



**San Bernardino Valley
Water Conservation District**

Helping Nature Store Our Water

BOARD OF DIRECTORS SPECIAL MEETING AGENDA

Tuesday, March 21, 2023 – 10:30 a.m.

Location-1630 West Redlands Boulevard, Suite A, Redlands, California

Anyone wishing to listen to or participate in the meeting can join via Zoom:

Call in (669) 900-6833, Meeting ID: 821 2706 9982

To join the Zoom Meeting on <https://us06web.zoom.us/j/82127069982>

While the District makes every attempt to follow all guidance re COVID-19 safety protocols, the District cannot assure in-person attendees that they will not be exposed to COVID-19 or persons who have been so exposed, and attendees are advised to exercise caution in limiting their own incidences of exposure, particularly those who may be in groups at higher risk of infection, or serious symptoms of COVID-19 if infected.

Note: Copies of staff reports and other documents relating to the items on this agenda are on file at the District office and are available for public review during normal District business hours. New information relating to agenda topics listed, received, or generated by the District after the posting of this agenda, but before the meeting, will be made available upon request at the District office and in the Agenda Package on the District’s website. It is the intention of the San Bernardino Valley Water Conservation District to comply with the Americans with Disabilities Act (ADA) in all respects. If you need special assistance with respect to the agenda or other written materials forwarded to the members of the Board for consideration at the public meeting, or if as a participant at this meeting you will need special assistance, the District will attempt to accommodate you in every reasonable manner. Please contact Athena Laroche at (909) 793-2503 at least 48 hours prior to the meeting to inform her of your particular needs and to determine if accommodation is feasible. Please advise us at that time if you will need accommodations to attend or participate in meetings on a regular basis.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

1. PUBLIC PARTICIPATION

Members of the public may address the Board of Directors on any item that is within the jurisdiction of the Board; however, no action may be taken on any item not appearing on the agenda unless the action is otherwise authorized by Subdivision (b) Section 54954.2 of the Government Code.

A. ENHANCED RECHARGE AGREEMENT SECOND AMENDMENT – 15 minutes

(M#1927)3

Presenter: David B. Cosgrove

1630 W. Redlands Blvd, Suite A
Redlands, CA 92373
Phone: 909.793.2503
Fax: 909.793.0188
www.sbvxcd.org Email: info@sbvxcd.org

BOARD OF DIRECTORS

Division 1:
Richard Corneille

Division 2:
David E. Raley

Division 3:
Robert Stewart

Division 4:
John Longville

Division 5:
Melody McDonald

GENERAL MANAGER

Betsy Miller

Recommendation: Review and approve the Second Amendment to Agreement to Develop and Operate Enhanced Recharge Facilities, and authorize the Board President to execute same on behalf of the District and General Manager to record same as may be required by the United States, Bureau of Land Management title review to complete the Wash Plan Land Exchange.

2. **CLOSED SESSION**

1. The Board will meet in Closed Session under authority of Government Code §54956.9 (a), in order to discuss existing litigation, Endangered Habitats League et al. vs. U.S. Army Corps of Engineers, Central District Court Case no. Case No.: 2:16-cv-09178-MWF-E.
2. The Board will meet in Closed Session under Government Code section 54956.8, to discuss the terms and conditions of potential acquisition of Federal properties as part of the Wash Plan land exchange with BLM, consisting of 327.5 acres of the Federal Exchange Parcel, and 90 acres of the Federal Equalization Parcels, in exchange for District property of Assessor Parcel Nos. 0291-151-01, -02, and-05. David Cosgrove and Betsy Miller are the District's negotiators, and Jessika Peltz is the lead negotiator for BLM.

ADJOURN MEETING. The next regularly scheduled Board of Directors/Groundwater Public Meeting will be on April 12, 2023 at 1:30 p.m., at District Headquarters, 1630 W. Redlands Blvd., Redlands, CA and via Zoom/teleconference.



San Bernardino Valley Water Conservation District

Helping Nature Store Our Water

To: Board of Directors

From: David B. Cosgrove, General Counsel

Date: March 21, 2023

Subject: Enhanced Recharge Agreement Second Amendment

RECOMMENDATION

Review and approve the Second Amendment To Agreement To Develop And Operate Enhanced Recharge Facilities, revised with input from Valley District and Western from the version included in the March 8 agenda packet, with authorization and instructions as follows:

1. Authorize the Board president to sign the agreement upon clarification by the United States Department of Interior, Bureau of Land Management (“BLM”) of its title opinion on the Land Exchange, if title opinion requires the Second Amendment be recorded in order to complete the land exchange, and
2. Authorize the General manager to record the Second Amendment with the County Recorder, as may be necessary or required by BLM to put title in such a condition as to permit the Wash Plan Land Exchange to proceed.

