

Appendix B: Legal Agreements



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Summaries of Agreements

Integrated Regional Water Management Planning Act

In 2002, the California Legislature passed Senate Bill 1672, the Integrated Regional Water Management Planning Act, and the Governor signed it into law. The Bill added Part 2.2 (commencing with Section 10530) to Division 6 of the Water Code: Conservation, Development and Utilization of State Water Resources.

The Integrated Regional Water Management Planning Act authorized a “regional water management group” to prepare and adopt a regional plan in accordance with certain procedures that addresses programs, projects, reports, or studies relating to water supply, water quality, flood protection, or related matters, over which any local public agency that is a participant in that group has authority to undertake.

The law requires DWR, the SWRCB, and the State Department of Health Services to include in any set of criteria used to select the projects and programs for grant funding “...a criterion that provides a benefit for qualified projects or programs.”

To comply with the requirements of the law, DWR and SWRCB prepared standards (also referred to as IRWM Guidelines) for preparation of IRWM Plans. In addition, they established set criteria for selection of the projects and programs to be funded under Chapter 8 of Proposition 50, the Integrated Regional Water Management Implementation Grant Program. The guidelines state that, “The intent of the IRWM Grant Program is to encourage integrated regional strategies for management of water resources and to provide funding, through competitive grants, for projects that protect communities from drought, protect and improve water quality, and improve local water security by reducing dependence on imported water.”

This IRWM Plan is prepared in compliance with the Integrated Regional Water Management Planning Act and DWR and SWRCB Guidelines and the intent of the grant program.

Groundwater Management Planning Act

In 2002, Senate Bill 1938, Groundwater Management Planning Act of 2002, was enacted into law. This law amended AB3030, which authorizes a local agency to prepare and implement a groundwater management plan. This law requires a local agency that elects to develop a groundwater management plan to follow specific requirements, including public notification and public involvement process as summarized below.

- Make available to the public a written statement describing the manner in which interested parties would be allowed to participate in the development of the plan.
- For the purposes of qualifying as a groundwater management plan and for receiving State funds administered by DWR for the construction of groundwater projects or groundwater quality projects, prepare and implement a plan that includes certain basin management objectives (BMOs) and components and adopt certain monitoring protocols.
- The law requires the local agency to submit a copy of the plan to DWR, in an electronic format, if practicable, approved by the DWR, and DWR would be required to make copies available to the public.
- Prior to adopting a resolution of intention to draft a groundwater management plan, a local agency shall hold a hearing after publication of notice on whether to adopt a resolution of intention to draft a groundwater management plan pursuant to this part for the purposes of implementing the plan and establishing a groundwater management program. At the conclusion of the hearing, the local agency may draft a resolution of intention to adopt a groundwater management plan pursuant to this part for the

purposes of implementing the plan and establishing a groundwater management program. Upon written request, the local agency shall provide any interested person with a copy of the resolution of intention.

- The local agency shall prepare a groundwater management plan within two years of the date of the adoption of the resolution of intention. If the plan is not adopted within two years, the resolution of intention expires, and no plan may be adopted except pursuant to a new resolution of intention adopted in accordance with this chapter.
- After a groundwater management plan is prepared, the local agency shall hold a second hearing to determine whether to adopt the plan. Notice of the hearing shall be given pursuant to Section 6066 of the Government Code. The notice should include a summary of the plan and shall state that copies of the plan may be obtained for the cost of reproduction at the office of the local agency. At the second hearing, the local agency shall consider protests to the adoption of the plan. At any time prior to the conclusion of the hearing, any landowner within the local agency may file a written protest or withdraw a protest previously filed.

Senate Bill 1938 does not require local agencies to prepare a groundwater management plan for the basins that are managed through adjudications. These long-standing adjudications govern the water rights and management of the basins. Any groundwater management planning would need to conform with the provisions of those adjudications and would require agreement and approval of the parties in those adjudications. The basins in the Upper Santa Ana watershed are adjudicated “in gross.” The agencies in the region, however, decided to prepare the plan because they strongly support the intent of the law that states, “It is the intent of the Legislature to encourage local agencies to work cooperatively to manage groundwater resources within their jurisdictions. The preparation of certain basin management objectives will assist local agencies in optimizing local resources while protecting groundwater and surface water resources. The preparation of basin management objectives also will facilitate an understanding of the basin or subbasin, thereby allowing local agencies, individually and cooperatively, to meet local, regional, and state water needs through conjunctive management, while ensuring that no particular water supply is jeopardized.”

A purpose of this IRWM Plan is to meet the intent and requirements of Senate Bill 1938.

Orange County Judgment

In 1963, the OCWD filed suit against substantially all water users in the area tributary to Prado Dam seeking adjudication of water rights on the SAR. The litigation ultimately involved over 4,000 served water users and water agencies, the four largest of which were OCWD, Valley District, Western, and the Chino Basin Municipal Water District (now the Inland Empire Utilities Agency). Given the magnitude of the potential litigation, these four districts and other parties developed a settlement that was approved by the Orange County Superior Court in a stipulated judgment entered on April 17, 1969 (Orange County Judgment). The Orange County Judgment imposes a physical solution that requires parties in the Upper SAR watershed to deliver a minimum quantity and quality of water to points downstream, including Riverside Narrows and Prado Dam. A provision of the Orange County Judgment related to conservation establishes that once the flow requirements are met, the upper area parties “...may engage in unlimited water conservation activities, including spreading, impounding, and other methods, in the area above Prado reservoir.” The Orange County Judgment is administered by the five-member SAR Watermaster that reports annually to the court and the four representative agencies. Valley District, Inland Empire Utilities Agency, and Western nominate one member each to the Watermaster; OCWD nominates two members; and members are then appointed by the court.

Western Judgment

The Western Judgment, entered simultaneously with the Orange County Judgment, settled rights within the Upper SAR watershed in part to ensure that those resources upstream of Riverside Narrows would be sufficient to meet the flow obligations of the Orange County Judgment at Riverside Narrows. Toward this end, the Western Judgment generally provides for the following:

- A determination of safe yield of the San Bernardino Basin Area (SBBA),
- Establishment 64,872 acre-feet rights that can be extracted from the SBBA by plaintiff parties. This is equal to 27.95 percent of safe yield,
- An obligation of Valley District to replenish any extractions from SBBA by non-plaintiffs in aggregate in excess of 167,228 acre-feet(equal to 72.05 percent of safe yield),
- An obligation of Western to replenish the Colton and Riverside Basins if extractions for use in Riverside County in aggregate exceed certain specific amounts, and
- An obligation of Valley District to replenish the Colton and Riverside basins if water levels are lower than certain specific water level elevations in specified wells.

Like the Orange County Judgment, the Western Judgment identifies regional representative agencies to be responsible, on behalf of the numerous parties bound thereby, for implementing the replenishment obligations and other requirements of the judgment. The representative entities for the Western Judgment are Valley District and Western. Valley District and Western are principally responsible for providing replenishment of the groundwater basins if extractions exceed amounts specified in the judgment or as determined by the Watermaster. For the purposes of this replenishment obligation, Valley District acts on behalf of all defendants (Non-Plaintiffs) dismissed from the Western Judgment and, similarly, Western acts on behalf of the Plaintiffs and other dismissed parties within Western. Plaintiff parties with specific rights to produce 27.95 percent of the safe yield from the SBBA are the City of Riverside, Riverside Highland Water Company, Meeks & Daley Water Company, and the Regents of the University of California (Regents). The Western Judgment is administered by the two-person Western-San Bernardino Watermaster—one person nominated each by Valley District and Western, and both appointed by the court.

Like the Orange County Judgment, the Western Judgment contemplates that the parties will undertake “new conservation,” which is defined as any increase in replenishment from natural precipitation resulting from operation of works and facilities that did not exist in 1969. The Western Judgment specifies that the parties to the judgment have the right to participate in any new conservation projects and, provided their appropriate shares of costs are paid, rights under the judgment are increased by the respective shares in new conservation (72.05 percent by Valley District and 27.95 by Western).

The Beaumont Basin Judgment

In February 2003, the STWMA filed suit in Riverside County Superior Court to adjudicate pumping and storage rights in the Beaumont Basin. The STWMA and the major pumpers developed a Stipulated Agreement to resolve the lawsuit. In February 2004, the Stipulated Agreement was approved by the Court.

This Stipulated Agreement established pumping rights among the two major classes of pumpers—overlying and appropriative pumpers. The overlying pumpers were assigned fixed rights with some flexibility to vary their maximum use during any five-year period. The safe yield established in the Stipulated Agreement is 8,650 acre-feet per year. The total of the overlying producers’ rights is equal to the safe yield. Collectively, the overlying pumpers produce substantially less than their aggregate rights. Appropriators’ rights are stated as a percentage or

fraction of water in the safe yield that is not used by the overlying pumpers. The Stipulated Agreement provides for the orderly transition of land use and associated water uses through detailed provisions that require the assignment of rights from an overlying pumper to an appropriator when the appropriator provides service to the lands of the overlying pumper.

The Stipulated Agreement declares that there is a temporary surplus of water in the basin of 160,000 acre-feet. The temporary surplus can be used by the appropriators during the first ten years of the Stipulated Agreement. The appropriators will store the unused portion of the temporary surplus for use in subsequent years. The intent of removing the temporary surplus is to create additional evacuated storage space in the basin for use in storing supplemental water. The Stipulated Agreement gives control of the evacuated storage space in the basin and the overall management of storage to the Watermaster.

1961 Rialto Basin Judgment

The Rialto-Colton Basin was adjudicated in the Lytle Creek Water & Improvement Company vs. Fontana Ranchos Water Company, et. al., San Bernardino County Superior Court Action 81264, entered on December 22, 1961. Limits on groundwater extractions are based on the average of the spring-high water level elevations of three wells within the basin. The pro rata water productions by each party (City of Colton, City of Rialto, Fontana Union Water Company, West Valley Water District) are based on the “spring-high water level” in the three index wells as described below:

Above 1002.3 feet	Unlimited
Between 1002.3 and 969.7 feet	As imposed by the judgment
Below 969.7 feet	Reduced by 1% for every foot the average is below 969.7

At the request of several of the stipulating parties, Valley District monitors compliance with the decree and has since the early 1990s.

Cooperative Agreement to Protect Water Quality and Encourage the Conjunctive Uses of Imported Water in the Santa Ana River Basin

Water agencies within the Santa Ana River watershed recognize the importance of protecting the quality of its groundwater resources. In July 2007, many of these agencies (Parties) entered into an agreement with the RWQCB for purposes of monitoring and improving water quality within the SAR Region. The agreement is limited in scope and specifically addresses Salinity Objectives.

Generally, the agreement requires that the Parties analyze the effects on water quality of recharging imported water into groundwater basins. This analysis will be compiled into a report and submitted to the RWQCB every three years (Triennial Water Quality Report). In addition, any new project that will include the recharge of imported water must analyze its effects prior to implementation.

Seven Oaks Accord

On July 21, 2004, Valley District, Western, the City of Redlands, East Valley Water District, Bear Valley Mutual Water Company (Bear Valley Mutual), Lugonia Water Company, North Fork Water Company, and Redlands Water Company signed a settlement agreement known as the Seven Oaks Accord (Accord). The Accord calls for Valley District and Western to recognize the prior rights of the water users for a portion of the natural flow of the SAR. In exchange, the water users agree to withdraw their protests to the water right application submitted by Valley District on behalf of itself and Western. All the parties to the Accord have agreed to support the granting of other necessary permits to allow Valley District and Western to divert water from the SAR. By means of the Accord,

Valley District agreed to modify its water right applications to incorporate implementation of the Accord. Additionally, the Accord calls for Valley District to develop and manage a groundwater spreading program that will maintain groundwater levels at a number of specified wells owned and operated by the other parties. This integrated management of the basin will be adopted within five years of SWRCB approval of the water right applications.

Management of water resources in the Valley District/Western service area takes place within a complex legal and institutional framework as will be discussed in the next section. Development of a comprehensive, coordinated regional water management plan will involve the cooperation of many parties interested in water management in addition to the signatories of the Accord. The Accord provides the framework and a cooperative environment for major water entities in the Upper SAR watershed to prepare a plan for the integrated management of the region's surface water and groundwater resources. This IRWM Plan enhances and refines the current management and planning activities within the region and develops regional water management strategies and the framework for their implementation.

Agreement Relating to the Diversion of Water from the Santa Ana River System Among Western Municipal Water District of Riverside County, Valley District and City of Riverside

In July 2004 a Settlement Agreement Relating to the Diversion of Water from the Santa Ana River System (the Seven Oaks Accord) was signed. The agreement requires Valley District and Western to develop a groundwater spreading program in cooperation with other parties, "That is intended to maintain groundwater levels at the specified wells at relatively constant levels, in spite of the inevitable fluctuations due to hydrologic variation." Other requirements of the Seven Oaks Accord are as follows:

- The groundwater management plan shall identify target water-level ranges in the specified "index wells" subject to the requirement that such spreading will not worsen high groundwater levels in the Pressure Zone.
- Thresholds of significance in terms of SAR water diverted by Valley District and Western and spreading by all parties should be observed. See Appendix I of the Accord (sidebar).
- The determination as to whether a certain groundwater management action will "worsen" high groundwater levels in the Pressure Zone is made through the use of the integrated surface and groundwater models.
- An "integrated management program" must be "adopted" within five years of the date the SWRCB grants a permit to Valley District/Western to divert water from the SAR. Valley District and Western have presented their data to the SWRCB and were told that any permit "terms" would be available in late 2007.
- Water users agree to limit spreading to conform to an annual management plan.

Santa Ana River-Mill Creek Cooperative Water Project Agreement

The SAR-Mill Creek Cooperative Water Project Agreement (informally known as the Exchange Plan) is an agreement among 9 agencies and water companies in eastern San Bernardino Valley executed in May 1976. The 9 parties to the Exchange Plan are as follows:

- Redlands Water Company, Bear Valley Mutual, Crafton Water Company, North Fork Water Company [East Valley Water District], Lugonia Water Company, City of Redlands, San Bernardino Water Conservation District (SBVWCD), YVWD, and the Valley District;

In an effort to avoid pumping costs and to lower the overall cost of water, the parties have agreed to the exchange of water from the SAR, Mill Creek, and the SWP. The agreement is described as a "bucket-for-bucket exchange," whereby a party to the agreement provides a "bucket" of their water to a second, higher elevation party, and the

second party provides a “bucket” of water from an alternate, lower elevation source back to the original party. To facilitate exchanges, parties to the agreement share their existing facilities. However, specific facilities (called Cooperative Water Project facilities) were built and are operated by Valley District in part to accommodate Exchange Plan deliveries. Given the three water sources and the available facilities, there are multiple delivery possibilities. Examples of exchanges that occur under the Exchange Plan include two-level exchanges, three-level exchanges, and water banking with DWR. In a two-level exchange, two water sources are used; for example, SAR water is delivered to Mill Creek water users, and, in return, an equal amount of SWP water is delivered to SAR water users. In a three-level exchange, three sources are used. For example, Mill Creek water is delivered to the Yucaipa area, an equal amount of SAR water is then delivered to Mill Creek water users, and finally SWP water is delivered to SAR water users. To bank water within the SWP, a party entitled to local water exchanges their water when the local water is available and then takes SWP water at a later date.

Big Bear Lake Operations

Bear Valley Dam, which forms Big Bear Lake, is the only major dam that affects runoff into Seven Oaks Dam. Big Bear Lake is a water conservation reservoir presently owned by the Big Bear Municipal Water District (Big Bear Municipal). Big Bear Lake is located on Bear Creek, a tributary to the SAR. The lake has a drainage area of about 38 square miles.

Bear Valley Mutual and its predecessors constructed, owned, and operated Big Bear Lake as a supplemental water supply reservoir to meet the irrigation water supply demand within the Bear Valley Mutual service area in the easterly end of the San Bernardino Valley. Historical irrigation releases during dry periods sometimes caused low water levels in Big Bear Lake.

As recreation uses of Big Bear Lake became more important, Big Bear Municipal sought to control the water levels in the lake. On February 4, 1977, a stipulated judgment was entered in San Bernardino County Superior Court for Case No. 165493 Big Bear Municipal Water District vs. North Fork Water Co. et al. Big Bear Municipal obtained the opportunity to furnish “in-lieu” water from several other named sources other than Big Bear Lake to meet the water supply demands of Bear Valley Mutual. Big Bear Municipal was allowed to retain an amount of water in Big Bear Lake equal to the amount of water furnished in-lieu to Bear Valley Mutual. Big Bear Municipal explored and implemented the alternate sources. Providing water from these alternate in-lieu sources resulted in water being retained in Big Bear Lake to stabilize the water levels in the lake.

On May 1, 1987, Big Bear Municipal adopted operating criteria for Big Bear Lake that contain conditions regarding when Big Bear Municipal will release water from Big Bear Lake and when Big Bear Municipal will acquire in-lieu water for Bear Valley Mutual.

On February 16, 1995, the SAR Water Quality Control Board adopted Order No. 95-4, which requires that Big Bear Municipal make releases from Big Bear Lake through Bear Valley Dam to provide water for preservation of fish in Bear Creek.

On February 1, 1996, Big Bear Municipal and Valley District entered into an agreement that provides for Valley District to furnish all in-lieu water that Big Bear Municipal needs to meet the water supply demands of Bear Valley Mutual.

As a result of the stipulated Judgment, Big Bear Lake is now maintained at higher levels for recreational uses. The lake will spill (i.e., need to release water because the reservoir is full) more often than occurred under the historic irrigation supply operation. However, inflow to the SAR during irrigation months may be less than historic irrigation releases. Inflow to the SAR during winter months may be greater than under the historic operation of Bear Valley Dam. The changes in the operation of Big Bear Lake from an irrigation water supply reservoir to a recreation reservoir result in changes in the timing and amounts of water Big Bear Lake and Bear Creek contribute to the SAR.

Settlement Agreement with San Bernardino Valley Water Conservation District

Within the settlement agreement dated August 9, 2005, Valley District, Western, and the SBVWCD have agreed to work cooperatively to develop an annual groundwater management plan.

Memorandum of Understanding (MOU) with the City of Riverside

In September 2005, Valley District, Western, and the City of Riverside entered into an MOU. The MOU stated that the intent of Valley District/Western is to work cooperatively with the City of Riverside to devise institutional and physical arrangements through which the city could directly benefit from “new conservation” undertaken as part of the Western Judgment and the pending Valley District/Western water right applications. The MOU states, “The Parties (Valley District, Western, and the City of Riverside) shall engage in good-faith negotiations with the goal of reaching a long-term agreement relating to the purchase, storage, and sale to Riverside by Western of imported water stored in the SBBA, and relating to storage, transport and delivery of conservation water from the Seven Oaks Dam...”

Institutional Controls and Settlement Agreement (ICSA)

The City of San Bernardino Municipal Water Department (SBMWD) is a party to a consent decree lodged with the United States District Court, Central District of California, Western Division (Court), on August 18, 2004. The Consent Decree obligates SBMWD to operate and maintain a system of wells and treatment plants known as the Newmark Groundwater Contamination Superfund Site (Newmark Site). The Newmark Site specifically treats groundwater contaminated with trichloroethylene (TCE) and perchloroethylene (PCE). The SBMWD is required by the terms of the Consent Decree, entered on March 23, 2005, to enact institutional controls and implement an ordinance providing for the protection and management of the Interim Remedy set forth in the Record of Decisions and Explanation of Significant Differences prepared by the U.S. Environmental Protection Agency.

The City of San Bernardino Ordinance No. MC-1221, approved in March 2006, establishes the management zone boundaries within the City of San Bernardino for water spreading and water extraction activities. The Consent Decree requires the City of San Bernardino to implement an ordinance to ensure that activities occurring in the management zone do not interfere or cause pass-through of contaminants from the Newmark and Muscoy Operable Units. The Interim Remedy requires the extraction of contaminated groundwater from the Bunker Hill Groundwater Basin and within the Newmark and Muscoy Operable Units, and treatment of the groundwater to meet all State and federal permits and requirements for drinking water. A permit by the SBMWD pursuant to the provisions outlined in the ordinance should first be obtained for any spreading (artificial recharge) or extracting (well pumping) within the Management Zones, as defined in the ordinance.

An ICSA has been executed to develop and adopt a successor agreement, titled Institutional Controls Groundwater Management Program (ICGMP), between the following parties:

- (1) City of San Bernardino Municipal Water Department

- (2) Valley District
- (3) Western Municipal Water District
- (4) City of Riverside
- (5) West Valley Water District
- (6) East Valley Water District
- (7) City of Colton
- (8) Riverside Highland Water Company

The parties listed above will not be subject to the provisions of City of San Bernardino Ordinance No. MC-1221 as long as each is a party to the ICSA and, subsequently, the ICGMP Agreement.

Settlement Agreement between City of San Bernardino and City of Riverside and Riverside Water Company

In November 1922, after a Supreme Court of the State of California decision, the City of San Bernardino (Plaintiff) and the City of Riverside and Riverside Water Company (Defendants) negotiated a settlement agreement to take, divert, and use water from the “San Bernardino Artesian Basin,” Lytle Creek, Warm Creek, and Devil Canyon Creek. The agreement was approved by the San Bernardino County Superior Court in a stipulated judgment that constituted authorities and rights of the parties for taking, diverting, and using the water. The court also established a provision for daily record keeping of all the diversions and use of water by all said parties.

Agreement between City of Riverside, Valley District, and Western – March 2007 (LF2151).

This agreement establishes the Seven Oaks Dam Water Diversions Engineering and Operations Committee (EOC) to develop and implement procedures to:

- i) Maintain the groundwater levels in the Index Wells at relatively constant levels, in spite of fluctuations due to hydrologic variation.
- ii) Minimize such fluctuations (reduce highs and lows).
- iii) Provide water “accounts” to Riverside to offset the loss of recharge to the SBBA and/or Riverside North due to Western/Valley District SAR water diversions.
 - (1) “Reserve Account” is initially established as 38 percent of the total volume of water diverted from the SAR by Valley District and Western pursuant to the SWRCB water right permit. To be recharged in the SBBA either directly or through an exchange.
 - (2) “Replacement water” varies from 0 to 6 percent of the flow at the E Street Bridge. Water to be recharged into the Riverside North basin.
- iv) Develop recommendations to the Western Judgment Watermaster regarding the classification of diverted SAR water as either New Conservation or existing safe yield of the SBBA.

Within the agreement, the EOC is scheduled to meet no later than October 1 of each year. The agreement states:

The EOC shall meet on a regular basis to effectively operate, on a real-time basis, a program to achieve the objectives listed above. EOC decisions will be implemented once approved by the EOC and will be provided to the BTAC for inclusion in the Annual San Bernardino Basin Area Management Plan. The tasks of the EOC could be covered at the BTAC meetings, realizing that most of the 2013 Regional Water Management Plan 12 members of the BTAC have no standing in this agreement and the decisions of the EOC are not subject to review by BTAC or any of the BTAC members.

Water levels at the index wells outside the Pressure Zone must be maintained at no lower than 10 feet, on average, during a repeat of the 39-year base period. Valley District will commence spreading to maintain these levels.

If the 12-month rolling averages of the Backyard Well ports D4, D5, and D6 are 50 feet bgs or greater, Valley District and Western will recharge water from the Reserve Account.

Cooperative Agreement to Protect Water Quality and Encourage the Conjunctive Uses of Imported Water in the Santa Ana River Basin– January 2008 (LF2181).

Requires the preparation of a triennial water quality report, limited to nitrogen and total dissolved solids (TDS), which analyzes whether the recharge of imported water had any adverse impact on compliance with Salinity Objectives established in the Water Quality Control Plan for the Santa Ana River Basin. The first report is due August 2009 and then every three years thereafter.

Requires any party that is serving as a lead agency for a project involving the recharge of imported water to analyze any adverse impacts on Salinity Objectives as part of the California Environmental Quality Act (CEQA) review process. Said analysis must be made with a groundwater quality model listed in the agreement.

San Bernardino Valley Municipal Water District/San Gorgonio Pass Water Agency Demonstration Project Water Exchange Agreement (the "Project")-November 2008 (LF 2205).

The Project consists of a short-term agreement to exchange water between San Bernardino Valley Municipal Water District (Valley) and San Gorgonio Pass Water Agency (Agency). The Project involves the collection of data and information relating to exchanges of water between Valley and Agency in order to determine the long-term feasibility of distribution of water to Valley and the Agency. The Project involves an initial delivery of up to 1,000 acre-feet of water from Agency to Valley on or before March 2009. Thereafter, no earlier than October 2009 and no later December 2011, Valley will deliver a like amount of water back to the Agency. The Project will not require the construction of any facilities for the initial delivery and return of the water exchanged pursuant to the Project. The Agency does not currently need the water that it intends to deliver to Valley and the water received by Valley will not be growth-inducing because it will only be used to improve reliability of supply to its existing water users within Valley. There is no possibility that the Project may have a significant effect on the environment.

San Bernardino Valley Municipal Water District and Crestline-Lake Arrowhead Water Agency Demonstration Project Water Exchange Agreement-November 2008 (LF 2206).

This Agreement authorizes Valley to acquire up to 1,000 acre-feet of State Water Project (SWP) water from Crestline-Lake Arrowhead Water Agency (Agency), and requires Agency to submit a written request to the California Department of Water Resources on or before December 1, 2008, to deliver up to 1,000 AF of Agency's share of SWP Table A water to Valley. In exchange for delivery of that water, Valley will deliver a like amount of water of equal or better quality to Agency within three years of the initial delivery of water to Valley.

Understanding Agreement Regarding the Contribution to Replenishment and Deliveries– September 2009 (LF2255).

This is an understanding agreement between West Valley Water District, the City of Rialto, the City of San Bernardino Municipal Water Department, and San Bernardino Valley Municipal Water District regarding the contribution to replenishment to be made in conjunction with deliveries through the Baseline Feeder of water from the Bunker Hill Basin by the City of San Bernardino Municipal Water Department.

Memorandum of Understanding and Agreement for Cost-Sharing of Feasibility Study for the Garden Bar Water And Power Project-December 2009 (LF 2252).

This Memorandum of Understanding (MOU) and Agreement is between the South Sutter Water District ("SSWD") and the Castaic Lake Water Agency, the Palmdale Water District, the City of Napa, and the San Bernardino Valley Municipal Water District.

The purpose of the MOU between these five entities (Parties) and RMC WATER AND ENVIRONMENT is to establish cost sharing obligations for the preparation of an Updated Reconnaissance Study for the project described as: Garden Bar Water and Power Project (herein after the "PROJECT") which would consist of a new dam and reservoir project located on the Bear River approximately five miles upstream of Camp Far West Reservoir. If approved and implemented, the Project would provide substantial water supply and hydroelectric power generation benefits, as well as other potential benefits, including flood control and recreation.

Joint Prosecution and Cost-Sharing Agreement Re Proposed Rule of the United States Fish & Wildlife Service to Designate Critical Habitat for the Santa Ana Sucker-June 2010 (Lf 2275).

The Parties have agreed to cooperate reasonably in efforts to analyze and comment upon the Proposed Rule by the United States Fish and Wildlife Service in an attempt to address any negative consequences that the ruling may have on the party's interests. These cooperative efforts include the utilization of various experts and consultants to assist with the review of and preparation of comments on the Proposed Rule, and the provision of consulting expert opinions relative to the necessity, wisdom, and efficacy of potential challenges to it.

The list of parties in this agreement includes:

1. San Bernardino Valley Municipal Water District
2. Western Municipal Water District of Riverside County
3. City of Riverside Public Utilities
4. City of San Bernardino Municipal Water Department
5. San Bernardino Valley Water Conservation District
6. Southern California Edison
7. East Valley Water District
8. City of Highland
9. City of Redlands
10. Yucaipa Valley Water District
11. San Bernardino County Flood Control District
12. Bear Valley Mutual Water Company/Crafton Water Company
13. Big Bear Municipal Water District

Other Possible Partner Agencies:

1. West Valley Water District
2. Raymond Basin Management Board/San Gabriel Valley Water Association
3. City of Colton
4. City of Rialto
5. Riverside County Flood Control District
6. Orange County Flood Control District

Joint Prosecution and Cost-Sharing Agreement Re Final Rule of the United States Fish & Wildlife Service to Designate Critical Habitat for the Santa Ana Sucker- April 2011 (LF 2304).

This cost sharing agreement define the Parties contribution to the sums listed in Exhibit B, which sets forth each Party's contribution towards the fees and costs collectively incurred in the Parties' cooperative efforts on the Final

Rule, plus the funds that may be needed to pursue a challenge to the Final Rule. The list of parties in this agreement includes:

1. San Bernardino Valley Municipal Water District
2. Western Municipal Water District of Riverside County
3. City of Riverside Public Utilities
4. City of San Bernardino Municipal Water Department
5. San Bernardino Valley Water Conservation District
6. East Valley Water District
7. City of Redlands
8. Yucaipa Valley Water District
9. Bear Valley Mutual Water Company/Crafton Water Company
10. Big Bear Municipal Water District
11. West Valley Water District
12. Riverside County Flood Control District

Agreement between Kern Delta Water District and the San Bernardino Valley Municipal Water District for a Water Management Program-October 2011 (LF 2327).

This agreement is in furtherance of development of a water management program that is being implemented by Kern Delta and Valley for the purpose of enhancing the water supply available to both entities. San Bernardino Valley Municipal Water District proposes to bank State Water Project water in banking facilities operated by the Kern Delta Water District for later withdrawal and use within Valley District. Under the program, the Valley District will bank up to 30,000 acre-feet of the water it would otherwise be allocated during the 2011-2012 water year pursuant to Table "A" of its State Water Project contract in existing water banking facilities operated by the Kern Delta. Diversions to the water banking facilities will be made through existing water conveyance facilities and will occur during the period between October 2011 and February 2012. Under the proposal, Kern Delta will, at Valley District's request, return up to 5,000 acre-feet per year to Valley District through existing conveyance facilities during or after the 2011-2012 water year.

Agreement between San Bernardino Valley Municipal Water District and Metropolitan Water District of Southern California for Emergency Services and Pipe Fabrication and Related Technical Services- November 2011 (LF 2335).

The services provided by Metropolitan to San Bernardino Valley MWD shall be emergency type services or routine type services covering the following sub-elements:

1. Preparation of services estimates
2. Engineering (including design, troubleshooting, and inspection services)
3. Project management and planning (including shop drawings detailing services)
4. Quality assurance and quality control, including destructive and non-destructive testing
5. Machining, fabrication, welding, and industrial coating and mortar-lining of various water treatment, conveyance and distribution parts, pipes, and equipment
6. Refurbishment of various water treatment, conveyance and distribution equipment
7. Site construction services
8. Diving services
9. Crane certification services
10. Transportation services

Agreement to Develop and Operate Enhanced Recharge Facilities between the San Bernardino Valley Water Conservation District (the "Conservation District"), the San Bernardino Valley Municipal Water District ("Valley District") and Western Municipal Water District of Riverside County ("Western")-October 2012 (LF 2382).

This agreement authorizes the lease of Conservation District facilities for the Purpose of Groundwater Recharge to Valley District and Western. The purpose of such agreement is to increase groundwater storage in the SBBA in order to meet current and future demands for water among the party's constituents. This agreement allow Valley District and Western to construct, operate, maintain, repair, reconstruct and rehabilitate diversion facilities, recharge basins, pumps and other ancillary facilities or equipment located within the Leased Property as Valley District and Western may reasonably deem necessary for the recharging of water on the Leased Property. This agreement has an initial term of 25 years, unless terminated earlier as provided in this agreement. This agreement may be extended by written agreement among all parties for up to five additional, consecutive five year terms ("Extension Terms"), on the same terms and conditions.

Agreement for the Cooperative Use of Unused Well Capacity, the Texas Grove Reservoir and the Central Feeder-April 2013 (LF 2392).

This is agreement is between the San Bernardino Valley Municipal Water District and the City of Redlands for the Cooperative Use of Unused Well Capacity, the Texas Grove Reservoir and the Central Feeder ("Agreement"). Under this agreement, Valley District will purchase 2.3 million gallons of capacity in the City's existing Texas Grove Reservoir which is connected to Valley District's Redlands Pump Station that delivers water to Valley Districts Central Feeder Pipeline. Valley District will have an annual option of purchasing up to 20,000 acre-feet of existing well capacity to the extent such capacity is not needed by the City in any given year. The purpose of the project is to postpone the need for Valley District to construct new water facilities in the area. The project involves the operation of existing facilities within existing limits established by applicable laws, regulations, agreements, and permits. This Agreement shall have an initial term of five years from its Effective Date and shall automatically renew for subsequent five-year terms thereafter unless terminated by the parties involved.

Agreement Regarding Additional Extractions of New Conservation Water from the San Bernardino Basin Area-July 2013 (LF 2402).

This Agreement is between San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County. The primary purpose of this Agreement is to provide for additional extractions of water from the SBBA by Plaintiffs and users within Valley District without replenishment by Valley District in amounts equal to the amount of New Conservation determined by Watermaster to have occurred from 1998 through 2012 due to operation of the Dam.

Planning Memorandum of Understanding between the San Bernardino County Flood Control District and the San Bernardino Valley Municipal Water District-July 2013 (LF 2404).

This Memorandum of Understanding (MOU) approves a ten year Planning Agreement (Agreement No. 13-608) between the San Bernardino County Flood Control District and the San Bernardino Valley Municipal Water District for the purpose of working together in the planning and evaluation of San Bernardino County Flood Control District facilities for joint use by the San Bernardino County Flood Control District and the San Bernardino Valley Municipal Water District for both flood control and groundwater replenishment operations.

Coordinated Operations Agreement between the San Bernardino Municipal Water Department and San Bernardino Valley Municipal Water District -September 2013 (LF 2415).

This Agreement governs the Parties' coordinated operation and use of the San Bernardino Municipal Water Department Facilities and the San Bernardino Valley Municipal Water District Facilities as described in Exhibit A, respectively. This Agreement shall have an initial term of twenty-five (25) years from its Effective Date and shall automatically renew for subsequent ten-year terms thereafter unless terminated.

Amendment to Agreement to Form the Upper Santa Ana River Wash Land Management and Habitat Conservation Plan Task Force-September 2013 (LF 2407).

This is an amendment to the 2002 Agreement to form The Upper Santa Ana River Wash Land Management and Habitat Conservation Plan Task Force ("Amendment") for the purposes of advancing environmental planning and permitting in connection with the Upper Santa Ana River Wash Land Management Plan ("Wash Plan"). This amendment is made effective on September 1st , 2013, by and between the following entities, CEMEX Construction Materials LP ("CEMEX"), Robertson's Ready Mix, LTD, ("Robertson's"), The City of Highland ("Highland"), East Valley Water District ("EWD"), The City of Redlands ("Redlands"), Redlands Municipal Utilities and Engineering Department ("RMUED"), County of San Bernardino ("San Bernardino County"), San Bernardino Flood Control District ("SBCFCD"), San Bernardino Valley Water Conservation District ("SBVWCD" or "Conservation District"), United States Bureau Of Land Management ("BLM"), And San Bernardino Valley Municipal Water District ("Valley District").

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8 **AGREEMENT**
9 **RELATING TO THE DIVERSION OF WATER**
10 **FROM THE SANTA ANA RIVER SYSTEM**
11 **AMONG**
12 **WESTERN MUNICIPAL WATER DISTRICT**
13 **OF RIVERSIDE COUNTY,**
14 **SAN BERNARDINO VALLEY**
15 **MUNICIPAL WATER DISTRICT**
16 **AND**
17 **CITY OF RIVERSIDE**
18 **(March 20, 2007)**
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**AGREEMENT
RELATING TO THE DIVERSION OF WATER
FROM THE SANTA ANA RIVER SYSTEM
AMONG
WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY,
SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
AND
CITY OF RIVERSIDE**

7

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
1. PARTIES.....	1
2. RECITALS.....	1
3. AGREEMENT.....	4
4. BANKING AND EXCHANGES.....	12
5. RIVERSIDE'S RECYCLED MUNICIPAL WASTEWATER.....	13
6. <i>WESTERN</i> JUDGMENT PRODUCTION LIMITS.....	13
7. WATERMASTER ACCOUNTING.....	13
8. RELATIONSHIP TO OTHER AGREEMENTS AND JUDGMENTS.....	14
9. LIST OF EXHIBITS.....	14
10. REMEDIES.....	14
11. AUTHORIZED REPRESENTATIVES.....	15
12. GENERAL PROVISIONS.....	15
EXHIBIT A - LIST AND FIGURE OF SBBA INDEX WELLS	
EXHIBIT B - RIVERSIDE NORTH BASIN WELLS	
EXHIBIT C - COORDINATED OPERATING AGREEMENT BETWEEN THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA AND SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT	
EXHIBIT D - SECTIONS 12 AND 13 OF ICSA SETTLEMENT	

1
2
3
4
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**AGREEMENT
RELATING TO THE DIVERSION OF WATER
FROM THE SANTA ANA RIVER SYSTEM
AMONG
WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY,
SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
AND
CITY OF RIVERSIDE**

1. **PARTIES:** This Agreement relating to the diversion of water from the Santa Ana River System ("Agreement") is entered into and effective this 20th day of March, 2007 by and among the City of Riverside ("Riverside"), San Bernardino Valley Municipal Water District ("Muni") and Western Municipal Water District of Riverside County ("Western"). Muni and Western are collectively referred to as "Muni/Western." Each party to this Agreement is referred to as a "Party" and the parties collectively are referred to as the "Parties."

2. **RECITALS:**

2.1 The Parties are interested in the efficient management of the water resources, both local and imported, available to them and desire to work cooperatively to ensure that the demands, both current and future, of all users within the Parties' respective service areas are satisfied by maximizing the yield of the local water supplies and utilizing the available imported water supplies as necessary.

2.2 The Parties were all parties to the litigation that resulted in the judgment in *Orange County Water District v. City of Chino et al.* (Orange County Superior Court No. 117628, April 17, 1969) (the "*Orange County Judgment*"). Under the terms of that judgment, each of the Parties has "full freedom to engage in any activity for water conservation or storage of storm flows above Prado Reservoir" as long as Western and the Inland Empire Utilities Agency deliver certain quantities of base flow to Orange County Water District.

2.3 The Parties are all parties to the judgment in *Western Municipal Water District et al. v. East San Bernardino County Water District et al.* (Riverside County Superior Court No. 78426, April 17, 1969) (the "*Western Judgment*"). Under the terms of that judgment,

1 Riverside is entitled to extract a total of 49,542 afy from the San Bernardino Basin Area
2 ("SBBA") for export outside San Bernardino County. The *Western* Judgment also
3 addresses Riverside's extractions in the Colton, Riverside North and Riverside South
4 groundwater basins. Collectively, the SBBA, Colton, Riverside North and Riverside South
5 groundwater basins are referred to as the "Groundwater Basins."

6 2.4 Riverside has developed groundwater resources from the Groundwater Basins and
7 has invested significant resources to produce, treat, transport, and deliver such water. The
8 *Western* Judgment also provides certain safeguards to ensure that all groundwater producers
9 may, in fact, exercise the rights referenced in the immediately preceding Section, most
10 notably a requirement that Muni and Western each replenish certain groundwater basins
11 under certain conditions in order to maintain the safe yield of the Groundwater Basins.

12 2.5 The construction of the Seven Oaks Dam ("SOD") by the US Army Corps of
13 Engineers provides the opportunity to increase the yield of the Groundwater Basins through
14 the development of additional Santa Ana River ("SAR") water that was historically not
15 utilized by the Parties. The *Western* Judgment defines "New Conservation" as "any
16 increase in replenishment from natural precipitation which results from operation of works
17 and facilities not now in existence" and contemplates that the Parties will develop additional
18 water supplies from the implementation of water conservation efforts under the terms of the
19 *Orange County* Judgment ("New Conservation"). The *Western* Judgment further
20 contemplates that Western, Riverside and other so-called Plaintiff Parties under the *Western*
21 Judgment shall have their adjusted extraction rights increased to include a proportionate
22 share of any New Conservation, provided that each Plaintiff Party pays its proportionate
23 share of the costs of such New Conservation.

24 2.6 Muni/Western have filed two water right applications with the State Water
25 Resources Control Board that, when approved, are intended to allow the development of
26 New Conservation from the diversion of the waters of the Santa Ana River that would

1 otherwise flow out of the area without being put to beneficial use. If granted in their
2 entirety, these applications would permit the conservation of up to 200,000 afy of native
3 (local) water from the Santa Ana River. Muni/Western have prepared an Environmental
4 Impact Report (the "Muni/Western EIR") that analyzes the potential effects on the
5 environment of the water rights applications and the facilities needed to place water diverted
6 from the Santa Ana River to reasonable and beneficial use (the "Project"). Riverside
7 provided comments to the draft version of the Muni/Western EIR.

8 2.7 The Parties agree that the Project, as identified in the EIR, has the potential to: a)
9 increase water supply reliability by reducing dependence on imported water; b) develop and
10 deliver a new, local, high quality, long-term water supply that is needed to meet a portion of
11 the anticipated future demands in their service areas; c) expand operational flexibility by
12 adding infrastructure and varying sources of water, thereby providing the Parties greater
13 capability to meet future water demands; and d) reduce the threat of liquefaction induced
14 damages caused by a combination of high groundwater and earthquake activity.

15 2.8 Further, the Parties recognize that Muni/Western's proposed diversion of water to
16 satisfy the Project's objectives listed above may have adverse effects on Riverside's water
17 resources in the Groundwater Basins.

18 2.9 Muni/Western desire to mitigate impacts that may be caused by the Project to
19 Riverside's water resources while also allowing for the maximum diversion of water by
20 Muni/Western from the SAR and avoiding conditions of high groundwater that create a risk
21 of liquefaction in the Pressure Zone of the SBBA groundwater basin and other groundwater
22 basins. This will be accomplished through the development and implementation of a
23 cooperative program as a part of the Integrated Regional Groundwater Management Plan for
24 the Upper Santa Ana River Watershed, which plan is currently being renamed to reference
25 water management generally and will hereinafter be referred to as the Integrated Regional
26 Water Management Plan for the Upper Santa Ana River Watershed ("IRWMP").

1 2.10 Riverside has submitted an application and a petition to the State Water Resources
2 Control Board to change the point of discharge, place of use, and purpose of use for its
3 treated wastewater effluent from the SAR. Riverside has prepared a Program EIR (PEIR)
4 for a Recycled Water Program.

5 2.11 The Parties wish to memorialize their understandings by means of this
6 Agreement.

7 3. **AGREEMENT:** The Parties agree as follows:

8 3.1 State Water Resources Control Board ("SWRCB") Process.

9 3.1.1 Riverside will support Muni/Western's applications before the SWRCB,
10 the California Department of Fish and Game ("DFG"), the U.S. Fish and Wildlife Service
11 ("USFWS"), the U.S. Army Corps of Engineers, the Santa Ana Regional Water Quality
12 Control Board, the "Local Sponsors" (San Bernardino County Flood Control District,
13 Riverside County Flood Control and Water Conservation District and Orange County Flood
14 Control District), and the U.S. Forest Service ("USFS").

15 3.1.2 Muni/Western will support Riverside's application and petition before the
16 SWRCB, DFG, USFWS, USFS and the Santa Ana Regional Water Quality Control Board.

17 3.1.3 Each Party shall cooperate with the other Parties to the extent consistent
18 with its own interests in connection with securing the water rights sought by the other
19 Parties through the SAR water right hearing(s). Except as agreed in writing by the
20 Authorized Representatives, or as provided by any existing cost sharing arrangements
21 between the Parties, each Party shall bear its own costs related to such cooperation.

22 3.2 California Environmental Quality Act (CEQA) Process.

23 3.2.1 Muni/Western will not challenge Riverside's PEIR for its recycled water
24 project.

25 3.2.2 Riverside will not challenge the Muni/Western EIR for diversions from
26 the Santa Ana River.

1 3.3 Seven Oaks Dam Water Diversions Engineering and Operations Committee. The
2 Parties hereby establish the Seven Oaks Dam Water Diversions Engineering and Operations
3 Committee ("EOC"), which committee shall initially be comprised of the Authorized
4 Representatives and shall be responsible for implementing this Agreement and shall operate
5 on a consensus basis in all matters. The EOC shall develop and implement procedures
6 intended to (i) maintain groundwater levels at the wells specified in Exhibit A at relatively
7 constant levels, in spite of fluctuations due to hydrologic variation, (ii) minimize such
8 fluctuations (reduce the highs and lows in groundwater levels), (iii) provide replacement
9 water to Riverside when water diversions from the SAR by Muni/Western reduce, or are
10 deemed under this agreement to reduce, recharge into the SBBA and Riverside North Basin,
11 as provided pursuant to Sections 3.8.4 and 3.9, and (iv) develop recommendations to the
12 *Western* Judgment Watermaster regarding the classification of the diverted SAR water as
13 either New Conservation or existing safe yield of the SBBA.

14 3.4 EOC Procedures. The Authorized Representatives shall meet no later than six (6)
15 months subsequent to approval of Muni/Western SAR water right applications by SWRCB
16 to develop the initial EOC procedures in accordance with the provisions of this Agreement.
17 The Authorized Representatives shall initiate a review of the procedures referred to in
18 Section 3.3 of this Agreement no later than October 1 of each year during the term of this
19 Agreement and, as may be necessary, shall revise such procedures by the following January
20 31. The EOC may hold such additional meetings during each water year (October 1 to
21 September 30) as may be necessary to update the procedures to reflect changing conditions.

22 3.5 Real-Time Implementation of Agreement Objectives. The EOC shall meet on a
23 regular basis, as needed, to effectively operate, on a real-time basis, a program to achieve
24 the objectives of Section 3.3.

25 3.6 Accumulated Basin Replenishment Credits. Unless otherwise agreed by the
26 Authorized Representatives, Muni/Western shall not use basin replenishment credits

1 accumulated under the *Western* Judgment to meet its recharge obligations under this
2 Agreement.

3 3.7 Remedies. In the event that the Parties disagree regarding the implementation of
4 Sections 3.3 through 3.9 of this Agreement, the decision shall be made by a registered
5 professional engineer acceptable to all Parties using, to the extent practicable, the
6 procedures set forth in Section 10 below, provided that the fact of such disagreement shall
7 not limit Muni/Western's ability to divert water from the SAR or to implement the terms of
8 any arrangement for the banking or exchange of SAR water, nor limit any Parties' ability to
9 concurrently use the dispute resolution process of Section 10 for such disagreement.

10 3.8 Thresholds of Groundwater Levels of Significance and Mitigation Measures for
11 SBBA. The following thresholds of groundwater levels of significance and mitigation
12 measures in the SBBA shall be monitored and maintained as provided by EOC procedures:

13 3.8.1 *Outside the Pressure Zone* – A reduction in groundwater levels outside
14 the Pressure Zone is significant if the analysis in the Muni/Western EIR, using the
15 integrated surface water and groundwater model developed by Muni/Western (the
16 USGS/Geoscience/Secor model of the Bunker Hill Groundwater Basin) and annual field
17 verifications, predicts that the Project would reduce static groundwater levels at one or more
18 index wells listed in Exhibit A, on average, by more than 10.0 feet during a repetition of the
19 39-year base hydrology (1962-2000), as compared to static water levels in the absence of
20 the Project. "Annual field verifications" shall mean a comparison of actual groundwater
21 levels to computer model generated predictions. To avoid a significant effect on the
22 groundwater levels at one or more index wells located outside the pressure zone,
23 Muni/Western shall commence spreading water from its SAR water made available
24 pursuant to a SWRCB permit or license or from the Reserve Account defined in Section
25 3.8.4 within one (1) calendar year and shall spread either such SAR water or Reserve
26 Account water sufficient to maintain static groundwater levels at the affected index wells to

1 reduce this project impact to less-than-significant level by no later than the end of the
2 following calendar year, unless otherwise agreed to by the Authorized Representatives.

3 3.8.2 *Within the Pressure Zone* – If the average of the 12-month rolling
4 averages of the static groundwater level measurements for the USGS/MUNI Backyard
5 Wells D4, D5, and D6 (SWNs 1S/4W-22D4,5,6 USGS Station Numbers
6 340439117173904,5,6) is 50 feet below ground surface (bgs) or greater, then Muni/Western
7 shall spread water from its SAR water made available under a SWRCB permit or license or
8 from the Reserve Account defined in Section 3.8.4, until such averages are less than 50 feet
9 bgs. When required, Muni/Western shall commence spreading its SAR water made
10 available under a SWRCB permit or license or from Reserve Account water within one (1)
11 calendar year and shall complete such spreading no later than the end of the following
12 calendar year, unless otherwise agreed to by the Authorized Representatives.

13 3.8.3 *Index Well Change* - It is the understanding of the Parties that the wells
14 used to determine whether Muni/Western shall spread water may be changed by written
15 agreement of the Authorized Representatives. It is further understood by the Parties that the
16 IRWMP process may conclude that it would be beneficial for Muni/Western to spread, or
17 not spread, water based on other factors in addition to the water levels in Index Wells
18 identified in this Agreement and that the Authorized Representatives shall take such
19 conclusions into consideration when determining if a well change is appropriate.

20 3.8.4 *Reserve Account* – The Reserve Account identified in Sections 3.8.1 and
21 3.8.2 shall be established as 38% of the total volume of water diverted by Muni/Western
22 from the SAR pursuant to a SWRCB permit or license. Such SAR water diverted by
23 Muni/Western and recharged in the SBBA, either directly or through an exchange, shall be
24 subtracted from the Reserve Account balance. SAR water directly delivered may be
25 similarly credited, if such credit is deemed appropriate by the EOC. Any credits established
26 through the recharge of more than 38% of the water diverted by Muni/Western shall expire

1 from the Reserve Account after five years if not used. This method of calculating the
2 Reserve Account water, 38% of total volume diverted by Muni/Western, will remain in
3 effect for 12 months after the first diversion of SAR water is made by Muni/Western, unless
4 the Parties mutually agree to an extension. During this time, the EOC defined in Section
5 3.3 will evaluate the available hydrology and recharge data for the SAR and SBBA to
6 determine if a modification to the 38% recharge factor is appropriate.

7 3.8.5 *Water Quality* - The Muni/Western water diversions and recharge
8 activities in the Groundwater Basins shall be consistent with the basin water quality
9 objectives as adopted by the Santa Ana Regional Water Quality Control Board outlined in
10 the most recent version of the Water Quality Control Plan, or any cooperative agreement
11 among the Santa Ana Regional Water Quality Control Board and agencies recharging water
12 in the Santa Ana River Watershed.

13 3.9 Potential Reduced Recharge and Mitigation Measures for Riverside North Basin.

14 The Parties agree that, under certain circumstances, water diversions from the SAR could
15 cause reduced recharge from surface water or groundwater, or both, into the Riverside North
16 Basin.

17 3.9.1 *Replacement Water Volume Calculation* - To alleviate this impact,
18 Muni/Western agree to provide replacement water to Riverside, in the Riverside North
19 Basin using daily flow data from the USGS E Street Gage 11059300 and by visual
20 inspection at the following bridges over the Santa Ana River: E Street Bridge and Mt.
21 Vernon Bridge.

22 3.9.1.1 The daily amount of reduced recharge shall be calculated using the
23 following table:

24 Is there visible flow in the SAR at E Street Bridge (using the USGS Gage > 0)?	25 Is there "Bank to Bank" Flow in the SAR at Mt. Vernon Bridge?	Muni/Western Diversion Amount, cfs	Reduced Recharge Amount, cfs
26 No	No	Less than 37 cfs	None

No	No	Greater than 37 cfs	6% of Muni/Western diversion less 37 cfs
Yes	No	Greater than zero	6% of total Muni/Western diversion
Yes	Yes	Greater than zero	None

3.9.1.2 The Muni/Western replacement obligation (total amount of reduced recharge) shall be equal to the summation of all of the daily calculations of reduced recharge for the diversion season.

3.9.1.3 A new calculation method for the Muni/Western recharge obligation in the Riverside North Basin may be developed and used in the future by agreement of the Authorized Representatives.

3.9.1.4 The Muni/Western replacement obligation shall be recorded in a "Riverside North Basin Recharge Account." Said account shall be administered by the Authorized Representatives in accord with the terms of this Agreement.

3.9.1.5 The Authorized Representatives may reduce the Muni/Western replacement obligation based on high groundwater or other special conditions within the Riverside North Basin.

3.9.1.6 The calculation of reduced recharge to the Riverside North Basin shall be made by Muni/Western at the end of the "diversion season", (September 30th) of each year.

3.9.2 *Replacement Water Delivery Timeline* - The Muni/Western replacement obligation shall be delivered within five years of the Muni/Western diversions which incurred the obligation. However, Muni/Western will use reasonable efforts to satisfy the Muni/Western replacement obligation within one (1) year of incurring the obligation.

3.9.3 *Recharge Locations* - Muni/Western will determine the most cost effective means of meeting their replacement obligation under this Agreement and will consult with groundwater producers in the Riverside North Basin and look for opportunities

1 to cooperate with others to develop multiple-use recharge facilities. Any Muni/Western
2 recharge obligation under this Agreement is anticipated to be satisfied using one or both of
3 the alternatives in Section 3.9.3.1 and 3.9.3.2. However, the choice of such alternative is
4 contingent upon the parties complying with all environmental laws arising out of or in
5 connection with such recharge. The term "environmental laws" shall include, without
6 limitation, the California Environmental Quality Act and all other applicable state and
7 federal environmental laws. The parties also acknowledge that other alternatives may be
8 identified and considered, and that by entering into the Agreement no selection has been
9 made of any alternative:

10 3.9.3.1 In-stream recharge in the SAR bed between Riverside's Meeks
11 #1 Well and Flume #6 Well at no cost to Riverside.

12 3.9.3.2 Off-stream recharge in available properties on either side of the
13 SAR in between Riverside's Meeks #1 Well and Flume #6 Well. The Parties may jointly
14 pursue the development of the diversion and recharge facilities on an agreed upon cost
15 allocation based on benefits from the project. Unless otherwise agreed by the Parties,
16 Riverside's portion of the funding will include any land they own which is used for the
17 project. Riverside shall retain ownership of the land and be given ownership of any project
18 improvements on the land. Riverside will also operate and maintain the project. Any storm
19 water captured by any joint project shall be credited toward the Muni/Western recharge
20 obligation under the Riverside North Basin Recharge Account. Riverside has no obligation,
21 but will make reasonable efforts, to develop and/or fund such recharge facilities.
22 Muni/Western agree to fully cooperate with any application to or before the SWRCB made
23 by Riverside, Muni and/or Western for diversion of water to such recharge facilities.

24 3.9.4 *In Lieu Delivery* - If Muni/Western cannot deliver the total volume of
25 replacement water required per Section 3.9.1 due to water supply shortages or other
26 circumstances, Muni/Western shall satisfy and discharge that obligation by means of the

1 direct delivery of a quantity of water to Riverside equal to and in lieu of recharging
2 additional water in the Riverside North Basin. Said in lieu delivery shall not exceed 71.51%
3 of the Muni/Western replacement obligation for any given year and shall be delivered by
4 one, or more, of the following options. Such option shall be exercised at the sole discretion
5 of Riverside. Muni/Western shall make such in lieu deliveries to Riverside in a manner that
6 is acceptable to all Parties, which may include the following:

7 3.9.4.1 A recommendation by Muni/Western to the *Western*
8 Watermaster that Riverside be allowed to increase its extractions from the Bunker Hill
9 Basin to an amount greater than Riverside's export rights under the *Western* Judgment for
10 the subsequent water year, provided that such additional extractions do not create an
11 additional replenishment obligation, as defined in the *Western* Judgment, on the part of
12 Muni. This option shall only satisfy and discharge Muni/Western's replacement water
13 obligation if the *Western* Watermaster and, if appropriate, the Superior Court of Riverside
14 County, determine that such additional extractions are permitted under the terms of the
15 *Western* Judgment.

16 3.9.4.2 The delivery of treated, potable water to Riverside at the
17 Metropolitan Water District's ("MWD") Henry J. Mills Water Treatment Plant with
18 Riverside paying Muni/Western an amount equal to the sum of: (i) the MWD Treated
19 Water Surcharge, as set forth in MWD's then-current rate schedules, and (ii) Riverside's
20 avoided pumping costs. The avoided pumping costs will be equal to Riverside's average
21 cost to produce water from the Riverside North Basin wells identified on Exhibit B for the
22 previous twenty-four (24) month period.

23 3.9.4.3 The delivery of water by Muni/Western to the Rice-Thorne
24 pipeline from the Baseline Feeder South Pipeline at no cost to Riverside.

25 3.9.4.4 The remaining 28.49 % must be recharged in Riverside North
26 Basin by Muni/Western as soon as practicable.

1 3.9.4.5 If Muni/Western delivers in lieu water to Riverside as provided for in this
2 Section 3.9.4 during a given year, Riverside's maximum entitlement to pump from the
3 Riverside North Basin during such year shall be reduced by an amount equal to the amount
4 actually pumped in excess of Riverside's Bunker Hill Basin export rights under the *Western*
5 Judgment or otherwise delivered to Riverside.

6 3.10 *CEQA Compliance.* The Parties agree that they intend to implement the
7 provisions of Sections 3.3 to 3.10 of this Agreement through either: (i) the use of existing
8 water rights and water extraction, conveyance, storage and distribution facilities, within the
9 existing physical, legal and institutional limits pertaining to such rights and facilities; or (ii)
10 the use of the water rights and physical facilities that comprise the Project, which are
11 described in the Muni/Western EIR, within the limits identified in the Muni/Western EIR.
12 If the Parties determine that additional water rights, institutional arrangements, banking or
13 exchange agreements, or physical facilities are necessary to implement this Agreement, the
14 Parties will undertake such subsequent environmental review and analysis as may be
15 required for such discretionary actions by the terms of CEQA.

16 4. **BANKING AND EXCHANGES:**

17 4.1 The Parties understand and acknowledge that they intend to bank and/or exchange
18 substantial quantities of SAR water for water imported from the State Water Project, or
19 other sources of imported or native water. Such banking and/or exchanges shall be
20 conducted pursuant to a comprehensive program for water banking and/or exchanges in the
21 San Bernardino Valley and elsewhere in Southern California that includes, but is not limited
22 to:

23 4.1.1 The groundwater spreading plan described in the July 21, 2004 Settlement
24 Agreement Relating to the Diversion of Water from the Santa Ana River System ("Seven
25 Oaks Accord");

26 4.1.2 The Projects described in the Muni/Western EIR; and

1 4.1.3 Any exchange or banking of water that may occur pursuant to the
2 Coordinated Operating Agreement Between The Metropolitan Water District of Southern
3 California and San Bernardino Valley Municipal Water District, dated July 10, 2000, as
4 amended, as attached hereto as Exhibit C (the "Coordinated Operating Agreement") and
5 incorporated herein by this reference, including but not limited to projects undertaken
6 pursuant to the agreement referred to as "Attachment 6" in the Coordinated Operating
7 Agreement, incorporated herein by this reference.

8 4.2 Riverside agrees that it will not oppose any such banking or exchange project(s);
9 provided, that (i) such project is implemented in a manner not inconsistent with the terms of
10 this Agreement; (ii) such project shall not result in an unmitigated adverse impact on
11 Riverside's sources of groundwater supply in the Groundwater Basins or Riverside's costs
12 related to the extraction of such groundwater; and (iii) in the implementation of the
13 Coordinated Operating Agreement, Muni shall not deliver Riverside's portion of any New
14 Conservation, as such term is defined in the *Western Judgment*, to Western without the prior
15 written consent of Riverside's Authorized Representative. Riverside agrees that any water
16 delivered to Riverside, directly or in lieu, by means of such banking or exchanges projects
17 shall be used in accordance with the SWRCB water rights permit or license obtained by
18 Muni/Western.

19 5. **RIVERSIDE'S RECYCLED MUNICIPAL WASTEWATER:** Nothing in this
20 Agreement shall be construed to regulate Riverside's use of its recycled municipal
21 wastewater.

22 6. **WESTERN JUDGMENT PRODUCTION LIMITS:** Nothing in this Agreement
23 should be construed to increase or diminish the groundwater production limits contained in
24 the *Western Judgment*.

25 7. **WATERMASTER ACCOUNTING:** The Parties agree to use their best efforts to
26 implement an accounting methodology under the *Western Judgment*, including any

1 amendments thereto, that will allow the Plaintiffs therein to utilize their full entitlement in
2 the SBBA. Specifically, to the extent that the extractions by any Plaintiff to the *Western*
3 Judgment are less than the limits set forth therein, such Plaintiff party shall be allowed to
4 use such unused extractions as a credit in following years, meaning that any extractions in
5 excess of the limits imposed by the *Western* Judgment, in future years, may be offset by
6 such credits and the Plaintiff party shall not be deemed to be in violation of the extraction
7 limits for the *Western* Judgment.

8 **8. RELATIONSHIP TO OTHER AGREEMENTS AND JUDGMENTS:** There are a
9 number of existing judgments and agreements that impose conditions on the Parties that
10 may have an effect on the implementation of this Agreement. The EOC procedures outlined
11 in this Agreement shall be developed and implemented in a manner consistent with each
12 Party's rights and obligations under existing judgments and agreements and nothing in this
13 Agreement is intended to modify the rights or obligations of the Parties under the terms of
14 such judgments or agreements.

15 **9. LIST OF EXHIBITS:** This Agreement includes and incorporates by reference the
16 following exhibits:

17 9.1 Exhibit A: List and Figure of Index Wells

18 9.2 Exhibit B: List of Riverside North Basin Wells

19 9.3 Exhibit C: Coordinated Operating Agreement for Conveyance Facilities and State
20 Water Project Between Metropolitan Water District of Southern California And San
Bernardino Valley Municipal Water District, including Attachments 1-6.

21 9.4 Exhibit D: Sections 12 and 13 of ICSA Settlement

22 **10. REMEDIES.** In the event that one Party believes that another Party, for reasons other
23 than the lack of funding or other resources, has failed to comply with its obligations under
24 this Agreement, or to dispute a matter referred to or a decision rendered under Section 3.7
25 hereto, the Parties shall use the dispute resolution provisions set forth in Sections 12 and 13
26 of the Agreement to Develop and Adopt an Institutional Controls Groundwater Management

1 Program, dated January 1, 2005 (the "ICSA Settlement"), which Sections are set forth as
2 Exhibit D and incorporated herein by reference. The Parties agree, however, that any
3 challenge to a decision of an arbitrator as described in Section 13 of the ICSA Settlement
4 shall be brought in the Superior Court of Riverside County, not in the United States Court
5 for the Central District of California. The Parties also agree that the arbitrator need not have
6 experience in groundwater contamination or environmental clean-up, as described in
7 Section 12 of the ICSA Settlement.

8 11. **AUTHORIZED REPRESENTATIVES:** Each Party shall designate by written notice
9 to the other Parties a representative who is authorized to act on its behalf in the
10 implementation of this Agreement and with respect to those matters contained herein which
11 are the functions and responsibilities of such Authorized Representative. Each Party may at
12 any time change the designation of their Authorized Representative by written notice to the
13 other Party. Such Authorized Representative shall have the authority to act for their
14 respective Parties in all matters relating to performance of this Agreement, including any
15 amendment of the Exhibits hereto. However, except as otherwise provided, they shall not
16 have the authority to amend or modify any provision of this Agreement.

17 12. **GENERAL PROVISIONS:**

18 12.1 Effective Date and Term. This Agreement shall be effective on the date first
19 written above and shall then continue until terminated by mutual consent of all Parties
20 hereto. Sections 3.3 through 3.10 of this Agreement shall not take effect until the SWRCB
21 issues a permit for the Western/Muni Applications.

22 12.2 Choice of Law. This Agreement and any dispute hereunder shall be governed by
23 and construed in accordance with the laws, except for laws pertaining to the choice of laws,
24 of the State of California.

25 12.3 No Waiver. No failure or delay in exercising any right, power or privilege
26 hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof

1 preclude any other or further exercise thereof or the exercise of any right, power or privilege
2 hereunder.

3 12.4 Entire Agreement. This Agreement shall not be construed to amend or modify
4 any other agreement between any of the Parties or between any Party and a non-Party,
5 which shall remain in all respects in full force and effect. This Agreement represents the
6 entire agreement of the Parties in connection with the subject matter hereof and may be
7 modified only in writing agreed to by all Parties. Further, this Agreement may be executed
8 in counterparts.

9 12.5 Construction and Interpretation. This Agreement has been arrived at through
10 negotiations and each Party has had a full and fair opportunity to revise the terms of this
11 Agreement. As a result, the normal rule of construction that any ambiguities are to be
12 resolved against the drafting Party shall not apply in the construction or interpretation of this
13 Agreement.

14 12.6 Partial Invalidity. If, after the date of execution of this Agreement, any provision
15 of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws
16 effective during the term of this Agreement, such provision shall be fully severable.
17 However, in lieu thereof, there shall be added a provision as similar in terms to such illegal,
18 invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

19 12.7 Necessary Actions. Each Party agrees to execute and deliver additional
20 documents and instruments and to take any additional actions as may be reasonably required
21 to carry out the purposes of this Agreement.

22 12.8 Third Party Beneficiaries. This Agreement shall not create any right or interest in
23 any non-Party or in any member of the public as a third party beneficiary.

24 12.9 Authority of Signatories. The signatories hereto represent and warrant that they
25 have been duly authorized to enter into this Agreement by the Party on whose behalf it is
26 indicated that the person is signing and, by such signature, to bind such Party to the

1 Agreement.

2 12.10 Jurisdiction and Venue. Any action at law or in equity brought by any of the
3 Parties hereto for the purpose of enforcing a right or rights provided for by this Agreement
4 shall be tried in a court of competent jurisdiction in the County of Riverside, State of
5 California, and the Parties hereby waive all provisions of law providing for a change of
6 venue in such proceedings to any other county.

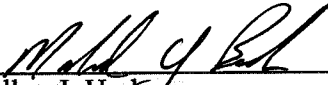
7 12.11 Notices. Any notices required to be given, hereunder shall be in writing and
8 shall be personally served or given by mail. Any notice given by mail shall be deemed
9 given when deposited in the United States Mail, certified and postage prepaid, addressed to
10 each Party to be served as follows:

11 To Riverside
12 Public Utilities Department
13 City of Riverside
14 Attn: Assistant Director – Resources
15 3901 Orange Street
16 Riverside, CA 92522

17 To Muni:
18 San Bernardino Valley Municipal Water District
19 1350 S. "E" Street (92408-2725)
20 P. O. Box 5906 (92412-5906)
21 San Bernardino, CA
22 Attn: General Manager


23 To Western:
24 Western Municipal Water District of Riverside County
25 450 Alessandro Boulevard
26 Riverside, CA 92508
Attn: General Manager

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2 **CITY OF RIVERSIDE**

3 By:  Dated: 4/2, 2007.
4 Bradley J. Hudson
5 City Manager

6 Attest: 
7 City Clerk

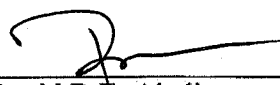
8 Approved as to form only:

9
10 By: 
11 Susan Wilson
12 Deputy City Attorney


13
14 **SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**

15 By:  Dated: 3/16, 2007.
16 Randy Van Gelder
17 General Manager

18 Approved as to form only:

19 By: 
20 David R.E. Aladjem
21 Downey Brand LLP

22
23 **WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY**

24 By:  Dated: 3/14, 2007.
25 John V. Rossi
26 General Manager

Approved as to form only:

By: 
David R.E. Aladjem
Downey Brand LLP

Exhibit A

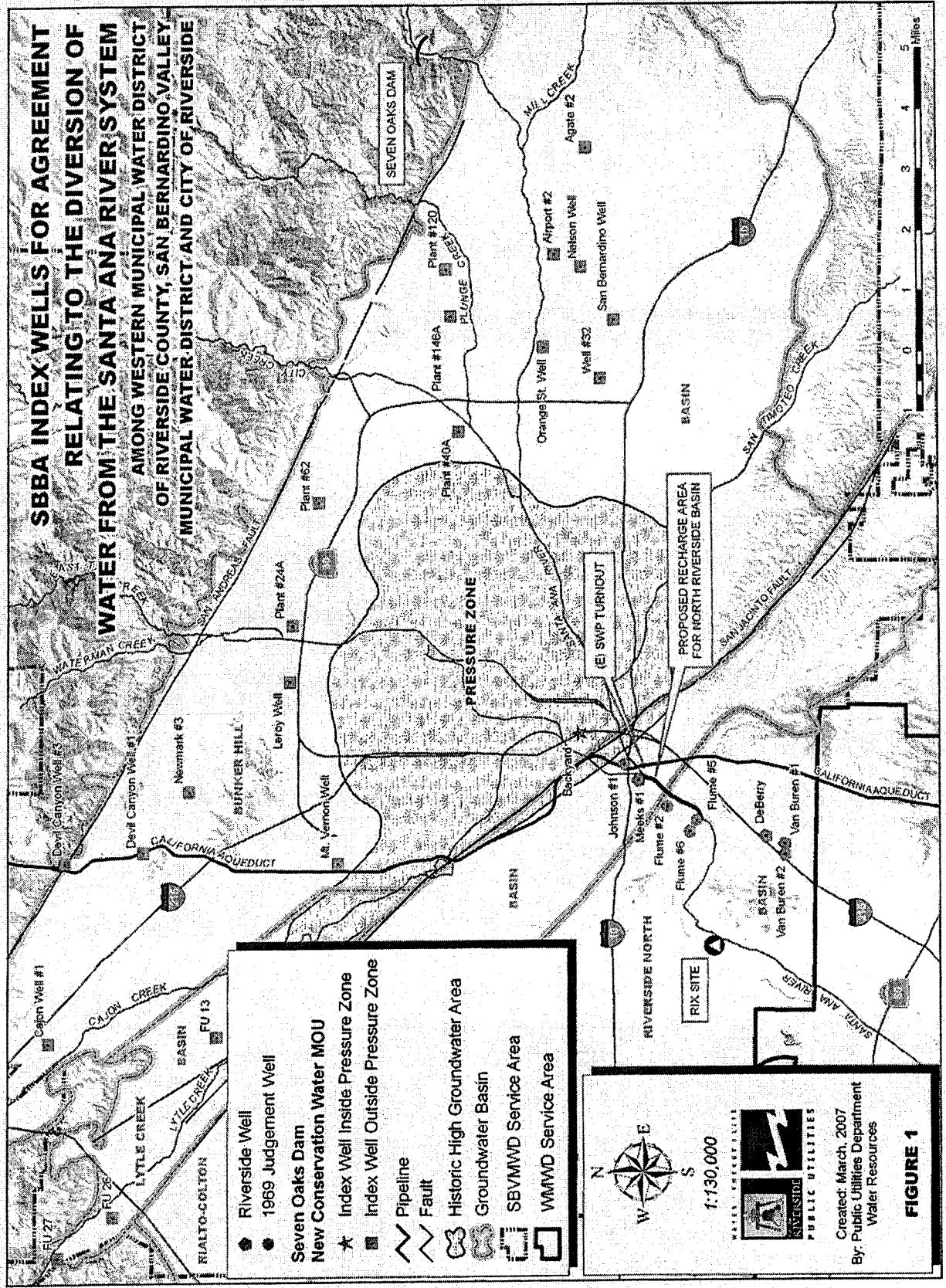
SBBA INDEX WELLS

Cajon Well #1
FU #13
Devil Canyon Wells #1 & #3
Newmark #3
Mt. Vernon Well
Well #7
Leroy Well
Plant #24A
Plant #62
Plant #40A
Plant #146A
Plant #120
Orange St. Well
Well #32
Airport #2
Nelson Well
San Bernardino Well
Agate #2

USGS/Muni Backyard Well

See attached Figure 1 for locations.

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1 **AGREEMENT**
2 **RELATING TO THE DIVERSION OF WATER**
3 **FROM THE SANTA ANA RIVER SYSTEM**
4 **AMONG**
5 **WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY**
6 **SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**
7 **AND**
8 **CITY OF RIVERSIDE**

9 **Exhibit C**
10 **Coordinated Operating Agreement**
11 **Between**
12 **Metropolitan Water District of Southern California**
13 **And**
14 **San Bernardino Valley Municipal Water District**
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**CONSERVED WATER AGREEMENT
BETWEEN
SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
AND
WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY**

Agreement made this 23rd day of MARCH, 2005, between San Bernardino Valley Municipal Water District ("Valley District") and Western Municipal Water District of Riverside County ("Western").

RECITALS

1. Valley District and Western have jointly filed two water rights applications with the State Water Resources Control Board. If granted in their entirety, these applications would permit the two districts to conserve up to 200,000 afy of native (local) water from the Santa Ana River ("Conserved Water").
2. Conserved water under this joint application is shared 72.05% to Valley District and 27.95% to Western for use within its boundaries.
3. The parties hereto anticipate that in wet years some portion of the conserved water may be delivered to The Metropolitan Water District of Southern California ("Metropolitan") in exchange for the subsequent delivery by Metropolitan of an equal quantity of water, less reasonable Metropolitan system losses, ("Exchange Water"), for use within the respective service areas of the parties. To that end, Valley District has entered into an agreement with Metropolitan entitled "Attachment 6" to the Coordinated Operating Agreement between Metropolitan and Valley District, dated July 10, 2000.

ORIGINAL

4. Such exchanges pursuant to the terms of Attachment 6 are anticipated to improve the water supply reliability and quality of water delivered by Metropolitan to its member agencies, and the use of local water for local needs within the respective service areas of the parties hereto.

TERMS

In consideration of the foregoing facts, it is hereby agreed as follows:

5. Western accepts the provisions of Attachment 6, subject to the terms of this Agreement.
6. In the implementation of Attachment 6, Valley District shall not deliver Western's share of Conserved Water to Metropolitan without Western's prior consent.
7. In the implementation of Attachment 6, Valley District's approval of the delivery by Metropolitan of Western's share of Exchange Water, and the time, place and manner of such delivery (including any in-lieu deliveries) shall be subject to Western's prior consent.
8. Western is an intended beneficiary of Attachment 6 as to its share of Conserved and Exchange Water, and shall be considered as a third party beneficiary of Attachment 6, and entitled to enforce all legal rights arising from such status.

ORIGINAL

9. The term of this Agreement shall be coincident with the term of Attachment 6, or any extension thereof, and is effective as of the date inserted above.

**SAN BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT**

By Robert L. Reiter
Robert L. Reiter
General Manager and Chief Engineer

**WESTERN MUNICIPAL WATER DISTRICT OF
RIVERSIDE COUNTY**

By John V. Rossi
John V. Rossi
General Manager

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ATTACHMENT 6

**COORDINATED EXCHANGE AGREEMENT
BETWEEN
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
AND
SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**

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Objective

20 The objective of this Attachment 6 to the Coordinated Operating Agreement for
21 Conveyance Facilities and State Water Project Supplies between The Metropolitan Water
22 District of Southern California ("Metropolitan") and San Bernardino Valley Municipal Water
23 District ("Valley District") dated July 10, 2000 (the "Coordinated Operating Agreement") is
24 to provide an institutional arrangement for the residents of Southern California to obtain the
25 maximum benefits from water conserved as a result of the construction and operation of Seven
26 Oaks Dam and Reservoir. Valley District and Metropolitan are each sometimes referred to
27 below as a "Party" and are sometimes collectively referred to below as the "Parties."

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Recitals

33 A. Valley District, in conjunction with Western Municipal Water District of Riverside
34 County ("Western"), has filed two water right applications with the State Water Resources
35 Control Board. If granted in their entirety, these applications would permit Valley District and
36 Western to conserve up to 200,000 afy of native (local) water from the Santa Ana River.

37 B. Valley District anticipates that, in wet years, it will deliver some portion of the water that
38 is conserved from the Santa Ana River pursuant to the water right applications to Metropolitan in
39 exchange for the subsequent delivery to Valley District of an equal quantity of water by
40 Metropolitan, less reasonable Metropolitan system losses.

41 C. Such an exchange of conserved native Santa Ana River water for water from the State
42 Water Project or other sources available to Metropolitan is anticipated to improve water supply
43 reliability and the quality of water delivered to Metropolitan and its member agencies and is

33 anticipated to improve water supply reliability and the use of local water for local needs within
34 Valley District's service area.

35

36 D. Valley District intends to work cooperatively with the Watermaster Committee to
37 determine the quantities of Conserved Water and Exchange Water, as defined below, delivered
38 by or to Valley District pursuant to this Attachment 6. Valley District intends that the
39 Watermaster Committee confirm, on an annual basis, that such quantities of Conserved Water
40 and Exchange Water constitute "new conservation" as that term is defined in the Judgment
41 pursuant to County of Riverside Superior Court Case 78426.

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Terms

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44 a. *Term.*

45 This Attachment 6 shall have a term identical to the Coordinated Operating Agreement.

46 2. *Exchange of Water.* Pursuant to paragraphs 1 and 3 of the Coordinated Operating
47 Agreement and paragraph 10.2 of Attachment 2 to the Coordinated Operating
48 Agreement, Metropolitan and Valley District agree to take the following actions:

49 a. If the water conserved from the Santa Ana River pursuant to the foregoing water
50 right applications ("Conserved Water") exceeds the immediate demand for such
51 water within Valley District's service area for direct delivery or groundwater
52 recharge and there is capacity available in Metropolitan's facilities to accept all or
53 a portion of the Conserved Water directly, on an in-lieu basis, or via an exchange,
54 for delivery to Metropolitan, Valley District may request that Metropolitan accept
55 into Metropolitan's facilities all or a portion of the Conserved Water on mutually
56 agreeable terms, conditions and locations. Absent other agreement of the Parties,
57 Conserved Water will be delivered to Metropolitan at the Inland Feeder. Valley
58 District shall consult with Metropolitan regarding the delivery of the Conserved
59 Water on a real-time basis and, each October 1 shall prepare an operations plan
60 for the delivery of Conserved Water, which plan shall be updated each April 1 to
61 reflect precipitation, runoff and other relevant factors. The operations plan shall

- 62 be subject to approval by Metropolitan, however, Metropolitan agrees to exercise
63 its best efforts to accept the Conserved Water into its facilities to the extent that
64 Metropolitan, in its sole discretion, determines that (1) sufficient capacity is
65 available within Metropolitan's facilities to accept the Conserved Water and
66 (2) that the Conserved Water is of adequate quality for Metropolitan's purposes.
67 The Conserved Water will be delivered to Metropolitan for beneficial uses within
68 Metropolitan's service area in quantities that will not exceed 200,000 afy.
- 69 b. Metropolitan shall, after consultation with Valley District, deliver to Valley a
70 substitute quantity of water obtained by Metropolitan from the State Water
71 Project ("Exchange Water") equal in quantity to the Conserved Water delivered
72 to Metropolitan pursuant to paragraph 2(a) above, less reasonable Metropolitan
73 system losses as determined by Metropolitan. Exchange Water shall be delivered
74 to Valley District as promptly as practicable at times, locations and in manners
75 mutually agreeable to Valley District and Metropolitan. Absent other agreement
76 of the Parties, Exchange Water will be delivered by Metropolitan to Valley
77 District at the Devil Canyon Afterbay. Exchange Water will be delivered to
78 Valley District for beneficial uses in quantities that will not exceed 200,000 afy.
- 79 c. The Parties agree that they may benefit from this Attachment 6 by virtue of
80 increased water supply reliability and improved water quality. Accordingly,
81 neither Party shall pay the other for services provided under this Attachment 6.
- 82 3. *Disputes.* The Parties recognize that there may be disputes regarding the obligations of
83 the Parties or the interpretation of this Attachment 6. The Parties agree that they will
84 attempt to resolve disputes in an amicable fashion without the need for litigation.
- 85 4. *General Provisions.*
- 86 a. *Authority.* Each signatory of this Attachment 6 represents that s/he is authorized
87 to execute this Attachment 6 on behalf of the Party for which s/he signs. Each

- 88 Party represents that it has legal authority to enter into this Attachment 6 and to
89 perform all obligations under this Attachment 6.
- 90 b. *Amendment.* This Attachment 6 may be amended or modified only by a written
91 instrument executed by each of the Parties to this Attachment 6.
- 92 c. *Partial Invalidity.* If, after the date of execution of this Attachment 6, any
93 provision of this Attachment 6 is held to be illegal, invalid, or unenforceable
94 under present or future laws effective during the term of this Attachment 6, such
95 provision shall be fully severable. However, in lieu thereof, there shall be added a
96 provision as similar in terms to such illegal, invalid or unenforceable provision as
97 may be possible and be legal, valid and enforceable.
- 98 d. *Incorporation by Reference.* The provisions of paragraph 15 of Attachment 2 are
99 hereby incorporated herein by reference as if set forth in full and shall apply to the
100 Parties' performance of the terms of this Attachment 6.
- 101

101 Dated: December 21 2004.

102 THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

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Ronald R. Gastelum
Chief Executive Officer

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT


Robert L. Reiter
General Manager and Chief Engineer

ATTACHMENT 5 TO THE
COORDINATED OPERATING AGREEMENT

AGREEMENT BETWEEN
THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA
AND
SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
REGARDING FOOTHILL PUMP STATION

THIS CONTRACT, hereinafter referred to as "Agreement" is entered into as of this 21st day of December, 2004, between The Metropolitan Water District of Southern California, a public agency of the State of California (hereinafter referred to as "Metropolitan") and the San Bernardino Valley Municipal Water District, a public agency of the State of California (hereinafter referred to as "Valley District").

EXPLANATORY RECITALS

- A. Metropolitan is a public agency of the State of California engaged in transporting, storing, treating and distributing water at wholesale in portions of the counties of Los Angeles, San Bernardino, Orange, Riverside, San Diego and Ventura, within the State of California.
- B. Valley District is a public agency of the State of California engaged in developing, transporting, storing, treating and wholesale delivery of water in portions of the counties of San Bernardino and Riverside within the State of California.
- C. The parties have previously entered into a Coordinated Operating Agreement and several subsequent attachments thereto, Attachments 1 through 4.
- D. Valley District, as a State Water Project (hereinafter "SWP") contractor takes delivery of SWP water from the Devil Canyon First Afterbay by way of its Foothill Pipeline, which has a capacity of 290 cubic feet per second (hereinafter "cfs"), and extends east from the Devil Canyon Afterbay approximately 17 miles. The Foothill Pipeline connects to other

facilities of the East Branch Extension of the State Water Project, which delivers water to the San Geronio Pass area of Riverside County.

E. Metropolitan, also an SWP contractor, is constructing a water conveyance system known as the Inland Feeder, which will take water from the Devil Canyon Second afterbay and deliver it into Metropolitan's service territory. The 144-inch inside diameter Inland Feeder has been fully constructed to a point just north of the Santa Ana River, where it is in close proximity to Valley District's Foothill Pipeline. The remainder of Metropolitan's Inland Feeder, to the north and west is still under construction.

F. In accordance with previous understandings reached between the parties, Metropolitan constructed a 78-inch inside diameter intertie pipeline to connect the Foothill Pipeline with the Inland Feeder, known as the Cone Camp Intertie.

G. Since December 2003, Metropolitan has taken water from the Foothill Pipeline through the Cone Camp Intertie and delivered it into the Inland Feeder at flows up to 240 cfs, as capacity was available. Valley District was compensated for the water delivered to Metropolitan from Valley District's Table A amounts at the rate provided for in Attachment 2 to the Coordinated Operating Agreement.

H. Currently, when more than 80 cfs is diverted from the Foothill Pipeline to the Cone Camp Intertie, there is insufficient head in the Foothill Pipeline to meet the minimum hydraulic gradient requirements at Greenspot Pump Station (easterly of the Foothill Pump Station) and therefore, insufficient head to meet Valley District demands downstream of the Greenspot Pump Station.

I. Pursuant to previous understandings reached between the parties, the Foothill Pump Station has been designed and constructed adjacent to the Foothill Pipeline and Cone

Camp Intertie to increase the hydraulic grade line at the Greenspot Pump Station to enable Valley District to meet demands downstream in the Foothill Pipeline when water is being delivered into the Cone Camp Intertie. The Foothill Pump Station includes eight 300-horsepower horizontal pumps with adjustable (variable) frequency drives. Use of the Foothill Pump Station is only needed to meet downstream demands if and when Metropolitan is taking water through the Cone Camp Intertie.

J. The purpose of this Attachment 5 is to provide for the parties' respective responsibilities regarding: (1) the right-of-way for the Foothill Pump Station, (2) the obligation to deliver water to the Cone Camp Intertie, and (3) payment provisions for Foothill Pump Station power costs, and water delivered to Metropolitan through the Cone Camp Intertie.

TERMS OF AGREEMENT

1. Foothill Pump Station Right-of-Way. For good and valuable consideration, the receipt of which is hereby acknowledged, Metropolitan hereby grants to Valley District an exclusive license ("License") to the use of a portion of the parcel of land owned by Metropolitan on which the Foothill Pump Station has been constructed (the "Property") for the operation, maintenance, repair and replacement of the Foothill Pump Station and related facilities located on the Property, which right shall include, without limitation, the right to construct, maintain, repair and replace a fence around the perimeter of the Property and to control all ingress and egress to and from the Property. The Property is more fully described in Exhibits A and B, which are attached hereto and incorporated herein by this reference.

a. The License shall be irrevocable and non-terminable for a term of ten (10) years commencing on January 1, 2005 and terminating on December 31, 2014. The License shall thereafter automatically be renewed on an annual basis, unless, at least 11 months before the

expiration date for the License, as the same may be extended as provided herein, either Valley District or Metropolitan notifies the other in writing of its decision not to renew the License. Valley District shall not be required to pay to Metropolitan any additional consideration for the License.

b. Valley District and Metropolitan agree to allow reasonable access to the other's staff, employees, contractors and/or agents across the lands subject to the License and/or adjacent rights of way upon reasonable notice.

c. Valley District shall be responsible, at its own cost and expense, for the operation, maintenance, repair, rehabilitation and replacement, as necessary, of the Foothill Pump Station (including, without limitation, the repair of any damage to the Foothill Pump Station due to natural disasters such as earthquake, fire or flood) and shall also be responsible for environmental compliance associated with or relating to the operation, maintenance, repair, rehabilitation and replacement of the Foothill Pump Station.

d. Metropolitan hereby grants to Valley District the right to purchase the Property in the event of the expiration or termination of the License, at a purchase price equal to the then current fair market value (as defined under California law) for the real property (excluding improvements thereon) as determined as provided in this paragraph. In order to exercise this right to purchase, Valley District must give written notice of Valley District's intent to exercise the purchase right ("Valley District's Exercise Notice") within 30 days after the date of expiration or termination of the License. Metropolitan and Valley District shall, within 30 business days after receipt of Valley District's Exercise Notice, mutually determine the fair market value of the Property or a process for making that determination using their good faith judgment. In the event that Metropolitan and Valley District cannot agree upon the fair market

value of the Property or such a process within said 30 day period, either party shall have the right to submit the determination of the fair market value of the Property to neutral binding arbitration: (i) administered by the American Arbitration Association under its commercial arbitration rules, or (ii) conducted according to such other arbitration procedures as may be mutually agreed upon in writing by Valley District and Metropolitan. The License shall remain in full force and effect until the purchase is completed. Metropolitan and Valley District agree to execute any additional instructions and documents as are normal and usual for the sale of real property.

