights to water and power for the Rincon Indian Reservation under the February 2, 1914 Agreement between the United

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States for the Rincon Indians and the Escondido Mutual Water Company and the June 28, 1922 Agreement between William G. Henshaw and the United States for the Indians of the Rincon and Pala Reservations, and in addition to the other consideration provided by the Settlement Act and this Agreement, the Rincon Reservation shall receive a new annual entitlement to Local Water (Rincon Water Entitlement).

9.D.1. Calculation of the Rincon Water Entitlement. The Rincon Water Entitlement shall be calculated based on the two years of total natural runoff accruing below Henshaw Dam and above the Diversion Dam. The calculation, when applied retroactively to the historical period between 1925 and 1982, shall replicate an average annual entitlement of 2,900 acre-feet per year.

9.D.1(a). Initial Projection of the Rincon Water Entitlement. By October 15 of each Year, the Local Entities shall prepare and submit to the Indian Water Authority an estimate of the Rincon Water Entitlement projected for the following Year. The projected entitlement shall be based on the total natural flow below Henshaw measured for the 17 month period ending September 30 of the current Year, plus the average of the cumulative total natural flow during the months of October through April for the previous 20 years. The estimated Rincon Water Entitlement shall be determined by the formula:

$$y = 778.11 * \ln(x) - 3639.03$$

where  $y$  = current annual entitlement of Local Rincon Water (acre-feet),  
constrained to be greater than or equal to zero and less than or equal to 4,344 acre-feet.

$x$  = average 12-month natural flow below Henshaw measured for the specified period (acre-feet)

$\ln()$  = natural logarithm function (base “e”)

9.D.1(b). Final Quantification of the Rincon Water Entitlement. By May 15 of each Year, the Local Entities shall prepare a final statement of the Rincon Water Entitlement for the current Year. The Rincon Water Entitlement shall be quantified using

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the same method described above, but using the total Natural Flow Below Henshaw and above the Diversion Dam measured for the 24 month period ending April 30 of the current Year. Examples of the calculation of the Rincon Water Entitlement are presented in Exhibit 4.

9.D.2. Deliveries of the Rincon Water Entitlement. Rincon, acting through the Indian Water Authority, shall schedule the delivery of the Rincon Water Entitlement during the Year in which it is available.

9.D.2(a). Scheduling Delivery. The Indian Water Authority, on behalf of Rincon, shall schedule the delivery of the Rincon Water Entitlement as described in section 9.L.1(a).

9.D.2(b). Rate of Delivery. Except as otherwise provided herein, the Rincon Water Entitlement shall not be delivered at a rate in excess of the capacity of the Rincon Penstock. In scheduling rates of delivery through the Rincon Penstock in excess of 6 cfs, the Parties shall cooperate in the scheduling to provide rates of delivery through the Rincon Penstock that accommodate Rincon's objectives without causing material harm to the Local Entities. For purposes of this provision, material harm shall not include a delay of up to 45 days of the delivery of Local Water to the Local Entities, as long as any such delay does not prevent the Local Entities from delivering the balance of the delayed deliveries of Local Water to the Local Entities prior to the commencement of the fall maintenance period.

9.D.2(c). Points of Delivery. Except as otherwise provided herein, the Rincon Water Entitlement shall be delivered to the Rincon Reservation through the Rincon Penstock when it is possible to carry the water through the Escondido Canal and the Rincon Penstock or from the channel of the San Luis Rey River as directed by Rincon. The Rincon Water Entitlement may also be delivered at points along the Escondido Canal above the Rincon Penstock, or released at such other location and rate as Rincon and the Local Entities may agree. Rincon and the Local Entities may make other arrangements for alternate delivery points and delivery rates subject to mutual agreement.

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9.D.2(d). No Losses Applied to Deliveries of the Rincon Water Entitlement. In consideration of the timing of the Surplus Supplemental Water payment by the Local Entities as described in section 8.E.2 and other provisions of this Agreement, the Rincon Water Entitlement is not subject to evaporative or transportation loss to the extent that the Local Rincon Water is not carried over to the next Year.

9.D.2(e). Unscheduled Deliveries of the Rincon Water Entitlement. In addition to the scheduled releases of the Rincon Water Entitlement through the Rincon Penstock or other points of delivery, the following flows arising from operational necessity or hydrologic events shall be accounted for as delivered Rincon Water Entitlement in an amount not to exceed 11.9 acre-feet per day:

9.D.2(e)(1). Runoff Exceeds Capacity of Escondido Canal. When runoff below Henshaw Dam and above the Diversion Dam exceeds the capacity of the Escondido Canal downstream of the Rincon Penstock, and the Rincon Water Entitlement cannot be delivered through the Rincon Penstock;

9.D.2(e)(2). Special Releases from Henshaw Dam. When water must be released from Henshaw Dam as required for safety, maintenance, or repair that results in flows at the Diversion Dam that exceed the capacity of the Escondido Canal downstream of the Rincon Penstock and the Rincon Water Entitlement cannot be delivered through the Rincon Penstock;

9.D.2(e)(3). Special Releases from Escondido Canal. When water must be released along the Escondido Canal between its intake and the point where it enters the San Pasqual Indian Reservation, as required for safety, maintenance, or repair activities and the Rincon Water Entitlement cannot be delivered through the Rincon Penstock;

9.D.2(e)(4). Runoff Below Henshaw Dam Not Divertible. When tributary runoff between Henshaw Dam and the Diversion Dam cannot be diverted into the Escondido Canal because the Escondido Canal between the diversion dam and the

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Rincon Penstock is shut down for regularly scheduled maintenance or for repair or replacement due to Uncontrollable Force; or

9.D.2(e)(5). Non-FERC Mandated Releases. If any agency other than FERC mandates releases of water from Lake Henshaw for in-stream flows past the Diversion Dam, to the extent that the water that flows past the Diversion Dam is available for the use and benefit of Rincon either by diversion and use on the Rincon Reservation or by recharging the aquifer underlying the Rincon Reservation.

9.D.2(f). Undelivered Rincon Water Entitlement. Any undelivered portion of the annual Rincon Water Entitlement as of December 31 of each Year shall be carried over and stored in Lake Henshaw. All Rincon Water Entitlement held in storage past December 31 of the Year in which it accrues shall bear proportionate storage losses and risk of first spill.

9.D.3. Other Arrangements Not Precluded. This Agreement does not obligate the Local Entities to purchase any undelivered portion of the Rincon Water Entitlement, but does not preclude mutually agreeable arrangements between Rincon and one or both of the Local Entities under which the Rincon Water Entitlement would be provided to one or both Local Entities.

9.D.4. Exchange Option for the Rincon Water Entitlement. Rincon shall decide whether and the extent to which the Rincon Water Entitlement it receives from the Local Entities will be exchanged by the Indian Water Authority for Supplemental Water provided to the Local Entities (Rincon Supplemental Exchange Water). Such an exchange with the Local Entities may occur only if and to the extent that Surplus Supplemental Water is available. If Rincon decides not to implement the exchange, the Local Entities will provide the Rincon Water Entitlement to Rincon pursuant to sections 9.D through 9.D.2. If and to the extent that Rincon decides to implement the exchange and Surplus Supplemental Water is available, the Local Entities will provide the Rincon Water Entitlement to the Rincon Reservation pursuant to sections 9.D through 9.D.2 in return for which the Indian

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Water Authority will provide an equal amount of Rincon Supplemental Exchange Water to the Local Entities pursuant to section 9.D.4(a). The Local Entities shall not pay any more for Supplemental Water pursuant to this section 9.D.4 than they would in its absence.

9.D.4(a). Rincon Supplemental Exchange Water. In further consideration of the arrangements for providing Rincon Local Water to the Rincon Reservation described in sections 9.D.1 and 9.D.2, the Indian Water Authority shall provide an equal amount of Rincon Supplemental Exchange Water to the Local Entities. In return, the Local Entities shall pay the Indian Water Authority for such Rincon Supplemental Exchange Water they pay for Surplus Supplemental Water minus 10 percent of the SDCWA charges that are not applied to Supplemental Exchange Water pursuant to section 4.d of the Agreement for the Conveyance of Water among the San Diego County Water Authority, the Parties and the United States dated October 3, 2003 (SDCWA Agreement). Such payment by the Local Entities for Rincon Supplemental Exchange Water shall be concurrent with the annual payment for Surplus Supplemental Water as described in section 8.E.2. The Indian Water Authority shall pay SDCWA its charges for the transportation of the Rincon Supplemental Exchange Water to the Local Entities pursuant to section 4.b of that SDCWA Agreement. The Indian Water Authority also shall pay Rincon 90 percent of the amount of SDCWA's charges that are not applied to Supplemental Exchange Water pursuant to section 4.d of the SDCWA Agreement. Examples of the implementation of the Rincon Supplemental Exchange Water are presented in Exhibit 5.

9.E. Local Exchange Water. The Bands, acting through the Indian Water Authority, are entitled to receive Local Water from the Local Entities in exchange for an equal amount of Supplemental Water.

9.E.1. Basis for Exchanges. All exchanges shall be made on the basis of one acre-foot of Local Exchange Water for one acre-foot of Supplemental Exchange Water. Except as otherwise provided in this Agreement, all Local Water provided for use on the Bands' Reservations pursuant to a request of the Indian Water Authority shall be subject to

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exchange. The Local Exchange Water shall be measured by the Local Entities at the points of delivery to the Bands.

9.E.2. Scheduling Local Exchange Water. The Indian Water Authority, on behalf of the Bands, shall schedule the delivery of the Local Exchange Water each Year as described in section 9.L.1(a).

9.E.3. No Losses of Local Exchange Water. In consideration of the timing of the Surplus Supplemental Water payment by the Local Entities as described in section 8.E.2, deliveries of Local Exchange Water are not subject to evaporative or transportation loss.

9.E.4. Points of Delivery. Local Exchange Water shall be delivered through the Rincon Penstock, at other locations along the Escondido Canal, or through the channel of the San Luis Rey River at the Diversion Dam.

9.E.4(a). Alternative Points of Delivery. Following consultation with the Local Entities to assure the continued integrity of the Local Water System as provided in section 3.C, the Indian Water Authority or any of the Bands acting through the Indian Water Authority may, at no expense to the Local Entities, construct and maintain one or more direct connections to the Escondido Canal. Provided, however, that Pala and Pauma shall have the right to negotiate directly with the Local Entities to obtain one or more connections to the Escondido Canal.

9.E.5. Exception to Requirement for Exchanges. When there is water flowing in the San Luis Rey River between Henshaw Dam and the Diversion Dam that: i) cannot be delivered to Lake Wohlford; ii) is not a component of the Rincon Water Entitlement; and iii) is not available for the benefit of the Local Entities, the Indian Water Authority may request delivery of such Local Water to one or more of the Reservations through the Local Water System. The Local Entities shall not unreasonably deny such a request. Such delivery shall not be subject to the requirement for exchanges provided in this section 9.E. The Parties shall cooperate to establish reasonable terms for such delivery. Such terms shall not exceed reimbursement of the reasonable costs incurred by the Local Entities to maintain and



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operate those portions of the Local Water System necessary to deliver that Local Water to one or more of the Bands' Reservations for the period during which the water is delivered to the Reservation(s), which costs shall not be more than a prorated portion of the average of such costs for the previous 3 years' annual reasonable operation and maintenance costs for conveyance of water through the Escondido Canal, excluding expenditures associated with major repairs or replacement projects. (For example if the siphon through Hellhole Canyon is inoperable but the Escondido Canal between the Diversion Dam and the Rincon Penstock is operable, the Local Entities would not require the Indian Water Authority to pay the Local Entities more than the prorated daily portion of such annual operation and maintenance costs for the period during which such Local Water is delivered to the Rincon Reservation. If the portion of the Escondido Canal operated is 50 percent of its total length, the daily cost would not exceed 50 percent of the per day average of such operation and maintenance costs.)

### 9.E.6 Limitation of Requirements Applicable to Flows Past Diversion Dam.

Except as provided in section 9.D.2(e) or as may be required for scheduled deliveries of Local Water through the channel of the San Luis Rey River past the Diversion Dam, Local Water that flows past the Diversion Dam that is not available for direct diversion and use by the Local Entities in their service areas and: 1) originates below Henshaw Dam and above the Diversion Dam; 2) is voluntarily released from Henshaw Dam; 3) is ordered to be released from Henshaw Dam for the purpose of public safety; or 4) spills from Henshaw Dam, shall not be subject to the requirement for exchanges pursuant to this section 9.E, shall not require any other consideration to the Local Entities, and shall be available for beneficial use, including ground water recharge, by one or more of the Bands.

### 9.F. Vista's Use of Water on the Warner Ranch.

9.F.1. Vista's Continuing Uses of Water on the Warner Ranch Not Accounted as "Local Water". Vista shall have the right to continue to allow the use of water on the Warner Ranch for the following purposes in substantially the same quantity and manner as

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has historically been used, including but not limited to: a) the domestic and commercial uses of the campground, café, store, cabin rentals, mobile home park, and hunting and fishing concession (not including the water stored in Lake Henshaw itself), all of which have historically been associated with Vista's Concession Management Agreement executed with Lake Henshaw Resorts, Inc.; b) stock water for grazing and livestock operations on the Warner Ranch; c) the domestic and commercial uses of water that support Vista's water production activities on the Warner Ranch, including employee residences, office and shop use, and maintenance activities; d) uses associated with other existing leases and license agreements, including those with the Department of the Navy, the California Department of Forestry and Fire Prevention, the California Department of Transportation, the County of San Diego, and San Diego Gas and Electric; and e) water as may be needed to combat wildland fires. See Exhibit 6 for a more detailed description of these existing uses. Water used for such purposes and in substantially the same quantities and manner as in the past shall not be accounted for as Local Water, and shall not be subject to limitation, exchange, or reimbursement to any Party under the terms of this Agreement. Whenever it appears that actions planned or undertaken by any of Vista's lessees or licensees indicate that their use of water might exceed the quantities used in the past or that the water is not being used in the same manner as in the past, Vista shall provide written notice to the Indian Water Authority and Escondido.

9.F.2. Vista's Use of Water for Future Business Arrangements with Incidental Water Use. In addition to ongoing historical uses described in section 9.F.1, Vista may enter into future business arrangements that include minor, incidental use of water on the Warner Ranch. Such future additional uses of water, which shall not exceed a combined aggregate of 20 acre-feet per year, shall not be accounted for as Local Water, and shall not be subject to limitation, exchange, or reimbursement to any Party under the terms of this Agreement. Vista shall provide written notice to the Indian Water Authority and Escondido of any future business arrangements that include minor, incidental use of water on the Warner Ranch.

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9.F.3. Vista's Interruptible, Temporary, and Agricultural Uses of Water on the Warner Ranch (Vista Interruptible Water). In Years when the Local Entities' April 1 forecast of the subsequent October 1 storage in Lake Henshaw (including estimated production, deliveries, and losses) projects that more than 1,000 acre-feet of storage will be remaining, Vista may use such additional available Local Water on the Warner Ranch for interruptible, temporary, or agricultural uses. Any agreements entered into by Vista with Third Parties (Third Party Agreement) for the use of water on the Warner Ranch shall specify that the availability of such water shall be subject to higher priority uses. Such interruptible, temporary or agricultural uses shall be accounted as Local Water delivered to Vista from Vista's share of Local Water.

9.F.3(a). Escondido Cooperation. Escondido may also make its portion of such additional available Local Water available for use by Vista on the Warner Ranch, for which Vista shall compensate Escondido for any detriment incurred in this transaction (Escondido component). Escondido shall not unreasonably withhold its portion of such additional available Local Water for use by Vista.

9.F.3(b). Indian Water Authority Option to Purchase Vista Interruptible Water (Indian Interruptible Option Water). In Years when Vista decides to use additional Local Water pursuant to section 9.F.3, the Indian Water Authority, on behalf of the Bands, shall have the option to purchase the water that Vista has proposed to use (including any Escondido component) by paying the greater of either: a) an amount equal to the cost of an equivalent amount of untreated Imported Water for municipal use that Vista has proposed to use (including any Escondido component); or b) an amount equal to the revenue to Vista of the agreement that Vista negotiated with a Third Party for the use of such land and water (including any Escondido component). The Indian Water Authority shall schedule the release and delivery of the Local Water obtained pursuant to this section 9.F.3(b). The Indian Water Authority shall pay for all such water on or before October 1 of each Year. If and to the extent that any Indian Interruptible Option Water remains in storage

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in Lake Henshaw after September 30 of the same Year, that portion which exceeds a total storage of 2,500 acre-feet in Lake Henshaw shall bear proportionate evaporation losses . This Indian Interruptible Option Water shall not be dependent on the availability of Supplemental Water, and shall be scheduled in a manner that will not reduce the total amount of Local Water that is available and is scheduled for release from Lake Henshaw for delivery to Lake Wohlford prior to October 1 of that Year.