BACKGROUND AND DISCUSSION

At its regular meeting on March 8, staff recommended continuing the proposed Second Amendment to the Enhanced Recharge Agreement, pending working out final language issues then remaining with Valley District and Western. The Board continued the matter to the earlier of the next regular meeting, or a special meeting to be called by the Board President, once an agreed form of the document was reached. We believe we have reached that point, and today’s special meeting is devoted to the Board’s consideration and approval of a form of the agreement that includes revisions made by both sides from the version included in the March 8, 2023 agenda packet. The current agreed form is attached. Valley District has indicated it intends to go to its Board of Directors for approval of the Agreement on March 21, 2023, at 2:00 pm.

The Second Amendment is being considered in order to try to clear title on the property going to BLM under the Wash Plan Land Exchange, after BLM expressed reluctance to take subject to the original enhanced recharge agreement.

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Betsy Miller

By way of background: On or about October 1, 2012, the District, San Bernardino Valley Municipal Water District (“Valley”) and Western Municipal Water District (“Western”) entered their “Agreement to Develop and Operate Enhanced Recharge Facilities.” (“Original Agreement”). Under the Original Agreement, the Conservation District leased portions of lands it owned, and those it otherwise occupied, to Valley and Western for the purposes of developing, and ultimately constructing, a series of new recharge basins designed to enhance the region’s groundwater recharge capacity, and ultimately, the region’s groundwater supply. The Agreement included land that was to be exchanged to the BLM under the Congressional Legislation directing a land exchange in furtherance of the Wash Plan, the John D. Dingell Conservation, Management, and Recreation Act P.L. 116-9, sec. 1003 (March 12, 2019).

Valley and Western have awarded a construction contract for, and are now in the final pre-construction planning phases of, their Enhanced Recharge Project, designed to utilize Conservation District-owned properties, and extending into other properties included in the Original Agreement, for construction of additional basins that the Conservation District will ultimately maintain and operate. Unfortunately, the timing of this project has created complications for completion of the land exchange contemplated by the legislation. Specifically, BLM staff indicated that it was uneasy with any party other than the Conservation District exercising rights over the property proposed to be transferred to the federal government (“New Federal Parcel”) despite that the facilities contemplated by the Enhanced Recharge Project were at all times known to BLM staff, and identified as a Valley covered activity and analyzed in the EIS/EIR accompanying the Wash Plan HCP.

In response to this concern, the parties on December 20, 2020 entered into their “Amendment to Agreement to Develop and Operate Enhanced Recharge Facilities,” which clarified the Conservation District’s existing rights over the New Federal Parcel, and committed that the exercise of any possessory rights on that parcel after the exchange would be by and through the Conservation District, and its rights.

This ultimately failed to satisfy BLM, whose staff has preliminarily indicated it is still unwilling to accept the New Federal Parcel subject to the lease interests created in the Original Agreement. BLM staff has referred the matter to its solicitor for final legal review, and we await the solicitor’s position on the title opinion needed to complete the land exchange.

Pending that title opinion, BLM staff suggested the approach more acceptable to it would be for all parties, including the Conservation District, to secure federal rights of way over the New Federal Parcel for the Enhanced Recharge facilities, and remove the lease interests of the Original Agreement. In response, the Conservation District prepared applications for such rights of way, filed with the BLM on or about May of 2022. BLM has further indicated that Valley and Western would also need such rights of way, of at least a temporary nature, to construct the facilities of the Enhanced Recharge Project, while the Conservation District holds more long-term rights for their maintenance and operation. The Conservation District has prepared draft companion right of way applications for Valley and Western, which as of this writing have been filed with BLM. We have also conducted a pre-application meeting with BLM staff on those applications, to expedite their processing and attempt to address early technical issues that might arise.

The Conservation District has funded a NEPA Environmental Assessment for all those applications, which is underway. That EA may not now be required, because BLM has also been provided with substantial additional NEPA documentation generated by Valley District and Western in connection with their permitting of the Phase 1B Enhanced Recharge Project. BLM preliminarily indicated that might be sufficient for a Determination of NEPA adequacy for the rights of way. If so, this will expedite the consideration and potential grant of the rights of way.

