

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

HYDRO LICENSING STATUS)
WORKSHOP) DOCKET NO. AD02-5-000
)
and) and
)
CITY OF ESCONDIDO) PROJECT NO. 176
_____)

JOINT STATUS REPORT

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INTRODUCTION

On December 10, 2001, at its first Annual Hydro Licensing Status Workshop the Commission briefly discussed Project No. 176. At that Workshop it was agreed that the parties would provide the Commission and its Staff with a written update on the Project's status.

BACKGROUND

The original license for Project No. 176 was issued to the Escondido Mutual Water Company ("Mutual") in June 1924 for a 50-year period expiring in June 1974. The Commission issued a new license in February 1979 jointly to Mutual, the City of Escondido ("City"), and Vista Irrigation District ("VID") requiring, among other things, that VID's Lake Henshaw facilities be licensed as a part of the Project. *Escondido Mutual Water Co.*, 6 FERC ¶ 61,189 (1979). In 1984, the Commission's issuance of the license was reversed, and the case was remanded to the Commission for further consideration. *Escondido Mutual Water Co. v. La Jolla Band of Mission Indians*, 466 U.S. 765 (1984), *on remand*, 743 F.2d 1321 (9th Cir. 1984).

After the remand from the Supreme Court, aided by Congressman Ron Packard, the parties met and negotiated a June 14, 1985 "Joint Statement of Principles for Settlement." One of the key premises of the Settlement Principles was that the local supplies of water developed by the Escondido/VID facilities on the San Luis Rey River and at Lake Henshaw needed to be augmented by additional water from another source.

Since the remand, and pending finalization of the settlement, the Project has continued to operate under annual licenses, pursuant to Section 15 of the Federal Power Act. ¹16 U.S.C. § 808(a).

A. THE SAN LUIS REY INDIAN WATER RIGHTS SETTLEMENT ACT

In November 1988, Congress enacted the San Luis Rey Indian Water Rights Settlement Act, Public Law 100-675, 102 Stat 4000 ("P.L. 100-675"). "[T]o provide a supplemental water supply for the benefit of the Bands and the local entities," ²section 106(a) charges the Secretary of the Interior with the obligation to arrange for the development of a supplemental water supply of 16,000 acre feet. Three potential sources were identified: (i) water pumped from public lands within California outside the service area of the Central Valley Project; (ii) water conserved through a project to line the All-American Canal ("AAC") authorized by Title II of the Act; or (iii) water provided by contract with the Metropolitan Water District of Southern California ("MWD"). Section 107 ratified the establishment by the Bands of the San Luis Rey Indian Water Authority ("Authority").

Section 109(a) of P.L. 100-675 states that any FERC license "for any part of the system that diverts the waters of the San Luis Rey River originating above the intake to

¹In April 1989 the Commission approved a transfer of the license to City of Escondido Mutual Water Co. and City of Escondido, 47 FERC ¶ 62,054 (1989).

²"Bands" refer to the La Jolla, Rincon, San Pasqual, Pauma and Pala Bands of Mission Indians. P.L. 100-675 § 102(1). "Local Entities" refer to the City, Mutual and VID. P.L. 100-675 § 102(4).

the Escondido Canal--(1) shall be subject to all of the terms, conditions, and provisions of the settlement agreement and this title; and (2) shall not in any way interfere with, or impair the ability of the Bands, the local entities and the United States to implement, perform, and comply fully with all of the terms, conditions, and provisions of the settlement agreement." ³Section 104 provides: "Sections 106 and 109 of this 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 (2) stipulated judgments or other appropriate final dispositions have been entered in said proceedings."

B. THE 2000 AMENDMENT TO P.L. 100-675

Following the enactment of P.L. 100-675, the Settlement Parties ⁴spent much time working with Interior investigating possible sources of the Supplemental Water. In

³The term "Settlement Agreement" was defined as "the agreement entered into by the United States, the Bands, and the local entities which will resolve all claims, controversies, and issues involved in all pending proceedings among the parties." P.L. 100-675 § 102(5).

⁴The Bands, the Authority, and the Local Entities are often referred to collectively as the "Settlement Parties."

October 2000 Congress enacted legislation which provides that the Secretary of the Interior shall permanently furnish annually for the benefit of the Bands and the Local Entities 16,000 acre-feet of the water conserved by the lining of the All-American Canal. The same legislation also provides for the furnishing of sufficient power capacity and energy for the transportation of the conserved water through the Colorado River Aqueduct to the places of use on the Bands' reservations or in the Local Entities' service areas. See Public Law 106-377, 114 Stat. 1441. ⁵

C. MATTERSTOBERESOLVEDPRIORTOFINALSETTLEMENT

Although considerable progress has been made, there are still a number of matters which must be resolved before the parties will be able to enter into a final settlement.

First, the All-American Canal ("AAC") Lining Project must go forward in order to make available the 16,000 acre feet of conserved water for the Settlement Parties. ⁶At

present the lining of the Coachella Branch of the AAC is proceeding with a due date for completion by the end of 2003. However, the lining of the main portion of the AAC within the Imperial Irrigation District ("IID") has not yet completed environmental review or "reached the starting gate."

Second, the Settlement Parties and the United States must reach agreement with

⁵Section 1(a)(2) of Public Law 106-377 enacted into law H.R. 5483 [House Energy & Water Development Appropriations Bill] as introduced on October 18, 2000. Section 211(a) of H.R. 5483 added § 106(f) to P.L. 100-675.

MWD and the San Diego County Water Authority ("SDCWA") to obtain the right to use MWD's Colorado River Aqueduct and SDCWA's San Diego Aqueduct to transport the 16,000 acre feet of conserved water from the Colorado River to the places of use on the Bands' reservations or in the Local Entities' service areas.

Third, the Settlement Parties must reach agreement with IID, Coachella Valley Municipal Water District, and MWD as to how to allocate various costs in connection with the AA Clining.

The Settlement Parties have recently commenced negotiations leading toward a final settlement. While it is difficult to estimate how long these negotiations may take and much may depend upon progress as to the above remaining issues, the goal of the Settlement Parties is to have a final settlement in place by the time the first water conserved by the lining of the Coachella Branch becomes available which is expected to be by the end of 2003.

The Settlement Parties will notify the Commission when the final settlement is reached. In the meantime we are available to meet with the Commission Staff to discuss any issues and procedures that must be addressed regarding the license for Project No. 176.

It is hoped that this Joint Status Report ⁷is responsive to the Commission's needs.

Respectfully submitted,

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⁷Prior to filing, this Joint Status Report was provided to counsel for the Department of the Interior. Counsel for the Department of the Interior has reviewed this Joint Status Report and has authorized the undersigned to state that the Department does not oppose this report.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 11th day of January, 2002.

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