9.F.3(c). Notice of Third Party Agreement. Vista shall, not more than 15 calendar days after the execution of a Third Party Agreement, give written notice to the Indian Water Authority, acting on behalf of the Band(s), of the Third Party Agreement. The notice shall include a copy of the Third Party Agreement and shall state that the Indian Water Authority has 45 calendar days after the date of the notice in which to respond.

9.F.3(d). Responses to Notice; Consummation of Transaction. If, the Indian Water Authority, acting on behalf of the Band(s), exercises its option by giving written notice to Vista, the Party or Parties exercising the option shall consummate the purchase within 60 calendar days following its notice. If the Party or Parties exercising the option fails to exercise the option on behalf of the Bands, or any of them, within the 45 day period, then the option as to that Third Party Agreement expires, and Vista may proceed to implement the Third Party Agreement.

9.F.3(e). Priority Among Bands/Indian Water Authority. If more than one of the Bands desires the Indian Water Authority to exercise an option, the Indian Water Authority shall determine (and notify Vista of) the Band(s) entitled to purchase the water.

9.F.4. Vista's Tier 1 Right to Use Local Water at Lake Henshaw and on the Warner Ranch.

9.F.4(a). Tier 1 Quantification and Use. Under Tier 1, Vista has the right to use up to a total of 1,250 acre-feet per year of its share of Local Water. This

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water may be used for recreation at Lake Henshaw and/or consumptively on the Warner Ranch subject to the conditions and requirements of this section.

9.F.4(b). No Effect on the Rincon Water Entitlement. Vista’s Tier 1 right would be subject to, and would not affect, the Rincon Water Entitlement.

9.F.4(c). Must be Used for Economically Significant Purposes. Vista’s Tier 1 right to use Local Water consumptively at Warner Ranch (excluding recreation use of Lake Henshaw) must be for economically significant purposes.

“Economically significant” means uses of Local Water that generate more net revenue for Vista than what Vista would pay for an equivalent amount of untreated Imported Water for municipal use.

9.F.5. Vista’s Tier 2 Right to use Local Water on the Warner Ranch by Exchange.

9.F.5(a). Tier 2 Rights by Exchange. Under Tier 2, Vista has the right to use Local Water consumptively on the Warner Ranch by exchange subject to the conditions and requirements of this section. Under Tier 2, Vista may use the Bands’ Local Exchange Water by first providing at Vista’s sole expense an equal amount of an alternative supply of water (including Supplemental Water) and also making arrangements at Vista’s sole expense for the delivery of that alternative supply of water to the Band(s) at the same times, at same locations, in the same amounts, and of a reasonably equivalent quality, as the Local Exchange Water that the Band(s) would otherwise receive and use.

9.F.5(b). No Effect on the Rincon Water Entitlement. Vista’s Tier 2 exchange right is not subject to, and does not affect, the Rincon Water Entitlement.

9.F.5(c). Must be Used for Economically Significant Purposes. Vista’s Tier 2 right to use Local Water by exchange consumptively on the Warner Ranch must be for economically significant purposes. “Economically significant” means uses of Local Water that generate more net revenue for Vista than what Vista would pay for an equivalent amount of untreated Imported Water for municipal use.

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9.F.5(d). Must First Use Local Entities' Local Water. Vista's Tier 2 right to use Local Water by exchange that would otherwise be used by one or more of the Bands would be exercised only after implementing every other reasonable opportunity to utilize the Local Water that otherwise would be released from Lake Henshaw for delivery to Lake Wohlford. Vista shall first use its share of Local Water on the Warner Ranch, and then shall utilize the maximum available portion of Escondido's share of Local Water on the Warner Ranch.

9.F.5(d)(1). No Detriment to Escondido. Upon request by Vista, Escondido shall make its share of Local Water available for Vista's use on the Warner Ranch, but only on terms which maintain the minimum flows necessary to prevent structural damage to the Escondido Canal, and only on terms which allow the essential recreational values and water quality needs of Lake Wohlford to be maintained, and assure that Escondido suffers no other loss or detriment due to Vista's use of Escondido's share of Local Water.

9.F.5(d)(2). Alternative Supply for Protection of Lake Wohlford. In order to delay as long as possible Vista's need to exercise Tier 2 rights vis-à-vis the Bands, the Bands and/or the Indian Water Authority shall pay for facilities designed and constructed in consultation with the Local Entities and the Valley Center Municipal Water District (Valley Center) that are necessary to deliver water from the Valley Center's infrastructure to Lake Wohlford. Once the facilities necessary to deliver water from the Valley Center facilities to Lake Wohlford are constructed, Vista shall not exercise its Tier 2 rights vis-à-vis the Bands without first satisfying its obligations to Escondido pursuant to section 9.F.5(d)(1). Once Vista satisfies its obligation to Escondido, Escondido shall provide its share of the Local Water for Vista's use on Warner Ranch during those Years in which Vista decides to use Tier 2 water. If the water delivered through the Escondido Canal to protect its structural integrity is insufficient to also protect the recreational and water quality needs of Lake Wohlford, and replacement water is available through the Valley

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Center infrastructure to Lake Wohlford, Vista shall be required to deliver sufficient water to protect those Lake Wohlford needs before exercising its Tier 2 rights vis-à-vis the Bands. If sufficient replacement water is delivered by Vista to Lake Wohlford to protect the recreational and water quality needs of Lake Wohlford and Escondido suffers no other loss or detriment due to the transaction, Escondido shall then provide its share of Local Water for Vista's Tier 2 use on Warner's Ranch and Vista shall use that share prior to using any of the Band's Local Water for Tier 2 use. When the use of water to preserve the beneficial uses of Lake Wohlford becomes insufficient to provide water for Vista's needs on the Warner Ranch, and after Vista has spent money to construct a capital project to provide alternative supplies for the Bands' use in satisfaction of Vista's Tier 2 responsibilities, Escondido shall no longer be required to make that portion of Local Water necessary to preserve the beneficial uses of Lake Wohlford available to Vista, and Vista shall no longer be required to provide water for Lake Wohlford beneficial uses if such water is more expensive than other alternatives made available by Vista's Tier 2 cure of the Bands.

9.F.5(d)(3). Minimize Adverse Impacts on Bands. Only after Vista has exercised its options to maximize the amount of Escondido's Local Water that is available for use on the Warner Ranch will Vista exercise its Tier 2 right to use the Bands' Local Exchange Water on the Warner Ranch. To the maximum reasonable extent possible Vista will exercise this Tier 2 right to use Local Water on the Warner Ranch in a manner that minimizes any adverse impacts on the Bands' use of Local Water.

9.F.6. Indian Right of First Refusal for Transactions Involving the Use of Vista's Tier 1 or Tier 2 Water on the Warner Ranch. (Indian First Refusal Water) Subject to applicable California law, each of the Bands and the Indian Water Authority shall have the right of first refusal with regard to any proposed transaction or related transactions between Vista and one or more Third Parties under which the Third Parties would obtain the right to use 250 acre-feet or more per year of Vista's Tier 1 or Tier 2 Water, including groundwater pumped from the Warner Wellfield, on the Warner Ranch. (Third Party Agreement

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involving Tier 1 or Tier 2 Water.) Any bona fide, independent, unrelated (e.g., not under the same or related ownership, etc.) transaction which uses less than 250 acre-feet per year of Vista's Tier 1 or Tier 2 Water shall be exempt from the Band's Right of First Refusal under this provision. If Vista enters into a Third Party Agreement involving Tier 1 or Tier 2 Water, the Indian Water Authority or any of the Bands shall have the first right of refusal to the water that Vista has proposed to use (including any Escondido component) in accordance with the procedure and requirements of this section 9.F.6. Any Third Party Agreement involving Tier 1 and Tier 2 Water entered into by Vista pursuant to this section shall specify that the use of Tier 1 or Tier 2 Water is subject to a right of first refusal by the Indian Water Authority and the Bands.

9.F.6(a). Consideration.

9.F.6(a)(1). Same Consideration to Vista. The Party or Parties exercising such right of first refusal or the Indian Water Authority shall provide the same consideration to Vista that Vista would have received under the proposed transaction. The Indian Water Authority has the option but not the obligation to cure any default or claim of nonperformance of any Party exercising the right of first refusal. Neither Vista nor Escondido shall be entitled to receive Supplemental Exchange Water or any other consideration beyond that contemplated in the proposed transaction in connection with the right of first refusal under section 9.F.6.

9.F.6(a)(2). Same Consideration to Party(ies) Exercising Right. The Indian Water Authority or any of the Bands exercising the right of first refusal pursuant to this section shall obtain the same consideration that the Third Party or Third Parties would have received under the proposed transaction, including the rights to use, and to control the use of, the full amount of all sources of Vista's Tier 1 or Tier 2 Water, including groundwater pumped from the Warner Wellfield, that were to be used under the proposed transaction for the full term of the proposed transaction: provided, however, that the Indian Water Authority or any of the Bands exercising the right of first refusal shall not



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be obligated to implement or undertake any development or other activity on the Warner Ranch that is provided for in the proposed transaction. The Vista Tier 1 or Tier 2 Water obtained pursuant to the exercise of the right of first refusal (Indian First Refusal Water) shall be produced and delivered in accordance with the terms of the proposed transaction. To the extent that the Indian First Refusal Water is delivered to the Local Water System, it shall be stored, controlled, scheduled, released and delivered in accordance with the directions provided by the Indian Water Authority for the benefit of the Band(s) exercising the right of first refusal in accordance with the provisions of this Agreement and shall have the same priority as the Vista Tier 1 or Tier 2 Water that the Third Party or Third Parties would have received under the proposed transaction.

9.F.6(b). Notice of Third Party Agreement involving Tier 1 or Tier 2 Water. Vista shall, not more than 15 calendar days after the execution of a Third Party Agreement involving Tier 1 or Tier 2 Water, provide written notice to the Indian Water Authority and to the Bands of said Agreement. This notice shall include a complete copy of the Agreement and any attachments thereto and shall state that the Indian Water Authority has 60 days in which to respond by advising Vista whether the Indian Water Authority or any of the Bands intends to exercise the right of first refusal with regard to this Agreement.

9.F.6(c). Response to Notice. Within 60 days of receipt of the notice from Vista described in section 9.F.6(b), the Indian Water Authority shall respond in writing to Vista advising that (i) the Indian Water Authority or any of the Bands intends to exercise the first right of refusal, or (2) that neither the Indian Water Authority nor any of the Bands intend to exercise the Right of First Refusal.

If the Indian Water Authority does not respond within the time allowed or responds that the right of first refusal is not going to be exercised by the Indian Water Authority or any of the Bands, then the Right of First refusal shall expire and Vista may proceed with the Third Party Agreement Involving Tier 1 or Tier 2 Water as provided in section 9.F.6(c).

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9.F.6(d). Consummation of Transaction.

9.F.6(d)(1). Consummation of Transaction with Indian Water Authority or Bands. If Vista receives timely notice that the Indian Water Authority or the Band(s) intend to exercise the right of first refusal and the Indian Water Authority's determination pursuant to section 9.F.6(e), the Indian Water Authority or the Band(s) shall have 90 days following the notice sent by the Indian Water Authority to consummate the transaction.

9.F.6(d)(2). Consummation of Transaction with Third Party. If Vista receives notice from the Indian Water Authority that there will be no exercise of the right of first refusal or if Vista does not receive timely notice from the Indian Water Authority, Vista may proceed with the Third Party Agreement involving Tier 1 or Tier 2 Water on the same terms and conditions that it was offered to the Indian Water Authority and the Bands.

9.F.6(e). Priority Among Bands. If more than one of the Bands desires to exercise the right of first refusal pursuant to this section 9.F.6, the Indian Water Authority shall determine (and notify Vista of) the Band(s) entitled to exercise this right of first refusal.

9.F.6(f). Storage Losses. If and to the extent that any Indian First Refusal Water remains in storage in Lake Henshaw on October 1, that portion which exceeds a total storage of 2,500 acre-feet in Lake Henshaw shall begin to bear its proportional share of storage losses and the risk of first spill as of that date.

9.F.6(g). Escondido Cooperation. To the extent that the Bands and/or the Indian Water Authority secures Indian First Refusal Water, and a portion of that Indian First Refusal Water was secured by Vista from Escondido's portion of Local Water, Escondido shall make the same portion of water available to the Bands and/or the Indian Water Authority exercising their right under this provision under the same terms and conditions agreed to by Vista and Escondido.

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9.G. Provision for Henshaw Carryover Storage Pool. The Local Entities shall use their best efforts to utilize their share of the Local Water in such a way as to provide for a Carryover Storage pool of not less than 2,500 acre-feet in Lake Henshaw. If such efforts are insufficient to maintain such a pool, Vista may call for all the Parties to meet and confer in good faith for the purpose of securing an opportunity for Vista to maintain such a Carryover Storage pool in Lake Henshaw. Vista has an interest in maintaining historical recreational, environmental, and water quality objectives in Lake Henshaw. These interests shall be considered in conjunction with the interests of other Parties' in utilizing Local Water for their beneficial uses, such as: municipal or agricultural use, protecting the structural integrity of the Escondido Canal and the beneficial uses of Lake Wohlford, groundwater recharge, and other recreational opportunities. All Parties shall cooperate in this effort to the extent that they would not suffer material harm.

9.H. Common Surplus Pool. Up to 3,000 acre-feet of Unallocated Local Water may be held in storage in Lake Henshaw and managed to provide water shortage protection for the Rincon Water Entitlement, the Escondido Canal/Lake Wohlford allocation, the Vista Tier 1 allocation, and a portion of the Bands' requested Local Exchange Water. Water allocated to the Common Surplus Pool shall be used to supply the demands of the Escondido Canal/Lake Wohlford allocation.

9.H.1. Allocation of Local Water to the Common Surplus Pool. When on October 1 of each Year there is more than 2,500 acre-feet of Unallocated Local Water stored in Lake Henshaw, up to 3,000 acre-feet of such excess Unallocated Local Water may be allocated to the Common Surplus Pool.

9.H.2. Management of Common Surplus Pool.

9.H.2(a). Monthly Assessment of Quantity of Water Needed to Provide Shortage Protection. Beginning on October 1 and continuing thereafter on a monthly basis until no water remains in the Common Surplus Pool, the Local Entities shall prepare a projection of the outlook for delivering the remaining scheduled water requests

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made by all Parties. This outlook shall consider existing storage in Lake Henshaw and the forecasts for well field production, runoff, evaporation, and any other relevant considerations. This projection shall assess whether all or any portion of Common Surplus Pool may be needed to provide a reasonable likelihood of supplying the Escondido Canal/Lake Wohlford allocation, the Vista Tier 1 allocation, and up to 4,750 acre-feet of both the Rincon Water Entitlement and the Bands' Exchange Water Allocation for the upcoming Year. This projection may also consider whether additional water may be needed to prevent structural damage to the Escondido Canal as described in 9.K.3. The Common Surplus Pool shall be managed to meet the remaining scheduled water requests made by all Parties with the available water. The Local Entities shall produce the monthly assessment not later than the 15<sup>th</sup> day of each month in which there is water remaining in the Common Surplus Pool.

9.H.2(b). Local Entities' Option to Retain Water in the Common Surplus Pool for the Escondido Canal. When the monthly assessment described in section 9.H.2(a) indicates that all or an increment of the Common Surplus Pool is only needed to provide additional water to prevent structural damage to the Escondido Canal as described in 9.K.3, the Local Entities may exercise an option to retain such water in the Common Surplus Pool until that water is no longer needed for that purpose.

9.H.2(c). Indian Water Authority's Option to Purchase Un-Needed Increment of Common Surplus Pool Water. When all or an increment of the Common Surplus Pool is not needed pursuant to sections 9.H.2(a) or 9.H.2(b), the un-needed portion shall become available to the Indian Water Authority for purchase as Indian Surplus Option Water as provided in section 9.I.3.

9.H.2(d). Remaining Un-Needed Increment of Common Surplus Pool Water. If the Indian Water Authority does not exercise its options to purchase any of the un-needed increment of the Common Surplus Pool within the time periods described in

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section 9.I.4, that water shall become the Local Entities' Carryover Storage and be managed as provided in section 9.J.

9.H.3. Allocation of and Payment for Storage Losses in Common Surplus Pool. Water in the Common Surplus Pool shall be subject to a proportional share of the daily storage losses and the risk of first spill until that water is released in satisfaction of the Escondido Canal/Lake Wohlford allocation, purchased by the Indian Water Authority as Indian Surplus Option Water, or become Local Entities' Carryover Storage. The storage losses sustained by the Common Surplus Pool shall be allocated 50 percent to the Indian Water Authority and 50 percent to the Local Entities. The Indian Water Authority's share of the storage losses shall be paid in the form of a monetary credit from the amount of the Local Entities' lump sum annual payment for Surplus Supplemental Water.