Given all this, and absent some reversal of position by BLM in the solicitor's title opinion, the leasehold interests of the New Federal Parcel must be removed for the land exchange to proceed. The Second Amendment does exactly that, detailing the above progress of events, and assuring that the leasehold interests of the Original Agreement on other properties owned by the Conservation District are unaffected. In addition, Conservation District staff is currently working with Valley and Western to try to make contingency plans for adjustments to construction sequencing and areas to assure the Enhanced Recharge Project can proceed in the timeliest fashion consistent with the implementation of the Wash Plan, of which it is a part. The land exchange is a critical component of the mitigation preserve which supports the environmental review and permitting of the Wash Plan under which the Enhanced Recharge Project proposes to proceed, and absent that exchange, the likelihood of the Enhanced Recharge Project meeting its assigned habitat requirements under the Wash Plan may come into question. The quickest path to resolution therefore appears to be the Second Amendment, and issuance of the rights of way being required by BLM to proceed.

Staff's recommendation is to approve the Second Amendment, and authorize the Board president to sign, and the General Manager to record it with the County Recorder, once it becomes clear in the BLM's final title opinion that it is necessary to do so. So, staff's recommendation is to "approve and hold" until BLM's final title determinations are made clear. (If BLM's title opinion opts to take the exchanged District property subject to the Original Agreement, it may not be necessary to finalize and record the Second Amendment, and the entire Second Amendment may be able to be shelved.)

In the interests of accommodating advancing construction schedules under the now awarded construction contract for the Phase 1B basin construction, all parties want to be able nimbly to clear title on an administrative level, to keep the land exchange and right of way processes moving as quickly as possible after BLM's positions are finalized. That is why staff is seeking the Board's approval of the Second Amendment now, pending the title opinion.

FISCAL IMPACT

The short-term fiscal impact of the Second Amendment is nominal, consisting of application fees (which Conservation Staff has already paid on behalf of Valley and Western, to expedite matters), and potentially minor additional consultant time to adjust the EA or document the Determination of NEPA Adequacy. Staff is pursuing waivers of rental payments and recovery bonds otherwise normally required by BLM, and awaits word back from BLM on these matters. We hope these costs will be minimal, or excused entirely. Should such costs prove problematic, the Second Amendment includes a "meet and confer" process among the parties to determine proper cost sharing, or alternative manners of proceeding that will still allow the project's construction to proceed.

POTENTIAL MOTIONS

1. Approve the Second Amendment To Agreement To Develop And Operate Enhanced Recharge Facilities, and authorize the Board President to execute same on behalf of the District, and the General Manager to record it, once BLM's title opinion determinations indicate the Second Amendment will be required to complete the land exchange.
2. Reject the Second Amendment To Agreement To Develop And Operate Enhanced Recharge Facilities, with directions to staff to attempt to explore alternate manners of proceeding with both the land exchange and the Enhanced Recharge Project.
3. Provide other direction to staff.
4. Table the item to a future meeting for consideration.

ATTACHMENTS

Second Amendment to Agreement to Develop and Operate Enhanced Recharge Facilities

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

SAN BERNARDINO VALLEY
WATER CONSERVATION DISTRICT
Attn: General Manager
1630 West Redlands Boulevard Suite A
Redlands CA 92373-8032

(SPACE ABOVE FOR RECORDER'S USE)

EXEMPT FROM FILING FEES PURSUANT GOVERNMENT CODE 6103

**SECOND AMENDMENT TO AGREEMENT TO DEVELOP AND OPERATE
ENHANCED RECHARGE FACILITIES**

SECOND AMENDMENT TO AGREEMENT TO DEVELOP AND OPERATE ENHANCED RECHARGE FACILITIES

This Second Amendment to Agreement to Develop and Operate Enhanced Recharge Facilities (“Second Amendment”) is entered into and effective this ____ day of March 2023, by and among the SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT (the “Conservation District”), the SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT (the “Valley District”) and WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY (“Western”). The Conservation District, Valley District and Western are each sometimes referred to as a “Party” and are collectively sometimes referred to as the “Parties.” This Amendment is entered into in consideration of all of the following:

RECITALS

A. This Second Amendment is made with reference to that certain “Agreement to Develop and Operate Enhanced Recharge Facilities” dated October 1, 2012, by and between the Parties, as amended by that certain “Amendment to Agreement to Develop and Operate Enhanced Recharge Facilities,” dated on or about December 15, 2020 (as amended or modified from time to time, the “Agreement”)

B. On or about October 1, 2012, the Parties entered into that certain “Agreement to Develop and Operate Enhanced Recharge Facilities” (the “Original Agreement”). Part of the Original Agreement was a lease by the Conservation District to Valley District and Western of specified properties owned by the Conservation District and other properties owned by the United States, Bureau of Land Management (“BLM”), for the purposes of the “recharging of water” as that term is defined in the Original Agreement.