2. Water Deliveries to Cone Camp Intertie. During the term of this Agreement, Valley District agrees, upon Metropolitan's request, to deliver water using any unused capacity in the Foothill Pipeline into Metropolitan's Cone Camp Intertie. Unused capacity is defined as the design capacity (approximately 290 cfs) for the Foothill Pipeline less; (i) demand within Valley District's existing service area, and (ii) the demand in San Geronio Pass Water Agency's service area, not to exceed San Geronio Pass Water Agency's SWP contract capacity, or 32 cfs. For purposes of this Agreement, the term "demand" includes both the direct delivery of water by Valley District to other water purveyors for immediate use within Valley District's service area and the delivery of water to various facilities for the recharge of groundwater basins within Valley District's service area.

3. Payment for Water and Foothill Pump Station Power Costs. Metropolitan shall pay Valley District for water purchased by Metropolitan from Valley District and for power costs at the Foothill Pump Station associated with the delivery of water to Metropolitan's Cone Camp Intertie as follows:

a. Metropolitan shall, as it has in the past, pay to Valley District the rate as provided by Attachment 2 to the Coordinated Operating Agreement for all water purchased from the

Valley District and delivered through the Foothill Pipeline into Metropolitan's Cone Camp Intertie. Costs for water purchased shall be invoiced to Metropolitan no more frequently than monthly. Payment shall be due to Valley District within 60 days of receipt of invoice.

b. Metropolitan shall pay to Valley District all additional power costs for the Foothill Pump Station required to deliver water through the unused capacity in the Foothill Pipeline to Metropolitan's Cone Camp Intertie. The additional power costs for which Metropolitan is responsible shall be calculated by multiplying the power rate in dollars per acre foot at Foothill Pump Station when the water was delivered to Metropolitan times either; (i) the capacity of the Foothill Pipeline less Valley District demands upstream of the Foothill Pump Station and the flow through the Foothill Pump Station, or (ii) flow through the Foothill Pump Station, whichever is less, times the actual power rate at the Foothill Pump Station when the water was delivered to Metropolitan. For purposes of this paragraph the power rate shall be based upon a the monthly power consumption at the Foothill Pump Station divided by the acre feet of water pumped by the Foothill Pump Station during that month. When water is not delivered to Metropolitan, Metropolitan shall not pay for any power costs associated with the Foothill Pump Station. Costs for power shall be invoiced to Metropolitan no more frequently than monthly. Payment shall be due to Valley District within 60 days of receipt of invoice.

4. Term.

a. This Agreement shall be non-terminable for 10 years from the date hereinabove first written and after 10 years, the term of this Agreement shall be coincidental with the term of the Coordinated Operating Agreement and any attachments thereto.

b. Paragraph 5 of the Coordinated Operating Agreement shall be modified to read as follows:

"5. This Agreement shall remain in force for a period ending December 31, 2014, with the expectation that a definitive agreement with a minimum term of twenty years will be entered into by the parties."

5. Notices. Any notice or communication given under this Agreement shall be effective when deposited, postage prepaid, with the United State Postal Service and addressed to the contracting parties as follows:

If to Metropolitan:

The Metropolitan Water District of Southern California
P. O. Box 54153
Los Angeles, CA 90054-0153
Attention: Ms. Debra Man

If to Valley District:

San Bernardino Valley Municipal Water District
P.O. Box 5906
San Bernardino CA 92412-5906
Attention: Mr. Robert Reiter

Either party may change the address to which notice or communication is to be sent by providing written notice to the other party.

6. Indemnification. Valley District agrees that it is solely responsible for the operation, maintenance, repair, rehabilitation and replacement of the Foothill Pump Station and hereby indemnifies and holds harmless Metropolitan and Metropolitan's directors, officers, employees and agents from any and all liabilities, injuries and/or damages, whether to the Foothill Pump Station, its employees, or to third parties, arising from Valley District's use of the Foothill Pump Station and/or the property (Exhibits A and B) subject to the License provided for by this Agreement. Said indemnification shall include all costs and attorney's fees to defend Metropolitan from any such claim or lawsuit for injury or damages. Metropolitan hereby

indemnifies and holds harmless Valley District and Valley District's directors, officers, employees and agents from any and all liabilities, injuries and/or damages, whether to the Inland Feeder or other facilities, its employees, or to third parties, arising from Metropolitan's activities. Said indemnification shall include all costs and attorney's fees to defend Valley District from any such claim or lawsuit for injury or damages.

7. **Jurisdiction and Venue.** This Agreement shall be deemed a contract under the jurisdiction and venue of the State of California and for all purposes shall be interpreted in accordance with such laws.

8. **Alteration.** It is mutually understood and agreed that this Agreement represents the complete understanding of the parties and that no oral understanding or agreement not incorporated herein shall be binding on either party. Except as provided herein, this Agreement may not be modified or altered without formal amendment in writing, signed by both parties thereto.

9. **Coordinating Operating Agreement.** Except to the extent required by the terms of this Agreement, both parties hereby acknowledge that they remain obligated under the terms of the Coordinating Operating Agreement and Attachments 1 through 4, thereto.

Exhibits:

- A. Legal Description of Real Property Subject to the License
- B. Map of Real Property Subject to the License

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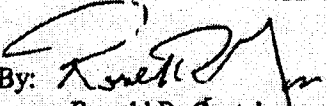
IN WITNESS WHEREOF, the parties have hereunto affixed their names as of the
date and year hereinabove first written.

APPROVED AS TO FORM:

By: 
Lauren R. Brainard
Senior Deputy General Counsel


Date: 12/17/04

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

By: 
Ronald R. Castelan
Chief Executive Officer

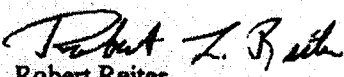
Date: 12/17/04

APPROVED AS TO FORM:

By: 
David R. E. Aladjem
Special Counsel

Date: 12/22/04

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT

By: 
Robert Reiter
General Manager

Date: 12/21/04

In duplicate

O:\a\s\contract\MDH_Attachment 5 (Foothill Pump Station) to the Coordinated Operating Agreement 12-15-04.doc

EXHIBIT A

INFED1-27-900RL2287
Revenue Lease RL 2287
MWD to
San Bernardino Valley
Municipal Water District

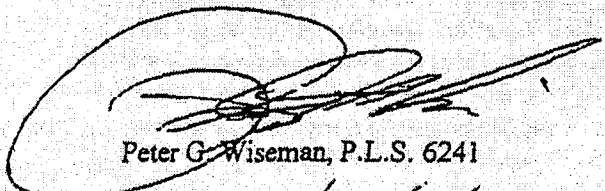
That portion of the southeast quarter (SE¼) of the southeast quarter (SE¼) of Section 1, Township 1 South, Range 3 West, San Bernardino Meridian, in the County of San Bernardino, State of California more particularly described as follows:

COMMENCING at the east quarter corner of said Section 1, marked by 2" I.P. with 3" brass disk stamped "FOR LA DISTRICT U.S. CORPS OF ENGINEERS AND COUNTY OF ORANGE BY JOHNSON-FRANK ASSOC. T1S ¼ S1 S6 LS 4215 R3W R2W 1989" as shown on Record of Survey 04-028 filed in Book 121, page 56 of Record of Surveys, in the Office of the County Recorder of said County; thence S 01° 02' 02" E 2638.77 feet to the southeast corner of said Section 1, marked by a 2-1/2" brass cap stamped "SB COUNTY T1S, R2W, S6 S7, R3W S1 S12", 12" above surface in rock and concrete mound, as shown on said Record of Survey; thence along the southerly line of said SE¼/SE¼, S 87° 34' 25" W 53.78 feet to the southeast corner of a triangular shaped parcel of land conveyed to The Metropolitan Water District of Southern California by Grant Deed recorded December 06, 2001 as Document No. 20010553506 of Official Records of said County; thence along the northeasterly line of said triangular parcel of land N 34° 55' 11" W 425.66 feet; thence N 56° 34' 22" W 28.19 feet to the POINT OF BEGINNING; thence leaving said northeasterly line S 88° 44' 43" W 345.98 feet; thence N 00° 32' 52" W 108.87 feet; thence N 89° 27' 08" E 22.00 feet; thence N 00° 32' 52" W 37.00 feet; thence S 89° 27' 08" W 22.00 feet; thence N 00° 32' 52" W 148.72 feet to the southerly line of that certain Grant of Easement to the San Bernardino Valley Municipal Water District recorded June 04, 1973 in Book 8196, page 25 of Official Records of said County; thence along said southerly line S 76° 35' 24" E 106.06 feet to said northeasterly line; thence along said northeasterly line the following courses S 43° 04' 19" E 64.89 feet; thence S 40° 09' 35" E 242.65 feet; thence S 56° 34' 20" E 53.61 feet to the POINT OF BEGINNING,

All as shown on EXHIBIT "B" attached hereto and made a part hereof.

END OF DESCRIPTION

PREPARED UNDER MY SUPERVISION


Peter G. Wiseman, P.L.S. 6241

Date

09/21/04

PGW\Inland\row\legals\27\900RL2287.doc



September 22, 2004

PAGE 1 OF 2

-E1/4 COR
SEC. 7
POC



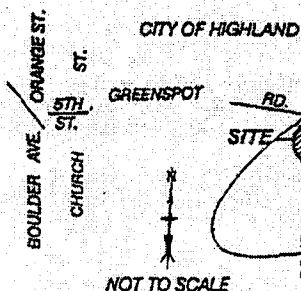
REVENUE LEASE
INFED1-27-900RL2287
(1.350 ACS.)

**THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**

**MWD
TO
SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT**

INFED1-27-900RL2287

09/22/2004 PGW/MOT



~~Peter G. Wiseman~~ P.L.S. 6241

DATE

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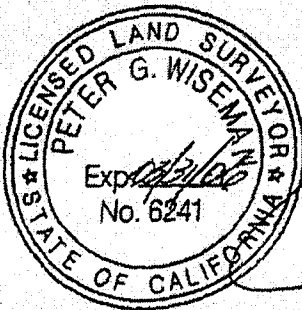
EXHIBIT B

PAGE 2 OF 2

THIS EXHIBIT IS TO BE ATTACHED TO THE LEGAL DESCRIPTION
SE1/4 SE1/4 OF SEC. 1, T.1S., R.3W, S.B.M.
COUNTY OF SAN BERNARDINO,
STATE OF CALIFORNIA

COURSE TABLE

LINE NO.	COURSE	DIST.
1	S87°34'25"W	53.78'
2	N34°55'11"W	425.66'
3	N56°34'22"W	28.19'
4	S88°44'43"W	345.98'
5	N00°32'52"W	108.87'
6	N89°27'08"E	22.00'
7	N00°32'52"W	37.00'
8	S89°27'08"W	22.00'
9	N00°32'52"W	148.72'
10	S78°35'24"E	106.06'
11	S43°04'18"E	64.88'
12	S40°09'35"E	242.65'
13	S58°34'20"E	53.61'



PREPARED UNDER
MY SUPERVISION

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

INLAND FEEDER
REVENUE LEASE R.L. 2287

MWD
TO

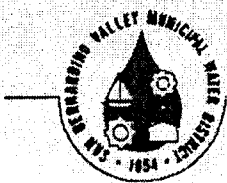
SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT

INFED1-27-900RL2287

Peter G. Wiseman P.L.S. 6241

DATE

09/27/04



San Bernardino Valley Municipal Water District

1350 SOUTH "E" STREET - P. O. BOX 5906 - SAN BERNARDINO, CALIFORNIA 92412-5906 -(909) 387-9200
FAX (909) 387-9247

December 27, 2004

Stephen N. Arakawa
Manager, Water Resources Management
Metropolitan Water District of Southern California
700 North Alameda Street
Los Angeles, CA 90012

Enclosed please find one fully executed original of Attachments 5 and 6 to the
Coordinated Operating Agreement between The Metropolitan Water District of Southern
California and San Bernardino Valley Municipal Water District.

Very truly yours,


Randy Van Gelder
Assistant General Manager

Directors and Officers

EDWARD B. KILLGORE
Division I

GEORGE A. AGUILAR
Division II

PAT MILLIGAN
Division III

MARK BULOT
Division IV

STEVE COPELAN
Division V

ROBERT L. REITER
General Manager
and Chief Engineer

**AGREEMENT
RELATING TO THE DIVERSION OF WATER
FROM THE SANTA ANA RIVER SYSTEM
AMONG
WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY
SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
AND
CITY OF RIVERSIDE**

Exhibit D

[Sections 12 and 13 of the ICSA Settlement]

EXECUTION COPY

AGREEMENT TO DEVELOP AND ADOPT AND INSTITUTIONAL CONTROLS GROUNDWATER MANAGEMENT PROGRAM

in recitals I.D through I.K inclusive as they may exist as of the effective date of this Agreement.

Further nothing in this Agreement is intended to modify or affect in any way the judgments initially referred to in recitals I.D, I.F and I.G above. This Agreement shall not be used as evidence in any water rights claim or cause of action.

12. In the event of the failure of the Parties to this Agreement to reach agreement on the ICGMP or if such an agreement has not yet been reached and there is no approved extension of the term of this Agreement, the matter shall be resolved by limited scope mediation and arbitration. The mediation and arbitration shall be conducted by JAMS (sometimes referred to as the mediation service provider), and shall be administered, to the extent practical in the San Bernardino office, or the JAMS office closest to San Bernardino. In the event, for whatever reason, JAMS is not available or lacks the necessary expertise, the parties shall first attempt to use the services of another judicially oriented service, such as IVAMS, and use the American Arbitration Association only after all other judicially based mediation and arbitration services have refused to undertake the mediation and arbitration of the dispute.

The Parties shall promptly initiate the process when they have reached an impasse with regard to any issues preventing complete agreement on the ICGMP. The process shall require the mediation of all disputes as a condition to the initiation of the arbitration process. The mediator shall be selected by mutual agreement of all of the affected Parties, and the cost of the mediator shall be borne on an equal basis by all of the Parties to this Agreement. In the event the Parties are unable to agree on a mediator, the mediation service provider shall select a mediator with civil judicial experience. The Parties shall meet and confer prior to the mediation and provide to the mediator an agreed list of matters to be resolved by the mediation. Unless all of the Parties to the mediation agree otherwise, the only matters to be discussed at the mediation are those matters

EXECUTION COPY

AGREEMENT TO DEVELOP AND ADOPT AND INSTITUTIONAL CONTROLS GROUNDWATER MANAGEMENT PROGRAM

submitted to the mediator following the meet and confer meeting of the Parties. Time shall be of the essence during the process and all Parties shall cooperate to promptly complete the process.

In the event the Parties are unsuccessful in resolving any or all of the issues presented to the mediator, a limited scope arbitration shall be conducted promptly following the completion of the mediation. The mediation service provider shall provide to the arbitrating parties a list of available arbitrators. The Parties shall first attempt to agree on an arbitrator having some background or expertise in water law, groundwater contamination or environmental clean-up matters, and failing to do such the mediation service provider shall select an arbitrator with complex civil judicial experience. The scope of the arbitration shall be limited to the issues presented to the arbitrator by the parties to the arbitration. The Parties shall meet and confer prior to the arbitration and provide to the arbitrator an agreed list of issues to be resolved. The arbitrator shall be instructed that the only issues for decision are those issues presented by the arbitrating parties, and that the arbitrator shall comply with California law, unless the subject matter specifically relates to a federal issue. It is specifically agreed that any decision of an arbitrator subjecting any of the Parties directly or indirectly to the Institutional Controls Ordinance is outside the scope and authority of the arbitrator and shall be unenforceable and void. The arbitrator shall have no authority to award costs or attorneys' fees. Each Party agrees that the costs of arbitration shall be shared equally by the Parties and that each Party shall bear their own attorneys fees and preparation costs. Time shall be of the essence during the arbitration process.

The decision of the arbitrator shall be binding as to those matters presented for determination. Any matters included in the decision of the arbitrator outside the issues presented for determination, including without limitation awards of costs and attorneys fees, shall be unenforceable and not binding on the parties. In the event an arbitrator attempts to include matters

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AGREEMENT TO DEVELOP AND ADOPT AND INSTITUTIONAL CONTROLS GROUNDWATER MANAGEMENT PROGRAM

or issues outside the scope of the arbitration or any party fails to abide by the terms of this Agreement limiting the scope of the arbitration, any other party shall have the right to file an action for declaratory relief in United States Court for the Central District of California in the consolidated cases, seeking enforcement of the provisions of this Agreement limiting the scope of arbitration.

13. Defined terms that are used in this Agreement and that are also used in the Consent Decree shall have the meaning set forth in the Consent Decree. In the event that there is any inconsistency between the definition of a term in this Agreement and a definition of the same term in the Consent Decree, the definition of the term in the Consent Decree shall control.

14. Each Party shall have access to and the right to examine any of the other Party's pertinent books, documents, papers or other records (including, without limitation, records contained on electronic media) relating to the performance of that Party's obligations pursuant to this Agreement. The Parties shall each retain all such books, documents, papers or other records to facilitate such review. Access to each Party's books, documents, papers and other records shall be during normal business hours only. Nothing in this paragraph shall be construed to operate as a waiver of any applicable privileges.

15. Each signatory of this Agreement represents that s/he is authorized to execute this Agreement on behalf of the Party for which s/he signs. Each Party represents that it has legal authority to enter into this Agreement and to perform all obligations under this Agreement.

16. This Agreement has been arrived at through negotiations and each Party has had a full and fair opportunity to revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in the construction or interpretation of this Agreement.

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**COOPERATIVE AGREEMENT
TO PROTECT WATER QUALITY AND ENCOURAGE THE CONJUNCTIVE USES OF IMPORTED
WATER IN THE SANTA ANA RIVER BASIN**

This Cooperative Agreement to Protect Water Quality and Encourage the Conjunctive Uses of Imported Water in the Santa Ana River Basin ("Agreement") is entered into and effective this 18 day of January, ~~2007~~ ²⁰⁰⁸ by and among the California Regional Water Quality Control Board, Santa Ana Region (the "**Regional Board**") and the entities listed in paragraph 11(n) below. The Regional Board and each of the entities listed in paragraph 11(n) below are individually referred to as a "**Party**" and are collectively referred to as the "**Parties**."

Recitals

A. Water imported to the Santa Ana River Region, as defined in Water Code section 13200(e) (the "**Region**"), from the State Water Project, the Colorado River and other sources, and to groundwater basins within the Region from other groundwater basins within the Region, is vital to meet present and future demands for water within the Region. Such water is directly used; injected or percolated within groundwater basins; stored in a groundwater basin for later use; may be combined with or used in addition to the native groundwater supplies in a basin; may be exported/imported from one basin to another; and after consumptive use may form a portion of the wastewater that is treated, recharged and reused within the Region. Such conjunctive uses of surface water and groundwater within the Region have been contemplated by the State of California at least since the issuance of the original California Water Plan in 1957 and the adoption by the State Water Quality Control Board of Resolution No. 64-1.

B. The Regional Board is charged by statute with adopting such water quality objectives as may be required to protect the beneficial uses of water within the Region. In particular, the long-term conjunctive use of groundwater in the Region requires that the quality of water in groundwater basins in the Region be managed to meet the water quality objectives for nitrogen and total dissolved solids (collectively, the "**Salinity Objectives**") adopted by the Regional Board in the 1995 Water Quality Control Plan for the Santa Ana River Basin, as amended in 2004 by R8 2004-0001 (the "**Basin Plan**").

C. The Salinity Objectives presently included in the Basin Plan are the result of a multi-year, multi-million dollar cooperative effort among many of the Parties. The Salinity Objectives are a product of the best scientific and technical information available.

D. The Legislature has declared that the facilitation of voluntary transfers of water and water rights is the established policy of the State. The Legislature has further declared that voluntary water transfers between water users can result in a more efficient use of water and can allow more intensive use of developed water resources so as to conserve all available water resources. The Legislature has directed the Regional Board to encourage voluntary transfers of water and water rights.

46 E. The Parties disagree whether the Regional Board may regulate the conjunctive
47 uses of imported water in the Region by means of general waste discharge requirements. Some
48 of the Parties believe the Regional Board lacks authority to regulate the conjunctive uses of
49 water in the Region because, they contend, such water does not constitute "waste" as defined in
50 Water Code section 13050(d); the Regional Board and other Parties believe the Regional Board
51 has such authority.

52
53 F. To avoid costly and time-consuming litigation brought to resolve the scope of the
54 Regional Board's authority to regulate imported water and without prejudice to the Parties'
55 competing views on this question, the Parties wish to act cooperatively with the goal of
56 achieving compliance with the Salinity Objectives without the necessity of general waste
57 discharge requirements.

58
59 G. The Parties wish to memorialize the terms of their cooperative effort by means of
60 this Agreement.

61 62 Agreements

63 64 65 1. *Purpose of Agreement*

66 This Agreement is intended to allow the Parties to monitor and improve water quality
67 within the Santa Ana River Region in a manner that is consistent both with adopted water quality
68 objectives and with the needs of the inhabitants of the Region for a reliable supply of water.
69 This Agreement is limited in scope to compliance with and implementation of the Salinity
70 Objectives.

71 2. *Parties*

72 The Regional Board or any public agency or non-profit mutual water company that
73 imports water to the Region, exports/imports water between basins within the Region, recharges
74 such imported water within the Region, delivers such imported water for potable use within the
75 Region, or treats and/or recharges wastewater within the Region that includes imported water
76 may become a Party to this Agreement.

77 78 3. *Term of Agreement*

79 This Agreement will have an initial term of 10 years and shall automatically renew for
80 subsequent 10-year periods, *provided* that any Party may withdraw at any time by providing one
81 year's written notice of withdrawal to all other Parties.

82 4. *Preparation of Triennial Water Quality Report*

83 The Parties that intentionally recharge imported water within the Santa Ana Region (the
84 "**Recharging Parties**") agree voluntarily to collect, compile and analyze the N/TDS water
85 quality data necessary to determine whether the intentional recharge of imported water in the
86 Region may have a significant adverse impact on compliance with the Salinity Objectives within

the Region. To that end, the Recharging Parties will collect, compile and analyze such N/TDS water quality data and prepare, within eighteen months from the effective date of this Agreement and every three years thereafter, a report containing the following information:

- a. A summary of the then-current ambient water quality in each groundwater management zone and a comparison of that ambient water quality with the Salinity Objectives. The Recharging Parties shall calculate ambient water quality for each groundwater management zone in a manner that allows for a technically valid comparison with the Salinity Objectives.
- b. A summary of the amount and quality of imported water recharged in each groundwater management zone during the previous three-year period.
- c. The initial report and each report prepared at six-year intervals thereafter will include a projection of ambient water quality in each groundwater management zone for the subsequent 20 years.
 - (1) The projection of ambient water quality for each groundwater management zone will be based upon professionally accepted modeling techniques, will reasonably account for surface fluxes of salt input, will reflect the effects of all existing and reasonably foreseeable recharge projects for which there is a certified environmental document and will compare baseline ambient water quality with the Salinity Objectives.
 - (2) The projections for different groundwater management zones may be based on different modeling techniques.
 - (3) Each report that includes a 20-year projection of ambient water quality will also present a comparison of then-current water quality in each groundwater management zone with the ambient water quality projection made six years earlier, together with an evaluation of the reason(s) for any differences.

The Recharging Parties will agree among themselves regarding the manner in which they will prepare the report and the manner in which they will share the cost of preparing the report. The Recharging Parties will circulate a draft version of each report to all other Parties for review and written comments for at least a 45-day period. The Recharging Parties shall consider written comments received on the draft report in preparing the final report. Upon completion of the final report, the Recharging Parties shall promptly lodge the final report with the Regional Board.

5. *CEQA Review of Proposed Projects*

Each Recharging Party agrees that, when it serves as a lead agency under the California Environmental Quality Act ("CEQA") for a proposed project involving the recharge of imported water within the Region, it will analyze that project as follows:

- 124 a. The environmental document will include the water quality data compiled in the
125 most recent triennial report to the Regional Board (see paragraph 4 above) in the
126 analysis of the potential impacts of the proposed project.
- 127 b. The environmental document will incorporate professionally acceptable modeling
128 techniques. The Parties agree that the following models meet this standard:
- 129 (1) The Wildermuth models used to establish maximum benefit objectives.
- 130 (2) The Orange County Basin Groundwater Model.
- 131 (3) The USGS/Geoscience/Secor model of the Bunker Hill Groundwater
132 Basin.
- 133 (4) The Chino Basin Watermaster/Inland Empire Utilities Agency model.
- 134 (5) The Beaumont-Cherry Valley model for the Beaumont management zone
- 135 (6) Eastern Municipal Water District's San Jacinto Groundwater Model.
- 136 (7) Elsinore Valley Municipal Water District's Elsinore Basin Groundwater
137 Model.
- 138 (8) The USGS model of the Beaumont Basin (with MT3D package or
139 equivalent added).
- 140 Updates/refinements of these models are presumed to be professionally
141 acceptable.
- 142 c. A Recharging Party may base its environmental analysis on a model other than
143 those described above if that model has been presented to the Regional Board at
144 least 180 days prior to the release of the draft environmental document and there
145 has been a determination by the Regional Board or its staff that the alternative
146 model is acceptable.
- 147 (1) The Regional Board agrees that an alternative model is acceptable for
148 purposes of this Agreement if the proponent of that model can
149 demonstrate with reasonable certainty that the relative error of the model's
150 calibration for the groundwater management zones in question for a
151 reasonable base period is $\pm 10\%$ or less when compared with existing
152 groundwater data.
- 153 (2) The provisions of the immediately preceding paragraph are not to be
154 construed to preclude other means or methodologies for an alternative
155 model's proponent to demonstrate to the Regional Board that an
156 alternative model is acceptable for purposes of this Agreement.

- 157 (3) If an alternative model has not been deemed acceptable by the Regional
158 Board or its staff and a lead agency wishes to include results from that
159 model in the environmental document, the lead agency shall include
160 results from both the alternative model and one of the pre-approved
161 models in the environmental document.
- 162 d. The environmental document will include the following analyses:
- 163 (1) A summary of the condition of the groundwater management zones, as
164 reflected in the most recent triennial report to the Regional Board, that
165 might be affected by the project.
- 166 (2) A 20-year projection of water quality in the groundwater management
167 zone with the proposed project and a comparison of that water quality with
168 conditions expected without the project.
- 169 (3) A comparison of the 20-year water quality projection for conditions with
170 the proposed project with the Salinity Objectives for the groundwater
171 management zone.
- 172 (4) A description and evaluation of any measures proposed to mitigate the
173 potential effects of the proposed project.
- 174 e. The draft environmental document will be circulated to all Parties.
- 175 f. Each Recharging Party agrees to adopt the operative guidelines contained in this
176 paragraph 5 as part of its CEQA implementing procedures pursuant to section
177 15022 of the CEQA Guidelines.
- 178 g. The environmental document shall include, if required under CEQA, an effective
179 mitigation monitoring and reporting plan that enables the lead agency to
180 demonstrate compliance with applicable regulatory standards and any
181 performance standards adopted in the environmental document.

182 6. *Basin Planning Updates*

183 The Regional Board will review and, if appropriate, revise water quality objectives for
184 the purpose of facilitating the recharge of imported water in groundwater management zones
185 within the Region. The Parties agree to cooperate in such efforts and agree to work
186 cooperatively to develop a program that addresses the use and allocation of assimilative capacity
187 as part of overall Basin planning and management.

188 7. *Enforcement*

189 If the Recharging Parties fail timely to prepare the triennial report described in paragraph
190 4 above or if a Recharging Party fails to include the analyses described in paragraph 5 above in
191 an environmental document prepared in connection with a proposed project involving the
192 recharge of imported water, then any other Party may enforce the terms of this Agreement as

193 follows.

194 If the dispute relates to the triennial report on water quality, the Regional Board will hold
195 a hearing asking the Recharging Parties to provide an explanation for the delay or failure to
196 prepare the report. Such a hearing will precede an action for specific performance of the terms
197 of this Agreement by the Regional Board. In the event that the dispute relates to the failure of a
198 Party to provide the appropriate analysis in an environmental document, that dispute will be
199 addressed by the Party(ies) using the remedies available under CEQA.

200 The Parties recognize that nothing in this Agreement can or is intended to divest the
201 Regional Board of its authority under the Porter-Cologne Water Quality Control Act.
202 Furthermore, nothing in this Agreement shall be construed as a waiver by any Party of any
203 remedies it may have against a non-Party for interference with the implementation of this
204 Agreement.

205 8. *Books and Records*

206 Each Party shall have access to and the right to examine any of the other Parties'
207 pertinent books, documents, papers or other records (including, without limitation, records
208 contained on electronic media) relating to the performance of that Party's obligations pursuant to
209 this Agreement. The Parties shall each retain all such books, documents, papers or other records
210 for at least four years after the termination of this Agreement to facilitate such review. Access
211 to each Party's books and records shall be during normal business hours only. Nothing in this
212 paragraph shall be construed to operate as a waiver of any applicable privileges.

213 9. *No Admissions*

214 Nothing in this Agreement shall be construed as an admission by any Party regarding any
215 subject matter of this Agreement, including but not limited to the authority of the Regional Board
216 to regulate the importation of water to the Region. The Parties agree that Evidence Code
217 sections 1152 and 1154 render this Agreement inadmissible as evidence against any of the
218 Parties in any adjudicative proceeding, except a proceeding to enforce or interpret the terms or
219 conditions of this Agreement.

220 10. *Preservation of Rights*

221 The Parties agree that this Agreement is in settlement of a dispute and preserves all rights
222 of the Parties as they may exist as of the effective date of this Agreement.

223 11. *General Provisions*

224 a. *Authority.* Each signatory of this Agreement represents that s/he is authorized to
225 execute this Agreement on behalf of the Party for which s/he signs. Each Party
226 represents that it has legal authority to enter into this Agreement and to perform
227 all obligations under this Agreement.

228 b. *Amendments.* This Agreement may only be amended with the approval of all
229 Parties.

- 230 c. *Jurisdiction and Venue.* This Agreement shall be governed by and construed in
231 accordance with the laws of the State of California, except for its conflicts of law
232 rules. Any suit, action, or proceeding brought under the scope of this Agreement
233 shall be brought and maintained to the extent allowed by law in the County of
234 Riverside, California.
- 235 d. *Representations and Warranties.* Each representation and warranty contained
236 herein or made pursuant hereto shall be deemed to be material and to have been
237 relied upon and shall survive the execution, delivery and termination of this
238 Agreement.
- 239 e. *Entire Agreement.* This Agreement constitutes the entire agreement of the Parties
240 with respect to the subject matter of this Agreement and supersedes any prior oral
241 or written agreement, understanding, or representation relating to the subject
242 matter of this Agreement.
- 243 f. *Successors and Assigns.* This Agreement shall be binding on and inure to the
244 benefit of the successors and assigns of the respective Parties to this Agreement.
245 No Party may assign its interests in or obligations under this Agreement without
246 the written consent of the other Parties, which consent shall not be unreasonably
247 withheld or delayed.
- 248 g. *Advice of Counsel; Drafting by Negotiations.* This Agreement has been arrived at
249 through negotiations and each Party has had a full and fair opportunity to revise
250 the terms of this Agreement. As a result, the normal rule of construction that any
251 ambiguities are to be resolved against the drafting Party shall not apply in the
252 construction or interpretation of this Agreement. Each Party represents that it has
253 sought and obtained any legal advice it deems necessary from its own separate
254 counsel before entering into this Agreement.
- 255 h. *Waiver.* No waiver of any violation or breach of this Agreement shall be
256 considered to be a waiver of any other violation or breach of this Agreement, and
257 forbearance to enforce one or more of the remedies provided in this Agreement
258 shall not be deemed to be a waiver of that remedy.
- 259 i. *Severability.* If, after the date of execution of this Agreement, any provision of
260 this Agreement is held to be illegal, invalid, or unenforceable under present or
261 future laws effective during the term of this Agreement, such provision shall be
262 fully severable. However, in lieu thereof, there shall be added a provision as
263 similar in terms to such illegal, invalid or unenforceable provision as may be
264 possible and be legal, valid and enforceable.
- 265 j. *Compliance with Laws.* In performing their respective obligations under this
266 Agreement, the Parties shall comply with and conform to all applicable laws,
267 rules, regulations and ordinances.

- 268 k. *No Third-Party Beneficiaries.* This Agreement shall not create any right or
269 interest in any non-Party or in any member of the public as a third party
270 beneficiary.
- 271 l. *Necessary Actions.* Each Party agrees to execute and deliver additional
272 documents and instruments and to take any additional actions as may be
273 reasonably required to carry out the purposes of this Agreement.
- 274 m. *Counterparts.* This Agreement may be executed in one or more counterparts,
275 which may be executed and delivered via facsimile transmission, each of which
276 shall be deemed to be an original, but all of which together shall constitute but
277 one and the same instrument.
- 278 n. *Notices.* All notices, requests, demands or other communications required or
279 permitted under this Agreement shall be in writing unless provided otherwise in
280 this Agreement and shall be deemed to have been duly given and received on:
281 (i) the date of service if served personally or served by facsimile transmission on
282 the Party to whom notice is to be given at the address(es) provided below, (ii) on
283 the first day after mailing, if mailed by Federal Express, U.S. Express Mail, or
284 other similar overnight courier service, postage prepaid, and addressed as
285 provided below, or (iii) on the third day after mailing if mailed to the Party to
286 whom notice is to be given by first class mail, registered or certified, postage
287 prepaid, addressed as follows:

288 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

289 California Regional Water Quality Control Board
290 Santa Ana Region
291 3737 Main St., Suite 500
292 Riverside, CA 92501
293 (951) 782-4130 ph
294 (951) 781-6288 fax

295 CITY OF CORONA

296 City of Corona
297 400 S. Vicentia Avenue
298 Corona, CA 92882-2187
299 (951) 736-2239 ph
300 (951) 736-2231 fax

301 CITY OF RIVERSIDE

302 City of Riverside
303 5950 Acorn Street
304 Riverside, CA 92504-1036
305 (951) 351-6080 ph
306 (951) 351-6267 fax

307 EASTERN MUNICIPAL WATER DISTRICT

308 Eastern Municipal Water District
309 2270 Trumble Road
310 Perris, CA 92570
311 P.O. Box 8300
312 Perris, CA 92572-8300
313 (951) 928-3777 ph
314 (951) 928-6177 fax

315 ELSINORE VALLEY MUNICIPAL WATER DISTRICT

316 Elsinore Valley Municipal Water District
317 31315 Chaney Street
318 Lake Elsinore, CA 92530
319 P.O. Box 3000
320 Lake Elsinore, CA 92531-3000

321 ORANGE COUNTY WATER DISTRICT

322 Orange County Water District
323 10500 Ellis Avenue
324 Fountain Valley, CA 92708-6921
325 P.O. Box 8300
326 Fountain Valley, CA 92728-8300
327 (714) 378-3200 ph
328 (714) 378-3371 fax

329 SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

330 San Bernardino Valley Municipal Water District
331 1350 South "E" Street
332 San Bernardino, CA 92408-2725
333 P.O. Box 5906
334 San Bernardino, CA 92412-5906
335 (909) 387-9200 ph
336 (909) 387-9247 fax


337 SAN GORGONIO PASS WATER AGENCY

338 San Gorgonio Pass Water Agency
339 1210 Beaumont Avenue
340 Beaumont, CA 92223
341 (951) 845-2577 ph
342 (951) 845-0281 fax

343 WESTERN MUNICIPAL WATER DISTRICT

344 Western Municipal Water District
345 450 E. Alessandro Blvd.
346 Riverside, CA 92508-2449
347 P.O. Box 5286
348 Riverside, CA 92517-5286
349 (951) 789-5000 ph
350 (951) 780-3837 fax

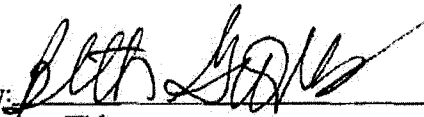
CALIFORNIA REGIONAL WATER
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356 By: 
357 Title: Executive Officer
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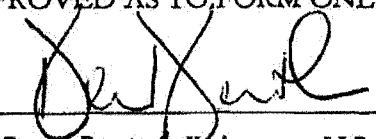
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362 By: _____

CITY OF CORONA

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367 By: 
368 Title: CITY MANAGER
369 Beth Groves
370

371 APPROVED AS TO FORM ONLY:
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373
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By: 
Best Best & Krieger, LLP
City of Corona Counsel

337 SAN GORGONIO PASS WATER AGENCY

338 San Gorgonio Pass Water Agency
339 1210 Beaumont Avenue
340 Beaumont, CA 92223
341 (951) 845-2577 ph
342 (951) 845-0281 fax

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347 P.O. Box 5286
348 Riverside, CA 92517-5286
349 (951) 789-5000 ph
350 (951) 780-3837 fax

CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD

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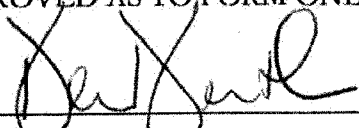
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CITY OF CORONA

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By: 
Title: CITY MANAGER
Beth Groves

APPROVED AS TO FORM ONLY:


By: 
Best Best & Krieger, LLP
City of Corona Counsel

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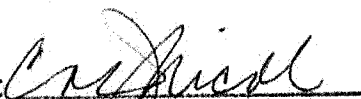
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CITY OF RIVERSIDE

By: 
Title: _____

APPROVED AS TO FORM ONLY:

By: *Gerson Wilson*
Deputy City Attorney

Attest: 
City Clerk

EASTERN MUNICIPAL WATER
DISTRICT

By: _____
Title: _____

APPROVED AS TO FORM ONLY:

By: _____

ELSINORE VALLEY MUNICIPAL
WATER DISTRICT

By: _____
Title: _____

APPROVED AS TO FORM ONLY:

By: _____

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CITY OF RIVERSIDE

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EASTERN MUNICIPAL WATER
DISTRICT

By:  _____
Title: *General Manager*

APPROVED AS TO FORM ONLY:

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ELSINORE VALLEY MUNICIPAL
WATER DISTRICT

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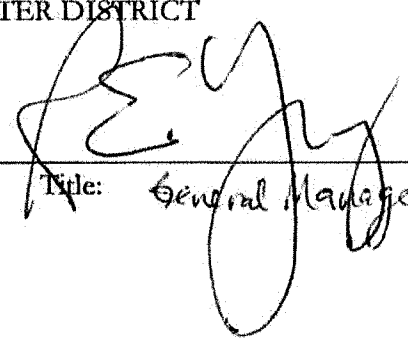
CITY OF RIVERSIDE

By: _____
Title: _____

EASTERN MUNICIPAL WATER
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Title: _____

ELSINORE VALLEY MUNICIPAL
WATER DISTRICT

By:  _____
Title: General Manager

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APPROVED AS TO FORM ONLY:

By: _____

ORANGE COUNTY WATER DISTRICT

By: Philip L. Anthony
Title: President

By: Michael P. [Signature]
Title: Acting General Manager

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT

By: _____
Title: _____

SAN GORGONIO PASS WATER
AGENCY

By: _____
Title: _____

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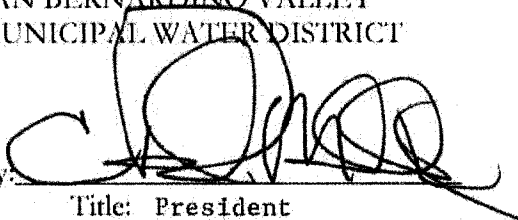
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ORANGE COUNTY WATER DISTRICT

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SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT

By: 
Title: President

SAN GORGONIO PASS WATER
AGENCY

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ORANGE COUNTY WATER DISTRICT

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Title: _____

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT

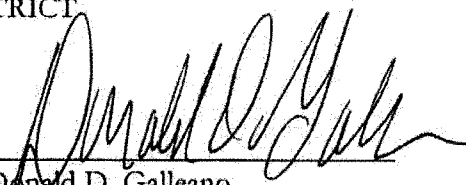
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SAN GORGONIO PASS WATER
AGENCY

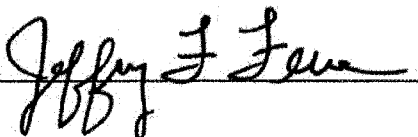
By: Jeffrey W. Davis
Title: General Manager

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WESTERN MUNICIPAL WATER
DISTRICT

By: 
Donald D. Galleano
President, Board of Directors

APPROVED AS TO FORM ONLY:

By: 

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CITY OF SAN BERNARDINO
MUNICIPAL WATER DEPARTMENT

By: Stacy Aldstadt
Title: GENERAL MANAGER

APPROVED AS TO FORM ONLY:

By: _____

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
SANTA ANA REGION**

RESOLUTION NO. R8-2008-0019

**Authorizing the Executive Officer to Sign and Execute the Cooperative Agreement
To Protect Water Quality and Encourage the Conjunctive Use
Of Imported Water in the Santa Ana River Basin**

WHEREAS:

1. In Resolution No. R8-2004-0001, the Regional Board revised the Basin Plan to adopt new water quality objectives for N/TDS based upon the recommendations of a stakeholder process;
2. The N/TDS Task Force, as the stakeholder effort has become known, is a model for the cooperative and collaborative development of water policy initiatives;
3. At its May 19, 2006 meeting, the Regional Board considered draft Resolution No. R8-2006-0042 and draft Order No. R8-2006-0005, which would have adopted general waste discharge requirements for the injection/percolation of imported State Project Water, Colorado River Water or imported well water to recharge groundwater management zones within the Santa Ana Region;
4. At the close of the May 19, 2006 meeting, the Regional Board directed staff to work with appropriate stakeholders – largely the same stakeholders that had participated in the development of the new water quality objectives for N/TDS through the N/TDS Task Force – to investigate the feasibility of a cooperative program to manage salinity within the Region that would serve as an alternative approach to achieve the objectives of draft Resolution R8-2006-0042 and draft Order No. R8-2006-0005;
5. The stakeholder group has met regularly with Regional Board staff and has negotiated a proposed Cooperative Agreement to Protect Water Quality and Encourage the Conjunctive Uses of Imported Water in the Santa Ana River Basin (Attachment A);
6. The City of Corona, the City of Riverside, the City of San Bernardino Municipal Water Department, Eastern Municipal Water District, Elsinore Valley Municipal Water District, Orange County Water District, San Bernardino Valley Municipal Water District, San Geronimo Pass Water Agency, and Western Municipal Water District of Riverside County have all executed the proposed cooperative agreement and, in doing so, have voluntarily agreed to an enhanced program to manage salinity within the Region;
7. Most water supply agencies in the State, including Metropolitan Water District of Southern California (MWDSC), are already required to collect and report routine chemical analyses to the California Department of Public Health (CDPH). In order to avoid redundant monitoring programs, MWDSC has offered to provide a copy of its annual water quality report, characterizing State Project Water, to the Regional Board. MWDSC's report to CDPH provides substantially the same

information that was originally specified in Table 1 of draft Order No. R8-2006-0005 (see Attachment B) and is a reasonable alternative approach;

8. The Regional Board wishes to obtain increased understanding of so-called "emerging contaminants" that may be present in imported water being used within the Region, however, there is significant uncertainty regarding the methods used to study emerging contaminants, including analytic methods and protocols;
9. The many issues associated with emerging contaminants are presently the subject of a number of studies, including a major study being undertaken by the National Water Research Institute (NWRI), the Metropolitan Water District of Southern California (MWDSC), and the Orange County Water District (OCWD) (NWRI/MWDSC/OCWD Study), estimated to be completed in 2009;
10. Regional Board staff believes that the NWRI/MWDSC/OCWD Study will provide data to satisfy the need for information concerning emerging contaminants for the calendar years 2008 and 2009;
11. For calendar years following 2008 and 2009, until a watershed-specific monitoring plan is developed and approved by the Regional Board, the Santa Ana River Dischargers Association (SARDA) has voluntarily agreed to provide an annual analysis of State Project Water imported to the Region for the suite of parameters sampled as part of the NWRI/MWDSC/OCWD Study;
12. The Cooperative Agreement signatories have agreed to develop a watershed-specific alternative list of emerging contaminants to be submitted for Regional Board consideration as an alternative to the parameters to be monitored during the NWRI/MWDSC/OCWD Study.
13. The Regional Board wishes to encourage voluntary programs to manage salinity and to better understand issues relating to emerging contaminants by partnering with stakeholders in a manner similar to the N/TDS Task Force. The results of the NWRI/MWDSC/OCWD study and other available data will be used in the stakeholder process to inform a program of study and investigation that includes an adaptively managed monitoring program.
14. The Cooperative Agreement and the monitoring program being developed by the stakeholder agencies within the Region obviates the need to bring back to the Board for consideration draft Resolution No. R8-2006-0042 and draft Order No. R8-2006-0005.

NOW, BE IT RESOLVED:

1. In lieu of the adoption of draft Resolution No. R8-2006-0042 and draft Order No. R8-2006-0005, the Regional Board hereby approves the proposed Cooperative Agreement to Protect Water Quality and Encourage the Conjunctive Uses of Imported Water in the

Santa Ana River Basin ("Agreement") and authorizes the Executive Officer to execute the Agreement on behalf of the Regional Board.

2. The Regional Board's execution of the Cooperative Agreement is contingent on the understanding that the other Cooperative Agreement signatories (the "Water Agencies") will, at their own expense, develop and implement a voluntary study program intended to better characterize the presence, extent, distribution and persistence of certain unregulated constituents in imported water used in the Santa Ana Region. The Regional Board supports this voluntary effort to manage water resources so as to avoid the need for future regulatory programs.
 - a. The study program will be based on the best available science. Additional data may be collected, as appropriate, as part of the annual plans for investigation described below.
 - b. The Water Agencies will, no later than December 31, 2008, prepare a report that provides a preliminary characterization of the presence, extent, distribution and persistence of unregulated constituents (also known as "emerging contaminants") that are indicators of the broader spectrum of constituents of water imported to the Santa Ana Region that may, in the future, be determined by appropriate regulatory agencies (e.g. USEPA or CDPH) to pose concerns for human health ("Imported Water Constituents"). This initial report will use data collected by the Department of Water Resources, the United States Geological Survey, the MWDSC/OCWD/NWRI study and other sources, as may be appropriate, that are developed consistent with generally accepted scientific data analysis protocols. The report shall be distributed to all signatories to this Agreement.
 - c. The Water Agencies will, no later than December 31, 2009, and annually thereafter, prepare a plan for investigation (including a summary of the results of all prior monitoring efforts) that addresses at least the following questions for the Imported Water Constituents:
 - i. Are there reliable and scientifically accepted protocols to test water for the presence and concentrations of these constituents?
 - ii. What is known about the presence, extent, distribution and persistence of these constituents?
 - iii. What is known about the toxicity, if any, of these constituents in terms of potential impacts on human health?
 - iv. Should additional data be collected on any of these constituents, and, if so, under what sampling and analytical protocols?
 - d. The annual plans for investigation described immediately above are not intended to substitute for the process used by USEPA and CDPH to develop MCLs or other water quality standards.

- e. It is understood that the constituents that are the subject of the annual plans for investigation will, in all likelihood, change over time as their relative importance or unimportance to human health becomes better known. The Water Agencies will select constituents that they believe will best assist in understanding the potential impacts of imported water on human health.
- f. The Regional Board may participate in the development of the report prepared pursuant to paragraph 2(b) above or the annual plans for investigation described in paragraph 2(c) above; however, such participation is not a prerequisite or condition for the development of such plan or reports.
- g. The Water Agencies will promptly prepare a status update on the progress of either the report prepared pursuant to paragraph 2(b) above or the current annual plan for investigation prepared pursuant to paragraph 2(c) above upon request by the Regional Board.
- h. The Water Agencies will promptly provide a copy of the report prepared pursuant to paragraph 2(b) above, the annual plans for investigation prepared pursuant to paragraph 2(c) above, and the results of analyses conducted pursuant to the Cooperative Agreement and this Resolution to all signatories to this Agreement, including the Regional Board.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Santa Ana Region, on January 18, 2008.



Gerard J. Thibeault
Executive Officer

Table I			
<u>Chemical</u>	<u>Units</u>	<u>Type of Sample</u>	<u>Minimum Frequency of Sampling and Analysis</u>
Total Water Flow	Mgd	Flow meter/totalizer	Continuous
Total Nitrogen ¹	mg/L	Grab ²	Annually
Nitrate Nitrogen	mg/L	Grab ³	Annually
Total Inorganic Nitrogen	"	"	"
Total Organic Carbon	"	"	"
Total Dissolved Solids	"	"	"
Total Trihalomethanes (TTHM) ⁴	"	"	"
N-Nitrosodimethylamine (NDMA)	"	"	"
Methyl-tert-butyl ether (MTBE)	"	"	"
Perchlorate	µg/L	Grab	Annually
<u>Inorganic Chemical</u>			
Aluminum	µg/L	Grab	Annually
Antimony	"	"	"
Arsenic	"	"	"
Asbestos	MFL	"	"
Barium	µg/L	Grab	"
Beryllium	"	"	"
Cadmium	"	"	"
Chromium	"	"	"
Cyanide	"	"	"
Fluoride	"	"	"
Mercury	"	"	"
Nickel	"	"	"
Selenium	"	"	"
Thallium	µg/L	Grab	Annually
<u>Volatile Organic Chemicals (VOC)</u>			
Benzene	µg/L	Grab	Annually
Carbon Tetrachloride	"	"	"
1,2-Dichlorobenzene	"	"	"
1,4-Dichlorobenzene	"	"	"
1,1-Dichloroethane	µg/L	Grab	Annually

¹ Total Nitrogen is defined as the sum of nitrate, nitrite, ammonia, and organic nitrogen concentrations, expressed as nitrogen.

² Grab sample is an individual sample collected in a short period of time not exceeding 15 minutes. Grab samples shall be collected during normal peak loading conditions for the parameter of interest, which may or may not be during hydraulic peaks.

³ Grab sample is an individual sample collected in a short period of time not exceeding 15 minutes. Grab samples shall be collected during normal peak loading conditions for the parameter of interest, which may or may not be during hydraulic peaks.

⁴ Sum of bromodichloromethane, dibromochloromethane, bromoform, and chloroform.

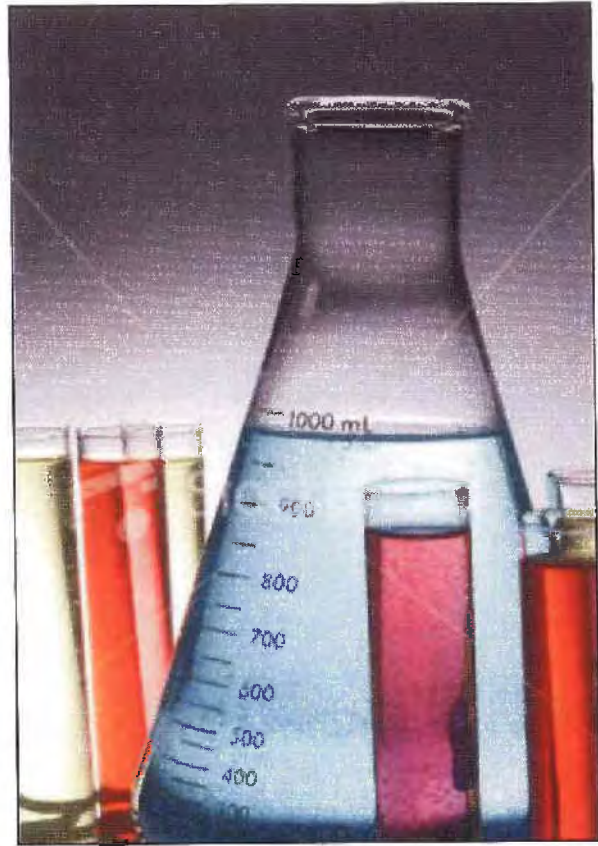
Table I			
<u>Chemical</u>	<u>Units</u>	<u>Type of Sample</u>	<u>Minimum Frequency of Sampling and Analysis</u>
1,2-Dichloroethane	µg/L	Grab	Annually
1,1-Dichloroethylene	"	"	"
Cis-1,2-Dichloroethylene	"	"	"
trans-1,2-Dichloroethylene	"	"	"
Dichloromethane	"	"	"
1,2-Dichloropropane	"	"	"
1,3-Dichloropropene	"	"	"
Ethylbenzene	"	"	"
Monochlorobenzene	"	"	"
Styrene	"	"	"
1,1,2,2-Tetrachloroethane	"	"	"
Tetrachloroethylene	"	"	"
Toluene	"	"	"
1,2,4-Trichlorobenzene	"	"	"
1,1,1-Trichloroethane	"	"	"
1,1,2-Trichloroethane	"	"	"
Trichloroethylene	"	"	"
Trichlorofluoromethane	"	"	"
1,1,2-Trichloro-1,2,2-Trifluoroethane	"	"	"
Vinyl Chloride	"	"	"
Xylenes ⁵	µg/L	Grab	Annually
<i>Non-Volatile Synthetic Organic Chemicals (SOCs)</i>			
Alachlor	µg/L	Grab	Annually
Atrazine	"	"	"
Bentazon	"	"	"
Benzo(a)pyrene	"	"	"
Carbofuran	"	"	"
Chlordane	"	"	"
2,4-D	"	"	"
Dalapon	"	"	"
Dibromochloropropane (DBCP)	"	"	"
Di(2-ethylhexyl)adipate	"	"	"
Di(2-ethylhexyl)phthalate	"	"	"
Dinoseb	"	"	"
Diquat	"	"	"
Endothall	"	"	"
Endrin	"	"	"
Ethylene Dibromide (EDB)	"	"	"
Glyphosate	"	"	"
Heptachlor	µg/L	Grab	Annually

⁵ Limit is for either a single isomer or the sum of the isomers.

Table I			
<u>Chemical</u>	<u>Units</u>	<u>Type of Sample</u>	<u>Minimum Frequency of Sampling and Analysis</u>
Heptachlor Epoxide	µg/L	Grab	Annually
Hexachlorobenzene	"	"	"
Hexachlorocyclopentadiene	"	"	"
Lindane	"	"	"
Methoxychlor	"	"	"
Molinate	"	"	"
Oxamyl	"	"	"
Pentachlorophenol	"	"	"
Picloram	"	"	"
Polychlorinated Biphenyls	"	"	"
Simazine	"	"	"
Thiobencarb	"	"	"
Toxaphene	"	"	"
2,3,7,8-TCDD (Dioxin)	"	"	"
2,4,5-TP (Silvex)	µg/L	Grab	Annually
<u>Disinfection By-products</u>			
	µg/L	Grab	Annually
Total Haloacetic acids (five) (HAA5) ⁶	"	"	"
<u>Notification Levels</u>			
Copper	µg/L	Grab	Annually
Lead	µg/L	Grab	Annually
<u>Radionuclides</u>			
Combined Radium-226 and Radium-228	pCi/l	Grab	Annually
Gross Alpha particle activity (including Radium-226 but excluding Radon and Uranium)	"	"	"
Tritium	"	"	"
Strontium-90	"	"	"
Gross Beta particle activity	"	"	"
Uranium	pCi/l	Grab	Annually

⁶ Sum of monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid).

Emerging Constituents Workgroup



Proposed Work Plan for Santa Ana Watershed Project Authority's Emerging Constituents Workgroup in 2010-2011

1.0 Introduction

Water quality is routinely sampled at tens of thousands of locations across the U.S. Samples are collected from rain water, storm water runoff, freshwater streams, lakes and reservoirs, groundwater wells and tap water to characterize the quality of various supply sources. Additional samples from the sewage systems are analyzed to ensure pollution prevention programs and wastewater treatment plants are meeting all federal and state water quality standards.

Most sampling programs focus on a few hundred of the most common chemical constituents to assess overall water quality. These chemicals were selected from the larger universe of known chemicals because there is sufficient scientific evidence to indicate they may pose an increased risk to humans, plants or animals (including aquatic organisms) when they occur at elevated concentrations.

Several different regulatory agencies share responsibility for determining the acceptable concentration of potential pollutants. This is a formidable task as there are tens of thousands of chemical compounds in common use. Consequently, state and federal authorities rely on sales/usage information and monitoring data to establish appropriate research priorities for setting new water quality standards through a sophisticated and thorough regulatory review process.¹

Improvements in analytical technology over the last decade have dramatically increased the number of chemicals we can detect and greatly decreased the concentration at which we can detect them.² Today, we are able to identify and quantify some potential pollutants in the range of one part-per-trillion (ppt) or less.³ For perspective, 1 ppt is approximately equal to a plot of land the size of a postage stamp in an area the size of Orange County.

This new ability to detect infinitesimally small chemical concentrations has fundamentally altered our understanding of what's in the water. Trace levels (approx. 1-100 ppt) of many different man-made chemicals, particularly pesticides, pharmaceuticals and personal care products, have been found in waters across the United States. Collectively, these compounds are referred to as "Emerging Constituents" (ECs) because their presence is just starting to be revealed by rapid advances in analytical technology.⁴

¹ See, for example, U.S. EPA's process for identifying Candidate Contaminant List (CCL).

² Vanderford, B.J., et al. "Analysis of Endocrine Disrupters and Personal Care Products in Water Using Liquid Chromatography and Tandem Mass Spectrometry." *Analytical Chemistry*. 2003 (75:6265-6274)

³ Vanderford, B.J. and Shane Snyder. "Analysis of Pharmaceuticals in Water by Isotope Dilution Liquid Chromatography/Tandem Mass Spectrometry." *Environmental Science and Technology*. 2006 (p. 7312-7320).

⁴ Emerging Constituents is one of several similar phrases used to describe the same phenomena. Synonyms include: emerging contaminants of concern, chemicals of emerging concern (CEC), micro-constituents, micro-pollutants, trace organics, etc. Such phrases may mistakenly imply that it is the concern that is emerging rather than the knowledge that certain chemicals may be present in a water sample. Similarly, referring to such compounds as Emerging Pollutants or Emerging Contaminants may mistakenly imply that the levels detected

Once new chemicals are detected, the question naturally arises as to what effect, if any, these compounds have on the municipal drinking water supplies. As part of the Recycled Water Policy adopted in early 2009, the California State Water Resources Control Board ("State Board") recently convened a Blue Ribbon Panel of Experts to address this concern.⁵ The Panel's mission is to recommend appropriate water quality monitoring strategies for ECs based on the best available pharmacological and toxicological information taking into consideration the fate and transport of such chemicals through advanced treatments systems and the natural environment. The Panel is expected to publish its final recommendations in mid-2010.

2.0 Regulatory Context

In general, chemical compounds can be divided into two categories: regulated and unregulated. Regulated chemicals include those where a formal water quality standard or a state notification level has been established.⁶ State and federal authorities may issue orders governing the release of such compounds into the environment. These regulations may range from relatively simple monitoring and reporting requirements to strict discharge prohibitions.

Unregulated chemicals are those for which no water quality standard or state notification level have been established. By definition, ECs are usually considered unregulated chemicals. However, that status may change as new information is developed. To that end, additional data are needed to characterize the presence and persistence of ECs throughout the water supply system. This information, along with epidemiological and toxicological data, may be used to set priorities for developing new water quality criteria, Maximum Contaminant Levels (MCLs), state notification levels and future water quality monitoring requirements.

Because the analytical techniques used to support EC characterization studies are still in the earliest stages of development, great care must be exercised when using the results of those studies. The data generated from the non-standard methods employed during the preliminary characterization studies are not sufficiently accurate for regulatory purposes such as: 303(d) listing decisions, antidegradation analyses, or translating narrative criteria into numeric effluent limits. These legal determinations depend on detailed risk assessments that are not yet available. However, the data from such studies is useful for determining which ECs, if any, should be prioritized for additional method development in order to determine whether more formal regulatory assessments may be needed in the future.

pose a known hazard to people or the environment. The Emerging Constituents Workgroup in the Santa Ana region has chosen to use the phrase "emerging constituents" to describe a large group of chemicals that may or may not pose a risk to human health and the environment. The California Office of Environmental Health Hazard Assessment and U.S. EPA have primary legal responsibility for making the necessary risk assessments and publishing appropriate water quality standards for all chemicals including Emerging Constituents.

5 SWRCB. Recycled Water Policy. Resolution No. 2009-0011 (adopted 2/3/09). A summary of the Blue Ribbon Panel's work-in-progress is available at www.sccwrp.org

6 Concentrations of concern may be expressed as Maximum Contaminant Levels (MCLs), Public Health Goals (PHGs), State Notification Levels, 304(a) Criteria, Basin Plan objectives, TMDL targets, wasteload allocations, or receiving water limitations. Some of these also serve as formal regulatory thresholds.

Pending development of additional water quality standards, the California Department of Public Health ("DPH") previously suggested that periodic monitoring for trace organic chemicals may serve as a useful indicator of groundwater quality downgradient of recycled water projects.⁷ Such data may also be used to corroborate the effectiveness of soil-aquifer treatment and the multi-barrier approach to preventing pathogen pollution. Therefore, as part of the proposed Groundwater Recharge Reuse Regulations, DPH prepared a draft list of ECs to guide planning and permitting efforts for recycled water projects.⁸

Acting on DPH's draft recommendations, Regional Boards began adding EC monitoring requirements to the permits for recycled water projects. As the use of recycled water has increased, so have the number of permits containing such provisions.⁹ By 2006, some form of EC monitoring, often based on DPH's preliminary suggestions, was rapidly becoming a permit condition for all direct and indirect recharge of recycled water.¹⁰

Recognizing that the draft monitoring list for ECs was being misunderstood, DPH subsequently revised the draft Groundwater Recharge Reuse Regulation to clarify its original intent. DPH eliminated the list of specific chemicals and instead proposed that recycled water projects analyze for representative compounds within broad chemical categories (hormones, pharmaceuticals, personal care products, industrial chemicals, pesticides, etc.). The specific choice of chemical would be left to the project proponent and the permitting authorities.¹¹

The SWRCB adopted the Recycled Water Policy and convened the aforementioned Blue Ribbon Panel of Experts to review the available science and make appropriate recommendations for future EC monitoring. California's Blue Ribbon Panel is only one of many different groups undertaking similar efforts. Recent news articles and a number of scientific papers and technical reports increased public awareness of the issue and provided impetus for additional EC investigations around the country.¹²

⁷ DPH serves several different regulatory roles with respect to groundwater recharge projects. DPH is responsible, under statute, for establishing water quality criteria for groundwater recharge projects. DPH also acts as a consultant to the Regional Boards on the permit requirements for specific groundwater recharge projects. And, DPH has a co-equal role with the Regional Boards in establishing permit requirements for groundwater recharge projects that rely on direct injection rather than surface percolation.

⁸ <http://www.cdph.ca.gov/certlic/drinkingwater/Documents/Recharge/DraftRechargeReg2008.pdf> (see Endnote 5). See also <http://www.cdph.ca.gov/certlic/drinkingwater/Pages/EmergingContaminants.aspx>

⁹ See, for example, Monitoring and Reporting Program for Regional Board Order No. R8-2005-0033 for Phase I of the Chino Basin Recycled Water Groundwater Recharge Project.

¹⁰ See, for example, the NPDES permit issued to Donald C. Tillman Water Reclamation Plant (NPDES No. CA0056227) and the proposed draft NPDES Permit for the Henry N. Wochholz Regional Water Recycling Facility operated by the Yucaipa Valley Water District (NPDES No. CA0105619). Attachment K: List of Unregulated Chemicals: Endocrine Disrupting Chemicals & Pharmaceuticals and Other Chemicals (2007).

¹¹ A more detailed discussion of the history of EC monitoring as it relates to NPDES permitting requirements in California is provided in the Phase-I Report of the Emerging Constituents Task Force. Santa Ana Watershed Project Authority. April, 2009. Available for download at: <http://www.sawpa.org>

¹² Jeff Donn, Martha Mendoza and Justin Pritchard, Associated Press. "AP Probe Finds Drugs in Drinking Water." March 10, 2008.

3.0 Current Studies to Characterize Emerging Constituents

Recently, several large-scale water quality characterization studies began testing for select ECs. The U.S. Geological Survey's National Ambient Water Quality Assessment (NAWQA) and Groundwater Ambient Monitoring Assessment (GAMA) are probably the largest and best known of these research efforts. Results from samples collected throughout the nation indicate that ECs have been detected at trace levels in some surface and groundwater samples.

Subsequent investigations have detected the presence of similar chemicals in both source waters and tap waters.¹³ And, follow-on studies found trace amounts of some ECs in highly treated recycled waters.¹⁴ The concentration of trace organic compounds fluctuates greatly from location to location and from day to day. New research is underway to determine if additional treatment can reduce or eliminate ECs cost-effectively.¹⁵

Given these findings, and the significant role recycled water plays in Southern California, a coordinated effort to characterize the presence of ECs in the Santa Ana River watershed was recently initiated. In 2007-8, the USGS collected and analyzed local groundwater samples as part of the GAMA program. Results of this effort were published in November, 2009 and the EC data are summarized in Table 1.

TABLE 1: EC Characterization for Select Ground Waters in the Santa Ana Region

Compound	Use	# Detections	Detection %	LRL*
Acetaminophen	Analgesic	3 of 89 wells	3%	25 ng/L
Caffeine	Stimulant	3 of 89 wells	3%	15 ng/L
Carbamazepine	Anti-convulsant	5 of 89 wells	6%	30 ng/L
Sulfamethoxazole	Antibiotic	0 of 89 wells	0%	10 ng/L

*LRL = Laboratory Reporting Level

Other pharmaceutical compounds evaluated included: Codeine (narcotic), Continine (nicotine metabolite), Dehydronifedipine (anti-angina metabolite), Diltiaem (anti-angina), Diphenhydramine (antihistamine), Salbutamol (bronchodilator), Thiabendazole (anthelmintic), Trimethoprim (antibacterial), Warfarin (anti-coagulant).

13 Benotti, M.J., R.A. Trenholm, B.J. Vanderford, J.C. Holady, B.D. Stanford and S. A. Snyder. "Pharmaceuticals and endocrine disrupting compounds in U.S. drinking water." Environmental Science and Technology. 2009

14 Snyder, Shane. Southern Nevada Water Authority - Applied R&D Center. Testimony before the Senate Subcommittee on Transportation Safety, Infrastructure Security and Water Quality on Pharmaceuticals in the Nation's Water: Assessing Potential Risks and Actions to Address the Issue. April 15, 2008.

15 See, for example, Dickenson, E.R., J.E. Drewes, D.L. Sedlak, E.C. Wert and S.A. Snyder. "Applying surrogates and indicators to assess removal efficiency of trace organic chemicals during chemical oxidation of wastewaters." Environmental Science and Technology. 2009.

The GAMA study also analyzed for nine other pharmaceutical compounds (listed above). None of these other chemicals were detected in any of the groundwater samples. USGS concluded that:

*"No pharmaceutical compound was detected in more than five wells, and all of the concentrations were low. Health-based thresholds do not exist for concentrations of pharmaceuticals in drinking water. However, to reach concentrations of the two detected medications (acetaminophen and carbamazepine) equal to dosages typically recommended or prescribed would, in all cases, require consuming more than one million liters of the sampled water. The sampled concentrations of caffeine were, in all cases, less than one-millionth of the concentration of caffeine in regular coffee."*¹⁶ (pg. 13)

In addition, three water agencies undertook a focused sampling program to characterize EC concentrations in surface waters including water imported to the region from the State Water Project and the Colorado River. The agencies also evaluated samples collected from the Santa Ana River, its tributaries, and select wastewater discharges to these streams.¹⁷ Consistent with previous studies performed elsewhere, preliminary data from the Santa Ana investigation detected the presence of some ECs in surface waters throughout the region (see Table 2).

TABLE 2: Partial EC Characterization for Surface Waters in Santa Ana River (n=32)¹⁸

Compound	Use	Minimum	Median	Maximum
Caffeine	Stimulant	9 ng/L	47 ng/L	1620 ng/L
Carbamazepine	Anti-convulsant	49 ng/L	135 ng/L	267 ng/L
Gemfibrozil	Anti-cholesterol	<5 ng/L	48 ng/L	590 ng/L
Primidone	Anti-convulsant	41 ng/L	90 ng/L	146 ng/L
Sulfamethoxazole	Antibiotic	4 ng/L	160 ng/L	721 ng/L

This finding is not surprising considering that recycled water often comprises more than 90% of the flow in the Santa Ana River and trace levels of some ECs were also detected in the treated municipal wastewater discharged to the river (see Table 3).

¹⁶ Kent, Robert and Kenneth Belitz. United States Geological Survey (USGS). Ground-Water Quality Data in the Upper Santa Ana Watershed Study Unit, November 2006 – March 2007: Results from the California GAMA Program. Data Series 404. November, 2009.

¹⁷ Guo, Y.C. et al, "Occurrence, Fate and Transport of PPCPs in Three California Watersheds." AWWA Water Quality Technology Conference, November, 2009. Seattle, WA (Research co-sponsored by Metropolitan Water District of Southern California, Orange County Water District, and National Water Research Institute).

¹⁸ Eight stream sites were each sampled four times between April, 2008 and April, 2009.

TABLE 3: Partial EC Characterization for Municipal Effluents (n=16)¹⁹

Compound	Use	Minimum	Median	Maximum
Caffeine	Stimulant	<5 ng/L	14 ng/L	1883 ng/L
Carbamazepine	Anti-convulsant	123 ng/L	208 ng/L	331 ng/L
Gemfibrozil	Anti-cholesterol	<5 ng/L	22 ng/L	1178 ng/L
Primidone	Anti-convulsant	84 ng/L	146 ng/L	171 ng/L
Sulfamethoxazole	Antibiotic	4 ng/L	417 ng/L	1593 ng/L

Finally, trace concentrations of some ECs were identified in water imported to the Santa Ana Region from the State Project (see Table 4) and the Colorado River (see Table 5).

TABLE 4: Partial EC Characterization for State Project Water (n=8)²⁰

Compound	Use	Minimum	Median	Maximum
Caffeine	Stimulant	<5 ng/L	7 ng/L	37 ng/L
Carbamazepine	Anti-convulsant	<1 ng/L	2 ng/L	4 ng/L
Gemfibrozil	Anti-cholesterol	<5 ng/L	<5 ng/L	5 ng/L
Primidone	Anti-convulsant	< 2 ng/L	2 ng/L	10 ng/L
Sulfamethoxazole	Antibiotic	5 ng/L	10 ng/L	11 ng/L

TABLE 5: Partial EC Characterization for Colorado River Water (n=4)²¹

Compound	Use	Minimum	Median	Maximum
Caffeine	Stimulant	<5 ng/L	<5 ng/L	<5 ng/L
Carbamazepine	Anti-convulsant	<1 ng/L	<1 ng/L	2 ng/L
Gemfibrozil	Anti-cholesterol	<5 ng/L	<5 ng/L	<5 ng/L
Primidone	Anti-convulsant	<2 ng/L	2 ng/L	3 ng/L
Sulfamethoxazole	Antibiotic	<1 ng/L	<1 ng/L	1 ng/L

¹⁹ Four wastewater treatment plans were each sampled four times between April, 2008 and April, 2009. The four plants include three that discharge to the Santa Ana river system and one that discharges to the Colorado River in Nevada.

²⁰ Two samples locations, representing the east and west branches of the State Project Water in Southern California, were sampled four times each between April, 2008 and April, 2009.

²¹ Four samples were collected from Lake Mathews, the terminal reservoir for Colorado River imported to Southern California, between April 2008 and April 2009.

After confirming that ECs were present, water and wastewater agencies throughout the Santa Ana region elected to continue their characterization studies and to coordinate those efforts with one another. This voluntary program is intended to supplement the existing knowledge base pending recommendations from the Blue Ribbon Panel of Experts and potential new policy guidance from DPH and/or the State Board. At this time, it is not known what those recommendations will be or what actions DPH and the State Board will take based on those recommendations.

4.0 Purpose

The water and wastewater agencies serving the Santa Ana region are committed to develop an EC investigation program that addresses the public's desire to know more about what chemicals may be in their water supplies. Such efforts are essential to increase public acceptance and encourage greater use of recycled water.

The rationale for this voluntary program was recently described in a report entitled: "Managing Contaminants of Emerging Concern in California." The report summarizes results and recommendations from a forum of regulatory and scientific experts convened to assist the State Board in developing a scope-of-work for the Blue Ribbon Panel. Workshop participants found that more data characterizing the presence and persistence of ECs will: 1) establish a baseline to evaluate fate and transport mechanisms and potential trends in water quality which is essential to develop a risk-based approach to understanding and managing exposure to ECs; 2) aid federal and state authorities as they set priorities for and determine whether to develop new water quality criteria; and 3) be useful for evaluating the effectiveness of pollution prevention and source control programs.

The report also identified three steps that should be taken as agencies collaborate to characterize and understand the effects of ECs on public health and the environment. The first step will be filling data gaps through investigative monitoring and targeted research. The second step will be identifying, developing and testing accurate and reliable methods for detecting ECs at very low levels. The third step will be to incorporate the measurement of ECs into on-going water quality studies, such as those that have been undertaken by Inland Empire Utilities Agency, the Metropolitan Water District of Southern California, National Water Research Institute and Orange County Water District. The workshop participants stressed that:

*"In lieu of regulations or compliance monitoring...investigative chemical monitoring should be used as the first step towards development of a management strategy in California." [A key element] "of this process will be our ability to adapt the strategy as new information becomes available. Since relatively little is known about CECs at this time, new information and technology will undoubtedly affect our ability to monitor and establish thresholds for CECs. Preliminary CEC monitoring lists will be subject to trial and error."*²²

As noted earlier, the draft DPH Groundwater Recharge and Reuse regulations do not identify the specific ECs that must be monitored. Rather, DPH states that this determination must be made on a project-by-project basis and will vary based on a number of considerations including the source of the recharge water, the type of treatments applied to the recycled water and the nature of soil conditions in the area and other factors that may affect the fate, transport and degradation of ECs in the environment. DPH also acknowledges that, for some projects, other chemicals (such as the relative amounts of inorganic tracers or total organic carbon) may provide a better indication of the sources influencing groundwater quality than the specific concentration of various trace organic compounds. It is the responsibility of the project proponents to recommend and justify an appropriate monitoring strategy to the state permitting authorities.

Because analytical technology is constantly improving and our knowledge of which chemicals may pose an unacceptable risk to people and the environment is always growing, it is agreed that any EC investigation program must be updated regularly. Therefore, it is likely that the list of chemicals recommended for future characterization studies will change over time. The water and wastewater agencies proposing to undertake this investigation are committed to a process of adaptive management to ensure the EC characterization program fulfills its stated purpose using the best available science.

To facilitate early implementation of these recommendations, stakeholders in the Santa Ana region propose to undertake a water quality characterization study in 2010-11 to fill some of the aforementioned data gaps. Samples collected from select surface water streams, imported water sources and wastewater treatment plants will be analyzed for a representative group of ECs using the best analytical technology presently available.

The EC Workgroup will prepare a written Sampling and Analysis Plan (SAP) describing the specific data quality objectives, sampling locations, sampling protocols, sampling frequency, analytical methods, QA/QC procedures, database management and reporting requirements. The plan will also discuss the appropriate and inappropriate uses of the data given the various method limitations. The SAP will be submitted to the Regional Board staff by March 15, 2010 for review and comment. The general specifications for the 2010-2011 EC Characterization Study are described in Section 5.

²² "Managing Contaminants of Emerging Concern in California." California CEC Workshop. Co-sponsored by the Southern California Coastal Water Research Project (SCCWRP), California Ocean Protection Council, California Ocean Science Trust, National Water Research Institute, San Francisco Estuary Institute and the Urban Water Research Center at the University of California-Irvine. Held: April 28-29, 2009. Report published in Sept., 2009 and is available at:
http://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/600_CEC_wkshp2009.pdf

5) 2010-11 Characterization Study

A) Proposed Analytes

Table 6 identifies the trace organic compounds that the stakeholders propose to assess during the 2010 characterization period. The list may be revised for the 2011 characterization period based on recommendations from the Blue Ribbon Panel of Experts or new guidance from the State Board.

Table 6: ECs to be Analyzed

Chemical	Category	Common Use	Notes
Acetaminophen (aka "Tylenol")	Pharmaceutical	Over-the Counter Analgesic	3,4,5,8
Bisphenol-A (BPA)	Industrial	Plastic Manufacturing	7
Caffeine (coffee, tea, soft drinks)	Food Additive	Non-Prescription Stimulant	3,5,6,8
Carbamazepine	Pharmaceutical	Prescription Anti-Convulsant	1,2,3,4,5,6,8
DEET (aka "Off")	Pesticide	Household Insect Repellent	1,2,6
Diuron	Herbicide	Weed Control	6
Ethinylestradiol/Ethinylestradiol	Hormone	Prescription	1,2,4,6
Gemfibrozil	Pharmaceutical	Prescription Anti-Cholesterol	1,2,3,4,5,6
Ibuprofen (aka "Advil")	Pharmaceutical	Over-the-Counter Analgesic	3,4,5
Sulfamethoxazole	Pharmaceutical	Prescription Antibiotic	1,2,3,5,6,8
TCEP	Industrial	Flame Retardant	1,2,3,6

Selection Criteria Notes:

- 1) Commonly detected in national studies of water supply sources.
- 2) Commonly detected in national studies of finished drinking water.
- 3) Detected in SAR surface waters and/or effluents in MWDSC/NWRI/OCWD study.
- 4) Detected in Inland Empire Utility Agency's existing EC monitoring program.
- 5) Detected in previous USGS studies of the Tualatin River system in Oregon.
- 6) Recommended by expert panel assembled to review an advanced reclamation project proposed for the West Basin.
- 7) Recently added to U.S. EPA's Candidate Contaminant List (CCL)
- 8) Detected by the USGS GAMA program in Santa Ana groundwater samples.

B) Proposed Sampling

Table 7: Sampling Locations, Frequency, Type & Responsibilities

Sampling Site	Sampling Frequency	Sample Type	Responsible Agency ²³
Final Effluent from All Wastewater Treatment Plants ²⁴	Annually	24-hour Composite	Permitted Operator
State Project Water @ Devil Canyon	Annually	Representative Grab	MWDSC
Colorado River @ San Jacinto West Portal	Annually	Representative Grab	MWDSC
Santa Ana River near MWD Crossing	2x/year	Representative Grab	OCWD
Santa Ana River near Prado Dam	2x/year	Representative Grab	OCWD

Water samples will be collected by June of each year. Second samples, when needed, will be collected by September of each year. Due to the time required to analyze samples, review QA/QC and summarize results, data from the summer collection period will be included in the next year's report.²⁵

C) Proposed Methods

At present, there are no standardized or certified methods for analyzing most ECs.²⁶ Until EPA approves such methods, the EC Workgroup is committed to using the best analytical technology commercially available: LC-MS-MS with isotope dilution. In general, this technique is capable of detecting select ECs in de-ionized laboratory water at concentrations of 1 to 10 ng/L. However, the specific reporting detection level (RDL) will vary over time and between laboratories in more complex water matrices. Therefore, more detailed data quality objectives and QA/QC requirements will be specified in the Sampling and Analysis Plan submitted to the Regional Board.

²³ Pending approval and funding authorization from each agency.

²⁴ Includes all wastewater treatment plants operating under a valid NPDES permit or Waste Discharge Requirement (WDR) issued by the California Regional Water Quality Control Board – Santa Ana Region and/or U.S. EPA regardless of whether the discharge is to waters of the U.S. or waters of the state.

²⁵ Therefore, the report submitted in November, 2010 will include only the results for samples collected in May, 2010. The report submitted in November, 2011 will include the results for samples collected in August, 2010 and May, 2011.

²⁶ U.S. EPA approves analytical methods pursuant to 40 CFR Part 136.

D) Proposed Reporting

Participating stakeholders will submit copies of all sampling documents (field notes and chain of custody forms) and laboratory reports to the Santa Ana Watershed Project Authority (SAWPA). SAWPA will input the data to the SAWDMS database and prepare an annual report summarizing results of the EC characterization program. A draft copy of the EC report will be distributed for review and comment and SAWPA will convene a stakeholder meeting shortly thereafter to discuss suggested revisions to the draft document. The final report will be submitted to the Regional Board, on behalf of the stakeholders, by December 31st of each year.

The annual report will include a detailed description of the chemical analytes, sampling locations, sampling dates and protocols, analytical methods, QA/QC procedures and relevant results. Where appropriate, the report will also include any recommended changes to future EC sampling efforts (including revised analytes or sampling locations).

Finally, to facilitate public understanding of the new information, the report will describe the toxicological relevance of the measured EC concentrations. The purpose of this discussion is to provide, where possible, a scientific context for evaluating the relative health risks of these trace organic compounds.²⁷

E) Proposed Schedule for 2010-11 Study Period

Task	Description	Deadline
1	Prepare and Submit EC Sampling and Analysis Plan	Mar. 15, 2010
2	Collect and Analyze Initial Samples from All Locations in Table 7	June 30, 2010
3	Submit Initial Sample Results and Related Documentation to SAWPA	July 31, 2010
4	ECW Meeting to Review and Discuss Initial Sample Results	Aug. 31, 2010
5	Collect and Analyze Second Surface Water Samples	Sept. 30, 2010
6	Distribute Draft Annual Report to Emerging Constituents Workgroup	Oct. 31, 2010
7	ECW Meeting to Review and Finalize Annual Report	Nov. 30, 2010
8	Submit First Annual Report to Regional Board	Dec. 31, 2010
9	Submit Second Surface Water Sample Results from 2010 to SAWPA	Jan. 31, 2011

²⁷ See, for example, "Toxicological Relevance of Endocrine Disrupting Chemicals and Pharmaceuticals in Water" American Water Works Association Research Foundation Report No. 3085/WRF 04-003.

E) Emerging Constituents Workgroup

SAWPA will periodically coordinate meetings of the Emerging Constituents Workgroup (ECW) to organize the next phase of the EC characterization study. This includes reviewing new water quality data, preparing the annual EC report, and integrating new EC policies enacted by the State Board and DPH.

During 2010, and after reviewing the final published results from the GAMA study and the MWDSC/NWRI/OCWD study, the ECW will determine whether it is useful and appropriate to expand the investigation effort to include storm water samples and select groundwater locations in 2011.

**CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD**

By: _____
Title: _____

APPROVED AS TO FORM ONLY:

By: _____

**METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA**

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Title: _____

APPROVED AS TO FORM ONLY:

By: _____

CITY OF CORONA

By: _____
Title: _____

APPROVED AS TO FORM ONLY:

By: _____

CITY OF RIVERSIDE

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Title: _____

APPROVED AS TO FORM ONLY:

By: _____

EASTERN MUNICIPAL WATER DISTRICT

By: _____
Title: _____

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**ELSINORE VALLEY MUNICIPAL WATER
DISTRICT**

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ORANGE COUNTY WATER DISTRICT

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Title: _____

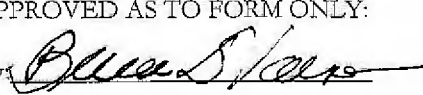
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**SAN BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT**

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WASTEWATER AUTHORITY**

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CITY OF REDLANDS

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Title: _____

APPROVED AS TO FORM ONLY:

By: _____

CITY OF RIALTO

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Title: _____

APPROVED AS TO FORM ONLY:

By: _____

INLAND EMPIRE UTILITIES AGENCY

By: _____

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LEE LAKE WATER DISTRICT

By: _____

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APPROVED AS TO FORM ONLY:

By: _____

CITY OF BEAUMONT

By: _____

Title: _____

APPROVED AS TO FORM ONLY:

By: _____

SAN GORGONIO PASS WATER AGENCY

By: _____

Title: _____

APPROVED AS TO FORM ONLY:

By: _____

**SANTA ANA WATERSHED PROJECT
AUTHORITY**

By: _____

Title: _____

APPROVED AS TO FORM ONLY:

By: _____

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

SAN GORGONIO PASS WATER AGENCY

DEMONSTRATION PROJECT

WATER EXCHANGE AGREEMENT

RECITALS

- A. San Bernardino Valley Municipal Water District ("VALLEY") is a public agency organized pursuant to the California Municipal Water District Law of 1911 (Water Code §§ 71000 et seq.) with broad powers to acquire and sell water. VALLEY has a Water Supply Contract with the California Department of Water Resources ("DWR") that provides VALLEY with a Table A Amount of up to 102,600 acre-feet per annum of water ("AFA") from the State Water Project ("SWP").
- B. San Gorgonio Pass Water Agency ("AGENCY") is a public agency organized in accordance with San Gorgonio Pass Water Agency Law (Water Code Appendix §§ 101-1 et seq.) with broad powers to acquire and sell water. AGENCY has a Water Supply Contract with DWR that provides it with a Table A Amount of up to 8,650 AFA in 2007, increasing to 17,300 AFA in 2008 and thereafter.
- C. VALLEY and AGENCY have previously entered into cooperative agreements to provide facilities and capacity to achieve and maximize delivery of SWP water to their respective service areas.
- D. VALLEY and AGENCY intend by this Agreement to implement a Demonstration Project to exchange water for an initial period of one year to determine the long-term feasibility, including evaluation of benefits, costs, and beneficial distribution of supplemental water to VALLEY and AGENCY.
- E. VALLEY and AGENCY desire to enter into this Water Exchange Agreement whereby VALLEY will acquire up to 1,000 AF of SWP water from AGENCY ("INITIAL DELIVERY") in exchange for delivery of a like amount of water from VALLEY to AGENCY ("EXCHANGE WATER") within three years of the INITIAL DELIVERY ("RETURN PERIOD").
- F. VALLEY has a need for the INITIAL DELIVERY on or before March, 2009 to improve reliability of supply to existing water users within VALLEY.