9.I. Indian Water Authority's Options to Purchase Unallocated Local Water (Indian Surplus Option Water). The Indian Water Authority shall have several options to purchase Local Water stored or to be stored in Lake Henshaw.

9.I.1. First Option. The First Option occurs when the Local Entities' May 15 forecast of the amount of storage in Lake Henshaw as of October 1 (including projected production, releases, losses and Vista's uses of water on the Warner Ranch pursuant to section 9.F) estimates that more than 5,500 acre-feet of Unallocated Local Water will be remaining.

9.I.2. Second Option. The Second Option occurs when on October 1 there is more than 5,500 acre-feet of Unallocated Local Water stored in Lake Henshaw.

9.I.3. Subsequent Options. Subsequent Options occurs after October 1 on a monthly basis whenever the monthly assessment described in section 9.H.2(a) indicates that all or an increment of the Common Surplus Pool is not needed to provide the protection described in section 9.H, the un-needed portion shall become available to the Indian Water Authority for purchase as Indian Surplus Option Water.

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9.I.4. Exercise of Options. The Indian Water Authority shall give notice on or before June 1 of each year of its exercise of its First Option, or on or before October 15 of each year of its exercise of its Second Option. The Indian Water Authority shall give notice of its exercise of its Subsequent Options within 15 calendar days of receipt of the Monthly Assessment which indicates that all or an increment of the Common Surplus Pool is not needed to provide the protections described in section 9.H.

9.I.5. Payment for Indian Surplus Option Water. The Indian Water Authority, on behalf of one or more of the Bands, has the right to purchase some or all of that Unallocated Local Water for the Bands' use by paying the Local Entities the cost to them of an equivalent amount of untreated imported water for municipal use. Unless otherwise agreed by the Local Entities, the money paid by the Indian Water Authority shall be divided equally between them. This right to purchase this Unallocated Local Water is not limited in quantity, but is subject to the anticipated availability of replacement Imported Water to the Local Entities. The Indian Water Authority shall pay for all water obtained under its First Option on or before July 1 of each Year, for all water obtained under its Second Option on or before November 15 of each Year, and for each increment of water obtained under Subsequent Options within 30 calendar days of the exercise of such option.

9.I.6. Delivery of Indian Surplus Option Water. The delivery of Indian Surplus Option Water shall be scheduled by the Indian Water Authority.

9.I.7. Storage Losses of Indian Surplus Option Water. If and to the extent that any Indian Surplus Option Water remains in storage in Lake Henshaw on December 31 of the same Year, or upon the date of the exercise of their Subsequent Options, that portion which exceeds a total storage of 2,500 acre-feet in Lake Henshaw shall bear proportional storage losses and risk of first spill as of that date.

9.I.8. Disposition of Remaining Unallocated Local Water. Any Unallocated Local Water in excess of 5,500 acre-feet of storage in Lake Henshaw as of October 1 that is

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not purchased by the Indian Water Authority under either Option 1 or Option 2 shall become the Local Entities' Carryover Storage to be managed as described in section 9.J.

9.I.9. Duty to Meet and Confer. Upon a request by the Local Entities or either of them, the Indian Water Authority shall meet and confer with the Local Entities regarding the amount of Surplus Option Water to be purchased. The purpose of the meet and confer process shall be to consider any anticipated detriment to the Local Entities as a result of exercise of the Option and to explore adjustments to the amount of Local Water to be purchased by the Indian Water Authority to minimize such detriment. For purposes of this section, detriment to the Local Entities may include without limitation a reasonable projection based on climate or other factors that there will be a shortfall of Local Water in the next Year and adverse effects on the Warner Wellfield which may result from the sale of the Surplus Option Water. The Indian Water Authority shall consider the concerns of the Local Entities and shall negotiate with them in good faith to seek ways to eliminate or minimize the adverse impacts of the sale of Surplus Option Water on them. This provision shall not be interpreted or applied to require the Indian Water Authority to make any adjustment in the amount of Surplus Option Water it will receive.

9.J. Local Entities' Carryover Storage. Water stored in Lake Henshaw on October 1 that is not designated as the Common Surplus Pool, undelivered Rincon Water Entitlement, Indian Interruptible Option Water, Indian First Refusal Water, or Indian Surplus Option Water shall become Local Entities' Carryover Storage. Additional Local Water from the Common Surplus Pool may become Local Entities' Carryover Storage as described in section 9.H.2(c). The Local Entities shall have discretion to manage their Carryover Storage and shall not be subject to the standard described in section 9.B.3(g). The Local Entities' Carryover Storage shall bear its proportional share of storage losses.

9.K. Annual Local Water Outlook, Priorities and Allocation. The following provisions shall be applied to assess and govern Local Water availability, priorities and uses each Year.

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9.K.1. Limitation on the Releases from Lake Henshaw of Current Year Water Production. Current Year Water Production shall not be released from Lake Henshaw prior to May 15 of any Year unless it is demonstrated that there is a reasonable expectation that doing so will not impede the satisfaction of the Rincon Water Entitlement, the Escondido Canal/Lake Wohlford, Vista Tier 1, and Bands' Local Exchange Water allocations for that Year.

9.K.2. Annual Local Water Outlook. By May 15 of each Year the Local Entities shall advise all Parties of the outlook for delivering the remaining scheduled water requests made by all Parties. This outlook shall consider existing storage in Henshaw and the forecasts for well field production, runoff, evaporation, and any other relevant considerations. Upon request, the Local Entities shall provide information regarding the basis and assumptions employed to develop this annual Local Water outlook.

9.K.3. Priority of Local Water Use. The first priorities for the delivery and use of Local Water are, in no particular order, to prevent structural damage to the Escondido Canal, to preserve essential recreational uses and water quality needs of Lake Wohlford (the quantity of water allocated to both of these priorities is referred to as the Escondido Canal/Lake Wohlford Allocation) and to satisfy the Rincon Water Entitlement. Structural damage to the Escondido Canal shall mean damage that is materially greater than what is typically experienced on an annual basis and may require materially greater expense to repair. Previous experience has shown that maintaining a flow of 5 cfs through the Escondido Canal during periods of high summer temperatures is typically sufficient to prevent that damage and to avoid materially greater repair expenses. The Lake Wohlford water quality needs referenced above shall be those water quality parameters that are necessary to preserve the continuing use of Lake Wohlford as a potable water supply without incurring excessive cost for water treatment. In addition, La Jolla has the right to schedule or coordinate Local Water for non-consumptive in-stream flows as described in sections 9.L.2, 9.L.2(a) and 9.L.2(b).



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Subsequent priorities shall be: 1) the Vista Tier 1 Water and the Bands' Local Exchange Water or the Vista Tier 2 Water which it replaces; 2) the Local Entities' additional Local Water to Lake Wohlford; 3) Vista Interruptible Water or Indian Interruptible Option Water; 4) Indian Surplus Option Water; and 5) Local Entities' Carryover Storage. The priorities and allocations for all such uses shall be subject to, and exercised in accordance with, the terms and conditions of this Agreement.

9.K.4. Water Supply Shortage. In years when the annual local water outlook described in section 9.K.2 projects that there will be insufficient Local Water to satisfy the water delivery requests of all Parties, the following guidelines and procedures shall be followed:

9.K.4(a) Allocation Guidelines. Every attempt shall be made to adhere to the priorities outlined in section 9.K.3 in accordance with the standards set forth in section 9.B.3.

9.K.4(b) Scheduling Committee. The Scheduling Committee (as described in section 21.A) shall meet within 10 calendar days of the determination of the annual outlook for delivering the Parties' remaining scheduled water requests to evaluate ways in which the available Local Water may be managed so as to minimize the adverse effects of shortage on all Parties and to seek voluntary agreements of the Parties regarding such management. As part of this process, those Parties who have higher priorities for the use of Local Water under section 9.K.3 shall reasonably consider and implement reductions in the water supply normally available to them as a result of those priorities to the extent that such reductions do not materially impair the interests established by such priorities. The Scheduling Committee shall complete its deliberations within 5 calendar days.

9.K.4(c) Water Supply Shortage Committee. If voluntary agreements cannot be reached by the Scheduling Committee, the matter shall be referred immediately to the Water Supply Shortage Committee, consisting of the General Manager of the Indian Water Authority, the Chairperson of each of the Bands, the City Manager of

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Escondido, and the General Manager of Vista (or the respective authorized representatives of each Party), which shall endeavor to achieve voluntary arrangements for the allocation and use of Local Water among the Parties. This Committee shall meet for such purpose within 10 calendar days of conclusion of the Scheduling Committee's deliberations and shall have 5 calendar days to attempt to reach an agreement.

9.K.4(d) Allocation in Absence of Agreement. If no agreement can be reached by the Water Supply Shortage Committee, the available Local Water shall be split 50/50 between the Escondido Canal/Lake Wohlford Allocation on the one hand and the Rincon Water Entitlement on the other, up to an amount equal to twice the lesser of these two priorities for that year, after which the greater of these two priorities shall receive the remaining available Local Water until both priorities are fully satisfied. When there is additional Local Water available for use beyond these first priorities, but insufficient to meet the needs of the next two priorities (the Vista Tier 1 water and the Bands' Local Exchange Water), the available water shall be split 50/50 between the Vista Tier 1 water on the one hand and the Bands' Local Exchange Water on the other, up to an amount equal to twice the lesser of these two priorities for that year, after which the greater of these two priorities shall receive the remaining available Local Water until both priorities are fully satisfied. An example of how this allocation would work under various scenarios where the Escondido Canal/Lake Wohlford Allocation is determined in accordance with section 9.K.5(c) is shown in the table in that section.

9.K.5. Determination of the Escondido Canal/Lake Wohlford Allocation. The following procedures shall be used to determine the allocation for Escondido Canal/Lake Wohlford:

9.K.5(a). Collection of Data. Within three months of the Effective Date, the Parties shall convene a committee consisting of one representative each from the Indian Water Authority, Escondido and Vista to establish by consensus the ongoing data monitoring needs that would facilitate the Lake Wohlford Study described in section

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9.K.5(d). This committee will jointly retain technical expertise to advise them regarding these monitoring needs. The cost of developing the data collection plan and of collecting the necessary data shall be borne 50 percent by the Indian Water Authority, and 25 percent each by Escondido and Vista.

9.K.5(b). Agreement to the Initial Escondido Canal/Lake Wohlford Allocation. Upon the Effective Date, and until the implementation of the revised Escondido Canal/Lake Wohlford Allocation pursuant to this section 9.K, the Parties agree that the Escondido Canal/Lake Wohlford Allocation as described in Section 9.K.3 shall be 3,500 acre-feet per year. In accordance with the requirements and standards of Section 9.B.3, the Local Entities shall satisfy the Escondido Canal/Lake Wohlford allocation from Lake Henshaw releases at times and in the amounts that will fulfill the needs of both the Escondido Canal and Lake Wohlford as described in Section 9.K.3, except as provided in section 9.J. If additional water is needed to satisfy the needs of the Escondido Canal, and that additional water is not provided pursuant to section 9.H.2(b), it shall be provided subject to the following conditions: (i) compliance with all applicable requirements, standards and conditions of this Agreement that govern the management of Local Water and are applicable to the allocations set forth in section 9.K.3; and (ii) a showing that additional water is needed to prevent the structural damage to the Escondido Canal as described in section 9.K.3. In years in which more than 10,000 acre-feet is available for use after May 15, the Escondido Canal/Lake Wohlford Allocation shall be increased if and to the extent that additional water is demonstrated to be necessary to satisfy the needs of the Escondido Canal and Lake Wohlford as described in section 9.K.3.

9.K.5(c). Examples. Examples of how the provisions of sections 9.K.3, 9.K.4 and 9.K.5 would be implemented under various scenarios are shown in the following table:

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<i>Available Local Water</i>	<i>Rincon Water Entitlement Pursuant to Formula</i>	<i>Escondido Canal/Lake Wohlford Allocation*</i>	<i>Rincon Water Entitlement Delivery</i>	<i>Vista Tier 1 Allocation</i>	<i>Water Available for Bands' Local Exchange</i>
500	500	250	250	0	0
2000	500	1500	500	0	0
4000	750	3250	750	0	0
6000	1000	3500	1000	750	750
10,000	3000	3500	3000	1250	1250
15,000	3000	3500*	3000	1250	7250
30,000	4344	3500*	4344	1250	16,000**

Note: the “Available Local Water” and “Rincon Water Entitlement Pursuant to Formula” shown in this table were selected for illustrative purposes only and do not reflect any actual conditions or entitlements.

\* Escondido Canal/Lake Wohlford Allocation is subject to upward adjustment in years in which more than 10,000 acre-feet of Local Water is available.

\*\* The “Water Available for Bands’ Local Exchange” is capped by the quantity of Supplemental Water that is available to be exchanged. The subsequent priorities for deliveries of Local Water are described in section 9.K.3.

9.K.5(d). Optional Engineering Study Required to Adjust the Escondido Canal/Lake Wohlford Allocation (Lake Wohlford Study). No sooner than 5 years after the Effective Date, and when the Annual Local Water Outlook indicates that there is insufficient Local Water available to meet all reasonable requests for the delivery of Local Water (including, without limitation, Local Water required to protect the interests of the Escondido Canal and Lake Wohlford), or when any Party submits documentation of a proposed future development that is intended to be undertaken within the next five years,

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then any Party may request that a comprehensive engineering study be performed to establish a revised quantification for the Escondido Canal/Lake Wohlford Allocation (Lake Wohlford Study). The Parties shall convene a committee consisting of one representative each from the Indian Water Authority, Escondido and Vista to establish by consensus the parameters and scope of the Lake Wohlford Study. The Lake Wohlford Study shall be designed to characterize and model the amount and timing of deliveries of Local Water that are necessary to prevent structural damage to the Escondido Canal and to preserve the essential recreational uses and water quality needs of Lake Wohlford as described in section 9.K.3. The committee will retain technical expertise to advise them regarding parameters, scope and execution of this Study. The Lake Wohlford Study shall be completed within 2 years after initiation and shall be updated and refined as necessary. The cost of developing and maintaining the Lake Wohlford Study shall be borne 50 percent by the Indian Water Authority, and 25 percent each by Escondido and Vista.

9.K.5(e). Failure to Reach Consensus. If the Parties fail to reach consensus as specified in Sections 9.K.5(a) or (c), the matter shall be referred to Dispute Resolution pursuant to Article XXII.

9.K.5(f). Implementation of Revised Escondido Canal/Lake Wohlford Allocation. The amount and timing of delivery of Local Water for the Escondido Canal and Lake Wohlford as determined pursuant to sections 9.K.5(d) or (e) shall become the allocation for those priorities and shall replace and supersede any other provisions of this agreement that quantify or otherwise establish the amount of Local Water allocated for those purposes.

9.L. Scheduling Deliveries of Local Water. The Local Entities shall schedule their own deliveries of Local Water and, in consultation and cooperation with the Indian Water Authority, provide releases and deliveries for the use and benefit of the Bands. The delivery of Local Water shall be subject to the operational and maintenance requirements of the Local Water System. For example, under typical conditions, reduced deliveries of Local

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Water are scheduled for October and November of each Year to allow for the annual maintenance of the Escondido Canal.

9.L.1. Scheduling Obligations of the Indian Water Authority.

9.L.1(a). Rincon Water Entitlement and Local Exchange Water, and Other Indian Stored Water. The Indian Water Authority shall give notice to the Local Entities by October 1 of each Year of its best estimates of the delivery quantities of the Rincon Water Entitlement, Local Exchange Water, the and other Local Water stored in Lake Henshaw pursuant to section 9.M.2, in acre-feet per month, for each month of the upcoming Year, and any anticipated trends in water use for each of the subsequent five years. The Indian Water Authority shall provide updates of those estimates on or about May 1 of each Year. Other updates may be provided throughout the Year as may be reasonably needed. The current Year Rincon Water Entitlement and the undelivered Rincon Water Entitlement that is carried over in Lake Henshaw from a previous Year as described in section 9.D.2(f) shall be provided in equal amounts until either the current Year Rincon Water Entitlement or the undelivered Rincon Water Entitlement that is carried over in Lake Henshaw from a previous Year has been fully delivered.

9.L.1(b). Indian Interruptible Option Water. The Indian Water Authority shall give notice to the Local Entities of its intent to exercise its option to purchase Indian Interruptible Option Water as described in section 9.F.3(d).

