

THE UPPER SAN LUIS REY RESOURCE CONSERVATION DISTRICT'S  
PARTICIPATION IN THE UPPER SAN LUIS REY RIVER BASIN GSA  
IS AN ABUSE OF THE LAFCO PROCESS

Since 1968, the La Jolla, Rincon, San Pasqual, Pauma and Pala Bands of Mission Indians (Bands) and the San Luis Rey Indian Water Authority have been engaged in multiple efforts to preserve, defend, protect and enforce the Bands' federally reserved and other rights to the surface and ground waters of the Upper San Luis Rey River and its tributaries. Their litigation, which also involved the United States, against the City of Escondido (Escondido) and the Vista Irrigation District (Vista) went to the United States Supreme Court in 1984. The result of the Supreme Court's decision was to send the case back to essentially to start over again.

The parties then commenced negotiations which eventually resulted in settlement agreements approved by Congress, the federal district court and the Federal Energy Regulatory Commission. The settlement includes important agreements with the Metropolitan Water District of Southern California and the San Diego County Water Authority and finally took effect on May 17, 2017.

The litigation and settlement with Escondido and Vista were limited to the surface and ground waters of the San Luis Rey River and its tributaries above the Henshaw Dam and above the diversion dam on the San Luis Rey River nine miles below Henshaw Dam. It did not include the ground water in the Upper San Luis Rey River (Upper Basin).

In September of 2014 as the settlement was in its final stages, the California legislature enacted, and Governor Brown signed the Sustainable Groundwater Management Act (SGMA). SGMA primarily applies to groundwater basins classified by the Department of Water Resources

as high or medium priority. Substantial portions of the La Jolla, Rincon, Pauma and Pala Reservations overlie the medium priority Upper Basin.

SGMA includes three important provisions applicable to California tribes. Section 10720.3(b) says that SGMA applies to an Indian tribe “to the extent authorized under federal or tribal law. Section 10720.3(c) says that any federally recognized Indian tribe “may voluntarily agree to participate in the preparation or administration of a groundwater sustainability plan or groundwater management plan... through agreements with local agencies in the basin.” Most importantly, section 10720.3(d) states:

.... In the management of a groundwater basin or subbasin by a groundwater sustainability agency or by the [State Water Resources Control] board, federally reserved water rights to groundwater shall be respected in full. In case of conflict between federal and state law in that ... management, federal law shall prevail.

After considerable internal thought and discussion as well as initially constructive meetings and other interactions with local water agencies and users of groundwater in the Upper Basin, the IWA and the Bands decided to voluntarily participate in the preparation and administration of a groundwater sustainability plan through voluntary agreements with local agencies in the Upper Basin. Unfortunately, those efforts were not successful.

Three governmental agencies, Yuima MWD, Pauma Valley Community Services District and the Upper San Luis Rey Resource Conservation District (RCD) have joined together to form a GSA for the Upper Basin without participation by the IWA or any of the Bands. The IWA and the Bands believe, and respectfully request LAFCO to conclude that RCD is not qualified to form a groundwater sustainability agency or to participate in its governance.

SGMA section 10723.6(c) says that a “combination of local agencies may form a groundwater sustainability agency.” A “local agency” is defined in SGMA section 10721(n) to mean “a local public agency that has water supply, water management or land use responsibilities within a groundwater basin.”

RCD does not have water supply, water management, or land use responsibilities. The December 7, 2020 Draft Municipal Service Review for Resource Conservation Districts in San Diego County (Draft MSR) states (on page 73) that the RCD is presently organized as a limited purpose agency with municipal service function tied to two active categories under its principal act: (a) water conservation and (b) wildlife enhancement. “The primary focus of Upper San Luis Rey RCD has involved maintaining conservation easements and performing related work to protect and restore native wildlife.” 12/7/20 Draft MSR at 73 and 82.

The RCD does have latent power to, among other things, provide water distribution. But that latent power has not been and cannot be exercised unless formally authorized by LAFCO at a noticed LAFCO hearing. MSR at 81. No such hearing has been called or held.