C. Conservation District is in the process of completing and implementing the Upper Santa Ana River Wash Plan (“Wash Plan”). The Wash Plan includes a land exchange (the “Land Exchange”) between the Conservation District and BLM, authorized and directed by the United States Congress in P.L. 116-9, the John D. Dingell, Jr. Conservation, Management, and Recreation Act, passed March 12, 2019 (the “Act”). Section 1003(b)(1) of the Act directs the Secretary to convey certain lands currently in BLM ownership to the Conservation District, and accept from the District other lands, both more specifically described therein. The Act also identifies various “exchange” parcels to use in the event values of the property need to be equalized with any equalization payment necessary under Section 206(b) of the Federal Land Policy and Management Act of 1976 (43 USC § 1716(b)).

D. A portion of the real property subject to the lease provisions of the Original Agreement is within the boundaries of the real property to be transferred by Conservation District to the BLM under the Land Exchange (the “New Federal Parcel”). After reviewing exceptions to title regarding the New Federal Parcel, BLM refused to accept the New Federal Parcel subject to the lease interests of Valley District and Western under the Original Agreement. BLM expressed concerns that the broadly stated nature of the Original Agreement’s lease provisions in favor of Valley District and Western, as they may apply to lands held in ownership by BLM, may not be entirely consonant with the Conservation District’s historical rights of use and occupancy of BLM lands.

E. To address these concerns, the Parties entered into that certain “Amendment to Agreement to Develop and Operate Enhanced Recharge Facilities,” dated on or about December 15, 2020. (the “First Amendment”). In the First Amendment the Parties clarified and agreed to the nature of the rights the Conservation District leased to Valley District and Western under the Original Agreement. Pending the Land Exchange and any issuance of the rights of way from BLM as contemplated hereunder, those rights remain unchanged. The First Amendment also clarified the manner in which Valley District and Western would exercise those rights. BLM refused, however, to accept the First Amendment as satisfaction of its concerns regarding the rights conferred by the Original Agreement with regard to the New Federal Parcel. BLM has indicated to the Conservation District that BLM is requiring, as a condition of completion of the Land Exchange, the removal of any leasehold interests under the Original Agreement on the New Federal Parcel.

F. The Parties desire that the Land Exchange be completed in a timely manner and that Valley District and Western be permitted to utilize the New Federal Parcel for construction of water delivery and conservation facilities more commonly known as the “Enhanced Recharge Project” or “Enhanced Recharge Facilities Project.” The Enhanced Recharge Project – Phase 1B was a Covered Activity under the Wash Plan HCP and was identified and described in the Draft Environmental Impact Statement/Supplemental Environmental Impact Report for the Proposed Habitat Conservation Plan and Section 10 Permit for the Upper Santa Ana River Wash Plan certified by the U.S Fish and Wildlife Service.

G. The Conservation District has submitted to BLM an “Application For Transportation, Utility Systems, Telecommunications And Facilities On Federal Lands And Property” (Standard Form 299) on or about May, 2022 (“ROW Application”), for a permanent federal right of way over the New Federal Parcel for groundwater recharge activities, including those aspects of the Enhanced Recharge Project studied and analyzed in the now-completed and certified Upper Santa Ana River Wash Plan HCP EIS/EIR (“EIS/EIR”). That ROW Application is currently under review by BLM, and is the subject of an ongoing Environmental Assessment incident to BLM action in considering and potentially granting the requested right of way, which Environmental Assessment is being funded by the Conservation District. BLM has also indicated to the Conservation District that any party occupying the New Federal Parcel after the Land Exchange will be required to hold a federally granted right of way, even if such occupancy is temporary. As a result, the Parties have prepared draft companion applications for Valley District and Western to secure their own temporary federal rights of way over the New Federal Parcel (the “Companion Applications”), for construction activities incident to the placement of Enhanced Recharge Project facilities as analyzed in the EIS/EIR.

NOW, THEREFORE, IN CONSIDERATION OF ALL OF THE FOREGOING, THE PARTIES DO HEREBY AMEND THE AGREEMENT AS FOLLOWS:

AGREEMENTS

1. Description of New Federal Parcel. The property constituting the New Federal Parcel is more specifically described in **Exhibit 5** hereto, which exhibit is hereby incorporated into the Agreement.