9.L.1(c). Indian Surplus Option Water. The Indian Water Authority shall give notice to the Local Entities of its intent to exercise its options to obtain Indian Surplus Option Water as provided in section 9.I. At the time it exercises these option(s), the Indian Water Authority shall also provide its initial request for the deliveries of such water, in acre-feet per month, for each remaining month of the Year. The Indian Water Authority shall provide an update of any delivery request for that Year's First Option water on September 1 of the current Year.

9.L.2. Scheduling for La Jolla In-stream Uses. In consultation with La Jolla,

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all scheduled releases from Lake Henshaw shall be coordinated with the in-stream use of Local Water on the La Jolla Reservation upstream of the Diversion Dam. Subject to operational constraints, the Local Entities, Rincon and the Indian Water Authority shall use their best efforts to coordinate and schedule their deliveries of Local Water to meet their needs while also providing in-stream flows in the San Luis Rey River above the Diversion Dam for the maximum benefit of La Jolla's recreational uses. For example, scheduled releases from Lake Henshaw could be decreased during some weekdays and increased during weekends during the recreation season. La Jolla shall provide its proposed schedule for in-stream uses to the Indian Water Authority to be conveyed to the Local Entities in conjunction with the Indian Water Authority's notice and updates of estimated water delivery needs. The releases of Local Water for the benefit of La Jolla pursuant to this section and pursuant to sections 9.L.2(a) and 9.L.2(b) shall not require acre-foot per acre-foot exchanges for Supplemental Exchange Water or any other consideration.

9.L.2(a). La Jolla In-stream Holiday Uses. La Jolla shall have the right to schedule 640 acre-feet per year of the Local Water that the Local Entities plan for release from Lake Henshaw for delivery to Lake Wohlford, to the extent that such right shall not interfere with the minimum flows necessary to prevent structural damage to the Escondido Canal. This Local Water scheduled by La Jolla is for use on the La Jolla Reservation for in-stream flows between Lake Henshaw and the Diversion Dam during the Memorial Day, July 4 and Labor Day weekends and one other weekend chosen by La Jolla between Memorial Day and Labor Day. For this purpose "weekend" is defined as Thursday through Monday.

9.L.2(b). La Jolla In-stream Rights Associated with Vista Tier 1 Water. La Jolla shall also have the right to schedule the release of an additional amount of water equal to the Tier 1 water that is used by Vista from the Local Water that is released from Lake Henshaw for delivery to the Local Entities for in-stream flows above the Diversion Dam, to the extent that such right shall not interfere with the minimum flows

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necessary to prevent structural damage to the Escondido Canal. To the extent that the Indian Water Authority has scheduled releases of water at the times identified by La Jolla as part of their rights associated with Vista Tier 1 water, those flows may be used to satisfy La Jolla's Rights associated with Vista Tier 1 water.

9.L.3. Scheduling Obligations of the Local Entities. The Local Entities, in consultation with the Indian Water Authority, shall establish schedules for deliveries of Local Water to the Parties. The Local Entities shall operate the Local Water System to provide deliveries of Local Rincon Water and Local Exchange Water in accordance with the Indian Water Authority's October 1 notice and subsequent updates to the maximum extent practicable consistent with this Agreement.

9.M. Lake Henshaw Storage. Lake Henshaw may be used to store Local Rincon Water, Local Exchange Water, Indian Interruptible Option Water, Indian First Refusal Water, Indian Surplus Option Water, the Local Entities Local Water, and Unallocated Local Water.

9.M.1. Rincon Water Entitlement. Rincon shall have the right to store the Rincon Water Entitlement in Lake Henshaw pursuant to section 9.D.2(f) subject to the terms and conditions of that section.

9.M.2. Indian Water Authority's Storage. The Indian Water Authority shall have the right to store water obtained pursuant to sections 9.F.3(b), 9.F.6 and 9.I in Lake Henshaw subject to the terms and conditions of those provisions.

9.M.3. Storage Losses. Water stored in Lake Henshaw shall suffer storage losses in accordance with the terms and conditions of this Agreement. Any such losses shall be calculated on a daily basis.

9.M.4. Spillage Loss. Spills of Local Rincon Water, Indian Interruptible Option Water, Indian First Refusal Water, Common Surplus Pool water, and Indian Surplus Option Water from Lake Henshaw shall be determined and accounted for in accordance



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with sections 9.D.2(f), 9.F.3(b), 9.F.6(c), 9.H.3, and 9.I.7 of this Agreement. All water subject to the risk of first spill shall bear proportionate losses during a spill.

9.M.5. Monthly Statement of Water Stored in Lake Henshaw. The Local Entities shall provide a statement that documents the quantities of all water stored in Lake Henshaw pursuant to this Agreement on a monthly basis.

9.N. Bands' Use of Local Water on the Reservations or Diversion of Waters Away from Local Water System. Except as otherwise provided in this section 9.N and in sections 9.D, 9.F and 9.I, the Bands' diversion of Local Water from Lake Henshaw, the Escondido Canal or the San Luis Rey River between Henshaw Dam and the Diversion Dam that would otherwise be diverted into the Escondido Canal shall be deemed and treated as Local Exchange Water for which an equal amount of Supplemental Exchange Water shall be provided to the Local Entities.

9.N.1. Use of Water that Would Otherwise Run Off into the Escondido Canal. There shall be no restriction or limitation on the use by La Jolla, Rincon, and San Pasqual within their Existing Reservations of water that might otherwise run off into the Escondido Canal from land within their Existing Reservations. There shall be no acre-foot for acre-foot exchange required for any of the waters described in this section. For the purposes of this section, the Oasis Ranch, as described in Exhibit 7, attached, shall be considered part of the Rincon Existing Reservation.

9.N.2 Uses by La Jolla.

9.N.2(a). In-stream Flows. In addition to the rights provided to La Jolla under sections 9.L.2, 9.L.2(a), and 9.L.2(b) of this Agreement, La Jolla is entitled to receive additional releases of Local Water from Lake Henshaw requested by La Jolla for in-stream flows above the Diversion Dam. Those additional releases are not subject to acre-foot for acre-foot exchanges pursuant to section 9.E if the water released for that purpose is delivered to Lake Wohlford.

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9.N.2(b). Tributaries, Springs, and Groundwater. There shall be no restriction or limitation on the quantity of Local Water that La Jolla may use from tributaries, springs, and groundwater within its Existing Reservation for consumptive or in-stream use within its Existing Reservation. Use for export will be allowed only for the water derived from the “Yale property”, which property is located within the northwest quarter of the northwest quarter of Section 24, township 10 South, Range 1 East, San Bernardino Base and Meridian, in the County of San Diego, State of California and which is held in trust by the United States for the benefit of La Jolla. There shall be no acre-foot for acre-foot exchange required for any of the waters described in this section.

9.N.3. Uses by San Pasqual. In addition to San Pasqual’s use of water that might otherwise run off into the Escondido Canal pursuant to section 9.N.1, there shall be no restriction or limitation on the quantity of San Pasqual’s use of water within its Reservation that is not: 1) diverted from the Escondido Canal within its Existing Reservation; or 2) water that originates above Lake Wohlford in the Escondido Creek watershed and is susceptible to being captured in Lake Wohlford. There shall be no acre-foot for acre-foot exchange required for any of the waters described in this section.

9.O. Alternative Sources of Water for Bands’ Uses. Nothing in this Agreement shall preclude mutually agreeable arrangements under which the Local Entities would, at their sole expense, satisfy their obligations in whole or in part for the delivery of Local Water to the Bands by replacing any deficit with Imported or Supplemental Water. Any such replacement water shall be delivered at the same times, the same locations, in the same amounts, and of a reasonably equivalent quality, as the Local Water that the Bands would otherwise receive and use.

**Article X. Local Entities’ Right to Transfer or Assign Local Water System**

10.A. Assignments and Transfers. The Local Entities may assign or transfer any part of the Local Water System to a California public entity or Federal agency. To the extent that 1) facilities necessary to maintain the yield of the Warner Wellfield; 2) Lake

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Henshaw; 3) the Diversion Dam; or 4) the Escondido Canal upstream of the point where the Canal enters property owned by the City of Escondido near Lake Wohlford are transferred or assigned, such public entity or agency must agree to be bound by this Agreement to the same extent as its predecessor-in-interest. No assignment or transfer of any rights or obligations under this Agreement by a Party shall be valid without the express written consent of all of the other Parties, which consent shall not be unreasonably withheld or delayed.

10.B. No Transfer Without Parties' Consent. The property rights and interests (including the water rights) of the Parties shall not be impaired, abrogated, transferred, or otherwise conveyed to Third Parties without the consent required under section 10.A.

**Article XI. Local Entities' Right to Discontinue Operating Local Water System Permanently**

11.A. Right to Discontinue Subject to Notice. If the Local Entities (or their successors or assigns, hereinafter for this Article "Local Entities") decide for any reason not to continue to be permanently responsible for operating, maintaining or replacing all or part of the Local Water System that is necessary to provide and deliver to Rincon its entitlement and to provide and deliver Local Exchange Water to the Bands in accordance with this Agreement, they shall provide the Indian Water Authority with notice (Notice of Abandonment) to that effect not less than two years prior to discontinuing that responsibility, unless such notice is not possible or practicable in which case as much notice as reasonably possible shall be given.

11.B. Indian Water Authority's or Bands' Right to Take Over the Local Water System. If the Local Entities decide not to continue to be permanently responsible for operating, maintaining or replacing all or part of the Local Water System that is necessary to provide and deliver to Rincon its entitlement or to provide and deliver to the Bands the Local Exchange Water in accordance with this Agreement, the Indian Water Authority or any of the Bands shall have the right to assume responsibility for operating, maintaining,

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and replacing any or all of the abandoned facilities of the Local Water System that are necessary to provide and deliver that Local Water including, without limitation, Lake Henshaw, Henshaw Dam, the Warner Wellfield and the Escondido Canal.

11.B.1. Notice of Intent to Assume the Responsibility for Abandoned Portions of Local Water System. As soon as reasonably possible, but no later than two years after the Notice of Abandonment, the Indian Water Authority, or any of the Bands, shall notify the Local Entities that the Indian Water Authority, or any of the Bands, intends to assume (Notice of Intent to Assume) the responsibility for operating, maintaining, repairing, and replacing any or all of the facilities of the Local Water System abandoned by the Local Entities.

11.B.1(a). Date of Assumption. Upon giving Notice of Intent to Assume, the Party(ies) giving such notice shall, as soon as reasonably possible, take responsibility for operating, maintaining, repairing, and replacing the abandoned facilities. Any necessary repair or replacement shall occur within a reasonable period.

11.B.2. Local Entities to Cooperate. In the event that such facility or facilities of the Local Water System are abandoned, the Local Entities will cooperate with the efforts of the Indian Water Authority, or any of the Bands, and shall take all actions necessary to enable the Indian Water Authority or any of the Bands to carry out that responsibility including, but not limited to, providing access to and the right to use the facilities of the Local Water System and transferring or assigning appurtenant rights-of-way or similar property interests necessary for the operation of the Local Water System, for as long as it is maintained as a functioning Local Water System. If and to the extent that Escondido or Vista decide to abandon some but not all of the Local Water System, but continue to operate, maintain, or replace other facilities of the Local Water System, the Local Entities shall do so in a manner that continues to fulfill their obligations under this Agreement that are necessary to provide and to deliver to the Bands the Local Water to which they are entitled. The Local Entities shall cooperate with the Indian Water Authority

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and any of the Bands in the operation, maintenance, repair and replacement of any parts of the Local Water System that are taken over by the Indian Water Authority or any of the Bands and are used for the purpose of providing and delivering the Local Water to which the Bands are entitled under this Agreement.

11.C. Discontinuance of Obligation to Provide Supplemental Exchange Water. If the Local Entities decide not to continue to be permanently responsible for operating, maintaining or replacing all or part of the Local Water Supply that is necessary to provide and to deliver to Rincon its entitlement and to provide and to deliver the Local Exchange Water in accordance with this Agreement, the Indian Water Authority shall not be obligated to provide the Local Entities with Supplemental Exchange Water or with Rincon Supplemental Exchange Water pursuant to this Agreement; provided however that the Local Entities shall be entitled to receive reasonable consideration from the Indian Water Authority if and to the extent that the Local Entities continue to operate, maintain, repair, and replace portions of the Local Water System and those facilities continue to provide some Local Exchange Water and Rincon Local Water to the Bands' Reservations as provided in this Agreement.

11.D. Local Entities' Continuing Obligation to Purchase Surplus Supplemental Water. In the event the Local Entities exercise their right to discontinue the operation of the Local Water System under this Article XI, the Local Entities shall continue to pay for the Surplus Supplemental Water delivered to them in accordance with section 8.E.2 of this Agreement.

11.E. Vista's Continuing Rights to Use Water on the Warner Ranch. In the event the Local Entities exercise their right to discontinue the operation of the Local Water System in accordance with this Article XI, Vista shall retain its rights to use water on the Warner Ranch in accordance with section 9.F of this Agreement.

**Article XII. Remedies**

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12.A. Limitation on Remedies. Except as provided in sections 5.C.4 and 12.B, the remedies for breach of any provision of this Agreement or for negligence in carrying out the terms of this Agreement shall be limited to specific performance, including equitable relief, i.e., orders directing one or more Parties to comply with the terms of this Agreement, and/or compensation for actual damages for economic injuries resulting from non-compliance with the terms of this Agreement or from negligence in carrying out this Agreement. In no event, shall any Party resort to self-help by withholding deliveries of Local or Supplemental Water or any required payment under this Agreement, nor shall any Party be liable to any other Party for any indirect, special, consequential or punitive damages.

12.B. Interest Rate for Delayed Payments. When any Party fails to make timely payment to another Party, or when any Party cures the late payment of another Party, the Party owing the obligation shall fully compensate the other Party, and the late payment shall bear interest compounded daily at an annual rate of five percent or the prime rate of interest, whichever is higher.

**Article XIII. Finality, Representations, Waivers, Relinquishments and Releases**

13.A. Resolution of All Pending Claims, Controversies, and Issues. In fulfillment of the requirement of section 104(1) of the Settlement Act, each Party acknowledges, certifies, agrees and represents that the terms, provisions, conditions and benefits provided under the Settlement Act, the Settlement Agreement, this Agreement and any other agreements implementing the Settlement Act, the rights-of-way and other property interests granted by the Secretary, the new Conduit Exemption License for the Bear Valley Power Plant issued by FERC, and any stipulated judgments or other appropriate final dispositions entered in the District Court cases and by FERC provide for a final and complete resolution of all claims, controversies, and issues, known and unknown, involved in all of the pending proceedings among the Parties in the United States District Court for the Southern District of California and FERC and for an outcome that is fair and reasonable to all Parties.

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13.B. Release of Claims. In consideration of all of the terms, provisions, conditions and benefits provided under the Settlement Act, the Settlement Agreement, this Agreement and any other agreements implementing the Settlement Act, the rights-of-way and other property interests granted by the Secretary, the new Conduit Exemption License for the Bear Valley Power Plant issued by FERC, and any stipulated dismissals or other appropriate final dispositions entered in the District Court cases and by FERC and subject to the provisions of this Agreement, including without limitation the provisions of sections 3.H, 7.A, 7.B, 7.C, and 7.E, each Party shall be precluded from asserting, and therefore waives, relinquishes and releases all claims, known and unknown, as against any other Party to this Agreement, based on any act or omission of any Party that occurred prior to the Effective Date relating to the use and diversion of Local Water, the use of the Local Water System, the use of land and facilities for the use and diversion of Local Water, and any contract between or among the Parties regarding Local Water, the Local Water System, and the waters of the San Luis Rey River basin.

13.C. Release of Unknown Claims. Each Party acknowledges and agrees that the release of claims pursuant to section 13.B includes claims that are unknown to the releasing Party. In addition each Party certifies that it has read the following provision of California Civil Code section 1542:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

Each Party waives the application of California Civil Code section 1542.

Each Party acknowledges that it is knowingly and deliberately releasing claims that may exist as of the Effective Date but which it does not know to exist, and which, if known, would materially affect its decision to execute this Agreement, regardless of whether the Party’s lack of knowledge is the result of ignorance, oversight, error, negligence, or any

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other cause. Nothing herein acknowledges the validity of any claims that are being waived, relinquished and released.

13.D. Limitations on Effects of Waivers. The representations, waivers, relinquishments and releases pursuant to sections 13.A, 13.B and 13.C are not intended, and shall not be construed, to: (i) conflict with, limit or qualify any other provision of this Agreement; (ii) alter, abandon, affect, impair or interfere with the Parties' rights referenced in section 3.H or Article VII of this Agreement; (iii) prevent or in any way interfere with the exercise of any Party's right to store, divert or use Local Water or Supplemental Water pursuant to sections 7.B and 7.F of this Agreement; or (iv) affect or enhance the rights of any Third Party.