- G. AGENCY has up to 1,000 AF of SWP water available from its 2008 allocation of SWP water for the INITIAL DELIVERY provided it can receive the EXCHANGE WATER from VALLEY within three years to enable it to meet anticipated demands for water within its service area.

IN CONSIDERATION OF THE MUTUAL PROMISES of the Parties as set forth herein, it is agreed as follows:

1. Description of the Exchange and Procedures.

a. On or before December 1, 2008, AGENCY will in writing request the California Department of Water Resources ("DWR") to deliver up to 1,000 AF of the AGENCY's SWP Table A Amount to VALLEY ("INITIAL DELIVERY") at its designated point of delivery. A copy of such written request shall be delivered to VALLEY. After written confirmation to AGENCY from VALLEY of such INITIAL DELIVERY, at the written request of AGENCY, VALLEY shall deliver a like amount of SWP water or water of equal or better quality ("EXCHANGE WATER") to AGENCY, in whole or in part as specified in such request. AGENCY shall not make such request any earlier than October, 2009. VALLEY and AGENCY shall meet and confer in advance of such delivery date to schedule the delivery of the EXCHANGE WATER over the Return Period. VALLEY shall complete delivery of the EXCHANGE WATER no later than December, 2011. VALLEY's obligation to deliver EXCHANGE WATER shall be from any source provided it is equal to or better than the water quality standards established by DWR for the State Water Project. AGENCY'S obligation for the INITIAL DELIVERY shall be subject to the availability of water from the SWP, and meeting the needs of the Agency to provide water for replenishment and meeting the needs of water retailers within the AGENCY as determined in good faith in the sole discretion of the AGENCY.

b. If AGENCY requests delivery of EXCHANGE WATER in a year which DWR has declared to be critically dry ("Critically Dry Year"), VALLEY and AGENCY agree to confer in good faith to adjust the quantity of EXCHANGE WATER to be delivered in that year so as to minimize adverse impacts on the ability of both parties to satisfy the needs of their respective customers. Further, if this Agreement is the subject of a legal challenge, AGENCY may, at its sole discretion, by written notice to VALLEY, cancel this Agreement. If the INITIAL DELIVERY has occurred before the written cancellation notice, VALLEY shall promptly cause the INITIAL DELIVERY to be returned to AGENCY unless, at the time of the notice, it is a Critically Dry Year, in which event VALLEY and AGENCY shall confer in good faith to determine the schedule for such return.

2. **Points of Delivery and Measurement.**

- a. VALLEY. The point of delivery and measurement of the Initial Water from AGENCY shall be from DWR at Reach 26a as measured at the Devil Canyon Powerplant Afterbay.
- b. AGENCY. The point of delivery and measurement of the Exchange Water from VALLEY to AGENCY shall be from VALLEY at Reach 26a as measured at the Devil Canyon Powerplant Afterbay.

3. **Charges.**

- a. Neither VALLEY nor AGENCY shall charge any costs to the other for use of either agency's facilities to the point of delivery.
- b. VALLEY shall be responsible for all delivery costs of the INITIAL DELIVERY. AGENCY shall be responsible for all delivery costs of the EXCHANGE WATER.

4. **Conditions Precedent and Covenants.**

4.1 **DWR Approval.** No provisions of this Agreement requiring DWR approval shall become operative until DWR approves of those provisions. VALLEY and AGENCY shall use their best efforts to promptly obtain such approvals.

4.2 **State Water Contractors.** VALLEY and AGENCY agree they will each with due diligence and in good faith seek to obtain the support and approval of this Agreement by the State Water Contractors and request DWR approve the exchange of water as set forth herein.

5. **Future Banking and Conjunctive Use Projects.**

VALLEY and AGENCY believe that coordinated operation and development of water supplies within their respective service areas will lead to improved reliability and supply of water to meet the needs of their respective water users. In that regard, VALLEY and AGENCY agree to work together in good faith and with due diligence to determine the technical and financial feasibility and implementation of such arrangements subject to compliance with applicable laws, including California Environmental Quality Act as follows:

- a. Water banking and storage within the service areas of VALLEY and AGENCY for their mutual benefit.

b. Increased use of recycled water by VALLEY for beneficial uses in its service area to create additional water for use by AGENCY.

6. Notices.

All written notices required to be given pursuant to the terms of this Agreement shall be either (i) personally delivered, (ii) deposited in the United States express mail or first class mail, (iii) delivered by overnight courier service, or (iv) delivered by facsimile transmission, provided that the original of such notice is sent by certified United States mail, postage prepaid, no later than one (1) business day following such facsimile transmission. All such notices shall be deemed delivered upon actual receipt (or upon first attempt at delivery pursuant to the methods specified in clauses (i), (ii) or (iii) above if the intended recipient refuses to accept delivery). All such notices shall be delivered to the following addresses or to such other address as the receiving party may from time to time specify by written notice to the other party:

VALLEY:

San Bernardino Valley Municipal Water District
380 East Vanderbilt Way
P.O. Box 5906
San Bernardino, CA 92412-5906

Attention: General Manager
Telephone: (909) 387-9211
Facsimile: (909) 387-9247

AGENCY:

San Geronio Pass Water Agency
1210 Beaumont Avenue
Beaumont, CA 92223

Attention: General Manager
Telephone: (951) 845-2577
Facsimile: (951) 845-0281

7. Miscellaneous.

7.1 No Assignment. No party shall assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the other party.

7.2 Successors and Permitted Assigns. All covenants and agreements contained in this Agreement by or on behalf of any of the parties shall bind and inure to the benefit of their respective successors and permitted assigns, wither so expressed or not.

7.3 No Modification of Existing Contracts. This Agreement shall not be interpreted to modify the terms or conditions of the water supply contracts between the DWR and AGENCY and between DWR and VALLEY or to modify the terms or conditions of the EBX and other water facility agreements between DWR, AGENCY and VALLEY.

7.4 Governing Law/Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Venue for any actions brought regarding this Agreement shall be in the County of Riverside, provided that, in accordance with the provisions of the Code of Civil Procedure Section 394, a disinterested judge from a neutral county is assigned to hear such action and all proceedings in connection therewith.

7.5 Ministerial Actions. Due to increasing State-wide demands for water, water exchanges, water storage, banking and recovery, and various water quality issues throughout the State, the Parties agree that this Project is unique and cannot be duplicated and there is not a plain, speedy, and adequate remedy at law for VALLEY or AGENCY should either refuse or fail to perform their respective obligations as set forth in this Agreement. Consequently, VALLEY and AGENCY agree that the terms of this Agreement are enforceable by writ of mandate and specific performance.

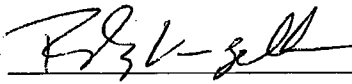
7.6 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument. Signatures sent by facsimile shall be deemed originals and treated in all respects as originals.

7.7 Further Action. The parties agree to and shall take such further action and execute such additional documents as may be reasonably required to effectuate the terms and conditions of this Agreement and to the extent consistent with terms thereof.

7.8 Interpretation. This Agreement has been jointly negotiated and drafted. The language of this Agreement shall be construed as whole according to its fair meaning and without regard to or aid of Civil Code Section 1654 or similar judicial rules of construction. Each party acknowledges that it has had the opportunity to seek the advice of experts and legal counsel prior to executing this Agreement and that it is fully aware of and understands all of its terms and the legal consequences thereof. The headings used in this Agreement are for reference only and shall not affect the construction of this Agreement.

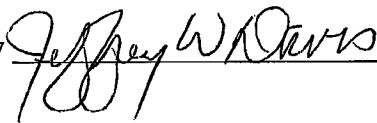
DATE: 11/6/2008

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT

By 

DATE: 11-6-08

SAN GORGONIO PASS WATER
AGENCY

By 

Notice of Exemption

To: Clerk of the Board
County of San Bernardino
385 N. Arrowhead, 2nd Floor
San Bernardino, CA 92415

From: San Bernardino Valley Municipal
Water District
380 E. Vanderbilt Way
San Bernardino, CA 92408

Project Title: San Bernardino Valley Municipal Water District/San Gorgonio Pass Water Agency Demonstration Project Water Exchange Agreement (the "Project").

Project Location: The Project facilities are located in Riverside and San Bernardino Counties in the service areas of San Gorgonio Pass Water Agency ("Agency") and San Bernardino Valley Municipal Water District ("Valley").

Project Description: The Project consists of a short-term agreement to exchange water between Valley and Agency. The Project involves the collection of data and information relating to exchanges of water between Valley and Agency in order to determine the long-term feasibility of distribution of water to Valley and the Agency. The Project involves an initial delivery of up to 1,000 acre-feet of water from Agency to Valley on or before March 2009. Thereafter, no earlier than October 2009 and no later December 2011, Valley will deliver a like amount of water back to the Agency.

The Project will not require the construction of any facilities for the initial delivery and return of the water exchanged pursuant to the Project. The Agency does not currently need the water that it intends to deliver to Valley and the water received by Valley will not be growth-inducing because it will only be used to improve reliability of supply to its existing water users within Valley. There is no possibility that the Project may have a significant effect on the environment.

Public Agency Approving the Project: San Bernardino Valley Municipal Water District, 380 E. Vanderbilt Way, San Bernardino, CA 92408.

Persons Carrying Out the Project: San Gorgonio Pass Water Agency, San Bernardino Valley Municipal Water District, the California Department of Water Resources.

Exempt Status: The Project is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to CEQA's commonsense exemption set forth in CEQA Guidelines section 15061(b)(3). In addition, the Project is also exempt from the provisions of CEQA pursuant to the statutory exemption set forth in CEQA Guidelines section 15262. The Project is also exempt pursuant to the categorical exemption set forth in CEQA Guidelines section 15301. Finally, the Project is also exempt from the provisions of CEQA pursuant to the categorical exemption set forth in CEQA Guidelines section 15306.

Reasons why Project is Exempt: As set forth above, the Project involves the short-term exchange(s) of water between Valley and Agency in order to determine the long-term feasibility of distribution of water to Valley and the Agency. The activities involved in the Project require the operation of existing facilities, without an expansion of their use. The water delivered to Valley will not be growth-inducing because it will only be used to improve reliability of supply to its existing water users within Valley.

As set forth in CEQA Guidelines section 15061(b)(3), the commonsense exemption is proper “[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” It can be seen with certainty that there is no possibility that this Project may have a significant effect on the environment because it will have no impacts on the environment.

The Project also qualifies for the statutory exemption set forth in CEQA Guidelines section 15262. That exemption applies to “feasibility or planning studies for possible future actions.” By definition, this Project is intended to determine the long-term feasibility of distribution of water to Valley and the Agency. In accordance with CEQA Guidelines section 15262, environmental factors of the Project have been considered and the Project will have no impacts on the environment.

The Project also qualifies for the categorical exemption set forth in CEQA Guidelines section 15301. That exemption applies when a project consist of “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination.” The Project involves the operation of existing facilities with no expansion of use.

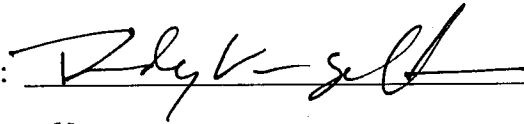
Finally, the Project also qualifies for the categorical exemption set forth in CEQA Guidelines section 15306. That exemption applies for “information collection activities” which can include “basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource.” The purpose of this Project is to collect information to determine the long-term feasibility of distribution of water to Valley and Agency. Because the Project will not have any impacts on the environment, the Project will not result in a serious or major disturbance to an environmental resource.

Exceptions to Categorical Exemption:

CEQA does not permit a project to use a categorical exemption if an exception to exemption listed in CEQA Guidelines section 15300.2 is applicable. However, for this Project, none of the exceptions to the CEQA categorical exemption set forth in CEQA Guidelines sections 15301 and 15306 are applicable.

Lead Agency Contact Person: Randy Van Gelder, General Manager
Area Code/Telephone: (909) 387-9218

Lead Agency Signature:



Date:

11/10/2008

Title:

General Manager

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 942360001
(916) 653-5791



MAR 11 2009

Mr. Jeff Davis
General Manager
San Geronio Pass Water Agency
1210 Beaumont Avenue
Beaumont, California 92223

Mr. Randy Van Gelder
General Manager
San Bernardino Valley Municipal Water District
Post Office Box 5906
San Bernardino, California 94212-5906

This Letter Agreement is in response to San Geronio Pass Water Agency's (SGPWA) letter requesting the Department of Water Resources' (DWR) approval for the exchange of up to 1,000 acre-feet of State Water Project (SWP) Table A water between San Bernardino Valley Municipal Water District (SBVMWD) and SGPWA. SBVMWD will take delivery of, and store within its groundwater basin, up to 1,000 acre-feet of SGPWA's 2008 Table A water by December 31, 2008. SBVMWD will return a portion of its allocation of Table A water by December 31, 2011 to SGPWA as a 1 acre-foot for 1 acre-foot exchange. There will be no monetary payments between SGPWA and SBVMWD for this exchange of Table A water.

DWR will file a Notice of Exemption based on California Environmental Quality Act Guidelines Section 15301 with the following description of this exchange of water: the proposed project is a water management operation using only existing facilities for the exchange of water from one SWP Contractor to another SWP Contractor, the limited term transfer will not support new development or a change in land use, and the transfer is wholly within the SWP place of use. DWR is willing to approve the delivery of up to 1,000 acre-feet of SGPWA's 2008 SWP Table A water to SBVMWD in exchange for the return of a portion of SBVMWD's Table A water subject to the following terms and conditions:

GENERAL PROVISIONS

1. DWR's approval under this Agreement is unique and shall not be considered a precedent for future agreements.
2. This Agreement shall become effective on the date of execution by all the parties and shall provide for the delivery of water to SBVMWD as of December 31, 2008. This Agreement shall terminate upon the delivery of all return water to SGPWA under this Agreement or by December 31, 2011, whichever comes first.
3. The delivery and return of water pursuant to this Agreement shall be contingent on, and subject to, any necessary approvals and shall be governed by the terms and conditions of such approval(s) and any other applicable regulations. SGPWA and SBVMWD shall be responsible for complying with all applicable laws and regulations and for securing any required consent, permit, or order. SGPWA and SBVMWD shall furnish to DWR copies of all approvals and agreements required for the delivery of water under this Agreement.
4. DWR will maintain records documenting the conveyance of up to 1,000 acre-feet of SGPWA's 2008 SWP Table A water to SBVMWD and the return delivery of water to SGPWA. SGPWA and SBVMWD shall certify to the State Water Project Analysis Office (Attention: Chief, Water Contracts Branch, Fax (916) 653-9628) the amount of SGPWA's approved 2008 Table A water delivered to SBVMWD and the return delivery of water from SBVMWD to SGPWA under this Agreement by January 31st of the year following the actual delivery.

WATER DELIVERY FROM SGPWA TO SBVMWD

5. The water delivered to SBVMWD shall be from SGPWA's allocation of 2008 approved Table A water.
6. The delivery of a portion of SGPWA's 2008 Table A water to SBVMWD shall be in accordance with a schedule reviewed and approved by DWR. DWR's approval is dependent upon the times and amounts of the delivery and the overall delivery capability of the SWP. DWR shall not be obligated to deliver the water at times when such delivery would adversely impact SWP operations, facilities, and other SWP contractors.
7. Pursuant to Paragraph 6, SGPWA shall obtain SBVMWD's approval for the water delivery schedule before submitting a schedule to DWR. All water delivery schedules and revisions shall be in accordance with Article 12 of SGPWA's and SBVMWD's respective long-term Water Supply contracts with DWR.

8. Pursuant to Paragraphs 5, 6, and 7, DWR will deliver up to 1,000 acre-feet of SGPWA's 2008 Table A water to SBVMWD's service area turnouts at Reaches EBX-1 (Devil Canyon Powerplant), EBX-2B (Greenspot Pump Station), or EBX-3A (Crafton Hills Pump Station) located within the East Branch Extension of the California Aqueduct by December 31, 2008.
9. SGPWA and SBVMWD shall submit to the State Water Project Analysis Office for approval (Attention: Chief, Water Deliveries Section, FAX (916) 653-9628) a revised 2008 water delivery schedule and shall reference this Agreement, SWPAO #08064.
10. SGPWA and SBVMWD shall submit a weekly schedule to the Southern Field Division (Attention: Chief, Water Operations Section, FAX (661) 294-3651) showing the deliveries to SBVMWD. The schedules shall be submitted by 10:00 a.m. Wednesday for the following two weeks ahead (Monday through Sunday) and shall be concurrently faxed to the following at the State Water Project Operations Control Office:

Chief, Pre-Scheduling Section at (916) 574-2782

Chief, Operations Scheduling at (916) 574-2785

RETURN WATER DELIVERED FROM SBVMWD TO SGPWA

11. SBVMWD shall return all water to SGPWA by December 31, 2011. The return water delivered to SGPWA shall be Table A water allocated to SBVMWD in the year water is returned. In the event that all water is not returned to SGPWA by August 31, 2011, DWR, in coordination with SGPWA and SBVMWD, shall expedite the return of water to SGPWA by so scheduling SBVMWD's Table A by December 31, 2011.
12. The return of water under this Agreement by SBVMWD to SGPWA shall be in accordance with a schedule reviewed and approved by DWR. DWR's approval is dependent upon the times and amounts of the delivery and the overall delivery capability of the SWP. DWR shall not be obligated to deliver the water at times when such delivery would adversely impact SWP operations, facilities, or other SWP Contractors.
13. Pursuant to Paragraph 11, SBVMWD shall obtain SGPWA's approval for the proposed delivery schedule, before submitting a schedule to DWR. All water delivery schedules and revisions shall be in accordance with Article 12 of SGPWA's and SBVMWD's long-term Water Supply contracts with DWR.

14. Pursuant to Paragraphs 11 and 12, DWR will deliver a portion of SBVMWD's Table A water scheduled for delivery to SBVMWD's service area to SGPWA's service area turnouts in Reaches EBX-4A (Crafton Hills Pump Station) or EBX-4B (Cherry Valley Pump Station) located within the East Branch Extension of the California Aqueduct by December 31, 2011.

NO IMPACT

15. This Agreement shall not be administered or interpreted in any way that would cause adverse impacts of SWP approved Table A water or of any other SWP approved water allocations, water deliveries, and SWP/CVP operations and facilities. SGPWA and SBVMWD shall be responsible for any adverse impacts, as determined by DWR, that may result from the exchange of water.

SWP ALLOCATION

16. Water returned to SGPWA pursuant to this Agreement shall not be considered by DWR in the determination of approved annual Table A deliveries to or allocation of other SWP water to SGPWA under Article 18 of SGPWA's long-term Water Supply contract with DWR.

CHARGES

17. SGPWA and SBVMWD shall pay the following charges, including all future adjustments, which shall be calculated in the same manner as charges are calculated for SWP Table A deliveries and shall be in accordance with the provisions of SGPWA's and SBVMWD's long-term Water Supply contracts with DWR. Charges shall be determined for the year the water is delivered, and the year the water is returned.
 - a. When a portion of SGPWA's approved 2008 Table A water is delivered to SBVMWD, SBVMWD shall pay to DWR the charges associated with the delivery of the water from the Delta to the point of delivery at SBVMWD's turnouts at Reaches EBX-1 (Devil Canyon Powerplant), EBX-2B (Greenspot Pump Station), or EBX-3A (Crafton Hills Pump Station) located within the East Branch Extension of the California Aqueduct. The charges associated with such delivery will be the 2008 Variable Operation, Maintenance, Power, and Replacement components of the Transportation Charge and the 2008 Off-Aqueduct Power Facilities Cost for each acre-foot of water delivered.

- b. In any year that a portion of SBVMWD's future Table A water is returned to SGPWA pursuant to this Agreement, SGPWA shall pay to DWR the charges associated with the delivery of the return water from the Delta to SGPWA's turnouts at Reaches EBX-4A (Crafton Hills Pump Station) or EBX-4B (Cherry Valley Pump Station) located within the East Branch Extension of the California Aqueduct. The charges associated with the return water will be the Variable Operation, Maintenance, Power, and Replacement components of the Transportation charges and the Off-Aqueduct Power Facilities Cost for each acre-foot of water delivered in effect for the year in which the water is returned to SGPWA.
18. In addition to the charges identified above, SGPWA and SBVMWD agree to pay to DWR any additional identified demonstrable increase in costs that would otherwise be borne by the SWP contractors not signatory to this Agreement or by DWR, as a result of activities pursuant to this Agreement.
19. Payment terms shall be in accordance with SGPWA's and SBVMWD's long-term Water Supply contracts with DWR.

LIABILITY

20. Responsibility for water delivered pursuant to this Agreement shall be governed by Article 13 of SGPWA's and SBVMWD's long-term Water Supply contracts, with responsibilities under the terms of that article shifting from DWR to SGPWA and SBVMWD when the water passes through their respective turnouts.
21. In the event of a claim of liability against DWR or its Directors, officers, or employees, jointly or severally, that arises as a result of this Letter Agreement, SGPWA and SBVMWD shall defend, indemnify, and hold DWR and any of its Directors, officers, employees harmless from any such claim, except to the extent that such claim arises from the sole negligence or willful misconduct of DWR.

EXECUTION

22. This Letter Agreement may be executed in counterpart. The parties agree to accept facsimile signatures as original signatures. The Agreement shall take effect as soon as all parties have signed.
23. Immediately after execution, SGPWA and SGPWA shall transmit a copy of the executed Letter Agreement by facsimile to Robert Cooke, Chief, State Water Project Analysis Office at (916) 653-9628 and to each other at:
SGPWA: (951) 845-0218
SBVMWD: (909) 387-9247

If SGPWA or SBVMWD needs a Board of Directors' approval of this Letter Agreement, that party shall send a facsimile of the board approval to the other two parties. If you have any questions or need additional information, please contact me at (916) 653-4313 and refer to SWPAO #08064.

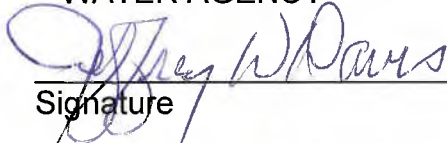

Sincerely,



Robert B. Cooke, Chief
State Water Project Analysis Office



ACCEPTED:

SAN GORGONIO PASS
WATER AGENCY


Signature

Title

4-30-09
Date

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT


Signature

Title

5/4/2009
Date

cc: Mr. Terry Erlewine
General Manager
State Water Contractors
1121 L Street, Suite 1050
Sacramento, California 95814

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

CRESTLINE-LAKE ARROWHEAD WATER AGENCY

DEMONSTRATION PROJECT

WATER EXCHANGE AGREEMENT

RECITALS

- A. San Bernardino Valley Municipal Water District ("VALLEY") is a public agency organized pursuant to the California Municipal Water District Law of 1911 (Water Code §§ 71000 et seq.) with broad powers to acquire and sell water. VALLEY has a Water Supply Contract with the California Department of Water Resources ("DWR") that provides VALLEY with a Table A Amount of up to 102,600 acre-feet per annum of water ("AFA") from the State Water Project ("SWP").
- B. Crestline-Lake Arrowhead Water Agency ("AGENCY") is a public agency organized in accordance with Crestline-Lake Arrowhead Water Agency Law (Water Code Appendix §§ 104-1 et seq.) with broad powers to acquire and sell water. AGENCY has a Water Supply Contract with DWR that provides it with a Table A Amount of 5,800 AFA.
- C. VALLEY and AGENCY intend by this Agreement to implement a Demonstration Project to exchange water for an initial period of one year to determine the long-term feasibility, including evaluation of benefits, costs, and beneficial distribution of supplemental water to VALLEY and AGENCY.
- D. VALLEY and AGENCY desire to enter into this Water Exchange Agreement whereby VALLEY will acquire up to 1,000 AF of SWP water from AGENCY ("INITIAL DELIVERY") in exchange for delivery of a like amount of water from VALLEY to AGENCY ("EXCHANGE WATER") within three years of the INITIAL DELIVERY ("RETURN PERIOD").
- E. VALLEY has a need for the INITIAL DELIVERY before December 31, 2008, to improve reliability of supply to existing water users within VALLEY.
- F. AGENCY has up to 1,000 AF of SWP water available from its 2008 allocation of SWP water for the INITIAL DELIVERY provided it can receive the EXCHANGE WATER from VALLEY within three years to enable it to meet anticipated demands for water within its service area.

IN CONSIDERATION OF THE MUTUAL PROMISES of the Parties as set forth herein, it is agreed as follows:

1. **Description of the Exchange and Procedures.**

On or before December 1, 2008, AGENCY will in writing request the California Department of Water Resources ("DWR") to deliver up to 1,000 AF of the AGENCY's SWP Table A Amount to VALLEY ("INITIAL DELIVERY") at its designated point of delivery. A copy of such written request shall be delivered to VALLEY. After written confirmation to AGENCY from VALLEY of such INITIAL DELIVERY, at the written request of AGENCY, VALLEY shall deliver a like amount of SWP water or water of equal or better quality ("EXCHANGE WATER") to AGENCY, in whole or in part as specified in such request. AGENCY shall not make such request any earlier than January, 2010. VALLEY and AGENCY shall meet and confer in advance of such delivery date to schedule the delivery of the EXCHANGE WATER over the Return Period. VALLEY shall complete delivery of the EXCHANGE WATER no later than December, 2011. VALLEY's obligation to deliver EXCHANGE WATER shall be from any source provided it is equal to or better than the water quality standards established by DWR for the State Water Project. If AGENCY requests delivery of EXCHANGE WATER in a year which DWR has declared to be critically dry, VALLEY and AGENCY agree to confer in good faith to adjust the quantity of EXCHANGE WATER to be delivered in that year so as to minimize adverse impacts on the ability of both parties to satisfy the needs of their respective customers. AGENCY'S obligation for the INITIAL DELIVERY shall be subject to the availability of water from the SWP.

2. **Points of Delivery and Measurement.**

- a. VALLEY. The point of delivery and measurement of the Initial Water from AGENCY shall be from DWR at Silverwood Lake.
- b. AGENCY. The point of delivery and measurement of the Exchange Water from VALLEY to AGENCY shall be from VALLEY at Silverwood Lake.

3. **Charges.**

- a. Neither VALLEY nor AGENCY shall charge any costs to the other for use of either agency's facilities to the point of delivery.
- b. VALLEY shall be responsible for all costs of, and entitled to all power credits generated by, the INITIAL DELIVERY downstream

from the point of delivery. AGENCY shall be responsible for all delivery costs of the EXCHANGE WATER.

4. **Conditions Precedent and Covenants.**

4.1 **DWR Approval.** No provisions of this Agreement requiring DWR approval shall become operative until DWR approves of those provisions. VALLEY and AGENCY shall use their best efforts to promptly obtain such approvals.

4.2 **State Water Contractors.** VALLEY and AGENCY agree they will each with due diligence and in good faith seek to obtain the support and approval of this Agreement by the State Water Contractors and request DWR approve the exchange of water as set forth herein.

5. **Future Banking and Conjunctive Use Projects.**

VALLEY and AGENCY believe that water exchange agreements and coordinated deliveries could lead to improved reliability and more efficient utilization of their respective supplies to meet the needs of their respective water users. In that regard, VALLEY and AGENCY agree to work together in good faith and with due diligence to determine the technical and financial feasibility and implementation of such arrangements subject to compliance with applicable laws, including California Environmental Quality Act.

6. **Notices.**

All written notices required to be given pursuant to the terms of this Agreement shall be either (i) personally delivered, (ii) deposited in the United States express mail or first class mail, (iii) delivered by overnight courier service, or (iv) delivered by facsimile transmission, provided that the original of such notice is sent by certified United States mail, postage prepaid, no later than one (1) business day following such facsimile transmission. All such notices shall be deemed delivered upon actual receipt (or upon first attempt at delivery pursuant to the methods specified in clauses (i), (ii) or (iii) above if the intended recipient refuses to accept delivery). All such notices shall be delivered to the following addresses or to such other address as the receiving party may from time to time specify by written notice to the other party:

VALLEY:

San Bernardino Valley Municipal Water District
380 East Vanderbilt Way
P.O. Box 5906
San Bernardino, CA 92412-5906

Attention: General Manager
Telephone: (909) 387-9211
Facsimile: (909) 387-9247

AGENCY:

Crestline-Lake Arrowhead Water Agency
24116 Crest Forest Drive
P.O. Box 3880
Crestline, CA 92325-3880

Attention: General Manager
Telephone: (909) 338-1779
Fax: (909) 338-3686

7. **Miscellaneous.**

7.1 **No Assignment.** No party shall assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the other party.

7.2 **Successors and Permitted Assigns.** All covenants and agreements contained in this Agreement by or on behalf of any of the parties shall bind and inure to the benefit of their respective successors and permitted assigns, wither so expressed or not.

7.3 **No Modification of Existing Contracts.** This Agreement shall not be interpreted to modify the terms or conditions of the water supply contracts between the DWR and AGENCY and between DWR and VALLEY, or to modify the terms or conditions of any other water purchase or exchange agreements between AGENCY and VALLEY.

7.4 **Governing Law/Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of California. Venue for any actions brought regarding this Agreement shall be in the County of San Bernardino, provided that, in accordance with the provisions of the

Code of Civil Procedure Section 394, a disinterested judge from a neutral county is assigned to hear such action and all proceedings in connection therewith.

7.5 Ministerial Actions. Due to increasing State-wide demands for water, water exchanges, water storage, banking and recovery, and various water quality issues throughout the State, the Parties agree that this Project is unique and cannot be duplicated and there is not a plain, speedy, and adequate remedy at law for VALLEY or AGENCY should either refuse or fail to perform their respective obligations as set forth in this Agreement. Consequently, VALLEY and AGENCY agree that the terms of this Agreement are enforceable by writ of mandate and specific performance.

7.6 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument. Signatures sent by facsimile shall be deemed originals and treated in all respects as originals.

7.7 Further Action. The parties agree to and shall take such further action and execute such additional documents as may be reasonably required to effectuate the terms and conditions of this Agreement and to the extent consistent with terms thereof.

7.8 Interpretation. This Agreement has been jointly negotiated and drafted. The language of this Agreement shall be construed as whole according to its fair meaning and without regard to or aid of Civil Code Section 1654 or similar judicial rules of construction. Each party acknowledges that it has had the opportunity to seek the advice of experts and legal counsel prior to executing this Agreement and that it is fully aware of and understands all of its terms and the legal consequences thereof. The headings used in this Agreement are for reference only and shall not affect the construction of this Agreement.

DATE: 11/7/2008

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT

By Fitzell

DATE: 11/7/08

CRESTLINE-LAKE ARROWHEAD
WATER AGENCY

By Roxanne M. Holmes

NOTICE OF EXEMPTION

(California Environmental Quality Act)

To: Clerk of the Board of Supervisors
County of San Bernardino
385 N. Arrowhead Ave., 2nd Floor
San Bernardino, CA 92415

Office of Planning and Research
1400 Tenth Street, Room 222
Sacramento, CA 95814
Attn: State Clearinghouse

From: San Bernardino Valley Municipal Water
District
380 East Vanderbilt Way
P.O. Box 5906
San Bernardino, CA 92412-5906
Phone: (909) 387-9211

Project Title: The Project entails the approval of a Water Exchange Agreement, which allows for the exchange of 1,000 acre-feet ("AF") of State Water Project ("SWP") water from Crestline-Lake Arrowhead Water Agency ("Agency") to San Bernardino Valley Municipal Water District ("Valley") and vice versa.

Project Location: Within the service areas of Crestline-Lake Arrowhead Watery Agency, see Map attached as Exhibit "1," and San Bernardino Valley Municipal Water District, see Map attached as Exhibit "2," in the County of San Bernardino.

Description of Nature, Purpose, and Beneficiaries of Project: On November 5, 2008, the Board of Directors of Valley approved the execution of the Water Exchange Agreement ("Agreement") with Agency. This Agreement authorizes Valley to acquire up to 1,000 AF of SWP water from Agency, and requires Agency to submit a written request to the California Department of Water Resources on or before December 1, 2008, to deliver up to 1,000 AF of Agency's share of SWP Table A water to Valley. In exchange for delivery of that water, Valley will deliver a like amount of water of equal or better quality to Agency within three years of the initial delivery of water to Valley. This same Agreement was approved by Agency on November 6, 2008.

Name of Public Agency Approving Project: San Bernardino Valley Municipal Water District

Exempt Status (check one):

- ☐ Ministerial Action.
- ☐ Declared Emergency
- ☐ Emergency Project
- ☒ X Categorical Exemption (State CEQA Guidelines § 15301 [Existing Facilities]; State CEQA Guidelines §15304 [Minor Alterations to Land, Water, or Vegetation].)
- ☒ X Statutory Exemption (State CEQA Guidelines § 15282(u) [Temporary Transfer or Exchange of Water or Water Rights].)
- ☒ X Other The Project is also exempt under State CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility the Project may have a significant impact on the environment. The Project is merely an exchange of water. No physical facilities will be constructed to produce or transport water because all such required facilities already exist. In addition, no new water production or transportation capacity is created by the Project.

Reasons why project is exempt: The water exchange approved by Valley will entail no change in type of use or expansion of use, but consist merely of the continued operation of existing facilities and the use of those facilities to temporarily transport water to a different location. State CEQA Guidelines section 15301 provides that environmental review is not required for "the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination." In addition, the exchange of water is a minor, temporary alteration to the condition of water that does not require the removal of any trees and thus is also exempt pursuant to State CEQA Guidelines section 15304 as "minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees." The Project's proposed exchange of water is temporary and thus is also exempt pursuant to the State CEQA Guidelines, section 15282(u) exemption for the temporary transfer of water or water rights. Because the water exchange will merely temporarily change the location in which water is used and will be delivered via existing facilities, there is no possibility the Project may have a significant impact on the environment. Accordingly, the Agreement and the water exchange that it authorizes are exempt from environmental review under CEQA. Moreover, the water transfer does not involve cumulative impacts, potentially significant impacts, unusually sensitive environments, or any other unique or unusual environmental impacts that might merit environmental review.

Contact Person & Telephone Number:

Randy Van Gelder, General Manager
Phone: (909) 387-9218

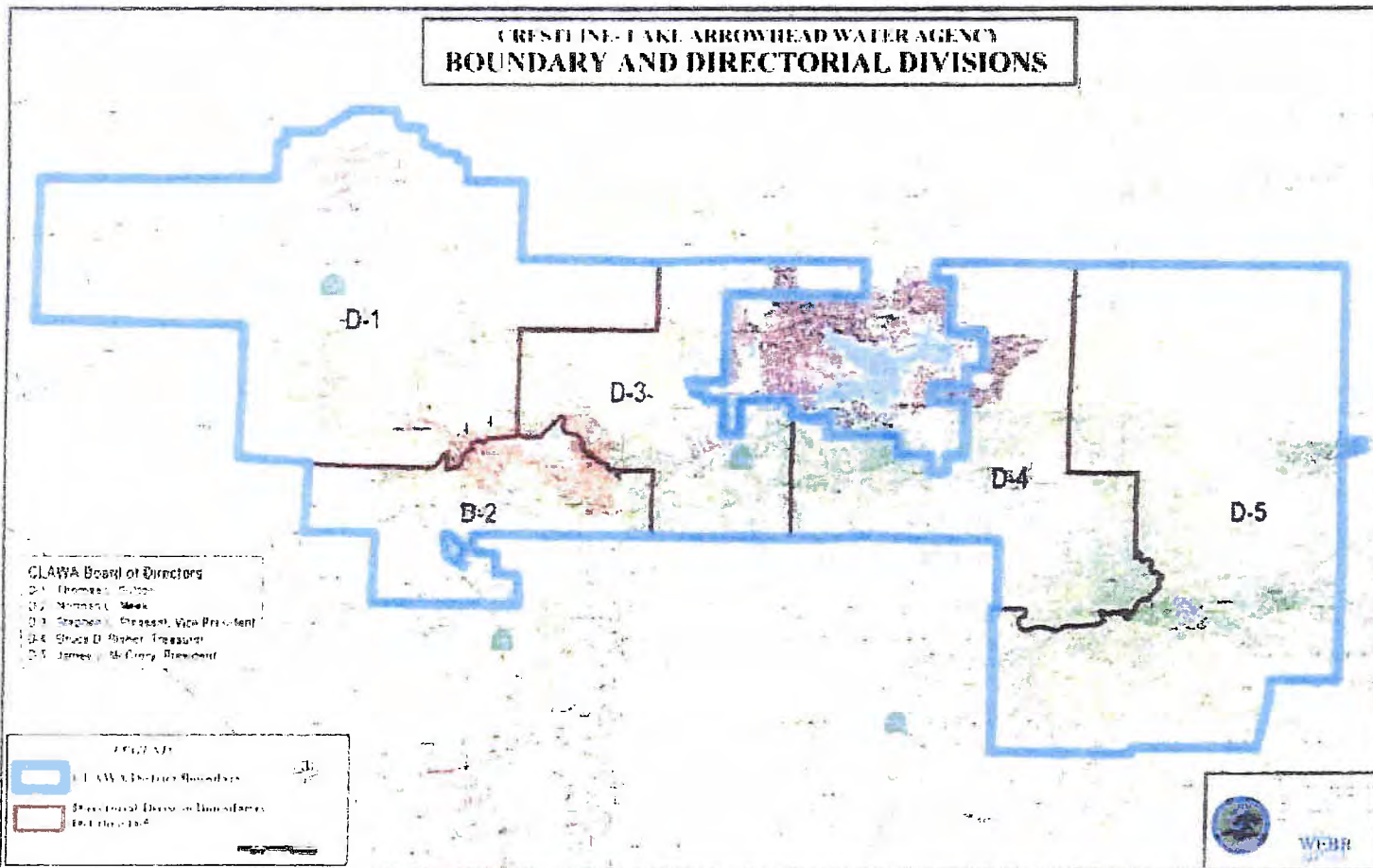
11/7/2008

Date



for San Bernardino Valley Municipal Water District

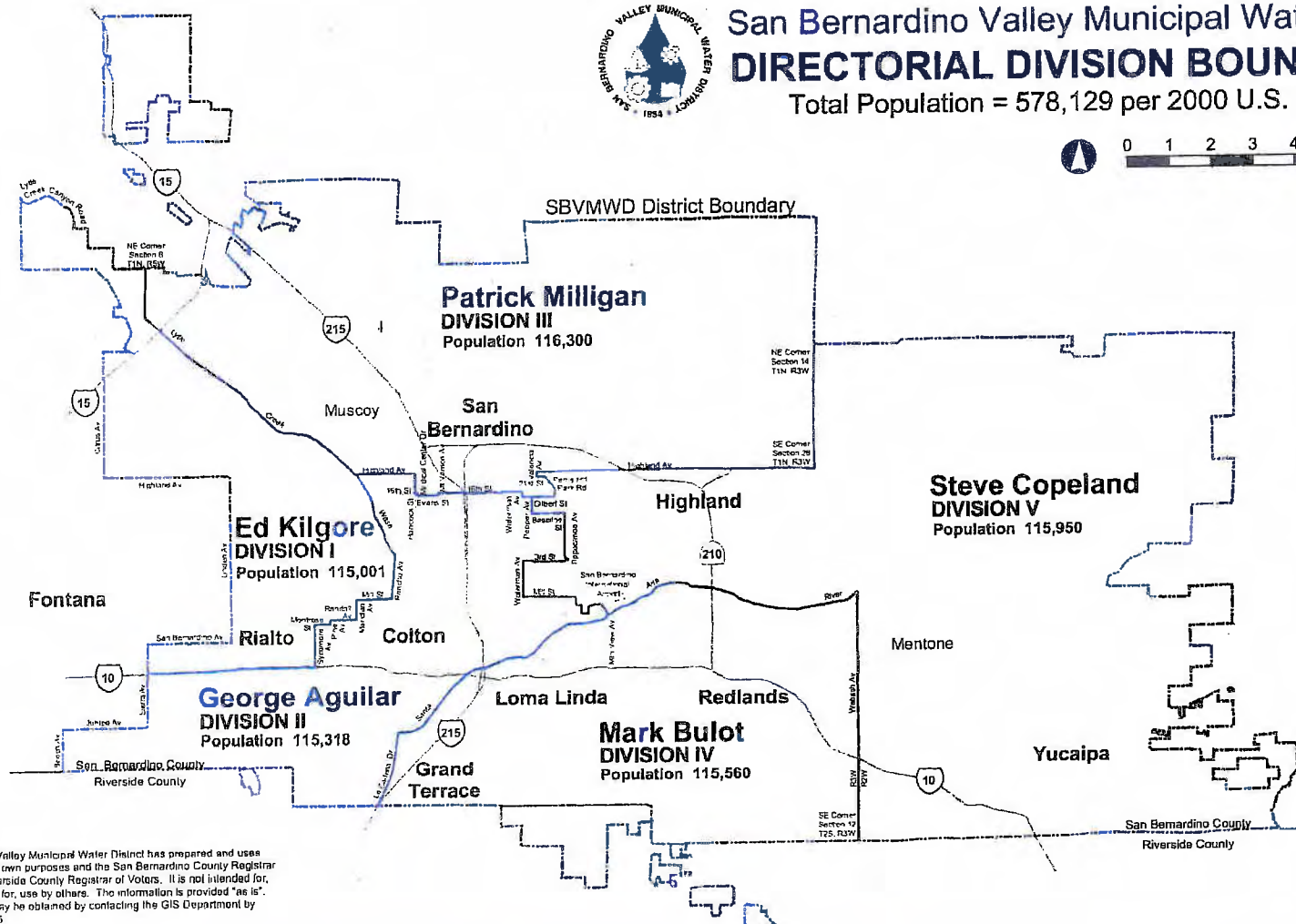
CRESTLINE LAKE ARROWHEAD WATER AGENCY BOUNDARY AND DIRECTORIAL DIVISIONS





San Bernardino Valley Municipal Water District DIRECTORIAL DIVISION BOUNDARIES

Total Population = 578,129 per 2000 U.S. Census



The San Bernardino Valley Municipal Water District has prepared and uses this information for its own purposes and the San Bernardino County Registrar of Voters and the Riverside County Registrar of Voters. It is not intended for, nor may it be suitable for, use by others. The information is provided "as is". Further information may be obtained by contacting the GIS Department by calling (909) 387-9275.

GIS Dept. August, 2004

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 942360001
(916) 653-5791



DEC 17 2008

Ms. Roxanne Holmes
General Manager
Crestline-Lake Arrowhead Water Agency
Post Office Box 3880
Crestline, California 92325

Mr. Randy Van Gelder
General Manager
San Bernardino Valley Municipal Water District
Post Office Box 5906
San Bernardino, California 94212-5906

This Letter Agreement is in response to Crestline-Lake Arrowhead Water Agency's (CLAWA) letter requesting the Department of Water Resources (DWR) approval for the exchange of up to 1,000 acre-feet of State Water Project (SWP) Table A water between San Bernardino Valley Municipal Water District (SBVMWD) and CLAWA. SBVMWD will take delivery of, and store within its groundwater basin, up to 1,000 acre-feet of CLAWA's 2008 Table A water by December 31, 2008. SBVMWD will return a portion of its allocation of Table A water by December 31, 2011 to CLAWA as a 1 acre-foot for 1 acre-foot exchange. There will be no monetary payments between CLAWA and SBVMWD for this exchange of Table A water.

DWR will file a Notice of Exemption based on California Environmental Quality Act Guidelines Section 15301 with the following description of this exchange of water: the proposed project is a water management operation using only existing facilities for the exchange of water from one SWP Contractor to another SWP Contractor, the limited term transfer will not support new development or a change in land use, and the transfer is wholly within the SWP place of use. DWR is willing to approve the delivery of up to 1,000 acre-feet of CLAWA's 2008 SWP Table A water to SBVMWD in exchange for the return of a portion of SBVMWD's Table A water subject to the following terms and conditions:

GENERAL PROVISIONS

1. DWR's approval under this Agreement is unique and shall not be considered a precedent for future agreements.
2. This Agreement shall become effective on the date of execution by all the parties and shall provide for the delivery of water to SBVMWD as of December 31, 2008. This Agreement shall terminate upon the delivery of all return water to CLAWA under this Agreement or by December 31, 2011, whichever comes first.

3. The delivery and return of water pursuant to this Agreement shall be contingent on, and subject to, any necessary approvals and shall be governed by the terms and conditions of such approval(s) and any other applicable regulations. CLAWA and SBVMWD shall be responsible for complying with all applicable laws and regulations and for securing any required consent, permit, or order. CLAWA and SBVMWD shall furnish to DWR copies of all approvals and agreements required for the delivery of water under this Agreement.
4. DWR will maintain records documenting the conveyance of up to 1,000 acre-feet of CLAWA's 2008 SWP Table A water to SBVMWD and the return delivery of water to CLAWA. CLAWA and SBVMWD shall certify to the State Water Project Analysis Office (Attention: Chief, Water Contracts Branch, Fax (916) 653-9628) the amount of CLAWA's approved 2008 Table A water delivered to SBVMWD and the return delivery of water from SBVMWD to CLAWA under this Agreement by January 31st of the year following the actual delivery.

WATER DELIVERY FROM CLAWA TO SBVMWD

5. The water delivered to SBVMWD shall be from CLAWA's allocation of 2008 approved Table A water.
6. The delivery of a portion of CLAWA's 2008 Table A water to SBVMWD shall be in accordance with a schedule reviewed and approved by DWR. DWR's approval is dependent upon the times and amounts of the delivery and the overall delivery capability of the SWP. DWR shall not be obligated to deliver the water at times when such delivery would adversely impact SWP operations, facilities, and other SWP contractors.
7. Pursuant to Paragraph 6, CLAWA shall obtain SBVMWD's approval for the water delivery schedule before submitting a schedule to DWR. All water delivery schedules and revisions shall be in accordance with Article 12 of CLAWA's and SBVMWD's respective long-term Water Supply contracts with DWR.
8. Pursuant to Paragraphs 5, 6, and 7, DWR will deliver up to 1,000 acre-feet of CLAWA's 2008 Table A water to SBVMWD's service area, Reach 26A of the California Aqueduct by December 31, 2008.
9. CLAWA and SBVMWD shall submit to the State Water Project Analysis Office for approval (Attention: Chief, Water Deliveries Section, FAX (916) 653-9628) a revised 2008 water delivery schedule and shall reference this Agreement, SWPAO #08063.

10. CLAWA and SBVMWD shall submit a weekly schedule to the Southern Field Division (Attention: Chief, Water Operations Section, FAX (661) 294-3651) showing the deliveries to SBVMWD. The schedules shall be submitted by 10:00 a.m. Wednesday for the following two weeks ahead (Monday through Sunday) and shall be concurrently faxed to the following at the State Water Project Operations Control Office:
Chief, Pre-Scheduling Section at (916) 574-2782
Chief, Operations Scheduling at (916) 574-2785

RETURN WATER DELIVERED FROM SBVMWD TO CLAWA

11. SBVMWD shall return all water to CLAWA by December 31, 2011. The return water delivered to CLAWA shall be Table A water allocated to SBVMWD in the year water is returned. In the event that all water is not returned to CLAWA by August 31, 2011, DWR, in coordination with CLAWA and SBVMWD, shall expedite the return of water to CLAWA by so scheduling SBVMWD's Table A by December 31, 2011.
12. The return of water under this Agreement by SBVMWD to CLAWA shall be in accordance with a schedule reviewed and approved by DWR. DWR's approval is dependent upon the times and amounts of the delivery and the overall delivery capability of the SWP. DWR shall not be obligated to deliver the water at times when such delivery would adversely impact SWP operations, facilities, or other SWP Contractors.
13. Pursuant to Paragraph 11, SBVMWD shall obtain CLAWA's approval for the proposed delivery schedule, before submitting a schedule to DWR. All water delivery schedules and revisions shall be in accordance with Article 12 of CLAWA's and SBVMWD's long-term Water Supply contracts with DWR.
14. Pursuant to Paragraphs 11 and 12, DWR will deliver a portion of SBVMWD's Table A water scheduled for delivery to SBVMWD's service area to CLAWA's service area in Reach 24 of the California Aqueduct.

NO IMPACT

15. This Agreement shall not be administered or interpreted in any way that would cause adverse impacts of SWP approved Table A water or of any other SWP approved water allocations, water deliveries, and SWP/CVP operations and facilities. CLAWA and SBVMWD shall be responsible for any adverse impacts that may result from the exchange of water as determined by DWR.

SWP ALLOCATION

16. Water returned to CLAWA pursuant to this Agreement shall not be considered by DWR in the determination of approved annual Table A deliveries to or allocation of other SWP water to CLAWA under Article 18 of CLAWA's long-term Water Supply contract with DWR.

CHARGES

17. CLAWA and SBVMWD shall pay the following charges, including all future adjustments, which shall be calculated in the same manner as charges are calculated for SWP Table A deliveries and shall be in accordance with the provisions of CLAWA's and SBVMWD's long-term Water Supply contracts with DWR. Charges shall be determined for the year the water is delivered, and the year the water is returned.
 - a. When a portion of CLAWA's approved 2008 Table A water is delivered to SBVMWD, SBVMWD shall pay to DWR the charges associated with the delivery of the water from the Delta to the point of delivery at SBVMWD's turnouts on the California Aqueduct, Reach 26A. The charges associated with such delivery will be the 2008 Variable Operation, Maintenance, Power, and Replacement components of the Transportation Charge and the 2008 Off-Aqueduct Power Facilities Cost for each acre-foot of water delivered.
 - b. In any year that a portion of SBVMWD's future Table A water is returned to CLAWA pursuant to this Agreement, CLAWA shall pay to DWR the charges associated with the delivery of the return water from the Delta to CLAWA's turnouts in Reach 24 of the California Aqueduct. The charges associated with the return water will be the Variable Operation, Maintenance, Power and Replacement components of the Transportation charges and the Off-Aqueduct Power Facilities Cost for each acre-foot of water delivered in effect for the year in which the water is returned to CLAWA.
18. In addition to the charges identified above, CLAWA and SBVMWD agree to pay to DWR any additional identified demonstrable increase in costs that would otherwise be borne by the SWP contractors not signatory to this Agreement or by DWR, as a result of activities pursuant to this Agreement.
19. Payment terms shall be in accordance with CLAWA's and SBVMWD's long-term Water Supply contracts with DWR.

LIABILITY

20. Responsibility for water delivered pursuant to this Agreement shall be governed by Article 13 of CLAWA's and SBVMWD's long-term Water Supply contracts, with responsibilities under the terms of that article shifting from DWR to CLAWA and SBVMWD when the water passes through their respective turnouts.
21. In the event of a claim of liability against DWR or its Directors, officers, or employees, jointly or severally, that arises as a result of this Letter Agreement, CLAWA and SBVMWD shall defend, indemnify, and hold DWR and any of its Directors, officers, employees harmless from any such claim, except to the extent that such claim arises from the sole negligence or willful misconduct of DWR.

EXECUTION

22. This Letter Agreement may be executed in counterpart. The parties agree to accept facsimile signatures as original signatures. The Agreement shall take effect as soon as all parties have signed.
23. Immediately after execution, SBVMWD and CLAWA shall transmit a copy of the executed Letter Agreement by facsimile to Robert Cooke, Chief, State Water Project Analysis Office at (916) 653-9628 and to each other at.
CLAWA: (909) 338-3686
SBVMWD: (909) 387-9247

If CLAWA or SBVMWD needs a Board of Directors' approval of this Letter Agreement, that party shall send a facsimile of the board approval to the other two parties. If you have any questions or need additional information, please contact me at (916) 653-4313 and refer to SWPAO #08063.

Sincerely,



Robert B. Cooke, Chief
State Water Project Analysis Office

Ms. Roxanne Holmes, et al

Page 6

ACCEPTED:

CRESTLINE-LAKE ARROWHEAD
WATER DISTRICT

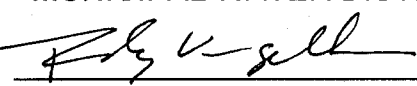
Signature

Title

Date

cc: Mr. Terry Erlewine
General Manager
State Water Contractors
1121 L Street, Suite 1050
Sacramento, California 95814

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT



Signature

General Manager

Title

12 | 22 | 2008


Date

Ms. Roxanne Holmes, et al

Page 6

ACCEPTED:

CRESTLINE-LAKE ARROWHEAD
WATER DISTRICT


Signature

General Manager

Title

12/22/08

Date

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT

Signature

Title

Date

cc: Mr. Terry Erlewine
General Manager
State Water Contractors
1121 L Street, Suite 1050
Sacramento, California 95814

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
CRESTLINE-LAKE ARROWHEAD WATER AGENCY
WATER EXCHANGE AGREEMENT AND AMENDMENT OF
DEMONSTRATION PROJECT

RECITALS

- A. On November 7, 2008, San Bernardino Valley Municipal Water District (“Valley”) and Crestline-Lake Arrowhead Water Agency (“Agency”) entered into an agreement titled “Demonstration Project Water Exchange Agreement” (the “2008 Exchange Agreement”). Pursuant to the terms of the 2008 Exchange Agreement, the Agency arranged for the delivery of 1,000 acre-feet of water from the Agency’s State Water Project Table A allocation in exchange for Valley’s agreement to allow the Agency to take back a total of 1,000 acre-feet of water from Valley’s State Water Project Table A allocations in 2010 and/or 2011 (the “2008 Exchange Arrangement”).
- B. The Agency and Valley wish to amend the 2008 Exchange Agreement to allow the Agency to take back a total of 1,000 acre-feet of water from Valley’s State Water Project Table A allocations in any year or years between 2010 and 2018, inclusive, subject to such reductions in the quantity of water to be returned to the Agency due to high groundwater conditions within Valley’s service area as are hereinafter provided.
- C. In addition, the Agency and Valley wish to provide for the delivery to Valley of 1,000 acre-feet of water from the Agency’s State Water Project Table A allocation in 2009, in exchange for Valley’s agreement to allow the Agency to take back a total of 650 acre-feet of water from Valley’s State Water Project allocations in any year or years between 2010 and 2018, inclusive, subject to such reductions in the quantity of water to be returned to the Agency due to high groundwater conditions within Valley’s service area as are hereinafter provided (the “2009 Exchange Arrangement”).
- D. The purpose of this Agreement is to amend the terms of the 2008 Exchange Agreement and to set forth the terms of the 2009 Exchange Arrangement.

IN CONSIDERATION OF THE MUTUAL PROMISES set forth herein, the Agency and Valley agree as follows:

1. Amendment of 2008 Exchange Agreement.

(a) Return of Exchange Water. The sixth sentence of Section 1 of the 2008 Exchange Agreement, titled "Description of the Exchange and Procedures" is hereby amended to provide as follows:

"VALLEY shall complete delivery of the EXCHANGE WATER no later than December 2018."

In addition, within Paragraphs D and F of the Recitals in the 2008 Exchange Agreement, the term "three years" is hereby amended to read "ten years."

(b) Quantity of Exchange Water. The 2008 Exchange Agreement is further amended to provide that the quantity of "Exchange Water" (as defined therein) to be returned to the Agency during the "Return Period" (as also defined therein) shall be subject to the same reductions as may be applied to the return of water under the 2009 Exchange Arrangement, due to high groundwater conditions within Valley's service area, as provided in Section 2(c) of this Agreement.

2. 2009 Exchange Arrangement.

(a) Initial Delivery to Valley. Prior to December 1, 2009, Agency will, in writing, request the California Department of Water Resources ("DWR") to deliver 1,000 acre-feet of the Agency's 2009 State Water Project Table A allocation to Valley, at Silverwood Lake. A copy of such written request shall be delivered to Valley.

(b) Return of Exchange Water. After written confirmation that 1,000 acre-feet of water from the Agency's State Water Project Table A allocation in 2009 has been delivered to Valley, Valley shall thereafter deliver to the Agency, at Silverwood Lake, up to a total of 650 acre-feet of water when requested by the Agency, between the years 2010 and 2018, inclusive (the "Exchange Water"). The Exchange Water shall be State Water Project water or water of equal or better quality. If the Agency requests delivery of Exchange Water in a year which DWR has declared to be critically dry, the Agency and Valley agree to confer in good faith to adjust the quantity of Exchange Water to be delivered in that year so as to minimize adverse impacts on the ability of both parties to satisfy the needs of their respective customers.

(c) Quantity of Exchange Water To Be Returned. As of the date of this Agreement, the total quantity of 2008 Exchange Water and 2009 Exchange Water to be returned to the Agency pursuant to the 2008

Exchange Agreement and the 2009 Exchange Arrangement is 1,650 acre-feet. Because water within the San Bernardino Valley Groundwater Basin is lost from the Basin during high groundwater conditions resulting from high precipitation, the Agency and Valley agree that during any year from 2010 to 2018, inclusive, that the Basin Technical Advisory Committee ("BTAC") makes a determination that high groundwater conditions exist in the San Bernardino Basin Area, the balance of the 2008 Exchange Water and the 2009 Exchange Water which has not been returned to the Agency prior to that year shall each be reduced by an amount equal to 10% of the then existing quantity of 2008 Exchange Water and the 2009 Exchange Water not yet returned, for each such year that a declaration of high groundwater conditions is made, and the parties shall jointly advise DWR in writing of such reduction. The declaration of high groundwater conditions shall be made pursuant to the protocol attached hereto as Exhibit "A" as amended by Valley from time to time.

(d) Charges. The Agency shall be responsible for all costs of delivering 1,000 acre-feet of State Water Project to Valley at Silverwood Lake in 2009. Valley shall be responsible for all costs of delivering up to 650 acre-feet of Exchange Water to the Agency at Silverwood Lake, in the year that such water is delivered, pursuant to the terms of this Agreement. The charges for the Agency's delivery of water to Valley, and Valley's delivery of Exchange Water back to the Agency, pursuant to the 2008 Exchange Arrangement shall be as set forth in the 2008 Exchange Agreement. For purposes of this paragraph, Exchange Water returned to the Agency shall be credited first to the exchange obligations set forth in the 2008 Exchange Agreement, until such Exchange Water is fully depleted, and then shall be credited to the exchange obligations created by the 2009 Exchange Arrangement.

3. Conditions Precedent and Covenants.

(a) DWR Approval. No provisions of this Agreement requiring DWR approval shall become operative until DWR approves of those provisions. The Agency and Valley shall use their best efforts to promptly obtain such approvals.

(b) State Water Contractors. The Agency and Valley agree that they will each with due diligence and good faith seek to obtain the support and approval of this Agreement by the State Water Contractors.

4. Notices.

All written notices required to be given pursuant to the terms of this Agreement shall be (i) personally delivered, (ii) deposited in the United States express mail or first-class mail, (iii) delivered by overnight courier service or (iv) delivered by facsimile transmission, provided that the

original of such notice is sent by certified United States mail, postage prepaid, no later than one business day following such facsimile transmission. All such notices shall be deemed delivered upon actual receipt or upon first attempt at delivery pursuant to the methods specified herein if the intended recipient refuses to accept delivery. All such notices shall be delivered to the following addresses or to such other address as the receiving party may from time to time specify by written notice to the other party:

AGENCY:

Crestline-Lake Arrowhead Water Agency
24116 Crest Forest Drive
P.O. Box 3880
Crestline, CA 92325-3880

Attention: General Manager
Telephone: (909) 338-1779
Facsimile: (909) 338-3686

VALLEY:

San Bernardino Valley Municipal Water District
380 East Vanderbilt Way
P.O. Box 5906
San Bernardino, CA 92412-5906

Attention: General Manager
Telephone: (909) 387-9211
Facsimile: (909) 387-9247

5. Miscellaneous.

(a) No Assignment. No party shall assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the other party.

(b) Successors and Permitted Assigns. All covenants and agreements contained in this Agreement by or on behalf of any of the parties shall bind and inure to the benefit of their respective successors and permitted assigns, whether so expressed or not.

(c) No Modification of Existing Contracts. This Agreement shall not be interpreted to modify the terms or conditions of the water supply contracts between the DWR and the Agency, and between DWR and Valley.

(d) Governing Law/Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Venue for any actions brought regarding this Agreement shall be in the County of San Bernardino, provided that, in accordance with the provisions of the Code of Civil Procedure Section 394, a disinterested judge from a neutral county is assigned to hear such action and all such proceedings in connection therewith.

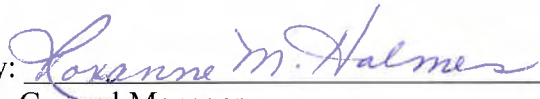
(e) Ministerial Actions. Due to increasing State-wide demands for water, water exchanges, water storage, banking and recovery, and various water quality issues throughout the State, the parties agree that this project is unique and cannot be duplicated and there is not a plain, speedy, and adequate remedy at law for the Agency or Valley should either refuse or fail to perform their respective obligations as set forth in this Agreement. Consequently, the Agency and Valley agree that the terms of this Agreement are enforceable by a writ of mandate and specific performance.

(f) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument. Signatures sent by facsimile shall be deemed originals and treated in all respects as originals.

(g) Further Action. The parties agree to and shall take such further action and execute such additional documents as may be reasonably required to effectuate the terms and conditions of this Agreement and to the extent consistent with the terms thereof.

(h) Interpretation. This Agreement has been jointly negotiated and drafted. The language of this Agreement shall be construed as a whole according to its fair meaning and without regard to or aid of Civil Code Section 1654 or similar judicial rules of construction. Each party acknowledges that it has had the opportunity to seek the advice of experts and legal counsel prior to executing this Agreement and that it is fully aware of and understands all of the terms and the legal consequences thereof. The headings used in this Agreement are for reference only and shall not affect the construction of this Agreement.

CRESTLINE-LAKE ARROWHEAD WATER
AGENCY

By: 
General Manager

Date: October 22, 2009

SAN BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT

By: 
General Manager

Date: 10/22/2009

EXHIBIT A

In December 2007, fourteen agencies adopted the *Upper Santa Ana Watershed Integrated Regional Water Management Plan* (Integrated Plan). One of the primary water resources identified in the Integrated Plan is groundwater. The largest groundwater basin in the study area is the San Bernardino Basin Area (SBBA). When the SBBA is too full, high groundwater levels can occur in an area known as the Pressure Zone. Some of the reasons high groundwater levels are undesirable is that they can cause water to flow out of the SBBA and can also prevent water from recharging (rejected recharge).

The Integrated Plan charges the Basin Technical Advisory Committee with monitoring and assessing water levels in the pressure zone and presenting their findings in the annual *Regional Water Management Plan*. The general methodology used each year to assess whether high groundwater conditions exist is as follows:

1. In October of each year, the Basin Technical Advisory Committee collects water level data for a series of wells in the Pressure Zone.
2. Water levels in the Pressure Zone are considered to be "high" if they are shallower than 50 feet below ground surface.
3. The BTAC presents their findings on high groundwater conditions in the annual *Regional Water Management Plan*.
4. In November of each year, the annual *Regional Water Management Plan* is reviewed and approved by the Boards of Directors of the San Bernardino Valley Municipal Water District and Western Municipal Water District.

BEST BEST & KRIEGER

ATTORNEYS AT LAW

INDIAN WELLS
(760) 568-2611

IRVINE
(949) 263-2600

LOS ANGELES
(213) 617-8100

ONTARIO
(909) 989-8584

3750 University Avenue, Suite 400
Post Office Box 1028
Riverside, California 92502-1028
(951) 686-1450
(951) 686-3083 Fax
BBKlaw.com

SACRAMENTO
(916) 325-4000

SAN DIEGO
(619) 525-1300

WALNUT CREEK
(925) 977-3300

Michael T. Riddell

(909) 826-8210

Michael.Riddell@bbklaw.com

October 23, 2009

Ms. Roxanne M. Holmes
General Manager
CRESTLINE-LAKE ARROWHEAD
WATER AGENCY
24116 Crest Forest Drive
P.O. Box 3880
Crestline, CA 92325-3880

Re: 2009 Exchange Agreement with San Bernardino Valley Municipal
Water District

Dear Roxanne:

Enclosed is the duplicate original of the 2009 Exchange Agreement with San Bernardino Valley Municipal Water District, signed by Randy Van Gelder on behalf of that District. You should sign this yourself and then keep it in your file so that you have a fully executed duplicate original.

By copy of this letter to Randy Van Gelder, I am also sending to him the duplicate original of the same agreement, signed by you, so that he may do likewise.

DWR is preparing the necessary agreement that it will need to have you and Randy sign as well. That should be ready soon. In addition, in our office we are preparing the Notice of Exemption which should be signed and filed by both the Agency and the District. It is filed with the County of San Bernardino and also with the State Clearinghouse. I will be providing that to both of you, along with some more detailed instructions.

BEST BEST & KRIEGER
ATTORNEYS AT LAW

Ms. Roxanne M. Holmes
October 23, 2009
Page 2

Thanks very much. Please let me know if you have any questions,

Sincerely yours,



Michael T. Riddell
of BEST BEST & KRIEGER LLP

MTR:mb

Enclosure

Cc: Randy Van Gelder, General Manager
San Bernardino Valley Municipal Water District

NOTICE OF EXEMPTION

(California Environmental Quality Act)

Receipt #374032
CLERK OF THE BOARD
NOV - 2 2009
COUNTY OF
SAN BERNARDINO

To: Clerk of the Board of Supervisors
County of San Bernardino
385 N. Arrowhead Ave., 2nd Floor
San Bernardino, CA 92415

Office of Planning and Research
1400 Tenth Street, Room 222
Sacramento, CA 95814
Attn: State Clearinghouse

From: San Bernardino Valley Municipal
Water District
380 East Vanderbilt Way
San Bernardino, CA 92408
Phone: (909) 387-9200

Project Title: The Project entails the approval of a Water Exchange Agreement, which allows for the delivery of 1,000 acre-feet ("AF") of State Water Project ("SWP") water from Crestline-Lake Arrowhead Water Agency ("Agency") to San Bernardino Valley Municipal Water District ("Valley") in 2009, in exchange for the return of 650 AF of SWP water by Valley to Agency no later than the end of 2018. The Water Exchange Agreement also amends a similar agreement between the same two parties in 2008 by extending the term for the return of 1,000 AF of SWP water from Valley to Agency, from 2011 to 2018.

Project Location: Within the service areas of Crestline-Lake Arrowhead Watery Agency, see Map attached as Exhibit "1," and San Bernardino Valley Municipal Water District, see Map attached as Exhibit "2," in the County of San Bernardino.

Description of Nature, Purpose, and Beneficiaries of Project: On October 1, 2009, the Board of Directors of Agency approved the execution of the Water Exchange Agreement ("Agreement") with Valley. This Agreement provides for the delivery of 1,000 AF of SWP water from Agency to Valley in 2009, and requires Agency submit a written request to the California Department of Water Resources on or before December 1, 2009, to deliver 1,000 AF of Agency's share of SWP Table A water to Valley. In exchange for delivery of that water, Valley will deliver 650 AF of water of equal or better quality to Agency by the end of 2018. This same Agreement was approved by Valley and then executed by Valley on October 22, 2009.

Name of Public Agency Approving Project: Crestline-Lake Arrowhead Water Agency

Exempt Status (check one):

- ☐ Ministerial Action.
- ☐ Declared Emergency
- ☐ Emergency Project
- ☒ X Categorical Exemption (State CEQA Guidelines § 15301 [Existing Facilities]; State CEQA Guidelines §15304 [Minor Alterations to Land, Water, or Vegetation].)
- ☒ X Statutory Exemption (State CEQA Guidelines § 15282(u) [Temporary Transfer or Exchange of Water or Water Rights].)
- ☒ X Other The Project is also exempt under State CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility the Project may have a significant impact on the environment. The Project is merely an exchange of water. No physical facilities will be constructed to produce or transport water


because all such required facilities already exist. In addition, no new water production or transportation capacity is created by the Project.

Reasons why project is exempt: The water exchange will entail no change in type of use or expansion of use, but consist merely of the continued operation of existing facilities and the use of those facilities to temporarily transport water to a different location. State CEQA Guidelines section 15301 provides that environmental review is not required for “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination.” In addition, the exchange of water is a minor, temporary alteration to the condition of water that does not require the removal of any trees and thus is also exempt pursuant to State CEQA Guidelines section 15304 as “minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees.” The Project’s proposed exchange of water is temporary and thus is also exempt pursuant to the State CEQA Guidelines, section 15282(u) exemption for the temporary transfer of water or water rights. Because the water exchange will merely temporarily change the location in which water is used and will be delivered via existing facilities, there is no possibility the Project may have a significant impact on the environment. Accordingly, the Agreement and the water exchange that it authorizes are exempt from environmental review under CEQA. Moreover, the water transfer does not involve cumulative impacts, potentially significant impacts, unusually sensitive environments, or any other unique or unusual environmental impacts that might merit environmental review.

Contact Person & Telephone Number:

Randy Van Gelder, General Manager
Phone: (909) 387-9200

10/30/2009
Date


for San Bernardino Valley Municipal Water
District



State of California—The Resources Agency
DEPARTMENT OF FISH AND GAME

2009 ENVIRONMENTAL FILING FEE CASH RECEIPT

RECEIPT#	374032
STATE CLEARING HOUSE # (If applicable)	

SEE INSTRUCTIONS ON REVERSE. TYPE OR PRINT CLEARLY

LEAD AGENCY San Bernardino Valley Municipal Water District	DATE 11-2-09
COUNTY/STATE AGENCY OF FILING San Bernardino, CA	DOCUMENT NUMBER
PROJECT TITLE Water Exchange Agreement - (AF) (SWP) Crestline-Lake Arrowhead Water	
PROJECT APPLICANT NAME San Bernardino Valley Municipal Water District	PHONE NUMBER 909 387-9200
PROJECT APPLICANT ADDRESS 380 E. Vanderbilt Way	CITY San Bernardino
	STATE CA
	ZIP CODE 92408

PROJECT APPLICANT (Check appropriate box):

- ☒ Local Public Agency ☐ School District ☐ Other Special District ☐ State Agency ☐ Private Entity

CHECK APPLICABLE FEES:

- | | | | |
|---|------------|----|--------------|
| <input type="checkbox"/> Environmental Impact Report | \$2,768.25 | \$ | |
| <input type="checkbox"/> Negative Declaration | \$1,993.00 | \$ | |
| <input type="checkbox"/> Application Fee Water Diversion (State Water Resources Control Board Only) | \$850.00 | \$ | |
| <input type="checkbox"/> Projects Subject to Certified Regulatory Programs | \$941.25 | \$ | |
| <input checked="" type="checkbox"/> County Administrative Fee | \$50.00 | \$ | 50.00 |
| <input type="checkbox"/> Project that is exempt from fees | | | |
| <input checked="" type="checkbox"/> Notice of Exemption | | | |
| <input type="checkbox"/> DFG No. Effect Determination (Form Attached) | | | |
| <input type="checkbox"/> Other | | \$ | |

PAYMENT METHOD:

- ☐ Cash ☐ Credit ☒ Check ☐ Other

TOTAL RECEIVED \$ **50.00**

SIGNATURE X Norma Lita	TITLE Deputy Clerk
----------------------------------	------------------------------

WHITE - PROJECT APPLICANT

YELLOW - DFG/ASB

PINK - LEAD AGENCY

GOLDEN ROD - COUNTY CLERK

FG 753.5a (Rev. 7/08)

TRANSMISSION VERIFICATION REPORT

TIME : 11/02/2009 14:24
NAME : SBVMWD
FAX : 9093879247
SER.# : BROD8F869364

DATE, TIME	11/02 14:23
FAX NO./NAME	819163233018
DURATION	00:00:48
PAGE(S)	03
RESULT	OK
MODE	STANDARD
	ECM



San Bernardino Valley Municipal Water District
380 E. Vanderbilt Way, P.O. Box 5906 • San Bernardino, CA 92412
Phone (909) 387-9200 • Fax (909) 387-9247

FACSIMILE TRANSMITTAL

DATE: November 2, 2009

TO FAX NO.: 916-323-3018

TIME: 1:16 PM

SUBJECT: Notice of Exemption

FROM: Randy Van Gelder

PLEASE DIRECT THIS TO THE ATTENTION OF: State Clearinghouse - Office of Planning

NUMBER OF PAGES OF THIS TRANSMISSION, INCLUDING THIS PAGE: 3

MESSAGE/SPECIAL COMMENTS:

- ☐ A copy of this transmission will follow by regular mail.
- ☐ Please call sender upon receipt of this transmission.
- ☐ Other:

Water Exchange Agreement – Crestline Lake Arrowhead Water Agency and San Bernardino Valley Municipal Water District dated October 30, 2009

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.



P.O. BOX 5906
SAN BERNARDINO, CA 92412
(909) 387-9200

Wells Fargo Bank, N.A.
California

16-24-1220

391771

11/2/2009

PAY
TO THE
ORDER OF

CLERK OF THE BOARD

\$ **50.00

Fifty and 00/100***** DOLLARS

CLERK OF THE BOARD
SAN BERNARDINO COUNTY

AUTHORIZED SIGNATURE

MEMO

⑈391771⑈ ⑆122000247⑆0607685880⑈

San Bernardino Valley Municipal Water District

CLERK OF THE BOARD
60 TAXES & LICENSES

11/2/2009

391771

50.00

NOE - WATER EXCHANGE AGREEMENT
1000 AF OF SWP FROM CLAWA
TO SBVMWD

CHECKING

50.00

San Bernardino Valley Municipal Water District

CLERK OF THE BOARD
60 TAXES & LICENSES

11/2/2009

391771

50.00

NOE - WATER EXCHANGE AGREEMENT
1000 AF OF SWP FROM CLAWA
TO SBVMWD

CHECKING

50.00

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 942360001
(916) 653-5791



December 7, 2009

Ms. Roxanne Holmes, General Manager
Crestline-Lake Arrowhead Water Agency
Post Office Box 3880
Crestline, California 92325

Mr. Randy Van Gelder, General Manager
San Bernardino Valley Municipal Water District
Post Office Box 5906
San Bernardino, California 94212-5906

This Letter Agreement is in response to Crestline-Lake Arrowhead Water Agency's (CLAWA) letter requesting the Department of Water Resources' (DWR) approval for the exchange of up to 1,000 acre-feet of State Water Project (SWP) Table A water between San Bernardino Valley Municipal Water District (SBVMWD) and CLAWA. SBVMWD will take delivery of, and store within its groundwater basin, up to 1,000 acre-feet of CLAWA's 2009 Table A water by December 31, 2009. In exchange CLAWA may take back from SBVMWD's future Table A water allocations 650 acre-feet of water at CLAWA's option, no later than December 31, 2018 as an unequal exchange. However, to remain a bona fide exchange, at least one half of the water delivered to SBVMWD under this Agreement must be returned to CLAWA by December 18, 2019. There will be no monetary payments between CLAWA and SBVMWD for this exchange of Table A water. The point of exchange shall be Silverwood Lake.

In the event that the SBVMWD Basin Technical Advisory Committee makes a determination in any year that high groundwater conditions exist in the San Bernardino Basin, resulting in the flow of water out of the that basin, the quantity of water not yet returned to CLAWA will be reduced by 10 percent. In the event that such conditions do occur in any year, however, SBVMWD and CLAWA would advise DWR of the reduction in the quantity of water remaining to be returned to CLAWA pursuant to this Agreement.

DWR will file a Notice of Exemption based on California Environmental Quality Act Guidelines Section 15301 with the following description of this exchange of water: the proposed project is a water management operation using only existing facilities for the exchange of water from one SWP contractor to another SWP contractor, the limited term transfer will not support new development or a change in land use, and the transfer is wholly within the SWP place of use. DWR is willing to approve the delivery of up to 1,000 acre-feet of CLAWA's 2009 SWP Table A water to SBVMWD in exchange for the return of up to 650 acre-feet of SBVMWD's Table A water subject to the following terms and conditions:

GENERAL PROVISIONS

1. DWR's approval under this Agreement is unique and shall not be considered a precedent for future agreements.

2. This Agreement shall become effective on the date of execution by all the parties and shall provide for the delivery of water to SBVMWD as of December 31, 2009. This Agreement shall terminate upon the delivery of all return water to CLAWA under this Agreement or by December 31, 2018, whichever comes first.
3. The delivery and return of water pursuant to this Agreement shall be contingent on, and subject to, any necessary approvals and shall be governed by the terms and conditions of such approval(s) and any other applicable regulations. CLAWA and SBVMWD shall be responsible for complying with all applicable laws and regulations and for securing any required consent, permit, or order. CLAWA and SBVMWD shall furnish to DWR copies of all approvals and agreements required for the delivery of water under this Agreement.
4. DWR will maintain records documenting the conveyance of up to 1,000 acre-feet of CLAWA's 2009 SWP Table A water to SBVMWD and the return delivery of water to CLAWA. CLAWA and SBVMWD shall certify to the State Water Project Analysis Office (Attention: Chief, Water Contracts Branch, Fax (916) 653-9628) the amount of CLAWA's approved 2009 Table A water delivered to SBVMWD and the return delivery of water from SBVMWD to CLAWA under this Agreement by January 31st of the year following the actual delivery.

WATER DELIVERY FROM CLAWA TO SBVMWD

5. The water delivered to SBVMWD shall be from CLAWA's allocation of 2009 approved Table A water.
6. The delivery of a portion of CLAWA's 2009 Table A water to SBVMWD shall be in accordance with a schedule reviewed and approved by DWR. DWR's approval is dependent upon the times and amounts of the delivery and the overall delivery capability of the SWP. DWR shall not be obligated to deliver the water at times when such delivery would adversely impact SWP operations, facilities, or other SWP contractors.
7. Pursuant to Paragraph 6, CLAWA shall obtain SBVMWD's approval for the water delivery schedule before submitting a schedule to DWR. All water delivery schedules and revisions shall be in accordance with Article 12 of CLAWA's and SBVMWD's respective long-term Water Supply contracts with DWR.
8. Pursuant to Paragraphs 5, 6, and 7, DWR will deliver up to 1,000 acre-feet of CLAWA's 2009 Table A water to SBVMWD's service area, Reach 26A of the California Aqueduct by December 31, 2009.

9. CLAWA and SBVMWD shall submit revised monthly water delivery schedules for approval to the State Water Project Analysis Office, Water Deliveries Section, indicating timing and point of delivery requested pursuant to this Agreement with reference to SWPAO #09079. Revised schedules shall be sent by electronic mail to SWPDeliveries@water.ca.gov or by FAX to (916) 653-9628, Attention: Chief, Water Deliveries Section.
10. CLAWA and SBVMWD shall submit weekly water schedules for the delivery of water pursuant to this Agreement to the Southern Field Division, Water Operations Section, indicating timing and point of delivery requested with reference to SWPAO #09079. Schedules shall be sent by electronic mail to SFDwaterschedule@water.ca.gov or by FAX to (661) 294-3651, Attention: Chief, Water Operations Section.

RETURN WATER DELIVERED FROM SBVMWD TO CLAWA

11. SBVMWD shall return at least half of the quantity of water advanced by CLAWA by December 31, 2018. The return water delivered to CLAWA shall be Table A water allocated to SBVMWD in the year water is returned. In the event that at least half of the water advanced is not returned to CLAWA by August 31, 2018, DWR, in coordination with CLAWA and SBVMWD, shall expedite the return of water to CLAWA by so scheduling SBVMWD's Table A by December 31, 2018.
12. The return of water under this Agreement by SBVMWD to CLAWA shall be in accordance with a schedule reviewed and approved by DWR. DWR's approval is dependent upon the times and amounts of the delivery and the overall delivery capability of the SWP. DWR shall not be obligated to deliver the water at times when such delivery would adversely impact SWP operations, facilities, or other SWP contractors.
13. Pursuant to Paragraph 11, SBVMWD shall obtain CLAWA's approval for the proposed delivery schedule, before submitting a schedule to DWR. All water delivery schedules and revisions shall be in accordance with Article 12 of CLAWA's and SBVMWD's long-term Water Supply contracts with DWR.
14. Pursuant to Paragraphs 11 and 12, DWR will deliver a portion of SBVMWD's Table A water scheduled for delivery to SBVMWD's service area to CLAWA's service area in Reach 24 of the California Aqueduct.

NO IMPACT

15. This Agreement shall not be administered or interpreted in any way that would cause adverse impacts to SWP approved Table A water or to any other SWP approved water allocations, water deliveries, or SWP/CVP operations and facilities. CLAWA and SBVMWD shall be responsible for any adverse impacts that may result from the exchange of water as determined by DWR.

SWP ALLOCATION

16. Water returned to CLAWA pursuant to this Agreement shall not be considered by DWR in the determination of approved annual Table A deliveries to or allocation of other SWP water to CLAWA under Article 18 of CLAWA's long-term Water Supply contract with DWR.

CHARGES

17. CLAWA and SBVMWD shall pay the following charges, including all future adjustments, which shall be calculated in the same manner as charges are calculated for SWP Table A deliveries and shall be in accordance with the provisions of CLAWA's and SBVMWD's long-term Water Supply contracts with DWR. Charges shall be determined for the year the water is delivered, and the year the water is returned.
 - a. When a portion of CLAWA's approved 2009 Table A water is made available to SBVMWD at Reach 24, CLAWA shall pay to DWR the charges associated with the delivery of the water from the Delta to the point of delivery at Silverwood Lake, Reach 24. The charges associated with such delivery will be the 2009 Variable Operation, Maintenance, Power, and Replacement components of the Transportation Charge and the 2009 Off-Aqueduct Power Facilities Cost for each acre-foot of water delivered.
 - b. DWR will deliver water made available by CLAWA at Silverwood Lake, Reach 24 to SBVMWD turnouts at Reach 26A. The charges associated with such delivery will be the 2009 Variable Operation, Maintenance, Power, and Replacement components of the Transportation Charge and the 2009 Off-Aqueduct Power Facilities Cost for each acre-foot of water delivered. SBVMWD will be charged at the Variable rate calculated from Reach 24 to Reach 26A.

- c. In any year that a portion of SBVMWD's future Table A water is returned to CLAWA pursuant to this Agreement, SBVMWD shall pay to DWR the charges associated with the delivery of the return water from the Delta to CLAWA's turnouts in Reach 24 of the California Aqueduct. The charges associated with the return water will be the Variable Operation, Maintenance, Power, and Replacement components of the Transportation charges and the Off-Aqueduct Power Facilities Cost for each acre-foot of water delivered in effect for the year in which the water is returned to CLAWA.
18. In addition to the charges identified above, CLAWA and SBVMWD agree to pay to DWR any additional identified demonstrable increase in costs that would otherwise be borne by the SWP contractors not signatory to this Agreement or by DWR, as a result of activities pursuant to this Agreement.
19. Payment terms shall be in accordance with CLAWA's and SBVMWD's long-term Water Supply contracts with DWR.

LIABILITY

20. Responsibility for water delivered pursuant to this Agreement shall be governed by Article 13 of CLAWA's and SBVMWD's long-term Water Supply contracts, with responsibilities under the terms of that article shifting from DWR to CLAWA and SBVMWD when the water passes through their respective turnouts.
21. In the event of a claim of liability against DWR or its Directors, officers, or employees, jointly or severally, that arises as a result of this Letter Agreement, CLAWA and SBVMWD shall defend, indemnify, and hold DWR and any of its Directors, officers, and employees harmless from any such claim, except to the extent that such claim arises from the sole negligence or willful misconduct of DWR.

EXECUTION

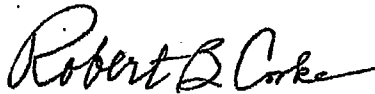
22. This Letter Agreement may be executed in counterpart. The parties agree to accept facsimile or electronically scanned signatures as original signatures. The Agreement shall take effect as soon as all parties have signed.
23. Immediately after execution, SBVMWD and CLAWA shall transmit a copy of the executed Letter Agreement by facsimile or electronically to Robert Cooke, Chief, State Water Project Analysis Office at (916) 653-9628 or cooke@water.ca.gov and to each other at.

CLAWA: (909) 338-3686 or Michael.riddell@bbklaw.com
SBVMWD: (909) 387-9247 or dough@sbvmwd.com

Ms. Roxanne Holmes, et al
December 7, 2009
Page 6

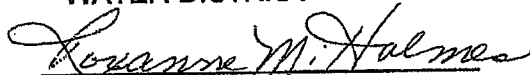
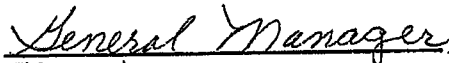

If CLAWA or SBVMWD needs a Board of Directors' approval of this Letter Agreement, that party shall send a facsimile or electronically scanned copy of the board approval to the other two parties. If you have any questions or need additional information, please contact me at (916) 653-4313 and refer to SWPAO #09079.

Sincerely,



Robert B. Cooke, Chief
State Water Project Analysis Office
ACCEPTED:

CRESTLINE-LAKE ARROWHEAD
WATER DISTRICT


Signature
Title
Date

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT

Signature

Title

Date

cc: Mr. Terry Erlewine, General Manager
State Water Contractors
1121 L Street, Suite 1050
Sacramento, California 95814

Ms. Roxanne Holmes, et al
December 7, 2009
Page 6

If CLAWA or SBVMWD needs a Board of Directors' approval of this Letter Agreement, that party shall send a facsimile or electronically scanned copy of the board approval to the other two parties. If you have any questions or need additional information, please contact me at (916) 653-4313 and refer to SWPAO #09079.