The 12/7/20 Draft MSR states that San Luis Rey RCD’s water conservation service function activities “focus on managing local groundwater resources through the District’s participation in the San Luis Rey GSA.” There are two fatal problems with this assertion. First, the SGMA requirement for being a local agency is that it actually has water supply, water management or land use responsibilities. That requirement clearly is not satisfied through its “participation,” whatever that means, in another entity.

Second, and as previously noted, the water distribution is a latent service function which must first need to be “formally activated by LAFCO at a noticed hearing.” There is no indication that any such hearing has been requested or held.

It is therefore crystal clear that the San Luis Rey RCD is not a local agency under SGMA and therefore is not qualified to form a GSA pursuant to SGMA section 10723.6(a).

SGMA requires that all of the land within high and medium priority basins must be subject to being covered and regulated to the maximum extent possible, one way or another, by properly formed GSAs. SGMA section 10723.2 states (with emphasis added): “The groundwater sustainability agency shall consider the interests of all beneficial uses and users of groundwater, as well as those responsible for implementing groundwater sustainability plans.” It then lists eleven of those interests, which include the federal government, California Native American tribes, and disadvantaged communities, and, for good measure, states that the covered beneficial uses and users of groundwater are not limited to those on the list.

In addition, SGMA section 10724(a) goes further by providing: “In the event that there is an area within a high or medium priority basin that is not within the management area of a groundwater sustainability agency, the county within which that unmanaged area lies will be presumed to be the groundwater sustainability agency for that area.” Counties can opt out of being the groundwater sustainability agency for the area by providing notice to DWR pursuant to SGMA section 10724.(b). If that fails, SGMA section 10735.2 empowers the State Water Resources Control Board to declare high or medium priority basins probationary. Sections 10735.6, 10735.8 and 10736 authorize the Board to adopt and implement interim plans to carry out the purposes of SGMA. All of these SGMA provisions reinforce the critical importance of

insuring, to the maximum extent possible, that all extractions of groundwater within high and medium priority basins are subject to regulation and control either by properly formed GSAs, by the county or counties in which the GSA is located, or, as a last resort, by the State Water Resources Control Board.

## **CONCLUSION**

The record in this matter clearly establishes that RCD's involvement in the Upper Basin SGMA process is a sham. SGMA's overriding purpose is overcoming the adverse effects of over-pumping the Upper Basin's groundwater by achieving long-term sustainability. Two of the major questions are: (1) how will sustainability be achieved? and (2) how will the Bands' federally reserved water rights be respected in full as SGMA mandates?

RCD does not pump or use groundwater. It is not a "local agency" under SGMA because it does not have "water supply, water management, or land use responsibilities."

Without RCD's participation, there cannot and will not be an Upper Basin GSA that excludes the IWA and the four Bands.. RCD does not have, or should not have, a dog in that fight.

The obvious purpose of RCD's participation in the Upper Basin GSA is to provide a jurisdictional fig leaf for Yuima MWD and local water users other than the Bands to retain their power, dominance and control over the Upper Basin's groundwater at the expense of the Bands' federally reserved water rights and in a manner that undermines the California legislature's directive that those rights be "respected in full."