**Article XIV. Protection Against Actions by Third Parties**

14.A. Cooperation with Respect to Actions or Proceedings by Third Parties. The Parties and each of them agree that as to any action or proceeding brought by Third Parties that challenges the effectiveness of this Agreement or that could result in interfering with, impairing or affecting the ability of any Party to implement, perform, and comply fully with all of the terms, conditions and provisions of this Agreement, each Party shall cooperate in protecting or defending the Agreement against any such action or proceeding by Third Parties.

14.B. Protection of Parties' Rights to Local Water or Supplemental Water. To the extent that it may be necessary to protect the right of any Party to store, divert or use Local Water or Supplemental Water consistent with this Agreement, each Party shall assert its water rights against Third Parties whose actions are adverse to the Parties' rights to Local Water or Supplemental Water. Each Party shall cooperate to protect their individual and collective rights to store, divert and use Local Water or Supplemental Water against actions adverse to the Parties' rights to Local Water or Supplemental Water made by Third Parties.

**Article XV. Assumptions of Liability for Claims Based on Acts or Omissions That Occurred Prior to the Effective Date**



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15.A Bands' Assumption of Liability for Claims by Band Members, Allottees or Other Reservation Residents, Water Users or Property Owners Based on Acts or Omissions That Occurred Prior to the Effective Date. In consideration of the financial and other benefits that the Indian Water Authority and the Bands receive under the Settlement Act, the Settlement Agreement, this Agreement and other related agreements, the Indian Water Authority and each Band agree to assume liability and to reimburse the Local Entities for any monetary or other relief awarded in a final judgment against Escondido or Vista in favor of any Band member, allottee, or other Reservation resident, water user or property owner based on any claim for damages or other relief due to any act or omission of the Local Entities or their predecessors that occurred prior to the Effective Date relating to: (1) the Local Entities' diversion of, or their failure to deliver, or otherwise comply with any statutory or contractual obligation relating to Local Water or power or energy; and (2) the Local Entities' use of Reservation land for rights-of-way or for facilities that are now or were ever a part of the Local Water System. The liability of each Band pursuant to this provision is specifically limited to final judgments that award monetary or other relief based on acts or omissions that injure the property rights or interests of Band members, allottees or other Reservation residents, water users or property owners within that Band's Reservation.

15.B Escondido's Assumption of Liability for Claims by its Water Customers Based on Acts or Omissions That Occurred Prior to the Effective Date. In consideration of the financial and other benefits that Escondido receives under the Settlement Act, the Settlement Agreement, this Agreement and other related agreements, Escondido agrees to assume liability and to reimburse the Bands and Vista for any monetary or other relief awarded in a final judgment against the Bands or Vista in favor of any water customer of Escondido or its predecessors based on any claim for damages or other relief due to any act or omission of the Bands or Vista that occurred prior to the Effective Date relating to the Bands' or Vista's statutory or contractual obligations regarding Escondido's or its predecessors' use, inability to use, or to obtain Local Water or power or energy from the

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Local Water System. The liability of Escondido pursuant to this provision is specifically limited to monetary or other relief in judgments resulting from claims made by any individual described above with respect to Escondido only.

15.C. Vista's Assumption of Liability for Claims by its Water Customers Based on Acts or Omissions That Occurred Prior to the Effective Date. In consideration of the financial and other benefits that Vista receives under the Settlement Act, the Settlement Agreement, this Agreement and other related agreements, Vista agrees to assume liability and to reimburse the Bands and Escondido for any monetary or other relief awarded in a final judgment against the Bands or Escondido in favor of any water customer of Vista or its predecessors based on any claim for damages or other relief due to any act or omission of the Bands or Escondido that occurred prior to the Effective Date relating to the Bands' or Escondido's statutory or contractual obligations regarding Vista's or its predecessors' use, inability to use, or to obtain Local Water or power or energy from the Local Water System. The liability of Vista pursuant to this provision is specifically limited to monetary or other relief in judgments resulting from claims made by any individual described above with respect to Vista only.

**Article XVI. No Third Party Beneficiaries**

16. No Third Party Beneficiaries. The terms and conditions of this Agreement are intended for the sole and exclusive benefit of the Parties, their successors, and assigns, and are not intended, and shall not be construed, to create any Third Party beneficiary rights to enforce the terms of this Agreement in any person or entity that is not a Party or a successor to or an assignee of a Party.

**Article XVII. Notices**

17.A. Current Addresses. All notices herein provided to be given, or which may be given by any Party to any other Party shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed as follows:

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City Manager  
(With additional copies to City Attorney and Utilities Director)  
City of Escondido  
201 North Broadway  
Escondido, California 92025

General Manager  
(With additional copy to Director of Water Resources)  
Vista Irrigation District  
1391 Engineer Street  
Vista, California 92081-8836

President  
(With additional copies to General Manager, General Counsel and Special Counsel)  
San Luis Rey River Indian Water Authority  
P.O. Box 428  
Pauma Valley, California 92061

La Jolla Band of Mission Indians  
Attn: Chairperson  
22000 Hwy. 76  
Pauma Valley, California 92061

Pala Band of Mission Indians  
Attn: Chairperson  
PMB 50,  
35008 Pala Temecula Road  
Pala, California 92059-0043

Pauma Band of Mission Indians  
Attn: Chairperson  
1010 Pauma Reservation Road  
P.O. Box 369  
Pauma Valley, California 92061

Rincon Band of Mission Indians  
Attn: Chairperson  
P.O. Box 68  
1 West Tribal Road

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Valley Center, California 92082

San Pasqual Band of Mission Indians  
Attn: Chairman  
27458 N. Lake Wohlford Road  
P.O. Box 365  
Valley Center, California 92082

17.B. Change of Addresses. Any of said addresses may be changed at any time by written notice given by one Party to the others as provided above.

17.C. Notice by Personal Services. Nothing herein contained shall preclude the giving of any such notice by personal service.

**Article XVIII. Joint and Several Liability**

18. Local Entities' Joint and Several Liability. Except where such obligations and responsibilities are unequivocally the responsibility of either Escondido or Vista alone (e.g., Vista's obligations under its Tier 2 rights, or Escondido's payment for water in Dry Years to protect Lake Wohlford recreation), the Local Entities shall be jointly and severally liable and responsible for satisfying the obligations and responsibilities of the Local Entities under this Agreement.

**Article XIX. Indemnity and Hold Harmless**

19. Indemnity and Hold Harmless. Each Party agrees to defend, indemnify and hold harmless the other Parties, their directors, agents, officers, employees, and authorized volunteers, from all costs, damages, liability, and claims asserted by Third Parties that are caused by, or arise out of, or relate to, that Party's own negligence. To the extent that more than one Party is determined to have been negligent, the Parties agree that each Party shall bear its own portion or percentage of liability based on principles of comparative fault and to indemnify and hold harmless the other Parties from that share.

**Article XX. Amendment**

20. Amendment. No modification, waiver, amendment, discharge, or change of or to this Agreement shall be valid unless the same is in writing and signed by the Parties

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against whom enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.

### **Article XXI. Administration of Agreement**

21.A. Scheduling Committee. To assist the Local Entities in the development of a comprehensive schedule of water deliveries that takes into account the needs of all Parties as provided in this Agreement, a Scheduling Committee shall be established consisting of one representative of the Indian Water Authority and one representative each from Escondido and Vista. The members of the Committee shall exercise their best efforts to approve such a comprehensive schedule by consensus. To the extent that such consensus is achieved, the schedule thus developed shall be implemented by the Parties. If such consensus cannot be reached, the matter shall be referred to the Administrative Committee.

21.B. Administrative Committee. In order to assist in the resolution of any disagreements related to the terms and conditions of this Agreement that may arise in the future among the Bands and the Local Entities, an Administrative Committee shall be established consisting of one representative of the Indian Water Authority and one representative each from Vista and Escondido. The Committee shall be advisory only with no authority to bind the Parties. Members of the Committee shall exercise their best efforts to resolve any disagreements through the development of a consensus.

21.B.1. Chair Rotation. Unless otherwise agreed, the members shall rotate chairing the Administrative Committee. In the first Year after this Agreement becomes effective, a representative from Vista shall be the Chair of the Administrative Committee. In the second Year, the authorized representative of the Indian Water Authority shall be the Chair of the Administrative Committee. In the third Year, the authorized representative of Escondido shall be the Chair of the Administrative Committee. In subsequent Years, the same rotation shall be followed. The Chair shall have the responsibility for scheduling all meetings.

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21.B.2. Meetings. The Administrative Committee shall meet at least once quarterly, or as frequently as necessary, for the purpose of reviewing the administration and implementation of this Agreement. However, a meeting of the Administrative Committee may be requested by any Party at any time. Upon any such request, the Chairman shall schedule a meeting as expeditiously as possible.

**Article XXII. Dispute Resolution**

22.A. Resolution of Disputes by Agreement or Mediation among the Parties. If, among the Parties, a dispute arises out of or relates to this Agreement, or the claimed breach thereof, and it is not resolved informally pursuant to the processes described in Article XXI, the Parties shall first attempt to resolve it by using the procedures set forth in this section 22.A.

22.A.1. Dispute Panel. In the event that the dispute is not resolved informally, the resolution of the dispute shall be referred to a panel comprised of the General Manager of the Indian Water Authority, the Chairperson of each of the Bands, the City Manager of Escondido, and the General Manager of Vista (or the respective authorized representatives of the Parties).

22.A.2. Dispute Resolution Procedure – Notice of Dispute. A Party requesting resolution of a dispute shall send written notice to the other Parties. The Notice of Dispute shall provide a brief description of the nature of the dispute and any relevant background information, together with a statement setting forth a description of the performance necessary to resolve the dispute.

22.A.3. Reference to Dispute Panel. If the dispute is not resolved to the satisfaction of the Party sending the Notice of Dispute within 30 days from the date of the Notice of Dispute, the Party requesting resolution shall send a copy of the Notice of Dispute to all other Parties with a statement that the dispute has not been satisfactorily resolved (“Dispute Resolution Statement”). Within 60 days of the Dispute Resolution Statement being sent, the Dispute Panel shall schedule a dispute resolution meeting or meetings, meet,

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and attempt to resolve the dispute by unanimous decision. If all Parties' representatives do not participate, a letter with the proposed action, signed by all of the attending Parties' representatives, shall be sent to the absent representative(s) of the absent Party or Parties by Certified Mail, postage prepaid, Return Receipt Requested. If no written protest from the representative of the absent Party or Parties is received by the other Parties within 30 days of receipt of the letter with the proposed action, the decision shall be deemed unanimous and become final. Any written protest shall be mailed to the representatives of each other Party, and to each of the Parties by Certified Mail, postage prepaid, Return Receipt Requested. Each Party shall bear its own expenses for the dispute resolution proceedings.

22.A.4. Mediation. If said dispute is not settled through the procedure described above within 30 days of the conclusion of the dispute resolution meeting(s), the Parties may agree to try in good faith to settle the dispute by mediation under the Commercial Mediation Procedures of the American Arbitration Association.

22.B. Binding Dispute Resolution. In the event a dispute concerning this Agreement, or claimed breach thereof, between or among the Parties is not resolved by the procedures in Article XXI or section 22.A, it shall be submitted to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association, or a similar organization by mutual agreement. Each Party will bear its own expenses. The expenses of the arbitrators and arbitration administration shall be divided between or among the Parties that participate in the arbitration.

22.B.1. Dispute Resolution Procedures. When a dispute is submitted for arbitration, the Parties involved shall endeavor to agree that only two positions on each issue exist. The Parties shall endeavor to align themselves into two groups according to the positions taken on each issue. If the Parties agree that only two positions exist and align themselves accordingly, then on each issue to be resolved, each of the two groups shall, within 15 calendar days after the receipt of a notice of request for arbitration, select one arbitrator and shall notify the other group in writing of its selection. If the Parties are unable

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to agree that only two positions exist on each issue and are unable to align themselves into two groups, two arbitrators shall be selected by the American Arbitration Association pursuant to the Commercial Arbitration Rules of the American Arbitration Association (or similar group selected by mutual agreement) within 30 calendar days after the receipt of a notice of a request for arbitration. The two arbitrators so selected shall select a third arbitrator within 15 calendar days following the selection of the last of the two arbitrators. If the arbitrators selected by the groups fail to agree upon a third arbitrator, the American Arbitration Association shall select the third arbitrator in accordance with the Commercial Arbitration Rules. The third arbitrator shall act as chairperson of the arbitration. All arbitrators shall be independent from all Parties, having no past, present, or pending relationship with any Party unless unanimously consented thereto by the Parties to the dispute. Each arbitrator must have sufficient background and expertise to understand the technical issues associated with the dispute. Any determination pertaining to the disputed issues agreed to by at least two of these arbitrators shall be final and binding on all Parties to the arbitration, and may be judicially enforced pursuant to the California Arbitration Act, California Code of Civil Procedure, Title 9 §§1280 et seq.

22.B.2. Special Procedures for Matters Pertaining to Water that is Needed to Meet Urgent and Immediate Needs. Notwithstanding the provisions of sections 22.A and 22.B.1, the special procedures in this section 22.B.2 shall apply to matters in which a Party claims: (1) an urgent and immediate need for Local Water, and (2) that without such water, the Party will suffer immediate or irreparable injury, loss, or damage. These special procedures shall be construed and administered to secure the just, speedy, and inexpensive determination of claims to Local Water in those circumstances.

22.B.2(a). Establishment of Dispute Resolution Panel. Resolution of an urgent and immediate claim to Local Water under this section 22.B.2 requires informed decision-makers who are able to act fairly, effectively and expeditiously. When the Parties convene to establish the parameters of the Lake Wohlford Study pursuant to section



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9.K.5(d) of this Agreement, the Indian Water Authority and the Local Entities shall identify five disinterested Third Parties with sufficient background and expertise to participate on a dispute resolution panel. These individuals shall be able to: (1) develop timely working knowledge of this Agreement; and (2) understand the technical issues associated with satisfying the urgent and immediate needs of the Parties during periods of actual or anticipated water scarcity. Unless unanimously agreed by the Parties, each of the five Third Parties shall be completely independent from all Parties and shall have no past, present, or pending relationship with any Party. The Parties shall periodically review the continued availability, eligibility and qualifications of the previously selected individuals. The Parties shall select a replacement within three months in the event of a vacancy. In the event that there is a vacancy when a dispute requiring resolution under the special procedures of section 22.B.2 of this Agreement occurs, the neutral member of the panel shall be selected from the remaining individuals as described in section 22.B.2(c) of this Agreement. The cost of the neutral member's participation in dispute resolution pursuant to this section 22.B.2 shall be allocated evenly between the Parties that participate in the dispute resolution.

22.B.2(b). Notice and Time Limits. A Party making a claim to use or manage Local Water under this section 22.B.2 shall immediately notify all Parties of the claim by means of a written notice signed by the Party that describes the claim and requests that a dispute resolution panel be convened. Upon receipt of the notice, any Party that has an interest in the claim shall notify all Parties of its interest within 3 calendar days of receipt of the notice.

22.B.2(c). Appointment of Dispute Resolution Panel. All Parties that have been served and have timely provided notice of their interest in the claim to all other Parties, shall meet in person or by electronic means within six calendar days of the completion of notice. At that meeting, the Parties shall align themselves into two groups, according to their interest in the claim and each group shall appoint one member to the dispute resolution panel. The two members so appointed may be non-neutral and may have

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past or present relationships with one or more of the Parties. In the presence of all Parties who have convened, the two members shall draw by lot one of the five individuals to serve as the third and neutral member of the dispute resolution panel. Each group shall have one opportunity to reject peremptorily the individual selected by lot without assigning, or being required to assign, a reason for doing so. All Parties who have received notice shall be bound by the selection of the neutral member, irrespective of whether the Parties appear at the meeting at which the selection is made. The first name drawn shall serve as the third, neutral member of the dispute resolution panel, unless rejected by one of the groups, and the person selected shall be notified promptly of the selection. In the event that the first or second person selected from the list by lot is rejected or is unwilling or unable to serve, then the remaining selections shall be notified in order until one accepts the appointment. In the event none of the five individuals is appointed by lot, the neutral third member of the panel shall be appointed by American Society of Civil Engineers or other mutually agreeable organization at the earliest date by which an appointment can be made.

22.B.2(d). Determination of Claim. The dispute resolution panel shall review all background information pertaining to the claim, including notice of service and may hold a meeting or hearing on the claim after providing notice to all of the Parties. The dispute resolution panel shall make a final decision within 10 days of the appointment of the last member. Said decision shall take into account the relevant provisions of this Agreement, including without limitation, sections 3.H.2, 9.B and 9.K, shall include written findings as to whether the Party making the claim has established (1) an urgent and immediate need for Local Water, and (2) that without such water, the Party will suffer immediate or irreparable injury, loss, or damage. The dispute resolution panel's determination shall be final and binding on all Parties.