Sincerely,



Robert B. Cooke, Chief
State Water Project Analysis Office
ACCEPTED:

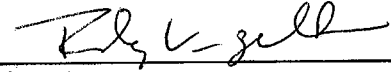
CRESTLINE-LAKE ARROWHEAD
WATER DISTRICT

Signature

Title

Date

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT



Signature

Title

12/7/2009

Date

cc: Mr. Terry Erlewine, General Manager
State Water Contractors
1121 L Street, Suite 1050
Sacramento, California 95814

CRESTLINE-LAKE ARROWHEAD WATER AGENCY

A Public Agency
P.O. BOX 3880 PHONE (909) 338-1779
24116 CREST FOREST DRIVE
CRESTLINE, CALIFORNIA 92325

November 20, 2009

Directors

STEPHEN L. PLEASANT, President
BRUCE D. RISHER
NORMAN C. MEEK
THOMAS L. SUTTON
KENNETH A. EATON

Secretary

JENNIFER A. SPINDLER

General Manager

ROXANNE M. HOLMES

Randy Van Gelder, General Manager
San Bernardino Valley Municipal Water District
380 East Vanderbilt Way
P.O. Box 5906
San Bernardino, CA 92412

RE: 2009 Water Exchange Agreement

Dear Randy:

The purpose of this letter is to address an issue that has been raised by the Department of Water Resources regarding the Water Exchange Agreement which we both executed on October 22, 2009. As you know, that agreement provides that of the 2,000 acre-feet of water which has been and will be delivered to the District from the Agency's 2008 and 2009 allocations, the Agency will have until the end of 2018 to take back 1,650 acre-feet of exchange water from the District's future allocations. The agreement further provides that in any year in which the District experiences high groundwater conditions, resulting in the loss of water from the Basin, the quantity of water not yet returned to the Agency by way of exchange will be reduced by 10%. That 10% reduction will apply in each year that such high groundwater conditions may occur.

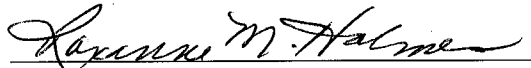
Craig Trombly at DWR has pointed out that exchange agreements such as this must provide for the return of no less than 50% of the water delivered to the exchange partner. Although it is extremely unlikely that we would experience multiple years of heavy precipitation between now and the end of 2018, DWR is nonetheless concerned that the 10% reduction provision theoretically could result in the return of less than half of the 2,000 acre-feet of water delivered to the District pursuant to the 2008 and 2009 Water Exchange Agreements.

In order to eliminate that possibility, we have agreed that if the 10% reduction provision is applied in multiple years, the last year of which would result in a cumulative loss of 650 acre-feet of water or more, in that year the Agency will take back all of the

remainder of the exchange water not yet returned to the Agency so that no more than a cumulative total of 649 acre-feet of water is lost due to the application of that 10% reduction provision. This agreement between us is consistent with the Water Exchange Agreements already executed and thus does not require an amendment of either the 2008 or the 2009 Water Exchange Agreement.

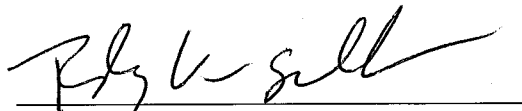
If this letter correctly states the agreement that we have reached regarding the timing of the return of exchange water to the Agency, please sign and return one of the two duplicate originals of this letter, both of which I have already signed. Upon receipt of the duplicate original bearing your signature, I will send a copy to Craig Trombly as written assurance that the exchange arrangement between the Agency and the District will in fact comply with the approved policy which DWR is applying uniformly to all such exchange arrangements.

Yours very truly.



Roxanne M. Holmes,
General Manager

This letter correctly and accurately reflects the agreement between the Agency and the District.



Randy Van Gelder

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 942360001
(916) 653-5791



Ms. Roxanne Holmes, General Manager
Crestline-Lake Arrowhead Water Agency
Post Office Box 3880
Crestline, California 92325

Mr. Douglas Headrick, General Manager
San Bernardino Valley Municipal Water District
Post Office Box 5906
San Bernardino, California 94212-5906

This is in response to your letter dated October 6, 2009 in which you requested that we amend the Letter Agreement SWPAO #08063, dated December 17, 2008, among the Department of Water Resources (DWR), Crestline-Lake Arrowhead Water Agency (CLAWA), and San Bernardino Valley Municipal Water District (SBVMWD) to exchange up to 1,000 acre-feet of CLAWA's 2008 State Water Project (SWP) Table A water with SBVMWD.

As described in the original Agreement's introductory paragraph, the quantity of Table A water to be exchanged is up to 1,000 acre-feet and to be returned as a 1 acre-foot for 1 acre-foot exchange. CLAWA and SBVMWD have agreed the returned Table A exchange water will now be subject to high groundwater conditions which could reduce the amount of water available for return to CLAWA. However, to remain a bona fide exchange, at least half the water delivered to SBVMWD must ultimately be returned to CLAWA by December 3, 2018. Paragraph 11 of the original Agreement #08063 provides for the return of all exchange water to CLAWA by December 31, 2011 and water to be scheduled by August 31, 2011 if all water has not been returned prior to that date. CLAWA and SBVMWD have agreed to extend the water return time to December 31, 2018 and schedule it by August 31, 2018. The details of this request are noted in the "Water Exchange Agreement and Amendment of Demonstration Project" signed by CLAWA and SBVMWD on October 22, 2009.

Accordingly, the original agreement is amended as follows:

Provision 2 shall now read:

2. This Agreement shall become effective on the date of execution by all the parties and shall provide for the delivery of water to SBVMWD as of December 31, 2008. This Agreement shall terminate upon the delivery of all return water to CLAWA under this Agreement or by December 31, 2018, whichever comes first.

Provision 11 shall now read:

11. SBVMWD shall return at least half of the water advanced to CLAWA by December 31, 2018. The return water delivered to CLAWA shall be Table A water allocated to SBVMWD in the year water is returned. In the event that at least half of the water advance is not returned to CLAWA by August 31, 2018, DWR, in coordination with CLAWA and SBVMWD, shall expedite the return of water to CLAWA by so scheduling SBVMWD's Table A by December 31, 2018.

A new term is added to the original Agreement to read:

In the event that SBVMWD's Basin Technical Advisory Committee makes a determination in any year that high groundwater conditions exist in the San Bernardino Basin, resulting in the flow of water out of that basin, the quantity of

Ms. Roxanne Holmes, et al

Page 2

water not yet returned to CLAWA will be reduced by 10 percent. In the event that such conditions do occur in any year, SBVMWD and CLAWA will advise DWR of the reduction in the quantity of water remaining to be returned to CLAWA pursuant to this Agreement.

If you agree to the terms and conditions of this Amendment, please sign and date all four originals. After signing, forward all four originals to SBVMWD for their signature and request that they return two executed originals to Robert Cooke, Chief, State Water Project Analysis Office, Department of Water Resources, Post Office Box 942836, Sacramento, California 94236-0001. SBVMWD will retain one executed original and return one executed original to CLAWA for their respective records. Please send a copy of the Board of Directors approval of this amendment, if such approval is required. This Amendment will not take effect until signed by both CLAWA and SBVMWD.

If you have any questions or need additional information, you may contact Craig Trombly, of my staff at (916) 653-6250, and refer to SWPAO #08063-A.


Sincerely,



Robert B. Cooke, Chief
State Water Project Analysis Office

ACCEPTED:

CRESTLINE-LAKE ARROWHEAD
WATER DISTRICT


Signature

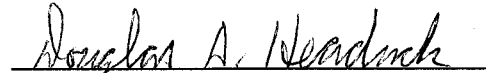
Title

Date

Enclosures

cc: Mr. Terry Erlewine, General Manager
State Water Contractors
1121 L Street, Suite 1050
Sacramento, California 95814

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT


Signature

General Manager
Title

2-16-2010
Date

**MEMORANDUM OF UNDERSTANDING AND AGREEMENT
FOR COST-SHARING OF
FEASIBILITY STUDY FOR THE GARDEN BAR WATER AND POWER PROJECT**

This Memorandum of Understanding and Agreement ("MOU") is dated and effective this 29th day of December, 2009 by and between the South Sutter Water District ("SSWD") and the entities listed in Exhibit A attached hereto and incorporated herein. The parties to this MOU are individually referred to herein as "Party" and collectively referred to herein as "Parties."

RECITALS

A. SSWD was formed in 1954 in order to develop, store and distribute surface water supplies to augment and replenish local groundwater supplies. SSWD owns and operates the Camp Far West Reservoir on the Bear River, which was completed in 1964 and which has a nominal storage capacity of 104,400 acre-feet. SSWD provides agricultural water service to approximately 36,000 acres of land located in Sutter and Placer counties.

B. SSWD is currently evaluating the feasibility of a new dam and reservoir project (the Garden Bar Water and Power Project; hereinafter "Project") that would be located on the Bear River approximately five miles upstream of Camp Far West Reservoir. If approved and implemented, the Project would provide substantial flood control, water supply and hydroelectric power generation benefits. The Project and related proposals have been the subject of various feasibility studies since the 1970s.

C. At the request of SSWD, RMC Water and Environment ("RMC") has developed a Budget and Scope of Work for an Updated Reconnaissance Study for the Project ("Reconnaissance Study"). The estimated budget for the Reconnaissance Study is \$1 million.

D. The Parties desire to enter into this Memorandum of Understanding to establish cost-sharing obligations for the Reconnaissance Study, oversight procedures and related obligations.

In this context, the Parties enter into the following understanding and agreement:

1. Agreement to Share Costs of Reconnaissance Study. The Parties agree to share the professional fees and costs of the Reconnaissance Study based on the cost share percentages and the maximum contributions set forth in Exhibit A attached hereto and incorporated herein. No Party will have any obligation to pay any fees or costs arising from or relating to the Reconnaissance Study in excess of the maximum contributions specified in Exhibit A absent a written agreement executed by the Party against whom additional fees or costs are to be imposed.

2. Oversight of Reconnaissance Study. Following commencement of the Reconnaissance Study, the Parties will meet at least once per calendar quarter in Sacramento, California with representatives of RMC to review the status of the Reconnaissance Study. All of

the Parties will be provided with written progress reports and other documentation describing the status of the Reconnaissance Study.

3. No Commitment to Approve or Implement Project. Notwithstanding any provision of this Memorandum, the Parties have made no determinations or commitments whatsoever to approve or implement the Project. The Parties agree that no determinations or commitments to approve or implement the Project can or will be made until environmental review of the Project is completed in accordance with the California Environmental Quality Act and other applicable laws. All of the Parties retain full and absolute discretion to decline further participation in the Project following completion of the Reconnaissance Study.

4. No Additional Project-Related Obligations. Except as expressly provided in this Memorandum, the Parties will have no obligations to participate financially or otherwise in Project planning, feasibility analysis, design, construction or implementation.

5. Reimbursement. In the event that some but less than all of the Parties elect to move forward, following completion of the Reconnaissance Study, with additional Project-related activities including but not limited to environmental review for the Project (hereinafter "Further Participating Parties"), any future Project-related agreements executed by the Further Participating Parties shall include provisions for the reimbursement of those Parties who elect not to participate further in Project-related activities as to the non-participating Party's share of professional fees and costs paid for the Reconnaissance Study, excluding interest and the non-participating Party's staff time or other in-kind contributions to the Reconnaissance Study. In the event that none of the Parties move forward, following completion of the Reconnaissance Study, with additional Project-related agreements, then no Party shall have any right whatsoever to reimbursement of any fees and costs incurred pursuant to this Memorandum.

6. Contracting for Reconnaissance Study. Each of the Parties will be a signatory to a contract with RMC for the Reconnaissance Study. RMC will submit invoices to each of the Parties for Reconnaissance Study work based on the cost-share percentages specified in Exhibit A. SSWD will serve as RMC's principal point of contact for contract administration purposes. In no event will SSWD be responsible for (i) advancing payments to RMC; or (ii) payments in excess of its maximum payment obligation as specified in Exhibit A.

7. Exclusive Right to Negotiate Project-Related Agreements. Following completion of the Reconnaissance Study, the Parties will meet and confer to determine whether the Parties desire to participate in additional Project-related activities. In the event SSWD and one or more of the other Parties ("Participating Parties") elect to participate in additional Project-related activities, the Participating Parties will, for a period of one hundred eighty (180) days following issuance by RMC of the final report on the Reconnaissance Study ("Exclusivity Period"), have the exclusive right to negotiate with SSWD regarding Project participation. During the Exclusivity Period, SSWD and the Participating Parties shall negotiate exclusively and in good faith with each other regarding the terms and conditions of one or more agreements to move forward with Project-related activities. The negotiations will be consistent with the principle of equitable distribution of Project benefits and costs. The Exclusivity Period may be extended by written agreement executed by SSWD and the Participating Parties. Following expiration of the Exclusivity Period, if one or more agreements to move forward with Project-related activities

have not been executed by SSWD and the Participating Parties, SSWD will have no further obligations to the Participating Parties and SSWD will be free to negotiate with any other person or entity regarding participation in the Project.

8. Attorneys' Fees. In the event of a civil action to enforce any obligation under this Memorandum of Understanding, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs (including but not limited to reasonable expert witness fees and costs) incurred in connection with such litigation.

9. Entire Agreement. This instrument constitutes the entire agreement and understanding between the Parties with respect to the subject matters hereof, and supersedes and replaces any prior agreements and understandings, whether oral or written, by and between them with respect to such matters.

10. Counterparts. This Memorandum may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have entered into this instrument as of the Effective Date set forth above.

SOUTH SUTTER WATER DISTRICT

By: Brad Arnold

Title: General Manager

Date: 12/9/09

SAN BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT

By: R. V. Gold

Title: G.M.

Date: 12/15/2009

PALMDALE WATER DISTRICT

By: Perry Hill

Title: _____

Date: 12/11

CASTAIC LAKE WATER AGENCY

By: William

Title: GM

Date: 12/29/09

DSM

CITY OF NAPA

By: Joe Teckel

Title: mayor

Date: 12/22/09

EXHIBIT A
LIST OF PARTIES, PARTICIPATION PERCENTAGES
AND MAXIMUM CONTRIBUTIONS

<u>NAME OF PARTY</u>	<u>PERCENTAGE</u>	<u>MAX. CONTRIB.</u>
SOUTH SUTTER WATER DISTRICT	20.00	\$200,000
CASTAIC LAKE WATER AGENCY	20.00	\$200,000
PALMDALE WATER DISTRICT	20.00	\$200,000
CITY OF NAPA	20.00	\$200,000
SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT	20.00	\$200,000

AGREEMENT FOR ENGINEERING SERVICES

THIS AGREEMENT is by and between each of the following entities collectively and individually: the South Sutter Water District, the Palmdale Water District, the Castaic Lake Water Agency, the San Bernardino Valley Municipal Water District, and the City of Napa, California (hereinafter called "**Parties**") and **RMC WATER AND ENVIRONMENT**, a corporation organized under the laws of the State of California.

RECITALS

A. On 12/29, 2009, the following Parties entered into a Memorandum of Understanding (MOU) with:

- South Sutter Water District (SSWD)
- Palmdale Water District (PWD),
- Castaic Lake Water Agency (CLWA)
- San Bernardino Valley Municipal Water District (SBVMWD)
- City of Napa (Napa)

The purpose of the MOU between these five entities (Parties) and RMC WATER AND ENVIRONMENT is to establish cost sharing obligations for the preparation of an Updated Reconnaissance Study for the project described as: Garden Bar Water and Power Project (herein after the "PROJECT") which would consist of a new dam and reservoir project located on the Bear River approximately five miles upstream of Camp Far West Reservoir. If approved and implemented, the Project would provide substantial water supply and hydroelectric power generation benefits, as well as other potential benefits, including flood control and recreation. The Project and related project proposals have been the subject of various feasibility studies since the 1970s.

B. SSWD was formed in 1954 in order to develop, store and distribute surface water supplies to augment and replenish local groundwater supplies. SSWD owns and operates the Camp Far West Reservoir on the Bear River, which was completed in 1964 and which has a nominal storage capacity of 104,400 acre-feet. SSWD provides agricultural water service to approximately 36,000 acres of land located in Sutter and Placer counties.

C. At the request of SSWD, RMC WATER AND ENVIRONMENT has developed a Scope of Work for an Updated Reconnaissance Study for the Project ("Reconnaissance Study"). The estimated budget for the Reconnaissance Study is \$1,000,000, including a project contingency of \$150,000.

D. Per the MOU, RMC WATER AND ENVIRONMENT will contract with each of the Parties separately and each party is responsible for one fifth (1/5) of the overall cost of the Reconnaissance Study, resulting in an individual cost share of up to \$200,000.

E. RMC WATER AND ENVIRONMENT is qualified to provide such engineering,

planning, and/or project management services.

F. Per the MOU, the Parties will participate in the Reconnaissance Study and will engage RMC WATER AND ENVIRONMENT for the services and RMC WATER AND ENVIRONMENT is willing and able to undertake the services upon the terms and conditions hereinafter set forth.

G. THEREFORE, it is mutually agreed as follows: Parties, individually and collectively, hereby employ RMC WATER AND ENVIRONMENT and RMC WATER AND ENVIRONMENT hereby accepts such employment to perform the services hereinafter defined upon the terms and conditions set forth herein.

ARTICLE 1 – SCOPE OF SERVICES

1. RMC WATER AND ENVIRONMENT shall act as an independent contractor and shall not act as an agent or officer of any of the Parties except as expressly and unanimously agreed to in writing by the Parties.
2. RMC WATER AND ENVIRONMENT shall provide those services as described in the Detailed Scope of Work attached as Attachment A. RMC WATER AND ENVIRONMENT shall not be obligated to provide and shall not be responsible for any services not expressly set forth in Attachment A unless such services are agreed to in writing between all of the Parties in the MOU.

ARTICLE 2 - COMPENSATION

Each Party will pay on a monthly basis, up to its separate one-fifth (1/5) share of the overall cost, to RMC WATER AND ENVIRONMENT as full compensation for the services described in this Agreement based on RMC WATER AND ENVIRONMENT'S standard hourly rates at the time the work is done together with reimbursable expenses as set forth herein. Copies of these standard rates are attached as Attachment B and will be updated as such rates change in the ordinary course of RMC WATER AND ENVIRONMENT's business. RMC WATER AND ENVIRONMENT costs to each Party shall not exceed \$170,000 (one fifth of \$850,000) without all Parties' written authorization. Expenditure of the project contingency budget of \$150,000 shall be available upon written authorization of all the Parties.

ARTICLE 3 – SCHEDULE

1. The Agreement shall commence on 12/31, 2009 and terminate on the earlier of the completion of the project or 12/31, 2010.
2. In the case of unavoidable delay due to weather, strikes, or any other condition not under RMC WATER AND ENVIRONMENT's reasonable control, the time for performance by RMC WATER AND ENVIRONMENT as provided herein shall be extended, and an equitable adjustment in the fee shall be negotiated by mutual agreement. Said modification or revision to this Agreement shall be in writing signed by the Parties to the MOU and RMC WATER AND

ENVIRONMENT.

ARTICLE 4 - PAYMENT

Payment to RMC WATER AND ENVIRONMENT, as described in Article 2, is to be made as follows:

1. RMC WATER AND ENVIRONMENT shall submit its standard monthly invoice describing the work performed and expenses incurred during the preceding month. Each Party shall be responsible for making payment of one-fifth (1/5) of each standard monthly invoice. Each Party shall make payment to RMC WATER AND ENVIRONMENT within thirty (30) days after receipt of RMC WATER AND ENVIRONMENT's monthly invoice.
2. RMC WATER AND ENVIRONMENT shall submit a single monthly invoice to all Parties, specifying each Party's share.
3. Within fifteen (15) days of receipt of any invoice, each Party shall review the invoice and notify RMC WATER AND ENVIRONMENT of any disputed portions. In the event any one or more Parties disputes any portion of any invoice, all Parties shall be forthwith notified of the disputed amount and all Parties shall each pay its proportionate share of all undisputed portions as set forth herein.
4. All the Parties shall meet and confer with RMC WATER ENVIRONMENT commencing no later than the twentieth (20th) day of receipt of the disputed invoice to resolve the disputed amount. If the disputed amount cannot be resolved by mutual agreement of all Parties and RMC WATER ENVIRONMENT by thirty (30) days from receipt of the disputed invoice, each Party shall pay the disputed amount to SSWD, which shall hold funds in trust until the disputed amount is resolved by a majority of the Parties as evidenced by their written consent to payment of such disputed amount. The Parties may not withhold payment of any invoice as an offset to any actual or claimed damages not directly attributable to the specific services and expenses withheld.
5. All Parties agree that timely payment, as provided herein, is a material term of this Agreement, and failure to make timely payment as agreed constitutes a breach hereof. In the event payment for services rendered, whether disputed or not, has not been made within forty-five (45) days from the receipt of invoice, as provided herein, RMC WATER AND ENVIRONMENT may, after giving seven (7) days' written notice and without penalty or liability of any nature, and without waiving any claim against any Party, suspend all work on all authorized services as set forth herein. Upon receipt of payment in full for services rendered, plus interest charges, RMC WATER AND ENVIRONMENT will resume services, but shall be entitled for an equitable adjustment in compensation and schedule to cover fee, expense, and schedule impacts from such suspension.
6. Payment of all compensation due RMC WATER AND ENVIRONMENT pursuant to this Agreement shall be a condition precedent to the any Party using any of RMC WATER AND ENVIRONMENT's professional services work product furnished under this Agreement.

7. In order to defray carrying charges resulting from delayed payments, simple interest at the rate of 7% per annum compounded monthly (not to exceed the maximum rate allowed by law) shall be added to the unpaid balance of each invoice. Payments shall first be credited to interest and then to principal.

8. It is further agreed that the above payments for engineering services, as described herein, have been arrived at after meaningful negotiations between all Parties and RMC WATER AND ENVIRONMENT.

9. It is also mutually agreed that the above payment for engineering services shall be compensation only for those services specifically identified in Article 1, and more fully described in Attachment A. Provisions for additional compensation will be separately negotiated to pay for Additional Services as set forth below.

ARTICLE 5 – CHANGE IN SERVICES & ADDITIONAL SERVICES.

RMC WATER AND ENVIRONMENT will not be responsible for any Additional Services, not included in the original Scope of Work, unless all Parties unanimously authorize the performance of the additional work in writing, with said authorization signed by RMC WATER AND ENVIRONMENT, which authorization shall specify the work to be performed, basis for payment, and the time for performance. In the event RMC WATER AND ENVIRONMENT believes Additional Services are required or performance of this Agreement by RMC WATER AND ENVIRONMENT has been prevented by events beyond its control, it shall notify all Parties. All Parties shall meet and confer within ten (10) days of receipt of such notice from RMC WATER AND ENVIRONMENT to determine whether to authorize such additional work by unanimous consent. The Parties shall notify RMC WATER AND ENVIRONMENT in writing whether to proceed with such additional work within twenty (20) days of receipt of such notice. In the event RMC WATER AND ENVIRONMENT is notified not to proceed, RMC WATER AND ENVIRONMENT shall have no responsibility for such services. If the Parties do not notify RMC WATER AND ENVIRONMENT such services are not required, within twenty (20) days of such notice RMC WATER AND ENVIRONMENT shall be entitled to proceed with the work and to payment for any such services provided and costs incurred.

ARTICLE 6 - RMC WATER AND ENVIRONMENT'S RESPONSIBILITIES.

1. RMC WATER AND ENVIRONMENT will not commence performance of the services identified in Article 1, until execution of this Agreement by all Parties.

2. Opinions of project construction and implementation cost to be prepared pursuant to this Agreement will be based upon data presently available, and adjusted where necessary to reflect anticipated future changes. In preparation of these cost estimates, RMC WATER AND ENVIRONMENT will apply its experience and judgment. Since RMC WATER AND ENVIRONMENT has no control over future changes or competitive bidding procedures, and market conditions or other factors affecting cost, RMC WATER AND ENVIRONMENT makes no warranty, whether expressed or implied, as to the accuracy of said opinions of cost.

ARTICLE 7 - INSURANCE, INDEMNIFICATION, AND COMPLIANCE WITH LAWS

1. RMC WATER AND ENVIRONMENT will purchase and maintain during the term of Agreement insurance in accordance with the following:

(a) RMC WATER AND ENVIRONMENT will maintain insurance coverage for Workers' Compensation, and Employer's Liability Insurance as well as General Liability and Automobile Liability Insurance, and will name each Party as an additional insured on the General Liability and Automobile Liability Insurance policies.

(b) RMC WATER AND ENVIRONMENT asserts that it is qualified in the professional discipline necessary to the services and duties proposed to be performed, and that it shall perform such services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals of RMC WATER AND ENVIRONMENT's discipline in the same locality. Within the limits of that standard of care RMC WATER AND ENVIRONMENT agrees to indemnify and hold harmless each Party, its officers, and employees from and against any and all liability, claims, suits, loss, damages, costs, and expenses to the extent caused by negligent acts, errors, or omissions of RMC WATER AND ENVIRONMENT, its officers, employees, agents, or consultants in the performance of its services and duties hereunder, but not from the negligence or willful misconduct of SSWD, its officers, and employees or other parties under Party's control. In no event shall RMC WATER AND ENVIRONMENT be liable for any special, indirect, or consequential damages as a result of its performance of the services hereunder.

(c) RMC WATER AND ENVIRONMENT maintains professional liability insurance. Notwithstanding the availability of professional liability insurance, the total aggregate of RMC WATER AND ENVIRONMENT's liability to all parties related to this Agreement, including third parties, shall not exceed One Million Dollars (\$1,000,000), or the amount of RMC WATER AND ENVIRONMENT's fee, whichever is greater.

2. Nothing contained within this Agreement shall be construed or interpreted as requiring RMC WATER AND ENVIRONMENT to assume the status of a generator, storer, transporter, treater, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42 USCA, §§6901 et seq., as amended, or within any state statute governing the generation, treatment, storage, and disposal of waste. Further, the contents of this Agreement shall not be construed or interpreted as requiring RMC WATER AND ENVIRONMENT to arrange for the transportation, treatment, or disposal of hazardous substances, as described in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USCA §9601, et seq., as amended.

3. In no event shall the officers, directors, owners or employees of RMC WATER AND ENVIRONMENT be personally liable for any obligation under this Agreement, for any alleged breach of this Agreement, for any direct, indirect, incidental or consequential losses or damage of any kind or nature whatsoever, provided that RMC WATER AND ENVIRONMENT is a properly organized, maintained, and capitalized Limited Liability Company or other corporation

or business entity authorized pursuant to the laws of California ("Business Entity" herein). The Parties agree that the sole and exclusive remedy by all Parties for any and all obligations and claims shall be against the Business Entity and not against any officer, director, or employee provided the Business Entity has been lawfully administered as an entity separate and apart from such officers, directors, or employees.

4. To the extent applicable hereto, RMC WATER AND ENVIRONMENT shall, in the performance of this Agreement, comply with:

(a) The Fair Labor Standards Act of 1939 (20 U.S.C. 201-219); The Walsh-Healey Public Contracts Act (41 U.S.C. 35-45); The Contract Work Hours Standards Act - Overtime Compensation (40 U.S.C. 327-330); Laws Restraining the Use of Convict Labor; Utilization of Small Business and Small Disadvantaged Business Concerns (Public Law 95-507); and all other federal, state and local laws; and all regulations and orders issued under any applicable law.

(b) The Equal Employment Opportunity clause in Section 202 of Executive Order (E. O.) 11246, as amended, and the implementing rules and regulations (41 CFR Part 60) are incorporated herein by reference, unless this order is exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of E. O. 11246 or provisions of any superseding E. O. As used in this clause, "Contractor" means Seller. Unless this order is exempted, the applicable Equal Employment Opportunity Compliance Certificate previously submitted by Seller to Buyer is by reference also incorporated herein.

(c) The Affirmative Action for Handicapped Workers Clause in Title 41, Code of Federal Regulations, Part 60, Subsection 741.4, and the implementing rules and regulations of the Department of Labor associated therewith are incorporated herein by reference unless this order is under \$2,500. As used in said clause, "Contractor" means Seller.

(d) The Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era Clause of Title 41, Code of Federal Regulations, Part 60, Subsection 250.4 and the implementing rules and regulations of the Department of Labor associated therewith are incorporated herein by reference, unless this order is under \$10,000. As used in said clause, "Contractor" means Seller, and "Contract" means this order.

ARTICLE 8- INSTRUMENTS OF SERVICES

All documents, including Drawings and Specifications prepared or furnished by RMC WATER AND ENVIRONMENT (and RMC WATER AND ENVIRONMENT's independent professional associates and consultants) pursuant to this Agreement, are instruments of service in respect of the Project. Each Party may make and retain copies for information and reference in connection with the use and occupancy of the Project. However, such documents are not intended or represented to be suitable for reuse by any Party or on any other extensions of the Project, or on any other project. Any reuse without written verification or adaptation by RMC WATER AND ENVIRONMENT for specific purpose intended will be at each Party's sole risk and without liability or legal exposure to RMC WATER AND ENVIRONMENT, or to RMC WATER AND ENVIRONMENT's independent professional associates and consultants. The Parties agree to

defend, indemnify, and hold RMC WATER AND ENVIRONMENT harmless from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any use of RMC WATER AND ENVIRONMENT's instruments of service are contingent on full payment of all fees and costs provided by this AGREEMENT.

ARTICLE 9 - SUSPENSION OR TERMINATION

1. The Parties, by unanimous agreement hereto by _____ notice in writing to RMC WATER AND ENVIRONMENT may, at any time and without cause, suspend the services of RMC WATER AND ENVIRONMENT, or any portion thereof for a period of not more than sixty (60) days'. RMC WATER AND ENVIRONMENT shall resume the services on receipt from the Parties of a written notice of resumption of services. RMC WATER AND ENVIRONMENT may be allowed an increase in fee or an extension of time, or both, if RMC WATER AND ENVIRONMENT makes an approved claim therefor, as provided in paragraph 2 below. In the event that the period of suspension exceeds ninety (90) days, the terms of this Agreement are subject to renegotiation.

2. This AGREEMENT may not be terminated without unanimous consent of the Parties. If the Parties unanimously decide to terminate the Project, they must provide RMC written notice and RMC WATER AND ENVIRONMENT agrees to cease all work under this AGREEMENT on or before the effective date of such notice. Nothing contained in any part of this AGREEMENT shall be deemed or construed to lessen, limit or derogate from the Parties's absolute right of cancellation set forth herein.

In the event of cancellation of this AGREEMENT, RMC WATER AND ENVIRONMENT shall receive as full compensation for all services and work performed to the date of cancellation, and all costs incurred in connection therewith, an amount of money to be determined as follows:

For work done on items of service on which a notice to proceed has been issued and which has been done in accordance with the terms and provisions of this Agreement, RMC WATER AND ENVIRONMENT shall be paid an amount of money computed in accordance with the provisions set forth in Articles 1 and 2 of this Agreement, plus reasonable termination expenses, in no event shall the amount of money to be paid for such items of service exceed the amount of Money which would be paid RMC WATER AND ENVIRONMENT under the applicable provisions of this Agreement for the full performance of such services.

ARTICLE 9 - MISCELLANEOUS

1. This Agreement shall be governed and interpreted in accordance with the laws of the State of California.

2. Any written notice permitted or required to be given under this Agreement may be given or served either in person or by certified mail. Such notice shall be effective upon receipt thereof by the party to whom it is addressed, whether it is personally delivered or sent by certified mail. Any such written notice delivered by certified mail shall, if not actually received earlier, be

deemed to have been effectively delivered at the expiration of forty-eight (48) hours after deposit in the United States Mail. Such notice shall be delivered or sent to the addresses of the parties concerned as shown below. Each party may change such address by giving written notice to the other party as provided below.

South Sutter Water District
2464 Pacific Avenue
Trowbridge, CA 95659
Attn: Brad Arnold

RMC Water and Environment
2868 Prospect Park Drive, Suite 130
Rancho Cordova, CA 95670
Attn: Steve Brown

Palmdale Water District
2029 E. Avenue Q
Palmdale, Ca 93550
Attn: Jon Pernula

Castaic Lake Water Agency
27234 Bouquet Canyon Road
Santa Clarita CA 91350
Attn: Dirk Marks

**San Bernardino Valley
Municipal Water District**
380 East Vanderbilt Way
San Bernardino, CA 92408
Attn: Douglas Hedrick

City of Napa, California
1340 Clay Street
Napa, CA 94559
Attn: Joy Eldredge

3. RMC WATER AND ENVIRONMENT's books, papers, records, and accounts, as well as those of any structural, mechanical, and electrical subcontractors, or any other consultant retained by RMC WATER AND ENVIRONMENT, relating to or in any way connected with the professional services herein contemplated, shall be open, at all reasonable times, for inspection and audit by the agents and authorized representatives of any of the Parties. The original books, papers, records, and other documents described herein shall be retained for a minimum of three (3) years after completion of services.

4. This Agreement is to be binding on the heirs, successors, and assigns of the parties hereto, but is not to be assigned without first obtaining the written consent of the other; consent not to be unreasonably withheld.

5. This represents the entire understanding of the Parties and each of them and RMC WATER AND ENVIRONMENT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by amendment in writing signed by each party.

7. RMC WATER AND ENVIRONMENT'S waiver of any term, condition, or covenant, or breach of any term, condition or covenant, shall not constitute the waiver of any other term, condition, or covenant, or the breach of any term, condition or covenant.

8. If any term, condition, or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be valid and binding on each party.

9. This Agreement may be executed in duplicate originals by each Party and RMC WATER AND ENVIRONMENT (six (6) executed originals) and shall not be valid or enforceable until all Parties and RMC WATER AND ENVIRONMENT has executed and received this Agreement so that RMC WATER AND ENVIRONMENT and each Party has an original executed Agreement from each other Party and RMC WATER AND ENVIRONMENT. The executed originals of this Agreement shall be sent to RMC WATER AND ENVIRONMENT for distribution to the Parties.

Executed this 24th day of December, 2009.

SOUTH SUTTER WATER DISTRICT

By: Brad Arnold
 Title: General Manager
 Dated: 12/9/09

RMC WATER AND ENVIRONMENT

By: [Signature]
 Title: Sr. Vice President
 Dated: 12/31/09

PALMDALE WATER DISTRICT

By: [Signature]
 Title: _____
 Dated: 12/11

CASTAIC LAKE WATER AGENCY

By: [Signature]
 Title: RN
 Dated: 12/17/09

**SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT**

By: [Signature]
 Title: G.M.
 Dated: 12/15/2009

CITY OF NAPA

By: [Signature]
 Title: Mayor
 Dated: 12/22/09

Attachment A
Scope of Work

**Scope of Work
Updated Reconnaissance Study for Garden Bar Reservoir
South Sutter Water District**

Background

The South Sutter Water District, in association with other California agencies, is considering implementation of the proposed Garden Bar Project. The Garden Bar Project would be located on the Bear River upstream of Camp Far West Dam and Reservoir, a facility owned and operated by the South Sutter Water District. The proposed project consists of a new dam and associated hydroelectric facilities, including power transmission facilities. The proposed site for developing Garden Bar Dam and associated hydroelectric power facilities has been studied and documented on numerous occasions, as indicated below:

- 1972 COE Flood Control Study (200,000 acre-ft flood control reservoir)
- 1981 COE Multi-Purpose Project Study (200,000 acre-ft reservoir, 23 MW conventional hydropower plant)
- 1982 Pumped Storage Alternative (260,000 acre-ft reservoir, 52 MW conventional hydropower plant)
- 1985 FERC Application (260,000 acre-ft reservoir, 79 MW hydropower plant, conventional hydro)
- 1987 Prospectus (250,000 acre-ft reservoir, 210 MW hydropower plant, pumped-storage hydro)
- 1991 FERC Application (265,000 acre-ft reservoir, 290 MW hydropower plant, pumped-storage hydro)

Basically, the scope of services for study of the dam and reservoir elements of the project is targeted at developing a reconnaissance-level cost estimate that can be used to evaluate economic feasibility of the project and to initiate subsequent permitting and more-detailed feasibility-level and implementation activities.

The following scope of services has been developed to support a decision to apply for water rights, apply for a FERC application, and solidify agreements with water and power partners. However, the work required to complete the applications is not included in this scope of work. The proposed scope of work includes tasks that will address:

- 1- Establishing the amount of water (firm and non-firm yield) and electric power generation that the project could produce;
- 2- Determining the construction, capital and O&M costs for the all elements of the project;
- 3- Developing a Strategic Implementation Plan, including an approach to CEQA/NEPA compliance and project permitting.

The proposed scope of services has been prepared assuming South Sutter Water District will execute a Memorandum of Understanding (MOU), or similar agreement, with other agencies to undertake the study. To that end, the signees of the MOU are referred to as the Project Partners.

Scope of Services

All workshops are assumed to be in either Sacramento or Trowbridge. For all draft technical memoranda, one reproducible copy and an electronic (pdf) file will be provided. All final technical memoranda will be submitted similarly.

Task 1 – Define Project Configurations to be Evaluated. This updated reconnaissance study will focus on three configurations. At this point in time, the three configurations are assumed to be as shown in the following table.

Elevation of Top of Dam	Elevation of Spillway (Normal Water Surface)	Height of Dam (feet)	Storage (AF)	Comment
650	635	365	310,000	Identified in 2007
635	620	350	265,000	Identified in 1991 report
605	590	320	250,000	Identified in 1982 report

By evaluating three configurations, the information can be used to determine the most cost effective facilities configuration and resulting water yield and power production values. The alignment of the dam, locations and configurations for the spillway, outlet works, hydropower facilities, cofferdams, river diversion, sources of construction materials, and construction access requirements will be reviewed during this task. During this first task, in a workshop setting, the project team and the project partners will define the dam/reservoir configuration. Other elements will either be defined (access roads, etc.) or, if an element can't be defined at this point in the project (terminus of the high voltage transmission lines, pumped storage or conventional hydro, etc.), the approach that the project team will use to determine these elements will be presented. These elements will be defined before the construction cost estimate is complete and therefore the final TM will be submitted with the construction cost estimate.

The alignment of the dam, locations and configurations for the spillway, outlet works, hydropower facilities, cofferdams, river diversion, sources of construction materials, and construction access requirements will be reviewed during the reconnaissance

Task 1 Deliverables

1. Draft Technical Memorandum - Project Configurations
2. Workshop with SSWD and Project Partners
3. Final Technical Memorandum - Project Configurations

Task 2 – Develop Environmental Compliance and Permitting Approach. There are many environmental issues associated with the construction and operation of a new dam and reservoir. These include the potential for the project to affect fisheries and aquatic resources, terrestrial and sensitive species, water quality, groundwater, recreation, cultural resources, and other environmental resource areas. Implementation of this project will first require successfully complying with the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), and obtaining a license for the hydroelectric facilities from the Federal Energy Regulatory Commission (FERC). In addition, there are also many other permits and regulatory approvals that will be required for the implementation of this Project. Therefore, the RMC team will evaluate the environmental issues and develop an environmental compliance strategy for successfully complying with CEQA/NEPA, FERC and the other permitting requirements.

Subtask 2.1 Environmental Issues and Constraints Analysis. The RMC Team will review the previous environmental compliance documents to determine the previously identified environmental issues and concerns. In addition, the RMC Team will conduct a reconnaissance level investigation of the likely environmental impacts that the project could cause if implemented today. This will include obtaining update sensitive species list within and around the project area, conducting a site investigation, as well as non-formal consultation with the resource agencies regarding sensitive biological species, including fisheries. The results of this review and analysis will be used to develop a listing of the probably sensitive environmental issues and identify the necessary technical studies that will need to be conducted during the environmental review process and to support the CEQA, NEPA, and FERC documents as well as the other permits and regulatory approvals. The results of this subtask will be summarized in a technical memorandum.

Subtask 2.2. Identify CEQA and NEPA Compliance Strategy. The RMC Team will develop the strategy for complying with both CEQA and NEPA. This will include identifying the appropriate federal agency to take the Lead Agency role for the preparation of the NEPA document. In addition, the RMC team will evaluate the advantages of doing a combined CEQA NEPA document versus preparing them separately, and develop a recommended approach with input and consideration from the identified/selected Federal Lead Agency. The RMC Team will develop an estimated scope of work, budget, and schedule to provide a basis for the level of effort and timeframe that will be required to comply with CEQA and NEPA. The results of this subtask will be summarized in a technical memorandum.

Subtask 2.3 Identify FERC Application Process and Strategy. The RMC Team will identify the FERC Application process and timeline along with identifying all of the documentation and studies that will be required to support the application process. The RMC Team will develop an estimated scope of work, budget, and schedule to provide a basis for the level of effort and timeframe that will be required to comply with FERC. The results of this subtask will be summarized in a technical memorandum.

Subtask 2.4 Identify Likely Permit Requirements and Regulatory Approvals. The RMC Team will identify all of the other likely permits and/or regulatory approvals that may be required for the implementation of this project. The RMC Team will develop an estimated scope of work, budget, and schedule to provide a basis for the level of effort and timeframe that will be

required to obtain these permits and regulatory approvals. The results of this subtask will be summarized in a technical memorandum.

Task 2 Deliverables

1. Draft Technical memorandum – Environmental Issues and Constraints Analysis
2. Draft Technical Memorandum - Strategic CEQA/NEPA/Permitting Approach
3. Draft Technical Memorandum – FERC Application Process and Strategy
4. Draft Technical Memorandum – Permit Requirements and Regulatory Approvals
5. Workshop with SSWD and Project Partners
6. Final Technical Memorandum – Environmental Compliance Strategy and Approach

Task 3 – Identify Markets. This task will focus on identification of potential water and power markets for any project yield or power generation capacity that is in excess of the needs of the Project Partners. Two technical memoranda will be prepared; Water Market TM and Power Market TM.

Subtask 3.1 – Water Market Analysis: Through consultation with the Project Partners, potential purchasers and/or additional partners will be identified and contacted. The Water Market TM will identify potential markets/agencies for the dry year, firm, and non-firm water in excess of the needs of the Project Partners. The intent is to identify potential users of the water that is in excess of the needs of the Project Partners.

Subtask 3.1 – Power Market Analysis: The Power Market TM will include a similar analysis. Power market issues relate to future value of the power and alternative facility and operational attributes. This addresses the energy value, and the values of ancillary services that could support the electrical grid. Decisions derived from this relate to operations for pumped-storage or conventional pass through hydroelectric operations, as well as maintaining relative storages between reservoirs. Due to a very robust and liquid market for power, partnering issues may be less important than with water, and will help address whether the project should be developed as a conventional hydro facility or a pumped storage facility.

Task 3 Deliverables

1. Draft Technical Memorandum - Water Market
2. Draft Technical Memorandum - Power Market
3. Workshop with Project Partners
4. Final Technical Memorandum - Water Market
5. Final Technical Memorandum - Power Market

Task 4 – Obtain Data for Modeling. The requisite modeling depends on several sets of data that are relatively independent yet in many cases may compete with or complement each other.

Subtask 4.1 - Existing/Previous Water Rights: A records search will be conducted to confirm and quantify of local water rights conditions. We will summarize in tabular form the local water rights constraints with annotation as to source documents and filings supporting the tabular summary

Subtask 4.2 - Hydrology: Hydrologic data are the fuel of the modeling effort. Three sets of data are necessary to address operations:

1. Flood hydrology – Gather Bear River data necessary for hourly design flows for various frequencies of floods, the Probable Maximum Flood, and recent historic floods of 1986, 1997 and 2005. These are necessary for spillway sizing, flood reservation definition, construction diversion sizing, and historical context.
2. Monthly Bear River hydrology – this is the driver for initial power and water supply evaluations. DWR data supporting its CALSIM modeling efforts derive from HEC3 upper basin simulation and should supply the monthly modeling inflows to Camp Far West, which, with minor adjustments, should supply monthly inflow to the proposed Garden Bar project
3. Monthly Delta Hydrology – DWR CALSIM modeling simulations provide the data indicating supply constraints for storage as well as demand constraints for south of Delta partners. The Project diversion to storage and release requirements must address SWRCB Standard Term 91 which limits new project storage to periods when reservoirs are not releasing water for Delta standards. Additionally, Delta pumping capacity constraints need to be evaluated relative to potential south of Delta project water deliveries. This data depends on ongoing simulations of the recent Wanger Decision that will support the future biological opinion.
4. Daily data – Not envisioned for this phase of analysis. Daily data would enable better resolution of power potential; however, because the project concept revolves around water supply, with power as an ancillary benefit, daily operations refinements will be relegated to future analyses.

Subtask 4.3 - Identification of Local Demands: Quantification of local demand for irrigation and potential municipal demands requires review of existing irrigated lands, ongoing irrigation practices and potential for further urban development. We will discuss these issues with the South Sutter WD prior to setting direction on future demand criteria. We will also review in-stream flow requirements downstream of Camp Far West Reservoir.

Subtask 4.4 - Downstream Deliveries and Constraints: In addition to constraints in the Delta, delivery constraints of potential partners upstream of the Delta will be identified.

Subtask 4.5 - Groundwater: There exists the potential opportunity to enhance the conjunctive use capabilities of the existing Camp Far West and proposed Garden Bar surface water supplies and the local groundwater supplies. We will coordinate with South Sutter Water District's groundwater consultant to establish criteria for enhancing the conjunctive use operations. These criteria will then be utilized to enhance the operational model of the proposed reservoir system.

Subtask 4.6 – Power Pricing Templates (Power): Daily and hourly data from the California Independent System Operator supplies information for power pricing of ancillary services elements whereas forward markets of the intercontinental exchange coupled with fundamental pricing data provides the basis for energy valuation. These data will not drive the operation per se, but will be utilized to provide indications of power benefits and potential for enhanced revenue.

Subtask 4.7 - Summary of Available Data: Tabular data compilations along with qualitative assessment of the data quality and limitations will be provided to establish levels of confidence in the operations simulations. All data have limits as to accuracy and applicability; accordingly, results may show precision that, when viewed against the nature of the data, exceed the underlying accuracy/applicability of available data. This summary will qualitatively address this issue.

Task 4 Deliverables

1. Workshop on local demand and groundwater policy direction
2. Draft Technical Memorandum - Summary of Available Data
3. Final Technical Memorandum - Summary of Available Data

Task 5 –Modeling. Two reservoir operations models using ResSim will respectively simulate 1) Water and Power operations and 2) Flood control. Simulations show the results of preset rules of operation under expected constraints. The rules of operation address the balance of reservoirs (Garden Bar and Camp Far West Reservoirs) relative to capacity constraints under alternative hydrologic conditions. This requires at least one but perhaps two workshops to confirm operational objectives: 1) surrounding high level objectives for water supply, flood control and recreational attributes; 2) reconciling objectives which simulations show to be somewhat mutually exclusive.

Subtask 5.1 – Configure Water/Power Model: The simulation process for water supply and power potential including Garden Bar, Camp Far West, local diversions, in-stream requirements, and groundwater reservoirs with interactions to the Feather and Bear Rivers. We will develop a conjunctive model for water operations and will establish general demand criteria for local and partner deliveries by year type as defined by Sacramento River Index. We will successively test and retool operational criteria to achieve balance of production versus risk.

Subtask 5.2 – Flood Set-up and Run 25, 50, 100, 250 PMF and Historical event floods: This task includes developing a probable maximum flood (PMF) estimate based on existing estimates from previous Garden Bar studies as adjusted to reflect subsequent hydrologic events. Although an incremental hazard evaluation (IHE) might lower inflow design flood (IDF), to be conservative at this stage of analysis, the IDF for Garden Bar Dam and Reservoir will be the PMF. Floods of 10-, 25- 50-, and 100-year recurrence intervals will be estimated in order to identify diversion requirements for construction and to assist in sizing the service spillway and outlet works. Historical flood routings will be developed to demonstrate project flood control accomplishments and to place the operation in historical context. Activities in this subtask will include:

- Research existing studies and determine a preliminary PMF for Garden Bar Reservoir.
- Develop flood frequency relationships and hydrographs. .
- Obtain data on the levels in Camp Far West Reservoir and using HEC-RAS develop a preliminary tail water rating curve for the Bear River downstream from Garden Bar Dam and at the proposed location(s) for hydropower facilities – provided topography is available

- Perform preliminary reservoir flood routing analyses to assess spillway requirements.
- Develop flood control diagram and balancing storage criteria
- Develop Pre and Post Project frequency curves for the Bear River near the Wheatland gage.

Task 5 Deliverables

1. Workshop(s) on high level objectives
2. Draft Technical Memorandum – Flood Protection
3. Draft Technical Memorandum - Water Supply
4. Draft Technical Memorandum - Power Production
5. Workshop with SSWD and Project Partners
6. Final Technical Memorandum – Flood Protection
7. Final Technical Memorandum - Water Supply
8. Final Technical Memorandum - Power Production

Task 6 – Engineering: Update Costs and Develop Curves. Prepare a construction and operations and maintenance cost estimate for the project and develop cost curves. The project will be divided into various elements and specialists in each area will prepare the cost estimate.

The following subtasks will be conducted:

Subtask 6.1 – Dam Elements: During this subtask, layouts for an earthfill/rockfill dam and appurtenant structures (spillway, intake, diversion dam, diversion tunnel, power tunnel, etc.) will be prepared for the dam configurations from Task 1. The construction cost for the dam elements will also include a number of important constructability and construction sequencing issues that will be identified and evaluated. These include access, staging and lay-down areas, spoil disposal, and processing and handling of on-site and off-site construction materials.

The geotechnical aspects of this project are significant. In many respects, the foundation for an accurate construction cost estimate is based on various geotechnical data and therefore, additional effort will be invested on compiling and organizing the previous work and any other published reports (USGS). Based on the previous work, opinions on foundation strength and hydraulic conductivity and preliminary recommendations for foundation preparation and treatment, seepage control and grouting, tunneling requirements, permanent and temporary excavation slopes, and construction materials available on-site and in the reservoir basin will be developed.

Subtask 6.2 – Power Systems: Various hydroelectric power developments have been studied in the past for the Garden Bar Project. Both conventional and pumped-storage hydropower facilities have been considered with capacities ranging from 23 MW (conventional) to 290 MW (pumped storage). Even with a conventional hydro development, the presence of the Camp Far West Reservoir downstream of Garden Bar Dam and its ability for re-regulating flows, may result in a project that is focused on peaking-type operations to maximize the value of energy produced, rather than run-of-river operations. Prior studies have assumed that conventional hydro would involve a surface powerhouse relatively near the toe of Garden Bar Dam, whereas a pumped-storage project most likely would be developed with an underground powerhouse, probably

located further downstream. Both conventional and pumped-storage hydro project concepts will be developed. Based on the reservoir operations and power studies in Task 5, we will identify an appropriate installed capacity for conventional and pumped-storage hydro and prepare layouts of the required facilities, including the reservoir intake, penstocks, powerhouse, switchyard, and transmission line. The layouts will be based on Francis turbine units of reasonable size based on the flow and head conditions. Specific activities include:

- Develop basic layouts of the intake, penstocks, and powerhouse
- Select unit size and dimension the intake, penstocks, and powerhouse
- Prepare hydraulic analyses and head loss estimates. Determine plant capacity factors and potential dependable capacity estimates
- Prepare construction cost estimate
- Document results in a TM

Subtask 6.3 – Local Facilities: In order to implement a conjunctive use approach to water in the District, it may be necessary to remove bottlenecks in the canal system to move water from Camp Far West to the various parts of District. Also, it may be necessary to modify wells to implement a conjunctive use approach. This task will identify, at a conceptual level, the required facilities and associated cost. We expect these construction costs to be minor in comparison to the overall construction cost and therefore a lower level of detail will be applied (compared to the dam elements and the power elements).

Subtask 6.4 – Ancillary Facilities: A construction cost estimate will be prepared for ancillary facilities such as access roads and high voltage transmission lines. Based on the power plant size identified, the team will select an appropriate location in the high voltage grid to connect the power from the Garden Bar project. One likely connection point is the Elverta Substation in Roseville on Fiddymont Road.

Subtask 6.5 – Prepare Capital and O&M Cost Estimate: Capital and O&M cost estimates will be prepared and included in the TM. Capital cost estimates will include allowances for permitting, environmental compliance, design engineering, construction services, and contingencies. The project cost estimates will be prepared at a feasibility level.

Subtask 6.6 – Prepare Implementation Schedule: An implementation schedule for the project will be prepared.

Task 6 Deliverables

1. Draft Technical Memorandum - Construction Cost
2. Workshop with Project Partners
3. Final Technical Memorandum - Construction Cost

Task 7 – Project Economics. Using the cost and market information from the tasks above, an economic analysis of the project will be performed. The economic analysis will incorporate analyses of:

- Project development costs, including permitting
- Project implementation costs, including construction

- Project financing costs
- Annual operations and maintenance costs

These costs will be compiled to establish a total project cost in terms of total initial capital and annualized costs. These costs will then be utilized to estimate the value of the water and power produced by the project, and thereby, the cost effectiveness and benefit cost ratios associated with project implementation.

Task 7 Deliverables

1. Draft Technical Memorandum – Project Economics
2. Workshop with Project Partners (combined with Task 6 workshop)
3. Final Technical Memorandum – Project Economics

Task 8 – Legal Review and Analysis. Downey Brand will provide a legal review and analysis of implementing the Garden Bar project, including reviewing the water rights, environmental, regulatory, and permitting issues.

Task 8 Deliverables

1. Draft Technical Memorandum – Project Legal Aspects

Task 9 – Reconnaissance Report. The RMC team will develop a Strategic Implementation Plan which will be a “road map” to all the steps necessary to implement and construct the Garden Bar Dam and Reservoir. The Plan will address all the steps, but will not provide a detailed analysis of each step. For example, governance (e.g., interagency agreements, creation of a joint powers authority, etc.) will be addressed, but not discussed in detail. The Plan will also include a timeline.

A draft Reconnaissance Report, including the draft Strategic Implementation Plan, will be prepared for the Project Partners’ review. It is envisioned that the Reconnaissance Report will be in one binder, and a separate binder will hold appendices. A workshop will be held with the Project Partners to present the Strategic Implementation Plan and the Reconnaissance Report. After the workshop, the final plan and report will be completed and submitted to the Project Partners.

Task 9 Deliverables

1. Draft Reconnaissance Report and Strategic Implementation Plan
2. Workshop with Project Partners
3. Final Reconnaissance Report and Strategic Implementation Plan

Task 10 - Project Management/Quality Control. RMC will provide monthly progress reports on project budget, schedule and progress status. RMC will also provide independent review of project work products prior to their submission to the Project Partners.

Task 10 Deliverables

1. Monthly Status (Progress, Budget & Schedule) Updates

Attachment B
RMC Water and Environment
2009/2010 Standard Billing Rates
(Effective 12/29/2009)

Employee Classifications	Hourly Billing Rate
Principal 3	\$245
Principal 2	\$235
Principal 1	\$225
Sr. Project Manager 3	\$220
Sr. Project Manager 2	\$215
Sr. Project Manager 1	\$210
Project Manager 3	\$205
Project Manager 2	\$195
Project Manager 1	\$185
Project Engineer 3	\$175
Project Engineer 2	\$165
Project Engineer 1	\$155
Environmental Planner/Scientist 3	\$165
Environmental Planner/Scientist 2	\$155
Environmental Planner/Scientist 1	\$145
Assistant Professional	\$125
Sr. CAD Designer	\$135
CAD Designer	\$125
Sr. Graphic Designer/Artist	\$125
Graphic Designer/Artist	\$115
Sr. Project Accountant	\$125
Project Accountant	\$115
Sr. Project Administrator	\$115
Project Administrator	\$105
Expert Witness	Rate x 2.0
Project Technology & Communication (PTC) Charges	3% of Labor Charges
Travel and Subsistence	Actual Cost
Mileage Charges	IRS Rate
Subconsultants	Cost + 10%
Other Direct Costs	Cost + 10%



December 30, 2011

South Sutter Water District
2452 Pacific Avenue
Trowbridge, CA 95659
Attn: Brad Arnold

San Bernardino Valley Municipal Water
District
380 East Vanderbilt Way
San Bernardino, CA 942408
Attn: Douglas Hedrick

City of Napa, California
1340 Clay Street
Napa, CA 94559
Attn: Joy Eldredge

Palmdale Water District
2029 E. Avenue Q
Palmdale, CA 93550
Attn: Jon Pernula

Subject: Garden Bar Water and Power Project – Amended Agreement for Engineering Services with RMC Water and Environment

Dear Dirk, Joy, Jon, Doug, and Brad:

This letter serves as Amendment No. 2 to our Agreement for Engineering Services the Garden Bar Water and Power Project. This is a no-cost amendment that modifies the termination date of the original agreement as modified in Amendment 1, described below. This amendment does not change the overall authorized contract amount of \$850,000 with a project contingency budget of \$150,000 available upon written authorization of all parties. Note, at this time RMC is not requesting authorization of use of the contingency budget.

Please sign where indicated, return, and keep a copy for your records.

Sincerely,

Lyndel Melton, P.E.
Principal

1451 River Park Drive
Suite 142
Sacramento, CA 95815
916.999.8700 ph
916.564.1639 fax
www.rmewater.com

The Agreement for Engineering Services dated December 29, 2009 and amended March 21, 2011 is hereby amended as follows:

ARTICLE 3 - SCHEDULE

1. The Agreement shall commence on 12/31/2009 and terminate on the earlier of the completion of the project or 12/31/2012.

This amendment is hereby agreed to among all the parties.

South Sutter Water District

By: _____

Title: _____

Dated: _____

San Bernardino Valley Municipal Water
District

By: Douglas D. Headrick

Title: General Manager

Dated: Feb. 7, 2012

City of Napa

By: _____

Title: _____

Dated: _____

Palmdale Water District

By: _____

Title: _____

Dated: _____

RMC Water and Environment

By: _____

Title: _____

Dated: _____

CITY OF SAN BERNARDINO MUNICIPAL WATER DEPARTMENT

RECEIVED

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ROBIN L. OHAMA
Deputy General Manager
MATTHEW H. LITCHFIELD, P.E.
Director of Water Utility
JOHN A. CLAUS
Director of Water Reclamation
ROBIN L. OHAMA
Acting Director of Finance
VALERIE HOUSEL
Director of Environmental &
Regulatory Compliance

"Trusted, Quality Service since 1905"

September 16, 2009

Anthony Araiza
General Manager
West Valley Water District
P. O. Box 920
Rialto, CA 92377

Randy Van Gelder
General Manager
San Bernardino Valley Municipal Water District
P.O. Box 5906
San Bernardino, CA 92412-5906

Dear Messrs. Araiza, Van Gelder:

This will confirm the understanding reached today, September 16, 2009, regarding the contributions to replenishment to be made by West Valley Water District in conjunction with deliveries through the Baseline Feeder of water from the Bunker Hill Basin by the City of San Bernardino Municipal Water Department (San Bernardino).

As all parties are aware, for several years, San Bernardino has been producing treated water for delivery to the Baseline Feeder. San Bernardino Valley Municipal Water District (Valley District) pays San Bernardino for all direct costs related to the delivery and then bills West Valley Water District and the city of Rialto, based on allocated deliveries. Deliveries have been made pursuant to periodic negotiations and a purchase order between San Bernardino and Valley District. Last year, it is San Bernardino's understanding, West Valley Water District (WVWD) and Rialto asked Valley District for assurances that San Bernardino's deliveries would continue, at least for a short term. San Bernardino and Valley District began negotiating the terms of a three-year contract for delivery of water to the Baseline Feeder.

It was San Bernardino's position that the costs of the delivered water should include some amount for replenishment of the Bunker Hill Basin. Meanwhile, invoicing for fiscal year 2009/2010 has been delayed, pending resolution of the replenishment issue.

300 North "D" Street, San Bernardino, California 92418 P.O. Box 710, 92402 Phone: (909) 384-5141

FACSIMILE NUMBERS: Administration: (909) 384-5215 Engineering: (909) 384-5532 Customer Service: (909) 384-7211

Corporate Yards: (909) 384-5260 Water Reclamation Plant: (909) 384-5258

SBVMWD LEGAL
DOCUMENT 2255

The following represents our agreement:

1. For fiscal year 2009/2010, there will be **no** amount added for replenishment. This is because WVWD has already committed to pay \$72,000 for approximately 1200 acre-feet of replenishment for water year 2009/2010; and
2. For the three-year contract period, in each of the contract years, WVWD agrees to pay Valley District for State Project Water to be delivered to Sweetwater, Devil Canyon and Waterman basins (at San Bernardino's choice) in an amount equal to the cost of one-quarter (1/4) of the amount of water delivered to the Baseline Feeder for WVWD's benefit.

An example: WVWD receives 3000 acre-feet delivered to it in Year 1 of the contract. WVWD pays Valley District (or allows Valley District to draw down from WVWD's account) the amount of money necessary to pay for 750 acre-feet of water. The possibility exists that Valley District will discount that water, thereby providing more water for the money

Thank you for your courtesy and cooperation in resolving this issue.

Very truly yours,

City of San Bernardino
Municipal Water Department

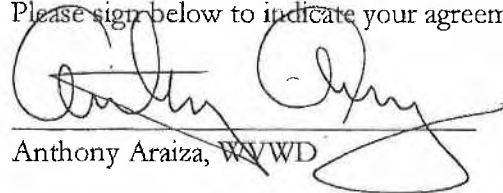


Stacey R. Aldstadt
General Manager

SRA:als

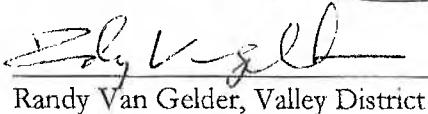
cc: DMS
R. Ohama, SBMWD
D. Headrick, Valley District
T. Crowley, WVWD
A. Hitchings, Somach

Please sign below to indicate your agreement and concurrence.



Anthony Araiza, WVWD

9-28-09
Date



Randy Van Gelder, Valley District

9/28/2009
Date

CITY OF SAN BERNARDINO MUNICIPAL WATER DEPARTMENT

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General Manager
ROBIN L. OHAMA
Deputy General Manager
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Director of Water Utility
JOHN A. CLAUS
Director of Water Reclamation
WILLIAM M. KOLBOW, C.P.A.
Director of Finance
JENNIFER L. SHEPARDSON
Director of Environmental &
Regulatory Compliance

"Trusted, Quality Service since 1905"

September 30, 2013

Mr. Douglas Headrick, P.E.
General Manager
San Bernardino Valley Municipal Water District
380 East Vanderbilt Way
San Bernardino, CA 92408

Dear Mr. Headrick:

The purpose of this letter is to extend the understanding reached on September 16, 2009, regarding the contributions to replenishment to be made by West Valley Water District (WVWD) and the City of Rialto in conjunction with deliveries through the Baseline Feeder of water from the Bunker Hill Basin by the City of San Bernardino Municipal Water Department (San Bernardino) via the Encanto Booster Station.

As all parties are aware, for several years, San Bernardino has been producing treated water for delivery to the Baseline Feeder. San Bernardino Valley Municipal Water District (Valley District) pays San Bernardino for all direct costs related to the delivery and then bills WVWD and the city of Rialto, based on allocated deliveries. Deliveries have been made pursuant to periodic negotiations and a purchase order between San Bernardino and Valley District. In 2012, Valley District and WVWD placed two (2) new wells online that make deliveries to the Baseline Feeder. This has reduced San Bernardino's deliveries to the Baseline Feeder significantly, especially during winter and spring months. However, San Bernardino continues to make periodic deliveries during the summer months through the Encanto Booster Station.

It continues to be San Bernardino's position that the costs of the delivered water should include a 25 percent replenishment obligation of the Bunker Hill Basin.

Douglas Headrick
September 30, 2013
Page 2

The following represents our agreement:

1. The term of this agreement will be for five (5) years.
2. For the five-year contract period, in each of the contract years, Valley District agrees to invoice the West Valley Water District and the City of Rialto for State Project Water to be delivered to the Waterman basin in an amount equal to the cost of one-quarter (1/4) of the amount of water delivered to the Baseline Feeder for WVWD's/Rialto's benefit through the Encanto Booster Station.

Thank you for your courtesy and cooperation.

Very truly yours,

City of San Bernardino
Municipal Water Department

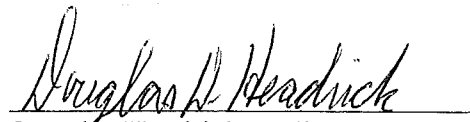


Stacey R. Aldstadt
General Manager

SRA:MHL:swd

cc: R. Ohama, SBMWD
A. Hitchings, Somach

Please sign below to indicate your agreement and concurrence.


Douglas Headrick, Valley District

10/4/13
Date

CITY OF SAN BERNARDINO MUNICIPAL WATER DEPARTMENT

BOARD OF WATER COMMISSIONERS

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Commissioners
B. WARREN COCKE
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LOUIS A. FERNANDEZ
WAYNE HENDRIX



STACEY R. ALDSTADT
General Manager
ROBIN L. OHAMA
Deputy General Manager
MATTHEW H. LITCHFIELD, P.E.
Director of Water Utility
JOHN A. CLAUS
Director of Water Reclamation
DON SHACKELFORD
Director of Finance
VALERIE HOUSEL
Director of Environmental &
Regulatory Compliance

June 17, 2010

Doug Headrick
General Manager
San Bernardino Valley
Municipal Water District
P.O. Box 5906
San Bernardino, CA 92412-5906

Reference: JOINT PROSECUTION AND COST-SHARING AGREEMENT RE
PROPOSED RULE OF THE UNITED STATES FISH & WILDLIFE SERVICE
TO DESIGNATE CRITICAL HABITAT FOR THE SANTA ANA SUCKER

Dear Mr. Headrick,

At the Regular Meeting of the Board of Water Commissioners of the City of San Bernardino held on Tuesday, June 15, 2010, the Board, in closed session, unanimously voted to approve the subject agreement; one fully execute original document is enclosed.

Sincerely,

April Sanchez
Executive Secretary

als
Enclosures

cc: John Claus
Richard Katz

**JOINT PROSECUTION AND COST-SHARING AGREEMENT RE PROPOSED RULE
OF THE UNITED STATES FISH & WILDLIFE SERVICE TO DESIGNATE CRITICAL
HABITAT FOR THE SANTA ANA SUCKER**

This Joint Prosecution and Cost-Sharing Agreement ("Agreement") is entered into by and among the undersigned (the "Parties"), as listed on Exhibit A hereto.

RECITALS

A. The Parties are cooperating on efforts to analyze, review and comment on the United States Fish & Wildlife Service's Proposed Rule to Designate Critical Habitat for the Santa Ana Sucker ("Proposed Rule"). The Proposed Rule may have negative consequences for the Parties, depending on the specifics of the finally adopted rule and the course of administrative proceedings on establishing the rule. The Parties have agreed to cooperate reasonably in efforts to analyze and comment upon the Proposed Rule. These cooperative efforts include the utilization of various experts and consultants to assist with the review of and preparation of comments on the Proposed Rule, and the provision of consulting expert opinions relative to the necessity, wisdom, and efficacy of potential challenges to it. These cooperative efforts are more particularly described in the scopes of work attached hereto as Exhibits B, C, and D, and incorporated herein by this reference.

B. Through this Agreement, the Parties desire to govern their payment of costs and fees arising from their cooperative efforts related to the retention and use of consulting experts on the Proposed Rule, and to confirm their common interests in maintaining a joint prosecution with respect to the Proposed Rule, to allow them to continue to share information related to the Proposed Rule, while continuing to preserve, to the fullest extent possible, the protections of the attorney-client privilege, work product privilege, common-interest doctrine, deliberative process

***CONFIDENTIAL
JOINT PROSECUTION MATERIAL***

attorney-client privilege, work product privilege, common-interest doctrine, deliberative process privilege, executive privilege, privileges regarding mediation or settlement communications, or any other privilege or protection existing under state or federal law.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, and the mutual covenants and conditions contained herein, the Parties agree as follows:

1. The Parties shall each initially contribute the sum of \$32,000, (except Big Bear Municipal Water District which shall contribute \$20,000) which represents each Party's per capita contribution to pay for the fees and costs collectively incurred in their said cooperative efforts on the Proposed Rule. San Bernardino Valley Municipal Water District shall have the responsibility for collecting each Party's contribution of funds, processing invoices submitted by the experts and consultants pursuant to their scopes of work attached hereto, coordinating communications among the Parties to the retained consulting experts, and for maintaining an accurate accounting of this administration of funds. In the event that additional tasks and associated costs are identified in order to meet the joint goals, the Parties will work cooperatively to fund such costs. However, nothing in this Agreement shall be construed to require a Party to pay more than its above-referenced initial per capita contribution towards the total cost for the current scopes of work, which is estimated to be \$407,000.
2. For purposes of this Agreement, "Joint Prosecution Materials" includes, but is not limited to, all communications (including communications related to the Proposed Rule made prior to the execution of this Agreement), factual materials, mental impressions, legal analyses,

theories or strategies, memoranda, reports, notes, emails or any other communications or documents that are protected from disclosure by the attorney-client privilege, work product privilege, deliberative process privilege, executive privilege, common-interest doctrine, joint prosecution/defense doctrine, privileges regarding mediation or settlement communications, or any other privilege or protection existing under state or federal law, and that are exchanged among the Parties and/or their respective counsel in connection with the Proposed Rule. Joint Prosecution Materials do not include final versions of any correspondence, studies, or reports prepared by or on behalf of one or more Parties intended for review by the United States Fish & Wildlife Service or a non-Party.

3. The Parties will maintain as confidential all Joint Prosecution Materials (as defined above). Disclosure of Joint Prosecution Materials shall be limited to the Parties and their employees and contractors as well as any counsel, consultants, and lobbyists retained by the parties, or on behalf of the parties, for the purpose of maintaining a joint prosecution with respect to the Proposed Rule, subject to the further provisions of this Agreement.

4. Any Joint Prosecution Materials shared or transmitted by or between Parties should be clearly designated "CONFIDENTIAL: JOINT PROSECUTION MATERIALS." However, the failure to include such designation shall not preclude such materials from being afforded the protections of this Agreement and shall not be construed to constitute a waiver of any privilege or other protection.

5. Each Party shall take all appropriate measures to ensure that any person who is granted access to Joint Prosecution Materials is familiar with the terms of this Agreement and complies with those terms.

6. Each Party is represented by its own respective legal counsel in connection with the Proposed Rule, and the cooperative efforts referenced herein. Said legal counsel will not have an attorney-client relationship with any other Party to this Agreement as a result of the legal counsel's participation in discussions and actions related to the Parties' cooperative efforts on the Proposed Rule. Similarly, said legal counsel will not have a duty of loyalty or confidentiality to any Party to this Agreement other than the legal counsel's specific client(s), and consequently, no Party may seek to disqualify the legal counsel for another Party as a result of the legal counsel's participation in discussions and actions related to the Parties' cooperative efforts on the Proposed Rule.

7. Except where required by the order of a court of competent jurisdiction, or by the prior written consent of the remaining Parties, a Party will not reveal to non-Parties any Joint Prosecution Materials it has received from another Party.

8. Each Party shall notify the Party that generated any Joint Prosecution Materials of any request to disclose the Joint Prosecution Materials to any non-Party, or of any proceeding before any court, administrative agency, or tribunal to compel the disclosure of such Joint Prosecution Materials, as soon as practicable after receipt of such request or the initiation of such proceeding. If a Party becomes subject to any judicial or administrative order purporting to compel release of Joint Prosecution Materials, that Party shall: (a) promptly notify the Party that generated the materials and all remaining Parties, and (b) make all reasonable efforts to give that Party an opportunity to protect the Joint Prosecution Materials.

9. No party is required to treat as confidential within the meaning of this Agreement any material where such material is, or hereafter becomes (without violation of this Agreement),

public record, public knowledge, or is obtained from sources other than exchanges under this Agreement.

10. The sharing of Joint Prosecution Materials among the Parties is not intended to and will not constitute a waiver of any privilege or other protection of confidentiality, including but not limited to the attorney-client privilege, work product privilege, common-interest doctrine, deliberative process privilege, executive privilege, privileges relating to mediation or settlement communications, or any other privilege or protection existing under state or federal law.

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12. Nothing in this Agreement shall obligate any Party to exchange documents or information with any other Party, whether or not such documents or information would be covered by this Agreement as Joint Prosecution Materials.

13. By this Agreement the Parties each acknowledge and agree that cooperation in the matters referenced above may involve the communication and sharing of confidential information and further agree that the interests of the Parties are not adverse as to matters within the scope of this Agreement. Each of the Parties has had a full opportunity to consult with separate counsel, is fully informed, and has concluded that the risk of any potential conflict of interest is outweighed by the benefits and efficiencies afforded by the opportunities for cooperation and sharing of Joint Prosecution Materials as provided for herein. The Parties consent to the sharing of Joint Prosecution Materials among their counsel, waive any potential

conflict of interest created thereby, and mutually agree that this sharing of Joint Prosecution Materials and cooperation shall not constitute grounds for seeking disqualification of counsel in any matter or action.

14. If there is a breach of this Agreement by a Party, the Parties agree that the non-breaching Party will have no adequate remedy at law in money or damages and shall be entitled to seek and obtain, in addition to all other remedies that may be available, a temporary restraining order, injunctive relief, or other equitable relief against the breach or its continuance.

15. Nothing in this Agreement shall be construed to waive any rights, claims, or privileges that any Party shall have against another Party or any other person or entity.

16. This Agreement shall be binding upon the successors and assigns of the Parties.

17. This Agreement is made under, and shall be construed in accordance with, the laws of the State of California.

18. The individuals signing this Agreement in a representative capacity warrant that they have the authority to do so on behalf of the entity or entities they represent, and further agree that as representatives of the entity or entities that they respectively represent, they themselves are bound by all terms of this Agreement.

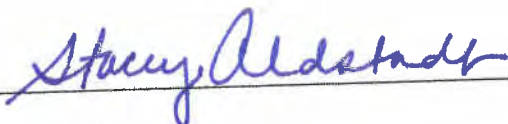
19. Any Party may withdraw from this Agreement by providing written notice to the other Parties. If a Party withdraws from this Agreement, the provisions of this Agreement shall continue to apply to the Joint Prosecution Materials that were shared during the time period when that Party was a party to this Agreement.

20. All notices and other communications required to be given to a Party under the terms of this Agreement (a) shall be in writing, (b) shall be personally delivered, or transmitted by facsimile or email, and (c) shall be directed to such Party at the address, facsimile number or

email address specified below, or at such other address, facsimile number or email address as such Party may hereafter designate by notice in accordance with this paragraph.

21. This Agreement may be executed in counterparts, each of which so executed shall be deemed an original irrespective of the date of the execution, and said counterparts shall together constitute one and the same Agreement. Further, facsimile or .PDF copies of signatures shall be as effective as original signatures for evidencing execution of this Agreement.

By:



Print Name:

Stacey Aldstadt

Date:

June 17, 2010

Title:

General Manager

Representing:

City of San Bernardino Municipal Water Department

Exhibit A

List of Parties

As of June 8, 2010

1. San Bernardino Valley Municipal Water District
2. Western Municipal Water District of Riverside County
3. City of Riverside Public Utilities
4. City of San Bernardino Municipal Water Department
5. San Bernardino Valley Water Conservation District
6. Southern California Edison
7. East Valley Water District
8. City of Highland
9. City of Redlands
10. Yucaipa Valley Water District
11. San Bernardino County Flood Control District
12. Bear Valley Mutual Water Company/Crafton Water Company
13. Big Bear Municipal Water District (\$20,000 share)

Other Possible Partner Agencies

1. West Valley Water District
2. Raymond Basin Management Board/San Gabriel Valley Water Association
3. City of Colton
4. City of Rialto
5. Riverside County Flood Control District
6. Orange County Flood Control District

Exhibit B

SCOPE OF WORK AND BUDGET

22 April 2010

ACTIVITIES ASSOCIATED WITH RESPONDING TO THE PROPOSED RESEIGNATION OF CRITICAL HABITAT FOR THE SANTA ANA SUCKER

Task 1. General Consulting Assistance

PBS&J (Leidy and colleagues) will assist the Santa Ana Sucker (SAS) Task Force, as requested, with assignments not included in other tasks. Budgeting for this task assumes that this task covers two time periods: 1 April through 30 Jun 2010 and 1 July through 31 December 2010. The period from 1 April through 30 July 2010, a period of 13 weeks, assumes an average labor commitment of 4 hours per week (\$11,700 labor). Other direct costs are estimated at \$1,000 for this same period (air fare, rental car, etc.). Total budget through 30 June 2010: \$12,700. Post 30 June through 31 December 2010 labor budget (26 weeks) with the same assumptions: \$23,400. Other direct costs: \$2,000. Total budget from July through December: \$25,400. Grand total budget (Labor and other direct costs) for this task from 1 April through 31 December 2010: \$38,100.

Task 2. Attendance as SAS Conservation Team and Other Relevant Meetings

This task has been consolidated into this scope of work and budget from PBS&J Project No. 100012843 which was initiated on 1 March 2010. Leidy will attend up to 10 meetings of the SAWPA Santa Ana Sucker Conservation Team (including the Restoration Working Group) and the Southern California Native Aquatic Fauna Working Group between 1 March 2010 and 31 December 2010 for the purpose of providing input to the interested parties on the introduction of the SAS in the Santa Ana River watershed, and to gather information on the proposed activities of these groups. Each attendance is expected to be a one-day event. Leidy will summarize in writing the content of each meeting related to SAS issues along with any recommendations for actions on the part of the SAS Task Force. Each meeting is expected to require up to 8 hours in travel and meeting time, plus travel expenses (airfare, rental car and gas, one meal, and personal vehicle mileage. Labor budget (meetings plus write-ups) at 9 hours per meeting plus 0.5 hours administrative time per meeting: \$20,900 (Before 30 June 2010: \$5,225; Post 30 June 2010: \$15,675). Other direct costs: \$4,300 (Before 30 June: \$1,075; Post 30 June 2010: \$3,225). Total

labor and other direct before 30 June: \$6,300. Total labor and other direct costs post 30 June 2010: \$18,900. Total labor and other direct costs from 1 March through 31 December 2010: \$25,200.

Task 3. SAS Enhancement Plan and Project Implementation

There are two phases to this task.

Phase 1

Leidy, working closely with Sam Fuller, is charged with developing a plan to enhance the survival of the SAS population within its existing range in the Santa Ana River basin. The focus geographically will be from the Rialto Drain downstream to the Imperial Highway. This is the reach of the Santa Ana River that currently supports or recently supported the SAS and the reach that will have the greatest probability of implementing a successful project. The plan may include upland sites within this general river reach. The plan will contain appropriate adaptive management elements focused in the short-term on stabilizing the SAS population in the Santa Ana River. The goal is to have one on-the-ground project in place by the end of September 2010. Specific constraints and milestones of the plan are:

- The project must be completed by 30 September 2010;
- The project design must avoid any permitting requirements (other than permission from the USFWS to capture, move, rear, and reintroduce SAS) to meet the schedule (i.e., no 404, 401, 1602, or other permits);
- The project should focus on improving spawning and/or juvenile rearing habitat for the SAS, if feasible;
- Leidy et al. will meet with the USFWS (Ren Lohofener, Pacific Southwest Regional Director) to present the plan and request approval to move SAS to the project site, if necessary;
- Leidy et al. will request concurrence from the California Department of Fish and Game (Curt Taucher, Regional Manager), and will also request that CDFG release up to \$200,000 in funding already provided by San Bernardino Valley Municipal Water District and Western Municipal Water District to CDFG under the terms of the water rights settlement with CDFG; and
- Post-project monitoring and O&M will be required.

To assist with Phase I, Leidy will engage the expert services of Dr. Camm Swift (ENTRIX, Inc.), Dr. Jonathan Baskin (San Marino Environmental Associates), and Kerwin Russell (Riverside-

Corona Resource Conservation District), as necessary, to design the project. Phase 1 has substantial unknowns at this time relative to the difficulty of implementing a project. If the process goes smoothly (for example, the project can make use of existing facilities at the RCRCDD), then the cost will be less than the cost estimated herein. Leidy has budgeted a moderate level-of-effort, but by no means a highly complicated or expensive scenario. Planning for Task 3, Phase 1, is to be completed prior to 30 June 2010. The budget is based on all activities undertaken prior to 1 July 2010 and does not include Phase 1 construction-related planning or construction implementation. The budget breakdown is presented in the attached table. The total budget prior to 1 July 2010: \$39,120. The total budget for the period from July through December 2010: \$65,480. Total Task 3, Phase 1 budget for 2010: \$104,600.

Phase 2

Phase 2 is a longer term continuation of Phase 1 that will occur over a two to three-year schedule at a funding level of approximately \$100,000 to \$150,000 per year. Phase 2 will develop additional projects that enhance and stabilize the SAS population within its existing range in the Santa Ana River basin. Project undertaken during this phase may require permitting and may focus on any activity that enhances SAS survival or improves habitat. Phase 2 is not budgeted at this time and will not be budgeted until Phase 1 is completed and we know better the level-of-effort required to continue with additional projects.

Task 4. Alternative Streams Investigation

This task will focus on evaluating the feasibility of establishing SAS populations elsewhere in the Santa Ana River basin outside of the current range of the species. New refugia for the SAS will be evaluated taking into consideration the following:

- Location relative to the parent population and existing infrastructure;
- Selection criteria for evaluating the suitability of specific locations to support viable populations of the SAS over time, including a risk analysis of potential threats; and
- Financial and institutional requirements to create, maintain, and monitor SAS populations at selected locations.

Leidy et al. will evaluate a select number of tributaries to the Santa Ana River that may contain the PCEs necessary to support an introduced SAS population in the future. This investigation will be at the reconnaissance level and the product will be a report presenting the results. Task 4 will be initiated prior to 30 June 2010, and will be completed prior to the end of calendar year 2010. Leidy will use experienced, mid-level fish biologists from PBS&J to assist with this task to contain costs. Approximately 25 streams will be evaluated. The evaluation will also include

site visits to confirm environmental conditions. A records search of resource agency files may also be required.

The labor costs incurred prior to 1 July 2010 will be for information gathering and site visits. This cost is estimated at \$11,200. Other direct costs prior to 1 July: \$3,500. Total budget prior to 1 July: \$14,700. Completion of the report following 30 June 2010 is estimated at \$11,200. Other direct costs after 30 June: \$500. Total budget after 30 June: \$11,700. Total budget for task: \$26,400.

Task 5. Additional Responses to the Economic Study

Leidy will provide additional comments, if necessary, on the draft economic study issued by the USFWS. This effort is estimated at 24 hours labor (\$5,400) plus other direct costs (\$400), for a total budget of \$5,800.

Budget Summary for the Proposed Scope of Work

Task	1 March-30 June (\$)	1 July-31 December (\$)	Total (\$)
1	12,700	25,400	38,100
2	6,300	18,900	25,200
3	39,120	65,480	104,600
4	14,700	11,700	26,400
5	5,800	0	5,800
Total	78,620	121,480	200,100

Exhibit C

Legal Budget/Scope Santa Ana Sucker Critical Habitat Designation

Best, Best & Krieger LLP on behalf of the Western Municipal Water District and City of Riverside and Downey Brand, LLP on behalf of the San Bernardino Valley Municipal Water District will undertake the tasks described in this Exhibit and will do so in cooperation with other Task Force members and their attorneys

Task 1 – General Coordination

This task involves general coordination efforts with the Santa Ana sucker task force and attendance at the monthly task force meetings. For purposes of the budget/scope, we have assumed that the task force will meet monthly from April through September and then meet in either October or November.

Task 2 Preparation of Comments on Economic Analysis

Task 2.1 involves legal coordination with John Husing as he prepares his comments based on the project descriptions submitted by participating agencies. We anticipate that most of those comments will focus on the economic impacts of critical habitat designation, but we anticipate some need to work with Husing to establish the legal framework for his analysis.

Task 2.2 involves the attendance at the Fish & Wildlife Service hearing on the economic analysis.

Task 3. Preparation of Enhancement Project

Task 3.1 involves legal coordination with Roy Leidy as he works with Camm Swift and John Baskin to develop the proposed Santa Ana sucker enhancement project.

Task 3.2 involves preparing for and meeting with officials at the Fish & Wildlife Service to obtain their consent to the implementation of the project(s) developed by Leidy, Swift and Baskin.

Task 3.3 involves the negotiation of a safe harbor agreement, a 10(j) population designation, or other legal/regulatory means to ensure that the Santa Ana task force parties' projects are fully protected from limits caused by the enhancement efforts.

Task 4. Review and Client Advice on Final Rule

This task involves review of the final critical habitat designation rule once it is issued by the Fish & Wildlife Service and advising the Santa Ana sucker task force about potential avenues in light of that designation.

Santa Ana Sucker Critical Habitat Designation Legal Budget

Task	April 1 to June 30, 2010		July 1 to December 31, 2010		Contingency (10%)	Total
	Hours	Fees/Costs	Hours	Fees/Costs		
Task 1 -- General Coordination	50	\$15,000	70	\$21,000	\$3,600	\$39,600
Task 2 -- Preparation of Comments on Economic Impacts of Designation						
Task 2.1 Coordination with John Husing	30	\$9,000	70	\$21,000	\$2,103	\$32,103
Task 2.2 Attendance at FWS Hearing	0	\$0	20	\$6,000	\$600	\$6,600
Task 3 -- Preparation of Enhancement Project						
Task 3.1 Coordination with Roy Leidy	50	\$15,000	25	\$7,500	\$755	\$23,255
Task 3.2 Meetings with FWS	25	\$7,500	20	\$6,000	\$603	\$14,103
Task 3.3 Negotiation of Safe Harbor Agreement	30	\$9,000	100	\$30,000	\$3,003	\$42,003
Task 4 Review and advice on Final Rule	0	\$0	40	\$12,000	\$1,200	\$13,200
Total	185	\$55,500	345	\$103,500	\$11,864	\$170,864

Exhibit D



Stacey Aldstadt, Esq
General Manager
City of San Bernardino Municipal
Water Department
444-D, Rialto
San Bernardino, CA 92410

June 4, 2010

Dear Stacey;

The purpose of this letter is to summarize and confirm the term and conditions of the agreement by Richard Katz Consulting Inc, ("Consultant") and X the City of San Bernardino Municipal Water Department ("SBMWD") ("Client").

SCOPE OF SERVICES

The Client retains Consultant to provide strategic advice as it relates to the Federal Governments effort on the Santa Ana Sucker Critical Habitat Designation. Consultant shall offer a critical political overlay to the efforts of the government relations teams representing the member agencies of the Santa Ana Sucker Task Force in Washington, DC. Efforts shall include but not be limited to review of current strategy, assistance in developing new and innovative strategy going forward, and coordination of efforts with federal, state and local entities.