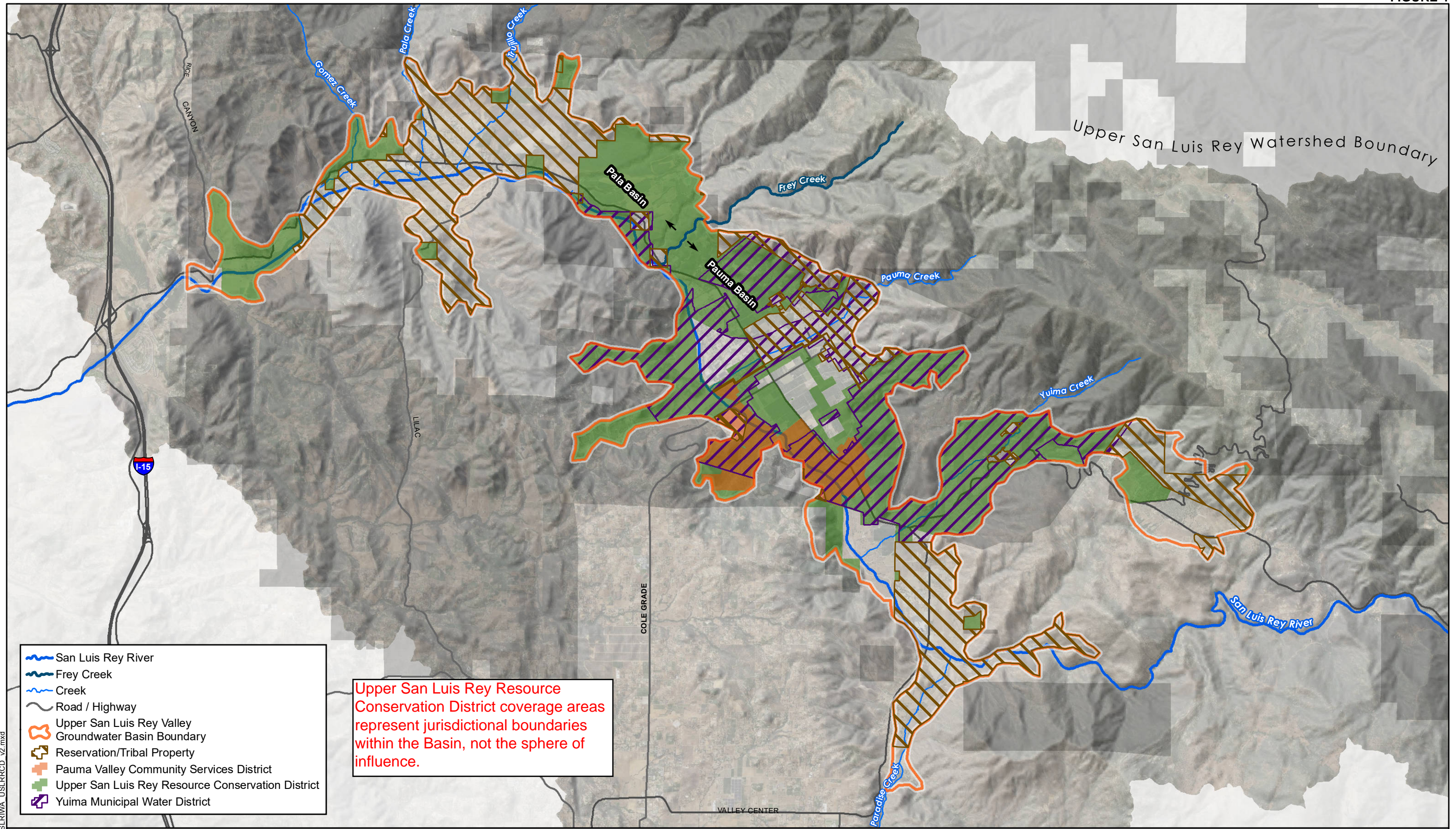
If RCD wants to participate in the SGMA/GSA/GSP process, it should follow the letter of LAFCO's process and rules for becoming a local agency as defined in SGMA.

Dated: December 4, 2020

Respectfully submitted,

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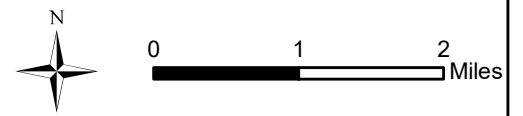
- San Luis Rey River
- Frey Creek
- Creek
- Road / Highway
- Upper San Luis Rey Valley Groundwater Basin Boundary
- Reservation/Tribal Property
- Pauma Valley Community Services District
- Upper San Luis Rey Resource Conservation District
- Yuma Municipal Water District

Upper San Luis Rey Resource Conservation District coverage areas represent jurisdictional boundaries within the Basin, not the sphere of influence.