22.B.2(e). Costs. Each Party shall bear its own expenses for the dispute resolution proceedings.

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**Article XXIII. Waivers of Sovereign and Governmental Immunity**

23.A. Waiver of Tribal Sovereign Immunity. The Indian Water Authority and each Band waive their sovereign immunity with respect to the binding processes for dispute resolution set forth in section 22.B of this Agreement and to the remedies provided in this Agreement.

**Article XXIV. Non-Waiver**

24. Non-Waiver. None of the provisions of this Agreement shall be considered waived by any Party except when such waiver is given in writing. The failure of any Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or their relinquishment of any such rights for the future, but such provisions and rights shall continue and remain in full force and effect.

**Article XXV. Uncontrollable Force**

25.A. Uncontrollable Force. None of the Parties shall be considered to be in default in the performance of any of its obligations under this Agreement when a failure of performance is due to an Uncontrollable Force. The term "Uncontrollable Force" means: an action of the elements, excluding severe and/or prolonged drought or low-flow conditions in the watershed of the Colorado River or the watershed of the San Luis Rey River; terrorism; the act or threat of any public enemy; Acts of God; court or agency order; war and war defense conditions; strikes or other labor disputes; fire, earthquake, flood or other natural disasters; or other causes beyond the control of one or more Parties. Each Party shall use reasonable diligence to avoid any such delay or default and to resume performance under this Agreement as promptly as possible after any such delay or default. However, nothing contained herein shall be construed so as to require a Party to settle any strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations under this Agreement by reason of an Uncontrollable Force shall give prompt

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written notice of such fact to the other Parties and shall exercise due diligence to remove such inability to the fullest extent practicable with all reasonable dispatch.

25.B. Exception to Uncontrollable Force Provision for Local Exchange Water.

Notwithstanding section 25.A, when affected by Uncontrollable Force, the Bands are entitled to Local Exchange Water only when: (i) the Bands have provided, or there is a reasonable expectation that they will provide, an equal amount of Supplemental Water or other water to the Local Entities in a reasonable period of time; or (ii) the Bands have provided compensation that enables the Local Entities to procure and deliver to their service areas an equivalent quantity of water from another source in a reasonable period of time. In no event shall the Local Entities be obligated to provide Local Exchange Water if an equivalent amount of replacement water cannot be delivered to and received by the Local Entities in a reasonable period of time.

**Article XXVI. Governing Law**

26. Governing Law. This Agreement shall be interpreted, governed by and construed under applicable federal law and the laws of the State of California to the extent such state laws are consistent with any applicable federal law.

**Article XXVII. Miscellaneous**

27.A. No Construction Against Any Party. The Parties agree that the terms and conditions of this Agreement are the result of negotiations between the Parties and/or their counsel, and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its counsel or representatives participated in drafting it or any portion of it.

27.B. Severability. Any provision of this Agreement that is found to be prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating any of the remaining provisions thereof. In the event any such provision of this Agreement is so held invalid, the Parties shall promptly renegotiate in good

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faith new provisions to restore this Agreement as nearly as possible to its original intent and effect. To the extent permitted by applicable law, the Parties hereto hereby waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

27.C. Representation of Authority. Each Party represents and warrants to the others that it has the full right and authority to enter into this Implementing Agreement, and further that it has the power, authority and ability to carry out the obligations assumed and promised hereunder, and is not presently aware of any pending event that would, or could, hamper, hinder, delay, or prevent the timely performance of said obligations.

27.C.1. Indian Water Authority. The Indian Water Authority represents and warrants to the other Parties that, by virtue of the resolution adopted by its Board of Directors that is attached hereto as Exhibit 8, its President has the full right and authority to: (1) sign this Implementing Agreement on behalf of the Indian Water Authority and (2) represent in open court in the United States District Court for the Southern District of California that the Indian Water Authority understands and agrees with the terms of the Implementing Agreement, validly exercised its governmental power to be bound by its terms, and that the Indian Water Authority has received adequate legal representation in reaching that conclusion.

27.C.2. La Jolla. The La Jolla Band of Mission Indians represents and warrants to the other Parties that, by virtue of the resolutions adopted by its General Council and Tribal Council that are attached hereto as Exhibits 9 and 10, its chairperson has the full right and authority to: (1) sign the Implementing Agreement on behalf of the La Jolla Band of Mission Indians and (2) represent in open court in the United States District Court for the Southern District of California that the La Jolla Band of Mission Indians understands and agrees with the terms of the Implementing Agreement, validly exercised its governmental power to be bound by its terms, and that the La Jolla Band of Mission Indians has received adequate legal representation in reaching that conclusion.

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27.C.3. Pala. The Pala Band of Mission Indians represents and warrants to the other Parties that, by virtue of the resolutions adopted by its General Council and Executive Committee that are attached hereto as Exhibits 11 and 12, its chairperson has the full right and authority to: (1) sign the Implementing Agreement on behalf of the Pala Band of Mission Indians and (2) represent in open court in the United States District Court for the Southern District of California that the Pala Band of Mission Indians understands and agrees with the terms of the Implementing Agreement, validly exercised its governmental power to be bound by its terms, and that the Pala Band of Mission Indians has received adequate legal representation in reaching that conclusion.

27.C.4. Pauma. The Pauma Band of Mission Indians represents and warrants to the other Parties that, by virtue of the resolutions adopted by its General Council and Tribal Council that are attached hereto as Exhibits 13 and 14, its chairperson has the full right and authority to: (1) sign the Implementing Agreement on behalf of the Pauma Band of Mission Indians and (2) represent in open court in the United States District Court for the Southern District of California that the Pauma Band of Mission Indians understands and agrees with the terms of the Implementing Agreement, validly exercised its governmental power to be bound by its terms, and that the Pauma Band of Mission Indians has received adequate legal representation in reaching that conclusion.

27.C.5. Rincon. The Rincon Band of Mission Indians represents and warrants to the other Parties that, by virtue of the resolutions adopted by its General Council and Tribal Council that are attached hereto as Exhibits 15 and 16, its chairperson has the full right and authority to: (1) sign the Implementing Agreement on behalf of the Rincon Band of Mission Indians and (2) represent in open court in the United States District Court for the Southern District of California that the Rincon Band of Mission Indians understands and agrees with the terms of the Implementing Agreement, validly exercised its governmental power to be bound by its terms, and that the Rincon Band of Mission Indians has received adequate legal representation in reaching that conclusion.

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27.C.6. San Pasqual. The San Pasqual Band of Mission Indians represents and warrants to the other Parties that, by virtue of the resolutions adopted by its General Council and Tribal Council that are attached hereto as Exhibits 17 and 18, its chairperson has the full right and authority to: (1) sign the Implementing Agreement on behalf of the San Pasqual Band of Mission Indians and (2) represent in open court in the United States District Court for the Southern District of California that the San Pasqual Band of Mission Indians understands and agrees with the terms of the Implementing Agreement, validly exercised its governmental power to be bound by its terms, and that the San Pasqual Band of Mission Indians has received adequate legal representation in reaching that conclusion.

27.C.7. Escondido. The City of Escondido represents and warrants to the other Parties that, by virtue of a resolution adopted by its City Council that is attached hereto as Exhibit 19, its Mayor has the full right and authority to: (1) sign the Implementing Agreement on behalf of the City of Escondido and (2) represent in open court in the United States District Court for the Southern District of California that the City of Escondido understands and agrees with the terms of the Implementing Agreement, validly exercised its governmental power to be bound by its terms, and that the City of Escondido has received adequate legal representation in reaching that conclusion.

27.C.8. Vista. The Vista Irrigation District represents and warrants to the other Parties that, by virtue of a resolution adopted by its Board of Directors that is attached hereto as Exhibit 20, its President has the full right and authority to: (1) sign the Implementing Agreement on behalf of the Vista Irrigation District and (2) represent in open court in the United States District Court for the Southern District of California that the Vista Irrigation District understands and agrees with the terms of the Implementing Agreement, validly exercised its governmental power to be bound by its terms, and that the Vista Irrigation District has received adequate legal representation in reaching that conclusion.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the dates set forth below:

**SAN LUIS REY RIVER INDIAN WATER AUTHORITY**

By: \_\_\_\_\_ Date

Approved as to form: By: \_\_\_\_\_ Date

**LA JOLLA BAND OF MISSION INDIANS**

By: \_\_\_\_\_ Date

Approved as to form: By: \_\_\_\_\_ Date

**RINCON BAND OF MISSION INDIANS**

By: \_\_\_\_\_ Date

Approved as to form: By: \_\_\_\_\_ Date



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**SAN PASQUAL BAND OF MISSION INDIANS**

By: \_\_\_\_\_  
Date

Approved as to form: By: \_\_\_\_\_  
Date

**PAUMA BAND OF MISSION INDIANS**

By: \_\_\_\_\_  
Date

Approved as to form: By: \_\_\_\_\_  
Date

**PALA BAND OF MISSION INDIANS**

By: \_\_\_\_\_  
Date

Approved as to form: By: \_\_\_\_\_  
Date

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CITY OF ESCONDIDO

By: \_\_\_\_\_  
Mayor Date

By: \_\_\_\_\_  
City Clerk Date

Approved as to form: By: \_\_\_\_\_  
City Attorney Date

Approved as to form: By: \_\_\_\_\_  
Special Counsel Date



**SETTLEMENT AGREEMENT**  
**BETWEEN THE UNITED STATES**  
**AND**  
**THE LA JOLLA, RINCON, PALA, PAUMA AND SAN PASQUAL BANDS OF**  
**MISSION INDIANS**  
**AND**  
**THE SAN LUIS REY INDIAN WATER AUTHORITY**  
**AND**  
**THE CITY OF ESCONDIDO**  
**AND**  
**VISTA IRRIGATION DISTRICT**

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting by and through its Secretary of the Interior (“Secretary”) and Attorney General acting pursuant to their authority under section 108 of Public Law 100-675 as amended (the “Settlement Act”), hereinafter referred to as “United States”; the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians, acting through the governing bodies of each respective Band as duly recognized by the Secretary, hereinafter referred to collectively as “Bands”; the San Luis Rey River Indian Water Authority, a permanent intertribal entity established pursuant to duly adopted ordinances of the Bands recognized and approved in Public Law 100-675, hereinafter referred to as “Indian Water Authority”; the City of Escondido, California, a city organized under the provisions of the general laws of the State of California, hereinafter referred to as “Escondido”, and the Vista Irrigation District, an irrigation district organized and

incorporated under the Irrigation District Law of the State of California, hereinafter referred to as "Vista". Each of the above is sometimes referred to individually as "Party", Escondido and Vista are sometimes collectively referred to as the "Local Entities", and all of the above are sometimes collectively referred to as "Parties."

## **1.0 PURPOSE**

This Agreement is entered into for the purposes of fully and finally implementing the San Luis Rey Indian Water Rights Settlement Act of 1988 ("Settlement Act"), as amended, and, together with the Implementing Agreement as to the parties thereto, achieving the complete resolution of all claims, controversies, and issues involved in all of the pending proceedings among the parties in the United States District Court for the Southern District of California and the Federal Energy Regulatory Commission in satisfaction of the requirement of paragraph (1) of section 104 of the Settlement Act.

This Agreement, which is premised on Congress amending the Settlement Act, clarifies the role and responsibilities of the United States with respect to all water rights of the Bands in light of the Settlement Act.

## **2.0 DEFINITIONS**

2.1 "Bands" mean the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians, acting through the governing bodies of each respective Band as duly recognized by the Secretary.

2.2 “Implementing Agreement” means the agreement between the City of Escondido, California, the Vista Irrigation District, the San Luis Rey River Indian Water Authority and the Bands dated [], 2014.

2.3 “Indian Water Authority” means the San Luis Rey River Indian Water Authority, a permanent intertribal entity established pursuant to duly adopted ordinances of the Bands recognized and approved by the Settlement Act.

2.3 “Local Water System” means the facilities operated by the Local Entities to develop and convey water from the Warner Ranch to the Bear Valley Power Plant, and the roads, trails, rights-of-way, and related facilities used by the Local Entities to gain access to those facilities in connection with their operation, maintenance, and repair.

2.4 “Secretary” means the Secretary of the Interior of the United States of America.

2.5 “Supplemental Water” means the water delivered by the United States pursuant to Section 106 of the Settlement Act.

2.6 “Settlement Act” means Title I of Public Law 100-675, enacted on November 17, 1988, 102 Stat. 4000, Title I (as amended by section 117 of the Act of November 13, 1991, Public Law 102-154, 105 Stat. 990, 1012-1013; section 1017 of the Act of October 14, 1998, Public Law 105-256, 112 Stat. 1896, 1899; and section 211 of the Act of October 27, 2000, Public Law 106-377 Appendix B, 114 Stat. 1441A-70) and any other amendments thereto, known more fully as the “San Luis Rey Indian Water Rights Settlement Act.”

2.7 “United States” means the United States of America.

### **3.0 GENERAL PROVISIONS**

3.1. CONTINUED FEDERALLY RESERVED AND OTHER WATER RIGHTS. The United States recognizes that, as directed by Congress in section 112(b) of the Act, notwithstanding any other provision of law, including anything in the Act as amended, the Bands had, have, and continue to possess federally reserved rights and other water rights held in trust by the United States.

3.2 AUTHORITY OF BANDS. Each Band has the authority and responsibility to assert, enforce, or defend the federally reserved and other water rights held in trust for each Band by the United States, as provided in and consistent with the Settlement Act.

3.3 DISCRETION OF THE UNITED STATES; NO CLAIMS BASED ON EXERCISE OF SAME. Any exercise of the United States’ discretion regarding whether and how to participate in any proceeding involving the assertion, enforcement, or defense of the Bands’ claims to federally reserved and other water rights held in trust by the United States shall not be subject to judicial review and shall not give rise to any claim for relief against the United States; *provided, however*, that (1) the United States, in its capacity as the Bands’ trustee, shall not take a position in such a proceeding adverse to the Bands with respect to their water rights claims unless the Secretary determines in her non-delegable discretion that doing so is consistent with (a) the trust relationship,

including the principle of working to avoid or resolve conflicts to the maximum extent possible in a manner that accommodates and protects trust and restricted fee lands, trust resources, and treaty and similarly recognized rights; and (b) other federal law; and (2) the ability of the United States, in any other capacity, to take positions in litigation or other proceedings is not affected by this subsection.

3.4 **LAW GOVERNING FUTURE DISPUTES.** Any proceeding involving the assertion, enforcement, or defense of claims to federally reserved and other water rights held in trust for the Bands by the United States shall be governed by the same law and rules, both substantive and procedural, as any other proceeding involving Indian water rights held in trust by the United States; *provided, however,* that:

(1) The United States shall not be a required party in any such proceeding in its capacity as trustee for any Band; and

(2) If the United States, after notice, does not participate in any such proceeding in a court of competent jurisdiction in said capacity as trustee for any Band, any claim, defense, or counter-claim properly asserted by any party in the proceeding may nonetheless be resolved with complete finality and full preclusive effect against the United States in its capacity as trustee for any Band, by such court, provided that the appropriate Band is provided with adequate notice regarding the proceeding.

#### **4.0 WATER DELIVERY AND ALLOCATION.**

4.1 **DELIVERY OF SUPPLEMENTAL WATER.** As authorized and directed in the Settlement Act, the United States agrees to deliver 16,000 acre-feet per year of Supplemental Water to the Bands and the Local Entities.



4.2 ALLOCATION OF WATER AMONG THE BANDS. The United States recognizes that the Bands have agreed on the process (Art. IV(6)) by which the available water will be allocated amongst themselves and any disputes shall be resolved pursuant to the dispute resolution provision provided therein (Art. XIII), in duly enacted ordinances adopted by each of the Bands. Those ordinances were recognized and approved by Congress in section 107(a)(1) of the Settlement Act and cannot be amended without the approval of the Secretary, pursuant to section 107(a)(2) of the Settlement Act.

**5.0 RELATIONSHIP TO AGREEMENT AMONG BANDS, INDIAN WATER AUTHORITY, AND LOCAL ENTITIES.** The United States recognizes that the Bands and the Indian Water Authority have entered into the Implementing Agreement, which is attached as Exhibit A to this Agreement. The Implementing Agreement sets forth the arrangements between and among the Bands, the Indian Water Authority, and the Local Entities resolving their disputes relating to the use of certain land and water rights in or near the San Luis Rey River watershed. Except as otherwise provided in this Agreement, the Secretary will exercise any discretion she has regarding actions that could interfere with the Implementing Agreement in a manner consistent with the trust relationship, including the principle of working to avoid or resolve conflicts to the maximum extent possible in a manner that accommodates and protects trust and restricted fee lands, trust resources, and treaty and similarly recognized rights.