Richard Katz

PROFESSIONAL FEES

In compensation for the services performed by Consultant on behalf of Client, as outlined above, Client agrees to pay Consultant a monthly retainer of \$5,000 per month for 90-days and \$3,500 per month on-going until the issue is resolved, beginning June 1, 2010.

REIMBURSEMENT OF EXPENSES INCURRED

Client will reimburse Consultant on a monthly basis for any out-of-pocket expenses reasonably incurred by Consultant on its behalf including, but not limited to, document reproduction charges, facsimile charges, long distant telephone calls, travel expenses and messenger fees. Consultant will send a statement of expenses incurred each month. No expenditure in excess of five Hundred Dollars (\$500.00) per month will be made without prior written consent from Client.

TERMINATION

Either party upon thirty (30) days written notice to the other party may terminate this agreement. In the event of such termination, Consultant shall bill Client for all professional services, independent contractor expenses and other costs incurred up to the date of termination.

NO REPRESENTATION THAT PERMITS OR SERVICES WILL BE APPROVED OR SUCCESSFUL

It is impossible to predict the approval or non-approval of any action, which requires discretionary government action. Consequently, while consultant will conscientiously perform all of its responsibilities outlined above, we cannot and do not make any representation to Client that any of the services discussed herein will be granted, acknowledged or approved by any governmental or public jurisdiction. Client acknowledges that none of its obligations under this letter agreement is dependent or conditioned upon approval of any service.

Consultant, its employees and associates, shall not be individually or collectively liable to client, or any party claiming through Client, for any damages resulting from the denial of any discretionary permits or from errors or omissions in

connection with any services provided hereunder for any reason other than willful misconduct.

Consultant shall not be liable to Client, or any party claiming through Client, for any damages resulting from the denial of the application of any governmental approval or service.

ATTORNEY'S FEES

In the event that any litigation is commenced concerning any provision of this letter agreement, the prevailing party will be entitled to recover, in addition to any other relief granted by the court, a reasonable sum for its attorney's fees incurred in the litigation.

CONCLUSION

We believe that the above terms and conditions accurately summarize our agreement for the performance of services related to the project. If you concur, please indicate your approval and acceptance by dating, signing and returning this letter agreement. We have enclosed a signed copy of this letter for your records.

We are very pleased that we are able to be of service to you and look forward to working with you.

All the Best,

A handwritten signature in dark ink, appearing to read "Richard Katz". The signature is fluid and cursive, with a long horizontal stroke at the end.

Richard Katz

AGREED AND ACCEPTED;
City of San Bernardino Municipal Water Department

By:

Stacey Aldstadt, Esq.

Date

**JOINT PROSECUTION AND COST-SHARING AGREEMENT RE PROPOSED RULE
OF THE UNITED STATES FISH & WILDLIFE SERVICE TO DESIGNATE CRITICAL
HABITAT FOR THE SANTA ANA SUCKER**

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B. Through this Agreement, the Parties desire to govern their payment of costs and fees arising from their cooperative efforts related to the retention and use of consulting experts on the Proposed Rule, and to confirm their common interests in maintaining a joint prosecution with respect to the Proposed Rule, to allow them to continue to share information related to the Proposed Rule, while continuing to preserve, to the fullest extent possible, the protections of the attorney-client privilege, work product privilege, common-interest doctrine, deliberative process

***CONFIDENTIAL
JOINT PROSECUTION MATERIAL***

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Materials and cooperation shall not constitute grounds for seeking disqualification of counsel in any matter or action.

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17. This Agreement is made under, and shall be construed in accordance with, the laws of the State of California.

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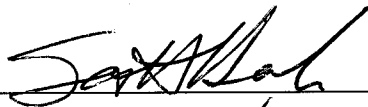
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email address specified below, or at such other address, facsimile number or email address as such Party may hereafter designate by notice in accordance with this paragraph.

21. This Agreement may be executed in counterparts, each of which so executed shall be deemed an original irrespective of the date of the execution, and said counterparts shall together constitute one and the same Agreement. Further, facsimile or .PDF copies of signatures shall be as effective as original signatures for evidencing execution of this Agreement.

By:



Print Name:

Scott Henle

Date:

0/17/10

Title:

Genl. Mgr.

Representing:

Bay Area MWD

Exhibit A

List of Parties

As of June 8, 2010

1. San Bernardino Valley Municipal Water District
2. Western Municipal Water District of Riverside County
3. City of Riverside Public Utilities
4. City of San Bernardino Municipal Water Department
5. San Bernardino Valley Water Conservation District
6. Southern California Edison
7. East Valley Water District
8. City of Highland
9. City of Redlands
10. Yucaipa Valley Water District
11. San Bernardino County Flood Control District
12. Bear Valley Mutual Water Company/Crafton Water Company
13. Big Bear Municipal Water District (\$20,000 share)

Other Possible Partner Agencies

1. West Valley Water District
2. Raymond Basin Management Board/San Gabriel Valley Water Association
3. City of Colton
4. City of Rialto
5. Riverside County Flood Control District
6. Orange County Flood Control District



RAYMOND BASIN MANAGEMENT BOARD

City of Alhambra

City of Arcadia

California-American
Water Company

East Pasadena
Water Company

H.E. Huntington Library
and Art Gallery

Kinneloa Irrigation
District

La Cañada Irrigation
District

Las Flores Water
Company

Lincoln Avenue
Water Company

Pasadena Cemetery
Association

City of Pasadena

Rubio Cañon Land and
Water Association

San Gabriel County
Water District

City of Sierra Madre

Sunny Slope
Water Company

Valley Water Company

July 26, 2010

Mr. Douglas Headrick
General Manager
San Bernardino Valley Municipal Water District
P.O. Box 5906
San Bernardino CA 92412-5906

Dear Mr. Headrick:

At its Regular Quarterly Board Meeting on July 21, 2010, the Raymond Basin Management Board authorized entering into the Joint Prosecution and Cost Sharing Agreement RE Proposed Rule of the United States Fish and Wildlife Service to Designate Critical Habitat for The Santa Ana Sucker. Please find enclosed an original executed agreement for your files.

Should you have any questions please feel free to call me at (626) 815-1300.

Sincerely,

Anthony C. Zampielo
Executive Officer

**JOINT PROSECUTION AND COST-SHARING AGREEMENT RE PROPOSED RULE
OF THE UNITED STATES FISH & WILDLIFE SERVICE TO DESIGNATE CRITICAL
HABITAT FOR THE SANTA ANA SUCKER**

This Joint Prosecution and Cost-Sharing Agreement ("Agreement") is entered into by and among the undersigned (the "Parties"), as listed on Exhibit A hereto.

RECITALS

A. The Parties are cooperating on efforts to analyze, review and comment on the United States Fish & Wildlife Service's Proposed Rule to Designate Critical Habitat for the Santa Ana Sucker ("Proposed Rule"). The Proposed Rule may have negative consequences for the Parties, depending on the specifics of the finally adopted rule and the course of administrative proceedings on establishing the rule. The Parties have agreed to cooperate reasonably in efforts to analyze and comment upon the Proposed Rule. These cooperative efforts include the utilization of various experts and consultants to assist with the review of and preparation of comments on the Proposed Rule, and the provision of consulting expert opinions relative to the necessity, wisdom, and efficacy of potential challenges to it. These cooperative efforts are more particularly described in the scopes of work attached hereto as Exhibits B, C, and D, and incorporated herein by this reference.

B. Through this Agreement, the Parties desire to govern their payment of costs and fees arising from their cooperative efforts related to the retention and use of consulting experts on the Proposed Rule, and to confirm their common interests in maintaining a joint prosecution with respect to the Proposed Rule, to allow them to continue to share information related to the Proposed Rule, while continuing to preserve, to the fullest extent possible, the protections of the attorney-client privilege, work product privilege, common-interest doctrine, deliberative process

***CONFIDENTIAL
JOINT PROSECUTION MATERIAL***

privilege, executive privilege, privileges regarding mediation or settlement communications, or any other privilege or protection existing under state or federal law.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, and the mutual covenants and conditions contained herein, the Parties agree as follows:

1. The Parties shall each initially contribute the sum of \$32,000, (except Big Bear Municipal Water District, which shall contribute \$20,000, and Raymond Basin Management Board/San Gabriel Valley Water Association, which shall not be required to contribute funds because of their location outside the Santa Ana River watershed) which represents each Party's per capita contribution to pay for the fees and costs collectively incurred in their said cooperative efforts on the Proposed Rule. San Bernardino Valley Municipal Water District shall have the responsibility for collecting each Party's contribution of funds, processing invoices submitted by the experts and consultants pursuant to their scopes of work attached hereto, coordinating communications among the Parties to the retained consulting experts, and for maintaining an accurate accounting of this administration of funds. In the event that additional tasks and associated costs are identified in order to meet the joint goals, the Parties will work cooperatively to fund such costs. However, nothing in this Agreement shall be construed to require a Party to pay more than its above-referenced initial per capita contribution towards the total cost for the current scopes of work, which is estimated to be \$407,000.

2. For purposes of this Agreement, "Joint Prosecution Materials" includes, but is not limited to, all communications (including communications related to the Proposed Rule made prior to the execution of this Agreement), factual materials, mental impressions, legal analyses, theories or strategies, memoranda, reports, notes, emails or any other communications or

documents that are protected from disclosure by the attorney-client privilege, work product privilege, deliberative process privilege, executive privilege, common-interest doctrine, joint prosecution/defense doctrine, privileges regarding mediation or settlement communications, or any other privilege or protection existing under state or federal law, and that are exchanged among the Parties and/or their respective counsel in connection with the Proposed Rule. Joint Prosecution Materials do not include final versions of any correspondence, studies, or reports prepared by or on behalf of one or more Parties intended for review by the United States Fish & Wildlife Service or a non-Party.

3. The Parties will maintain as confidential all Joint Prosecution Materials (as defined above). Disclosure of Joint Prosecution Materials shall be limited to the Parties and their employees and contractors as well as any counsel, consultants, and lobbyists retained by the parties, or on behalf of the parties, for the purpose of maintaining a joint prosecution with respect to the Proposed Rule, subject to the further provisions of this Agreement.

4. Any Joint Prosecution Materials shared or transmitted by or between Parties should be clearly designated "CONFIDENTIAL: JOINT PROSECUTION MATERIALS." However, the failure to include such designation shall not preclude such materials from being afforded the protections of this Agreement and shall not be construed to constitute a waiver of any privilege or other protection.

5. Each Party shall take all appropriate measures to ensure that any person who is granted access to Joint Prosecution Materials is familiar with the terms of this Agreement and complies with those terms.

6. Each Party is represented by its own respective legal counsel in connection with the Proposed Rule, and the cooperative efforts referenced herein. Said legal counsel will not

have an attorney-client relationship with any other Party to this Agreement as a result of the legal counsel's participation in discussions and actions related to the Parties' cooperative efforts on the Proposed Rule. Similarly, said legal counsel will not have a duty of loyalty or confidentiality to any Party to this Agreement other than the legal counsel's specific client(s), and consequently, no Party may seek to disqualify the legal counsel for another Party as a result of the legal counsel's participation in discussions and actions related to the Parties' cooperative efforts on the Proposed Rule.

7. Except where required by the order of a court of competent jurisdiction, or by the prior written consent of the remaining Parties, a Party will not reveal to non-Parties any Joint Prosecution Materials it has received from another Party.

8. Each Party shall notify the Party that generated any Joint Prosecution Materials of any request to disclose the Joint Prosecution Materials to any non-Party, or of any proceeding before any court, administrative agency, or tribunal to compel the disclosure of such Joint Prosecution Materials, as soon as practicable after receipt of such request or the initiation of such proceeding. If a Party becomes subject to any judicial or administrative order purporting to compel release of Joint Prosecution Materials, that Party shall: (a) promptly notify the Party that generated the materials and all remaining Parties, and (b) make all reasonable efforts to give that Party an opportunity to protect the Joint Prosecution Materials.

9. No party is required to treat as confidential within the meaning of this Agreement any material where such material is, or hereafter becomes (without violation of this Agreement), public record, public knowledge, or is obtained from sources other than exchanges under this Agreement.

10. The sharing of Joint Prosecution Materials among the Parties is not intended to and will not constitute a waiver of any privilege or other protection of confidentiality, including but not limited to the attorney-client privilege, work product privilege, common-interest doctrine, deliberative process privilege, executive privilege, privileges relating to mediation or settlement communications, or any other privilege or protection existing under state or federal law.

11. Execution of this Agreement constitutes the mutual agreement of the Parties that any sharing of Joint Prosecution Materials among themselves is reasonably necessary for the accomplishment of the Parties' common purposes as described above. Any sharing of Joint Prosecution Materials among the Parties is in reliance on this Agreement and the protections that arise from the Parties' common interests in reviewing and commenting on the Proposed rule.

12. Nothing in this Agreement shall obligate any Party to exchange documents or information with any other Party, whether or not such documents or information would be covered by this Agreement as Joint Prosecution Materials.

13. By this Agreement the Parties each acknowledge and agree that cooperation in the matters referenced above may involve the communication and sharing of confidential information and further agree that the interests of the Parties are not adverse as to matters within the scope of this Agreement. Each of the Parties has had a full opportunity to consult with separate counsel, is fully informed, and has concluded that the risk of any potential conflict of interest is outweighed by the benefits and efficiencies afforded by the opportunities for cooperation and sharing of Joint Prosecution Materials as provided for herein. The Parties consent to the sharing of Joint Prosecution Materials among their counsel, waive any potential conflict of interest created thereby, and mutually agree that this sharing of Joint Prosecution

Materials and cooperation shall not constitute grounds for seeking disqualification of counsel in any matter or action.

14. If there is a breach of this Agreement by a Party, the Parties agree that the non-breaching Party will have no adequate remedy at law in money or damages and shall be entitled to seek and obtain, in addition to all other remedies that may be available, a temporary restraining order, injunctive relief, or other equitable relief against the breach or its continuance.

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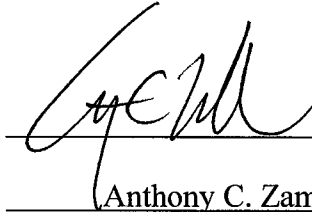
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By:



Print Name:

Anthony C. Zampello

Date:

July 21, 2010

Title:

Executive Officer

Representing:

Raymond Basin Management Board

Exhibit A

List of Parties

As of June 8, 2010

1. San Bernardino Valley Municipal Water District
2. Western Municipal Water District of Riverside County
3. City of Riverside Public Utilities
4. City of San Bernardino Municipal Water Department
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3. City of Colton
4. City of Rialto
5. Riverside County Flood Control District
6. Orange County Flood Control District



Yucaipa Valley Water District

12770 SECOND STREET, YUCAIPA, CALIFORNIA 92399
TELEPHONE (909) 797-5119 FAX (909) 797-6381

LETTER OF TRANSMITTAL

DATE: August 4, 2010 **METHOD OF DELIVERY:** U.S. Postal Service
To: Doug Headrick, General Manager
Agency: San Bernardino Valley Municipal Water District
Address: 380 East Vanderbilt Way
San Bernardino, CA 92408
FROM: Joseph B. Zoba, General Manager

Documentation Enclosed:

- Executed Joint Prosecution and Cost Sharing Agreement - Proposed Rule of the United States Fish & Wildlife Service to Designate Critical Habitat for the Santa Ana Sucker
-

Message:

Doug - Please find attached a copy of the executed agreement.

Should you have any questions, please call.

Joe

Copies to:

- Project File

**JOINT PROSECUTION AND COST-SHARING AGREEMENT RE PROPOSED RULE
OF THE UNITED STATES FISH & WILDLIFE SERVICE TO DESIGNATE CRITICAL
HABITAT FOR THE SANTA ANA SUCKER**

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**CONFIDENTIAL
JOINT PROSECUTION MATERIAL**

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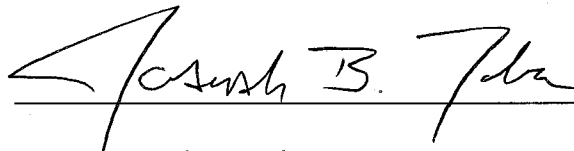
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By:



Print Name:

Joseph B. Zoba

Date:

June 16, 2010

Title:

General Manager

Representing:

Yucaipa Valley Water District

Exhibit A

List of Parties

As of June 8, 2010

1. San Bernardino Valley Municipal Water District
2. Western Municipal Water District of Riverside County
3. City of Riverside Public Utilities
4. City of San Bernardino Municipal Water Department
5. San Bernardino Valley Water Conservation District
6. Southern California Edison
7. East Valley Water District
8. City of Highland
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2. Raymond Basin Management Board/San Gabriel Valley Water Association
3. City of Colton
4. City of Rialto
5. Riverside County Flood Control District
6. Orange County Flood Control District

Exhibit B

SCOPE OF WORK AND BUDGET

22 April 2010

ACTIVITIES ASSOCIATED WITH RESPONDING TO THE PROPOSED RESEIGNATION OF CRITICAL HABITAT FOR THE SANTA ANA SUCKER

Task 1. General Consulting Assistance

PBS&J (Leidy and colleagues) will assist the Santa Ana Sucker (SAS) Task Force, as requested, with assignments not included in other tasks. Budgeting for this task assumes that this task covers two time periods: 1 April through 30 Jun 2010 and 1 July through 31 December 2010. The period from 1 April through 30 July 2010, a period of 13 weeks, assumes an average labor commitment of 4 hours per week (\$11,700 labor). Other direct costs are estimated at \$1,000 for this same period (air fare, rental car, etc.). Total budget through 30 June 2010: \$12,700. Post 30 June through 31 December 2010 labor budget (26 weeks) with the same assumptions: \$23,400. Other direct costs: \$2,000. Total budget from July through December: \$25,400. Grand total budget (Labor and other direct costs) for this task from 1 April through 31 December 2010: \$38,100.

Task 2. Attendance as SAS Conservation Team and Other Relevant Meetings

This task has been consolidated into this scope of work and budget from PBS&J Project No. 100012843 which was initiated on 1 March 2010. Leidy will attend up to 10 meetings of the SAWPA Santa Ana Sucker Conservation Team (including the Restoration Working Group) and the Southern California Native Aquatic Fauna Working Group between 1 March 2020 and 31 December 2010 for the purpose of providing input to the interested parties on the introduction of the SAS in the Santa Ana River watershed, and to gather information on the proposed activities of these groups. Each attendance is expected to be a one-day event. Leidy will summarize in writing the content of each meeting related to SAS issues along with any recommendations for actions on the part of the SAS Task Force. Each meeting is expected to require up to 8 hours in travel and meeting time, plus travel expenses (airfare, rental car and gas, one meal, and personal vehicle mileage. Labor budget (meetings plus write-ups) at 9 hours per meeting plus 0.5 hours administrative time per meeting: \$20,900 (Before 30 June 2010: \$5,225; Post 30 June 2010: \$15,675). Other direct costs: \$4,300 (Before 30 June: \$1,075; Post 30 June 2010: \$3,225). Total

labor and other direct before 30 June: \$6,300. Total labor and other direct costs post 30 June 2010: \$18,900. Total labor and other direct costs from 1 March through 31 December 2010: \$25,200.

Task 3. SAS Enhancement Plan and Project Implementation

There are two phases to this task.

Phase 1

Leidy, working closely with Sam Fuller, is charged with developing a plan to enhance the survival of the SAS population within its existing range in the Santa Ana River basin. The focus geographically will be from the Rialto Drain downstream to the Imperial Highway. This is the reach of the Santa Ana River that currently supports or recently supported the SAS and the reach that will have the greatest probability of implementing a successful project. The plan may include upland sites within this general river reach. The plan will contain appropriate adaptive management elements focused in the short-term on stabilizing the SAS population in the Santa Ana River. The goal is to have one on-the-ground project in place by the end of September 2010. Specific constraints and milestones of the plan are:

- The project must be completed by 30 September 2010;
- The project design must avoid any permitting requirements (other than permission from the USFWS to capture, move, rear, and reintroduce SAS) to meet the schedule (i.e., no 404, 401, 1602, or other permits);
- The project should focus on improving spawning and/or juvenile rearing habitat for the SAS, if feasible;
- Leidy et al. will meet with the USFWS (Ren Lohofener, Pacific Southwest Regional Director) to present the plan and request approval to move SAS to the project site, if necessary;
- Leidy et al. will request concurrence from the California Department of Fish and Game (Curt Taucher, Regional Manager), and will also request that CDFG release up to \$200,000 in funding already provided by San Bernardino Valley Municipal Water District and Western Municipal Water District to CDFG under the terms of the water rights settlement with CDFG; and
- Post-project monitoring and O&M will be required.

To assist with Phase I, Leidy will engage the expert services of Dr. Camm Swift (ENTRIX, Inc.), Dr. Jonathan Baskin (San Marino Environmental Associates), and Kerwin Russell (Riverside-

Corona Resource Conservation District), as necessary, to design the project. Phase 1 has substantial unknowns at this time relative to the difficulty of implementing a project. If the process goes smoothly (for example, the project can make use of existing facilities at the RCRCDD), then the cost will be less than the cost estimated herein. Leidy has budgeted a moderate level-of-effort, but by no means a highly complicated or expensive scenario. Planning for Task 3, Phase 1, is to be completed prior to 30 June 2010. The budget is based on all activities undertaken prior to 1 July 2010 and does not include Phase 1 construction-related planning or construction implementation. The budget breakdown is presented in the attached table. The total budget prior to 1 July 2010: \$39,120. The total budget for the period from July through December 2010: \$65,480. Total Task 3, Phase 1 budget for 2010: \$104,600.

Phase 2

Phase 2 is a longer term continuation of Phase 1 that will occur over a two to three-year schedule at a funding level of approximately \$100,000 to \$150,000 per year. Phase 2 will develop additional projects that enhance and stabilize the SAS population within its existing range in the Santa Ana River basin. Project undertaken during this phase may require permitting and may focus on any activity that enhances SAS survival or improves habitat. Phase 2 is not budgeted at this time and will not be budgeted until Phase 1 is completed and we know better the level-of-effort required to continue with additional projects.

Task 4. Alternative Streams Investigation

This task will focus on evaluating the feasibility of establishing SAS populations elsewhere in the Santa Ana River basin outside of the current range of the species. New refugia for the SAS will be evaluated taking into consideration the following:

- Location relative to the parent population and existing infrastructure;
- Selection criteria for evaluating the suitability of specific locations to support viable populations of the SAS over time, including a risk analysis of potential threats; and
- Financial and institutional requirements to create, maintain, and monitor SAS populations at selected locations.

Leidy et al. will evaluate a select number of tributaries to the Santa Ana River that may contain the PCEs necessary to support an introduced SAS population in the future. This investigation will be at the reconnaissance level and the product will be a report presenting the results. Task 4 will be initiated prior to 30 June 2010, and will be completed prior to the end of calendar year 2010. Leidy will use experienced, mid-level fish biologists from PBS&J to assist with this task to contain costs. Approximately 25 streams will be evaluated. The evaluation will also include

site visits to confirm environmental conditions. A records search of resource agency files may also be required.

The labor costs incurred prior to 1 July 2010 will be for information gathering and site visits. This cost is estimated at \$11,200. Other direct costs prior to 1 July: \$3,500. Total budget prior to 1 July: \$14,700. Completion of the report following 30 June 2010 is estimated at \$11,200. Other direct costs after 30 June: \$500. Total budget after 30 June: \$11,700. Total budget for task: \$26,400.

Task 5. Additional Responses to the Economic Study

Leidy will provide additional comments, if necessary, on the draft economic study issued by the USFWS. This effort is estimated at 24 hours labor (\$5,400) plus other direct costs (\$400), for a total budget of \$5,800.

Budget Summary for the Proposed Scope of Work

Task	1 March-30 June (\$)	1 July-31 December (\$)	Total (\$)
1	12,700	25,400	38,100
2	6,300	18,900	25,200
3	39,120	65,480	104,600
4	14,700	11,700	26,400
5	5,800	0	5,800
Total	78,620	121,480	200,100

Exhibit C

Legal Budget/Scope Santa Ana Sucker Critical Habitat Designation

Best, Best & Krieger LLP on behalf of the Western Municipal Water District and City of Riverside and Downey Brand, LLP on behalf of the San Bernardino Valley Municipal Water District will undertake the tasks described in this Exhibit and will do so in cooperation with other Task Force members and their attorneys

Task 1 – General Coordination

This task involves general coordination efforts with the Santa Ana sucker task force and attendance at the monthly task force meetings. For purposes of the budget/scope, we have assumed that the task force will meet monthly from April through September and then meet in either October or November.

Task 2 Preparation of Comments on Economic Analysis

Task 2.1 involves legal coordination with John Husing as he prepares his comments based on the project descriptions submitted by participating agencies. We anticipate that most of those comments will focus on the economic impacts of critical habitat designation, but we anticipate some need to work with Husing to establish the legal framework for his analysis.

Task 2.2 involves the attendance at the Fish & Wildlife Service hearing on the economic analysis.

Task 3. Preparation of Enhancement Project

Task 3.1 involves legal coordination with Roy Leidy as he works with Camm Swift and John Baskin to develop the proposed Santa Ana sucker enhancement project.

Task 3.2 involves preparing for and meeting with officials at the Fish & Wildlife Service to obtain their consent to the implementation of the project(s) developed by Leidy, Swift and Baskin.

Task 3.3 involves the negotiation of a safe harbor agreement, a 10(j) population designation, or other legal/regulatory means to ensure that the Santa Ana task force parties' projects are fully protected from limits caused by the enhancement efforts.

Task 4. Review and Client Advice on Final Rule

This task involves review of the final critical habitat designation rule once it is issued by the Fish & Wildlife Service and advising the Santa Ana sucker task force about potential avenues in light of that designation.

Santa Ana Sucker Critical Habitat Designation Legal Budget

Task	April 1 to June 30, 2010		July 1 to December 31, 2010		Contingency (10%)	Total
	Hours	Fees/Costs	Hours	Fees/Costs		
Task 1 -- General Coordination	50	\$15,000	70	\$21,000	\$3,600	\$39,600
Task 2 -- Preparation of Comments on Economic Impacts of Designation						
Task 2.1 Coordination with John Husing	30	\$9,000	70	\$21,000	\$2,103	\$32,103
Task 2.2 Attendance at FWS Hearing	0	\$0	20	\$6,000	\$600	\$6,600
Task 3 -- Preparation of Enhancement Project						
Task 3.1 Coordination with Roy Leidy	50	\$15,000	25	\$7,500	\$755	\$23,255
Task 3.2 Meetings with FWS	25	\$7,500	20	\$6,000	\$603	\$14,103
Task 3.3 Negotiation of Safe Harbor Agreement	30	\$9,000	100	\$30,000	\$3,003	\$42,003
Task 4 Review and advice on Final Rule	0	\$0	40	\$12,000	\$1,200	\$13,200
Total	185	\$55,500	345	\$103,500	\$11,864	\$170,864

Exhibit D



Stacey Aldstadt, Esq
General Manager
City of San Bernardino Municipal
Water Department
444-D, Rialto
San Bernardino, CA 92410

June 4, 2010

Dear Stacey;

The purpose of this letter is to summarize and confirm the term and conditions of the agreement by Richard Katz Consulting Inc, ("Consultant") and X the City of San Bernardino Municipal Water Department ("SBMWD") ("Client").

SCOPE OF SERVICES

The Client retains Consultant to provide strategic advice as it relates to the Federal Governments effort on the Santa Ana Sucker Critical Habitat Designation. Consultant shall offer a critical political overlay to the efforts of the government relations teams representing the member agencies of the Santa Ana Sucker Task Force in Washington, DC. Efforts shall include but not be limited to review of current strategy, assistance in developing new and innovative strategy going forward, and coordination of efforts with federal, state and local entities.

Richard Katz

PROFESSIONAL FEES

In compensation for the services performed by Consultant on behalf of Client, as outlined above, Client agrees to pay Consultant a monthly retainer of \$5,000 per month for 90-days and \$3,500 per month on-going until the issue is resolved, beginning June 1, 2010.

REIMBURSEMENT OF EXPENSES INCURRED

Client will reimburse Consultant on a monthly basis for any out-of-pocket expenses reasonably incurred by Consultant on its behalf including, but not limited to, document reproduction charges, facsimile charges, long distant telephone calls, travel expenses and messenger fees. Consultant will send a statement of expenses incurred each month. No expenditure in excess of five Hundred Dollars (\$500.00) per month will be made without prior written consent from Client.

TERMINATION

Either party upon thirty (30) days written notice to the other party may terminate this agreement. In the event of such termination, Consultant shall bill Client for all professional services, independent contractor expenses and other costs incurred up to the date of termination.

NO REPRESENTATION THAT PERMITS OR SERVICES WILL BE APPROVED OR SUCCESSFUL

It is impossible to predict the approval or non-approval of any action, which requires discretionary government action. Consequently, while consultant will conscientiously perform all of its responsibilities outlined above, we cannot and do not make any representation to Client that any of the services discussed herein will be granted, acknowledged or approved by any governmental or public jurisdiction. Client acknowledges that none of its obligations under this letter agreement is dependent or conditioned upon approval of any service.

Consultant, its employees and associates, shall not be individually or collectively liable to client, or any party claiming through Client, for any damages resulting from the denial of any discretionary permits or from errors or omissions in

connection with any services provided hereunder for any reason other than willful misconduct.

Consultant shall not be liable to Client, or any party claiming through Client, for any damages resulting from the denial of the application of any governmental approval or service.

ATTORNEY'S FEES

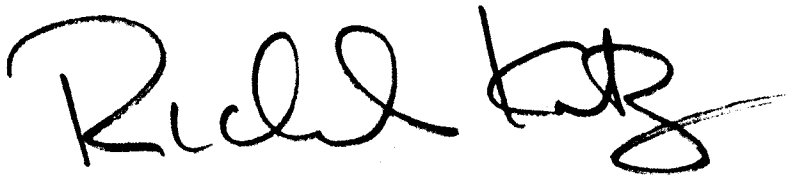
In the event that any litigation is commenced concerning any provision of this letter agreement, the prevailing party will be entitled to recover, in addition to any other relief granted by the court, a reasonable sum for its attorney's fees incurred in the litigation.

CONCLUSION

We believe that the above terms and conditions accurately summarize our agreement for the performance of services related to the project. If you concur, please indicate your approval and acceptance by dating, signing and returning this letter agreement. We have enclosed a signed copy of this letter for your records.

We are very pleased that we are able to be of service to you and look forward to working with you.

All the Best,

A handwritten signature in black ink, appearing to read "Richard Katz", with a stylized flourish at the end.

Richard Katz

AGREED AND ACCEPTED;
City of San Bernardino Municipal Water Department

By:

Stacey Aldstadt, Esq.

Date

**JOINT PROSECUTION AND COST-SHARING AGREEMENT RE PROPOSED RULE
OF THE UNITED STATES FISH & WILDLIFE SERVICE TO DESIGNATE CRITICAL
HABITAT FOR THE SANTA ANA SUCKER**

This Joint Prosecution and Cost-Sharing Agreement (“Agreement”) is entered into by and among the undersigned (the “Parties”), as listed on Exhibit A hereto.

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B. Through this Agreement, the Parties desire to govern their payment of costs and fees arising from their cooperative efforts related to the retention and use of consulting experts on the Proposed Rule, and to confirm their common interests in maintaining a joint prosecution with respect to the Proposed Rule, to allow them to continue to share information related to the Proposed Rule, while continuing to preserve, to the fullest extent possible, the protections of the attorney-client privilege, work product privilege, common-interest doctrine, deliberative process

***CONFIDENTIAL
JOINT PROSECUTION MATERIAL***

privilege, executive privilege, privileges regarding mediation or settlement communications, or any other privilege or protection existing under state or federal law.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, and the mutual covenants and conditions contained herein, the Parties agree as follows:

1. The Parties shall each initially contribute the sum of \$32,000, (except Big Bear Municipal Water District which shall contribute \$20,000) which represents each Party's per capita contribution to pay for the fees and costs collectively incurred in their said cooperative efforts on the Proposed Rule. San Bernardino Valley Municipal Water District shall have the responsibility for collecting each Party's contribution of funds, processing invoices submitted by the experts and consultants pursuant to their scopes of work attached hereto, coordinating communications among the Parties to the retained consulting experts, and for maintaining an accurate accounting of this administration of funds. In the event that additional tasks and associated costs are identified in order to meet the joint goals, the Parties will work cooperatively to fund such costs. However, nothing in this Agreement shall be construed to require a Party to pay more than its above-referenced initial per capita contribution towards the total cost for the current scopes of work, which is estimated to be \$407,000.
2. For purposes of this Agreement, "Joint Prosecution Materials" includes, but is not limited to, all communications (including communications related to the Proposed Rule made prior to the execution of this Agreement), factual materials, mental impressions, legal analyses, theories or strategies, memoranda, reports, notes, emails or any other communications or

documents that are protected from disclosure by the attorney-client privilege, work product privilege, deliberative process privilege, executive privilege, common-interest doctrine, joint prosecution/defense doctrine, privileges regarding mediation or settlement communications, or any other privilege or protection existing under state or federal law, and that are exchanged among the Parties and/or their respective counsel in connection with the Proposed Rule. Joint Prosecution Materials do not include final versions of any correspondence, studies, or reports prepared by or on behalf of one or more Parties intended for review by the United States Fish & Wildlife Service or a non-Party.

3. The Parties will maintain as confidential all Joint Prosecution Materials (as defined above). Disclosure of Joint Prosecution Materials shall be limited to the Parties and their employees and contractors as well as any counsel, consultants, and lobbyists retained by the parties, or on behalf of the parties, for the purpose of maintaining a joint prosecution with respect to the Proposed Rule, subject to the further provisions of this Agreement.

4. Any Joint Prosecution Materials shared or transmitted by or between Parties should be clearly designated "CONFIDENTIAL: JOINT PROSECUTION MATERIALS." However, the failure to include such designation shall not preclude such materials from being afforded the protections of this Agreement and shall not be construed to constitute a waiver of any privilege or other protection.

5. Each Party shall take all appropriate measures to ensure that any person who is granted access to Joint Prosecution Materials is familiar with the terms of this Agreement and complies with those terms.

6. Each Party is represented by its own respective legal counsel in connection with the Proposed Rule, and the cooperative efforts referenced herein. Said legal counsel will not

have an attorney-client relationship with any other Party to this Agreement as a result of the legal counsel's participation in discussions and actions related to the Parties' cooperative efforts on the Proposed Rule. Similarly, said legal counsel will not have a duty of loyalty or confidentiality to any Party to this Agreement other than the legal counsel's specific client(s), and consequently, no Party may seek to disqualify the legal counsel for another Party as a result of the legal counsel's participation in discussions and actions related to the Parties' cooperative efforts on the Proposed Rule.

7. Except where required by the order of a court of competent jurisdiction, or by the prior written consent of the remaining Parties, a Party will not reveal to non-Parties any Joint Prosecution Materials it has received from another Party.

8. Each Party shall notify the Party that generated any Joint Prosecution Materials of any request to disclose the Joint Prosecution Materials to any non-Party, or of any proceeding before any court, administrative agency, or tribunal to compel the disclosure of such Joint Prosecution Materials, as soon as practicable after receipt of such request or the initiation of such proceeding. If a Party becomes subject to any judicial or administrative order purporting to compel release of Joint Prosecution Materials, that Party shall: (a) promptly notify the Party that generated the materials and all remaining Parties, and (b) make all reasonable efforts to give that Party an opportunity to protect the Joint Prosecution Materials.

9. No party is required to treat as confidential within the meaning of this Agreement any material where such material is, or hereafter becomes (without violation of this Agreement), public record, public knowledge, or is obtained from sources other than exchanges under this Agreement.

10. The sharing of Joint Prosecution Materials among the Parties is not intended to and will not constitute a waiver of any privilege or other protection of confidentiality, including but not limited to the attorney-client privilege, work product privilege, common-interest doctrine, deliberative process privilege, executive privilege, privileges relating to mediation or settlement communications, or any other privilege or protection existing under state or federal law.

11. Execution of this Agreement constitutes the mutual agreement of the Parties that any sharing of Joint Prosecution Materials among themselves is reasonably necessary for the accomplishment of the Parties' common purposes as described above. Any sharing of Joint Prosecution Materials among the Parties is in reliance on this Agreement and the protections that arise from the Parties' common interests in reviewing and commenting on the Proposed rule.

12. Nothing in this Agreement shall obligate any Party to exchange documents or information with any other Party, whether or not such documents or information would be covered by this Agreement as Joint Prosecution Materials.

13. By this Agreement the Parties each acknowledge and agree that cooperation in the matters referenced above may involve the communication and sharing of confidential information and further agree that the interests of the Parties are not adverse as to matters within the scope of this Agreement. Each of the Parties has had a full opportunity to consult with separate counsel, is fully informed, and has concluded that the risk of any potential conflict of interest is outweighed by the benefits and efficiencies afforded by the opportunities for cooperation and sharing of Joint Prosecution Materials as provided for herein. The Parties consent to the sharing of Joint Prosecution Materials among their counsel, waive any potential conflict of interest created thereby, and mutually agree that this sharing of Joint Prosecution

Materials and cooperation shall not constitute grounds for seeking disqualification of counsel in any matter or action.

14. If there is a breach of this Agreement by a Party, the Parties agree that the non-breaching Party will have no adequate remedy at law in money or damages and shall be entitled to seek and obtain, in addition to all other remedies that may be available, a temporary restraining order, injunctive relief, or other equitable relief against the breach or its continuance.

15. Nothing in this Agreement shall be construed to waive any rights, claims, or privileges that any Party shall have against another Party or any other person or entity.

16. This Agreement shall be binding upon the successors and assigns of the Parties.

17. This Agreement is made under, and shall be construed in accordance with, the laws of the State of California.

18. The individuals signing this Agreement in a representative capacity warrant that they have the authority to do so on behalf of the entity or entities they represent, and further agree that as representatives of the entity or entities that they respectively represent, they themselves are bound by all terms of this Agreement.

19. Any Party may withdraw from this Agreement by providing written notice to the other Parties. If a Party withdraws from this Agreement, the provisions of this Agreement shall continue to apply to the Joint Prosecution Materials that were shared during the time period when that Party was a party to this Agreement.

20. All notices and other communications required to be given to a Party under the terms of this Agreement (a) shall be in writing, (b) shall be personally delivered, or transmitted by facsimile or email, and (c) shall be directed to such Party at the address, facsimile number or

email address specified below, or at such other address, facsimile number or email address as such Party may hereafter designate by notice in accordance with this paragraph.

21. This Agreement may be executed in counterparts, each of which so executed shall be deemed an original irrespective of the date of the execution, and said counterparts shall together constitute one and the same Agreement. Further, facsimile or .PDF copies of signatures shall be as effective as original signatures for evidencing execution of this Agreement.

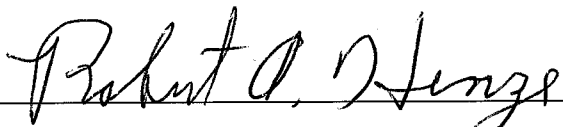
By: 
Print Name: Robert A. Hinze
Date: 8-5-10
Title: President
Representing: Bear Valley Mutual Water Company

Exhibit A

List of Parties

As of June 8, 2010

1. San Bernardino Valley Municipal Water District
2. Western Municipal Water District of Riverside County
3. City of Riverside Public Utilities
4. City of San Bernardino Municipal Water Department
5. San Bernardino Valley Water Conservation District
6. Southern California Edison
7. East Valley Water District
8. City of Highland
9. City of Redlands
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11. San Bernardino County Flood Control District
12. Bear Valley Mutual Water Company/Crafton Water Company
13. Big Bear Municipal Water District (\$20,000 share)

Other Possible Partner Agencies

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4. City of Rialto
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**CONFIDENTIAL
JOINT PROSECUTION MATERIAL**

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AGREEMENT

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By:

Print Name:

Date:

Title:

Representing:



John Rossi

June 17, 2010

General Manager

Western Municipal Water District

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**CONFIDENTIAL
JOINT PROSECUTION MATERIAL**

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1. The Parties shall each initially contribute the sum of \$32,000, (except Big Bear Municipal Water District which shall contribute \$20,000) which represents each Party's per capita contribution to pay for the fees and costs collectively incurred in their said cooperative efforts on the Proposed Rule. San Bernardino Valley Municipal Water District shall have the responsibility for collecting each Party's contribution of funds, processing invoices submitted by the experts and consultants pursuant to their scopes of work attached hereto, coordinating communications among the Parties to the retained consulting experts, and for maintaining an accurate accounting of this administration of funds. In the event that additional tasks and associated costs are identified in order to meet the joint goals, the Parties will work cooperatively to fund such costs. However, nothing in this Agreement shall be construed to require a Party to pay more than its above-referenced initial per capita contribution towards the total cost for the current scopes of work, which is estimated to be \$407,000.
2. For purposes of this Agreement, "Joint Prosecution Materials" includes, but is not limited to, all communications (including communications related to the Proposed Rule made prior to the execution of this Agreement), factual materials, mental impressions, legal analyses, theories or strategies, memoranda, reports, notes, emails or any other communications or

documents that are protected from disclosure by the attorney-client privilege, work product privilege, deliberative process privilege, executive privilege, common-interest doctrine, joint prosecution/defense doctrine, privileges regarding mediation or settlement communications, or any other privilege or protection existing under state or federal law, and that are exchanged among the Parties and/or their respective counsel in connection with the Proposed Rule. Joint Prosecution Materials do not include final versions of any correspondence, studies, or reports prepared by or on behalf of one or more Parties intended for review by the United States Fish & Wildlife Service or a non-Party.

3. The Parties will maintain as confidential all Joint Prosecution Materials (as defined above). Disclosure of Joint Prosecution Materials shall be limited to the Parties and their employees and contractors as well as any counsel, consultants, and lobbyists retained by the parties, or on behalf of the parties, for the purpose of maintaining a joint prosecution with respect to the Proposed Rule, subject to the further provisions of this Agreement.

4. Any Joint Prosecution Materials shared or transmitted by or between Parties should be clearly designated "CONFIDENTIAL: JOINT PROSECUTION MATERIALS." However, the failure to include such designation shall not preclude such materials from being afforded the protections of this Agreement and shall not be construed to constitute a waiver of any privilege or other protection.

5. Each Party shall take all appropriate measures to ensure that any person who is granted access to Joint Prosecution Materials is familiar with the terms of this Agreement and complies with those terms.

6. Each Party is represented by its own respective legal counsel in connection with the Proposed Rule, and the cooperative efforts referenced herein. Said legal counsel will not

have an attorney-client relationship with any other Party to this Agreement as a result of the legal counsel's participation in discussions and actions related to the Parties' cooperative efforts on the Proposed Rule. Similarly, said legal counsel will not have a duty of loyalty or confidentiality to any Party to this Agreement other than the legal counsel's specific client(s), and consequently, no Party may seek to disqualify the legal counsel for another Party as a result of the legal counsel's participation in discussions and actions related to the Parties' cooperative efforts on the Proposed Rule.

7. Except where required by the order of a court of competent jurisdiction, or by the prior written consent of the remaining Parties, a Party will not reveal to non-Parties any Joint Prosecution Materials it has received from another Party.

8. Each Party shall notify the Party that generated any Joint Prosecution Materials of any request to disclose the Joint Prosecution Materials to any non-Party, or of any proceeding before any court, administrative agency, or tribunal to compel the disclosure of such Joint Prosecution Materials, as soon as practicable after receipt of such request or the initiation of such proceeding. If a Party becomes subject to any judicial or administrative order purporting to compel release of Joint Prosecution Materials, that Party shall: (a) promptly notify the Party that generated the materials and all remaining Parties, and (b) make all reasonable efforts to give that Party an opportunity to protect the Joint Prosecution Materials.

9. No party is required to treat as confidential within the meaning of this Agreement any material where such material is, or hereafter becomes (without violation of this Agreement), public record, public knowledge, or is obtained from sources other than exchanges under this Agreement.

10. The sharing of Joint Prosecution Materials among the Parties is not intended to and will not constitute a waiver of any privilege or other protection of confidentiality, including but not limited to the attorney-client privilege, work product privilege, common-interest doctrine, deliberative process privilege, executive privilege, privileges relating to mediation or settlement communications, or any other privilege or protection existing under state or federal law.

11. Execution of this Agreement constitutes the mutual agreement of the Parties that any sharing of Joint Prosecution Materials among themselves is reasonably necessary for the accomplishment of the Parties' common purposes as described above. Any sharing of Joint Prosecution Materials among the Parties is in reliance on this Agreement and the protections that arise from the Parties' common interests in reviewing and commenting on the Proposed rule.

12. Nothing in this Agreement shall obligate any Party to exchange documents or information with any other Party, whether or not such documents or information would be covered by this Agreement as Joint Prosecution Materials.

13. By this Agreement the Parties each acknowledge and agree that cooperation in the matters referenced above may involve the communication and sharing of confidential information and further agree that the interests of the Parties are not adverse as to matters within the scope of this Agreement. Each of the Parties has had a full opportunity to consult with separate counsel, is fully informed, and has concluded that the risk of any potential conflict of interest is outweighed by the benefits and efficiencies afforded by the opportunities for cooperation and sharing of Joint Prosecution Materials as provided for herein. The Parties consent to the sharing of Joint Prosecution Materials among their counsel, waive any potential conflict of interest created thereby, and mutually agree that this sharing of Joint Prosecution

Materials and cooperation shall not constitute grounds for seeking disqualification of counsel in any matter or action.

14. If there is a breach of this Agreement by a Party, the Parties agree that the non-breaching Party will have no adequate remedy at law in money or damages and shall be entitled to seek and obtain, in addition to all other remedies that may be available, a temporary restraining order, injunctive relief, or other equitable relief against the breach or its continuance.

15. Nothing in this Agreement shall be construed to waive any rights, claims, or privileges that any Party shall have against another Party or any other person or entity.

16. This Agreement shall be binding upon the successors and assigns of the Parties.

17. This Agreement is made under, and shall be construed in accordance with, the laws of the State of California.

18. The individuals signing this Agreement in a representative capacity warrant that they have the authority to do so on behalf of the entity or entities they represent, and further agree that as representatives of the entity or entities that they respectively represent, they themselves are bound by all terms of this Agreement.

19. Any Party may withdraw from this Agreement by providing written notice to the other Parties. If a Party withdraws from this Agreement, the provisions of this Agreement shall continue to apply to the Joint Prosecution Materials that were shared during the time period when that Party was a party to this Agreement.

20. All notices and other communications required to be given to a Party under the terms of this Agreement (a) shall be in writing, (b) shall be personally delivered, or transmitted by facsimile or email, and (c) shall be directed to such Party at the address, facsimile number or

email address specified below, or at such other address, facsimile number or email address as such Party may hereafter designate by notice in accordance with this paragraph.

21. This Agreement may be executed in counterparts, each of which so executed shall be deemed an original irrespective of the date of the execution, and said counterparts shall together constitute one and the same Agreement. Further, facsimile or .PDF copies of signatures shall be as effective as original signatures for evidencing execution of this Agreement.

By:

Belinda J. Graham

Print Name:

Belinda J. Graham

Date:

August 5, 2010

Title:

Assistant City Manager

Representing:

City of Riverside

Attest:

Sherry Morton Ellis
City Clerk

APPROVED AS TO FORM

Susan Wilson
DEPUTY CITY ATTORNEY

Exhibit A

List of Parties

As of June 8, 2010

1. San Bernardino Valley Municipal Water District
2. Western Municipal Water District of Riverside County
3. ~~City of Riverside Public Utilities~~
4. City of San Bernardino Municipal Water Department
5. San Bernardino Valley Water Conservation District
6. Southern California Edison
7. East Valley Water District
8. City of Highland
9. City of Redlands
10. Yucaipa Valley Water District
11. San Bernardino County Flood Control District
12. Bear Valley Mutual Water Company/Crafton Water Company
13. Big Bear Municipal Water District (\$20,000 share)

Other Possible Partner Agencies

1. West Valley Water District
2. Raymond Basin Management Board/San Gabriel Valley Water Association
3. City of Colton
4. City of Rialto
5. Riverside County Flood Control District
6. Orange County Flood Control District

Exhibit B

SCOPE OF WORK AND BUDGET

22 April 2010

ACTIVITIES ASSOCIATED WITH RESPONDING TO THE PROPOSED RESEIGNATION OF CRITICAL HABITAT FOR THE SANTA ANA SUCKER

Task 1. General Consulting Assistance

PBS&J (Leidy and colleagues) will assist the Santa Ana Sucker (SAS) Task Force, as requested, with assignments not included in other tasks. Budgeting for this task assumes that this task covers two time periods: 1 April through 30 Jun 2010 and 1 July through 31 December 2010. The period from 1 April through 30 July 2010, a period of 13 weeks, assumes an average labor commitment of 4 hours per week (\$11,700 labor). Other direct costs are estimated at \$1,000 for this same period (air fare, rental car, etc.). Total budget through 30 June 2010: \$12,700. Post 30 June through 31 December 2010 labor budget (26 weeks) with the same assumptions: \$23,400. Other direct costs: \$2,000. Total budget from July through December: \$25,400. Grand total budget (Labor and other direct costs) for this task from 1 April through 31 December 2010: \$38,100.

Task 2. Attendance as SAS Conservation Team and Other Relevant Meetings

This task has been consolidated into this scope of work and budget from PBS&J Project No. 100012843 which was initiated on 1 March 2010. Leidy will attend up to 10 meetings of the SAWPA Santa Ana Sucker Conservation Team (including the Restoration Working Group) and the Southern California Native Aquatic Fauna Working Group between 1 March 2010 and 31 December 2010 for the purpose of providing input to the interested parties on the introduction of the SAS in the Santa Ana River watershed, and to gather information on the proposed activities of these groups. Each attendance is expected to be a one-day event. Leidy will summarize in writing the content of each meeting related to SAS issues along with any recommendations for actions on the part of the SAS Task Force. Each meeting is expected to require up to 8 hours in travel and meeting time, plus travel expenses (airfare, rental car and gas, one meal, and personal vehicle mileage). Labor budget (meetings plus write-ups) at 9 hours per meeting plus 0.5 hours administrative time per meeting: \$20,900 (Before 30 June 2010: \$5,225; Post 30 June 2010: \$15,675). Other direct costs: \$4,300 (Before 30 June: \$1,075; Post 30 June 2010: \$3,225). Total

labor and other direct before 30 June: \$6,300. Total labor and other direct costs post 30 June 2010: \$18,900. Total labor and other direct costs from 1 March through 31 December 2010: \$25,200.

Task 3. SAS Enhancement Plan and Project Implementation

There are two phases to this task.

Phase 1

~~Leidy, working closely with Sam Fuller, is charged with developing a plan to enhance the~~ survival of the SAS population within its existing range in the Santa Ana River basin. The focus geographically will be from the Rialto Drain downstream to the Imperial Highway. This is the reach of the Santa Ana River that currently supports or recently supported the SAS and the reach that will have the greatest probability of implementing a successful project. The plan may include upland sites within this general river reach. The plan will contain appropriate adaptive management elements focused in the short-term on stabilizing the SAS population in the Santa Ana River. The goal is to have one on-the-ground project in place by the end of September 2010. Specific constraints and milestones of the plan are:

- The project must be completed by 30 September 2010;
- The project design must avoid any permitting requirements (other than permission from the USFWS to capture, move, rear, and reintroduce SAS) to meet the schedule (i.e., no 404, 401, 1602, or other permits);
- The project should focus on improving spawning and/or juvenile rearing habitat for the SAS, if feasible;
- Leidy et al. will meet with the USFWS (Ren Lohofener, Pacific Southwest Regional Director) to present the plan and request approval to move SAS to the project site, if necessary;
- Leidy et al. will request concurrence from the California Department of Fish and Game (Curt Taucher, Regional Manager), and will also request that CDFG release up to \$200,000 in funding already provided by San Bernardino Valley Municipal Water District and Western Municipal Water District to CDFG under the terms of the water rights settlement with CDFG; and
- Post-project monitoring and O&M will be required.

To assist with Phase I, Leidy will engage the expert services of Dr. Camm Swift (ENTRIX, Inc.), Dr. Jonathan Baskin (San Marino Environmental Associates), and Kerwin Russell (Riverside-

Corona Resource Conservation District), as necessary, to design the project. Phase 1 has substantial unknowns at this time relative to the difficulty of implementing a project. If the process goes smoothly (for example, the project can make use of existing facilities at the RCRCD), then the cost will be less than the cost estimated herein. Leidy has budgeted a moderate level-of-effort, but by no means a highly complicated or expensive scenario. Planning for Task 3, Phase 1, is to be completed prior to 30 June 2010. The budget is based on all activities undertaken prior to 1 July 2010 and does not include Phase 1 construction-related planning or construction implementation. The budget breakdown is presented in the attached table. The total budget prior to 1 July 2010: \$39,120. The total budget for the period from July through December 2010: \$65,480. Total Task 3, Phase 1 budget for 2010: \$104,600.

Phase 2

Phase 2 is a longer term continuation of Phase 1 that will occur over a two to three-year schedule at a funding level of approximately \$100,000 to \$150,000 per year. Phase 2 will develop additional projects that enhance and stabilize the SAS population within its existing range in the Santa Ana River basin. Project undertaken during this phase may require permitting and may focus on any activity that enhances SAS survival or improves habitat. Phase 2 is not budgeted at this time and will not be budgeted until Phase 1 is completed and we know better the level-of-effort required to continue with additional projects.

Task 4. Alternative Streams Investigation

This task will focus on evaluating the feasibility of establishing SAS populations elsewhere in the Santa Ana River basin outside of the current range of the species. New refugia for the SAS will be evaluated taking into consideration the following:

- Location relative to the parent population and existing infrastructure;
- Selection criteria for evaluating the suitability of specific locations to support viable populations of the SAS over time, including a risk analysis of potential threats; and
- Financial and institutional requirements to create, maintain, and monitor SAS populations at selected locations.

Leidy et al. will evaluate a select number of tributaries to the Santa Ana River that may contain the PCEs necessary to support an introduced SAS population in the future. This investigation will be at the reconnaissance level and the product will be a report presenting the results. Task 4 will be initiated prior to 30 June 2010, and will be completed prior to the end of calendar year 2010. Leidy will use experienced, mid-level fish biologists from PBS&J to assist with this task to contain costs. Approximately 25 streams will be evaluated. The evaluation will also include

site visits to confirm environmental conditions. A records search of resource agency files may also be required.

The labor costs incurred prior to 1 July 2010 will be for information gathering and site visits. This cost is estimated at \$11,200. Other direct costs prior to 1 July: \$3,500. Total budget prior to 1 July: \$14,700. Completion of the report following 30 June 2010 is estimated at \$11,200. Other direct costs after 30 June: \$500. Total budget after 30 June: \$11,700. Total budget for task: \$26,400.

Task 5. Additional Responses to the Economic Study

Leidy will provide additional comments, if necessary, on the draft economic study issued by the USFWS. This effort is estimated at 24 hours labor (\$5,400) plus other direct costs (\$400), for a total budget of \$5,800.

Budget Summary for the Proposed Scope of Work

Task	1 March-30 June (\$)	1 July-31 December (\$)	Total (\$)
1	12,700	25,400	38,100
2	6,300	18,900	25,200
3	39,120	65,480	104,600
4	14,700	11,700	26,400
5	5,800	0	5,800
Total	78,620	121,480	200,100

Exhibit C

Legal Budget/Scope Santa Ana Sucker Critical Habitat Designation

Best, Best & Krieger LLP on behalf of the Western Municipal Water District and City of Riverside and Downey Brand, LLP on behalf of the San Bernardino Valley Municipal Water District will undertake the tasks described in this Exhibit and will do so in cooperation with other Task Force members and their attorneys

Task 1 – General Coordination

This task involves general coordination efforts with the Santa Ana sucker task force and attendance at the monthly task force meetings. For purposes of the budget/scope, we have assumed that the task force will meet monthly from April through September and then meet in either October or November.

Task 2 Preparation of Comments on Economic Analysis

Task 2.1 involves legal coordination with John Husing as he prepares his comments based on the project descriptions submitted by participating agencies. We anticipate that most of those comments will focus on the economic impacts of critical habitat designation, but we anticipate some need to work with Husing to establish the legal framework for his analysis.

Task 2.2 involves the attendance at the Fish & Wildlife Service hearing on the economic analysis.

Task 3. Preparation of Enhancement Project

Task 3.1 involves legal coordination with Roy Leidy as he works with Camm Swift and John Baskin to develop the proposed Santa Ana sucker enhancement project.

Task 3.2 involves preparing for and meeting with officials at the Fish & Wildlife Service to obtain their consent to the implementation of the project(s) developed by Leidy, Swift and Baskin.

Task 3.3 involves the negotiation of a safe harbor agreement, a 10(j) population designation, or other legal/regulatory means to ensure that the Santa Ana task force parties' projects are fully protected from limits caused by the enhancement efforts.

Task 4. Review and Client Advice on Final Rule

This task involves review of the final critical habitat designation rule once it is issued by the Fish & Wildlife Service and advising the Santa Ana sucker task force about potential avenues in light of that designation.

Santa Ana Sucker Critical Habitat Designation Legal Budget

Task	April 1 to June 30, 2010		July 1 to December 31, 2010		Contingency (10%)	Total
	Hours	Fees/Costs	Hours	Fees/Costs		
Task 1 -- General Coordination	50	\$15,000	70	\$21,000	\$3,600	\$39,600
Task 2 -- Preparation of Comments on Economic Impacts of Designation						
Task 2.1 Coordination with John Husing	30	\$9,000	70	\$21,000	\$2,103	\$32,103
Task 2.2 Attendance at FWS Hearing	0	\$0	20	\$6,000	\$600	\$6,600
Task 3 -- Preparation of Enhancement Project						
Task 3.1 Coordination with Roy Leidy	50	\$15,000	25	\$7,500	\$755	\$23,255
Task 3.2 Meetings with FWS	25	\$7,500	20	\$6,000	\$603	\$14,103
Task 3.3 Negotiation of Safe Harbor Agreement	30	\$9,000	100	\$30,000	\$3,003	\$42,003
Task 4 Review and advice on Final Rule	0	\$0	40	\$12,000	\$1,200	\$13,200
Total	185	\$55,500	345	\$103,500	\$11,864	\$170,864

Exhibit D



Stacey Aldstadt, Esq
General Manager
City of San Bernardino Municipal
Water Department
444-D, Rialto
San Bernardino, CA 92410

June 4, 2010

Dear Stacey;

The purpose of this letter is to summarize and confirm the term and conditions of the agreement by Richard Katz Consulting Inc, ("Consultant") and X the City of San Bernardino Municipal Water Department ("SBMWD") ("Client").

SCOPE OF SERVICES

The Client retains Consultant to provide strategic advice as it relates to the Federal Governments effort on the Santa Ana Sucker Critical Habitat Designation. Consultant shall offer a critical political overlay to the efforts of the government relations teams representing the member agencies of the Santa Ana Sucker Task Force in Washington, DC. Efforts shall include but not be limited to review of current strategy, assistance in developing new and innovative strategy going forward, and coordination of efforts with federal, state and local entities.

PROFESSIONAL FEES

Richard Katz

In compensation for the services performed by Consultant on behalf of Client, as outlined above, Client agrees to pay Consultant a monthly retainer of \$5,000 per month for 90-days and \$3,500 per month on-going until the issue is resolved, beginning June 1, 2010.

REIMBURSEMENT OF EXPENSES INCURRED

Client will reimburse Consultant on a monthly basis for any out-of-pocket expenses reasonably incurred by Consultant on its behalf including, but not limited to, document reproduction charges, facsimile charges, long distant telephone calls, travel expenses and messenger fees. Consultant will send a statement of expenses incurred each month. No expenditure in excess of five Hundred Dollars (\$500.00) per month will be made without prior written consent from Client.

TERMINATION

Either party upon thirty (30) days written notice to the other party may terminate this agreement. In the event of such termination, Consultant shall bill Client for all professional services, independent contractor expenses and other costs incurred up to the date of termination.

NO REPRESENTATION THAT PERMITS OR SERVICES WILL BE APPROVED OR SUCCESSFUL

It is impossible to predict the approval or non-approval of any action, which requires discretionary government action. Consequently, while consultant will conscientiously perform all of its responsibilities outlined above, we cannot and do not make any representation to Client that any of the services discussed herein will be granted, acknowledged or approved by any governmental or public jurisdiction. Client acknowledges that none of its obligations under this letter agreement is dependent or conditioned upon approval of any service.

Consultant, its employees and associates, shall not be individually or collectively liable to client, or any party claiming through Client, for any damages resulting from the denial of any discretionary permits or from errors or omissions in connection with any services provided hereunder for any reason other than willful misconduct.

Consultant shall not be liable to Client, or any party claiming through Client, for any damages resulting from the denial of the application of any governmental approval or service.

ATTORNEY'S FEES

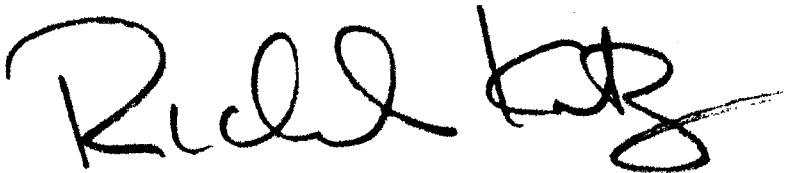
In the event that any litigation is commenced concerning any provision of this letter agreement, the prevailing party will be entitled to recover, in addition to any other relief granted by the court, a reasonable sum for its attorney's fees incurred in the litigation.

CONCLUSION

We believe that the above terms and conditions accurately summarize our agreement for the performance of services related to the project. If you concur, please indicate your approval and acceptance by dating, signing and returning this letter agreement. We have enclosed a signed copy of this letter for your records.

We are very pleased that we are able to be of service to you and look forward to working with you.

All the Best,

A handwritten signature in black ink, appearing to read "Richard Katz", with a stylized flourish at the end.

Richard Katz

AGREED AND ACCEPTED;

City of San Bernardino Municipal Water Department

By:

Stacey Aldstadt, Esq.

Date

email address specified below, or at such other address, facsimile number or email address as such Party may hereafter designate by notice in accordance with this paragraph.

21. This Agreement may be executed in counterparts, each of which so executed shall be deemed an original irrespective of the date of the execution, and said counterparts shall together constitute one and the same Agreement. Further, facsimile or .PDF copies of signatures shall be as effective as original signatures for evidencing execution of this Agreement.


By:

Print Name:

Date:

Title:

Representing:



George E. Wilson


8/11/10

President

East Valley Water District

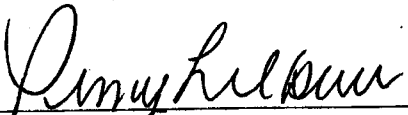
email address specified below, or at such other address, facsimile number or email address as such Party may hereafter designate by notice in accordance with this paragraph.

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By:	
Print Name:	Joseph Hughes
Date:	August 13, 2010
Title:	City Manager
Representing:	City of Highland

SANTA ANA SUCKER TASK FORCE CONFLICT OF INTEREST CONSENT

I, Penny Lilburn, represent that I am authorized on behalf of the City of Highland to execute this Consent. The City of Highland, after having had the opportunity to consult with independent counsel of its choice, acknowledges receipt of the foregoing written disclosure and agrees to the foregoing arrangements. If the City of Highland is a client of either Best Best & Krieger LLP or Downey Brand LLP, the City of Highland hereby consents to the partial payment of counsel's fees by members of the Task Force. If the City of Highland is not a client of either Best Best & Krieger LLP or Downey Brand LLP, the City of Highland hereby acknowledges that the Task Force does not create any attorney-client relationship with either law firm and that Best Best & Krieger LLP will continue only to represent the City of Riverside and Western in this matter while Downey Brand LLP will continue only to represent Valley District in this matter.



Penny Lilburn, Mayor
City of Highland

Date: July 13, 2010



SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT

Established 1932

1630 West Redlands Boulevard, Suite A
Redlands, CA 92373-8032
(909) 793-2503
Fax: (909) 793-0188

P.O. Box 1839
Redlands, CA 92373-0581
Email: info@sbvwcd.dst.ca.us
www.sbvwd.dst.ca.us

Transmittal Letter

Date: August 16, 2010

☐ Pick-Up ☐ Delivery ☒ Mail ☐ Other

Reference: Santa Ana Sucker Joint Prosecution/Cost Sharing Agreement

To: San Bernardino Valley Municipal Water District

Attn: _____

Address: P.O. Box 5906

City: San Bernardino State: CA Zip: 92412

From: Claud Seal

Comments/Attachments: Enclosed: Agreement

BOARD
OF
DIRECTORS

Richard W. Corneille
Clare Henry Day

Arnold L. Wright
John Longville

David E. Raley
Melody McDonald
Manuel Aranda, Jr.

GENERAL
MANAGER

R. Robert Neufeld

DRAFT
[6-8-10 Clean Version]

**JOINT PROSECUTION AND COST-SHARING AGREEMENT RE PROPOSED RULE
OF THE UNITED STATES FISH & WILDLIFE SERVICE TO DESIGNATE CRITICAL
HABITAT FOR THE SANTA ANA SUCKER**

This Joint Prosecution and Cost-Sharing Agreement (“Agreement”) is entered into by and among the undersigned (the “Parties”), as listed on Exhibit A hereto.

RECITALS

A. The Parties are cooperating on efforts to analyze, review and comment on the United States Fish & Wildlife Service’s Proposed Rule to Designate Critical Habitat for the Santa Ana Sucker (“Proposed Rule”). The Proposed Rule may have negative consequences for the Parties, depending on the specifics of the finally adopted rule and the course of administrative proceedings on establishing the rule. The Parties have agreed to cooperate reasonably in efforts to analyze and comment upon the Proposed Rule. These cooperative efforts include the utilization of various experts and consultants to assist with the review of and preparation of comments on the Proposed Rule, and the provision of consulting expert opinions relative to the necessity, wisdom, and efficacy of potential challenges to it. These cooperative efforts are more particularly described in the scopes of work attached hereto as Exhibits B, C, and D, and incorporated herein by this reference.

B. Through this Agreement, the Parties desire to govern their payment of costs and fees arising from their cooperative efforts related to the retention and use of consulting experts on the Proposed Rule, and to confirm their common interests in maintaining a joint prosecution with respect to the Proposed Rule, to allow them to continue to share information related to the Proposed Rule, while continuing to preserve, to the fullest extent possible, the protections of the

CONFIDENTIAL
JOINT PROSECUTION MATERIAL

attorney-client privilege, work product privilege, common-interest doctrine, deliberative process privilege, executive privilege, privileges regarding mediation or settlement communications, or any other privilege or protection existing under state or federal law.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, and the mutual covenants and conditions contained herein, the Parties agree as follows:

1. The Parties shall each initially contribute the sum of \$32,000, (except Big Bear Municipal Water District which shall contribute \$20,000) which represents each Party's per capita contribution to pay for the fees and costs collectively incurred in their said cooperative efforts on the Proposed Rule. San Bernardino Valley Municipal Water District shall have the responsibility for collecting each Party's contribution of funds, processing invoices submitted by the experts and consultants pursuant to their scopes of work attached hereto, coordinating communications among the Parties to the retained consulting experts, and for maintaining an accurate accounting of this administration of funds. In the event that additional tasks and associated costs are identified in order to meet the joint goals, the Parties will work cooperatively to fund such costs. However, nothing in this Agreement shall be construed to require a Party to pay more than its above-referenced initial per capita contribution towards the total cost for the current scopes of work, which is estimated to be \$407,000.
2. For purposes of this Agreement, "Joint Prosecution Materials" includes, but is not limited to, all communications (including communications related to the Proposed Rule made prior to the execution of this Agreement), factual materials, mental impressions, legal analyses,

theories or strategies, memoranda, reports, notes, emails or any other communications or documents that are protected from disclosure by the attorney-client privilege, work product privilege, deliberative process privilege, executive privilege, common-interest doctrine, joint prosecution/defense doctrine, privileges regarding mediation or settlement communications, or any other privilege or protection existing under state or federal law, and that are exchanged among the Parties and/or their respective counsel in connection with the Proposed Rule. Joint Prosecution Materials do not include final versions of any correspondence, studies, or reports prepared by or on behalf of one or more Parties intended for review by the United States Fish & Wildlife Service or a non-Party.

3. The Parties will maintain as confidential all Joint Prosecution Materials (as defined above). Disclosure of Joint Prosecution Materials shall be limited to the Parties and their employees and contractors as well as any counsel, consultants, and lobbyists retained by the parties, or on behalf of the parties, for the purpose of maintaining a joint prosecution with respect to the Proposed Rule, subject to the further provisions of this Agreement.

4. Any Joint Prosecution Materials shared or transmitted by or between Parties should be clearly designated "CONFIDENTIAL: JOINT PROSECUTION MATERIALS." However, the failure to include such designation shall not preclude such materials from being afforded the protections of this Agreement and shall not be construed to constitute a waiver of any privilege or other protection.

5. Each Party shall take all appropriate measures to ensure that any person who is granted access to Joint Prosecution Materials is familiar with the terms of this Agreement and complies with those terms.

6. Each Party is represented by its own respective legal counsel in connection with the Proposed Rule, and the cooperative efforts referenced herein. Said legal counsel will not have an attorney-client relationship with any other Party to this Agreement as a result of the legal counsel's participation in discussions and actions related to the Parties' cooperative efforts on the Proposed Rule. Similarly, said legal counsel will not have a duty of loyalty or confidentiality to any Party to this Agreement other than the legal counsel's specific client(s), and consequently, no Party may seek to disqualify the legal counsel for another Party as a result of the legal counsel's participation in discussions and actions related to the Parties' cooperative efforts on the Proposed Rule.

7. Except where required by the order of a court of competent jurisdiction, or by the prior written consent of the remaining Parties, a Party will not reveal to non-Parties any Joint Prosecution Materials it has received from another Party.

8. Each Party shall notify the Party that generated any Joint Prosecution Materials of any request to disclose the Joint Prosecution Materials to any non-Party, or of any proceeding before any court, administrative agency, or tribunal to compel the disclosure of such Joint Prosecution Materials, as soon as practicable after receipt of such request or the initiation of such proceeding. If a Party becomes subject to any judicial or administrative order purporting to compel release of Joint Prosecution Materials, that Party shall: (a) promptly notify the Party that generated the materials and all remaining Parties, and (b) make all reasonable efforts to give that Party an opportunity to protect the Joint Prosecution Materials.

9. No party is required to treat as confidential within the meaning of this Agreement any material where such material is, or hereafter becomes (without violation of this Agreement),

public record, public knowledge, or is obtained from sources other than exchanges under this Agreement.

10. The sharing of Joint Prosecution Materials among the Parties is not intended to and will not constitute a waiver of any privilege or other protection of confidentiality, including but not limited to the attorney-client privilege, work product privilege, common-interest doctrine, deliberative process privilege, executive privilege, privileges relating to mediation or settlement communications, or any other privilege or protection existing under state or federal law.

11. Execution of this Agreement constitutes the mutual agreement of the Parties that any sharing of Joint Prosecution Materials among themselves is reasonably necessary for the accomplishment of the Parties' common purposes as described above. Any sharing of Joint Prosecution Materials among the Parties is in reliance on this Agreement and the protections that arise from the Parties' common interests in reviewing and commenting on the Proposed rule.

12. Nothing in this Agreement shall obligate any Party to exchange documents or information with any other Party, whether or not such documents or information would be covered by this Agreement as Joint Prosecution Materials.

13. By this Agreement the Parties each acknowledge and agree that cooperation in the matters referenced above may involve the communication and sharing of confidential information and further agree that the interests of the Parties are not adverse as to matters within the scope of this Agreement. Each of the Parties has had a full opportunity to consult with separate counsel, is fully informed, and has concluded that the risk of any potential conflict of interest is outweighed by the benefits and efficiencies afforded by the opportunities for cooperation and sharing of Joint Prosecution Materials as provided for herein. The Parties consent to the sharing of Joint Prosecution Materials among their counsel, waive any potential

conflict of interest created thereby, and mutually agree that this sharing of Joint Prosecution Materials and cooperation shall not constitute grounds for seeking disqualification of counsel in any matter or action.

14. If there is a breach of this Agreement by a Party, the Parties agree that the non-breaching Party will have no adequate remedy at law in money or damages and shall be entitled to seek and obtain, in addition to all other remedies that may be available, a temporary restraining order, injunctive relief, or other equitable relief against the breach or its continuance.

15. Nothing in this Agreement shall be construed to waive any rights, claims, or privileges that any Party shall have against another Party or any other person or entity.

16. This Agreement shall be binding upon the successors and assigns of the Parties.

17. This Agreement is made under, and shall be construed in accordance with, the laws of the State of California.

18. The individuals signing this Agreement in a representative capacity warrant that they have the authority to do so on behalf of the entity or entities they represent, and further agree that as representatives of the entity or entities that they respectively represent, they themselves are bound by all terms of this Agreement.

19. Any Party may withdraw from this Agreement by providing written notice to the other Parties. If a Party withdraws from this Agreement, the provisions of this Agreement shall continue to apply to the Joint Prosecution Materials that were shared during the time period when that Party was a party to this Agreement.

20. All notices and other communications required to be given to a Party under the terms of this Agreement (a) shall be in writing, (b) shall be personally delivered, or transmitted by facsimile or email, and (c) shall be directed to such Party at the address, facsimile number or

email address specified below, or at such other address, facsimile number or email address as such Party may hereafter designate by notice in accordance with this paragraph.

21. This Agreement may be executed in counterparts, each of which so executed shall be deemed an original irrespective of the date of the execution, and said counterparts shall together constitute one and the same Agreement. Further, facsimile or .PDF copies of signatures shall be as effective as original signatures for evidencing execution of this Agreement.

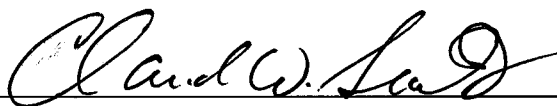
By: 
Print Name: Claude W. Seal, Jr.
Date: August 13, 2010
Title: Assistant General Manager
Representing: San Bernardino Valley Water Conservation District

Exhibit A

List of Parties

As of June 8, 2010

1. San Bernardino Valley Municipal Water District
2. Western Municipal Water District of Riverside County
3. City of Riverside Public Utilities
4. City of San Bernardino Municipal Water Department
5. San Bernardino Valley Water Conservation District
6. Southern California Edison
7. East Valley Water District
8. City of Highland
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10. Yucaipa Valley Water District
11. San Bernardino County Flood Control District
12. Bear Valley Mutual Water Company/Crafton Water Company
13. Big Bear Municipal Water District (\$20,000 share)

Other Possible Partner Agencies

1. West Valley Water District
2. Raymond Basin Management Board/San Gabriel Valley Water Association
3. City of Colton
4. City of Rialto
5. Riverside County Flood Control District
6. Orange County Flood Control District

Exhibit D



Stacey Aldstadt, Esq
General Manager
City of San Bernardino Municipal
Water Department
444-D, Rialto
San Bernardino, CA 92410

June 4, 2010

Dear Stacey;

The purpose of this letter is to summarize and confirm the term and conditions of the agreement by Richard Katz Consulting Inc, ("Consultant") and X the City of San Bernardino Municipal Water Department ("SBMWD") ("Client").

SCOPE OF SERVICES

The Client retains Consultant to provide strategic advice as it relates to the Federal Governments effort on the Santa Ana Sucker Critical Habitat Designation. Consultant shall offer a critical political overlay to the efforts of the government relations teams representing the member agencies of the Santa Ana Sucker Task Force in Washington, DC. Efforts shall include but not be limited to review of current strategy, assistance in developing new and innovative strategy going forward, and coordination of efforts with federal, state and local entities.

Richard Katz

PROFESSIONAL FEES

In compensation for the services performed by Consultant on behalf of Client, as outlined above, Client agrees to pay Consultant a monthly retainer of \$5,000 per month for 90-days and \$3,500 per month on-going until the issue is resolved, beginning June 1, 2010.

REIMBURSEMENT OF EXPENSES INCURRED

Client will reimburse Consultant on a monthly basis for any out-of-pocket expenses reasonably incurred by Consultant on its behalf including, but not limited to, document reproduction charges, facsimile charges, long distant telephone calls, travel expenses and messenger fees. Consultant will send a statement of expenses incurred each month. No expenditure in excess of five Hundred Dollars (\$500.00) per month will be made without prior written consent from Client.

TERMINATION

Either party upon thirty (30) days written notice to the other party may terminate this agreement. In the event of such termination, Consultant shall bill Client for all professional services, independent contractor expenses and other costs incurred up to the date of termination.

NO REPRESENTATION THAT PERMITS OR SERVICES WILL BE APPROVED OR SUCCESSFUL

It is impossible to predict the approval or non-approval of any action, which requires discretionary government action. Consequently, while consultant will conscientiously perform all of its responsibilities outlined above, we cannot and do not make any representation to Client that any of the services discussed herein will be granted, acknowledged or approved by any governmental or public jurisdiction. Client acknowledges that none of its obligations under this letter agreement is dependent or conditioned upon approval of any service.

Consultant, its employees and associates, shall not be individually or collectively liable to client, or any party claiming through Client, for any damages resulting from the denial of any discretionary permits or from errors or omissions in

connection with any services provided hereunder for any reason other than willful misconduct.

Consultant shall not be liable to Client, or any party claiming through Client, for any damages resulting from the denial of the application of any governmental approval or service.

ATTORNEY'S FEES

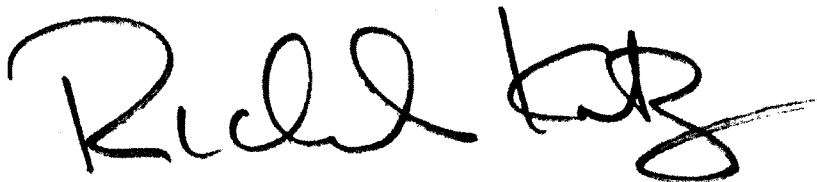
In the event that any litigation is commenced concerning any provision of this letter agreement, the prevailing party will be entitled to recover, in addition to any other relief granted by the court, a reasonable sum for its attorney's fees incurred in the litigation.

CONCLUSION

We believe that the above terms and conditions accurately summarize our agreement for the performance of services related to the project. If you concur, please indicate your approval and acceptance by dating, signing and returning this letter agreement. We have enclosed a signed copy of this letter for your records.

We are very pleased that we are able to be of service to you and look forward to working with you.

All the Best,

A handwritten signature in black ink, appearing to read "Richard Katz", with a stylized, cursive script.

Richard Katz

AGREED AND ACCEPTED;
City of San Bernardino Municipal Water Department

By:

Stacey Aldstadt, Esq.

Date

Exhibit B

SCOPE OF WORK AND BUDGET

22 April 2010

ACTIVITIES ASSOCIATED WITH RESPONDING TO THE PROPOSED RESESIGNATION OF CRITICAL HABITAT FOR THE SANTA ANA SUCKER

Task 1. General Consulting Assistance

PBS&J (Leidy and colleagues) will assist the Santa Ana Sucker (SAS) Task Force, as requested, with assignments not included in other tasks. Budgeting for this task assumes that this task covers two time periods: 1 April through 30 Jun 2010 and 1 July through 31 December 2010. The period from 1 April through 30 July 2010, a period of 13 weeks, assumes an average labor commitment of 4 hours per week (\$11,700 labor). Other direct costs are estimated at \$1,000 for this same period (air fare, rental car, etc.). Total budget through 30 June 2010: \$12,700. Post 30 June through 31 December 2010 labor budget (26 weeks) with the same assumptions: \$23,400. Other direct costs: \$2,000. Total budget from July through December: \$25,400. Grand total budget (Labor and other direct costs) for this task from 1 April through 31 December 2010: \$38,100.

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This task has been consolidated into this scope of work and budget from PBS&J Project No. 100012843 which was initiated on 1 March 2010. Leidy will attend up to 10 meetings of the SAWPA Santa Ana Sucker Conservation Team (including the Restoration Working Group) and the Southern California Native Aquatic Fauna Working Group between 1 March 2020 and 31 December 2010 for the purpose of providing input to the interested parties on the introduction of the SAS in the Santa Ana River watershed, and to gather information on the proposed activities of these groups. Each attendance is expected to be a one-day event. Leidy will summarize in writing the content of each meeting related to SAS issues along with any recommendations for actions on the part of the SAS Task Force. Each meeting is expected to require up to 8 hours in travel and meeting time, plus travel expenses (airfare, rental car and gas, one meal, and personal vehicle mileage. Labor budget (meetings plus write-ups) at 9 hours per meeting plus 0.5 hours administrative time per meeting: \$20,900 (Before 30 June 2010: \$5,225; Post 30 June 2010: \$15,675). Other direct costs: \$4,300 (Before 30 June: \$1,075; Post 30 June 2010: \$3,225). Total

labor and other direct before 30 June: \$6,300. Total labor and other direct costs post 30 June 2010: \$18,900. Total labor and other direct costs from 1 March through 31 December 2010: \$25,200.

Task 3. SAS Enhancement Plan and Project Implementation

There are two phases to this task.

Phase 1

Leidy, working closely with Sam Fuller, is charged with developing a plan to enhance the survival of the SAS population within its existing range in the Santa Ana River basin. The focus geographically will be from the Rialto Drain downstream to the Imperial Highway. This is the reach of the Santa Ana River that currently supports or recently supported the SAS and the reach that will have the greatest probability of implementing a successful project. The plan may include upland sites within this general river reach. The plan will contain appropriate adaptive management elements focused in the short-term on stabilizing the SAS population in the Santa Ana River. The goal is to have one on-the-ground project in place by the end of September 2010. Specific constraints and milestones of the plan are:

- The project must be completed by 30 September 2010;
- The project design must avoid any permitting requirements (other than permission from the USFWS to capture, move, rear, and reintroduce SAS) to meet the schedule (i.e., no 404, 401, 1602, or other permits);
- The project should focus on improving spawning and/or juvenile rearing habitat for the SAS, if feasible;
- Leidy et al. will meet with the USFWS (Ren Lohofener, Pacific Southwest Regional Director) to present the plan and request approval to move SAS to the project site, if necessary;
- Leidy et al. will request concurrence from the California Department of Fish and Game (Curt Taucher, Regional Manager), and will also request that CDFG release up to \$200,000 in funding already provided by San Bernardino Valley Municipal Water District and Western Municipal Water District to CDFG under the terms of the water rights settlement with CDFG; and
- Post-project monitoring and O&M will be required.

To assist with Phase I, Leidy will engage the expert services of Dr. Camm Swift (ENTRIX, Inc.), Dr. Jonathan Baskin (San Marino Environmental Associates), and Kerwin Russell (Riverside-

Corona Resource Conservation District), as necessary, to design the project. Phase 1 has substantial unknowns at this time relative to the difficulty of implementing a project. If the process goes smoothly (for example, the project can make use of existing facilities at the RCRCDD), then the cost will be less than the cost estimated herein. Leidy has budgeted a moderate level-of-effort, but by no means a highly complicated or expensive scenario. Planning for Task 3, Phase 1, is to be completed prior to 30 June 2010. The budget is based on all activities undertaken prior to 1 July 2010 and does not include Phase 1 construction-related planning or construction implementation. The budget breakdown is presented in the attached table. The total budget prior to 1 July 2010: \$39,120. The total budget for the period from July through December 2010: \$65,480. Total Task 3, Phase 1 budget for 2010: \$104,600.

Phase 2

Phase 2 is a longer term continuation of Phase 1 that will occur over a two to three-year schedule at a funding level of approximately \$100,000 to \$150,000 per year. Phase 2 will develop additional projects that enhance and stabilize the SAS population within its existing range in the Santa Ana River basin. Project undertaken during this phase may require permitting and may focus on any activity that enhances SAS survival or improves habitat. Phase 2 is not budgeted at this time and will not be budgeted until Phase 1 is completed and we know better the level-of-effort required to continue with additional projects.

Task 4. Alternative Streams Investigation

This task will focus on evaluating the feasibility of establishing SAS populations elsewhere in the Santa Ana River basin outside of the current range of the species. New refugia for the SAS will be evaluated taking into consideration the following:

- Location relative to the parent population and existing infrastructure;
- Selection criteria for evaluating the suitability of specific locations to support viable populations of the SAS over time, including a risk analysis of potential threats; and
- Financial and institutional requirements to create, maintain, and monitor SAS populations at selected locations.

Leidy et al. will evaluate a select number of tributaries to the Santa Ana River that may contain the PCEs necessary to support an introduced SAS population in the future. This investigation will be at the reconnaissance level and the product will be a report presenting the results. Task 4 will be initiated prior to 30 June 2010, and will be completed prior to the end of calendar year 2010. Leidy will use experienced, mid-level fish biologists from PBS&J to assist with this task to contain costs. Approximately 25 streams will be evaluated. The evaluation will also include

site visits to confirm environmental conditions. A records search of resource agency files may also be required.

The labor costs incurred prior to 1 July 2010 will be for information gathering and site visits. This cost is estimated at \$11,200. Other direct costs prior to 1 July: \$3,500. Total budget prior to 1 July: \$14,700. Completion of the report following 30 June 2010 is estimated at \$11,200. Other direct costs after 30 June: \$500. Total budget after 30 June: \$11,700. Total budget for task: \$26,400.

Task 5. Additional Responses to the Economic Study

Leidy will provide additional comments, if necessary, on the draft economic study issued by the USFWS. This effort is estimated at 24 hours labor (\$5,400) plus other direct costs (\$400), for a total budget of \$5,800.

Budget Summary for the Proposed Scope of Work

Task	1 March-30 June (\$)	1 July-31 December (\$)	Total (\$)
1	12,700	25,400	38,100
2	6,300	18,900	25,200
3	39,120	65,480	104,600
4	14,700	11,700	26,400
5	5,800	0	5,800
Total	78,620	121,480	200,100

**JOINT PROSECUTION AND COST-SHARING AGREEMENT RE PROPOSED RULE
OF THE UNITED STATES FISH & WILDLIFE SERVICE TO DESIGNATE CRITICAL
HABITAT FOR THE SANTA ANA SUCKER**

This Joint Prosecution and Cost-Sharing Agreement ("Agreement") is entered into by and among the undersigned (the "Parties"), as listed on Exhibit A hereto.