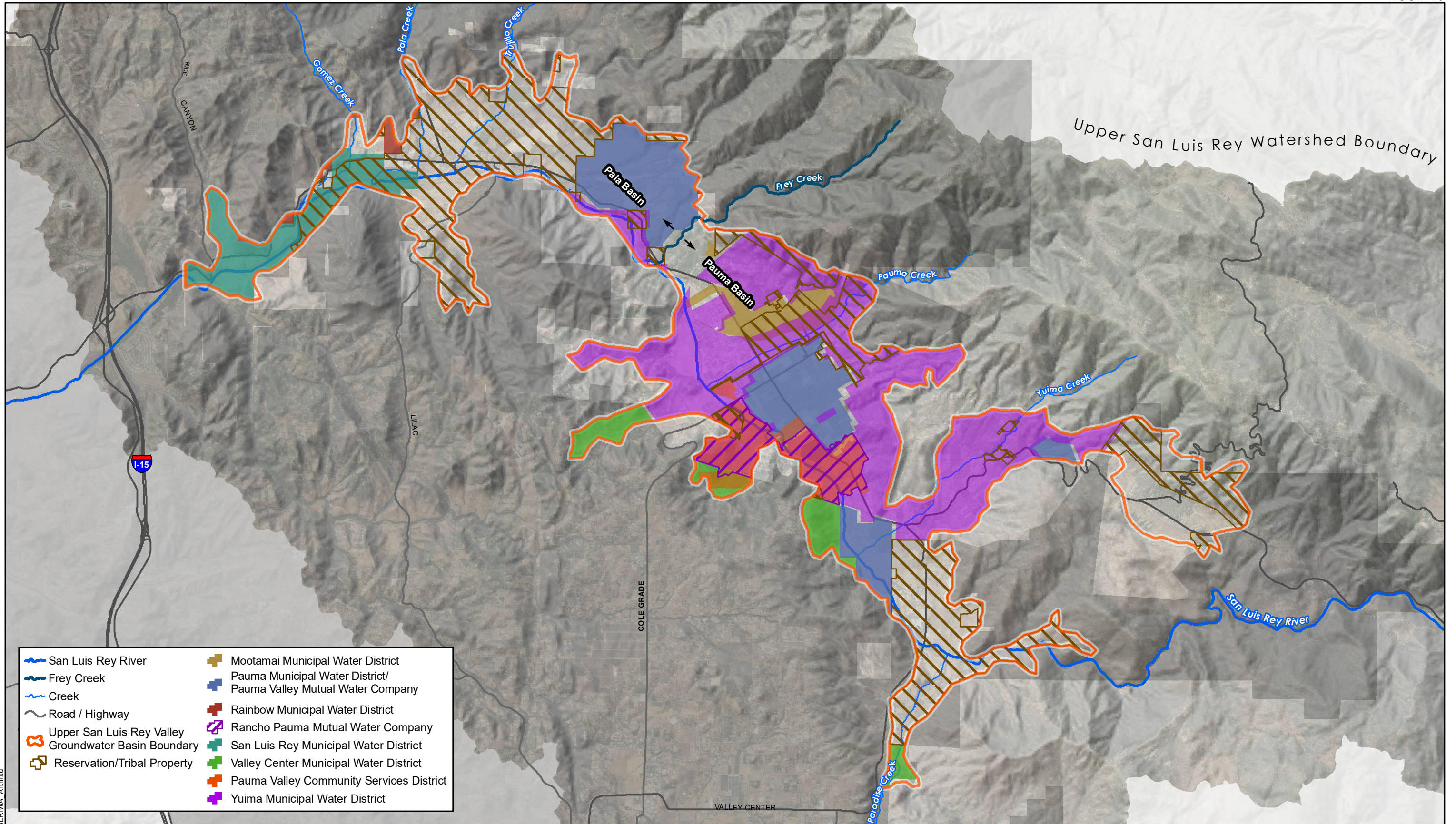
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**SAN LUIS REY INDIAN WATER AUTHORITY  
DWR BASIN BOUNDARY COVERAGE BY UPPER SAN LUIS REY RESOURCE CONSERVATION DISTRICT  
EXCLUDING COVERAGE BY MEMBER TRIBE RESERVATIONS AND TRIBAL PROPERTIES  
DRAFT 12/4/2020**