2. Exclusion of New Federal Parcel from Leased Property. The first sentence of Paragraph 2(a) of the Agreement is hereby amended to read as follows:

The Conservation District hereby leases to Valley District and Western, for the term of this Agreement and on the terms specified herein, non-exclusive use of the surface of the lands shown on **Exhibit 1** (“Leased Property”) to the extent that such use is within the Conservation District’s rights; provided, however, the New Federal Parcel, more specifically described in **Exhibit 5** hereto, shall be excluded from the Leased Property, with the intent and effect that the New Federal Parcel is no longer a part of the lease under this Agreement.

3. Agreements Regarding New Federal Parcel

a. Anticipated Rights of Way Granted by BLM. Conservation District shall pay any application fees required by BLM in conjunction with its ROW Application or the Companion Applications. The Parties anticipate that the Environmental Assessment being prepared for the Conservation District’s ROW Application will cover, and suffice for, the Companion Applications, and that all three applications for rights of way will be processed simultaneously by BLM. In the event that new or supplemental Environmental Assessments are required for the Companion Applications, the Conservation District shall prepare the same at its sole cost. The Parties shall meet and confer regarding the sharing of any other costs or financial assurances that may be required by BLM incident to the grants of rights of way over the New Federal Parcel. The Parties agree to accept the rights of way granted by BLM, as well as any applicable rights under the Conservation District’s Conservation Rights, as the exclusive authority under which they may and will occupy the New Federal Parcel for groundwater recharge activities, such as those contemplated by the Enhanced Recharge Project.

b. Facilities on New Federal Parcel; Operations and Maintenance. In the event that BLM grants to the Parties rights of way sufficient for construction, operation and maintenance of diversion facilities, recharge basins, pumps and other ancillary facilities or equipment located within or upon the New Federal Parcel as the Parties may reasonably deem sufficient for the recharging of water on the New Federal Parcel, the Conservation District, in coordination with Valley District and Western under the auspices of the Joint Operations Committee provided for in the Original Agreement, shall be responsible for the operation and maintenance of such facilities on behalf of the Parties. The Conservation District shall utilize its best efforts to make full use of the anticipated facilities on the New Federal Parcel for the recharge of water, consistent with the hydrological design limitations of the facilities, and with the collaborative management of recharge to avoid incompatibility with any mining operations on the Leased Property, as provided in paragraph 2(a) (5) of the Original Agreement. The Conservation District shall use its best, good faith efforts to operate and maintain all new and existing facilities located on or within the New Federal Parcel in good working condition, to ensure that the recharge of water continues efficiently, in accordance with a mutually-agreed schedule of regular maintenance and any supplemental agreements governing special or emergency

maintenance responsibilities. The Conservation District shall set aside a portion of the gross lease fee provided for in Paragraph 3(a) of the Agreement received from Valley District and Western, in accordance with the Conservation District's Reserve Policy, to ensure sufficient funds are available to meet the agreed maintenance obligations.

4. No Representation or Warranty Regarding BLM Grant of Rights of Way. Conservation District represents that it has conferred extensively with BLM, and that the right of way application process the Conservation District is pursuing to secure the ability to construct, operate, and maintain groundwater recharge facilities on the New Federal Parcel was suggested by BLM staff as the best procedure for the Conservation District to pursue in order to both complete the Land Exchange and ensure that the existing and expanded groundwater recharge facilities contemplated in the EIS/EIR may proceed expeditiously. Notwithstanding such representation, the grant of rights of way by BLM is a discretionary process, over which the Conservation District has no control, and the Parties agree and acknowledge that Conservation District provides no warranty or guarantee regarding the outcome of the Parties' respective right of way applications, the timing of their consideration or potential grant, or the terms, stipulations, or conditions thereof. Valley District and Western agree to hold the Conservation District harmless from any claim, cause of action, injury to person or property, consequential or incidental damage, monetary or otherwise ("Damages"), caused by or arising from BLM's consideration or grant of the rights of way for groundwater recharge uses and facilities on the New Federal Parcel, except to the extent such Damages are caused by the negligence or willful misconduct of the Conservation District. In the event such rights of way are not granted, or are unreasonably delayed for any reason, the Parties shall meet and confer in good faith, under the auspices of the Joint Operations Committee provided for in the Original Agreement, to determine how best to proceed.