RECITALS

A. The Parties are cooperating on efforts to analyze, review and comment on the United States Fish & Wildlife Service's Proposed Rule to Designate Critical Habitat for the Santa Ana Sucker ("Proposed Rule"). The Proposed Rule may have negative consequences for the Parties, depending on the specifics of the finally adopted rule and the course of administrative proceedings on establishing the rule. The Parties have agreed to cooperate reasonably in efforts to analyze and comment upon the Proposed Rule. These cooperative efforts include the utilization of various experts and consultants to assist with the review of and preparation of comments on the Proposed Rule, and the provision of consulting expert opinions relative to the necessity, wisdom, and efficacy of potential challenges to it. These cooperative efforts are more particularly described in the scopes of work attached hereto as Exhibits B, C, and D, and incorporated herein by this reference.

B. Through this Agreement, the Parties desire to govern their payment of costs and fees arising from their cooperative efforts related to the retention and use of consulting experts on the Proposed Rule, and to confirm their common interests in maintaining a joint prosecution with respect to the Proposed Rule, to allow them to continue to share information related to the Proposed Rule, while continuing to preserve, to the fullest extent possible, the protections of the attorney-client privilege, work product privilege, common-interest doctrine, deliberative process

**CONFIDENTIAL
JOINT PROSECUTION MATERIAL**

privilege, executive privilege, privileges regarding mediation or settlement communications, or any other privilege or protection existing under state or federal law.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, and the mutual covenants and conditions contained herein, the Parties agree as follows:

1. The Parties shall each initially contribute the sum of \$32,000, (except Big Bear Municipal Water District which shall contribute \$20,000) which represents each Party's per capita contribution to pay for the fees and costs collectively incurred in their said cooperative efforts on the Proposed Rule. San Bernardino Valley Municipal Water District shall have the responsibility for collecting each Party's contribution of funds, processing invoices submitted by the experts and consultants pursuant to their scopes of work attached hereto, coordinating communications among the Parties to the retained consulting experts, and for maintaining an accurate accounting of this administration of funds. In the event that additional tasks and associated costs are identified in order to meet the joint goals, the Parties will work cooperatively to fund such costs. However, nothing in this Agreement shall be construed to require a Party to pay more than its above-referenced initial per capita contribution towards the total cost for the current scopes of work, which is estimated to be \$407,000.
2. For purposes of this Agreement, "Joint Prosecution Materials" includes, but is not limited to, all communications (including communications related to the Proposed Rule made prior to the execution of this Agreement), factual materials, mental impressions, legal analyses, theories or strategies, memoranda, reports, notes, emails or any other communications or

documents that are protected from disclosure by the attorney-client privilege, work product privilege, deliberative process privilege, executive privilege, common-interest doctrine, joint prosecution/defense doctrine, privileges regarding mediation or settlement communications, or any other privilege or protection existing under state or federal law, and that are exchanged among the Parties and/or their respective counsel in connection with the Proposed Rule. Joint Prosecution Materials do not include final versions of any correspondence, studies, or reports prepared by or on behalf of one or more Parties intended for review by the United States Fish & Wildlife Service or a non-Party.

3. The Parties will maintain as confidential all Joint Prosecution Materials (as defined above). Disclosure of Joint Prosecution Materials shall be limited to the Parties and their employees and contractors as well as any counsel, consultants, and lobbyists retained by the parties, or on behalf of the parties, for the purpose of maintaining a joint prosecution with respect to the Proposed Rule, subject to the further provisions of this Agreement.

4. Any Joint Prosecution Materials shared or transmitted by or between Parties should be clearly designated "CONFIDENTIAL: JOINT PROSECUTION MATERIALS." However, the failure to include such designation shall not preclude such materials from being afforded the protections of this Agreement and shall not be construed to constitute a waiver of any privilege or other protection.

5. Each Party shall take all appropriate measures to ensure that any person who is granted access to Joint Prosecution Materials is familiar with the terms of this Agreement and complies with those terms.

6. Each Party is represented by its own respective legal counsel in connection with the Proposed Rule, and the cooperative efforts referenced herein. Said legal counsel will not

have an attorney-client relationship with any other Party to this Agreement as a result of the legal counsel's participation in discussions and actions related to the Parties' cooperative efforts on the Proposed Rule. Similarly, said legal counsel will not have a duty of loyalty or confidentiality to any Party to this Agreement other than the legal counsel's specific client(s), and consequently, no Party may seek to disqualify the legal counsel for another Party as a result of the legal counsel's participation in discussions and actions related to the Parties' cooperative efforts on the Proposed Rule.

7. Except where required by the order of a court of competent jurisdiction, or by the prior written consent of the remaining Parties, a Party will not reveal to non-Parties any Joint Prosecution Materials it has received from another Party.

8. Each Party shall notify the Party that generated any Joint Prosecution Materials of any request to disclose the Joint Prosecution Materials to any non-Party, or of any proceeding before any court, administrative agency, or tribunal to compel the disclosure of such Joint Prosecution Materials, as soon as practicable after receipt of such request or the initiation of such proceeding. If a Party becomes subject to any judicial or administrative order purporting to compel release of Joint Prosecution Materials, that Party shall: (a) promptly notify the Party that generated the materials and all remaining Parties, and (b) make all reasonable efforts to give that Party an opportunity to protect the Joint Prosecution Materials.

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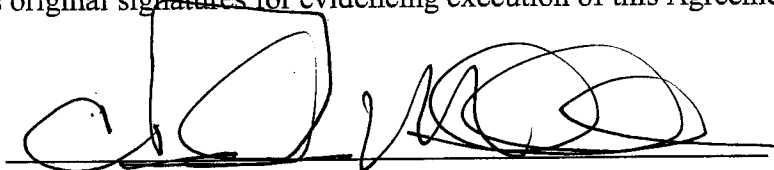
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By:

A handwritten signature in black ink, appearing to read 'C. Patrick Milligan', written over a horizontal line.

Print Name:

C. Patrick Milligan

Date:

8/18/10

Title:

Board President

Representing:

San Bernardino Valley Municipal Water District

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Exhibit B

SCOPE OF WORK AND BUDGET

22 April 2010

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Corona Resource Conservation District), as necessary, to design the project. Phase 1 has substantial unknowns at this time relative to the difficulty of implementing a project. If the process goes smoothly (for example, the project can make use of existing facilities at the RCRCDD), then the cost will be less than the cost estimated herein. Leidy has budgeted a moderate level-of-effort, but by no means a highly complicated or expensive scenario. Planning for Task 3, Phase 1, is to be completed prior to 30 June 2010. The budget is based on all activities undertaken prior to 1 July 2010 and does not include Phase 1 construction-related planning or construction implementation. The budget breakdown is presented in the attached table. The total budget prior to 1 July 2010: \$39,120. The total budget for the period from July through December 2010: \$65,480. Total Task 3, Phase 1 budget for 2010: \$104,600.

Phase 2

Phase 2 is a longer term continuation of Phase 1 that will occur over a two to three-year schedule at a funding level of approximately \$100,000 to \$150,000 per year. Phase 2 will develop additional projects that enhance and stabilize the SAS population within its existing range in the Santa Ana River basin. Project undertaken during this phase may require permitting and may focus on any activity that enhances SAS survival or improves habitat. Phase 2 is not budgeted at this time and will not be budgeted until Phase 1 is completed and we know better the level-of-effort required to continue with additional projects.

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This task will focus on evaluating the feasibility of establishing SAS populations elsewhere in the Santa Ana River basin outside of the current range of the species. New refugia for the SAS will be evaluated taking into consideration the following:

- Location relative to the parent population and existing infrastructure;
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site visits to confirm environmental conditions. A records search of resource agency files may also be required.

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Leidy will provide additional comments, if necessary, on the draft economic study issued by the USFWS. This effort is estimated at 24 hours labor (\$5,400) plus other direct costs (\$400), for a total budget of \$5,800.

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Total	78,620	121,480	200,100

Exhibit C

Legal Budget/Scope Santa Ana Sucker Critical Habitat Designation

Best, Best & Krieger LLP on behalf of the Western Municipal Water District and City of Riverside and Downey Brand, LLP on behalf of the San Bernardino Valley Municipal Water District will undertake the tasks described in this Exhibit and will do so in cooperation with other Task Force members and their attorneys

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This task involves review of the final critical habitat designation rule once it is issued by the Fish & Wildlife Service and advising the Santa Ana sucker task force about potential avenues in light of that designation.

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	Hours	Fees/Costs	Hours	Fees/Costs		
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Total	185	\$55,500	345	\$103,500	\$11,864	\$170,864

Exhibit D



Stacey Aldstadt, Esq
General Manager
City of San Bernardino Municipal
Water Department
444-D, Rialto
San Bernardino, CA 92410

June 4, 2010

Dear Stacey;

The purpose of this letter is to summarize and confirm the term and conditions of the agreement by Richard Katz Consulting Inc, ("Consultant") and X the City of San Bernardino Municipal Water Department ("SBMWD") ("Client").

SCOPE OF SERVICES

The Client retains Consultant to provide strategic advice as it relates to the Federal Governments effort on the Santa Ana Sucker Critical Habitat Designation. Consultant shall offer a critical political overlay to the efforts of the government relations teams representing the member agencies of the Santa Ana Sucker Task Force in Washington, DC. Efforts shall include but not be limited to review of current strategy, assistance in developing new and innovative strategy going forward, and coordination of efforts with federal, state and local entities.

Richard Katz

PROFESSIONAL FEES

In compensation for the services performed by Consultant on behalf of Client, as outlined above, Client agrees to pay Consultant a monthly retainer of \$5,000 per month for 90-days and \$3,500 per month on-going until the issue is resolved, beginning June 1, 2010.

REIMBURSEMENT OF EXPENSES INCURRED

Client will reimburse Consultant on a monthly basis for any out-of-pocket expenses reasonably incurred by Consultant on its behalf including, but not limited to, document reproduction charges, facsimile charges, long distant telephone calls, travel expenses and messenger fees. Consultant will send a statement of expenses incurred each month. No expenditure in excess of five Hundred Dollars (\$500.00) per month will be made without prior written consent from Client.

TERMINATION

Either party upon thirty (30) days written notice to the other party may terminate this agreement. In the event of such termination, Consultant shall bill Client for all professional services, independent contractor expenses and other costs incurred up to the date of termination.

NO REPRESENTATION THAT PERMITS OR SERVICES WILL BE APPROVED OR SUCCESSFUL

It is impossible to predict the approval or non-approval of any action, which requires discretionary government action. Consequently, while consultant will conscientiously perform all of its responsibilities outlined above, we cannot and do not make any representation to Client that any of the services discussed herein will be granted, acknowledged or approved by any governmental or public jurisdiction. Client acknowledges that none of its obligations under this letter agreement is dependent or conditioned upon approval of any service.

Consultant, its employees and associates, shall not be individually or collectively liable to client, or any party claiming through Client, for any damages resulting from the denial of any discretionary permits or from errors or omissions in

connection with any services provided hereunder for any reason other than willful misconduct.

Consultant shall not be liable to Client, or any party claiming through Client, for any damages resulting from the denial of the application of any governmental approval or service.

ATTORNEY'S FEES

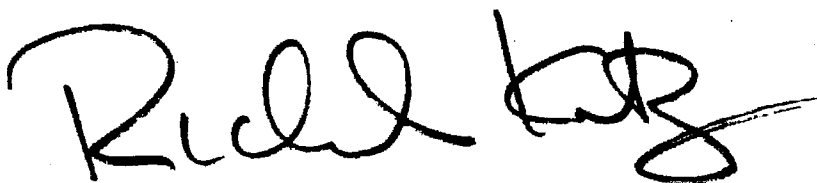
In the event that any litigation is commenced concerning any provision of this letter agreement, the prevailing party will be entitled to recover, in addition to any other relief granted by the court, a reasonable sum for its attorney's fees incurred in the litigation.

CONCLUSION

We believe that the above terms and conditions accurately summarize our agreement for the performance of services related to the project. If you concur, please indicate your approval and acceptance by dating, signing and returning this letter agreement. We have enclosed a signed copy of this letter for your records.

We are very pleased that we are able to be of service to you and look forward to working with you.

All the Best,

A handwritten signature in black ink, appearing to read "Richard Katz", with a stylized, cursive script.

Richard Katz

AGREED AND ACCEPTED;
City of San Bernardino Municipal Water Department

By:

Stacey Aldstadt, Esq.

Date

**JOINT PROSECUTION AND COST-SHARING AGREEMENT RE PROPOSED RULE
OF THE UNITED STATES FISH & WILDLIFE SERVICE TO DESIGNATE CRITICAL
HABITAT FOR THE SANTA ANA SUCKER**

This Joint Prosecution and Cost-Sharing Agreement ("Agreement") is entered into by and among the undersigned (the "Parties"), as listed on Exhibit A hereto.

RECITALS

A. The Parties are cooperating on efforts to analyze, review and comment on the United States Fish & Wildlife Service's Proposed Rule to Designate Critical Habitat for the Santa Ana Sucker ("Proposed Rule"). The Proposed Rule may have negative consequences for the Parties, depending on the specifics of the finally adopted rule and the course of administrative proceedings on establishing the rule. The Parties have agreed to cooperate reasonably in efforts to analyze and comment upon the Proposed Rule. These cooperative efforts include the utilization of various experts and consultants to assist with the review of and preparation of comments on the Proposed Rule, and the provision of consulting expert opinions relative to the necessity, wisdom, and efficacy of potential challenges to it. These cooperative efforts are more particularly described in the scopes of work attached hereto as Exhibits B, C, and D, and incorporated herein by this reference.

B. Through this Agreement, the Parties desire to govern their payment of costs and fees arising from their cooperative efforts related to the retention and use of consulting experts on the Proposed Rule, and to confirm their common interests in maintaining a joint prosecution with respect to the Proposed Rule, to allow them to continue to share information related to the Proposed Rule, while continuing to preserve, to the fullest extent possible, the protections of the attorney-client privilege, work product privilege, common-interest doctrine, deliberative process

**CONFIDENTIAL
JOINT PROSECUTION MATERIAL**

privilege, executive privilege, privileges regarding mediation or settlement communications, or any other privilege or protection existing under state or federal law.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, and the mutual covenants and conditions contained herein, the Parties agree as follows:

1. The Parties shall each initially contribute the sum of \$32,000, (except Big Bear Municipal Water District which shall contribute \$20,000) which represents each Party's per capita contribution to pay for the fees and costs collectively incurred in their said cooperative efforts on the Proposed Rule. San Bernardino Valley Municipal Water District shall have the responsibility for collecting each Party's contribution of funds, processing invoices submitted by the experts and consultants pursuant to their scopes of work attached hereto, coordinating communications among the Parties to the retained consulting experts, and for maintaining an accurate accounting of this administration of funds. In the event that additional tasks and associated costs are identified in order to meet the joint goals, the Parties will work cooperatively to fund such costs. However, nothing in this Agreement shall be construed to require a Party to pay more than its above-referenced initial per capita contribution towards the total cost for the current scopes of work, which is estimated to be \$407,000.
2. For purposes of this Agreement, "Joint Prosecution Materials" includes, but is not limited to, all communications (including communications related to the Proposed Rule made prior to the execution of this Agreement), factual materials, mental impressions, legal analyses, theories or strategies, memoranda, reports, notes, emails or any other communications or

documents that are protected from disclosure by the attorney-client privilege, work product privilege, deliberative process privilege, executive privilege, common-interest doctrine, joint prosecution/defense doctrine, privileges regarding mediation or settlement communications, or any other privilege or protection existing under state or federal law, and that are exchanged among the Parties and/or their respective counsel in connection with the Proposed Rule. Joint Prosecution Materials do not include final versions of any correspondence, studies, or reports prepared by or on behalf of one or more Parties intended for review by the United States Fish & Wildlife Service or a non-Party.

3. The Parties will maintain as confidential all Joint Prosecution Materials (as defined above). Disclosure of Joint Prosecution Materials shall be limited to the Parties and their employees and contractors as well as any counsel, consultants, and lobbyists retained by the parties, or on behalf of the parties, for the purpose of maintaining a joint prosecution with respect to the Proposed Rule, subject to the further provisions of this Agreement.

4. Any Joint Prosecution Materials shared or transmitted by or between Parties should be clearly designated "CONFIDENTIAL: JOINT PROSECUTION MATERIALS." However, the failure to include such designation shall not preclude such materials from being afforded the protections of this Agreement and shall not be construed to constitute a waiver of any privilege or other protection.

5. Each Party shall take all appropriate measures to ensure that any person who is granted access to Joint Prosecution Materials is familiar with the terms of this Agreement and complies with those terms.

6. Each Party is represented by its own respective legal counsel in connection with the Proposed Rule, and the cooperative efforts referenced herein. Said legal counsel will not

have an attorney-client relationship with any other Party to this Agreement as a result of the legal counsel's participation in discussions and actions related to the Parties' cooperative efforts on the Proposed Rule. Similarly, said legal counsel will not have a duty of loyalty or confidentiality to any Party to this Agreement other than the legal counsel's specific client(s), and consequently, no Party may seek to disqualify the legal counsel for another Party as a result of the legal counsel's participation in discussions and actions related to the Parties' cooperative efforts on the Proposed Rule.

7. Except where required by the order of a court of competent jurisdiction, or by the prior written consent of the remaining Parties, a Party will not reveal to non-Parties any Joint Prosecution Materials it has received from another Party.

8. Each Party shall notify the Party that generated any Joint Prosecution Materials of any request to disclose the Joint Prosecution Materials to any non-Party, or of any proceeding before any court, administrative agency, or tribunal to compel the disclosure of such Joint Prosecution Materials, as soon as practicable after receipt of such request or the initiation of such proceeding. If a Party becomes subject to any judicial or administrative order purporting to compel release of Joint Prosecution Materials, that Party shall: (a) promptly notify the Party that generated the materials and all remaining Parties, and (b) make all reasonable efforts to give that Party an opportunity to protect the Joint Prosecution Materials.

9. No party is required to treat as confidential within the meaning of this Agreement any material where such material is, or hereafter becomes (without violation of this Agreement), public record, public knowledge, or is obtained from sources other than exchanges under this Agreement.

10. The sharing of Joint Prosecution Materials among the Parties is not intended to and will not constitute a waiver of any privilege or other protection of confidentiality, including but not limited to the attorney-client privilege, work product privilege, common-interest doctrine, deliberative process privilege, executive privilege, privileges relating to mediation or settlement communications, or any other privilege or protection existing under state or federal law.

11. Execution of this Agreement constitutes the mutual agreement of the Parties that any sharing of Joint Prosecution Materials among themselves is reasonably necessary for the accomplishment of the Parties' common purposes as described above. Any sharing of Joint Prosecution Materials among the Parties is in reliance on this Agreement and the protections that arise from the Parties' common interests in reviewing and commenting on the Proposed rule.

12. Nothing in this Agreement shall obligate any Party to exchange documents or information with any other Party, whether or not such documents or information would be covered by this Agreement as Joint Prosecution Materials.

13. By this Agreement the Parties each acknowledge and agree that cooperation in the matters referenced above may involve the communication and sharing of confidential information and further agree that the interests of the Parties are not adverse as to matters within the scope of this Agreement. Each of the Parties has had a full opportunity to consult with separate counsel, is fully informed, and has concluded that the risk of any potential conflict of interest is outweighed by the benefits and efficiencies afforded by the opportunities for cooperation and sharing of Joint Prosecution Materials as provided for herein. The Parties consent to the sharing of Joint Prosecution Materials among their counsel, waive any potential conflict of interest created thereby, and mutually agree that this sharing of Joint Prosecution

Materials and cooperation shall not constitute grounds for seeking disqualification of counsel in any matter or action.

14. If there is a breach of this Agreement by a Party, the Parties agree that the non-breaching Party will have no adequate remedy at law in money or damages and shall be entitled to seek and obtain, in addition to all other remedies that may be available, a temporary restraining order, injunctive relief, or other equitable relief against the breach or its continuance.

15. Nothing in this Agreement shall be construed to waive any rights, claims, or privileges that any Party shall have against another Party or any other person or entity.

16. This Agreement shall be binding upon the successors and assigns of the Parties.

17. This Agreement is made under, and shall be construed in accordance with, the laws of the State of California.

18. The individuals signing this Agreement in a representative capacity warrant that they have the authority to do so on behalf of the entity or entities they represent, and further agree that as representatives of the entity or entities that they respectively represent, they themselves are bound by all terms of this Agreement.

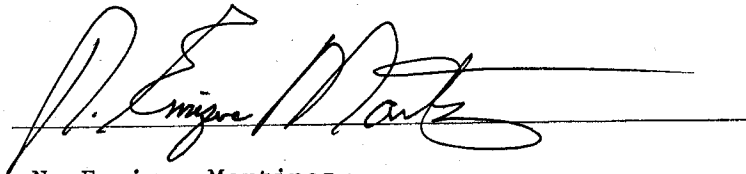
19. Any Party may withdraw from this Agreement by providing written notice to the other Parties. If a Party withdraws from this Agreement, the provisions of this Agreement shall continue to apply to the Joint Prosecution Materials that were shared during the time period when that Party was a party to this Agreement.

20. All notices and other communications required to be given to a Party under the terms of this Agreement (a) shall be in writing, (b) shall be personally delivered, or transmitted by facsimile or email, and (c) shall be directed to such Party at the address, facsimile number or

email address specified below, or at such other address, facsimile number or email address as such Party may hereafter designate by notice in accordance with this paragraph.

21. This Agreement may be executed in counterparts, each of which so executed shall be deemed an original irrespective of the date of the execution, and said counterparts shall together constitute one and the same Agreement. Further, facsimile or .PDF copies of signatures shall be as effective as original signatures for evidencing execution of this Agreement.

By:



Print Name:

N. Enrique Martinez

Date:

August 24, 2010

Title:

City Manager

Representing:

City of Redlands

ATTEST:



Sam Irwin, City Clerk

Exhibit A

List of Parties

As of June 8, 2010

1. San Bernardino Valley Municipal Water District
2. Western Municipal Water District of Riverside County
3. City of Riverside Public Utilities
4. City of San Bernardino Municipal Water Department
5. San Bernardino Valley Water Conservation District
6. Southern California Edison
7. East Valley Water District
8. City of Highland
9. City of Redlands
10. Yucaipa Valley Water District
11. San Bernardino County Flood Control District
12. Bear Valley Mutual Water Company/Crafton Water Company
13. Big Bear Municipal Water District (\$20,000 share)

Other Possible Partner Agencies

1. West Valley Water District
2. Raymond Basin Management Board/San Gabriel Valley Water Association
3. City of Colton
4. City of Rialto
5. Riverside County Flood Control District
6. Orange County Flood Control District

Exhibit B

SCOPE OF WORK AND BUDGET

22 April 2010

ACTIVITIES ASSOCIATED WITH RESPONDING TO THE PROPOSED RESEIGNATION OF CRITICAL HABITAT FOR THE SANTA ANA SUCKER

Task 1. General Consulting Assistance

PBS&J (Leidy and colleagues) will assist the Santa Ana Sucker (SAS) Task Force, as requested, with assignments not included in other tasks. Budgeting for this task assumes that this task covers two time periods: 1 April through 30 Jun 2010 and 1 July through 31 December 2010. The period from 1 April through 30 July 2010, a period of 13 weeks, assumes an average labor commitment of 4 hours per week (\$11,700 labor). Other direct costs are estimated at \$1,000 for this same period (air fare, rental car, etc.). Total budget through 30 June 2010: \$12,700. Post 30 June through 31 December 2010 labor budget (26 weeks) with the same assumptions: \$23,400. Other direct costs: \$2,000. Total budget from July through December: \$25,400. Grand total budget (Labor and other direct costs) for this task from 1 April through 31 December 2010: \$38,100.

Task 2. Attendance as SAS Conservation Team and Other Relevant Meetings

This task has been consolidated into this scope of work and budget from PBS&J Project No. 100012843 which was initiated on 1 March 2010. Leidy will attend up to 10 meetings of the SAWPA Santa Ana Sucker Conservation Team (including the Restoration Working Group) and the Southern California Native Aquatic Fauna Working Group between 1 March 2020 and 31 December 2010 for the purpose of providing input to the interested parties on the introduction of the SAS in the Santa Ana River watershed, and to gather information on the proposed activities of these groups. Each attendance is expected to be a one-day event. Leidy will summarize in writing the content of each meeting related to SAS issues along with any recommendations for actions on the part of the SAS Task Force. Each meeting is expected to require up to 8 hours in travel and meeting time, plus travel expenses (airfare, rental car and gas, one meal, and personal vehicle mileage. Labor budget (meetings plus write-ups) at 9 hours per meeting plus 0.5 hours administrative time per meeting: \$20,900 (Before 30 June 2010: \$5,225; Post 30 June 2010: \$15,675). Other direct costs: \$4,300 (Before 30 June: \$1,075; Post 30 June 2010: \$3,225). Total

labor and other direct before 30 June: \$6,300. Total labor and other direct costs post 30 June 2010: \$18,900. Total labor and other direct costs from 1 March through 31 December 2010: \$25,200.

Task 3. SAS Enhancement Plan and Project Implementation

There are two phases to this task.

Phase 1

Leidy, working closely with Sam Fuller, is charged with developing a plan to enhance the survival of the SAS population within its existing range in the Santa Ana River basin. The focus geographically will be from the Rialto Drain downstream to the Imperial Highway. This is the reach of the Santa Ana River that currently supports or recently supported the SAS and the reach that will have the greatest probability of implementing a successful project. The plan may include upland sites within this general river reach. The plan will contain appropriate adaptive management elements focused in the short-term on stabilizing the SAS population in the Santa Ana River. The goal is to have one on-the-ground project in place by the end of September 2010. Specific constraints and milestones of the plan are:

- The project must be completed by 30 September 2010;
- The project design must avoid any permitting requirements (other than permission from the USFWS to capture, move, rear, and reintroduce SAS) to meet the schedule (i.e., no 404, 401, 1602, or other permits);
- The project should focus on improving spawning and/or juvenile rearing habitat for the SAS, if feasible;
- Leidy et al. will meet with the USFWS (Ren Lohoefer, Pacific Southwest Regional Director) to present the plan and request approval to move SAS to the project site, if necessary;
- Leidy et al. will request concurrence from the California Department of Fish and Game (Curt Taucher, Regional Manager), and will also request that CDFG release up to \$200,000 in funding already provided by San Bernardino Valley Municipal Water District and Western Municipal Water District to CDFG under the terms of the water rights settlement with CDFG; and
- Post-project monitoring and O&M will be required.

To assist with Phase I, Leidy will engage the expert services of Dr. Camm Swift (ENTRIX, Inc.), Dr. Jonathan Baskin (San Marino Environmental Associates), and Kerwin Russell (Riverside-

Corona Resource Conservation District), as necessary, to design the project. Phase 1 has substantial unknowns at this time relative to the difficulty of implementing a project. If the process goes smoothly (for example, the project can make use of existing facilities at the RCRCDD), then the cost will be less than the cost estimated herein. Leidy has budgeted a moderate level-of-effort, but by no means a highly complicated or expensive scenario. Planning for Task 3, Phase 1, is to be completed prior to 30 June 2010. The budget is based on all activities undertaken prior to 1 July 2010 and does not include Phase 1 construction-related planning or construction implementation. The budget breakdown is presented in the attached table. The total budget prior to 1 July 2010: \$39,120. The total budget for the period from July through December 2010: \$65,480. Total Task 3, Phase 1 budget for 2010: \$104,600.

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Santa Ana Sucker Critical Habitat Designation Legal Budget

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Exhibit D



Stacey Aldstadt, Esq
General Manager
City of San Bernardino Municipal
Water Department
444-D, Rialto
San Bernardino, CA 92410

June 4, 2010

Dear Stacey;

The purpose of this letter is to summarize and confirm the term and conditions of the agreement by Richard Katz Consulting Inc, ("Consultant") and X the City of San Bernardino Municipal Water Department ("SBMWD") ("Client").

SCOPE OF SERVICES

The Client retains Consultant to provide strategic advice as it relates to the Federal Governments effort on the Santa Ana Sucker Critical Habitat Designation. Consultant shall offer a critical political overlay to the efforts of the government relations teams representing the member agencies of the Santa Ana Sucker Task Force in Washington, DC. Efforts shall include but not be limited to review of current strategy, assistance in developing new and innovative strategy going forward, and coordination of efforts with federal, state and local entities.

Richard Katz

PROFESSIONAL FEES

In compensation for the services performed by Consultant on behalf of Client, as outlined above, Client agrees to pay Consultant a monthly retainer of \$5,000 per month for 90-days and \$3,500 per month on-going until the issue is resolved, beginning June 1, 2010.

REIMBURSEMENT OF EXPENSES INCURRED

Client will reimburse Consultant on a monthly basis for any out-of-pocket expenses reasonably incurred by Consultant on its behalf including, but not limited to, document reproduction charges, facsimile charges, long distant telephone calls, travel expenses and messenger fees. Consultant will send a statement of expenses incurred each month. No expenditure in excess of five Hundred Dollars (\$500.00) per month will be made without prior written consent from Client.

TERMINATION

Either party upon thirty (30) days written notice to the other party may terminate this agreement. In the event of such termination, Consultant shall bill Client for all professional services, independent contractor expenses and other costs incurred up to the date of termination.

NO REPRESENTATION THAT PERMITS OR SERVICES WILL BE APPROVED OR SUCCESSFUL

It is impossible to predict the approval or non-approval of any action, which requires discretionary government action. Consequently, while consultant will conscientiously perform all of its responsibilities outlined above, we cannot and do not make any representation to Client that any of the services discussed herein will be granted, acknowledged or approved by any governmental or public jurisdiction. Client acknowledges that none of its obligations under this letter agreement is dependent or conditioned upon approval of any service.

Consultant, its employees and associates, shall not be individually or collectively liable to client, or any party claiming through Client, for any damages resulting from the denial of any discretionary permits or from errors or omissions in

connection with any services provided hereunder for any reason other than willful misconduct.

Consultant shall not be liable to Client, or any party claiming through Client, for any damages resulting from the denial of the application of any governmental approval or service.

ATTORNEY'S FEES

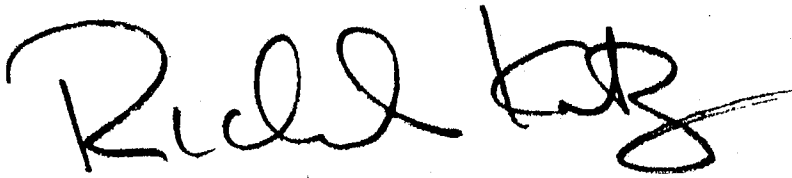
In the event that any litigation is commenced concerning any provision of this letter agreement, the prevailing party will be entitled to recover, in addition to any other relief granted by the court, a reasonable sum for its attorney's fees incurred in the litigation.

CONCLUSION

We believe that the above terms and conditions accurately summarize our agreement for the performance of services related to the project. If you concur, please indicate your approval and acceptance by dating, signing and returning this letter agreement. We have enclosed a signed copy of this letter for your records.

We are very pleased that we are able to be of service to you and look forward to working with you.

All the Best,

A handwritten signature in black ink, appearing to read "Richard Katz", with a stylized flourish at the end.

Richard Katz

AGREED AND ACCEPTED;
City of San Bernardino Municipal Water Department

By:

Stacey Aldstadt, Esq.

Date



SIGN-IN SHEET

MEETING: Santa Ana Sucker Taskforce Meeting

DATE: November 8, 2012

NAME	AGENCY	PHONE	E-MAIL
CHRIS DICK	REDLANDS	()	
Tom Crowley	WVWD	()	
Melody McDowell	SSVWCD	()	
Jeff Crider	SSVWWD	()	
Jennifer Arer	YUWD	()	
Kevin Milligan	RPU	()	
		()	
DAVID AZADJON	in room	()	
GREG WILKINSON	in room	()	
SUSAN WILSON	in room	()	
BOB	in room	()	
SCOTT HUBLE	- emailed Garcia Analysis		
ROY LEIOY	- emailed Garcia Analysis		
JOHN MORA	- emailed		
FRED HICKS	- NOT emailed () NO CONTACT INFORMATION.		
ANDY HITCHINGS	- emailed Garcia Analysis		
STEVE KENNEDY	- emailed	()	
HEATHER HENNESSEY	- emailed	()	

SANTA ANA SUCKER TASK FORCE
November 8, 2012

- **The reasons for our lawsuit against the Fish and Wildlife Service have not changed.**
 - The designation of critical habitat for the SAS continues to threaten the exercise of water rights granted by the State Water Resources Control Board for the diversion and use of water stored behind Seven Oaks Dam.
 - The habitat designation continues to threaten numerous projects planned by Task Force members for the Santa Ana River watershed, including local supply projects needed for water supply reliability.
 - The habitat designation threatens the long established allocation of water between the upper and lower watersheds of the Santa Ana River by interfering with efforts in the Upper Area to conserve additional water supplies.
- **The District Court's decision is vulnerable to an appeal.**
 - The district court effectively reads Section 2(c)(2) of the ESA (requiring federal agencies to "cooperate" with state and local agencies to "resolve" water resource issues "in concert" with the conservation of endangered species) out of existence.
 - The district court's decision flatly ignores the Government's commitments in the Western Riverside MSHCP and disregards the requirement of the MSHCP and its Implementing Agreement that the Government make a finding of non-implementation of the MSHCP before covered lands are designated as critical habitat.
 - In doing so, the district court's ruling effectively eviscerates the "No Surprises" Rule developed by the Clinton Administration and undermines the incentives for land owners to encumber their lands with the restrictions imposed by HCPs.
 - The decision effectively immunizes critical habitat designations from judicial review by accepting the Government's argument that the designation is an unreviewable decision "not to exclude" lands from a critical habitat designation, when the Supreme Court has already said that the designation of critical habitat is governed by specific, reviewable standards.
 - The district court's decision ignores case law (and related ESA regulations) holding that before unoccupied areas can be designated as critical habitat (here all lands above the Rialto Drain and below Seven Oaks Dam) the FWS must find that a designation limited to the species present range (i.e., occupied lands) would be

inadequate and that the unoccupied areas are essential to the conservation of the species.

- The district court's decision approves a defective economic impact analysis.
 - It incorrectly concludes that the FWS considered the impacts of its critical habitat designation on water supply projects above Seven Oaks Dam. It says the FWS considered the "incremental effects" on such projects even though the FWS itself admits that it treated such impacts as part of the "baseline".
 - It incorrectly shifts the burden of establishing that alternative water supplies are available to replace any water supplies lost because of the designation from the FWS (which argued that such supplies are available without any analysis) to the Plaintiffs—requiring us to prove that such supplies are not available.
- The decision tees up the issue of whether NEPA applies to the designation of critical habitat when the designation affects the quality of the human environment. Currently there is a split in the circuits on this issue, with the 9th Circuit finding no such requirement and the 10th Circuit disagreeing and finding that a NEPA obligation exists.
- **The District Court's decision raises at least three issues of national significance.**
 - The interpretation of the ESA to eviscerate the language of § 2(c)(2) of the Act, applies to water resource activities nationwide.
 - The decision to ignore the language of the MSHCP and, with it, the "No Surprises" commitments of the Government in the MSHCP, applies to MSHCPs nationwide.
 - The issue of the application of NEPA to a designation of critical habitat involves a split among the circuit courts of appeal and is an issue of nationwide significance.
- **Much of the research related to an appeal has already been undertaken.**
 - The litigation before the district court involved extensive research that will not need to be duplicated on appeal.
- **This will be a high-profile case that will draw national attention. It is entirely possible that other organizations (including, for instance, the State of California, Building Industry Association, Western States Water Council, Family Farm Alliance or the Western Governors' Association) may lend legal and/or financial support.**

- **Prospects at the Ninth Circuit**

- As we anticipated at the outset of the litigation, the Ninth Circuit is likely to reject our claims, unless we draw an unusually conservative panel.
- Pursuing the appeal at the Ninth Circuit is likely to take about a year to 18 months.

- **Prospects at the U.S. Supreme Court**

- The U.S. Supreme Court generally is able to choose the cases that it hears. There are two chief criteria.
 - The Court often takes cases where there is a split in the circuits (as is the case here). The Court believes that federal law should be uniform among all of the circuits and so is likely to hear a case to resolve that conflict.
 - The Court also takes cases that it believes to be of national significance. Here, there are two additional issues that we believe might be of interest to the Court. First, the ESA's requirement that the United States cooperate with states and local governments. Second, the trial court's ruling that undermines the "No Surprises" and "Safe Harbors" rules.
- Obtaining a decision from the U.S. Supreme Court on a petition for certiorari will take about 12 months after a decision by the Ninth Circuit. If the Supreme Court grants certiorari, as we hope it will, the chances are good that any adverse decision by the Ninth Circuit (and the district court) will be reversed.

- **Costs**

- Pursuing an appeal to the Ninth Circuit and petitioning the U.S. Supreme Court to hear the case is estimated to cost about \$350,000. We have already received an indication from the Metropolitan Water District that it views this case as important to its interests and is willing to assist in defraying these costs.
- There would be additional costs to brief the case and argue the case if the U.S. Supreme Court decides to hear the case. Those costs could be up to another \$150,000 but, this is where we are most likely to have other parties willing to help defray the costs. And, if the appeal is successful—as the grant of a petition for cert. suggests that it would be—these costs (along with all of the costs and fees generated in the lower courts) would be subject to recovery under the ESA's citizen suit provision or the Equal Access to Justice Act—or both.

Date: Nov 6, 2012; Section: Front Page; Page: A1

ENDANGERED FISH: CLEANING UP TEQUESQUITE ARROYO IN RIVERSIDE

RESTORING HABITAT

Water districts are spending \$500,000 to help the Santa Ana sucker, a species at the center of a long legal fight

BY JANET ZIMMERMAN

STAFF WRITER jjzimmerman@pe.com

More than a decade of studies, legal fights and millions in taxpayer dollars devoted to the fate of the endangered Santa Ana sucker have largely taken place far from the waterways where the fish lives, or once lived.

Now, for a fraction of the more than \$3 million spent on lawsuits and population surveys, the fish is getting some more tangible help: On-the-ground work has begun to restore a remote tributary of the Santa Ana River in hopes of creating an environment where the fish will thrive.

The lower reach of Tequesquite Arroyo in Riverside was clogged with debris that blocked the sucker from reaching gravel-laden areas needed for spawning. In the next phase, predatory fish, non-native bullfrogs and invasive plants will be eliminated.

Though the once-plentiful fish don't exist in the arroyo now, the hope is they will be drawn up the creek to the deeper pools and cooler water they need to flourish. It is, in essence, a years-long experiment.

"There's not enough of a current to direct them now. They think it's a pond," said Kerwin Russell, natural resources manager for the Riverside-Corona Resource Conservation District. "If we can increase the flows so this moves, we have a chance of getting fish up here."

The \$500,000 restoration is part of a settlement the San Bernardino Valley Municipal Water District and Western Municipal Water District in Riverside reached with the state to compensate for damaging sucker habitat with a water diversion project farther north on the river, at the Seven Oaks Dam near Highland.

That funding — \$50,000 a year for a decade — is less than one-sixth of what's been spent on studies and attorneys' fees to fight lawsuits over the small, algae-eating fish. Since the 1990s, water districts, environmentalists and state and federal wildlife regulators have waged battles over how much habitat should be designated to help the species recover, and what should be done to help the fish.

Not everyone is happy with the Tequesquite project. Ileene Anderson, a biologist with the Center for Biological Diversity, an environmental group that has sued the federal government to increase protections for the sucker, said there's no evidence the fish ever lived in the arroyo.

Her group would rather see habitat enhanced above the Seven Oaks Dam, where the suckers once lived.

"It seems like they would want to choose a place where suckers have been known to inhabit, to assure a more successful reintroduction," she said. "That's a lot of money to spend on something that may not assure that suckers will live there."

Russell and water district officials are more optimistic. The fish lives in a three-mile stretch of the river south from Highway 60 in Riverside, which is shallow and warmer than the creek, so creating a more desirable environment should draw them in, they said.

Doug Headrick, general manager at San Bernardino Valley Municipal Water District, cited the successful restoration of Sunnyslope Creek, another inlet to the river.

"The sucker quickly showed up there. They know to find these protected areas," he said. "The more of these areas we can create, the less likely they will go extinct."

Protecting the sucker is important because fish need clean water to survive, and if they are suffering, it

indicates an unhealthy watershed that ultimately affects humans, Russell said.

The Tequesquite Arroyo is an isolated, man-made habitat fed by urban runoff from across Riverside, including Sycamore Canyon, UC Riverside and the Wood Streets neighborhood. Water quality testing is just beginning to determine how much pesticide, vehicle fluids and other contaminants the discharge contains, said Russell, who is leading the restoration.

Decades ago, huge chunks of concrete were placed across a section of the creek to provide flood protection for a now-closed landfill nearby. That barrier cut off the sucker fish's access to the upper reaches of the tributary, and they stayed closer to the main river, where they became food for turtles, carp and large-mouth bass, Russell said.

In September, crews spent three weeks breaking up the concrete with sledgehammers, crowbars and concrete saws because the area was too tight for mechanical equipment.

They cleared mattresses, shopping carts, human waste and other detritus of established homeless encampments that also degrade water quality, Russell said.

"There are a number of environmental factors that harm the fish: predation, water quality and habitat," Russell said.

On a recent afternoon, Russell was thigh deep in the creek, swishing a net across the clear water. From near the muddy bank he pulled up swollen bullfrog tadpoles and green sunfish — both predators of the 3-inch-long Santa Ana suckers. He threw them in the dirt, leaving them for the raccoons.

It's too early yet for suckers to appear. But Russell will be back out in February, when spawning begins.

This is the first of three efforts to add a mile of stream to the sucker's habitat. The other two are conservation district cleanups and restoration, at Anza Creek and Hole Creek, and are not being funded by the water agencies.

All three projects also will benefit the speckled dace and the arroyo chub, other imperiled fish species, he said.

Follow Janet Zimmerman on Twitter: [@JanetLZimmerman](https://twitter.com/JanetLZimmerman)



KURT MILLER/STAFF PHOTOGRAPHER

Kerwin Russell, natural resources manager for the Riverside-Corona Resource Conservation District, seeks non-native species in the Tequesquite tributary of the Santa Ana River in Riverside on Wednesday. Work has begun to restore the tributary and help the sucker fish thrive.



Russell captures a bullfrog tadpole. Bullfrogs are predators of the Santa Ana suckers.



KURT MILLER/STAFF PHOTOGRAPHER

Kerwin Russell inspects a former homeless encampment in the lower reach of the Tequesquite Arroyo. Though the sucker fish don't exist in the arroyo now, the hope is they will be drawn up the creek to the deeper pools and cooler water they need.

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21264

Application 31165 of San Bernardino Valley Municipal Water District and Western Municipal
Water District of Riverside County
P.O. Box 5906
San Bernardino, CA 92412-5906

filed on **March 21, 2001**, has been approved by the State Water Resources Control Board (State Water Board or Board) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source:

Santa Ana River (1, 3, 6, 9, 10)

Bear Creek (2)

Breakneck Creek (4)

Keller Creek (5)

Alder Creek (7)

Tributary to:

Pacific Ocean

Santa Ana River thence Pacific Ocean

Santa Ana River thence Pacific Ocean

Santa Ana River thence Pacific Ocean

Santa Ana River thence Pacific Ocean

within the County of **San Bernardino**.

2. Location of points of diversion (POD) and points of rediversion (POR)

By California Coordinate System of 1983, Zone 5	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
POD & POR #1: Seven Oaks Dam North 1,866,500 ft. and East 6,835,000 ft.	NE$\frac{1}{4}$ of NW$\frac{1}{4}$	4	01S	02W	SB
POD #2: North 1,882,500 ft. and East 6,859,600 ft.	SE$\frac{1}{4}$ of NE$\frac{1}{4}$	19	01N	01W	SB
POD #3: North 1,882,400 ft. and East 6,859,700 ft.	SE$\frac{1}{4}$ of NE$\frac{1}{4}$	19	01N	01W	SB
POD #4: North 1,880,900 ft. and East 6,858,100 ft.	NW$\frac{1}{4}$ of SE$\frac{1}{4}$	19	01N	01W	SB
POD #5: North 1,877,700 ft. and East 6,846,200 ft.	NW$\frac{1}{4}$ of NE$\frac{1}{4}$	26	01N	02W	SB
POD #6: North 1,876,700 ft. and East 6,846,700 ft.	SW$\frac{1}{4}$ of NE$\frac{1}{4}$	26	01N	02W	SB
POD #7: North 1,877,100 ft. and East 6,843,600 ft.	NW$\frac{1}{4}$ of NW$\frac{1}{4}$	26	01N	02W	SB
POR #8: North 1,865,800 ft. and East 6,837,100 ft.	SE$\frac{1}{4}$ of NE$\frac{1}{4}$	4	01S	02W	SB
POD & POR #9: North 1,864,900 ft. and East 6,835,000 ft.	SE$\frac{1}{4}$ of NW$\frac{1}{4}$	4	01S	02W	SB
POD & POR #10: North 1,862,800 ft. and East 6,834,000 ft.	SW$\frac{1}{4}$ of SW$\frac{1}{4}$	4	01S	02W	SB

3. Purpose of use	4. Place of use	Section	Township	Range	Base and Meridian	Acres
Municipal, Industrial, Irrigation, Heat Control, Frost Protection and Recreational uses	San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County's Service Areas*					

*The place of use is shown on maps dated June 7, 2010 and filed with the State Water Board.

- 5a. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **400** cubic feet per second (cfs) by direct diversion and **100,000** acre-feet per annum (afa) by underground and/or surface storage to be diverted from **January 1** to **December 31** of each year. The amount of surface storage at Seven Oaks Dam shall not exceed 50,000 afa. The maximum rate of diversion to underground storage shall not exceed 400 cfs. The total amount of water to be taken from the sources shall not exceed 100,000 acre-feet (af) per water-year of October 1 to September 30. The total rate for water to be taken from the sources for either direct use and/or underground storage shall not exceed 800 cfs.
(0000005E)
- 5b. The total quantity of water to be taken from the sources under both Application 31165 and Application 31370 shall not exceed 198,317 af per water-year of October 1 to September 30. The total amount of water diverted to storage at Seven Oaks Dam under both Applications 31165 and 31370 shall not exceed 50,000 af per water-year of October 1 to September 30. The total combined rate for water to be taken from the sources under Applications 31165 and 31370 for either direct use, underground storage, and/or offstream surface storage shall not exceed an instantaneous rate of 1,250 cfs.
(0000005L)
6. The amount authorized for appropriation may be reduced in the license if investigation warrants.
(00000006)
7. Construction work and the application of water to beneficial use shall be prosecuted with reasonable diligence. Actual construction shall begin no later than June 30, 2010 and be completed by October 1, 2020. Water shall be put to full beneficial use by December 31, 2059.
(00000009)
8. Progress reports shall be submitted promptly by Permittee when requested by the State Water Board until a license is issued.
(00000010)
9. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit.
(00000011)
10. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of Permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against

reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the Permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

11. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the Permittee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

12. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531-1544). If a "take" will result from any act authorized under this water right, the Permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

13. Permittee shall maintain records of the amount of water diverted and used to enable State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605.

(0000015)

14. This permit shall not be construed as conferring upon the Permittee right of access to the point of diversion.

(0000022)

15. Permittee shall consult with the Division of Water Rights (Division) and, within one year from the date of this permit, shall submit to the State Water Board its Urban Water Management Plan as prepared and adopted in conformance with section 10610, et seq. of the California Water Code, supplemented by any additional information that may be required by the Board.

All cost effective measures identified in the Urban Water Management Plan and any supplements thereto shall be implemented in accordance with the schedule for implementation found therein.

(0000029A)

16. If it is determined after permit issuance that the as-built conditions of the project are not correctly represented by the map(s) prepared to accompany the application, Permittee shall, at his expense have the subject map(s) updated or replaced with equivalent as-built map(s).

Said revision(s) or new map(s) shall be prepared by a civil engineer or land surveyor registered or licensed in the State of California and shall meet the requirements prescribed in section 715 and sections 717 through 723 of the California Code of Regulations, Title 23. Said revision(s) or map(s) shall be furnished upon request of the Chief of the Division of Water Rights.

(0000030)

17. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the State Department of Fish and Game and the Permittee (DFG) is filed with the Division. Compliance with the terms and conditions of the agreement is the responsibility of the Permittee. If a stream or lake alteration agreement is not necessary for this permitted project, the Permittee shall provide the Division a copy of a waiver signed by DFG.

(0000063)
18. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction undertaken after issuance of the permit, Permittee shall file a report pursuant to Water Code Section 13260 and shall comply with all waste discharge requirements imposed by the California Regional Water Quality Control Board, Santa Ana Region, or by the State Water Board.

(0000100)
19. Prior to diversion of water under this permit, Permittee shall: (1) install devices to measure the instantaneous rate of diversion and the quantities of water placed into underground storage and (2) install devices to measure or provide documentation of the method to be used to determine the quantity of water recovered from underground storage and placed to beneficial use. All measuring devices and the method of determining the quantity of water placed into and recovered from underground storage shall be approved by the State Water Board prior to diversion of water under this permit. All measuring devices shall be properly maintained. The diversion data shall be posted on Permittee's websites on a weekly basis.

(0080117)
20. The Permittee shall obtain all necessary state and local agency permits required by other agencies prior to construction and diversion of water. Copies of such permits and approvals shall be forwarded to the Deputy Director for Water Rights (Deputy Director).

(0000203)
21. No debris, soil, silt, cement that has not set, oil, or other such foreign substance will be allowed to enter into or be placed where it may be washed by rainfall runoff into the waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.

(0000208)
22. The State Water Board adopts and incorporates by reference into this permit the mitigation measures and monitoring and reporting requirements applicable to the impacts of the Project on biological and cultural resources, geology, hazardous material and groundwater contamination, groundwater and surface water hydrology, water quality and public services, utilities and transportation identified in the Final EIR, specifically mitigation measures MM BIO-1, MM BIO-2 and MM BIO-6 through MM BIO-10, MM CR 1 through MM CR 4, MM HAZ 1 through MM HAZ 5, MM GEO-1 through MM GEO-8, MM GW-1, MM SW-2 and MM PS-12. (See attached Table 1.) Permittee must implement the measures to mitigate significant impacts and conduct the required

¹ The Chief of the Division of Water Rights is hereafter referred by the State Water Board as the Deputy Director for Water Rights.

reporting and monitoring of those measures as provided in the Mitigation Monitoring and Reporting Plan adopted on March 21, 2007 by the respective Boards of Directors of San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County. In addition, Permittee shall submit an annual report to the Deputy Director that includes the results of the Mitigation Monitoring and Reporting Program. The State Water Board reserves jurisdiction to require any reasonable amendments to these measures and requirements to ensure that they will accomplish the stated goal.

(0400500)

23. The State Water Board adopts and incorporates by reference into this permit the mitigation measures and monitoring and reporting requirements applicable to the cumulative impacts of the Project on biological and cultural resources, geology, hazardous material and groundwater contamination, groundwater and surface water hydrology and water quality, and public services, utilities and transportation identified in the EIR, specifically mitigation measures MM Cumulative BIO-1, MM Cumulative CR-1, MM Cumulative CR-2, MM Cumulative HAZ-1, MM Cumulative SW-1 and MM Cumulative GW-1. (See attached Table 2.) Permittee must implement the measures to mitigate cumulative impacts and conduct the required reporting and monitoring of those measures as provided in the Mitigation Monitoring and Reporting Plan adopted by the respective Boards of Directors of San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County on March 21, 2007. In addition, Permittee shall submit to the Deputy Director an annual report that includes the results of the Mitigation Monitoring and Reporting Program. The State Water Board reserves jurisdiction to require any reasonable amendments to these measures and requirements to ensure that they will accomplish the stated goal.

(0400500)

24. This permit shall not be construed as conferring upon Permittee right of access to facilities of the U.S. Army Corps of Engineers and the Santa Ana River Mainstem Local Sponsors.

(0000022)

25. This permit is specifically subject to the prior rights of Bear Valley Mutual Water Company, City of Redlands, East Valley Water District, Lugonia Water Company, North Fork Water Company and Redlands Water Company to divert the first 88 cfs of the natural flow of the Santa Ana River pursuant to pre-1914 appropriative rights, to the extent that such rights may exist.

(0400500)

26. This permit is specifically subject to the prior rights of San Bernardino Valley Water Conservation District under Licenses 2831 and 2832 issued pursuant to Applications 2217 and 4807, and any valid pre-1914 appropriative right confirmed by the Court.

(0400500)

27. Nothing in this permit shall be construed as authorizing any diversions contrary to the provisions of the December 19, 2002 Biological Opinion issued by United States Fish and Wildlife Service for operation of Seven Oaks Dam, as may be revised in the future, including flow releases for downstream over-bank inundation to preserve State and federally listed threatened and endangered species and their habitat.

(0600500)

28. Permittee shall only divert water at points of diversion 5 through 10 in compliance with the terms and conditions of Federal Energy Regulatory Commission (FERC) license Project No. 1933 and 401 water quality certification as well as any future FERC licenses and 401 water quality certifications.

(0560900)

29. Permittee shall not, without the prior written consent of Southern California Edison (SCE), construct, operate or maintain diversion works at points of diversion located upstream of the flood inundation pool of Seven Oaks Dam in a manner that interferes with the operation and maintenance of the hydroelectric works licensed to SCE by the Federal Energy Regulatory Commission (FERC) license for Project No. 1933. Permittee's diversion of water at such points of diversion shall not interfere with SCE's diversion of water for hydroelectric purposes, again as described in the FERC license for Project No. 1933. Nothing in this permit shall be construed to limit Permittee's diversion of water from such points of diversion at times when the quantity of water available for diversion at such points of diversion exceeds the demand of SCE's facilities to divert water from the Santa Ana River system.
(0430999)
30. This permit shall not be construed as conferring upon Permittee the right of access to Seven Oaks Dam, the points of diversion, the lands necessary for related facilities, or the lands necessary for inundation for water storage. Access to, construction upon, or inundation of National Forest Service lands shall not commence prior to authorization by the Forest Service, in accordance with applicable laws and regulations. Such authorization will require compliance with all applicable federal laws and regulations. Permittee specifically recognizes that completion of the applicable legal process does not guarantee such authorization will be granted, the issuance of this water right permit notwithstanding.
(0000022)
31. This permit shall not be construed as conferring upon Permittee the right of access to Seven Oaks Dam, the points of diversion, and lands necessary for related facilities; or the lands necessary for inundation for water storage. Permittee shall not commence construction and operation of water diversion facilities at Seven Oaks Dam without a written access agreement from the Santa Ana River Mainstem Project Local Sponsors.
(0000022)
32. Flow in the Santa Ana River is highly variable from year to year. Because the face value of this permit is based on a rare storm event, this permit shall not be construed as giving any assurance that such an event will occur. The actual amount of water available for appropriation may be much less.
(0000999)
33. Permittee is required to follow guidance from existing state and federally mandated projects regarding groundwater contaminant plumes within and outside the San Bernardino Basin Area. This includes coordination with appropriate oversight agencies and compliance with policies regarding the remediation of the groundwater contaminant plumes.
(0400800)
34. Permittee shall not use the Cactus Spreading and Flood Control Basins under this permit.
(0400800)
- 35a. In order to prevent degradation of the quality of water released to the Santa Ana River from storage at Seven Oaks Dam, the State Water Board may modify this permit to set conditions that apply water quality objectives to any release from storage.
- 35b. No water shall be released from storage of Seven Oaks Dam for purposes of redirection by Permittee until Permittee has consulted with the Chief Deputy Director for Water Quality or his or her delegee and the Chief Deputy Director has determined that the releases will be consistent with applicable water quality objectives. The releases shall be consistent with any conditions the Chief Deputy Director determines are necessary to ensure compliance with applicable water quality objectives.
(0400800)

36. In order to prevent degradation of water quality during and after construction of the project, prior to commencement of any construction undertaken after issuance of the permit, Permittee shall file a report pursuant to Water Code Section 13260 and shall comply with all waste discharge requirements imposed by the California Regional Water Quality Control Board, Santa Ana Region, or by the State Water Board.

(0290800)

This permit is issued and Permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every Permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any Permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any Permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD

for James W. Kassel

Victoria A. Whitney

Deputy Director for Water Rights

Dated:

JUN 29 2010

Attachments

Table 1: Mitigation Measures

MM BIO-1	<p>Muni/Western will minimize disturbance to native habitats and listed and non-listed sensitive species by the implementation of the following measures at construction sites prior to and during construction. Where ground disturbance is required, the Muni/Western program will include the following:</p> <ol style="list-style-type: none"> (1) Clearly marking and delineating the limits of the staging areas as well as the construction corridors/zones in the field and graphically on all final construction drawings and blueprints. Personnel and equipment will be prohibited in native habitats outside the construction limits. (2) Biologically sensitive areas, including individuals or colonies of listed and non-listed sensitive plant species and wildlife species, will be identified and delineated in the field prior to ground disturbance (see MM BIO-3) and will be clearly marked graphically on all final construction plans or blueprints so they will be avoided to maximum extent feasible. (3) Use methods to minimize the construction corridor width to the maximum extent feasible in sensitive habitats, such as transporting and stockpiling excavated materials in disturbed area of the right-of-way (ROW), or into other parts of the ROW by truck or conveyor belt. <p>Employee Training</p> <p>Implementation of an employee training program. Muni/Western's program will include an initial meeting with all personnel presented by a qualified biologist familiar with all affected species, habitats, and permit conditions. The employee training program will include a discussion of each species, all applicable laws, the permit conditions, and the potential penalties for violating permit conditions. The employee training program will be conducted before construction activities begin. Regular updates will occur during weekly tailgate meetings with construction personnel, and newly hired personnel will be informed of the permit conditions as well as the habitat and species issues before working on the Project site.</p> <p>On-Site Monitoring</p> <p>Biological monitoring of habitat clearing activities and removal of sedentary animals, both common and sensitive, within the ROW prior to clearing. This will require a qualified biologist to be at the location of habitat removal before clearing to attempt to remove animals where visible and, during removal activities, to ensure that no inadvertent impacts to adjacent habitats occur. Weekly inspections of the ROW perimeter near work areas will also reduce the potential for inadvertent impacts to adjacent habitat.</p> <p>Best Management Practices (BMPs)</p> <p>Dust control. All areas of mechanical ground disturbance, including dirt access roadways, will be consistently moistened to reduce the creation of dust clouds. The frequency of watering will be consistent with the desired goal and in accordance with regional standards and BMPs.</p> <p>Erosion control. Devices such as straw bales and "v" ditches will be installed in areas where construction activities may directly or indirectly cause erosion or sediment deposition on adjacent habitats.</p> <p>Routine removal of trash from construction areas. All refuse, including non-construction materials such as paper and miscellaneous food packaging materials, will be removed from the ROW to prevent littering of the adjacent habitat areas outside of the ROW. At a minimum, site clean-ups should occur weekly.</p> <p>Listed Species Protection Measures</p> <p>In areas where the San Bernardino Kangaroo Rat (SBKR) is present, either within or adjacent to the ROW, Muni/Western will install exclusionary fencing where appropriate to reduce the potential for SBKR entering the ROW.</p>
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MM BIO-1 (continued)	<p>Specification for the fencing will be particular to the goal of the SBKR exclusion and will be approved by the United States Fish and Wildlife Service (USFWS). Muni/Western may not install fencing in certain areas such as boulder-strewn washes where fence construction may cause substantial habitat disturbance. Following the installation of fencing, the animals within the ROW will be trapped and released within adjacent suitable habitat outside the ROW. These methods will be approved by the USFWS. In areas where the SBKR is present, either within or adjacent to the ROW, Muni/Western will limit construction activities to daylight hours (approximately 7:00 A.M. to 6:00 P.M.). During night hours, no activities that would unnaturally increase the light or noise within adjacent occupied habitat will occur.</p> <p>In areas where the SBKR, coastal California gnatcatcher CAGN, least Bell's vireo, or southwestern willow flycatcher are present either within or adjacent to the ROW, Muni/Western will avoid or reduce construction activities in the vicinity of occupied habitat during the breeding season. Avoidance will take place from March 1 through June 30. In certain areas, avoidance of southwestern willow flycatcher will continue through July 31. Where complete avoidance is not possible, construction activities will be conducted in a manner that attempts to minimize disturbance during early morning hours and avoids the most sensitive breeding months of April and May.</p> <p>In areas where preconstruction sensitive species surveys and other seasonally limited activities such as seed collection and plant propagation are needed, Muni/Western will prepare a calendar of when such activities need to be accomplished and incorporate this into design and construction schedules to ensure that the surveys can be conducted in the appropriate season without causing delays. (Draft EIR page 3.3-37 through 3.3-39; Final EIR Section 2.4.)</p>
MM BIO-2	<p>Muni/Western will develop a Habitat Revegetation, Restoration, and Monitoring Program (Program), obtaining input from CDFG, and USFWS, for implementation in all habitat areas directly affected by construction activities. The Program will include the following measures:</p> <p>Invasive Species Control</p> <p>Where appropriate and feasible, the area to be treated will be treated to kill invasive exotics species and limit their seed production before initiating any earthmoving activity with the objectives of: (1) preventing invasive species from spreading from the disturbance area, and (2) removing weed sources from the salvaged topsoil. Herbicides will be used only by a licensed herbicide applicator and may require notification to property owners or resource agencies. The treatment will be completed before earthmoving in order for this mitigation to have its intended effect (e.g., the treatment would need to occur before target species set seed).</p> <p>Topsoil Salvage and Replacement</p> <p>In areas where vegetation and soil are to be removed, the topsoil will be salvaged and replaced, where practicable. This may be accomplished using two lifts, the first to salvage the seed bank, and the second to salvage soil along with soil biota in the root zone. Soil will be stockpiled in two areas near the Project site, with the seed bank labeled to identify it. Topsoil will be replaced in the proper layers after final reconfiguration of disturbed areas. Where presence of extensive deposits of boulders and cobbles limit the opportunity to salvage topsoil and make the above-mentioned procedure infeasible, Muni/Western will salvage available surface material and stockpile it for replacement on the surface of the restored area. Stockpiles will be covered if the soil is to be left for an extended period to prevent losses due to erosion and invasion of weeds.</p> <p>Habitat Rehabilitation and Revegetation</p> <p>Muni/Western will develop and implement plans and specifications for replanting areas disturbed by the Project. Replanting will be with native species propagated from locally collected seed or cuttings, and, if applicable, will include seed or sensitive species that would be impacted during construction activities.</p>

MM BIO-2 (continued)	Monitoring procedures and performance criteria will be developed by Muni/Western to address revegetation and erosion control. The performance criteria will consider the level of disturbance and the condition of adjacent habitats. Monitoring will continue for three-to-five years, or until performance criteria have been met. Appropriate remedial measures, such as replanting, erosion control or weed control, will be identified and implemented if it is determined that performance criteria are not being met. (Draft EIR page 3.3-39 through 3.3-40; Final EIR Section 2.4.)
MM BIO-6	<p>Prior to ground disturbance or other activities, qualified botanists will survey all proposed construction, staging, stockpile, and access areas for presence of non-listed sensitive plant species. Preconstruction surveys will occur during appropriate season and in accordance with established protocols (if required). These surveys will be conducted in all construction areas that occur in native habitats. In the event that non-listed sensitive plant species are observed in the impact area during pre-Project surveys, Muni/Western will implement the following measures:</p> <ul style="list-style-type: none"> (a) Colonies will be clearly marked, mapped, and recorded along with the numbers of individuals in each colony and their respective condition. To the extent feasible, construction areas and access roads will be configured to avoid or minimize loss of individual plants and damage to occupied habitats. (b) Where impacts to non-listed sensitive plant species are unavoidable, Muni/Western will develop and implement a salvage, propagation, replanting, and monitoring program that will use both seed and salvaged plants constituting an ample and representative sample of each colony. (Draft EIR page 3.3-42.)
MM BIO-7	<p>To reduce impacts on biological resources, Muni/Western will realign pipelines to avoid sensitive resources and habitat to the maximum extent feasible. Specifically, Muni/Western will realign Phase II of the Plunge Pool Pipeline northward and place it adjacent to Greenspot Road. (See Draft EIR Figure 3.3-7). This will put the project-related disturbance at the edge of the habitat and avoid bisecting the intermediate to mature RAFSS habitat along the western portion of the alignment.</p> <p>If it is infeasible to implement MM BIO-7, then the residual impact could be compensated by implementation of MM BIO-8, which is intended to compensate for permanent or long-term losses of sensitive RAFSS habitat as a result of installation of permanent facilities or long-term construction impacts that cannot be fully mitigated by MM BIO-1, MM BIO-2, and MM BIO-7. (Draft EIR page 3.3-44.)</p>
MM BIO-8	<p>To compensate for permanent long-term and temporal losses of RAFSS habitat value, Muni/Western will acquire, for every 1 acre impacted, a minimum of 1 acre of good quality habitat of similar or greater habitat value than the RAFSS area impacted by the Plunge Pool pipeline and dedicate it in perpetuity as a habitat conservation easement area, or other appropriate designation, and provide funding for its future management as native habitat in perpetuity. The acquired RAFSS habitat area would ideally be contiguous with existing habitat already set aside in the WSPA or other dedicated RAFSS habitat. If good quality habitat in such a locality is not available for purchase, availability of other RAFSS habitat will be investigated, with the objective of obtaining good quality habitat near the Project area. Implementation of this mitigation measure will be subject to the requirement that such long-term mitigation and reporting plans for such acquisitions are to be approved by the Deputy Director for Water Rights of the State Water Board prior to construction of the Plunge Pool Pipeline. (Draft EIR page 3.3-44; Final EIR Section 2.4.)</p>
MM BIO-9	<p>Muni/Western will monitor and remove invasive non-native species establishing in the channel and adjacent RAFSS habitats between Seven Oaks Dam and Mill Creek. Target species include species of tamarisk or salt cedar (<i>Tamarix</i> spp.), fountain grass (<i>Pennisetum setaceum</i>), and giant reed (<i>Arundo donax</i>). These species establish in</p>

MM BIO-9 (continued)	habitats suitable to SBKR and Santa Ana River woolly-star and have the potential to spread further into adjacent suitable habitat areas. Initial control will be established using a combination of physical removal and herbicidal treatment using appropriate environmental safeguards. Herbicides will be used pursuant to manufacturer's instructions, and standard measures will be taken to avoid impacts to water quality. Two to several follow-up treatments would be anticipated during the first year with follow-up monitoring and treatments at least once annually in the ensuing years. (Draft EIR page 3.3-61; Final EIR Section 2.4.)
MM BIO-10	<p>Muni/Western will develop a program, in coordination with MSHCP agency participants, to selectively restore SBKR and Santa Ana River woolly-star habitat by using habitat manipulation, either by mechanical means or high pressure water, to remove vegetation and leave freshly deposited sand and silt, simulating the habitat-renewing aftermath of natural flooding. This will be done using an adaptive management approach with input from Multispecies Habitat Conservation Plan (MSHCP) stakeholders. If the high pressure water method is used, water will be piped. A high-pressure nozzle will be directed at localized areas of habitat determined to be suitable for SBKR and Santa Ana River woolly-star after renewal. The nozzle will be hand operated or operated from a light vehicle. Treatments will be accomplished in a randomized block design to allow experimental testing of variables such as duration and intensity of spray, addition of clean sand, season of disturbance, application of seed vs. allowing natural dispersal, etc. A rigorous monitoring program funded by Muni/Western will be established to enable the differences among experimental treatments to be determined. The primary indicator of success will be related to development of habitat characteristics identified with pioneer to intermediate RAFSS habitat within the SBKR and Santa Ana River woolly-star populations that have been documented. These characteristics are documented in the literature and will be specified as part of the Muni/Western Program. The program will be adjusted appropriately as results from earlier efforts become available. The design and implementation of the ongoing effort will be funded by Muni/Western and conducted by representatives of Muni/Western with input from the USFWS and CDFG. A complete description of this method is also included in Appendix E7 of the Draft EIR, Section 2.0. Muni/Western commit to achieving a mitigation performance of restoring 10 acres of intermediate- to late-stage RAFSS habitat to the early or intermediate stage RAFSS habitat during the first 20 years of Project implementation. (Draft EIR pages 3.3-61 and 3.3-62; Final EIR Section 2.4.)</p>
MM CR-1	In the event of an unanticipated archaeological or paleontological resource discovery during construction, all ground disturbances within 150 feet of the discovery will be halted or redirected to other areas until the discovery has been documented by a qualified archaeologist or paleontologist, and its potential significance evaluated consistent with CEQA. Resources considered significant will be avoided by Project design. If avoidance is not feasible, the resource will be subject to a data recovery mitigation program, as appropriate. If human remains are discovered the County Coroner will be contacted, and all procedures required by the California Health and Safety Code Section 7050.5, State CEQA Guidelines Section 15064.5(e) and PRC Section 5097.98 will be followed. (Draft EIR page 3.9-19.)
MM-CR-2	Proposed construction of the Plunge Pool Pipeline will avoid physical impacts to the Francis Cuttle Weir Dam to the extent feasible. In the event that any portion of the Francis Cuttle Weir Dam would be modified or demolished, a qualified architectural historian will prepare a historic recordation of the Francis Cuttle Weir Dam, in the context of the Conservation District's groundwater spreading system. The recordation will conform to the standards of either the Historic American Buildings Survey (HABS) or the Historic American Engineering Record (HAER). (Draft EIR page 3.9-20.)

MM CR-3	Prior to construction activities along the segment of the Plunge Pool Pipeline, Phase I, align north of Greenspot Road, the location of the North Fork Canal will be precisely mapped on engineering design plans to identify where the canal falls within the construction corridor. Temporary fencing will be placed 5 feet south of the canal along the portion of the canal that falls within the construction corridor to provide a small buffer area, and no heavy construction equipment or vehicles will be allowed north of the fencing. (Draft EIR page 3.9-21.)
MM CR-4	If it is necessary to install the Morton Canyon Connector II Pipeline through the "Hole in the Wall" within the retaining wall of Greenspot Bridge, construction activities will be confined to previously disturbed sections only and the wall will be restored to pre-Project conditions. Prior to construction, a qualified architectural historian will review the final construction designs of the Morton Canyon Connector II Pipeline to verify avoidance of significant impacts to any Greenspot Bridge feature. (Draft EIR page 3.9-24.)
MM HAZ-1	Muni/Western will direct the contractor to wash out concrete trucks in a designated area where the material cannot run off into a stream or percolate into the groundwater. This area will be specified on all applicable construction plans and be in place before any concrete is poured. Muni/Western will direct the contractor to construction vehicles in a manner that contains fluids, such as lubricants, within an impervious area to avoid spill-related water quality impacts. (Draft EIR page 3.12-12.)
MM HAZ-2	Muni/Western will direct the contractor to inspect and, as necessary, service all equipment before it enters the construction site and regularly thereafter, and before working immediately adjacent to the Santa Ana River or any other drainage or creek to avoid equipment leak-related water quality impacts. Muni/Western will direct the contractor to repair any leaks or hoses/fittings in poor condition before the equipment begins work. (Draft EIR page 3.12-12.)
MM HAZ-3	Muni/Western will direct the contractor to prepare a spill prevention and contamination plan prior to equipment use on the site. Muni/Western will direct the contractor to follow the spill prevention plan during Project construction to prevent spill-related water quality impacts. This plan will include, but not necessarily be limited to: <ul style="list-style-type: none"> a. Specific bermed equipment maintenance and refueling areas. b. Bermed and lined hazardous material storage areas on site that are covered during the rainy season. c. Hazardous material spill cleanup equipment on site (e.g., absorbent pads, shovels, and bags to contain contaminated soil). d. Workers trained in the location and use of cleanup equipment. (Draft EIR page 3.12-12.)
MM HAZ-4	Using available data, in conjunction with the integrated surface and groundwater models, Muni/Western will identify groundwater trends, including plume movement and isolate changes attributable to implementation of the Project. To the extent feasible given existing infrastructure, and consistent with meeting other basin management objectives, Muni/Western will direct Project water spreading to limit adverse plume movements. (Draft EIR page 3.12-14.)
MM-HAZ-5	Muni/Western will make an alternative water supply available to parties affected by contaminated wells, or provide treatment for affected wells, at Muni/Western's discretion. The alternative supply or treatment for affected wells will be made available for all times when pertinent water quality standards are exceeded as a result of the Project. (Final EIR section 2.3.2.)

MM GEO-1	Before beginning construction, a sedimentation and erosion control plan will be prepared by Muni/Western and submitted to the Santa Ana Regional Water Quality Control Board (SARWQCB) for approval. In addition, a Storm Water Pollution Prevention Plan (SWPPP) will be prepared by Muni/Western and submitted to the SARWQCB for approval prior to construction. Where possible, erosion control measures will be implemented by Muni/Western before beginning work in the rainy season. To minimize short-term impacts associated with erosion and off-site siltation of the SAR, standard erosion and sediment control features will be used during and immediately after grading and excavations.
MM GEO-2	Muni/Western will direct the contractor to install, prior to de-watering activities, energy dissipation devices at discharge points to prevent erosion. Sedimentation basins (such as straw bales lined with filter fabric) will be used at dewatering discharge points to prevent excess downstream sedimentation. These basins will be constructed during dewatering and regularly maintained during construction, including after storm events, to keep them in good working order.
MM GEO-3	Muni/Western will implement recommendations established in a site-specific geotechnical report, prepared by a qualified engineer or engineering geologist. The report recommendations will be based on comprehensive evaluation of slope stability, seismic, and soil conditions that may affect construction of the pipelines and related facilities. Recommendations will be consistent with provisions of California Code of Regulations, Title 8, Construction and Safety Orders. Project grading and excavations will be observed by a geotechnical engineer, engineering geologist, or other qualified representative, to verify compliance with recommendations of the geotechnical report. The geotechnical investigation will be completed in accordance with: (1) CDMG Special Publication 117, <i>Guidelines for Evaluating and Mitigating Seismic Hazards in California</i> (CDMG 1997). (2) Southern California Earthquake Center, Recommended Procedures for Implementation of DMG Special Publication 117 Guidelines for Analyzing and Mitigating Liquefaction in California (SCEC1999).
MM GEO-4	Muni/Western will implement seismic-related recommendations contained in a site-specific geotechnical report, as discussed in MM GEO-3, to minimize seismically induced damage to the pipeline.
MM GEO-5	A water flow shut-off mechanism will be installed by Muni/Western at the Plunge Pool Pipeline Intake Structure to terminate flow immediately following a large earthquake in the vicinity of the site.
MM GEO-6	Muni/Western will complete emergency repairs to the pipeline and/or related facilities, in the event of seismically induced damage. MM GEO-1 and MMGEO-2 will be applied to reduce erosion related impacts associated with soil disturbance during emergency repairs.
MM GEO-7	Muni/Western will implement a groundwater level monitoring program using data from Index Wells (see Figure 3.4-5). This information will be used in conjunction with forecasts of groundwater levels derived from Muni/Western integrated surface and groundwater models to identify trends in groundwater levels and identify changes attributable to the Project. To the extent feasible given existing infrastructure, and consistent with meeting other basin management objectives, Muni/Western will direct Project water spreading to limit high groundwater conditions in the vicinity of Devil Canyon, Lytle Creek, Mill Creek, and areas in the forebay and intermediate area of the SBBA.

MM GEO-8	Muni/Western will implement a groundwater level monitoring program using data from Index Wells. This information will be used in conjunction with forecasts of groundwater levels derived from Muni/Western integrated surface and groundwater models to identify trends in groundwater levels and isolate changes attributable to the Project. To the extent feasible given existing infrastructure, and consistent with meeting other basin management objectives, Muni/Western will direct Project water spreading to limit potential for subsidence in the Pressure Zone area of the SBBA.
MM GW-1	Using available reliable data, Muni/Western will, on an annual basis, evaluate impacts of the Project on TDS and nitrate concentrations in the SBBA. To the extent feasible given existing infrastructure, and consistent with meeting other basin management objectives, Muni/Western will direct Project water spreading to reduce significant TDS and nitrate impacts.
MM SW-2	An energy dissipation structure, a device to slow fast moving flows so as to prevent erosion, will be placed at the terminus of the pipeline delivering water to Lytle Basins channel to ensure that water from the Project does not scour or erode the channel.
MM PS-12	<p>Per the requirements of the Seven Oaks Accord, to avoid a significant effect on groundwater levels at one or more index wells located outside the Pressure Zone, Muni/Western will spread sufficient water to maintain static groundwater levels at the affected index wells.</p> <p>To implement this mitigation measure, Muni/Western will use a groundwater monitoring program based on information derived from the index wells. This information will be used in conjunction with forecasts of groundwater levels derived from Muni/Western integrated surface and groundwater models to identify trends in groundwater levels and isolate the share of change attributable to the Project. Remedial action will be implemented prior to an actual 10-foot reduction being reached, to avoid the significant impact.</p>

Table 2: Cumulative Mitigation Measures

MM Cumulative BIO-1	<p>The San Bernardino General Plan continues a number of policies in the Natural Resources Element designed to require review of biological impacts for each development project in coordination with the development and enforcement of Habitat Conservation Plans, and development of monitoring programs. The Riverside County General Plan Draft Program EIR identifies policies from the Multipurpose Open Space Element of the County of Riverside General Plan as well as additional measures to reduce impacts to biological resources associated with growth. Policies are designed to require review of biological impacts for each development project, avoidance of habitat fragmentation, and use of constructed wetlands to treat water before it enters the natural stream system. Residual impacts: despite General Plan policies, significant unavoidable cumulative biological impacts would still occur in San Bernardino and Riverside Counties.</p>
MM Cumulative CR-1	<p>Individual review of each of the related projects under CEQA would likely result in the identification of any significant cultural resource impacts and provide mitigation to reduce or avoid impacts. It is not certain that all significant cumulative impacts could be successfully mitigated, given the potentially large amount of ground disturbance involved with the Project and related projects. Residual impacts: potential cumulative impacts on cultural resources would remain significant.</p>
MM Cumulative CR-2	<p>The Natural Resources Element of the San Bernardino County General Plan contains a number of policies to mitigate impacts to cultural resources. Generally, these policies require cultural resource field surveys with all project submittals; the preparation of cultural resource overlays for all existing Planning Areas not covered by an overlay map; preliminary cultural resource reviews by the Archaeological Information Center; the cataloging of artifacts discovered as a result of a cultural resource investigation; and notification of the Native American Heritage Commission if projects require the excavation of Native American archaeological sites. The Multipurpose Open Space Element of the Riverside County General Plan also contains relevant policies that would mitigate impacts to cultural resources. The Riverside County General Plan Draft Program EIR identifies additional mitigation measures including compliance with State Health and Safety Code Section 7050.5 that requires disturbance of an area to cease where human remains have been encountered until the Riverside County Coroner has made a determination of the origin and disposition; avoidance of</p>

MM Cumulative CR-2 (Continued)	<p>cultural resources where possible, where avoidance of cultural resources is not possible, the planting of deterrent plant species such as prickly pear cactus shall be completed to minimize public availability to the site; and additional measures if avoidance and/or preservation of cultural resources is not possible, such as having a participant-observer present from the appropriate Indian Band or Tribe during archaeological testing or excavation of a project site.</p> <p>Residual impacts: significant cumulative impacts to cultural resources could still occur given the potentially large amount of ground disturbance related to growth and development.</p>
MM Cumulative HAZ-1	<p>The San Bernardino County General Plan includes policies to reduce impacts related to hazardous materials. Specifically, the Hazardous Waste/Materials section of the Man-made Hazards Element includes policies HW-1 through HW-26. In general, these measures establish an effective and expeditious permitting process for siting hazardous waste facilities that includes extensive public participation; ensures the protection of public health and safety when siting needed hazardous waste facilities; develops uniform set of criteria for the siting of hazardous waste facilities in the County, including a requirement that facilitates the siting only in areas with a zoning overlay of Specified Hazardous Waste Facility; and ensures coordination among agencies and County departments in the review of all hazardous waste applications within the County.</p>
MM Cumulative SW-1	<p>The San Bernardino General Plan contains a number of policies in the Water section of the Natural Resources Element designed to coordinate and manage water resources throughout the County. However, with regard to water resources in San Bernardino County, significant unavoidable impacts would still occur.</p> <p>The Riverside County General Plan addresses localized flooding risks in the Safety Element of the proposed Riverside County General Plan. Additionally, the proposed Riverside County General Plan Draft Program EIR contains measures to further mitigate flooding impacts including use of FEMA documents to minimize flood hazards, prohibition by the County of the alteration of floodways and channelization where possible, and the requirement that the 10-year flood flows be contained within the tops of curbs and the 100-year flood flows within the street rights-of-way. These policies would mitigate impacts related to surface water in Riverside County.</p> <p>Residual impacts: significant cumulative impacts to surface water resources related to water demand and generation of urban contaminants could still occur in San Bernardino County.</p>

MM Cumulative GW-1	<p>The San Bernardino County General Plan contains a number of policies in the Water section of the Natural Resources Element designed to coordinate and manage water resources throughout the County.</p> <p>The Riverside County General Plan contains a number of policies in the multipurpose Open Space Element and Land Use Element designed to avoid overdraft and groundwater contamination.</p> <p>Residual impacts: significant unavoidable cumulative groundwater impacts would still occur in San Bernardino County.</p>
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STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21265

Application 31370 of

**San Bernardino Valley Municipal Water District and Western Municipal
Water District of Riverside County
P.O. Box 5906
San Bernardino, CA 92412-5906**

filed on **November 4, 2002**, has been approved by the State Water Resources Control Board (State Water Board or Board) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source:

Santa Ana River (1, 3, 6, 9, 10, 11,12)
Bear Creek (2)
Breakneck Creek (4)
Keller Creek (5)
Alder Creek (7)

Tributary to:

Pacific Ocean
Santa Ana River thence Pacific Ocean
Santa Ana River thence Pacific Ocean
Santa Ana River thence Pacific Ocean
Santa Ana River thence Pacific Ocean

within the County of **San Bernardino**.

2. Location of points of diversion (POD) and points of redirection (POR)

By California Coordinate System of 1983, Zone 5	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
POD & POR #1: Seven Oaks Dam North 1,866,500 ft. and East 6,835,000 ft.	NE $\frac{1}{4}$ of NW $\frac{1}{4}$	4	01S	02W	SB
POD #2: North 1,882,500 ft. and East 6,859,600 ft.	SE $\frac{1}{4}$ of NE $\frac{1}{4}$	19	01N	01W	SB
POD #3: North 1,882,400 ft. and East 6,859,700 ft.	SE $\frac{1}{4}$ of NE $\frac{1}{4}$	19	01N	01W	SB
POD #4: North 1,880,900 ft. and East 6,858,100 ft.	NW $\frac{1}{4}$ of SE $\frac{1}{4}$	19	01N	01W	SB
POD #5: North 1,877,700 ft. and East 6,846,200 ft.	NW $\frac{1}{4}$ of NE $\frac{1}{4}$	26	01N	02W	SB
POD #6: North 1,876,700 ft. and East 6,846,700 ft.	SW $\frac{1}{4}$ of NE $\frac{1}{4}$	26	01N	02W	SB
POD #7: North 1,877,100 ft. and East 6,843,600 ft.	NW $\frac{1}{4}$ of NW $\frac{1}{4}$	26	01N	02W	SB
POR #8: North 1,865,800 ft. and East 6,837,100 ft.	SE $\frac{1}{4}$ of NE $\frac{1}{4}$	4	01S	02W	SB
POD & POR #9: North 1,864,900 ft. and East 6,835,000 ft.	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	4	01S	02W	SB
POD & POR #10: North 1,864,900 ft. and East 6,834,600 ft.	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	4	01S	02W	SB
POD & POR #11: North 1,863,500 ft. and East 6,834,000 ft.	NW $\frac{1}{4}$ of SW $\frac{1}{4}$	4	01S	02W	SB
POD & POR #12: North 1,862,800 ft. and East 6,834,000 ft.	SW $\frac{1}{4}$ of SW $\frac{1}{4}$	4	01S	02W	SB

2 (continued) Location of point of diversion

By California Coordinate System of 1983, Zone 6	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
POR #13: Lake Mathews (Cajalco Dam) North 2,249,950 ft. and East 6,193,550 ft.	NE¼ of SW¼	12	04S	06W	SB
POR #14: Diamond Valley Lake Dam North 2,188,680 ft. and East 6,313,210 ft.	NE¼ of NW¼	11	06S	02W	SB
POR #15 Lake Skinner Dam North 2,157,870 ft. and East 6,311,180 ft.	SW¼ of SE¼	3	07S	02W	SB

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Municipal, Industrial, Irrigation, Heat Control, Frost Protection and Recreational uses	San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County's Service Areas*					

*The place of use is shown on maps dated June 7, 2010 and June 14, 2010 and filed with the State Water Board.

- 5a. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **1,100** cubic feet per second (cfs) by direct diversion and **100,000** acre-feet per annum (afa) by underground and/or surface storage to be diverted from **January 1 to December 31** of each year. The amount of surface storage at Seven Oaks Dam shall not exceed 50,000 afa. The maximum rate of diversion to offstream storage shall not exceed 1,250 cfs. The maximum rate of diversion to underground storage shall not exceed 400 cfs. The total amount of water to be taken from the sources shall not exceed 100,000 acre-feet (af) per water-year from October 1 to September 30. The total rate for water to be taken from the sources for either direct use, underground storage, and/or offstream surface storage shall not exceed 1,250 cfs.

(0000005E)

- 5b. The total quantity of water to be taken from the sources under both Application 31165 and Application 31370 shall not exceed 198,317 af per water-year from October 1 to September 30. The total amount of water diverted to storage at Seven Oaks Dam under both Applications 31165 and 31370 shall not exceed 50,000 af per water-year from October 1 to September 30. The total combined rate for water to be taken from the sources under Applications 31165 and 31370 for either direct use, underground storage, and/or offstream surface storage shall not exceed an instantaneous rate of 1,250 cfs.

(0000005L)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants.