- |   |  |
|---|--|
| San Luis Rey River                                      | Mootamai Municipal Water District                                    |
| Frey Creek  | Pauma Municipal Water District/<br>Pauma Valley Mutual Water Company |
| Creek   | Rainbow Municipal Water District                                     |
| Road / Highway  | Rancho Pauma Mutual Water Company                                    |
| Upper San Luis Rey Valley<br>Groundwater Basin Boundary | San Luis Rey Municipal Water District                                |
| Reservation/Tribal Property                             | Valley Center Municipal Water District                               |
|   | Pauma Valley Community Services District                             |
|   | Yuima Municipal Water District                                       |

**SAN LUIS REY INDIAN WATER AUTHORITY  
DWR BASIN BOUNDARY COVERAGE BY YUIMA MWD, PAUMA VALLEY  
CSD, IWA RESERVATIONS & TRIBAL PROPERTIES, AND OTHER LOCAL ENTITIES**

DRAFT 12/4/2020



0 1 2 Miles



**Table 1**  
**San Luis Rey Indian Water Authority**  
**Summary of Jurisdictional Coverage by Member Tribes, GSA Members, & Local Entities**  
**Upper San Luis Rey Valley Basin**

Entity Name	Jurisdictional Area within the Upper San Luis Rey Valley Basin (acres)	Percent Coverage of the Upper San Luis Rey Valley Basin <sup>1</sup>
<b>San Luis Rey Indian Water Authority Member Tribes</b>		
Pala Band (Reservation Land & Fee Land/Tribal Property)	4,376	22.7%
Pauma/Yuima Band (Reservation Land & Fee Land/Tribal Property)	450	2.3%
La Jolla Band (Reservation Land & Fee Land/Tribal Property)	831	4.3%
Rincon Band (Reservation Land & Fee Land/Tribal Property)	1,577	8.2%
<b>Total</b>	<b>7,235</b>	<b>37.6%</b>
<b>Current GSA Members, excluding Upper San Luis Rey Resource Conservation District</b>		
Yuima Municipal Water District	6,770	35.2%
Pauma Valley Community Services District	1,120	5.8%
<b>Total<sup>2</sup></b>	<b>7,050</b>	<b>36.6%</b>
<b>Upper San Luis Rey Resource Conservation District<sup>3</sup></b>		
Total jurisdictional boundary within the Upper San Luis Rey Basin	17,025	88.4%
Total jurisdictional boundary within the Upper San Luis Rey Basin (minus member tribe reservations & tribal properties)	9,880	51.3%
<b>Total Basin Coverage by Yuima MWD, Pauma Valley CSD, and Upper San Luis Rey RCD<sup>2</sup></b>	<b>17,363</b>	<b>90.2%</b>
<b>Other Local Water Entities</b>		
Mootamai Municipal Water District	657	3.4%
Pauma Municipal Water District <sup>4</sup>	2,955	15.3%
Pauma Mutual Water Company <sup>4</sup>	2,955	15.3%
Rainbow Municipal Water District	94	0.5%
Rancho Pauma Mutual Water Company	929	4.8%
San Luis Rey Municipal Water District	1,183	6.1%
Valley Center Municipal Water District	760	3.9%
<b>Total</b>	<b>6,578</b>	<b>34.2%</b>
<b>Area not Covered by the Member Tribes, GSA Members, Upper San Luis Rey RCD, or Other Local Water Entities</b>		
<b>Total</b>	<b>668</b>	<b>3.5%</b>

**Notes**

- 1) Upper San Luis Rey Valley Basin consists of **19,254 acres** of land, per DWR Basin Prioritization Report dated September 2019.
- 2) Due to overlapping jurisdictions among the current GSA members, total coverage by the current GSA is less than the combined coverage by each current GSA member individually.
- 3) The Upper San Luis Rey Resource Conservation District coverage areas provided in this table (and in the figures) represent jurisdictional boundaries within the Basin, **not** the sphere of influence.
- 4) Jurisdictions of Pauma MWD and Pauma Mutual Water Company are predominantly overlapping.