**6.0. RESOLUTION OF DISPUTES AMONG THE PARTIES OVER CERTAIN WATER RIGHTS, RIGHTS-OF-WAY, AND OTHER USES OF TRIBAL AND OTHER FEDERAL LANDS SUBJECT TO THE AUTHORITY OF THE SECRETARY.**

6.1 In order to resolve the land and water disputes referenced in Paragraph 1 above, the Parties hereby agree that:

(1) Commencing with the Effective Date, the Local Entities shall exercise the water rights at issue in the pending litigation among the Parties and their rights to use and occupy land and rights-of way in connection with the operation of the Local Water System vis-à-vis any other Party to this Agreement in accord with the terms of the Settlement Act, this Agreement, the Conduit Exemption License, rights-of-way granted by the Secretary, and the Implementing Agreement as to the parties thereto. No rights or obligations between or among the Parties shall remain in effect pursuant to the following documents: (A) Agreement dated June 4, 1894, between the Escondido Irrigation District and the Potrero Band or Village of Mission Indians; (B) Memorandum of Agreement dated February 2, 1914, between the United States, for and on behalf of the Rincon Indians, and the Escondido Mutual Water Company; (C) Agreement dated June 28, 1922, between William G. Henshaw and the United States by the Secretary of the Interior for the Indians of the Rincon and Pala Reservations; and (D) any permit or license issued prior to the Effective Date by FERC other than the Conduit Exemption License.

(2) Pursuant to section 109(b) of the Settlement Act, the Secretary has determined that the Indian land or other land subject to the authority of the Secretary, as described in Exhibit G Maps attached as Exhibit \_\_\_ to this Agreement, is used, or may be useful, in connection with the operation, maintenance, repair, replacement, or use of the Local Water System. The La Jolla, Rincon and San Pasqual Bands have agreed in the Implementing Agreement

to provide the necessary approvals for the Secretary's exercise of authority pursuant to section 109 of the Settlement Act. The Secretary recognizes existing rights-of-way or other interests in Indian land and other federal land subject to the authority of the Secretary (collectively, "authorizations") that are necessary to operate the Local Water System, and will take the following steps:

(A) The Secretary has conducted a preliminary review to verify the validity of existing authorizations, including FERC authorizations, for known and existing facilities of the Local Water System ("facilities"). The Secretary agrees to complete a final review of such known and existing authorizations that will include the identification of any known and existing facilities found to be beyond the scope of existing authorizations. The Secretary will make every effort to complete this verification process within six months of the execution of this Agreement. The Secretary will produce a map showing the locations of all existing facilities and authorizations addressed in this sub-section, and will issue or produce other documentation confirming the authorizations for all known and existing facilities.

(B) For any known and existing facilities identified through the verification process described in (i) as beyond the scope of existing authorizations, the Secretary will consult with the Bands and the Local Entities regarding a process to review such facilities and, consistently with applicable federal law and regulation, take necessary steps to bring them under a valid authorization. The Secretary will make

every effort to complete any process(es) under this sub-section within one year of the execution of this Agreement.

(C) For the purposes of this Agreement, the San Pasqual Undergrounding Project will be treated as known and existing and the Secretary will make every effort to complete any process(es) under this subsection within one year of this Agreement.

(D) For any unknown facilities that are identified after completion of, and that were not reviewed during, the processes described in (A) or (B), the Secretary will review such unknown facilities using the processes described in (A) and (B). The Secretary will complete any process(es) under this sub-section as expeditiously as possible.

(3) The Local Entities and the Bands will consult with the Secretary regarding all future proposed changes or new actions on Indian land or other federal land subject to the authority of the Secretary prior to commencing such changes or actions. The Secretary, in coordination with the Bands and the Local Entities, will determine whether future proposed changes or new actions are within the scope of existing, valid authorizations. For those future proposed changes or new actions requiring new authorizations, the Secretary will comply with all applicable federal laws and regulations in reviewing proposed authorizations for such changes or actions.

(4) The Parties agree that such exercise of authority by the Secretary shall be effective upon the satisfaction of the conditions set forth in section 104 of the Settlement Act.

(5) Since the terms and conditions of the Settlement Act and the Implementing Agreement as to the parties thereto provide adequate consideration and protection for the use of the above mentioned rights-of-way and other interests in tribal land and other federal land subject to the authority of the Secretary, no fees or other conditions are required or shall be imposed, unless required by federal law or regulation, with respect to existing facilities and uses verified in accordance with (2)(A), (2)(B), and (2)(C) of this section, except that individual Indians or allottees whose land is subjected to a lease, grant or title transfer of rights-of-way and other property interests by the Secretary shall be entitled to receive just compensation. However, any payment of such compensation shall be made by the Indian Water Authority and no additional consideration or compensation shall be due from the Local Entities for the use of such allotted or individually owned land.

6.2 The Secretary shall take the steps, consistent with federal law, regulation, and the trust relationship, including the principle of working to avoid or resolve conflicts to the maximum extent possible in a manner that accommodates and protects trust and restricted fee lands, trust resources, and treaty and similarly recognized rights as she may deem necessary or appropriate to support implementation of paragraph (1) of this section.

6.3 By waiving and releasing its claims in the pending federal district court and FERC proceedings, as stated in section 10.0 of this Agreement, and by satisfying the claims asserted by the Local Entities in those proceedings, as also stated in section 10.0 of this Agreement, the United States recognizes and agrees that the Local Entities retain the land and water rights at issue in the proceeding in Section 10 of this Agreement, on

which they have relied to operate and maintain the Local Water System except as expressly provided in the Settlement Act and the Implementing Agreement as to the parties thereto.

6.4 After the Effective Date the Parties acknowledge that the Local Water System will be operated for the joint use and benefit of the Bands and the Local Entities in accordance with the terms of the Settlement Act, this Agreement and the Implementing Agreement as to the parties thereto.

**7.0 WAIVER OF CLAIMS AGAINST THE UNITED STATES; EFFECT ON RIGHTS; RESERVATION OF RIGHTS.**

7.1 WAIVER OF CLAIMS AGAINST THE UNITED STATES. Subject to the provisions of 7.3, the Bands and the Indian Water Authority hereby waive and release any and all claims, including breach of trust claims, against the United States for:

- (1) any and all water rights, whether surface or ground water, whether reserved, trust or otherwise, including but not limited to claims related to injuries; loss or deprivation of use; failure to assert, defend, acquire, or develop; negotiation and execution of this settlement, including the Settlement Agreement and the Settlement Act; and allocation of water and money between and among the Bands pursuant to the Bands' ordinances;
- (2) damages, losses, or injuries to land or other resources due to loss of water or water rights (including hunting, fishing, gathering, or cultural rights);
- (3) damages, losses, or injuries to water, land, or other resources of the La Jolla, Rincon, San Pasqual, Pala, and Pauma Indian Reservations arising out of, resulting from, or relating in any manner to Project No. 176; and,

(4) all claims relating in any manner to the management, investment, distribution, or allocation of funds by the United States, upon receipt of such funds from the Secretary of the Treasury, of the San Luis Rey Tribal Development Fund established by Section 105 of the Settlement Act first arising prior to the Effective Date; and

(5) as provided in Section 107(b)(3) of the Settlement Act, all claims relating in any manner to the management, investment, distribution, or allocation of funds by the Indian Water Authority, upon receipt of such funds of the San Luis Rey Tribal Development Fund established by Section 105 of the Settlement Act.

*provided, however, that*, to the extent that the United States in any legal proceeding asserts any claim to San Luis Rey surface or ground water rights other than in its capacity as trustee for any Band, any Band and/or the Indian Water Authority may defend against any such claim in that proceeding, including by asserting the federally reserved and other trust rights referred to in paragraph 3.1 in response to the claims asserted by the United States.

7.2 NO THIRD PARTY RIGHTS. Except as provided in paragraph 8, nothing in this Agreement shall be construed to confer any substantive or procedural right on any person or entity other than the Bands, the Indian Water Authority, Escondido, Vista and the United States.

7.3 RESERVATION OF RIGHTS AND RETENTION OF CLAIMS.

(1) Notwithstanding the waivers and releases in this Agreement, the Bands, the Indian Water Authority and the United States, acting as trustee for each Band and allottees, retain -

- A. all claims for enforcement of this Agreement and the Settlement Act;
- B. all claims relating to activities affecting the quality of water, including any claims under—
  - i. the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), including for damages to natural resources;
  - ii. the Safe Drinking Water Act (42 U.S.C. 300f et seq.);
  - iii. the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and
  - iv. any regulations implementing the Acts described in subparagraphs (A) through (C);
- C. all claims relating to damages, losses, or injuries to land or other resources; and
- D. all rights, remedies, privileges, immunities, and powers not specifically waived and released pursuant to this Agreement;
- E. any future claims arising from water rights acquired by the Bands or Indian Water Authority and taken into trust after the Effective Date of this Settlement Agreement as provided in subparagraph 9.2; and



F. any and all future challenges to final agency action, either before an agency or in the federal courts pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701-706 (“APA”), where the challenge asserts that the agency action would impair federally reserved water rights or other water rights held in trust for a Band or the Bands; provided that, this retention is inapplicable to the agency actions or decisions that under any other section of this agreement is not subject to judicial review or review under a different standard.

(2) Notwithstanding the waivers and releases in this Agreement, the Bands and the Indian Water Authority also retain all claims against any person or entity other than the United States and the Local Entities.

## **8.0 ALLOTTEES**

8.1 PURPOSE. It is the intent and expectation of the United States and the other Parties that, as a result of this Agreement, the Settlement Act, and actions taken pursuant thereto, the quantity and reliability of the water supplies available for use on the Bands’ reservations, including the water available to satisfy the needs of the allottees with allotments within the La Jolla, Rincon, and Pala reservations, will be enhanced as compared to the quality and reliability of the water that otherwise would have been available for use on the Bands’ reservations taking into consideration, among other things

--

(1) the potential risks, cost, and time delay associated with litigation that is resolved by this Agreement and the Settlement Act;

(2) the benefits provided by the Settlement Act, including the availability of the 16,000 acre-feet per year of Supplemental Water authorized and required under section 106 of the Act to be permanently delivered for use by the Bands and the Local Entities; and

(3) the applicability of section 7 of the Act of February 8, 1887 (25 U.S.C. 381) and this title to protect the interests of allottees.

8.2 IN GENERAL. In addition to serving the needs of the Bands, the 16,000 acre-feet per year of Supplemental Water and other water available for use on the Bands' Reservations shall serve, either through direct use or exchange, current and future reasonable domestic use by allottees and for irrigation purposes of the allottees for allotments on the La Jolla, Rincon and Pala reservations. The provisions of Section 7 of the Act of February 8, 1887 (25 U.S.C. 381) shall apply to the 16,000 acre-feet per year of Supplemental Water and to other water available for use on the La Jolla, Rincon and Pala Reservations.

### 8.3 ALLOTTEE CLAIM PROCEDURES; SATISFACTION OF CLAIMS.

The La Jolla, Rincon and Pala Bands shall satisfy any rights of the allottees with allotments on their respective reservations from the Supplemental Water or other water available to the Bands or the Indian Water Authority in accordance with the following procedures:

(1) Claims to water by allottees on allotments within the La Jolla, Rincon and Pala Indian Reservations first must be presented to the tribal government that exercises jurisdiction over the reservation in which the allotment

is located. In deciding such claims, the La Jolla, Rincon and Pala Bands shall provide the claimants with a full and fair opportunity to be heard.

(2) Following the exhaustion of available tribal remedies, a decision of the tribal government regarding an allottee claim to water is subject to review by the Secretary under section 7 of the Act of February 8, 1887 (25 U.S.C. § 381). The Secretary shall have the authority to protect the rights of allottees as specified in that section.

(3) In accordance with section 112(c) of the Act, and pursuant to Congress' intent to provide full satisfaction of the water rights of allottees and to ensure final resolution of all potential claims, the remedial procedures set forth in paragraph 8.3(1) of this Agreement, including the right to review under Section 381, shall replace any and all claims, including breach of trust claims, of the allottees against the United States regarding: (1) any and all water rights, whether surface or ground water, whether reserved or otherwise, including but not limited to claims related to injuries, loss or deprivation of use, or failure to assert, defend, acquire, or develop such rights; (2) damages, losses, or injuries to land or resources due to loss of water; or (3) negotiation and execution of this Settlement, including the Settlement Agreement and the Settlement Act, and the allocation of the Supplemental Water between and among the Bands. The intent of this Agreement and Settlement Act is to fully satisfy all rights of allottees with allotments on their respective reservations. Nothing in this section alters an allottees' rights under Section 381 as set forth herein.

**9.0 EFFECT OF SETTLEMENT AGREEMENT AND ACT**

**9.1 OTHER LAWS, STATE JURISDICTION AND CLAIMS NOT AFFECTED.**

Nothing in this Settlement Agreement—

(1) affects the ability of the United States, acting as sovereign, to take actions authorized by law, including but not limited to, any laws relating to health, safety, or the environment, such as—

(A) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(B) the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(C) the Federal Water Pollution Control Act (33 U.S.C.1251 et seq.);

(D) the Endangered Species Act (16 U.S.C. 1531 et seq.); and

(E) any regulations implementing the Acts described in subparagraphs (A) through (D);

*Provided that*, to the extent any such action is within the discretion of the United States, the United States, consistent with Executive Order 13175, shall upon request, consult with the Bands and Indian Water Authority with respect to the impacts on the Settlement Act, Settlement Agreement or the Implementing Agreement, and take into full consideration its trust responsibilities to the Bands and how any such action would impact implementation of the Act.

*Provided further that*, to the extent any such action is within the discretion of the Secretary, the Secretary shall exercise that discretion consistent with the

trust relationship, including the principle of working to avoid or resolve conflicts to the maximum extent possible in a manner that accommodates and protects trust and restricted fee lands, trust resources, and treaty and similarly recognized rights.

(2) affects the ability of the United States to take actions in its capacity as trustee for any other Indian tribe or allottee of any other Indian tribe;

(3) confers jurisdiction on any State court, including (without limitation) any jurisdiction—

(A) to interpret Federal law regarding health, safety, or the environment;

(B) to determine the duties of the United States or other parties pursuant to Federal law regarding health, safety, or the environment;  
or

(C) to conduct judicial review of Federal agency action; or

(4) waives any claim of a member of the Band in an individual capacity that does not derive from a right of the Band.

## 9.2 ACQUISITION OF ADDITIONAL LANDS AND WATERS.

Nothing in this Settlement Agreement affects the ability of any of the Bands or the Indian Water Authority to acquire additional lands and/or water rights and to seek to have such acquired lands and/or rights held in trust by the United States, consistent with applicable law.

## 9.3 OTHER INDIAN TRIBES AND FEDERAL AGENCIES.

Nothing in this Settlement Agreement shall be construed in any way to quantify or otherwise adversely affect any land or water right, or any claim or entitlement to land

or water, of any Indian tribe, pueblo, band, or community, or any federal agency other than the Department of the Interior. Nor shall anything in this Agreement be construed to prevent any Band, the Indian Water Authority, or either Local Entity from defending against any such claim, except that no defense shall lie that the tribe, pueblo, band, community, or federal agency other than the Department of Interior is precluded by section 10 of this agreement from bringing such claim.

**9.4 PRECEDENT.**

Nothing in the Act or this Settlement Agreement shall be construed or interpreted as a precedent for the litigation or settlement of Indian reserved water rights.

**10.0 RESOLUTION AND SATISFACTION OF ALL PENDING CLAIMS, CONTROVERSIES AND ISSUES.**

In fulfillment of the requirement of section 104(1) of the Settlement Act, the Local Entities, Bands, Indian Water Authority and United States in its capacity as a party to all proceedings described in this paragraph acknowledge, certify, agree and represent that the terms, provisions, conditions and benefits provided under the Settlement Act; the Implementing Agreement; and this Agreement provide, as of the Effective Date, for a final and complete resolution of all claims and controversies 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 and (2) all pending proceedings before FERC involving Project 176, and all such claims are waived, relinquished, and satisfied as of the Effective Date.

**11.0 DISPUTE RESOLUTION**

Any dispute concerning this Agreement, or claimed breach thereof, may be brought by any Party to the United States District Court for the Southern District of California pursuant to its continuing jurisdiction in the consolidated actions in Rincon Band of Mission Indians v. Escondido Mutual Water Company, Civ. Nos. 69-217-S, 72-271-S, and 72-276-S, solely to interpret and enforce the provisions of this Agreement.