(0000006)

7. Construction work and the application of water to beneficial use shall be prosecuted with reasonable diligence. Actual construction shall begin no later than June 30, 2010 and be completed by October 1, 2020. Water shall be put to full beneficial use by December 31, 2059.

(0000009)

8. Progress reports shall be submitted promptly by Permittee when requested by the State Water Board until a license is issued.

(0000010)

9. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit.

(0000011)

10. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of Permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the Permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

11. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the Permittee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken

pursuant to this paragraph unless the State Water Board finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

12. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531-1544). If a "take" will result from any act authorized under this water right, the Permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

13. Permittee shall maintain records of the amount of water diverted and used to enable State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605.

(0000015)

14. This permit shall not be construed as conferring upon the Permittee right of access to the point of diversion.

(0000022)

15. Permittee shall consult with the Division of Water Rights (Division) and, within one year from the date of this permit, shall submit to the State Water Board its Urban Water Management Plan as prepared and adopted in conformance with section 10610, et seq. of the California Water Code, supplemented by any additional information that may be required by the Board.

All cost effective measures identified in the Urban Water Management Plan and any supplements thereto shall be implemented in accordance with the schedule for implementation found therein.

(0000029A)

16. If it is determined after permit issuance that the as-built conditions of the project are not correctly represented by the map(s) prepared to accompany the application, Permittee shall, at his expense have the subject map(s) updated or replaced with equivalent as-built map(s). Said revision(s) or new map(s) shall be prepared by a civil engineer or land surveyor registered or licensed in the State of California and shall meet the requirements prescribed in section 715 and sections 717 through 723 of the California Code of Regulations, Title 23.. Said revision(s) or map(s) shall be furnished upon request of the Chief of the Division of Water Rights¹.

(0000030)

17. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the State Department of Fish and Game (DFG) and the Permittee is filed with the Division. Compliance with the terms and conditions of the agreement is the responsibility of the Permittee. If a stream or lake alteration agreement is not necessary for this permitted project, the Permittee shall provide the Division a copy of a waiver signed by DFG.

(0000063)

¹ The Chief of the Division of Water Rights is hereafter referred by the State Water Board as the Deputy Director for Water Rights.

18. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction undertaken after issuance of the permit, Permittee shall file a report pursuant to Water Code Section 13260 and shall comply with all waste discharge requirements imposed by the California Regional Water Quality Control Board, Santa Ana Region, or by the State Water Board.
(0000100)
19. Prior to diversion of water under this permit, Permittee shall: (1) install devices to measure the instantaneous rate of diversion and the quantities of water placed into underground storage, and (2) install devices to measure or provide documentation of the method to be used to determine the quantity of water recovered from underground storage and placed to beneficial use. All measuring devices and the method of determining the quantity of water placed into and recovered from underground storage shall be approved by the State Water Board prior to diversion of water under this permit. All measuring devices shall be properly maintained. The diversion data shall be posted on Permittee's websites on a weekly basis.
(0080117)
20. The Permittee shall obtain all necessary state and local agency permits required by other agencies prior to construction and diversion of water. Copies of such permits and approvals shall be forwarded to the Deputy Director for Water Rights (Deputy Director).
(0000203)
21. No debris, soil, silt, cement that has not set, oil, or other such foreign substance will be allowed to enter into or be placed where it may be washed by rainfall runoff into the waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.
(0000208)
22. The State Water Board adopts and incorporates by reference into this permit the mitigation measures and monitoring and reporting requirements applicable to the impacts of the Project on biological and cultural resources, geology, hazardous material and groundwater contamination, groundwater and surface water hydrology, water quality and public services, utilities and transportation identified in the Final EIR, specifically mitigation measures MM BIO-1, MM BIO-2 and MM BIO-6 through MM BIO-10, MM CR 1 through MM CR 4, MM HAZ 1 through MM HAZ 5, MM GEO-1 through MM GEO-8, MM GW-1, MM SW-2 and MM PS-12. (See attached Table 1.) Permittee must implement the measures to mitigate significant impacts and conduct the required reporting and monitoring of those measures as provided in the Mitigation Monitoring and Reporting Plan adopted on March 21, 2007 by the respective Boards of Directors of San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County. In addition, Permittee shall submit an annual report to the Deputy Director that includes the results of the Mitigation Monitoring and Reporting Program. The State Water Board reserves jurisdiction to require any reasonable amendments to these measures and requirements to ensure that they will accomplish the stated goal.
(0400500)
23. The State Water Board adopts and incorporates by reference into this permit the mitigation measures and monitoring and reporting requirements applicable to the cumulative impacts of the Project on biological and cultural resources, geology, hazardous material and groundwater contamination, groundwater and surface water hydrology and water quality, and public services, utilities and transportation identified in the EIR, specifically mitigation measures MM Cumulative BIO-1, MM Cumulative CR-1, MM Cumulative CR-2, MM Cumulative HAZ-1, MM Cumulative SW-1 and MM Cumulative GW-1. (See attached Table 2.) Permittee must implement the measures to mitigate cumulative impacts and conduct the required reporting and monitoring of those measures as provided in the Mitigation Monitoring and Reporting Plan adopted by the respective Boards of Directors of San Bernardino Valley Municipal Water District and Western

Municipal Water District of Riverside County on March 21, 2007. In addition, Permittee shall submit to the Deputy Director an annual report that includes the results of the Mitigation Monitoring and Reporting Program. The State Water Board reserves jurisdiction to require any reasonable amendments to these measures and requirements to ensure that they will accomplish the stated goal.

(0400500)

24. This permit shall not be construed as conferring upon Permittee right of access to facilities of the U.S. Army Corps of Engineers and the Santa Ana River Mainstem Local Sponsors.

(0000022)

25. This permit is specifically subject to the prior rights of Bear Valley Mutual Water Company, City of Redlands, East Valley Water District, Lugonia Water Company, North Fork Water Company and Redlands Water Company to divert the first 88 cfs of the natural flow of the Santa Ana River pursuant to pre-1914 appropriative rights, to the extent that such rights may exist.

(0400500)

26. This permit is specifically subject to the prior rights of San Bernardino Valley Water Conservation District under Licenses 2831 and 2832 issued pursuant to Applications 2217 and 4807, and any valid pre-1914 appropriative right confirmed by the Court.

(0400500)

27. Nothing in this permit shall be construed as authorizing any diversions contrary to the provisions of the December 19, 2002 Biological Opinion issued by United States Fish and Wildlife Service for operation of Seven Oaks Dam, as may be revised in the future, including flow releases for downstream over-bank inundation to preserve State and federally listed threatened and endangered species and their habitat.

(0600500)

28. Permittee shall only divert water at points of diversion 5 through 10 in compliance with the terms and conditions of Federal Energy Regulatory Commission (FERC) license Project No. 1933 and 401 water quality certification as well as any future FERC licenses and 401 water quality certifications.

(0560900)

29. Permittee shall not, without the prior written consent of Southern California Edison (SCE), construct, operate or maintain diversion works at points of diversion located upstream of the flood inundation pool of Seven Oaks Dam in a manner that interferes with the operation and maintenance of the hydroelectric works licensed to SCE by the Federal Energy Regulatory Commission (FERC) license for Project No. 1933. Permittee's diversion of water at such points of diversion shall not interfere with SCE's diversion of water for hydroelectric purposes, again as described in the FERC license for Project No. 1933. Nothing in this permit shall be construed to limit Permittee's diversion of water from such points of diversion at times when the quantity of water available for diversion at such points of diversion exceeds the demand of SCE's facilities to divert water from the Santa Ana River system.

(0430999)

30. This permit shall not be construed as conferring upon Permittee the right of access to Seven Oaks Dam, the points of diversion, the lands necessary for related facilities, or the lands necessary for inundation for water storage. Access to, construction upon, or inundation of National Forest Service lands shall not commence prior to authorization by the Forest Service, in accordance with applicable laws and regulations. Such authorization will require compliance with all applicable federal laws and regulations. Permittee specifically recognizes that completion of

the applicable legal process does not guarantee such authorization will be granted, the issuance of this water right permit notwithstanding.

(0000022)

31. This permit shall not be construed as conferring upon Permittee the right of access to Seven Oaks Dam, the points of diversion, and lands necessary for related facilities, or the lands necessary for inundation for water storage. Permittee shall not commence construction and operation of water diversion facilities at Seven Oaks Dam without a written access agreement from the Santa Ana River Mainstem Project Local Sponsors.

(0000022)

32. Flow in the Santa Ana River is highly variable from year to year. Because the face value of this permit is based on a rare storm event, this permit shall not be construed as giving any assurance that such an event will occur. The actual amount of water available for appropriation may be much less.

(0000999)

33. Permittee is required to follow guidance from existing state and federally mandated projects regarding groundwater contaminant plumes within and outside the San Bernardino Basin Area. This includes coordination with appropriate oversight agencies and compliance with policies regarding the remediation of the groundwater contaminant plumes.

(0400800)

34. Permittee shall not use the Cactus Spreading and Flood Control Basins under this permit.

(0400800)

- 35a. In order to prevent degradation of the quality of water released to the Santa Ana River from storage at Seven Oaks Dam, the State Water Board may modify this permit to set conditions that apply water quality objectives to any release from storage.

- 35b. No water shall be released from storage of Seven Oaks Dam for purposes of redirection by Permittee until Permittee has consulted with the Chief Deputy Director for Water Quality or his or her delegatee and the Chief Deputy Director has determined that the releases will be consistent with applicable water quality objectives. The releases shall be consistent with any conditions the Chief Deputy Director determines are necessary to ensure compliance with applicable water quality objectives.

(0400800)

36. In order to prevent degradation of water quality during and after construction of the project, prior to commencement of any construction undertaken after issuance of the permit, Permittee shall file a report pursuant to Water Code Section 13260 and shall comply with all waste discharge requirements imposed by the California Regional Water Quality Control Board, Santa Ana Region, or by the State Water Board.

(0400800)

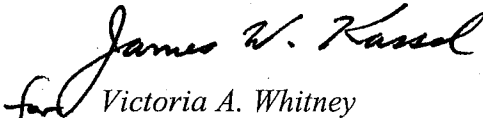
This permit is issued and Permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every Permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefore shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any Permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any Permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney
Deputy Director for Water Rights

Dated: **JUN 29 2010**

Attachments

Table 1: Mitigation Measures

MM BIO-1	<p>Muni/Western will minimize disturbance to native habitats and listed and non-listed sensitive species by the implementation of the following measures at construction sites prior to and during construction. Where ground disturbance is required, the Muni/Western program will include the following:</p> <ol style="list-style-type: none"> (1) Clearly marking and delineating the limits of the staging areas as well as the construction corridors/zones in the field and graphically on all final construction drawings and blueprints. Personnel and equipment will be prohibited in native habitats outside the construction limits. (2) Biologically sensitive areas, including individuals or colonies of listed and non-listed sensitive plant species and wildlife species, will be identified and delineated in the field prior to ground disturbance (see MM BIO-3) and will be clearly marked graphically on all final construction plans or blueprints so they will be avoided to maximum extent feasible. (3) Use methods to minimize the construction corridor width to the maximum extent feasible in sensitive habitats, such as transporting and stockpiling excavated materials in disturbed area of the right-of-way (ROW), or into other parts of the ROW by truck or conveyor belt. <p>Employee Training Implementation of an employee training program. Muni/Western's program will include an initial meeting with all personnel presented by a qualified biologist familiar with all affected species, habitats, and permit conditions. The employee training program will include a discussion of each species, all applicable laws, the permit conditions, and the potential penalties for violating permit conditions. The employee training program will be conducted before construction activities begin. Regular updates will occur during weekly tailgate meetings with construction personnel, and newly hired personnel will be informed of the permit conditions as well as the habitat and species issues before working on the Project site.</p> <p>On-Site Monitoring Biological monitoring of habitat clearing activities and removal of sedentary animals, both common and sensitive, within the ROW prior to clearing. This will require a qualified biologist to be at the location of habitat removal before clearing to attempt to remove animals where visible and, during removal activities, to ensure that no inadvertent impacts to adjacent habitats occur. Weekly inspections of the ROW perimeter near work areas will also reduce the potential for inadvertent impacts to adjacent habitat.</p> <p>Best Management Practices (BMPs) Dust control. All areas of mechanical ground disturbance, including dirt access roadways, will be consistently moistened to reduce the creation of dust clouds. The frequency of watering will be consistent with the desired goal and in accordance with regional standards and BMPs. Erosion control. Devices such as straw bales and "v" ditches will be installed in areas where construction activities may directly or indirectly cause erosion or sediment deposition on adjacent habitats. Routine removal of trash from construction areas. All refuse, including non-construction materials such as paper and miscellaneous food packaging materials, will be removed from the ROW to prevent littering of the adjacent habitat areas outside of the ROW. At a minimum, site clean-ups should occur weekly.</p> <p>Listed Species Protection Measures In areas where the San Bernardino Kangaroo Rat (SBKR) is present, either within or adjacent to the ROW, Muni/Western will install exclusionary fencing where appropriate to reduce the potential for SBKR entering the ROW.</p>
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MM BIO-1 (Continued)	<p>Specification for the fencing will be particular to the goal of the SBKR exclusion and will be approved by the United States Fish and Wildlife Service (USFWS). Muni/Western may not install fencing in certain areas such as boulder-strewn washes where fence construction may cause substantial habitat disturbance. Following the installation of fencing, the animals within the ROW will be trapped and released within adjacent suitable habitat outside the ROW. These methods will be approved by the USFWS.</p> <p>In areas where the SBKR is present, either within or adjacent to the ROW, Muni/Western will limit construction activities to daylight hours (approximately 7:00 A.M. to 6:00 P.M.) During night hours, no activities that would unnaturally increase the light or noise within adjacent occupied habitat will occur.</p> <p>In areas where the SBKR, coastal California gnatcatcher CAGN, least Bell's vireo, or southwestern willow flycatcher are present either within or adjacent to the ROW, Muni/Western will avoid or reduce construction activities in the vicinity of occupied habitat during the breeding season. Avoidance will take place from March 1 through June 30. In certain areas, avoidance of southwestern willow flycatcher will continue through July 31. Where complete avoidance is not possible, construction activities will be conducted in a manner that attempts to minimize disturbance during early morning hours and avoids the most sensitive breeding months of April and May.</p> <p>In areas where preconstruction sensitive species surveys and other seasonally limited activities such as seed collection and plant propagation are needed, Muni/Western will prepare a calendar of when such activities need to be accomplished and incorporate this into design and construction schedules to ensure that the surveys can be conducted in the appropriate season without causing delays. (Draft EIR page 3.3-37 through 3.3-39; Final EIR Section 2.4.)</p>
MM BIO-2	<p>Muni/Western will develop a Habitat Revegetation, Restoration, and Monitoring Program (Program), obtaining input from CDFG, and USFWS, for implementation in all habitat areas directly affected by construction activities. The Program will include the following measures:</p> <p>Invasive Species Control</p> <p>Where appropriate and feasible, the area to be treated will be treated to kill invasive exotics species and limit their seed production before initiating any earthmoving activity with the objectives of: (1) preventing invasive species from spreading from the disturbance area, and (2) removing weed sources from the salvaged topsoil. Herbicides will be used only by a licensed herbicide applicator and may require notification to property owners or resource agencies. The treatment will be completed before earthmoving in order for this mitigation to have its intended effect (e.g., the treatment would need to occur before target species set seed).</p> <p>Topsoil Salvage and Replacement</p> <p>In areas where vegetation and soil are to be removed, the topsoil will be salvaged and replaced, where practicable. This may be accomplished using two lifts, the first to salvage the seed bank, and the second to salvage soil along with soil biota in the root zone. Soil will be stockpiled in two areas near the Project site, with the seed bank labeled to identify it. Topsoil will be replaced in the proper layers after final reconfiguration of disturbed areas. Where presence of extensive deposits of boulders and cobbles limit the opportunity to salvage topsoil and make the above-mentioned procedure infeasible, Muni/Western will salvage available surface material and stockpile it for replacement on the surface of the restored area. Stockpiles will be covered if the soil is to be left for an extended period to prevent losses due to erosion and invasion of weeds.</p> <p>Habitat Rehabilitation and Revegetation</p> <p>Muni/Western will develop and implement plans and specifications for replanting areas disturbed by the Project. Replanting will be with native species propagated from locally collected seed or cuttings, and, if applicable, will include seed or sensitive species that would be impacted during construction activities.</p> <p>Monitoring procedures and performance criteria will be developed by Muni/Western to</p>

MM BIO-2 (Continued)	address revegetation and erosion control. The performance criteria will consider the level of disturbance and the condition of adjacent habitats. Monitoring will continue for three-to-five years, or until performance criteria have been met. Appropriate remedial measures, such as replanting, erosion control or weed control, will be identified and implemented if it is determined that performance criteria are not being met. (Draft EIR page 3.3-39 through 3.3-40; Final EIR Section 2.4.)
MM BIO-6	<p>Prior to ground disturbance or other activities, qualified botanists will survey all proposed construction, staging, stockpile, and access areas for presence of non-listed sensitive plant species. Preconstruction surveys will occur during appropriate season and in accordance with established protocols (if required). These surveys will be conducted in all construction areas that occur in native habitats. In the event that non-listed sensitive plant species are observed in the impact area during pre-Project surveys, Muni/Western will implement the following measures:</p> <ul style="list-style-type: none"> (a) Colonies will be clearly marked, mapped, and recorded along with the numbers of individuals in each colony and their respective condition. To the extent feasible, construction areas and access roads will be configured to avoid or minimize loss of individual plants and damage to occupied habitats. (b) Where impacts to non-listed sensitive plant species are unavoidable, Muni/Western will develop and implement a salvage, propagation, replanting, and monitoring program that will use both seed and salvaged plants constituting an ample and representative sample of each colony. (Draft EIR page 3.3-42.)
MM BIO-7	<p>To reduce impacts on biological resources, Muni/Western will realign pipelines to avoid sensitive resources and habitat to the maximum extent feasible. Specifically, Muni/Western will realign Phase II of the Plunge Pool Pipeline northward and place it adjacent to Greenspot Road. (See Draft EIR Figure 3.3-7). This will put the project-related disturbance at the edge of the habitat and avoid bisecting the intermediate to mature RAFSS habitat along the western portion of the alignment. If it is infeasible to implement MM BIO-7, then the residual impact could be compensated by implementation of MM BIO-8, which is intended to compensate for permanent or long-term losses of sensitive RAFSS habitat as a result of installation of permanent facilities or long-term construction impacts that cannot be fully mitigated by MM BIO-1, MM BIO-2, and MM BIO-7. (Draft EIR page 3.3-44.)</p>
MM BIO-8	<p>To compensate for permanent long-term and temporal losses of RAFSS habitat value, Muni/Western will acquire, for every 1 acre impacted, a minimum of 1 acre of good quality habitat of similar or greater habitat value than the RAFSS area impacted by the Plunge Pool pipeline, and dedicate it in perpetuity as a habitat conservation easement area, or other appropriate designation, and provide funding for its future management as native habitat in perpetuity. The acquired RAFSS habitat area would ideally be contiguous with existing habitat already set aside in the WSPA or other dedicated RAFSS habitat. If good quality habitat in such a locality is not available for purchase, availability of other RAFSS habitat will be investigated, with the objective of obtaining good quality habitat near the Project area. Implementation of this mitigation measure will be subject to the requirement that such long-term mitigation and reporting plans for such acquisitions are to be approved by the Deputy Director for Water Rights of the State Water Resources Control Board prior to construction of the Plunge Pool Pipeline. (Draft EIR page 3.3-44; Final EIR Section 2.4.)</p>
MM BIO-9	<p>Muni/Western will monitor and remove invasive non-native species establishing in the channel and adjacent RAFSS habitats between Seven Oaks Dam and Mill Creek. Target species include species of tamarisk or salt cedar (<i>Tamarix</i> spp.), fountain grass (<i>Pennisetum setaceum</i>), and giant reed (<i>Arundo donax</i>). These species establish in habitats suitable to SBKR and Santa Ana River woolly-star and have the potential to</p>

MM BIO-9 (Continued)	spread further into adjacent suitable habitat areas. Initial control will be established using a combination of physical removal and herbicidal treatment using appropriate environmental safeguards. Herbicides will be used pursuant to manufacturer's instructions, and standard measures will be taken to avoid impacts to water quality. Two to several follow-up treatments would be anticipated during the first year with follow-up monitoring and treatments at least once annually in the ensuing years. (Draft EIR page 3.3-61; Final EIR Section 2.4.)
MM BIO-10	<p>Muni/Western will develop a program, in coordination with MSHCP agency participants, to selectively restore SBKR and Santa Ana River woolly-star habitat by using habitat manipulation, either by mechanical means or high pressure water, to remove vegetation and leave freshly deposited sand and silt, simulating the habitat-renewing aftermath of natural flooding. This will be done using an adaptive management approach with input from Multispecies Habitat Conservation Plan (MSHCP) stakeholders. If the high-pressure water method is used, water will be piped. A high-pressure nozzle will be directed at localized areas of habitat determined to be suitable for SBKR and Santa Ana River woolly-star after renewal. The nozzle will be hand-operated or operated from a light vehicle. Treatments will be accomplished in a randomized block design to allow experimental testing of variables such as duration and intensity of spray, addition of clean sand, season of disturbance, application of seed vs. allowing natural dispersal, etc. A rigorous monitoring program funded by Muni/Western will be established to enable the differences among experimental treatments to be determined. The primary indicator of success will be related to development of habitat characteristics identified with pioneer to intermediate RAFSS habitat within the SBKR and Santa Ana River woolly-star populations that have been documented. These characteristics are documented in the literature and will be specified as part of the Muni/Western Program.</p> <p>The program will be adjusted appropriately as results from earlier efforts become available. The design and implementation of the ongoing effort will be funded by Muni/Western and conducted by representatives of Muni/Western with input from the USFWS and CDFG. A complete description of this method is also included in Appendix E7 of the Draft EIR, Section 2.0. Muni/Western commit to achieving a mitigation performance of restoring 10 acres of intermediate- to late-stage RAFSS habitat to the early or intermediate stage RAFSS habitat during the first 20 years of Project implementation (Draft EIR pages 3.3-61 and 3.3-62; Final EIR Section 2.4.)</p>
MM CR-1	In the event of an unanticipated archaeological or paleontological resource discovery during construction, all ground disturbances within 150 feet of the discovery will be halted or redirected to other areas until the discovery has been documented by a qualified archaeologist or paleontologist, and its potential significance evaluated consistent with CEQA. Resources considered significant will be avoided by Project design. If avoidance is not feasible, the resource will be subject to a data recovery mitigation program, as appropriate. If human remains are discovered the County Coroner will be contacted, and all procedures required by the California Health and Safety Code Section 7050.5, State CEQA Guidelines Section 15064.5(e) and PRC Section 5097.98 will be followed. (Draft EIR page 3.9-19.)
MM-CR-2	Proposed construction of the Plunge Pool Pipeline will avoid physical impacts to the Francis Cuttle Weir Dam to the extent feasible. In the event that any portion of the Francis Cuttle Weir Dam would be modified or demolished, a qualified architectural historian will prepare a historic recordation of the Francis Cuttle Weir Dam, in the context of the Conservation District's groundwater spreading system. The recordation will conform to the standards of either the Historic American Buildings Survey (HABS) or the Historic American Engineering Record (HAER). (Draft EIR page 3.9-20.)

MM CR-3	Prior to construction activities along the segment of the Plunge Pool Pipeline, Phase I, align north of Greenspot Road, the location of the North Fork Canal will be precisely mapped on engineering design plans to identify where the canal falls within the construction corridor. Temporary fencing will be placed 5 feet south of the canal along the portion of the canal that falls within the construction corridor to provide a small buffer area, and no heavy construction equipment or vehicles will be allowed north of the fencing. (Draft EIR page 3.9-21.)
MM CR-4	If it is necessary to install the Morton Canyon Connector II Pipeline through the "Hole in the Wall" within the retaining wall of Greenspot Bridge, construction activities will be confined to previously disturbed sections only and the wall will be restored to pre-Project conditions. Prior to construction, a qualified architectural historian will review the final construction designs of the Morton Canyon Connector II Pipeline to verify avoidance of significant impacts to any Greenspot Bridge feature. (Draft EIR page 3.9-24.)
MM HAZ-1	Muni/Western will direct the contractor to wash out concrete trucks in a designated area where the material cannot run off into a stream or percolate into the groundwater. This area will be specified on all applicable construction plans and be in place before any concrete is poured. Muni/Western will direct the contractor to construction vehicles in a manner that contains fluids, such as lubricants, within an impervious area to avoid spill-related water quality impacts. (Draft EIR page 3.12-12.)
MM HAZ-2	Muni/Western will direct the contractor to inspect and, as necessary, service all equipment before it enters the construction site and regularly thereafter, and before working immediately adjacent to the Santa Ana River or any other drainage or creek to avoid equipment leak-related water quality impacts. Muni/Western will direct the contractor to repair any leaks or hoses/fittings in poor condition before the equipment begins work. (Draft EIR page 3.12-12.)
MM HAZ-3	Muni/Western will direct the contractor to prepare a spill prevention and contamination plan prior to equipment use on the site. Muni/Western will direct the contractor to follow the spill prevention plan during Project construction to prevent spill-related water quality impacts. This plan will include, but not necessarily be limited to: <ul style="list-style-type: none"> a. Specific bermed equipment maintenance and refueling areas. b. Bermed and lined hazardous material storage areas on site that are covered during the rainy season. c. Hazardous material spill cleanup equipment on site (e.g., absorbent pads, shovels, and bags to contain contaminated soil). d. Workers trained in the location and use of cleanup equipment. (Draft EIR page 3.12-12.)
MM HAZ-4	Using available data, in conjunction with the integrated surface and groundwater models, Muni/Western will identify groundwater trends, including plume movement and isolate changes attributable to implementation of the Project. To the extent feasible given existing infrastructure, and consistent with meeting other basin management objectives, Muni/Western will direct Project water spreading to limit adverse plume movements. (Draft EIR page 3.12-14.)
MM-HAZ-5	Muni/Western will make an alternative water supply available to parties affected by contaminated wells, or provide treatment for affected wells, at Muni/Western's discretion. The alternative supply or treatment for affected wells will be made available for all times when pertinent water quality standards are exceeded as a result of the Project. (Final EIR section 2.3.2.)
MM GEO-1	Before beginning construction, a sedimentation and erosion control plan will be prepared by Muni/Western and submitted to the Santa Ana Regional Water Quality Control Board

MM GEO-1 (Continued)	(SARWQCB) for approval. In addition, a Storm Water Pollution Prevention Plan (SWPPP) will be prepared by Muni/Western and submitted to the SARWQCB for approval prior to construction. Where possible, erosion control measures will be implemented by Muni/Western before beginning work in the rainy season. To minimize short-term impacts associated with erosion and off-site siltation of the SAR, standard erosion and sediment control features will be used during and immediately after grading and excavations.
MM GEO-2	Muni/Western will direct the contractor to install, prior to de-watering activities, energy dissipation devices at discharge points to prevent erosion. Sedimentation basins (such as straw bales lined with filter fabric) will be used at dewatering discharge points to prevent excess downstream sedimentation. These basins will be constructed during dewatering and regularly maintained during construction, including after storm events, to keep them in good working order.
MM GEO-3	<p>Muni/Western will implement recommendations established in a site-specific geotechnical report, prepared by a qualified engineer or engineering geologist. The report recommendations will be based on comprehensive evaluation of slope stability, seismic, and soil conditions that may affect construction of the pipelines and related facilities. Recommendations will be consistent with provisions of California Code of Regulations, Title 8, Construction and Safety Orders.</p> <p>Project grading and excavations will be observed by a geotechnical engineer, engineering geologist, or other qualified representative, to verify compliance with recommendations of the geotechnical report.</p> <p>The geotechnical investigation will be completed in accordance with:</p> <ol style="list-style-type: none">(1) CDMG Special Publication 117, <i>Guidelines for Evaluating and Mitigating Seismic Hazards in California</i> (CDMG 1997).(2) Southern California Earthquake Center, Recommended Procedures for Implementation of DMG Special Publication 117 Guidelines for Analyzing and Mitigating Liquefaction in California (SCEC1999).
MM GEO-4	Muni/Western will implement seismic-related recommendations contained in a site-specific geotechnical report, as discussed in MM GEO-3, to minimize seismically induced damage to the pipeline.
MM GEO-5	A water flow shut-off mechanism will be installed by Muni/Western at the Plunge Pool Pipeline Intake Structure to terminate flow immediately following a large earthquake in the vicinity of the site.
MM GEO-6	Muni/Western will complete emergency repairs to the pipeline and/or related facilities, in the event of seismically induced damage. MM GEO-1 and MMGEO-2 will be applied to reduce erosion related impacts associated with soil disturbance during emergency repairs.
MM GEO-7	Muni/Western will implement a groundwater level monitoring program using data from Index Wells (see Figure 3.4-5). This information will be used in conjunction with forecasts of groundwater levels derived from Muni/Western integrated surface and groundwater models to identify trends in groundwater levels and identify changes attributable to the Project. To the extent feasible given existing infrastructure, and consistent with meeting other basin management objectives, Muni/Western will direct Project water spreading to limit high groundwater conditions in the vicinity of Devil Canyon, Lytle Creek, Mill Creek, and areas in the forebay and intermediate area of the SBBA.

MM GEO-8	Muni/Western will implement a groundwater level monitoring program using data from Index Wells. This information will be used in conjunction with forecasts of groundwater levels derived from Muni/Western integrated surface and groundwater models to identify trends in groundwater levels and isolate changes attributable to the Project. To the extent feasible given existing infrastructure, and consistent with meeting other basin management objectives, Muni/Western will direct Project water spreading to limit potential for subsidence in the Pressure Zone area of the SBBA.
MM GW-1	Using available reliable data, Muni/Western will, on an annual basis, evaluate impacts of the Project on TDS and nitrate concentrations in the SBBA. To the extent feasible given existing infrastructure, and consistent with meeting other basin management objectives, Muni/Western will direct Project water spreading to reduce significant TDS and nitrate impacts.
MM SW-2	An energy dissipation structure, a device to slow fast moving flows so as to prevent erosion, will be placed at the terminus of the pipeline delivering water to Lytle Basins channel to ensure that water from the Project does not scour or erode the channel.
MM PS-12	<p>Per the requirements of the Seven Oaks Accord, to avoid a significant effect on groundwater levels at one or more index wells located outside the Pressure Zone, Muni/Western will spread sufficient water to maintain static groundwater levels at the affected index wells.</p> <p>To implement this mitigation measure, Muni/Western will use a groundwater monitoring program based on information derived from the index wells. This information will be used in conjunction with forecasts of groundwater levels derived from Muni/Western integrated surface and groundwater models to identify trends in groundwater levels and isolate the share of change attributable to the Project. Remedial action will be implemented prior to an actual 10-foot reduction being reached, to avoid the significant impact.</p>

Table 2: Cumulative Mitigation Measures

MM Cumulative BIO-1	<p>The San Bernardino General Plan continues a number of policies in the Natural Resources Element designed to require review of biological impacts for each development project in coordination with the development and enforcement of Habitat Conservation Plans, and development of monitoring programs. The Riverside County General Plan Draft Program EIR identifies policies from the Multipurpose Open Space Element of the County of Riverside General Plan as well as additional measures to reduce impacts to biological resources associated with growth. Policies are designed to require review of biological impacts for each development project, avoidance of habitat fragmentation, and use of constructed wetlands to treat water before it enters the natural stream system. Residual impacts: despite General Plan policies, significant unavoidable cumulative biological impacts would still occur in San Bernardino and Riverside Counties.</p>
MM Cumulative CR-1	<p>Individual review of each of the related projects under CEQA would likely result in the identification of any significant cultural resource impacts and provide mitigation to reduce or avoid impacts. It is not certain that all significant cumulative impacts could be successfully mitigated, given the potentially large amount of ground disturbance involved with the Project and related projects. Residual impacts: potential cumulative impacts on cultural resources would remain significant.</p>
MM Cumulative CR-2	<p>The Natural Resources Element of the San Bernardino County General Plan contains a number of policies to mitigate impacts to cultural resources. Generally, these policies require cultural resource field surveys with all project submittals; the preparation of cultural resource overlays for all existing Planning Areas not covered by an overlay map; preliminary cultural resource reviews by the Archaeological Information Center; the cataloging of artifacts discovered as a result of a cultural resource investigation; and notification of the Native American Heritage Commission if projects require the excavation of Native American archaeological sites. The Multipurpose Open Space Element of the Riverside County General Plan also contains relevant policies that would mitigate impacts to cultural resources. The Riverside County General Plan Draft Program EIR identifies additional mitigation measures including compliance with State Health and Safety Code Section 7050.5 that requires disturbance of an area to cease where human remains have been encountered until the Riverside County Coroner has made a determination of the origin and disposition; avoidance of</p>

	<p>cultural resources where possible, where avoidance of cultural resources is not possible, the planting of deterrent plant species such as prickly pear cactus shall be completed to minimize public availability to the site; and additional measures if avoidance and/or preservation of cultural resources is not possible, such as having a participant-observer present from the appropriate Indian Band or Tribe during archaeological testing or excavation of a project site.</p> <p>Residual impacts: significant cumulative impacts to cultural resources could still occur given the potentially large amount of ground disturbance related to growth and development.</p>
MM Cumulative HAZ-1	<p>The San Bernardino County General Plan includes policies to reduce impacts related to hazardous materials. Specifically, the Hazardous Waste/Materials section of the Man-made Hazards Element includes policies HW-1 through HW-26. In general, these measures establish an effective and expeditious permitting process for siting hazardous waste facilities that includes extensive public participation; ensures the protection of public health and safety when siting needed hazardous waste facilities; develops uniform set of criteria for the siting of hazardous waste facilities in the County, including a requirement that facilitates the siting only in areas with a zoning overlay of Specified Hazardous Waste Facility; and ensures coordination among agencies and County departments in the review of all hazardous waste applications within the County.</p>
MM Cumulative SW-1	<p>The San Bernardino General Plan contains a number of policies in the Water section of the Natural Resources Element designed to coordinate and manage water resources throughout the County. However, with regard to water resources in San Bernardino County, significant unavoidable impacts would still occur.</p> <p>The Riverside County General Plan addresses localized flooding risks in the Safety Element of the proposed Riverside County General Plan. Additionally, the proposed Riverside County General Plan Draft Program EIR contains measures to further mitigate flooding impacts including use of FEMA documents to minimize flood hazards, prohibition by the County of the alteration of floodways and channelization where possible, and the requirement that the 10-year flood flows be contained within the tops of curbs and the 100-year flood flows within the street rights-of-way. These policies would mitigate impacts related to surface water in Riverside County.</p> <p>Residual impacts: significant cumulative impacts to surface water resources related to water demand and generation of urban contaminants could still occur in San Bernardino County.</p>

MM Cumulative GW-1	<p>The San Bernardino County General Plan contains a number of policies in the Water section of the Natural Resources Element designed to coordinate and manage water resources throughout the County.</p> <p>The Riverside County General Plan contains a number of policies in the multipurpose Open Space Element and Land Use Element designed to avoid overdraft and groundwater contamination.</p> <p>Residual impacts: significant unavoidable cumulative groundwater impacts would still occur in San Bernardino County.</p>
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**JOINT PROSECUTION AND COST-SHARING AGREEMENT RE FINAL RULE OF
THE UNITED STATES FISH & WILDLIFE SERVICE TO DESIGNATE CRITICAL
HABITAT FOR THE SANTA ANA SUCKER**

This Joint Prosecution and Cost-Sharing Agreement (“**Agreement**”) is entered into by and among the undersigned (the “**Parties**”), as listed on Exhibit A hereto.

RECITALS

A. The Parties are cooperating on efforts to review and analyze the effects of the United States Fish & Wildlife Service’s Final Rule to Designate Critical Habitat for the Santa Ana Sucker (the “**Final Rule**”), which was published in the Federal Register on December 14, 2010. If the Parties conclude that the Final Rule has adverse effects, including but not limited to preventing maintenance of existing infrastructure, preventing the construction of new infrastructure, and/or limiting the diversion of water from the Santa Ana River or other streams, one or more of the Parties may commence litigation against the United States or seek other relief from the effects of the Final Rule. These cooperative efforts, both before and during any litigation may include the utilization of various experts and consultants to assist with the review and evaluation of the effects of the Final Rule, and the necessity, wisdom, and efficacy of potential challenges to it.

B. Through this Agreement, the Parties desire to govern their payment of costs and fees arising from their cooperative efforts and to confirm their common interests in maintaining a joint prosecution with respect to the Final Rule, to allow them to continue to share information related to the Final Rule, while continuing to preserve, to the fullest extent possible, the protections of the attorney-client privilege, work product privilege, common-interest doctrine,

**CONFIDENTIAL
JOINT PROSECUTION MATERIAL**

SBVMWD LEGAL
DOCUMENT **2304**

deliberative process privilege, executive privilege, privileges regarding mediation or settlement communications, or any other privilege or protection existing under state or federal law.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, and the mutual covenants and conditions contained herein, the Parties agree as follows:

1. The Parties shall contribute the sums listed in Exhibit B hereto, which sets forth each Party's contribution towards the fees and costs collectively incurred in the Parties' cooperative efforts on the Final Rule, plus the funds that may be needed to pursue a challenge to the Final Rule (whether by litigation or otherwise). If additional funds are needed, then the participating Parties will agree upon the amount of additional call(s) for funds and each participating Party's contribution to such call(s). In the event that any new parties decide to join the undersigned Parties and participate in this Agreement, Exhibits A and B shall be modified accordingly, and the amounts contributed shall be adjusted. San Bernardino Valley Municipal Water District shall have the responsibility for collecting each Party's contribution of funds, processing invoices submitted by the experts and consultants pursuant to their scopes of work attached hereto, coordinating communications among the Parties to the retained consulting experts, and for maintaining an accurate accounting of this administration of funds.

2. For purposes of this Agreement, "Joint Prosecution Materials" includes, but is not limited to, all communications (including communications related to the Final Rule or the proposed rule issued by the United States Fish & Wildlife Service on December 9, 2009 made prior to the execution of this Agreement), factual materials, mental impressions, legal analyses, theories or strategies, memoranda, reports, notes, emails or any other communications or documents that are protected from disclosure by the attorney-client privilege, work product

privilege, deliberative process privilege, executive privilege, common-interest doctrine, joint prosecution/defense doctrine, privileges regarding mediation or settlement communications, or any other privilege or protection existing under state or federal law, and that are exchanged among the Parties and/or their respective counsel in connection with the Final Rule. Joint Prosecution Materials do not include final versions of any correspondence, studies, or reports prepared by or on behalf of one or more Parties intended for review by the United States Fish & Wildlife Service or a non-Party.

3. The Parties will maintain as confidential all Joint Prosecution Materials (as defined above). Disclosure of Joint Prosecution Materials shall be limited to the Parties and their employees and contractors as well as any counsel, consultants, and lobbyists retained by the parties, or on behalf of the parties, for the purpose of maintaining a joint prosecution with respect to the Final Rule, subject to the further provisions of this Agreement.

4. Any Joint Prosecution Materials shared or transmitted by or between Parties should be clearly designated "CONFIDENTIAL: JOINT PROSECUTION MATERIALS." However, the failure to include such designation shall not preclude such materials from being afforded the protections of this Agreement and shall not be construed to constitute a waiver of any privilege or other protection.

5. Each Party shall take all appropriate measures to ensure that any person who is granted access to Joint Prosecution Materials is familiar with the terms of this Agreement and complies with those terms.

6. Each Party is represented by its own respective legal counsel in connection with the Final Rule, and the cooperative efforts referenced herein. Said legal counsel will not have an attorney-client relationship with any other Party to this Agreement as a result of the legal

counsel's participation in discussions and actions related to the Parties' cooperative efforts on the Final Rule. Similarly, said legal counsel will not have a duty of loyalty or confidentiality to any Party to this Agreement other than the legal counsel's specific client(s), and consequently, no Party may seek to disqualify the legal counsel for another Party as a result of the legal counsel's participation in discussions and actions related to the Parties' cooperative efforts on the Final Rule.

7. Except where required by the order of a court of competent jurisdiction, or by the prior written consent of the remaining Parties, a Party will not reveal to non-Parties any Joint Prosecution Materials it has received from another Party.

8. Each Party shall notify the Party that generated any Joint Prosecution Materials of any request to disclose the Joint Prosecution Materials to any non-Party, or of any proceeding before any court, administrative agency, or tribunal to compel the disclosure of such Joint Prosecution Materials, as soon as practicable after receipt of such request or the initiation of such proceeding. If a Party becomes subject to any judicial or administrative order purporting to compel release of Joint Prosecution Materials, that Party shall: (a) promptly notify the Party that generated the materials and all remaining Parties, and (b) make all reasonable efforts to give that Party an opportunity to protect the Joint Prosecution Materials.

9. No party is required to treat as confidential within the meaning of this Agreement any material where such material is, or hereafter becomes (without violation of this Agreement), public record, public knowledge, or is obtained from sources other than exchanges under this Agreement.

10. The sharing of Joint Prosecution Materials among the Parties is not intended to and will not constitute a waiver of any privilege or other protection of confidentiality, including

but not limited to the attorney-client privilege, work product privilege, common-interest doctrine, deliberative process privilege, executive privilege, privileges relating to mediation or settlement communications, or any other privilege or protection existing under state or federal law.

11. Execution of this Agreement constitutes the mutual agreement of the Parties that any sharing of Joint Prosecution Materials among themselves is reasonably necessary for the accomplishment of the Parties' common purposes as described above. Any sharing of Joint Prosecution Materials among the Parties is in reliance on this Agreement and the protections that arise from the Parties' common interests in reviewing, evaluating and potentially challenging the Final Rule.

12. Nothing in this Agreement shall obligate any Party to exchange documents or information with any other Party, whether or not such documents or information would be covered by this Agreement as Joint Prosecution Materials.

13. By this Agreement the Parties each acknowledge and agree that cooperation in the matters referenced above may involve the communication and sharing of confidential information and further agree that the interests of the Parties are not adverse as to matters within the scope of this Agreement. Each of the Parties has had a full opportunity to consult with separate counsel, is fully informed, and has concluded that the risk of any potential conflict of interest is outweighed by the benefits and efficiencies afforded by the opportunities for cooperation and sharing of Joint Prosecution Materials as provided for herein. The Parties consent to the sharing of Joint Prosecution Materials among their counsel, waive any potential conflict of interest created thereby, and mutually agree that this sharing of Joint Prosecution Materials and cooperation shall not constitute grounds for seeking disqualification of counsel in any matter or action.

14. If there is a breach of this Agreement by a Party, the Parties agree that the non-breaching Party will have no adequate remedy at law in money or damages and shall be entitled to seek and obtain, in addition to all other remedies that may be available, a temporary restraining order, injunctive relief, or other equitable relief against the breach or its continuance.

15. Nothing in this Agreement shall be construed to waive any rights, claims, or privileges that any Party shall have against another Party or any other person or entity.

16. This Agreement shall be binding upon the successors and assigns of the Parties.

17. This Agreement is made under, and shall be construed in accordance with, the laws of the State of California.

18. The individuals signing this Agreement in a representative capacity warrant that they have the authority to do so on behalf of the entity or entities they represent, and further agree that as representatives of the entity or entities that they respectively represent, they themselves are bound by all terms of this Agreement.

19. Any Party may withdraw from this Agreement by providing written notice to the other Parties. If a Party withdraws from this Agreement, the provisions of this Agreement shall continue to apply to the Joint Prosecution Materials that were shared during the time period when that Party was a party to this Agreement.

20. All notices and other communications required to be given to a Party under the terms of this Agreement (a) shall be in writing, (b) shall be personally delivered, or transmitted by facsimile or email, and (c) shall be directed to such Party at the address, facsimile number or email address specified below, or at such other address, facsimile number or email address as such Party may hereafter designate by notice in accordance with this paragraph.

Exhibit A

List of Parties

1. San Bernardino Valley Municipal Water District
2. Western Municipal Water District of Riverside County
3. City of Riverside Public Utilities
4. City of San Bernardino Municipal Water Department
5. San Bernardino Valley Water Conservation District
6. East Valley Water District
7. City of Redlands
8. Yucaipa Valley Water District
9. Bear Valley Mutual Water Company/Crafton Water Company
10. Big Bear Municipal Water District
11. West Valley Water District
12. Riverside County Flood Control District

Exhibit B

Each Party's Contribution

Agency	Contribution
San Bernardino Valley Municipal Water District	\$90,000
Western Municipal Water District	\$75,000
City of San Bernardino Municipal Water Department	\$75,000
City of Riverside Public Utilities Department	\$75,000
San Bernardino Valley Water Conservation District	\$1,000
East Valley Water District	\$75,000
City of Redlands	\$50,000
Yucaipa Valley Water District	\$15,000
Bear Valley/Crafton Water Companies	\$50,000
Big Bear Municipal Water District	\$15,000
Riverside County Flood Control District	\$75,000
West Valley Water District	\$15,000
Total	\$611,000

21. This Agreement may be executed in counterparts, each of which so executed shall be deemed an original irrespective of the date of the execution, and said counterparts shall together constitute one and the same Agreement. Further, facsimile or .PDF copies of signatures shall be as effective as original signatures for evidencing execution of this Agreement.

By:



Print Name:

C. Patrick Milligan

Date:

April 14, 2011

Title:

Board President

Representing:

San Bernardino Valley Municipal Water District

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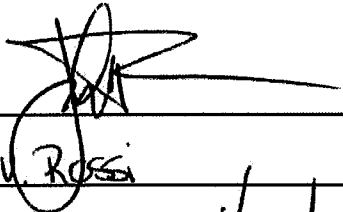
By:

Print Name:

Date:

Title:

Representing:



John W. Rossi

4/13/11

General Manager

Western Municipal Water District


21. This Agreement may be executed in counterparts, each of which so executed shall be deemed an original irrespective of the date of the execution, and said counterparts shall together constitute one and the same Agreement. Further, facsimile or .PDF copies of signatures shall be as effective as original signatures for evidencing execution of this Agreement.

By: Belinda J. Graham
Print Name: Belinda J. Graham
Date: April 20, 2011
Title: Assistant City Manager
Representing: City of Riverside

Attest: Sherry Norton
City Clerk

APPROVED AS TO FORM
Susan Wilson
DEPUTY CITY ATTORNEY

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By: 
Print Name: Stacey Aldstadt
Date: April 6, 2011
Title: General Manager
Representing: San Bernardino Municipal Water Department

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By:

Print Name:

Date:

Title:

Representing:



ELMER H. DAY

27 APRIL 2011

PRESIDENT

SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT

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By:



Print Name:

Robert Martin

Date:

April 25, 2011


Title:

General Manager

Representing:

East Valley Water District

21. This Agreement may be executed in counterparts, each of which so executed shall be deemed an original irrespective of the date of the execution, and said counterparts shall together constitute one and the same Agreement. Further, facsimile or .PDF copies of signatures shall be as effective as original signatures for evidencing execution of this Agreement.

By:  _____

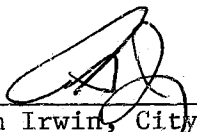
Print Name: Pete Aguilar

Date: May 3, 2011

Title: Mayor

Representing: City of Redlands

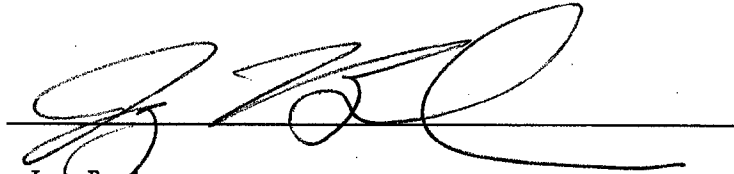
ATTEST:



Sam Irwin, City Clerk

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By:



Jay Bogn

Print Name:

Date:

April 26, 2011

Title:

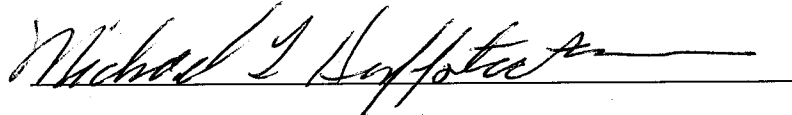
Board President

Representing:

Yucaipa Valley Water District

21. This Agreement may be executed in counterparts, each of which so executed shall be deemed an original irrespective of the date of the execution, and said counterparts shall together constitute one and the same Agreement. Further, facsimile or .PDF copies of signatures shall be as effective as original signatures for evidencing execution of this Agreement.

By:



Print Name:

Michael L. Huffstutler

Date:

May 5, 2011

Title:

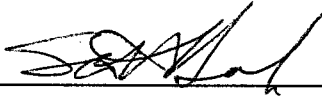
General Manager

Representing:

Bear Valley Mutual Water Company

21. This Agreement may be executed in counterparts, each of which so executed shall be deemed an original irrespective of the date of the execution, and said counterparts shall together constitute one and the same Agreement. Further, facsimile or .PDF copies of signatures shall be as effective as original signatures for evidencing execution of this Agreement.

By:



Print Name:

Scott Heule

Date:

4/6/11

Title:

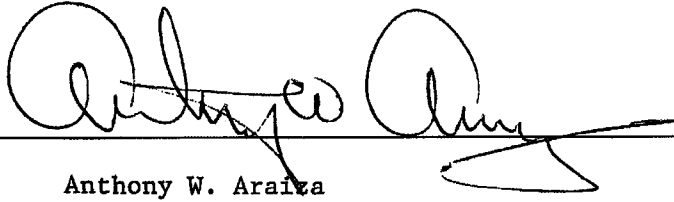
Jur. Mgr.

Representing:

Bog Bear Municipal Water District

21. This Agreement may be executed in counterparts, each of which so executed shall be deemed an original irrespective of the date of the execution, and said counterparts shall together constitute one and the same Agreement. Further, facsimile or .PDF copies of signatures shall be as effective as original signatures for evidencing execution of this Agreement.

By:



Print Name:

Anthony W. Araiza

Date:

April 28, 2011

Title:

General Manager

Representing:

West Valley Water District

Receipt # 415519
DATE FILED & POSTED

NOTICE OF EXEMPTION

To:

San Bernardino County Clerk
Hall of Records Building, First Floor
222 W. Hospitality Lane
San Bernardino, CA 92415

Kern County Clerk
1115 Truxtun Avenue
Bakersfield, CA 93301

From:

San Bernardino Valley Municipal Water District
380 East Vanderbilt Way
San Bernardino, CA 92408

CLERK OF THE BOARD
OCT 07 2011
COUNTY OF
SAN BERNARDINO

Project Title: Water Banking and Water Supply Reliability Program with Kern Delta Water District

Location -- Specific: Counties of Kern and San Bernardino, within service areas of Kern Delta Water District and San Bernardino Valley Municipal Water District

Description of Nature, Purpose, and Beneficiaries of Project: San Bernardino Valley Municipal Water District (hereinafter, "Valley District") proposes to bank State Water Project water in banking facilities operated by the Kern Delta Water District (hereinafter, "Kern Delta") for later withdrawal and use within Valley District. Under the program, the Valley District will bank up to 30,000 acre-feet of the water it would otherwise be allocated during the 2011-2012 water year pursuant to Table "A" of its State Water Project contract in existing water banking facilities operated by the Kern Delta. Diversions to the water banking facilities will be made through existing water conveyance facilities and will occur during the period between October 2011 and February 2012. Under the proposal, Kern Delta will, at Valley District's request, return up to 5,000 acre-feet per year to Valley District through existing conveyance facilities during or after the 2011-12 water year.

The proposal is consistent with and included within the scope of Kern Delta's 2002 Final Environmental Impact Report ("FEIR") for its Groundwater Banking And In-Lieu Water Supply Project (State Clearinghouse # 2001011103), which addressed the environmental impacts of the use of Kern Delta's facilities for the banking of up to 213,000 acre-feet by other water agencies, such as Valley District. Because Valley District's proposal involves making use of presently-unused capacity of the California Aqueduct, other State Water Project facilities, and Kern Delta's conveyance and banking facilities, all of which were identified in Kern Delta's FEIR as facilities that would be used to bank water, the project represents the use of existing facilities within the limits established by applicable legal requirements. Moreover, the environmental effects, if any, of the project were fully analyzed in Kern Delta's FEIR, and the project does not alter the conclusions of the 2002 FEIR.

Name of Public Agency Approving or Carrying Out Activity: San Bernardino Valley
Municipal Water District

Finding of Exempt Status:

☒ Categorical Exemption. CEQA Guidelines § 15301 (Existing Facilities)

Reasons why activity is exempt:

The project is exempt from CEQA review pursuant to 14 Cal. Code Regs. § 15301 (Existing Facilities) because the proposal is for the banking and recovery of up to 30,000 acre feet of water delivered pursuant to an existing long term State Water Project contract through existing water conveyance facilities to and from existing water banking facilities. The overall program for water banking by Kern Delta (of which this banking project is a small part) was previously analyzed under CEQA and any significant effects on the environment were fully mitigated.

Agency Contact Person: Douglas Headrick

Telephone: (909) 387-9200

Signature:

Douglas D. Headrick

Douglas Headrick

Title:

General Manager

Date:

10/7/2011



Signed by Public Agency



Signed by Applicant

Date received for filing by County Clerk:



State of California—The Resources Agency
DEPARTMENT OF FISH AND GAME
2011 ENVIRONMENTAL FILING FEE CASH RECEIPT

RECEIPT# **415519**
STATE CLEARING HOUSE # (If applicable)

SEE INSTRUCTIONS ON REVERSE. TYPE OR PRINT CLEARLY

LEAD AGENCY San Bernardino Valley Municipal Water District		DATE 10/7/2011
COUNTY/STATE AGENCY OF FILING County of San Bernardino		DOCUMENT NUMBER
PROJECT TITLE Water Banking and Water Supply Reliability Program with Kern Delta		
PROJECT APPLICANT NAME San Bernardino Valley Municipal Water District		PHONE NUMBER (909) 387-9200
PROJECT APPLICANT ADDRESS 380 East Vanderbilt Way	CITY San Bernardino	STATE CA
		ZIP CODE 92408
PROJECT APPLICANT (Check appropriate box): <input checked="" type="checkbox"/> Local Public Agency <input type="checkbox"/> School District <input type="checkbox"/> Other Special District <input type="checkbox"/> State Agency <input type="checkbox"/> Private Entity		

CHECK APPLICABLE FEES:

- | | | | |
|---|------------|----|--------------|
| <input type="checkbox"/> Environmental Impact Report (EIR) | \$2,839.25 | \$ | |
| <input type="checkbox"/> Mitigated/Negative Declaration (ND)(MND) | \$2,044.00 | \$ | |
| <input type="checkbox"/> Application Fee Water Diversion (State Water Resources Control Board Only) | \$850.00 | \$ | |
| <input type="checkbox"/> Projects Subject to Certified Regulatory Programs (CRP) | \$965.50 | \$ | |
| <input checked="" type="checkbox"/> County Administrative Fee | \$50.00 | \$ | 50.00 |
| <input type="checkbox"/> Project that is exempt from fees | | | |
| <input checked="" type="checkbox"/> Notice of Exemption | | | |
| <input type="checkbox"/> DFG No Effect Determination (Form Attached) | | | |
| <input type="checkbox"/> Other | | \$ | |

PAYMENT METHOD:

☐ Cash ☐ Credit ☒ Check ☐ Other

TOTAL RECEIVED \$ **50.00**

SIGNATURE

X

TITLE

Deputy Clerk

WHITE - PROJECT APPLICANT

YELLOW - DFG/ASB

PINK - LEAD AGENCY

GOLDEN ROD - COUNTY CLERK

FG 753.5a (Rev. 11/10)



State of California—The Resources Agency
DEPARTMENT OF FISH AND GAME
2011 ENVIRONMENTAL FILING FEE CASH RECEIPT

RECEIPT# **415519**
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LEAD AGENCY San Bernardino Valley Municipal Water District		DATE 10/7/2011
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| <input type="checkbox"/> DFG No Effect Determination (Form Attached) | | | |
| <input type="checkbox"/> Other | | \$ | |

PAYMENT METHOD:

☐ Cash ☐ Credit ☒ Check ☐ Other

TOTAL RECEIVED \$ **50.00**

SIGNATURE

X

TITLE

Deputy Clerk

WHITE - PROJECT APPLICANT

YELLOW - DFG/ASB

PINK - LEAD AGENCY

GOLDEN ROD - COUNTY CLERK

FG 753.5a (Rev. 11/10)

**AGREEMENT BETWEEN
KERN DELTA WATER DISTRICT
AND THE SAN BERNARDINO VALLEY MUNICIPAL WATER
DISTRICT
FOR A
WATER MANAGEMENT PROGRAM**

THIS AGREEMENT ("Agreement"), dated as of Oct 26, 2011, is entered into by and between the **KERN DELTA WATER DISTRICT ("Kern Delta")**, and **THE SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT ("Valley")**. Valley and Kern Delta may be referred to individually as Party or collectively as Parties.

PREAMBLE

This Agreement is in furtherance of development of a water management program ("Regulation Program") that is being implemented by Kern Delta and Valley for the purpose of enhancing the water supply available to both entities. It is intended that nothing in this Agreement or the Regulation Program is to (1) materially impair the integrity of existing and ongoing Kern Delta operations; (2) adversely impact either physically, operationally or economically the Kern Delta or its landowners; or (3) result in a net decrease in water supplies available for beneficial use within Kern Delta's boundaries specifically and the southern San Joaquin Valley generally. It is the intention of the Parties that, through provisions of this Agreement, actual or prospective adverse impacts of the Regulation Program will be avoided. The Regulation Program is intended to be operated in a manner to optimize available water supplies. It will utilize Kern Delta Facilities, as well as the Cross Valley Canal and the Intertie

Canal of the Arvin-Edison Transportation Facilities.

RECITALS

A. Kern Delta includes approximately 129,000 acres within its boundaries. Attached Exhibit B includes maps setting forth the boundaries (service area) of Kern Delta (Exhibit B-1); the Regulation Program Facilities (Exhibits B-2 and B-3). Approximately 87,000 acres have existing service connections to the Kern Delta distribution system (2,000 acres of which lie outside Kern Delta's boundaries), and the landowners within said surface water service area are in large part dependent on Kern Delta for a water supply. Additionally, Kern Delta's operations enhance groundwater conditions for the remaining approximately 34,000 acres within the District. To meet landowner demand, Kern Delta has, among other things, (i) contracted for a water supply with the Kern County Water Agency ("KCWA") providing for delivery to Kern Delta of 25,500 acre-feet of Table A Water from the California State Water Project ("Table A Water"); (2) entered into agreements with Buena Vista Water Storage District ("Buena Vista") providing for the exchange of Kern Delta's Table A Water for a like amount of Buena Vista's Kern River water; (3) acquired various Kern River water rights historically utilized to serve lands within and without Kern Delta's boundaries ("Kern River Entitlement"); and (4) entered into agreements with The Metropolitan Water District of Southern California ("Metropolitan") providing for the regulation of Metropolitan's water in the groundwater basin underlying Kern Delta. At times, Kern Delta has water available from its Table A Water, its Kern River Entitlement, or other sources, which could be better regulated through additional facilities constructed within Kern Delta and, in consideration of the benefits to be derived through this Agreement, Kern Delta is willing to regulate for Valley other water provided by Valley.

B. Valley is a public agency formed under the Municipal Water District Act of 1911. Valley provides imported supplies for water agencies to supplement local municipal water supplies within service area located in San Bernardino and Riverside Counties. Valley obtains its water supplies from the State Water Project, and other sources. Valley seeks to augment its dry year water supplies by arranging for delivery to and banking of water within Kern Delta and the extraction and delivery of banked water to Valley during periods of insufficient supply from available sources.

C. Valley and Kern Delta find that it will be mutually advantageous to enter into the Regulation Program as provided in this Agreement, whereby Kern Delta will regulate water on Valley's behalf and deliver that water to Valley upon request. The regulated water generally will be banked in the Kern Delta Basin and, upon demand of Valley; such water will be delivered to Valley through either an existing intertie into the California Aqueduct or through an exchange for water in the California Aqueduct, or both.

D. The Regulation Program will provide for usage by Valley of existing Kern Delta Facilities and construction and operation, for Valley usage, of Kern Delta Regulation Program Facilities, as well as Valley's usage of certain of Arvin-Edison Transportation Facilities and Cross Valley Canal. This Regulation Program is intended to provide a minimum recharge and return capability of 5,000 acre-feet annually.

E. This Agreement, through regulation and conservation of water supplies, is intended to (1) provide Valley with additional supplies of water and (ii) consistent with providing benefit to Valley also provide Kern Delta with access to new facilities, improved reliability of supplies and improve Kern Delta's ability to enhance groundwater conditions.

F. Consistent with the California Environmental Quality Act ("CEQA"), Kern Delta,

acting as lead agency, has completed an Environmental Impact Report concerning the Regulation Program. Kern Delta's Board of Directors, on November 12, 2002, considered, approved and certified the Final Environmental Impact Report ("FEIR"), as being in compliance with CEQA, and Valley's Board of Directors, acting as a responsible agency, on October 4, 2011, considered and approved a Notice of Exemption for the activities contemplated under this Agreement. A Notice of Determination to proceed with the Regulation Program was adopted by Kern Delta on November 12, 2002. In August 2011 Kern Delta prepared an addendum to the aforementioned EIR; this action is consistent with Kern Delta's 2002 Environmental Impact Report, which addresses the use of Kern Delta's existing and new recharge and conveyance facilities to enhance Kern Delta surface and groundwater supplies, (Exhibit E, Addendum to the FEIR).

G. The parties have relied upon various studies to make the following assumption upon which this Agreement is based: that, with existing facilities and wells along with the new facilities contemplated under this Agreement for the operation of the Regulation Program, it will be possible to regulate sufficient water in, and return sufficient water from, the groundwater basin for both Kern Delta's Normal and Customary Uses and Regulation Program purposes.

ARTICLE 1. DEFINITIONS

As used in this Agreement, each of the following terms shall have the respective meaning given to it in this Article 1 unless expressly stated to the contrary where such term is used.

1.1 "Account" means an account maintained by Kern Delta for the benefit of Valley pursuant to this Agreement in which Regulated Water, which is Delivered Water less losses deducted in accordance with Article 3 (Operational Losses), is credited upon delivery to the Point of Delivery to Kern Delta and is debited upon delivery to the Point of Delivery to Valley.

1.2 **"Account Balance"** means the difference between the credits and debits in the Account.

1.3 **"Agreement"** means, as of any particular time, this Agreement for a Water Management Program, as amended or supplemented by the Parties through that time.

1.4 **"Arvin-Edison Intake Canal"** means the Arvin-Edison Intake Canal owned and operated by the Arvin-Edison Water Storage District to the full extent of the capacity rights provided for in the Arvin-Edison MOU.

1.5 **"Arvin-Edison MOU"** means the agreement among Kern Delta with Arvin-Edison Water Storage District to use all or a portion of Arvin-Edison Transportation Facilities.

1.6 **"Arvin-Edison Transportation Facilities"** means Arvin-Edison Intake Canal, Forest Frick Pumping Plant, and all appurtenant facilities and structures as specified in the Arvin-Edison MOU.

1.7 **"Cross Valley Canal"** means the Cross Valley Canal owned and operated by the Kern County Water Agency to the full extent of Kern Delta's designated capacity (i.e., not including unused capacity of other participants) in the enlarged Cross Valley Canal as provided in the Cross Valley Canal Participation Agreement.

1.8 **"Cross Valley Canal Participation Agreement"** has the meaning provided for in this agreement, Recitals Section D.

1.9 **"Delivered Water"** means water which Valley makes available to Kern Delta at the Point of Delivery to Kern Delta pursuant to this Agreement.

1.10 **"Delivery Canal"** means (i) the Cross Valley Canal; and (ii) all interconnecting facilities from the Cross Valley Canal used to transport water to Kern Delta's service areas.

- 1.11 **"DWR"** means the Department of Water Resources of the State of California.
- 1.12 **"Effective Date"** means the date set forth on the first line of this Agreement
- 1.13 **"Execution Date"** means the date set forth on the first line of this Agreement.
- 1.14 **"Financial Account"** means the Account provided for in Section 5.1 (Put Payments).
- 1.15 **"KCWA"** means the Kern County Water Agency.
- 1.16 **"Kern Delta Basin"** means that portion of the southern San Joaquin Valley groundwater basin underlying the lands within the boundaries of Kern Delta.
- 1.17 **"Kern Delta Facilities"** means Kern Delta Regulation Program Facilities.
- 1.18 **"Kern Delta Regulation Program Facilities"** means Kern Delta Regulation Program Facilities.
- 1.19 **"Normal and Customary Uses"** means (i) deliveries to meet historic demands, as existing prior to Execution Date, of water users within Kern Delta's surface water service areas as provided at Subsection 4.2.2 of Section 4.2 (Conditions On Return of Regulated Water), (ii) historic transfers (including exchanges) and transfers similar to the type historically existing prior to Execution Date, entered into by Kern Delta with other entities, and (iii) operational conditions and criteria which would exist and/or be employed with or without the Regulation Program (for example spreading programs, energy load management, aquatic pest control and the like).
- 1.20 **"Participation Payment"** means the amount of money paid by Valley to Kern Delta for Delivered Water as full compensation for regulation program implementation costs (i.e., design, construction, inspection, administration and right of way) which amount is \$40.00 per acre foot.

1.21 "Point of Delivery to Kern Delta" means the California Aqueduct turnout to the Cross Valley Canal; or other turnout mutually agreed upon by the parties such as the Arvin-Edison Transportation Facilities.

1.22 "Point of Delivery to Valley" means the California Aqueduct at/or between Reaches 12E and 14A, or any other point of delivery mutually agreed upon by the parties.

1.23 "Put Payment" means the Participation Payment and operation, maintenance and replacement costs determined on a per acre-foot basis, and energy cost in accordance with Section 5.1 (Put Payments) hereof.

1.24 "Regulated Water" means Delivered Water less losses deducted in accordance with Article 3 (Operational Losses), credited pursuant to Section 2.5 (Regulation of Water).

1.25 "Regulation Program" means the water management program provided for in this Agreement.

1.26 "Take Payment" means the amount of money paid by Valley to Kern Delta for each acre foot of Regulated Water returned to Valley pursuant to this Agreement, which amount is specified in Section 5.2 (Take Payments) hereof.

1.27 "Year" means a calendar year commencing on January 1 and ending on December 31.

ARTICLE 2. REGULATION OF WATER

2.1 Source of Water. Valley shall provide Delivered Water at the Point of Delivery to Kern Delta for regulation under this Agreement. All such Delivered Water (exclusive of losses) shall be credited to Valley's Account as Regulated Water. Delivered Water shall be of at least as good water quality as otherwise available from the California Aqueduct or as Kern Delta

would otherwise be able to accept for its own use.

2.2 Program Level. If requested by Valley, Kern Delta shall accept from Valley at the Point of Delivery to Kern Delta such a quantity of Delivered Water as will result in crediting to the Account 26,700 acre-feet (after losses determined pursuant to Article 3) of Regulated Water.

2.3 Priorities and Schedule For Regulation.

2.3.1 Kern Delta shall have first priority to utilize Kern Delta Facilities for the purpose of meeting Normal and Customary Uses. Regulation for Valley shall be second priority to the first priority.

2.3.2 Regulation program operations shall not cause a net decrease in supplies available to Kern Delta for its own purposes.

2.4 Scheduling of Delivered Water. Valley shall submit a schedule to Kern Delta for delivery of Delivered Water. Kern Delta, in conformity with Valley's schedule, shall be responsible for scheduling delivery of Delivered Water with KCWA and shall coordinate with KCWA on its resulting request to DWR for scheduling of Delivered Water. Valley shall provide written notice to Kern Delta of its intent to provide water for regulation pursuant to Section 2.6 (Deliveries).

2.5 Regulation of Water.

2.5.1 Kern Delta shall take control and possession of Delivered Water at the Point of Delivery to Kern Delta and shall credit the Account in an amount equal to the water so delivered less the deduction for losses provided for in Article 3 (Operational Losses) with respect to such water.

2.5.2 At the time Kern Delta credits the Account, pursuant to Subsection 2.5.1

of this Section 2.5 (Regulation of Water), legal title to such water, together with the right to withdraw from the Kern Delta Basin an amount sufficient to return to Valley the Regulated Water, shall vest in Kern Delta. Upon crediting Valley's Account, Kern Delta shall convey and cause to be regulated the water so credited. Kern Delta shall thereafter hold and return the Regulated Water as provided in Article 4 (Return of Water) of this Agreement.

2.5.3 Kern Delta shall accurately maintain the Account and prepare and maintain adequate supporting records. All records shall be subject to audit, review and approval by Valley at Valley's exercise upon reasonable notification to Kern Delta.

2.5.4 Valley acknowledges that Regulated Water may be commingled with other water. At all times during the term of this Agreement, there shall be in the Kern Delta Basin an amount at least equal to the amount of the Account Balance, which shall be deemed to be Regulated Water. Kern Delta shall be deemed to remove Regulated Water from storage only as and when requested by Valley pursuant to the terms of this Agreement, and any other removal of water by Kern Delta from the Kern Delta Basin shall be deemed to be the removal of water that is not Regulated Water.

2.6 Deliveries. Valley shall not be obligated to provide Delivered Water; but shall nevertheless use reasonable efforts to provide quantities of Delivered Water which, after losses pursuant to Article 3 (Operational Losses), shall result in Kern Delta crediting the minimum amounts of Regulated Water specified in Section 5.1 (Put Payments).

ARTICLE 3. OPERATIONAL LOSSES

Transportation losses, evaporation, metering discrepancies and any other losses of water, for purposes of this Agreement are collectively fixed to be eleven percent (11%) of the amount

of Delivered Water provided for the Regulation Program as measured at the Point of Delivery to Kern Delta. These losses are subject to modification in the future with the concurrence of both Parties. Any modifications shall only apply to deliveries made after the date of the modification and Account Balance shall not be adjusted as to previous Delivered Water and Regulated Water.

ARTICLE 4. RETURN OF WATER

4.1 Methods of Return of Regulated Water.

4.1.1 Kern Delta shall only be obligated to return Regulated Water so long as the return does not cause the Account Balance to be less than zero.

4.1.2 Upon request by Valley, Kern Delta shall deliver Regulated Water to Valley at the Point of Delivery to Valley by any one or more of the following methods: (i) an exchange of Regulated Water for SWP water in the California Aqueduct; (ii) an exchange of Regulated Water for other surface supplies, or with Valley's consent, groundwater deliverable to and into the California Aqueduct; (iii) the recovery of Regulated Water and delivery thereof to and into the California Aqueduct via existing or new Kern Delta facilities; or (iv) any other means mutually acceptable to the Parties.

4.1.3 In utilizing the methods specified in Subsection 4.1.2(ii) and (iv) of Section 4.1 (Methods of Return of Regulated Water), Kern Delta may propose to exchange Valley's Regulated Water for an equal amount of water from other sources which Kern Delta elects to make available in the California Aqueduct. Kern Delta will be deemed to have affected such an exchange by delivering such water to Valley at the Point of Delivery to Valley.

4.1.4 Kern Delta, upon request of Valley, and subject to the conditions at Sections 4.2 (Conditions On Return of Regulated Water) through 4.4 (Water Quality), shall

return up to 5,000 acre-feet of Regulated Water per year, subject to Section 4.2.3.

4.2 Conditions on Return of Regulated Water. The return of Regulated Water by Kern Delta to Valley shall be subject to the following terms and conditions:

4.2.1 Except as otherwise provided for in Section 8.1 (Regulation Program), for each acre-foot of Regulated Water held by Kern Delta for Valley, Kern Delta shall ultimately return one acre-foot of water to Valley.

4.2.2 Return of Regulated Water by Kern Delta shall not interfere with Normal and Customary Uses by Kern Delta of its available water supplies. Kern Delta may modify from time to time its service area. Any such modifications shall not interfere with Kern Delta's ability to deliver Regulated Water to Valley unless consented to in writing by Valley.

4.2.3 Notwithstanding any other provision of this Agreement, Kern Delta may temporarily reduce or terminate groundwater pumping for the purpose of returning Regulated Water to Valley to (i) ensure that the groundwater basin underlying Kern Delta is protected (to the maximum extent practicable), (ii) ensure that Valley's Account Balance does not become negative, (iii) ensure that the project facilities are physically capable of returning banked water either through exchange or directly, to the California Aqueduct, and (iv) protect Kern Delta's groundwater basin in regards to an extended drought. However, such reduction or termination shall only be temporary and Kern Delta shall, with Valley's approval, adjust the scheduling of groundwater pumping to mitigate reductions in return of Regulated Water and to the extent practical, in a manner that does not cause additional unreimbursed costs to Kern Delta, Kern Delta shall take measures to change the timing and location of pumping to avoid reduction in or termination of the return of Regulated Water or return other available supplies.

4.2.4 The Regulation Program shall not adversely affect Kern Delta's existing

exchanges with other parties.

4.3 Annual Scheduling of Regulated Water. Valley shall notify Kern Delta of its intent to take delivery of Regulated Water at a Point of Delivery to Valley as early in the Year as possible, but no later than March 15 of the same Year. If such notification is provided after March 15 Kern Delta shall, in good faith, endeavor to comply with the notice to the maximum extent feasible. Kern Delta shall be responsible for all necessary approvals to return the Regulated Water to the Point of Delivery to Valley. Valley shall be responsible for any necessary approvals and costs once the Regulated Water has been returned to the Point of Delivery to Valley, provided that Kern Delta shall cooperate in obtaining such approvals.

4.4 Water Quality.

4.4.1 Based on available data, the parties have concluded that Kern Delta currently can supply Regulated Water at the California Aqueduct which meets existing Safe Drinking Water Act primary and secondary standards. (The foregoing is only a reference to an existing standard and shall not be interpreted as causing Kern Delta to become subject to the Safe Drinking Water Act.) Subject only to Kern Delta obligations under contracts or agreements existing as of Execution Date, Kern Delta shall take no direct action that would knowingly cause the quality of recovered groundwater returned as Regulated Water to not meet the existing or reasonably predictable future Safe Drinking Water primary and secondary standards. Should Kern Delta knowingly take such impermissible direct action which causes the quality of Regulated Water delivered into the California Aqueduct to not meet existing or reasonably predictable future Safe Drinking Water Act primary and secondary standards, Kern Delta shall be responsible for taking additional steps, at Kern Delta's expense, to ensure that such water meets such standards. The preceding sentence shall not apply to delivery of water under Kern

Delta's Normal and Customary Uses or water quality degraded as a result of operating under this Program. In the event that future water quality standards change, or the quality of groundwater from Kern Delta wells or surface water is such that Kern Delta cannot meet acceptable standards for direct pumpback of Regulated Water into the California Aqueduct, Regulated Water shall be returned to Valley by alternative methods satisfactory to Valley. Such alternative methods may include, but are not necessarily limited to: purchases, exchanges with others, and/or by improving Regulated Water quality to acceptable standards for direct pumpback, with the additional costs of any such methods being paid by Valley. Kern Delta's operations and financial situation shall not be adversely impacted as a result of these alternative methods.

4.4.2 Without limiting the foregoing, Kern Delta shall rotate pumping if and to the extent necessary to maximize Regulated Water quality and to use the best quality wells available, to the greatest extent practicable, for Regulated Water return purposes.

ARTICLE 5. COMPENSATION

5.1 Put Payments. Valley shall pay Kern Delta for each acre foot of Delivered Water a Put Payment which shall consist of: (i) a Participation Payment, plus (ii) an amount equal to actual costs per acre foot of operation, maintenance and replacement of Kern Delta Facilities used to regulate Delivered Water determined in accordance with Section 5.5 (OM&R Fees); plus (iii) an amount sufficient to pay all energy costs associated with the delivery, distribution, and recharge of each acre foot of Delivered Water determined in accordance with Section 5.4 (Power & Energy Costs).

5.2 Take Payments. For each acre foot of Regulated Water returned by Kern Delta to Valley, whether by recovery from the Kern Delta Basin or by exchange, Valley shall pay to

Kern Delta a Take Payment equal to the sum of the following components: (i) \$47.00 adjusted pursuant to Subsection 5.3 (Adjustment of Rates) from the Effective Date; plus (ii) an amount equal to actual costs per acre foot of operation, maintenance, repair and replacement of Kern Delta Facilities used to provide Regulated Water to Valley calculated as set forth in Section 5.5 (OM&R Fees) below; plus (iii) an amount sufficient to pay all energy costs associated with the delivery of each acre foot of Regulated Water to Valley calculated as set forth in Section 5.4 (Power & Energy Costs) below.

5.3 Adjustment of Rates. The amount payable for a calendar year under Section 5.1 and Section 5.2 shall be adjusted commencing December 1 of each year commencing 2011 for the following year by the fraction of the numerator of which is the Consumer Price Index, All Urban Consumers, All Items Index, Western Cities with populations of 50,000 to 330,000 (the "CPI") for December of the Year immediately preceding the Year with respect to which the adjusted amount is being determined and the denominator of which shall be the CPI for 2010 (based on the 1982-84 index).

5.4 Power & Energy Costs.

5.4.1 The Put Payment component as specified in Section 5.1 to convey Delivered Water from Kern Delta's Point of Delivery to Spreading Facilities or in lieu delivery points shall be an amount sufficient to pay all energy costs associated with the delivery, distribution, and recharge of each acre foot of Delivered Water. Take Payment component specified in Subsection 5.2 shall be determined by calculating the average unit power and energy costs to pump Regulated Water from the Kern Delta Basin for either direct delivery to the California Aqueduct or for entitlement exchange, and to convey Regulated Water through the distribution system and to deliver such water into the California Aqueduct. Said power costs

shall be computed based on the amount of energy consumed to pump, withdraw, transport, and when applicable to convey to the California Aqueduct Valley's Regulated Water in a given Year multiplied by Kern Delta's average actual unit power cost for that period.

5.4.2 The initial calculation of energy costs shall be consistent with the calculation shown in the table included in Exhibit "B-1," (Methodology for Determining Energy Requirements) and incorporated herein by this reference. The Table 2 (Energy Analysis Results) in Exhibit B-1 may be revised from time to time by written consent of the Parties, which consent shall not be unreasonably withheld. The intent of Exhibit B-1 is to provide Kern Delta with sufficient revenue to recover the power costs incurred by Kern Delta for transportation, regulation and withdrawal of Delivered and Regulated Water and to allow Kern Delta flexibility to change the calculation based on experience and the changing electric utility industry and possible changes in its power supply and transmission contracts.

5.5 OM&R Fees. For each acre-foot of Delivered Water or Regulated Water, whether conveyed directly by Kern Delta or by exchange, Valley shall pay to Kern Delta the applicable operation, maintenance and replacement fee ("OM&R fee") based on the following rates which are to approximate Kern Delta's actual OM&R and administrative costs to perform the functions listed. The methodology for determining such costs is included in Exhibit "B-2" (Methodology for Determining O&M Costs and Replacement Cost) attached hereto and incorporated herein by this reference.

5.5.1 Spreading (Either direct recharge or in-lieu or exchange) OM&R Fee of \$3.52 per acre-foot of Delivered Water regulated for Valley.

5.5.2 Extraction (Either direct pumping or in-lieu or exchange) OM&R Fee of \$8.20 per acre-foot of Regulated Water delivered to Valley upon return of Regulated Water.

5.5.3 Conveyance (Either directly conveyed or exchange) OM&R Fee of \$19.88 per acre-foot of Delivered Water (upon delivery into storage), and \$12.88 per acre-foot of Regulated Water (upon return of Regulated Water).

5.5.4 Commencing December of the first full year following Execution Date, each OM&R Fee provided for in this Section 5.5 (OM&R Fees) shall be adjusted for the following year by the fraction of the numerator of which is the Consumer Price Index, All Urban Consumers, All Items Index, Western Cities with populations of 50,000 to 330,000 (the "CPI") for December of the Year immediately preceding the Year with respect to which the adjusted amount is being determined and the denominator of which shall be the CPI for 2010 (based on the 1982-84 index). In lieu of the aforesaid adjustment for each of the sixth and subsequent fifth full years ("Methodology Adjustment Years") following Execution Date, each OM&R Fee provided for in this Section 5.5 (OM&R Fees) shall be subject to the Methodology Adjustment, which shall utilize the applicable methodology provided for in Exhibit B-2 (Methodology for Determining O&M Costs and Replacement Costs). For purposes of calculating adjustments in years between Methodology Adjustment Years, the OM&R Fee determined for the previous Methodology Adjustment Year shall be utilized for adjustments until the next succeeding Methodology Adjustment Year.

5.6 State Project Costs. For all Regulated Water returned by Kern Delta pursuant to Subsection 4.1.2 of Section 4.1 (Methods of Return of Regulated Water), Valley shall pay applicable State Water Project costs beyond the Point of Delivery to Valley.

5.7 Payment Schedule. For payment obligations incurred pursuant to Participation Payments; Sections 5.1 (Put Payments); 5.2 (Take Payments); 5.4 (Power & Energy Costs); and 5.5 (OM&R Fees), Kern Delta may only bill Valley for water previously credited or debited to

Account pursuant to this Agreement. In all events, Kern Delta may only bill Valley, no more frequently than monthly for payments under this Agreement which payments shall be due Kern Delta and shall become delinquent thirty (30) days after Valley receives the invoice under the terms of this Agreement. Data supporting the amounts invoiced shall be provided upon the request of Valley. Kern Delta shall correct any erroneous billing promptly upon discovery of the error. If Valley has been underbilled, payment of the underbilled amount, together with interest thereon at the average investment yield of Valley's investments as reported monthly by Valley's Treasurer, shall be due and become delinquent thirty (30) days after Valley receives the corrective invoice and data justifying the change. Correction of overpayments by Valley shall become delinquent unless refunded by Kern Delta to Valley within forty-five days of discovery by either Valley or Kern Delta, together with interest thereon computed from the date the overpayment was made at the average investment yield of Valley's investments as reported monthly by Valley's Treasurer.

5.8 Delinquencies. In addition to other amounts payable, delinquencies shall bear interest at the rate of one percent (1%) per month.

ARTICLE 6. DIVISION OF RISK RESPONSIBILITIES

Kern Delta and Valley agree to cooperate, in reducing, to the greatest extent practicable, the risk from claims arising against any of the Parties from implementation of this Agreement. In the event of claims by third parties relating to this Agreement, the responsibilities of Kern Delta, and Valley shall be divided as follows:

6.1 Kern Delta Responsibilities. Kern Delta shall defend, indemnify and hold harmless Valley and its directors, officers, agents, employees and volunteers against any and all

losses, claims, demands and causes of action (herein collectively referred to as "claims") and shall assume responsibility for payment of any settlements, judgments, costs and attorneys' fees arising from claims concerning the following:

(a) Control, carriage, transportation, handling, use, disposal, or distribution of Delivered, Regulated or Transported Water from the Point of Delivery to Kern Delta and to the Point of Delivery to Valley;

(b) Any contest or dispute by any landowner or water user within the service area of, or otherwise served by, Kern Delta concerning the allocation of benefits among or the assessment of charges to Kern Delta landowners or water users;

(c) Construction, repair, modification, or replacement of any Regulation Program Facilities;

(d) Operation of the Regulation Program or Kern Delta Facilities or the actions of Kern Delta's officers, employees or agents; and

(e) Any other activities under the exclusive control of Kern Delta. If Valley is named in any such action, it may submit its defense to Kern Delta, which shall bear the full cost of defense, except to the extent that Valley utilizes its own counsel for such defense.

Notwithstanding the foregoing, the responsibility for any claims challenging the validity, underlying authority or enforceability of the Regulation Program under this Agreement shall be as provided at Section 6.3 (Other Claims). Valley shall not be entitled to any indemnification from Kern Delta except as set forth in this Section 6.1 (Kern Delta Responsibilities).

6.2 Valley Responsibilities. Valley shall defend, indemnify and hold harmless Kern Delta and its respective directors, officers, agents, employees and volunteers, against any and all claims and shall assume responsibility for payment of any settlements, judgments, costs or

attorneys' fees arising from claims concerning the following:

- (a) Control, transportation, handling, use, disposal or distribution of Delivered Water to the Point of Delivery to Kern Delta and Regulated Water from the Point of Delivery to Valley;
- (b) Any claim by a landowner, resident, public agency or other entity within the service area of, or otherwise served by, Valley challenging the Regulation Program or this Agreement directly or indirectly;
- (c) Construction, repair, modification or replacement of any of the facilities of Valley, or the State Water Project;
- (d) Operation of the facilities of or the actions of the officers, employees or agents of Valley; and
- (e) Any other activities under the exclusive control of Valley.

If Kern Delta is named in any such action, it may submit its defense to Valley involved, in which event Valley shall bear the full cost of defense, except to the extent Kern Delta utilizes its own counsel for such defense. Notwithstanding the foregoing, the responsibility for any claims challenging the validity, underlying authority or enforceability of the Program under this Agreement shall be as provided at Section 6.3 (Other Claims). Kern Delta shall not be entitled to any indemnification from Valley except as set forth in this Section 6.2 (Valley Responsibilities).

6.3 Other Claims. As for any claims by a third party with respect to the Regulation Program which are not otherwise provided for at Sections 6.1 (Kern Delta Responsibilities) or 6.2 (Valley Responsibilities), including any claims challenging the underlying authority for or the validity or enforceability of the Regulation Program under this Agreement, Valley shall be responsible for payment of any settlements it has approved or any judgments with respect to such claims. If Kern Delta is named in any action with respect to such a claim, it may submit its

defense to Valley and Valley shall bear the full cost of defense, except to the extent Kern Delta utilizes its own counsel for such defense. At the request of Valley, Kern Delta shall join in the defense of any claim which is not adverse to Kern Delta's water supply or financial interests, in which case Valley shall reimburse Kern Delta for all of its costs of defense. However, with respect to claims in which one or more of the plaintiffs resides or does business in Kern County challenging the recovery of groundwater under this Agreement, Valley may demand that Kern Delta join in the defense of claims. In such case, Kern Delta must comply with any such demand, the Parties shall jointly manage the litigation, and Kern Delta and Valley shall each pay one-half of the defense costs. In other such cases, Valley shall reimburse Kern Delta for all of its costs of defense.