5. Conservation District-Owned Property Unaffected. As to those portions of the Leased Property owned by the Conservation District both at the time of the Original Agreement and after the Land Exchange, Valley District and Western shall continue to enjoy the full range of rights for entry and use as described in the Original Agreement and the First Amendment. Notwithstanding the foregoing, and except for rights of way that may be granted by BLM for the benefit of Valley District and Western on those portions of the Leased Property owned by BLM and outside of the New Federal Parcel, Valley District and Western shall be limited to the exercise of those rights clarified in the First Amendment, exercising such rights by and through the Conservation District as the entity with approval power over any facilities for the recharging of water on such lands and the operator and manager of such facilities. As to Valley District and Western, such rights for entry and use on those portions of the Leased Property owned by BLM may further only be exercised for uses consistent with the uses specified in the Wash Plan, and for no other purposes, absent further grant of rights of way to Valley District or Western, or both of them, by BLM.

6. Effect of Second Amendment; Capitalized Terms. Except as specifically amended herein, the remainder of the Agreement shall remain in full force and effect. Capitalized terms used in this Second Amendment shall have the meanings ascribed to such terms in the Agreement, unless otherwise defined herein.

7. Counterparts. This Second Amendment may be executed in counterparts and all counterparts together shall be considered part of one Second Amendment, binding on all parties

hereto. This Second Amendment may also be executed and delivered by facsimile signature, PDF or any electronic signature complying with the ESIGN Act of 2000.

[Signatures on Following Page]

**SAN BERNARDINO VALLEY
WATER CONSERVATION DISTRICT
“Conservation District”**

By: _____
Melody McDonald, President
Board of Directors

**APPROVED AS TO FORM:
RUTAN & TUCKER, LLP**

By: _____
David B. Cosgrove
General Counsel

**SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT
“Valley District”**

By: _____
Paul Kielhold, President
Board of Directors

**APPROVED AS TO FORM:
DOWNEY BRAND, LLP**

By: _____
General Counsel

**WESTERN MUNICIPAL WATER
DISTRICT OF RIVERSIDE COUNTY
“Western”**

By: _____
Mike Gardner, President
Board of Directors

**APPROVED AS TO FORM:
BEST, BEST & KRIEGER**

By: _____
General Counsel

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, 2023, before me, _____, Notary Public, personally appeared xx, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, 2023, before me, _____, Notary Public, personally appeared xx, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, 2023, before me, _____, Notary Public, personally appeared xx, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT 5

Legal Description of New Federal Parcel

PARCEL 1:

The Northwest 1/4 and the Northeast 1/4 of Section 12, Township 1 South, Range 3 West, San Bernardino Base and Meridian, in the City of Highland, County of San Bernardino, State of California, according to the Official Plat thereof.

Excepting therefrom that portion conveyed to the San Bernardino Valley Water Conservation District by Quitclaim Deed, recorded June 28, 1984, as Instrument No. 84-152554, of Official Records.

Also described as

San Bernardino Meridian

T. 1 S., R. 3 W.,

sec. 12, NE¹/₄, N¹/₂NW¹/₄, E¹/₂SW¹/₄NW¹/₄, E¹/₂W¹/₂SW¹/₄NW¹/₄, and SE¹/₄NW¹/₄.

The area described contains 310.00 acres, more or less, in San Bernardino County, California.

Non-Federal Land

PARCEL 2:

All of the Atchison, Topeka and Santa Fe Railway Company's property in the North half of Section 12, Township 1 South, Range 3 West, San Bernardino Base and Meridian, in the City of Highland, County of San Bernardino, State of California, according to the Official Plat, described as follows:

A 100-foot-wide strip of land lying between lines that are parallel and/or concentric with and distant 50 feet, measured at right angles, and/or radially from and on each side of the centerline of the San Bernardino and Eastern Railway Company's (predecessor in interest to first said Railway Company) tract as originally located in the Northwest quarter of said Section 12; a 100-foot wide strip of land and a 50 foot wide strip of land, both in Southwest quarter of the Northeast quarter of said Section 12, as described in deed to said San Bernardino and Eastern Railway Company, recorded December 15, 1891, in Book 144 of Deeds, page 16, records of said county, and, a 100 foot wide strip of land in the North half of the Southeast quarter of said Section 12, as described in deed to said San Bernardino and Eastern Railway Company, recorded December 15, 1891, in Book 142 of Deeds, page 392, records of said county.

The area described contains 9.053 acres, more or less, in San Bernardino County, California.