## **12.0 EFFECTIVE DATE**

This Agreement takes effect only if the following:

- (1) The Agreement is signed by the Secretary of the Interior, the Attorney General or his designee, the Tribal Chair of each of the five Bands pursuant to the appropriate approval by the Council of each of the Five Bands, the Mayor of Escondido, the President of the Vista Irrigation District Board, and by the President of the Indian Water Authority;
- (2) Federal legislation consistent with the understanding of the parties is enacted and ratifies this Agreement; and
- (3) the requirements of Paragraph 6.1(2)(A), 6.1(2)(B), and 6.1(2)(C) of this Agreement and Section 104 of Title I of Public Law 100-675 are satisfied, and all rights-of-way and other land rights subject to the authority of the Secretary which are used, in connection with the operation, maintenance, repair or replacement of the Local Water System are authorized and in place.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the dates set forth below:

**UNITED STATES OF AMERICA**

By: \_\_\_\_\_ DATE: \_\_\_\_\_  
Secretary of the Interior

By: \_\_\_\_\_ DATE: \_\_\_\_\_  
Attorney General or his designee

**SAN LUIS REY RIVER INDIAN WATER AUTHORITY**

By: \_\_\_\_\_ DATE: \_\_\_\_\_

By: \_\_\_\_\_ DATE: \_\_\_\_\_

**LA JOLLA BAND OF MISSION INDIANS**

By: \_\_\_\_\_ DATE: \_\_\_\_\_

By: \_\_\_\_\_ DATE: \_\_\_\_\_

**RINCON BAND OF MISSION INDIANS**



DRAFT 11-26-14

By: \_\_\_\_\_ DATE: \_\_\_\_\_

By: \_\_\_\_\_ DATE: \_\_\_\_\_

**SAN PASQUAL BAND OF MISSION INDIANS**

By: \_\_\_\_\_ DATE: \_\_\_\_\_

By: \_\_\_\_\_ DATE: \_\_\_\_\_

**PAUMA BAND OF MISSION INDIANS**

By: \_\_\_\_\_ DATE: \_\_\_\_\_

By: \_\_\_\_\_ DATE: \_\_\_\_\_

**PALA BAND OF MISSION INDIANS**

By: \_\_\_\_\_ DATE: \_\_\_\_\_

By: \_\_\_\_\_ DATE: \_\_\_\_\_

**CITY OF ESCONDIDO**

By: \_\_\_\_\_ DATE: \_\_\_\_\_

By: \_\_\_\_\_ DATE: \_\_\_\_\_

**VISTA IRRIGATION DISTRICT**

By: \_\_\_\_\_ DATE: \_\_\_\_\_

By: \_\_\_\_\_ DATE: \_\_\_\_\_

RESOLUTION NO. 14-XX

RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
VISTA IRRIGATION DISTRICT:

(1) APPROVING THE IMPLEMENTING AGREEMENT AND SETTLEMENT AGREEMENT TO RESOLVE THE SAN LUIS REY RIVER WATER RIGHTS LITIGATION AND RELATED DISPUTES BETWEEN THE DISTRICT AND CITY OF ESCONDIDO, ON THE ONE HAND, AND THE UNITED STATES, THE SAN LUIS REY RIVER INDIAN WATER AUTHORITY AND THE LA JOLLA, RINCON, SAN PASQUAL, PAUMA AND PALA BANDS OF MISSION INDIANS, ON THE OTHER; AND

(2) AUTHORIZING THE FILING OF PLEADINGS AND TAKING OTHER ACTIONS TO CONCLUDE THE SAN LUIS REY RIVER WATER RIGHTS LITIGATION AND RELATED DISPUTES

WHEREAS, beginning in approximately 1875, the United States took action to set aside Indian Reservations for the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians (collectively, the “Bands”) along or in the vicinity of the San Luis Rey River; and

WHEREAS, since approximately 1922, the District and its predecessors have impounded the water originating in the upper portion of the San Luis Rey River watershed behind Henshaw Dam in Lake Henshaw. Lake Henshaw has been used by District, the City of Escondido (“Escondido”), and their respective predecessors to store runoff from the watershed above Henshaw Dam for subsequent release. Henshaw Dam further allowed carryover storage from wet years through periods of drought. Since approximately 1926, a portion of the water diverted through the Escondido Canal and the Bear Valley Power Plant has been delivered to the District’s service area ; and

WHEREAS, in 1924, the Federal Power Commission (now the Federal Energy Regulatory Commission, or “FERC”) issued a license for some of the District and Escondido facilities conveying San Luis Rey River water that, among other things, authorized the use of federal and Bands’ lands for those facilities; and

WHEREAS, the District owns Lake Henshaw and the Warner Ranch surrounding Lake Henshaw. Since the early 1950’s, the District, in conjunction with Escondido, has pumped groundwater from the Warner Basin underlying the Warner Ranch and stored the pumped water in Lake Henshaw for release into the San Luis Rey River and diversion into a facility known as the Escondido Canal; and

WHEREAS, the United States facilitated the diversion and use of the waters of the San Luis Rey River by the District and Escondido, and the use of tribal lands of the Bands and federal lands administered by the Bureau of Land Management for the conveyance of that water from the San Luis Rey River to the service areas of the District and Escondido; and

WHEREAS, the waters of the San Luis Rey River are insufficient to supply the needs of the Bands, on the one hand, and the District and Escondido, on the other; and

WHEREAS, the Bands initiated litigation in the United States District Court for the Southern District of California against the District and Escondido to determine, among other things, respective rights of the Bands and District and Escondido to certain waters of the San Luis Rey River, and related matters among the same parties have been contested before FERC (collectively, the “Water Rights Litigation”); and

WHEREAS, the United States joined in the Water Rights Litigation on behalf of the Bands; and

WHEREAS, recognizing that the federal government granted conflicting water rights or access to water of the San Luis Rey River to the Bands, on the one hand, and to the District and Escondido, on the other, Congress enacted the San Luis Rey Indian Water Rights Settlement Act, Title I of Public Law 100-675, as amended, in 1988 to provide for the resolution of the disputes that were the subject of the Water Rights Litigation (the “Settlement Act”); and

WHEREAS, the Settlement Act was amended in 2000 by adding subsection 106(f), which directs the Secretary of the Interior, acting through the Commission of Reclamation, to fulfill the United States’ trust responsibility to the Bands, by furnishing annually to the Bands, the District and Escondido both: (a) a permanent supply of up to 16,000 acre-feet of the water conserved by lining certain unlined portions of the water conveyance facility known as the All-American Canal and its Coachella branch; and (b) a permanent supply of power capacity and energy at no cost and at no further expense to the United States, the Bands, the District and Escondido in an amount sufficient to convey the water conserved from Lake Havasu through the Colorado River Aqueduct to the places of use on the Reservations and the service areas of the District and Escondido; and

WHEREAS, the Bands, the District and Escondido have entered into agreements with the United States and other parties that provide for the permanent delivery by the Secretary of the Interior of up to a maximum of 16,000 acre-feet per year of water to the Indian Water Authority for the benefit of the Bands, and to the District and Escondido; and

WHEREAS, section 4 of the Settlement Act states that the delivery of water and power under that legislation shall take effect only when the Bands, the United States, the District and Escondido have entered into a settlement agreement providing for the complete resolution of all claims involved in the Water Rights Litigation, and stipulated judgments or other appropriate final dispositions have been entered in the Water Rights Litigation; and

WHEREAS, the Bands, the San Luis Rey River Indian Water Authority, the District and Escondido have jointly prepared that certain written agreement entitled “Implementing Agreement Among the City of Escondido, California, on its Behalf and the Successor to the Escondido Mutual Water Company, the Vista Irrigation District, the San Luis Rey River Indian Water Authority, and the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians Pursuant to the San Luis Rey Indian Water Rights Settlement Act, Public Law 100-675, as amended,” a copy of which is attached hereto as Exhibit “A” (the “Implementing Agreement”) to resolve their disputes and satisfy in part the requirements of section 104 of the Settlement Act; and

WHEREAS, on April 25, 2012, the District Board of Directors approved the Implementing Agreement in principle, and directed District staff and legal counsel to work with representatives of the Bands and the United States to finalize the Implementing Agreement and other instruments and actions to resolve the Water Rights Litigation in a manner consistent with the Implementing Agreement and the Settlement Act; and

WHEREAS, on September 25, 2012, FERC issued a CONDITIONAL ORDER GRANTING EXEMPTION FROM LICENSING (CONDUIT), ACCEPTING SURRENDER OF LICENSE, AND DISMISSING RELICENSE APPLICATION for FERC Project 176, which order was conditioned, among other things, upon “Escondido and Vista having filed documentation of execution of the Settlement Agreement and proof of receipt of the necessary rights-of way from Interior”; and

WHEREAS, the United States, San Luis Rey River Indian Water Authority, the District, Escondido and the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians have jointly drafted the “Settlement Agreement Between the United States and the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians and the San Luis Rey River Indian Water Authority and the City of Escondido and Vista Irrigation District,” a copy of which is attached hereto as Exhibit “B” (the “Settlement Agreement”) to implement in part the provisions of section 104 of the Settlement Act; and

WHEREAS, the District, Escondido, the San Luis Rey River Indian Water Authority, and the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians mutually desire to enter into the Implementing Agreement and (along with the United States) to enter into the Settlement Agreement for the complete resolution of all claims, controversies and issues involved in all of the Water Rights Litigation, and to satisfy the requirement of paragraph (1) of section 104 of the San Luis Rey Indian Water Rights Settlement Act; and

WHEREAS, the District’s approval of the Implementing Agreement and the Settlement Agreement is categorically exempt from the requirements of the California Environmental Quality Act, Public Resources Code section 21000, *et seq.* (“CEQA”), under §§ 15307 and 15308 of the State CEQA Guidelines, 15 Cal. Code Regs. 15000, *et seq.*, on the grounds that entering into the Implementing Agreement and the Settlement Agreement will avoid the need for the construction of major new water conveyance facilities in sensitive areas, and reduce the need for importation of scarce water supplies from northern California, such that the approval of the Implementing Agreement and the Settlement Agreement constitute acts by the District, as a water regulatory agency, for the protection of natural resources (i.e., water) and for the protection of the environment.

NOW, THEREFORE, the Board of Directors of the Vista Irrigation District hereby resolves as follows:

Section 1. The Implementing Agreement, substantially in the form attached hereto as Exhibit “A” is hereby approved, and the President and Secretary are hereby authorized to execute the Implementing Agreement, subject to final approval by the District’s General Manager, and subject to approval as to form by District’s special Water Rights counsel.

Section 2. The Settlement Agreement, substantially in the form attached hereto as Exhibit "B" is hereby approved, and the President and Secretary are hereby authorized to execute the Implementing Agreement, subject to final approval by the District's General Manager and approval as to form by District's special Water Rights counsel.

Section 3. District officers, staff, general counsel and/or special Water Rights counsel are hereby authorized to take the following actions: (a) to file such pleadings and other documents in the Water Rights Litigation as are necessary to cause the dismissal or similar termination of the Water Rights Litigation; (b) to represent to the court in the Water Rights Litigation that the District understands and agrees with the terms of the Implementing Agreement and Settlement Agreement, that the District validly exercised its governmental powers to be bound by such terms, and that the District has received adequate legal representation in reaching that conclusion; and (c) to take such other actions as are consistent with this Resolution to implement the Implementing Agreement and Settlement Agreement, and conclude the Water Rights Litigation.

Section 4. The District staff is hereby authorized and directed to file a notice of exemption under CEQA with respect to the approval of the Implementing Agreement and the Settlement Agreement.

PASSED and ADOPTED at a special meeting of the Board of Directors of the Vista Irrigation District held on December 8, 2014, by the following roll call vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

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Paul E. Dorey, President

ATTEST:

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Lisa R. Soto, Secretary  
Board of Directors  
VISTA IRRIGATION DISTRICT



## STAFF REPORT

Agenda Item: 7

**Board Meeting Date:** December 8, 2014  
**Prepared By:** Lisa Soto  
**Approved By:** Roy Coox

**SUBJECT:** RESOLUTION HONORING DIRECTOR JOHN B. FRANKLIN

**RECOMMENDATION:** Adopt a resolution honoring Director John B. Franklin for his service on the Vista Irrigation District Board of Directors since December 11, 2012.

**PRIOR BOARD ACTION:** None.

**FISCAL IMPACT:** None.

**SUMMARY:** Director Franklin has served as Director of Division 4 beginning on December 11, 2012 to December 9, 2014 when he took office as a Council member of the City of Vista. During his term, the District accomplished many activities, including the execution of a water purchase agreement with the City of Oceanside for obtaining treated water from the Weese Filtration Plant; the launching of the District's tap water outreach campaign uniquely named "Love Tap!"; fully funding the District's Other Post Employment Benefits, namely retiree health benefits, which will result in an estimated \$3.8 million net cost savings to the District; and the successful labor negotiations resulting in new 3-year agreements with all the District's employee groups.

During Director Franklin's tenure, the District received significant honors such as the Top Workplace Award from the U-T San Diego and Workplace Safety Awards from the District's insurer, ACWA JPIA; the Innovative Program of the Year Award for the District's Workforce Planning and Career Development Program, and the Transparency Certificate of Excellence, both from the California Special Districts Association; reaccreditation as a District of Distinction from the Special District Leadership Foundation; and for the sixth and seventh years in a row, the District was awarded the Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association for the District's Comprehensive Annual Financial Reports for the fiscal years 2012 and 2013

During Director Franklin's term, the District also reached an agreement with the Federal government to proceed with the final execution of the San Luis Rey Indian Water Rights Settlement.

During his two years on the Board, Director Franklin was a member of both the Water Sustainability and the Public Affairs Committees, serving as Chair of the Public Affairs Committee in 2014. He also served on the ACWA Federal Affairs Committee in 2014. As recognition of Director Franklin's diligent and tireless service to the District and its customers, the attached resolution is presented for the Board's consideration.

**ATTACHMENT:** See attached draft resolution.

RESOLUTION NO. 14-XX

RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE VISTA IRRIGATION DISTRICT  
HONORING DIRECTOR JOHN B. FRANKLIN

WHEREAS, John B. Franklin has served as Director of Division 4 from December 11, 2012 until December 9, 2014; and

WHEREAS, Director Franklin has conscientiously and ably served as a member of the Board during that period; and

WHEREAS, during his term, the District accomplished many activities, including the execution of a water purchase agreement with the City of Oceanside for obtaining treated water from the Weese Filtration Plant; the launching of the District's tap water outreach campaign uniquely named "Love Tap!"; the full funding of the District's Other Post Employment Benefits, namely retiree health benefits, which will result in an estimated \$3.8 million net cost savings to the District and its ratepayers; and the successful labor negotiations resulting in new three-year agreements with all the District's employee groups; and

WHEREAS, during Director Franklin's tenure, the District received significant honors such as the Top Workplace Award from the U-T San Diego and Workplace Safety Awards from the District's insurer, ACWA JPIA; the Innovative Program of the Year Award for the District's Workforce Planning and Career Development Program, and the Transparency Certificate of Excellence, both from the California Special Districts Association; reaccreditation as a District of Distinction from the Special District Leadership Foundation; and for the sixth and seventh years in a row, Certificates of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association for the District's Comprehensive Annual Financial Reports for fiscal years 2012 and 2013; and

WHEREAS, during Director Franklin's term, the District also reached an agreement with the Federal government to proceed with the final execution of the San Luis Rey Indian Water Rights Settlement.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors and staff of the Vista Irrigation District do hereby express to John B. Franklin their appreciation for his accomplishments and outstanding efforts for the benefit of all the people of the Vista Irrigation District during his tenure as a VID Board member.

PASSED AND ADOPTED by the following roll call vote of the Board of Directors for the Vista Irrigation District this 8<sup>th</sup> day of December 2014.

AYES:

NOES:

ABSTAIN:

ABSENT:

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Paul E. Dorey, President

ATTEST:

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Lisa R. Soto, Secretary  
Board of Directors  
VISTA IRRIGATION DISTRICT





**Agenda Item: 8**

**STAFF REPORT**

**Board Meeting Date: December 8, 2014**  
**Prepared By: Lisa Soto**

SUBJECT: COMMENTS BY DIRECTORS

SUMMARY: This item is placed on the agenda to enable individual Board members to convey information to the Board and the public not requiring discussion or action.



**Agenda Item: 9**

**STAFF REPORT**

**Board Meeting Date: December 8, 2014**  
**Prepared By: Roy Coox**

SUBJECT: COMMENTS BY GENERAL MANAGER

SUMMARY: Informational report by the General Manager on items not requiring discussion or action.