6.4 Multiple Claims. In the event that payments are made in settlement of a claim, in satisfaction of a judgment or for defense costs where the claim arises from issues applying to both Kern Delta and Valley, payments shall be divided in proportion to the relative liability of each arising from the common claim. If the Parties cannot agree on the proportion, then the share to be paid by each of Kern Delta and Valley shall be submitted to arbitration as provided at Article 7 hereof.

ARTICLE 7. DISPUTE RESOLUTION

7.1 Informal Mediation. In the event of a dispute regarding the interpretation or implementation of this Agreement, or if the parties are unable to agree upon a matter as to which their agreement is provided for hereunder, the Parties will endeavor to resolve the dispute by using the services of a mutually acceptable consultant. The fees and expenses of the consultant shall be shared equally by the Parties.

7.2 Arbitration.

7.2.1 If a consultant cannot be agreed upon, or if the consultant's recommendations are not acceptable to the Parties, and unless the Parties otherwise agree, the matter shall be resolved by arbitration as provided in this Article 7 and in the California Arbitration Act (Part 3 [commencing with § 1280], Tit. 9, Calif. Code Civ. Proc.), including Section 1283.05. The Parties agree to be bound by the majority decision of a three-member panel to be selected as follows: (i) one member shall be selected by Valley; (ii) one member shall be selected by Kern Delta; and (iii) the third member shall be selected by the other two (2) members. If the two (2) members selected by Valley and Kern Delta are unable to agree on the selection of a third member, either Party may petition a court to appoint the third member pursuant to Code of Civil Procedure Section 1281.6. Each Party shall be responsible for any fees and expenses of the member of the panel appointed by that Party, and the fees and expenses of the third member of the panel shall be shared fifty percent (50%) by Kern Delta and fifty percent (50%) by Valley.

7.2.2 If a Party asserts that another Party has breached obligations under this Agreement, it may request that the arbitration panel order the other Party to comply with this Agreement. Upon the panel finding that a Party has in fact breached this Agreement, the panel shall order compliance. The panel may order any other equitable relief permitted by California law, including declaratory or injunctive relief, applicable to the matter before the panel for resolution. If termination is sought by a party pursuant to the terms hereof, the panel may determine the issues of whether a default has occurred or other condition precedent to the termination alleged has been satisfied and, if so, may issue orders implementing that termination. The orders of the panel shall be judicially enforceable. The panel may order that the effective

date of its order be the date of the breach, if appropriate. If Valley has suspended payments as provided in Subsection 9.1.2 of Section 9.1 (Remedies in the Event of Kern Delta's Willful Failure to Perform), it shall reimburse Kern Delta for any monies withheld and then due to Kern Delta as soon as Kern Delta again fully complies with this Agreement unless otherwise ordered by the panel. The panel may not order any damages (including consequential or punitive damages) beyond those provided for or permitted under this Agreement.

ARTICLE 8 TERM OF AGREEMENT

8.1 Regulation Program. Unless the Regulation Program provisions of this Agreement are earlier terminated pursuant to Subsection 9.1.3 of Section 9.1 (Remedies in the Event of Kern Delta's Willful Failure to Perform), Section 9.2 (Remedies in the Event of Valley's Voluntary Failure to Perform), Section 9.3 (Remedies in Event of Failure of Certain Other Remedies), or Section 10.2 (Involuntary Termination), Valley's right to provide Delivered Water pursuant to Section 2.1 (Source of Water) and to receive Regulated Water pursuant to Article 4 (Return of Water) shall terminate at the end of 2035. At the end of 2035, the entire Account Balance shall be debited and the remaining Regulated Water, if any, shall be available for Kern Delta to utilize for its own purposes.

8.2 Agreement Termination. This Agreement shall terminate at the time of termination of both the Regulation Program unless extended pursuant to Section 8.3 (Pending and Late Arising Claims).

8.3 Pending and Late Arising Claims. If a claim arising under or with respect to one or more terms of this Agreement has not been resolved when such term terminates, or if such a claim is brought after this Agreement has terminated but within the period of time for bringing

such a claim under California law ("Late Arising Claim"), the provisions of this Agreement shall continue in full force and effect for such additional period of time as is necessary to resolve such claims and to satisfy the rights and obligations of the Parties hereto with respect thereto.

8.4 Renewals of Agreement. This Agreement may be renewed by mutual agreement of the Parties, which renewal shall, unless otherwise agreed, effect a continuation of both parties' rights and duties under this Agreement.

ARTICLE 9. REMEDIES

9.1 Remedies in the Event of Kern Delta's Willful Failure to Perform.

9.1.1 If Valley alleges that Kern Delta has not substantially performed according to the terms of this Agreement or has willfully failed to perform this Agreement by causing (or, if within Kern Delta's jurisdiction, permitting) other entities or persons to interfere with Regulation Program operation, or by failing to accept or return water as and when required by this Agreement, or if Kern Delta has otherwise breached its obligations under this Agreement and notice has been provided to Kern Delta pursuant to Section 11.4 (Waiver/Cure of Defaults) and Kern Delta has failed to cure the alleged breach within the time provided in Section 11.4 (Waiver/Cure of Defaults), Valley may, at any time thereafter while the default is continuing, advise Kern Delta of the remedy or remedies provided in Article 7 (Dispute Resolution), and Subsections 9.1.2 and 9.1.3 below which Valley intends to pursue with respect to such default. Kern Delta may challenge at any time, through Article 7 (Dispute Resolution), whether in fact there has been a breach of or default under this Agreement by Kern Delta.

9.1.2 In the event of an alleged breach as to which Valley has given notice to Kern Delta pursuant to Section 9.1.1, Valley may elect to suspend any payment obligations it

may have under Article 5 (Compensation) of this Agreement until Kern Delta complies with the terms of this Agreement and cures such breach or default, or is determined, pursuant to Article 7 (Dispute Resolution), not to have violated the Agreement. Notwithstanding such suspension of Valley's payment obligations, this Agreement shall remain in effect unless and until Valley elects to terminate the Agreement under Section 9.1.3 in which case termination shall occur in accordance with and as provided in such provision. Notwithstanding an election by Valley under this Section 9.1.2 to suspend payment obligations, Valley or Kern Delta may thereafter also seek relief under Article 7 (Dispute Resolution).

9.1.3 If Kern Delta willfully fails to recharge or return water for or to Valley under circumstances where such performance or nonperformance is not excused by the terms of this Agreement and Valley elects to terminate this Agreement, Kern Delta shall purchase the amount of Valley's Regulated Water in its Account Balance for an amount equal to Valley's previous payments with respect to such Regulated Water, all adjusted as provided in Section 5.5.2, all payable within one (1) year of said election by Valley to terminate. Once such payment has been fully made, this Agreement shall be fully terminated except for Preamble; Recitals; Articles 1 (Definitions); 7 (Dispute Resolution); 8 (Term of Agreement); 9 (Remedies); and 11 (Miscellaneous Provisions). Upon payment in full by Kern Delta as provided above, Valley's beneficial interest in the amount of Regulated Water in Valley's Account Balance shall vest in Kern Delta free of obligations and Kern Delta shall be entitled to produce and use such water for its own account.

9.2 Remedies in the Event of Valley's Voluntary Failure to Perform. If Valley has not substantially performed according to the terms of this Agreement, and notice has been provided to Valley pursuant to Section 11.4 (Waiver/Cure of Defaults) and Valley has failed to

cure the alleged breach within the time provided in Section 11.4 (Waiver/Cure of Defaults), Kern Delta may at its election, at any time thereafter while the default is continuing, either (i) suspend further performance and thereafter seek relief under Article 7 (Dispute Resolution), recommencing performance once Valley complies with the Agreement, or (ii) terminate this Agreement. If Kern Delta elects to terminate this Agreement, any Regulated Water remaining in Valley's Account shall be transferred to Kern Delta at no cost to Kern Delta. In such event, Kern Delta shall have no further responsibility for repayment of funds advanced by Valley under Article 5 (Compensation). Valley may challenge at any time, through Article 8 (Dispute Resolution), whether in fact there has been a breach of this Agreement by Valley.

9.3 Remedies in Event of Failure of Certain Other Remedies. If: (i) Kern Delta has breached or defaulted in the performance of its obligations under this Agreement, and (ii) Valley has given notice of the breach or default pursuant to Subsection 9.1.1 of Section 9.1 (Remedies in the Event of Kern Delta's Willful Failure to Perform), and (iii) Kern Delta has failed to cure that breach or default within thirty (30) days as required by Section 11.4 (Waiver/Cure of Defaults), and (iv) Valley has elected a remedy for that breach or default pursuant to Subsection 9.1.1 of Section 9.1 (Remedies in the Event of Kern Delta's Willful Failure to Perform), and (v) Kern Delta has agreed to such remedy or, if Kern Delta has not so agreed, Valley has obtained a judgment or court order against Kern Delta (whether based on an order of an arbitration panel under Article 7 (Dispute Resolution) or otherwise) which judgment or court order Kern Delta has failed or refused to perform, *then* Valley may notify Kern Delta that Valley is entitled to and intends to exercise its right to appointment of a successor in place of Kern Delta and, thereafter, Valley may apply to a court of competent jurisdiction for such appointment of a successor who shall be charged with performing the duties pursuant to the

terms of this Agreement. The successor, when appointed, shall be entitled to exercise any and all rights theretofore held by Kern Delta for Valley. Upon the later of (i) receipt by Valley at the California Aqueduct of water in an amount equal to Valley's Account Balance pursuant to the exercise by such successor of its rights, or (ii) expiration of the term specified in Section 8 (Term of Agreement), this Agreement shall be fully terminated unless extended pursuant to Section 8.4 (Pending and Late Arising Claims).

ARTICLE 10. EARLY TERMINATION

10.1 Resignation of Kern Delta. Kern Delta may not resign its duties and obligations under this Agreement for the term of this Agreement except as permitted by Sections 9.2 (Remedies in the Event of Valley's Voluntary Failure to Perform) and 10.2 (Involuntary Termination), and any other attempt by Kern Delta to resign shall be deemed to be a breach of its obligations hereunder.

10.2 Involuntary Termination. Notwithstanding Article 9 (Remedies), in the event that Kern Delta is unable to perform its obligations under this Agreement for reasons beyond its control, the following shall apply ("reasons beyond its control" as used in this sentence shall not include any reasons caused by Kern Delta's breach of its obligations under this Agreement or other failure to comply with any of its legal obligations).

10.2.1 If such inability to perform relates to the Regulation Program, and that inability to perform includes the inability of Kern Delta to return Regulated Water which remains in the Valley Account Balance, Kern Delta shall purchase the Regulated Water which Kern Delta is unable to return for an amount equal to the costs which Kern Delta would have incurred to purchase such water under its contract with the KCWA in the Year such Regulated Water was

delivered to storage. Such payment by Kern Delta to Valley upon involuntary termination under this Section 9.2 (Remedies in the Event of Valley's Voluntary Failure to Perform) shall be financed over time upon terms mutually agreeable to Valley and Kern Delta. If Valley and Kern Delta are unable to agree on such terms in a reasonable period of time, they shall resolve their disagreement pursuant to Article 7 (Dispute Resolution). Once such payments have been fully made, this Agreement shall be fully terminated. If payment is made as provided above, the beneficial interest in the amount of Valley's Regulated Water in Valley's Account Balance which Kern Delta is unable to return shall vest in Kern Delta.

ARTICLE 11. MISCELLANEOUS PROVISIONS

11.1 Successors and Assigns. This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties; provided, however, neither Party shall assign any of their rights or obligations under this Agreement without the prior written consent of the other. Nothing in this Agreement is intended to confer any right or remedy under this Agreement on any person other than the parties to this Agreement and their respective successors and permitted assigns, or to relieve or discharge any obligation or liability of any person to any party to this Agreement, or to give any person any right of subrogation or action over or against any party to this Agreement.

11.2 No Precedent. Kern Delta entering into this Agreement shall not create in Valley any rights beyond those expressly provided by this Agreement, nor shall it establish any precedent for extension or renewal of this Agreement beyond its term. Furthermore, Valley shall not make any claim to continued use of water provided under this Agreement, beyond that expressly provided under this Agreement, including, but not limited to, asserting any right

against Kern Delta to use of water beyond the term of this Agreement under the doctrine of intervening public use.

11.3 No Modification of Existing Contracts. This Agreement shall not be interpreted to modify the terms or conditions of either the water supply contracts between DWR and Valley or the water supply and related agreements between Kern Delta and other parties.

11.4 Waiver/Cure of Defaults. The failure of any Party to enforce against the other a provision of this Agreement shall not constitute a waiver of that Party's right to enforce such a provision at a later time. No Party shall be deemed to be in default of any provision of this Agreement unless the other Party has given written notice specifically stating the alleged default and the Party in default fails to cure the default within thirty (30) days of receipt of such written notice.

11.5 Construction of Agreement. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto and Section 1654 of the Civil Code has no application to interpretation of this Agreement. Headings at the beginning of Sections, paragraphs and subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement and shall not be used in construing it. The preamble, recitals and all exhibits and schedules to this Agreement are part of this Agreement and are incorporated herein by this reference. When required by the context: whenever the singular number is used in this Agreement, the same shall include the plural, and the plural shall include the singular; and the masculine gender shall include the feminine and neuter genders and vice versa. Unless otherwise required by the context (or otherwise provided herein): the words "herein," "hereof" and "hereunder" and similar words shall refer to the Agreement generally and not merely to the provision in which such term

is used; the word "person" shall include individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority and other entity of whatever nature; each of the words "Valley" and "Kern Delta" shall include the respective representatives, successors and permitted assigns, if any, of such person; the words "including," "include" or "includes" shall be interpreted in a non-exclusive manner as though the words "but [is] not limited to" or "but without limiting the generality of the foregoing" immediately followed the same; the word "month" shall mean calendar month; and the term "business day" shall mean any day other than a Saturday, Sunday or legal holiday. If the day on which performance of any act or the occurrence of any event hereunder is due is not a business day, the time when such performance or occurrence shall be due shall be the first business day occurring after the day on which performance or occurrence would otherwise be due hereunder. All times provided in this Agreement for the performance of any act will be strictly construed, time being of the essence of this Agreement.

11.6 Entire Agreement. This Agreement and other documents expressly referenced herein constitute the entire agreement between the Parties pertaining to the matters provided for herein and, except as herein provided, supersedes all prior and/or contemporaneous agreements and understanding, whether written or oral, pertaining between the Parties relating to the matters provided for herein. In the event of inconsistency between and among (i) other documents, (ii) Exhibits to this Agreement, and (iii) the remaining provisions of this Agreement, the remaining provisions of this Agreement shall control.

11.7 Severability. In the event that a court of competent jurisdiction or an arbitration panel as provided at Article 7 (Dispute Resolution) determines that a provision included in this Agreement is legally invalid or unenforceable and such decision becomes final, the Parties to this

Agreement shall use their best efforts to (i) within thirty (30) days of the date of such final decision identify by mutual agreement the provisions of this Agreement which must be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the Parties. Pending the completion of the actions designated above, to the extent it is reasonably practical and can be done without violating any applicable provisions of law, the provisions of this Agreement which were not found to be legally invalid or unenforceable in the final decision shall continue in effect. If the Parties cannot agree on appropriate revisions, this Agreement shall be involuntarily terminated in accordance with Section 9.2 (Remedies in the Event of Valley's Voluntary Failure to Perform).

11.8 Force Majeure. All obligations of the Parties other than monetary or payment obligations shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, not to exceed one year, by earthquakes, fires, tornadoes, facility failures, floods, strikes, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, or other events or causes beyond the control of the Parties. In no event shall any liability accrue against a Party, to its officers, agents or employees, for any damage arising out of or connected with a suspension of performance pursuant to this Section 11.8. All time limits to perform and the term of the Agreement shall be extended by period equivalent to the length of suspension. In event of such an occurrence of duration in excess of one year, Section 10.2 (Involuntary Termination) shall control, unless the Parties otherwise agree.

11.9 Notices. All notices, requests and demands hereunder ("Notices") shall be in writing and shall be deemed to have been duly given when delivered (or, if mailed, postage

prepaid, on the third business day after mailing, if that date is earlier than actual delivery).

Notices shall be sent to a Party at the address of that Party set forth below or, if such Party has furnished notice of a change of that address as herein provided, to the address of that Party most recently so furnished. Notices for Kern Delta shall be sent to the Engineer Manager of Kern Delta at 501 Taft Highway, Bakersfield, CA 93307-6247. Notices for Valley shall be sent to the General Manager of Valley at 380 East Vanderbilt Way, San Bernardino 92408. Each Party hereto (a "Recipient") who receives from another Party hereto (a "Sender") by electronic facsimile transmission (telecopier) any writing which appears to be signed by that Sender is authorized to rely and act upon that writing in the same manner as if the original signed writing was in the possession of the Recipient upon oral confirmation of that Sender to the Recipient that the writing was signed by that Sender and is intended by that Sender to be relied upon by the Recipient. Each Party transmitting any writing to any other Party by electronic facsimile transmission agrees to forward immediately to that Recipient, by expedited means (for next day delivery, if possible), or by first class mail if the Recipient so agrees, the signed hard copy of that writing, unless the Recipient expressly agrees to some other disposition of the original by the Sender.

11.10 Regulatory Changes. It is recognized that changes in Kern Delta's actual costs of operating the Regulation Program or changes in other conditions affecting the Regulation Program may occur on or after the date this Agreement is executed as a result of enactments, amendments, changes in implementation or interpretation, or repeal of any federal or state law, rule, regulation or ordinance or changes in contract terms (each, a "Regulatory Change"). If either Party determines that a Regulatory Change has occurred that would result in a material change (upward or downward) in Kern Delta's costs or other conditions relating to regulating,

recovering or transporting water pursuant to the terms of this Agreement, which change is not reflected in the adjustments in the payments due from Valley to Kern Delta pursuant to Article 5 (Compensation) or other provision of this Agreement, such Party shall promptly inform the other Party of the nature and extent of such alleged Regulatory Change and of the reason why that party believes an adjustment pursuant to this Section 11.10 is warranted in the payments due from Valley to Kern Delta or in other terms or conditions. The Parties will thereupon attempt to reach an appropriate amendment of this Agreement in light of the Regulatory Change. If such agreement cannot be reached within forty-five (45) days after either Party has provided the required notice and information, the matter shall be resolved pursuant to Article 7 (Dispute Resolution), the qualified third party or arbitration panel being charged with determining (i) whether a Regulatory Change has occurred (if that is in dispute), (ii) the amount of change, if any, in Kern Delta's costs resulting from the Regulatory Change, and (iii) the manner in which the payments due from Valley to Kern Delta or other terms or conditions which should be modified are to be adjusted to fairly and equitably reflect that change in Kern Delta's costs or other terms and conditions (it being the intent of the Parties that no windfall or unwarranted compensation or benefit should result to any Party as a result of any adjustment made pursuant to this Section 11.10). Any adjustment to the payments due from Valley to Kern Delta or other terms and conditions made pursuant to this Section 11.10 shall be effective as of the first day such Regulatory Change affects Kern Delta operations hereunder unless the Parties otherwise agree and may be reconsidered thereafter at any time, at the request of any Party, if the adjustment is unjustly under-compensating or over-compensating any Party.

11.11 Further Assurances. Each Party hereto, upon the request of the other, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this instrument.

11.12 Counterparts. This Agreement, and any document or instrument entered into, given or made pursuant to this Agreement or authorized hereby, and any amendment or supplement thereto may be executed in two or more counterparts, and by each party on a separate counterpart, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document. Any signature page of this Agreement or of such an amendment, supplement, document or instrument may be detached from any counterpart without impairing the legal effect of any signatures thereon, and may be attached to another counterpart identical in form thereto but having attached to it one or more additional signature pages. In proving this Agreement or any such amendment, supplement, document or instrument, it shall not be necessary to produce or account for more than one counterpart thereof signed by the party against whom enforcement is sought.

Executed the day and year first hereinabove written.

THE SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

By: _____



President


APPROVED AS TO FORM:

By: _____



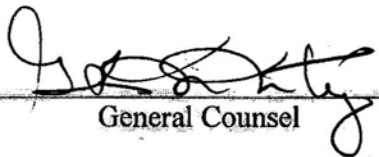
General Counsel

KERN DELTA WATER DISTRICT

By: 
President

By: 
Secretary

APPROVED AS TO FORM:

By: 
General Counsel

Exhibits

- A. Map Depicting Kern-Delta Boundaries and Program Facilities**
- B-1. Methodology for Determining Energy Requirements**
- B-2. Methodology for Determining O&M Costs and Replacement Cost**
- C. Certification That Conditions Precedent Have Been Satisfied or Waived**
- D. Map Depicting Kern Delta Boundaries and Program Facilities**

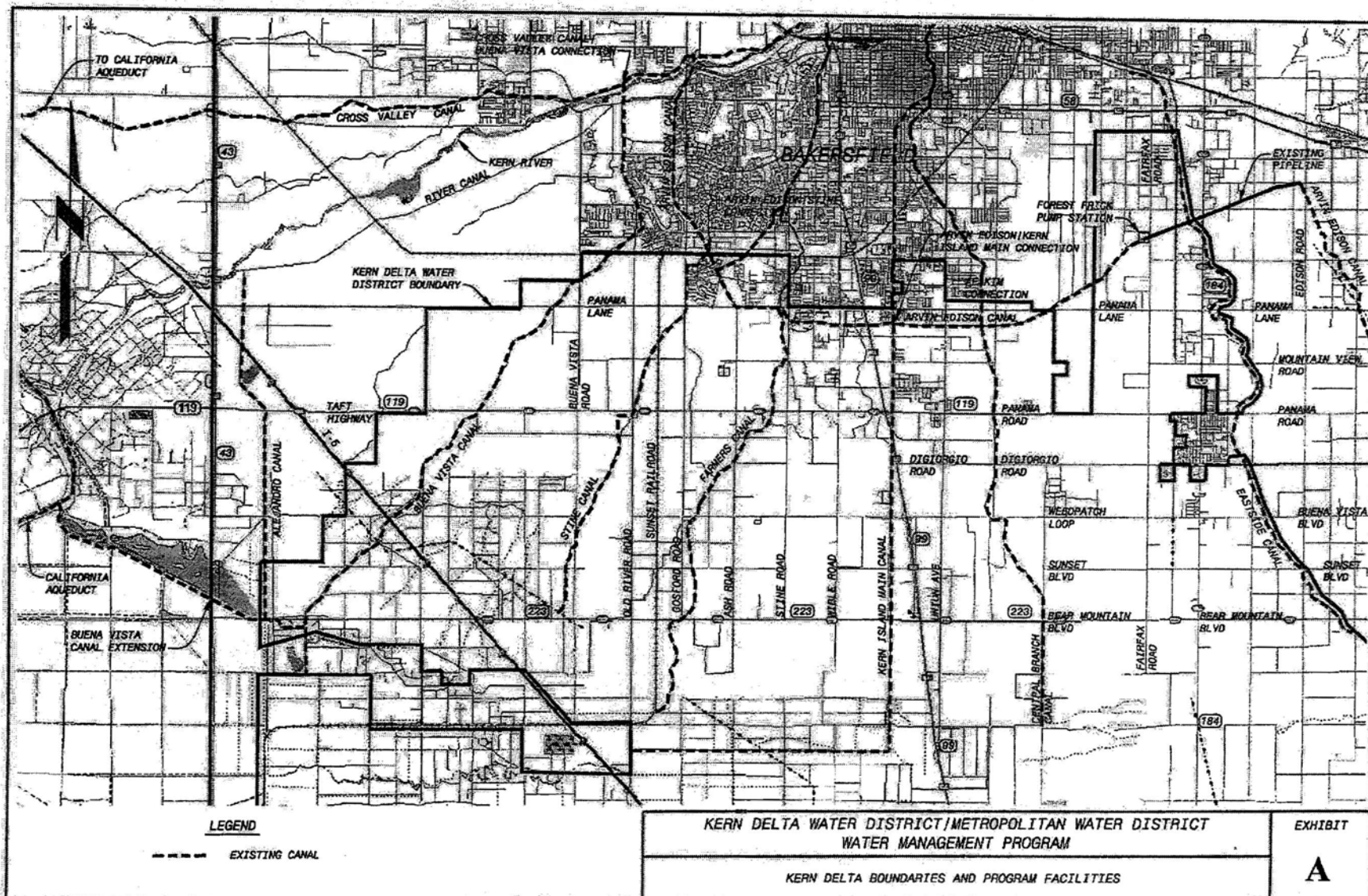


EXHIBIT B-1

BLACK & VEATCH Corporation

METHODOLOGY FOR DETERMINING ENERGY REQUIREMENTS

Kern Delta Water District Water Banking Program
Water Banking Program

B&V Project 99241
B&V File D.2
January 11, 2002

To: L. Mark Mulkay
Project Manager

From: Steven N. Foellmi, P.E.
Technical Manager

Prepared By: Klint Reedy, P.E.
Victor Tsai

EXECUTIVE SUMMARY

PURPOSE

The purpose of this memorandum is to evaluate the energy requirements associated with the facilities required for the Kern Delta Water District Water (KDWD) Banking Program (Kern Delta Project). The estimated energy requirements associated with these facilities are based on Black & Veatch experience and record data from the operation of similar facilities by other local agencies. In addition to estimating the power requirements, a preliminary assessment of the existing local electrical distribution facilities ability to meet potential future operating demands are investigated.

BACKGROUND

As part of the Water Banking Program, five new pump stations (Kern Delta pump stations No.1 through 5) would be built along the new Kern Delta Canal to allow for conveyance of water between the Kern Water Bank Authority (KWBA) Canal and the Arvin-Edison Canal. The pumping plants would take water from a lower canal segment and lift it to the adjacent canal segment. During wet years, the proposed

Kern Delta canal system would allow for the diversion of water from the California Aqueduct to the Kern Delta agricultural canals and spreading basins.

An existing pump within the existing Arvin-Edison Forrest Frick Pump Station would also be used to meet irrigation demands in the eastern section of the Kern Delta service area through the in-lieu (pipeline) facilities. These facilities will allow the use of State Water Project (SWP) water.

The project would also include thirty-two groundwater wells to recover previously stored water in the groundwater basin. The extraction wells would be located near existing water conveyance facilities.

ENERGY ANALYSIS

The facilities requiring energy to operate the water-banking project include of five pumping stations along the proposed canal conveyance facility, thirty-two new groundwater wells which will be utilized to withdraw stored water supplies, and the existing Arvin-Edison Forrest Frick Pump Station will be used to provide SWP supplies to meet irrigation demands in lieu of current groundwater extraction operations. The canal pumping stations and groundwater extraction wells are planned as motor-operated pumps with electricity to be provided from the existing Pacific Gas and Electric Company (PG&E) facilities.

Energy Rate Schedules and Metering Requirements

Energy rate schedules have been obtained from PG&E for evaluation of the power and metering requirements relevant to the operation of the pumping stations and groundwater extraction wells. PG&E recommends using schedule AG-5B, "Large Time-of-Use Agricultural Power for the Water Banking facilities. Schedule AG-5B is used for customers with high annual operation (generally over 1,200 hours) who run 24 hours per day or can minimize electric use on sum weekdays between noon and 6 p.m.

Energy rates for this schedule vary by the summer or winter season and the time of day the energy is consumed. A seasonal demand charge and a maximum-peak-period demand charge, based on peak kW usage, is also exercised. In addition to these base charges, PG&E also has a flat surcharge rate of \$0.02953/kWh in

accordance with the "Energy Procurement Surcharge Schedule (EPS)". This surcharge is applied after all other calculations are made and is applicable to all kW-hours consumed. Lastly, the customer's bill includes a customer charge, a meter charge, and a one-time installation and processing charge per meter.

A summary of the AG-5B / EPS rate schedule is provided in Table 1.

TABLE 1
PG&E "AG-5B/ EPS" RATE SCHEDULE

Charges	Summer Season (May – October)	Winter Season (November – April)
Energy Charge (per kWh per month)		
Peak (12 noon–6:00 p.m.) Mon.-Fri.	\$0.14294	-
Partial Peak (8:30 a.m.-12:00 p.m.) & (6:00 p.m.-9:30 p.m.) Mon.-Fri.	-	\$0.04661
Off-Peak	\$0.04088	\$0.03706
Demand Charges (per kW)		
Seasonal billing demand	\$6.55	\$4.40
Peak Period Demand	\$2.70	-
Surcharges (per kWh)		
EPS Rate for AG-5B Schedule	\$0.02953	\$0.02953
Monthly Base Service Charges		
Customer Charge per meter	\$16.00	\$16.00
Meter Charge per month	\$6.00	\$6.00

* Except Holidays.

Energy Analysis Model Development and Methodology

A preliminary version of the energy model has been created in Microsoft Excel using a single workbook that incorporates several worksheets. The model estimates power requirements of the proposed Water Banking facilities based on user defined operating scenarios. The following input is required by the user to perform a simulation:

1. Number of pumps operating at the five existing canal pumping stations (1 or 2 pumps @ 100 cfs each).
2. Desired flowrate for the "in lieu" element of the program (typically 25 to 30 cfs).
3. Number of groundwater wells operating during withdraw operation in dry years (between 0 to 32 groundwater wells).

-
4. Define seasonal operating conditions for "storage" and "withdrawal" facilities (daily hours of operation).

The total dynamic lift of each groundwater well is estimated and assumed to be consistent for each well. Electrical horsepower is calculated from the total dynamic lift, flowrate, and the overall efficiency (pump and motor). Currently the overall efficiency is estimated and a single typical value is used. However, it is anticipated that record flow rates and power data will be available and the program will utilize specific efficiencies based on the record data.

The model estimates power requirements for each of the pumping facilities along the proposed canal conveyance facility. The output tabulates the daily, monthly, and yearly facility power requirements.

Model Assumptions

Currently, the following assumptions have been made for the pumping plant facilities:

1. Combined pump and motor efficiency is 75 percent for all pumps at all plants under all conditions.
2. Arvin-Edison Forrest Frick Pumping Station has an assumed 67 percent combined pump and motor efficiency.
3. Proposed canal pumping plants will deliver 100 cfs or 200 cfs. The model currently assumes that when a pump from a pumping station is taken off-line to accommodate decreased flows, a single pump is operating at all the other pumping stations.

The following assumptions have been made for the groundwater extraction wells:

1. Combined pump and motor efficiency is 75 percent for all groundwater pumps.
2. Since the design of the wells is at conceptual levels, the power supply requirements are calculated assuming a "typical" well, and then multiplied by the number of wells.
3. Due to the lack of specific detailed design, the length of well discharge pipeline is estimated in order to calculate losses for the "typical well".
4. Each of the wells will extract groundwater at a rate of 6.25 cfs.

5. Assume negligible groundwater level drop due to extraction.

Some of these assumptions will be modified or quantified after additional data is received.

Energy Analysis Results

Preliminary analysis has been completed assuming the facilities operate at 200 cfs, 24 hours per day, until 55,500 ac-ft is stored into the groundwater basin. The initial results are presented in the following table.

TABLE 2
ENERGY ANALYSIS RESULTS

	Storage Mode ^{(1) (2)} 1 cycle = 64,750 Ac-Ft ⁽³⁾	Withdrawal Mode ⁽⁴⁾ 1 cycle = 55,500 Ac-Ft
Summer Costs		
\$/month	\$108,000	\$615,000
\$/cycle	\$648,000	\$3,690,000
\$/ac-ft	\$7	\$49
Winter Costs		
\$/month	\$82,500	\$445,000
\$/cycle	\$495,000	\$2,660,000
\$/ac-ft	\$5	\$35

(1) Assumes canal facilities operate 24 hours per day, 7 days per week for 20 weeks, totaling 55,500 Ac-Ft

(2) Assumes In-Lieu facilities operate during off-peak hours, totaling 9,250 Ac-Ft.

(3) 50,000 Ac-Ft storage + 9,250 Ft In-Lieu

(4) Assumes groundwater facilities operate 24 hours per day, 7 days per week.

The initial analysis estimated the electrical costs associated with operating the water banking program facilities 24 hours per day, 7 days per week. As presented in Table 1, significant savings maybe realized if the facilities were operated in a manner that minimizes peak demand charges.

CONCEPTUAL ELECTRICAL ARRANGEMENT

Based on the electrical demands estimated in the energy evaluation, conceptual one-line diagrams have been prepared for the canal pumping facilities and the groundwater pumping facilities and are attached for reference. An order of magnitude cost estimate was prepared for the new electrical equipment required between the existing PG&E 12 kV distribution power line and the pumping equipment, totaling \$80,000 per site. This cost is generally accurate for both the groundwater wells and the canal pumping stations.

Typically, PG&E will install and maintain this equipment and will recover the costs in the monthly billings. Alternatively, the KDWD can install and maintain the facilities between the main distribution power line and the pumping facilities and be eligible for a "voltage discount" within their rate. Upon preliminary investigation, it is recommended that KDWD have PG&E provide, install, and maintain these facilities.

CONCLUSION

A customized spreadsheet has been developed to estimate power requirements for the Kern Delta facilities. Currently, it is assumed that all facilities operate 24 hours per day seven days per week. However, significant savings may be realized if the facilities are operated to avoid peak demand periods. It is recommended that the model presented herein be used to evaluate the potential savings associated with minimizing peak demand charges.

EXHIBIT B-2

BLACK & VEATCH Corporation

METHODOLOGY FOR DETERMINING O&M COSTS & REPLACEMENT COST

Kern Delta Water District
Water Banking Program

B&V Project 99241
B&V File D.2
January 9, 2002

To: L. Mark Mulkay
Project Manager

From: Steven N. Foellmi, P.E.
Technical Manager

Prepared By: Klint Reedy, P.E.
Victor Tsai

EXECUTIVE SUMMARY

PURPOSE

The purpose of this memorandum is to evaluate the operations and maintenance (O&M) requirements associated with the Kern Delta Water District Water Banking Program components (Kern Delta Project). The recommended manufacturer O&M requirements and estimated replacement costs associated with operation of the major equipment components have been identified and tabulated. Actual maintenance history from similar facilities, and engineer's experience on similar projects were also utilized to define the O&M schedule for the facilities in the preferred project.

BACKGROUND

As part of the Water Banking Program, five new pump stations (Kern Delta pump stations No.1 through 5) would be built along the new Kern Delta Canal allowing conveyance of water between the Kern Water Bank Authority (KWBA) Canal and the Arvin-Edison Canal. The pumping plants would take water from a lower canal segment and lift it to the adjacent canal segment. During wet years, the proposed Kern Delta

canal system would allow for the diversion of water from the California Aqueduct to the Kern Delta agricultural canals and spreading basins.

An existing pump within the existing Arvin-Edison Forrest Frick Pump Station would also be used to meet irrigation demands in the eastern section of the Kern Delta service area through the in-lieu (pipeline) facilities. These facilities will allow the use of SWP water "in-lieu" of local groundwater.

Lastly, the project includes 32 new groundwater wells to recover previously stored water in the groundwater basin. The extraction wells would be located near existing water conveyance facilities.

OPERATION AND MAINTENANCE INVESTIGATION

The water-banking project facilities that require O&M include the five pumping stations along a proposed canal conveyance facility, 32 new groundwater wells to withdraw stored supplies, and the existing pump within the Arvin-Edison Forrest Frick Pump Station.

A maintenance schedule for the preferred project components and a preliminary estimate for the corresponding O&M costs has been included. The schedule includes recommended procedures for operating the canal pump stations, groundwater pumps and motors, and the equipment within the Arvin-Edison Forrest Frick Pump Station. The procedures include placing the equipment in service and operating it under both normal and abnormal conditions.

Operation & Maintenance Schedule

The attached example O&M schedule is based on information and recommendations obtained from the equipment manufacturers, maintenance history from other agencies with similar equipment, and the engineer's experience on similar projects. The attached example schedule is intended to provide a general idea of the O&M procedures required for each of the major equipment components of the Water Banking Project. Prior to startup of these facilities, a more detailed O&M schedule should be developed based on specific manufacturer's manuals and shop drawing information.

Estimated O&M Costs

A preliminary estimate of the O&M costs associated with the recommended maintenance procedures for the proposed Water Banking equipment is summarized in

Table 1.

Table 1
Annual Operation & Maintenance Costs
(2002 Dollars)

Description	Cost
STORAGE MODE	
Annual Power Costs	\$1,143,000
Labor (Personnel)	\$435,000
Annual Maintenance Costs ⁽¹⁾	\$54,000
Total Annual O&M Cost	\$1,632,000
5 YR Minor overhaul of canal pumps	\$25,000
20 YR Major overhaul of canal pumps	\$57,000
50 YR Major canal / spreading basin equipment replacement	\$2,400,000
Present Worth of Maintenance Costs⁽⁴⁾	\$716,817
Cost per AC-FT of Stored Water	\$14
WITHDRAWAL MODE	
Annual Power Costs	\$6,350,000
Labor (Personnel)	\$492,000
Annual Maintenance Costs ⁽²⁾	\$67,000
Total Annual O&M Cost	\$6,909,000
5 YR Minor Overhaul of GW Pumps	\$55,000
20 YR Major Overhaul of GW Pumps	\$124,000
50 YR Major groundwater pump equipment replacement	\$2,200,000
Present Worth of Maintenance Costs⁽³⁾	\$842,741
Cost per AC-FT of Recovered Water	\$53

⁽¹⁾ Maintenance costs for storage mode include idle maintenance costs for the groundwater facilities.

⁽²⁾ Maintenance costs for withdrawal mode include idle maintenance costs for the canal pumps.

⁽³⁾ Assumes 3% inflation & 6% discount factor.

The power costs presented in Table 1 are based on the results presented in the KDWD Water Banking Program "Energy Requirements" Technical Memorandum. Personnel costs associated with operating and maintaining the Water Banking facilities are based on 5 additional staff positions during the storage model and 6 positions during the withdrawal mode. It may be possible to utilize existing staff to assist with the operation of these facilities and minimize the total number of additional staff required. The estimated annual maintenance and overhaul costs are based on typical maintenance costs for similar facilities. Table 2 summarizes O&M costs by component.

Table 2
Operation & Maintenance Cost Summary By Component
(2002 Dollars)

Description	Annual Cost	
	In-Service	Idle
Canal Pumping Facilities		
Labor (Personnel) Costs	\$210,496	\$103,904
Routine Maintenance Costs	\$21,000	\$4,000
Annualized Major Equipment Overhaul & Replacement Costs	\$57,345	-
Total O&M Costs (\$ / AC-FT)	\$4	
Energy Costs per AC-FT ^{(1) (2)}	\$5	
Total Energy + O&M Costs per AC-FT	\$9	
Spreading Basins		
Labor (Personnel)	\$170,880	\$33,600
Routine Maintenance Costs	\$9,000	\$2,000
Annualized Major Equipment Overhaul & Replacement Costs	\$0	-
Total O&M Costs (\$ / AC-FT)	\$3	
Energy Costs per AC-FT	-	
Total Energy + O&M Costs per AC-FT	\$3	
In-lieu Facilities		
Labor (Personnel)	\$5,824	\$1,400
Routine Maintenance Costs	\$8,000	\$2,000
Annualized Major Equipment Overhaul & Replacement Costs	\$5,735	-
Total O&M Costs per AC-FT	\$2.1	
Energy Costs per AC-FT ^{(1) (3)}	\$6	
Total Energy + O&M Costs per AC-FT	\$8	
Well Field Facilities		
Labor (Personnel)	\$342,400	\$40,960
Routine Maintenance Costs	\$46,000	\$9,000
Annualized Major Equipment Overhaul & Replacement Costs	\$93,774	-
Total O&M Costs per AC-FT	\$7	
Energy Costs per AC-FT ^{(1) (4)}	\$35	
Total Energy + O&M Costs per AC-FT	\$42	
Canal / Pipeline Facilities		
Labor (Personnel) Costs	\$23,720	\$4,016
Routine Maintenance Costs	\$18,000	\$3,000
Annualized Major Equipment Overhaul & Replacement Costs	\$7,335	-
Total O&M Costs (\$ / AC-FT)	\$6.3	

(1) Reference Kern Delta Water Banking Project Energy Requirements Memorandum, dated February 27, 2002.

(2) Assumes winter demand charges, if operated in summer months additional \$5/AC-FT will be realized.

(3) Assumes winter demand charges, if operated in summer months additional \$6/AC-FT will be realized.

(4) Assumes winter demand charges, if operated in summer months additional \$35/AC-FT will be realized.

Exhibit C

CERTIFICATION THAT CONDITIONS PRECEDENT HAVE BEEN SATISFIED OR WAIVED

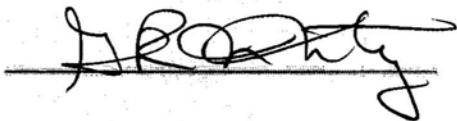
Kern Delta Water District and The San Bernardino Valley Municipal Water District hereby jointly certify that:

- 1) All conditions precedent set forth in Sections 8.1 of the Agreement titled _____, dated _____, have been satisfied or waived.
- 2) No Event of Default exists under the Agreement.

Capitalized terms used herein and not otherwise defined are as defined in the Agreement

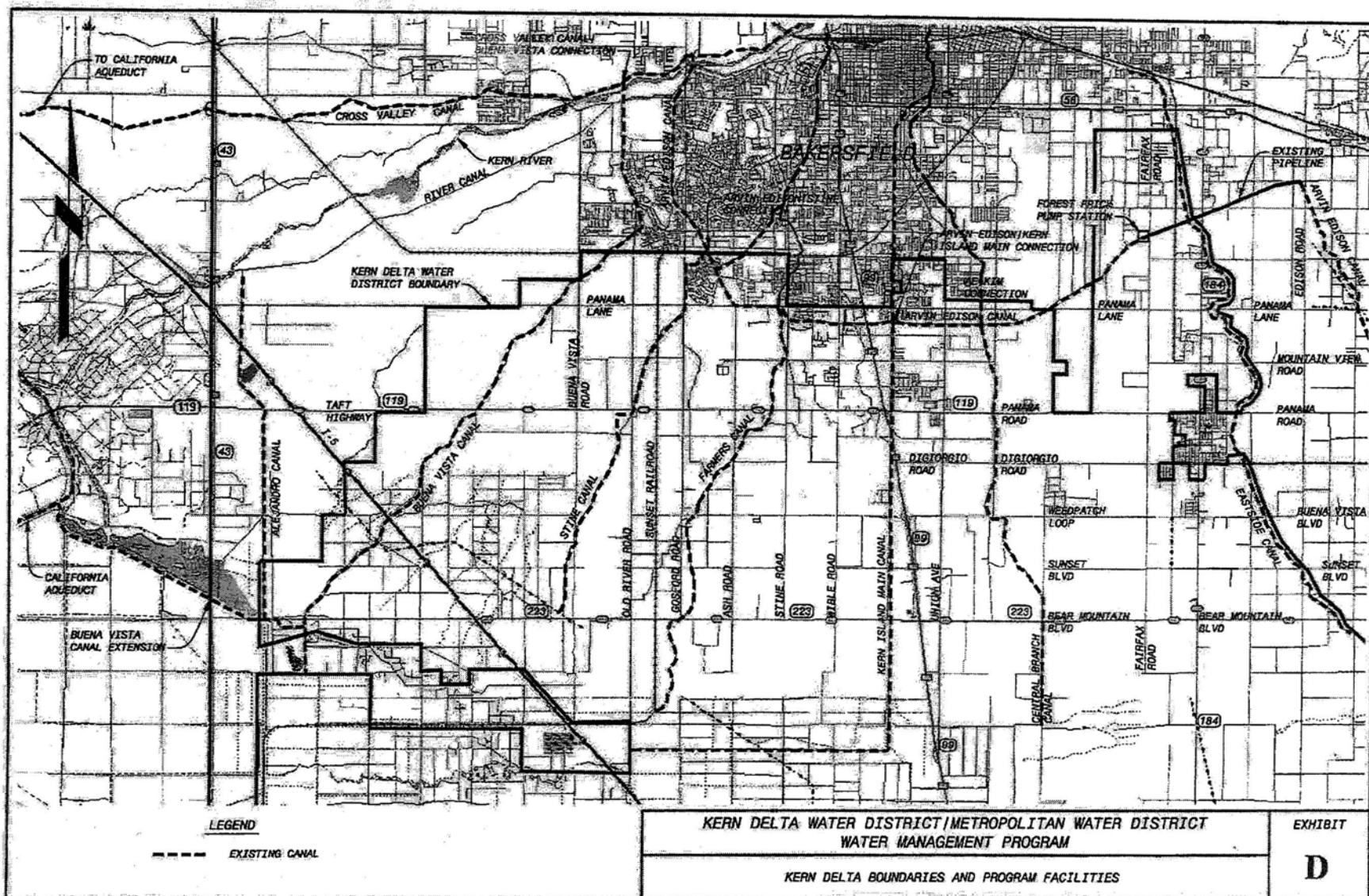
Dated: _____, 2011

Kern Delta Water District



**The San Bernardino Valley
Municipal Water District**





Kern Delta Water Storage Program

Invoice Review

INVOICED COSTS:

Cost	Agreement	June 18, 2012 Invoice
Participation Payment	\$40/acre-ft	\$40/acre-ft
Energy costs	Pay all energy costs	CVC Power (pass through)
Operational losses	11%	11%
OM&R Fee (spreading)	\$3.52/acre-ft	\$3.51/acre-ft
OM&R Fee (conveyance)	\$19.88/acre-ft	\$19.88/acre-ft
Exchange Cost (Rosedale)	§ 4.1.2, 5.4.1	Pass through
Exchange Cost (BVWSD)	§ 4.1.2, 5.4.1	Pass through

INVOICE AMOUNT:

	Staff Estimate	June 18, 2012
Put Cost	\$2,400,000	\$2,329,862.77

17,800 af

\$130.89/af

Kern Delta Water District

501 TAFT HIGHWAY
BAKERSFIELD, CALIFORNIA 93307-6247
TELEPHONE (661) 834-4656
FAX (661) 836-1705

BOARD OF DIRECTORS

Rodney Palla, *President*
David L. Kaiser, *Vice President*
David C. Cosyns, *Secretary*
Kevin Antongiovanni, *Treasurer*
Donald Collins
Howard Frick
Fred Garone
Richard Tillema
Philip J. Cerro



OFFICERS & STAFF

L. Mark Mulkay
General Manager
Dirk W. Reed
Deputy General Manager
Bryan C. Duncan
Controller
McMurtrey, Hartsock & Worth
Attorneys-at-Law

June 18, 2012

Doug Headrick
General Manager
San Bernardino Valley Municipal Water District
380 East Vanderbilt Way
San Bernardino, Ca 92408

Re: Invoice for 2011 Storage of Regulated Water (**Invoice # WBP2012-04**)

Dear Mr. Headrick,

Pursuant to the *Agreement Between Kern Delta Water District and The San Bernardino Valley Municipal Water District for a Water Management Program*, dated October 26, 2011; please accept this letter as an invoice.

Agreement Section	Title	Rate (\$/af)	Delivered Water (af)	Cost (\$)
1.20	Participation Payment	40.00	30,000	\$1,200,000.00
5.5.1	OM&R Spreading	3.51	30,000	\$105,300.00
5.5.3	OM&R Delivery Canal	19.88	30,000	\$596,400.00
5.4.1	CVC Power (variable)*		Pass Through	\$232,976.36
5.4.1	Exchange Cost (Rosedale)*		Pass Through	\$66,227.92
5.4.1	Exchange Cost (BVWSD)*		Pass Through	<u>\$128,967.48</u>
			Total Due	\$2,329,862.77

* See attachment 1 for detailed cost breakdown

APPROVE FOR PAYMENT

Initials DDH

Date 8/2/12

Project Name _____

Project Number _____

Invoice to be billed to other Entity ☐

Entity Name _____

% split or EBX Reach # _____

After this invoice, the summary of Regulated Water is as follows:

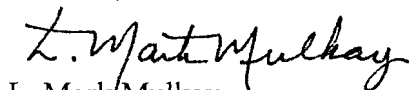
<u>Deliveries</u>	<u>Regulated Water</u>	<u>Returned Water</u>	<u>Remaining Water</u>
30,000 af	26,700 af	0 af	26,700 af

Please remit payment to:

Kern Delta Water District
501 Taft Highway
Bakersfield, Ca 93307

Thank you for your help in this matter. If you have any questions please call me at (661) 834-4656.

Sincerely,



L. Mark Mulkay
General Manager
Kern Delta Water District

Enclosure(s)

	Total 2011	MWD Portion of CVC	Valley District Portion
Melded CVC cost (acft)	CVC Cost	Cost	of CVC Cost
Acre-feet	90,139	60,139	30,000
KCWA CVC Cost	\$699,981.50	\$467,014.14	\$232,967.36
Rosedale/ID4	\$198,990.63	\$132,762.71	\$66,227.92
BVWSD Exchange Cost	\$387,500.00	\$258,532.52	\$128,967.48

KCWA -- CVC Conveyance Cost		
Invoice Number	acft	dollars
24249	1632	\$22,039.25
24291	1503	\$6,581.25
24487 & 24466	4887	\$109,370.25
24810 & 24805	3959	\$93,655.75
24924 & 24969	1552	\$26,491.00
25021 & 25023	3998	\$45,822.00
25088 & 25085	3858	\$59,841.75
25191 & 25193	12530	\$202,161.00
25328 & 25331	6536	\$109,299.75
25429 & 25445	2868	\$24,719.50
	<u>43323</u>	<u>\$699,981.50</u>

ID#4 Exchange Cost	
acft	dollars
926	\$19,298.00
817	\$15,874.00
803	\$7,395.75
1681	\$22,263.75
<u>4227</u>	<u>\$64,831.50</u>

Rosedale Exchange Cost		
Invoice Number	acft	dollars
1003	763	\$4,959.50
1013	542	\$6,168.00
1014	2541	\$17,205.50
1015/1016	6801	\$38,300.13
1017/1018	9308	\$67,526.00
	<u>19955</u>	<u>\$134,159.13</u>

**Kern Delta Water District's Use of Improvement District No. 4's CVC Capacity
September 2011 through February 2012**

Kern Delta Wheeling through ID4 Capacity in CVC Pools 1-6*								
	Sep-11	Oct-11	Oct - 11**	Nov-11	Dec-11	Jan-12	Feb-12	Total
Pump Plant 1	926	394	423	803	1,681	-	-	4,227
Pump Plant 2	926	394	423	803	1,681	-	-	4,227
Pump Plant 3	926	258	423	447	1,410	-	-	3,464
Pump Plant 4	926	258	423	447	1,410	-	-	3,464
Pump Plant 5	926	258	423	447	1,410	-	-	3,464
KDWD Wheeling Amount through CVC Extension***								
	Sep-11	Oct-11	Oct - 11**	Nov-11	Dec-11	Jan-12	Feb-12	Total
Pump Plant 6	526	128	423	340	1,306	4,858	6,386	13,967
AEWSD TO	392	24		74	513	-	4,776	5,779
KDWD to CVC Extension	134	104	423	266	793	4,858	1,610	8,188
Unlined Losses	10	16	34	29	67		337	493
RTO3	124	88	388	237	-		-	837
Pump Plant 7	-	-	-	-	726	4,858	1,273	6,857
Unlined Losses					66	766	307	832
RTO4	-	-		-	660	4,092	966	5,718
KCWA Power Invoice No.	24839	24991	pending	25125	25126	NA	NA	
Power Amount Billed	\$19,298.00	\$6,168.00	\$9,706.00	\$7,395.75	\$22,263.75	\$0.00	\$0.00	

*Pursuant to the Letter Agreement between Improvement District No. 4 and Kern Delta Water District dated September 21, 2011.

**Pending invoice correction from CVC.

***Pursuant to the Agreement between Improvement District No. w and Kern Delta Water District dated February 25, 2004.

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

12/14/2011

DUE DATE

1/13/2012

INVOICE NO. 24839

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

0034-1310

450B-5131

INVOICE**IMPROVEMENT DISTRICT NO. 4**

Estimated Power Costs for Kern Delta Water District's Use of
Improvement District No. 4's Cross Valley Canal Capacity

Pursuant to the Letter Agreement between Improvement District No. 4 and Kern Delta Water District dated September 21, 2011.

Canal Reach	Pumping Plant	Delivered af	Rate \$/af	Total Charges
1	1	926	\$3.25	\$3,009.50
1	2	926	\$3.25	\$3,009.50
2	3	926	\$3.25	\$3,009.50
2	4	926	\$3.25	\$3,009.50
2	5	926	\$5.00	\$4,630.00
3	6	526	\$5.00	\$2,630.00
		3,704		\$19,298.00

TOTAL AMOUNT DUE**\$19,298.00**

Requested By

Prepared By

Approved By

Approved By



ORIGINAL



REMITTANCE



FILE



ACCOUNTING



NUMERICAL CONTROL

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

1/11/2012

2/10/2012

INVOICE NO. 24991

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

0034-1310
450B-5131

INVOICE**IMPROVEMENT DISTRICT NO. 4**

Estimated Power Costs for Kern Delta Water District's Use of
Improvement District No. 4's Cross Valley Canal Capacity

Pursuant to the Letter Agreement between Improvement District No. 4 and Kern Delta Water District dated September 21, 2011.

Canal Reach	Pumping Plant	Delivered <i>af</i>	Rate <i>\$/af</i>	Total Charges
1	1	394	\$3.25	\$1,280.50
1	2	394	\$3.25	\$1,280.50
2	3	258	\$3.25	\$838.50
2	4	258	\$3.25	\$838.50
2	5	258	\$5.00	\$1,290.00
3	6	128	\$5.00	\$640.00
				\$6,168.00

TOTAL AMOUNT DUE**\$6,168.00**

D. SEMAR 1-11-12

A handwritten signature in dark ink, appearing to be "D. Semar".

Requested By

Prepared By

Approved By

Approved By



ORIGINAL



REMITTANCE



FILE



ACCOUNTING



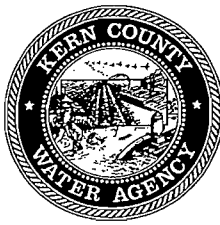
NUMERICAL CONTROL

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

2/15/2012

3/16/2012

INVOICE NO. 25125

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

0034-1310
450B-4610

INVOICE**IMPROVEMENT DISTRICT NO. 4**

Estimated Power Costs for Kern Delta Water District's Use of

Improvement District No. 4's Cross Valley Canal Capacity during November 2011

Pursuant to the Letter Agreement between Improvement District No. 4 and Kern Delta Water District dated September 21, 2011.

Canal Reach	Pumping Plant	Delivered <i>af</i>	Rate <i>\$/af</i>	Total Charges
1	1	803	\$2.25	\$1,806.75
1	2	803	\$2.25	\$1,806.75
2	3	447	\$2.25	\$1,005.75
2	4	447	\$2.25	\$1,005.75
2	5	447	\$2.25	\$1,005.75
3	6	340	\$2.25	\$765.00
				\$7,395.75

TOTAL AMOUNT DUE**\$7,395.75**

Requested By

Prepared By

Approved By

Approved By



ORIGINAL



REMITTANCE



FILE



ACCOUNTING



NUMERICAL CONTROL

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

2/15/2012

3/16/2012

INVOICE NO. 25126

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

0034-1310
450B-4610

INVOICE**IMPROVEMENT DISTRICT NO. 4**

Estimated Power Costs for Kern Delta Water District's Use of
Improvement District No. 4's Cross Valley Canal Capacity during December 2011
Pursuant to the Letter Agreement between Improvement District No. 4 and Kern Delta Water District dated September 21, 2011.

Canal Reach	Pumping Plant	Delivered <i>af</i>	Rate <i>\$/af</i>	Total Charges
1	1	1,681	\$2.25	\$3,782.25
1	2	1,681	\$2.25	\$3,782.25
2	3	1,681	\$2.25	\$3,782.25
2	4	1,410	\$2.25	\$3,172.50
2	5	1,410	\$2.25	\$3,172.50
3	6	1,306	\$2.25	\$2,938.50
Extension	7	726	\$2.25	\$1,633.50
				\$22,263.75

TOTAL AMOUNT DUE**\$22,263.75**

Requested By

Prepared By

Approved By

Approved By



ORIGINAL



REMITTANCE



FILE



ACCOUNTING



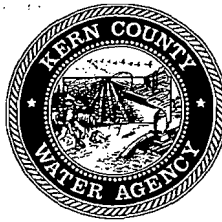
NUMERICAL CONTROL

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

09/22/2011

10/24/2011

INVOICE NO. 24291

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

0053-1330(PWR)
561B-4402

Cross Valley Canal
April 2011

Estimated power costs for deliveries of Kern Delta Water District Metropolitan Water District SWP supplies delivered to the N-2 Siphon as part of an operational exchange for deliveries of Kern County Water Agency Member Unit (KCWA M/U) Federal Section 215 deliveries to the Arvin-Edison Turnout on the CVC as well as deliveries to the P-11 Turnout as part of an operational exchange with KCWA M/U's for Federal Section 215 supplies delivered off the Friant-Kern Canal delivered to the Arvin-Edison Intake Canal; adjust for lined losses.

Canal Reach	Pumping Plant	SWP MWD Volume AF	Rate \$/AF	Pumping Costs \$
1	1	1,503	2.25	3,381.75
1	2	1,422	2.25	3,199.50
2	3	0	2.25	0.00
2	4	0	2.25	0.00
2	5	0	2.25	0.00
3	6	0	2.25	0.00
Extension	7	0	2.25	0.00

TOTAL AMOUNT DUE**\$6,581.25**

Requested By

Prepared By

Approved By

Approved By



ORIGINAL



REMITTANCE



FILE



ACCOUNTING



NUMERICAL CONTROL

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

08/31/2011

09/30/2011

INVOICE NO. 24249

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

0053-1330(PWR)

WATER B.P.

VENDOR	<i>K0841</i>
INVOICE #	<i>24249</i>
P.O. #	<i>DWR</i>
DATE	<i>8-31-</i>
AMOUNT	<i>22,039.25</i>
ACCT. CODE	<i>40540</i>

Cross Valley Canal
March 2011

Estimated power costs for deliveries of Kern Delta Water District SWP Article 21 supplies, Metropolitan Water District SWP supplies delivered to the Arvin-Edison Turnout as well as an operational exchange of Article 21 deliveries to the North and South Strand Ranch Turnouts for a like amount of Federal supplies delivered to River Turnout No. 2; adjust for lined losses.

Canal Reach	Pumping Plant	SWP Article 21 Volume AF	SWP MWD Volume AF	Rate \$/AF	Pumping Costs \$
1	1	999	1,632	2.25	5,919.75
1	2	998	1,631	2.25	5,915.25
2	3	762	1,630	2.25	5,382.00
2	4	182	1,629	2.25	4,074.75
2	5	77	1,626	2.25	3,831.75
3	6	8	1,617	2.25	3,656.25
Extension	7	0	0	2.25	0.00

TOTAL AMOUNT DUE

\$28,779.75

OF THE \$28,779.75 K.D.W.D. PAID \$6,740.50

BANKING PAID \$22,039.25

Requested By

Prepared By

Approved By

Approved By

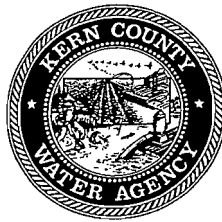
☐ ORIGINAL ☒ REMITTANCE ☐ FILE ☐ ACCOUNTING ☐ NUMERICAL CONTROL

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

11/22/2011

12/22/2011

INVOICE NO. 24487

RECEIVED
 NOV 28 2011

 Kern Delta Water District
 501 Taft Highway
 Bakersfield, CA 93307

0055-1100

580B-4430

020A-5103

0102-1100

Cross Valley Canal
August 2011

Early implementation conveyance fees in the Cross Valley Canal for delivery of Kern Delta Water District deliveries of Metropolitan WD State Water Project supplies to Arvin-Edison WSD and Rosedale Rio-Bravo WSD as well as an operational exchange of Kern County Water Agency Member Units' Lower River water supplies; adjusted for lined losses. Kern Delta Water District State Water Project Table A supplies were delivered to the Section 4 Turnout as part of an operational exchange with Semitropic WSD Lower River supplies of the Kern River Channel.

Reach	KDWD SWP Volume AF	MWD SWP Volume AF	Kern River Operational Exchange Volume AF	Total \$/AF [1]	Conveyance Costs Total \$
1	208	4,887	0	1.00	5,095.00
2	208	4,880	750	1.00	5,838.00
3	0	2,817		1.00	2,817.00

VENDOR	K0241
INVOICE #	24487
P.O. #	JWR
DATE	11-23-11
AMOUNT	13,188.00
ACCT. CODE	40530

[1] Conveyance Fee \$1.00 per Reach.

468%
 562.00 - 54600
 13,188.00 - 40530
 12/1/11

Total Amount Due

13,750.00

TOTAL AMOUNT DUE

\$ 13,750.00

WATER B.P.

Requested By

Prepared By

Approved By

Approved By

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KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

12/12/2011

01/11/2012

INVOICE NO. 24810

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

0055-1100

580B-4430

020A-5103

0102-1100

Cross Valley Canal
September 2011

Early implementation conveyance fees in the Cross Valley Canal for delivery of Kern Delta Water District deliveries of Metropolitan WD State Water Project supplies to Arvin-Edison WSD and Rosedale Rio-Bravo WSD as well as an operational exchange of Kern County Water Agency Member Units' Lower River water supplies; adjusted for lined losses. Kern Delta Water District State Water Project Table A supplies were delivered to the Section 4 Turnout as part of an operational exchange with Semitropic WSD Lower River supplies of the Kern River Channel.

Reach	MWD SWP Volume AF	Total \$/AF [1]	Conveyance Costs Total \$
1	3,959	1.00	3,959.00
2	3,952	1.00	3,952.00
3	3,280	1.00	3,280.00
Total Amount Due			11,191.00

TOTAL AMOUNT DUE

\$ 11,191.00

[1] Conveyance Fee \$1.00 per Reach.

Requested By

Prepared By

Approved By

Approved By

☐ ORIGINAL ☒ REMITTANCE ☐ FILE ☐ ACCOUNTING ☐ NUMERICAL CONTROL



RECEIVED
DEC 14 2011

December 12, 2011

Directors:

Ted R. Page
Division 1

Terry Rogers
Vice President
Division 2

Randell Parker
Division 3

Michael Radon
President
Division 4

Adrienne J. Mathews
Division 5

William W. Van Skike
Division 6

Gene A. Lundquist
Division 7

James M. Beck
General Manager

Amelia T. Minaberrigarai
General Counsel

Mr. Mark Mulkay
Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

Re: Estimated power and conveyance invoices for September 2011; Cross Valley
Canal Water Balance Summaries for September 2011

Dear Mr. Mulkay:

Enclosed are the above referenced documents for your records and remittance. If
you have any questions or require further information, please call me at (661) 634-
1491.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Taylor", with a long horizontal line extending to the right.

Trent Taylor
Water Resources Planner
Kern County Water Agency

Enclosures

(661) 634-1400

Mailing Address

P.O. Box 58
Bakersfield, CA 93302-0058

Street Address

3200 Rio Mirada Dr.
Bakersfield, CA 93308

WATER B.P.

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

11/22/2011

12/22/2011

INVOICE NO. 24466

RECEIVED
NOV 28 2011

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

0053-1330(PWR)

561B-4402

**Cross Valley Canal
August 2011**

Estimated power costs for deliveries of Kern Delta Water District Metropolitan Water District SWP supplies delivered to Rosedale Rio-Bravo WSD and Arvin-Edison WSD as well as an operational exchange delivery with Kern County Water Agency Member Units' (750 af) delivered to the Section 4 Turnout; adjust for lined losses. Kern Delta WD also delivered their own SWP Table A supplies (303 af) to River Turnout No. 1 as part of an operational exchange with Semitropic WSD for Semitropic WSD Lower River supplies delivered to Kern Delta WD off the Kern River Channel.

Canal Reach	Pumping Plant	MWD SWP Volume AF	KDWD SWP Volume AF	Rate \$/AF	Pumping Costs \$	
1	1	4,883	208	3.25	16,545.75	
1	2	4,880	208	3.25	16,536.00	
2	3	4,877	208	3.25	16,526.25	
2	4	4,357	208	3.25	14,836.25	
2	5	4,354	0	5.00	21,770.00	
3	6	2,813	0	5.00	14,065.00	
Extension	7	0	0	5.00	0.00	

4%

TOTAL AMOUNT DUE

\$100,279.25

VENDOR	K0241
INVOICE #	24466
P.O. #	DWR
DATE	11-22-11
AMOUNT	96,182.25
ACCT. CODE	

4,097.00 - 54600
96,182.25 - 40540
WATER B.P.

Requested By

Prepared By

Approved By

Approved By

☒ ORIGINAL ☐ REMITTANCE ☐ FILE ☐ ACCOUNTING ☐ NUMERICAL CONTROL

Cross Valley Canal
August 2011 Deliveries - Gross AF

Points of Entry					
	Tupman T/O SWP (AF)	CVC/Friant-Kern Intertie CVP (AF)	Pionner Inlet KR (AF)	KCWA Armco Reverse SWP Exch. (AF)	CVC Total (AF)
Deliveries by Turnout:					
N-2 Siphon	1,204	-	-	-	1,204
Rosedale Rio Bravo Turnout No. 1	5,066	-	-	-	5,066
Strand Siphons	2,287	-	-	-	2,287
North Strand Ranch Turnout	2,507	-	-	-	2,507
South Strand Ranch Turnout	742	-	-	-	742
Kern Water Bank P-11 Turnout	2,420	-	-	-	2,420
Nord Siphons	339	-	-	-	339
Section 4 Turnout	5,514	-	-	-	5,514
River Turnout No. 1	3,136	-	-	-	3,136
Rosedale Rio Bravo Turnout No. 2	2,237	750	-	-	2,987
River Turnout No. 2	1,277	-	-	-	1,277
Arvin-Edison Turnout	18,754	-	-	-	18,754
Lined Losses - Pools 1-6	126	-	-	-	126
Unlined Losses - Pool 7	355	-	-	-	355
River Turnout No. 4 to River	5,121	-	-	-	5,121
Calloway Turnout	2,747	-	-	-	2,747
Henry C. Garnett Treatment Plant	-	-	-	3,959	3,959
Cawelo Pump Station 'A'	742	-	-	-	742
Unlined Losses - Pool 8	292	-	-	-	292
Total	54,866	750	-	3,959	59,575
Deliveries by Turnout/Owner:					
N-2 Siphon					
Improvement District No. 4	35	-	-	-	35
Kern County Water Agency	271	-	-	-	271
Kern-Tulare WD - KCWA M/U	564	-	-	-	564
Lower Tule River ID - KCWA M/U	21	-	-	-	21
Pixley ID - KCWA M/U	313	-	-	-	313
Rosedale-Rio Bravo Turnout No. 1					
Rosedale-Rio Bravo WSD - AEWS	4,303	-	-	-	4,303
Rosedale-Rio Bravo WSD - KDWD	763	-	-	-	763
Strand Siphons					
Improvement District No. 4	86	-	-	-	86
Kern County Water Agency	503	-	-	-	503
Kern-Tulare WD - KCWA M/U	1,057	-	-	-	1,057
Lower Tule River ID - KCWA M/U	52	-	-	-	52
Pixley ID - KCWA M/U	589	-	-	-	589
North Strand Turnout					
Kern County Water Agency	531	-	-	-	531
Kern-Tulare WD - KCWA M/U	1,248	-	-	-	1,248
Pixley ID - KCWA M/U	728	-	-	-	728
South Strand Turnout					
Kern County Water Agency	165	-	-	-	165
Kern-Tulare WD - KCWA M/U	371	-	-	-	371
Pixley ID - KCWA M/U	206	-	-	-	206
Kern Water Bank P-11 Turnout					
Improvement District No. 4	473	-	-	-	473
Kern County Water Agency	359	-	-	-	359
Kern-Tulare WD - KCWA M/U	822	-	-	-	822
Lower Tule River ID - KCWA M/U	290	-	-	-	290
Pixley ID - KCWA M/U	476	-	-	-	476
Nord Siphons					
Improvement District No. 4	211	-	-	-	211
Lower Tule River ID - KCWA M/U	128	-	-	-	128
Section 4 Turnout					
Improvement District No. 4	147	-	-	-	147
Kern County Water Agency	1,031	-	-	-	1,031
Kern Delta Water District	516	-	-	-	516
Kern-Tulare WD - KCWA M/U	2,360	-	-	-	2,360
Lower Tule River ID - KCWA M/U	89	-	-	-	89
Pixley ID - KCWA M/U	1,371	-	-	-	1,371
River Turnout No. 1					
Improvement District No. 4	173	-	-	-	173
Kern County Water Agency	539	-	-	-	539
Kern Delta Water District	208	-	-	-	208
Kern-Tulare WD - KCWA M/U	1,316	-	-	-	1,316
Lower Tule River ID - KCWA M/U	105	-	-	-	105
Pixley ID - KCWA M/U	795	-	-	-	795
Rosedale Rio Bravo Turnout No. 2					
Kern County Water Agency	191	-	-	-	191
Kern Delta Water District	1,537	750	-	-	2,287
Kern-Tulare WD - KCWA M/U	332	-	-	-	332
Pixley ID - KCWA M/U	177	-	-	-	177
River Turnout No. 2					
Kern County Water Agency	299	-	-	-	299
Kern-Tulare WD - KCWA M/U	640	-	-	-	640
Pixley ID - KCWA M/U	338	-	-	-	338
Arvin-Edison Turnout					
Arvin-Edison WSD (Existing)	887	-	-	-	887
Arvin-Edison WSD (New)	1,936	-	-	-	1,936
Cawelo WD - AEWS	2,694	-	-	-	2,694
County of Fresno - AEWS	726	-	-	-	726
County of Tulare - AEWS	726	-	-	-	726
Hills Valley ID - AEWS	518	-	-	-	518
Improvement District No. 4	4,244	-	-	-	4,244
Kern County Water Agency	442	-	-	-	442
Kern Delta Water District	2,813	-	-	-	2,813
Kern-Tulare WD - KCWA M/U	607	-	-	-	607
Lower Tule River ID - KCWA M/U	2,601	-	-	-	2,601
Pixley ID - KCWA M/U	323	-	-	-	323
Tri-Valley WD - AEWS	237	-	-	-	237
Lined Losses - Pools 1-6					
Arvin-Edison WSD (New)	48	-	-	-	48
Cawelo WD - AEWS	11	-	-	-	11
Improvement District No. 4	17	-	-	-	17
Kern County Water Agency	29	-	-	-	29
Kern Delta Water District	21	-	-	-	21
Unlined Losses - Pools 7					
Improvement District No. 4	355	-	-	-	355
River Turnout No. 4					
Improvement District No. 4	5,121	-	-	-	5,121
Calloway Turnout					
Cawelo WD	2,747	-	-	-	2,747
Cawelo Pump Station 'A'					
Cawelo WD	742	-	-	-	742
Henry C. Garnett Treatment Plant:					
Improvement District No. 4	-	-	-	3,959	3,959
Unlined Losses - Pools 8					
Improvement District No. 4	292	-	-	-	292
Total	54,866	750	-	3,959	59,575
Existing Participant Deliveries	19,890	-	-	3,959	14,693
New Participant Deliveries	34,976	750	-	-	44,882
	54,866	750	-	3,959	59,575

Shading denotes forward flow deliveries based on each point of entry into the CVC: - / - denotes pools / pump plants utilized (for forward flow).

November 22, 2011
2:09 PM

[illegible]

[1] Kern County Water Agency Member Units' made deliveries of Federal Section 213 supplies utilizing Lower-Tule River Irrigation District, Pixley Irrigation District and Kern-Tulare Water District capacities per long-term agreements which allow for KCWA MIU's to utilize unused capacities.

	CVC Losses	N-2 Siphon	CVC Losses	RRB 1 Turnout	Strand Siphons	Strand Turnout	Strand Turnout	KWB P-11 Turnout	CVC Losses	Nord Siphons	Section 4 Pump	CVC Losses	RTO 1 Turnout	CVC Losses	RRB 2 Turnout	RTO 2 Turnout	CVC Losses	AEWSD T.O.	KTWD Siphons	Unlined Losses	RTO 3 River	RTO 4 Turnout	Unlined Losses	Calway Turnout	Cawelo PSA	T/O Total
Arvin Edison WSD	3		6	4,303					5			1,117					12	7,817								12,168
Bekridge WSD	8	300			536	210	296	212	2			1,012														3,842
Berrenda Mesa WD	1	82			132	151	381	123				140					1									2,232
Buena Vista WSD						234																				234
Cawelo WD	2								1																	3,500
Improvement District No. 4	3	56			138			763	2	339	238	2	278	3			3									14,440
Kern Delta WD	4								3		750	4	303	5	2,237		4	6,845		355		5,121	292	2,747	742	8,166
Lost Hills WD					589	30	65	212										4,092								1,846
Semirropic WSD	4	297			218	1,427		758	2		1,864	2	1,343			128										5,699
Wheel Ridge - Maricopa WSD	1	393			674	455		625	1							234										2,737
Total	26	1,204	18	5,065	2,287	2,507	742	2,420	16	339	5,514	22	3,136	20	2,237	1,277	24	18,754	0	355	0	5,121	292	2,747	742	54,866

		Reach 1				Reach 2				Reach 3				Reach 4				Reach 5				System		
Date	California Aqueduct KR	Pool 1		Pool 2		Pool 3				Pool 4		Pool 5		Pool 6		Pool 7		Pool 8		Unlined Losses	Unlined Losses	Calloway Turnout	ID4 WTP	System Loss/Storage
		CVC Losses	CVC Losses	RRB 1	Strand Siphons	North Strand Turnout	South Strand Turnout	KWB P-11 Turnout	CVC Losses	Section 4 Turnout	Nord Siphons	CVC Losses	CVC Losses	Pioneer Inlet	RRB 2	CVC Losses	AEWSD Turnout							
1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
11	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
12	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
13	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
14	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
16	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
17	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
18	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
19	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
20	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
21	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
22	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
23	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
24	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
25	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
26	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
27	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
28	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
29	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
31	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
CFS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
AF	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
KCWA M/JU Lower River Storage																								
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	

NOTES:
[1] Deliveries of Kern County Water Agency Lower River supplies in CVC Pool 5 to Kern Delta WD are part of an operational exchange of KCWA M/JU Lower River supplies for Kern Delta WD SWP supplies delivered in forward flow to the Section 4 Turnout.

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

12/12/2011

01/11/2012

INVOICE NO. 24805

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

0053-1330(PWR)
561B-4402

**Cross Valley Canal
September 2011**

Estimated power costs for deliveries of Kern Delta Water District Metropolitan Water District SWP supplies delivered to River Turnout No. 2 and 3, Rosedale Rio-Bravo WSD and Arvin-Edison WSD; adjust for lined losses.

Canal Reach	Pumping Plant	MWD SWP Volume AF	Rate \$/AF	Pumping Costs \$
1	1	3,955	3.25	12,853.75
1	2	3,952	3.25	12,844.00
2	3	3,950	3.25	12,837.50
2	4	3,946	3.25	12,824.50
2	5	3,940	5.00	19,700.00
3	6	2,281	5.00	11,405.00
Extension	7	0	5.00	0.00

TOTAL AMOUNT DUE**\$82,464.75**

Requested By

Prepared By

Approved By

Approved By



ORIGINAL



REMITTANCE



FILE



ACCOUNTING



NUMERICAL CONTROL

Cross Valley Canal
September 2011 Deliveries - Gross AF

Points of Entry					
	Tupman- T/O SWP (AF)	CVC/Friant-Kern Intertie CVP (AF)	Pionner Inlet KR (AF)	KCWA Armco Reverse SWP Exch. (AF)	CVC Total (AF)
Deliveries by Turnout:					
N-2 Siphon	2,366	-	-	-	2,366
Rosedale Rio Bravo Turnout No. 1	5,109	-	-	-	5,109
Strand Siphons	3,142	-	-	-	3,142
North Strand Ranch Turnout	1,666	-	-	-	1,666
Kern Water Bank P-11 Turnout	3,759	-	-	-	3,759
Nord Siphons	1,825	-	-	-	1,825
Section 4 Turnout	5,100	-	-	-	5,100
River Turnout No. 1	8,257	-	-	-	8,257
Rosedale Rio Bravo Turnout No. 2	2,148	-	-	-	2,148
River Turnout No. 2	5,288	-	-	-	5,288
Arvin-Edison Turnout	10,332	-	-	-	10,332
Lined Losses - Pools 1-6	124	-	-	-	124
River Turnout No. 3 to River	1,212	-	-	-	1,212
Unlined Losses - Pool 7	121	-	-	-	121
Henry C. Garnett Treatment Plant	-	-	-	3,709	3,709
Total	50,449	-	-	3,709	54,158
Deliveries by Turnout/Owner:					
N-2 Siphon					
Cawelo WD	67	-	-	-	67
Improvement District No. 4	71	-	-	-	71
Kern County Water Agency	370	-	-	-	370
Kern-Tulare WD - KCWA M/U	917	-	-	-	917
Lower Tule River ID - KCWA M/U	439	-	-	-	439
Pixley ID - KCWA M/U	502	-	-	-	502
Rosedale-Rio Bravo Turnout No. 1					
Kern County Water Agency	34	-	-	-	34
Kern-Tulare WD - KCWA M/U	74	-	-	-	74
Lower Tule River ID - KCWA M/U	38	-	-	-	38
Pixley ID - KCWA M/U	22	-	-	-	22
Rosedale-Rio Bravo WSD	3,021	-	-	-	3,021
Rosedale-Rio Bravo WSD - AEWSD	1,608	-	-	-	1,608
Rosedale-Rio Bravo WSD - KDWD	312	-	-	-	312
Strand Siphons					
Improvement District No. 4	206	-	-	-	206
Kern County Water Agency	480	-	-	-	480
Kern-Tulare WD - KCWA M/U	1,182	-	-	-	1,182
Lower Tule River ID - KCWA M/U	628	-	-	-	628
Pixley ID - KCWA M/U	646	-	-	-	646
Nouth Strand Turnout					
Kern County Water Agency	226	-	-	-	226
Kern-Tulare WD - KCWA M/U	629	-	-	-	629
Lower Tule River ID - KCWA M/U	320	-	-	-	320
Pixley ID - KCWA M/U	342	-	-	-	342
Rosedale-Rio Bravo WSD	149	-	-	-	149
Kern Water Bank P-11 Turnout					
Cawelo WD	69	-	-	-	69
Improvement District No. 4	759	-	-	-	759
Kern County Water Agency	372	-	-	-	372
Kern-Tulare WD - KCWA M/U	1,052	-	-	-	1,052
Lower Tule River ID - KCWA M/U	878	-	-	-	878
Pixley ID - KCWA M/U	629	-	-	-	629
Nord Siphons					
Improvement District No. 4	425	-	-	-	425
Kern County Water Agency	196	-	-	-	196
Kern-Tulare WD - KCWA M/U	494	-	-	-	494
Lower Tule River ID - KCWA M/U	438	-	-	-	438
Pixley ID - KCWA M/U	272	-	-	-	272
Section 4 Turnout					
Improvement District No. 4	131	-	-	-	131
Kern County Water Agency	679	-	-	-	679
Kern-Tulare WD - KCWA M/U	1,706	-	-	-	1,706
Lower Tule River ID - KCWA M/U	811	-	-	-	811
Pixley ID - KCWA M/U	936	-	-	-	936
Rosedale-Rio Bravo WSD	837	-	-	-	837
River Turnout No. 1					
Cawelo WD	3,477	-	-	-	3,477
Cawelo WD - AEWSD	856	-	-	-	856
Improvement District No. 4	637	-	-	-	637
Improvement District No. 4 - AEWSD	6	-	-	-	6
Kern County Water Agency	530	-	-	-	530
Kern-Tulare WD - KCWA M/U	1,216	-	-	-	1,216
Lower Tule River ID - KCWA M/U	870	-	-	-	870
Pixley ID - KCWA M/U	665	-	-	-	665
Rosedale Rio Bravo Turnout No. 2					
Cawelo WD - AEWSD	771	-	-	-	771
Improvement District No. 4 - AEWSD	6	-	-	-	6
Improvement District No. 4 - KDWD	184	-	-	-	184
Kern County Water Agency	89	-	-	-	89
Kern Delta Water District	660	-	-	-	660
Kern-Tulare WD - KCWA M/U	136	-	-	-	136
Pixley ID - KCWA M/U	72	-	-	-	72
Rosedale-Rio Bravo WSD - KDWD	230	-	-	-	230
River Turnout No. 2					
Cawelo WD - AEWSD	174	-	-	-	174
Improvement District No. 4 - KDWD	216	-	-	-	216
Kern County Water Agency	682	-	-	-	682
Kern Delta Water District	991	-	-	-	991
Kern-Tulare WD - KCWA M/U	1,682	-	-	-	1,682
Lower Tule River ID - KCWA M/U	620	-	-	-	620
Pixley ID - KCWA M/U	923	-	-	-	923
Arvin-Edison Turnout					
Arvin-Edison WSD (Existing)	887	-	-	-	887
Arvin-Edison WSD (New)	1,945	-	-	-	1,945
Cawelo WD - AEWSD	2,049	-	-	-	2,049
County of Fresno - AEWSD	726	-	-	-	726
County of Tulare - AEWSD	726	-	-	-	726
Hills Valley ID - AEWSD	518	-	-	-	518
Improvement District No. 4 - AEWSD	50	-	-	-	50
Improvement District No. 4 - KDWD	392	-	-	-	392
Kern County Water Agency	463	-	-	-	463
Kern Delta Water District	1,895	-	-	-	1,895
Kern-Tulare WD - KCWA M/U	290	-	-	-	290
Pixley ID - KCWA M/U	154	-	-	-	154
Tri-Valley WD - AEWSD	237	-	-	-	237
Lined Losses - Pools 1-6					
Arvin-Edison WSD (New)	39	-	-	-	39
Cawelo WD - AEWSD	12	-	-	-	12
Improvement District No. 4	9	-	-	-	9
Kern County Water Agency	33	-	-	-	33
Kern Delta Water District	27	-	-	-	27
Rosedale-Rio Bravo WSD	4	-	-	-	4
Unlined Losses - Pools 7					
Improvement District No. 4	46	-	-	-	46
Kern Delta Water District	75	-	-	-	75
River Turnout No. 3					
Improvement District No. 4	627	-	-	-	627
Kern Delta Water District	585	-	-	-	585
Henry C. Garnett Treatment Plant:					
Improvement District No. 4	-	-	-	3,709	3,709
Total	50,449	-	-	3,709	54,158
Existing Participant Deliveries	40,078	-	-	3,709	43,787
New Participant Deliveries	10,371	-	-	-	10,371
	50,449	-	-	3,709	54,158

Shading denotes forward flow deliveries based on each point of entry into the CVC; - / - denotes pools / pump plants utilized (for forward flow).

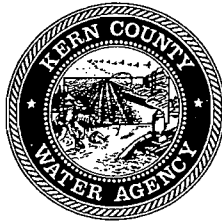
Date	Reach 1		Reach 2		Reach 3		Reach 4		Reach 5		Reach 6		Reach 7		Extension		T/O Total SWP										
	Pool 1		Pool 2		Pool 3		Pool 4		Pool 5		Pool 6		Pool 7		Pool 8												
	CVC Losses SWP	N-2 Siphon SWP	CVC Losses SWP	RRB 1 Turnout SWP	Strand Siphons SWP	North Strand Turnout SWP	South Strand Turnout SWP	KWB P-11 Turnout SWP	CVC Losses SWP	North Siphons SWP	Section 4 Pump SWP	CVC Losses SWP	RTO 1 Turnout SWP	CVC Losses SWP	RRB 2 Turnout SWP	RTO 2 Turnout SWP		CVC Losses SWP	AEWSD T.O. SWP	KTWD Siphons SWP	Unlined Losses SWP	RTO 3 River SWP	RTO 4 Turnout SWP	Unlined Losses SWP	Calloway Turnout SWP	Cawels PSA SWP	
1	1	46	1	90	59	18	0	92	0	33	89	0	0	1	55	39	1	253	0	5	33	0	0	0	0	816	
2	0	47	0	90	58	18	0	92	0	33	88	0	0	0	55	83	0	234	0	5	82	0	0	0	0	865	
3	1	46	0	90	58	17	0	92	1	33	88	1	0	0	55	66	0	240	0	5	82	0	0	0	0	875	
4	0	46	1	89	59	18	0	92	0	34	88	0	1	1	55	66	1	241	0	5	82	0	0	0	0	879	
5	1	47	0	89	59	17	0	92	0	33	88	0	1	1	55	66	0	231	0	3	37	0	0	0	0	885	
6	0	47	0	90	58	18	0	88	0	34	88	1	126	0	89	1	225	0	0	0	0	0	0	0	0	887	
7	1	47	0	90	59	19	0	83	1	34	88	0	134	1	0	106	0	216	0	0	0	0	0	0	0	879	
8	0	46	1	89	59	18	0	83	0	33	88	0	150	0	0	106	1	211	0	0	0	0	0	0	0	885	
9	0	47	0	90	59	18	0	83	0	34	85	1	150	0	0	110	0	210	0	0	0	0	0	0	0	887	
10	1	46	0	87	24	17	0	27	0	33	80	0	150	1	0	114	0	210	0	0	0	0	0	0	0	780	
11	0	46	1	89	0	23	0	0	1	32	83	0	145	0	0	118	1	211	0	0	0	0	0	0	0	0	750
12	1	46	0	89	32	25	0	37	0	32	88	1	141	1	0	115	0	209	0	0	0	0	0	0	0	0	816
13	0	45	0	90	61	25	0	83	0	32	87	0	142	0	0	111	1	205	0	0	0	0	0	0	0	0	882
14	1	46	0	90	60	27	0	83	0	31	89	0	148	0	0	110	0	205	0	0	0	0	0	0	0	0	890
15	0	46	1	90	60	29	0	83	1	31	89	1	154	1	0	109	0	154	0	0	0	0	0	0	0	0	892
16	1	46	0	91	60	29	0	83	0	31	90	0	154	0	0	110	1	183	0	0	0	0	0	0	0	0	896
17	0	47	0	91	61	35	0	95	0	31	89	0	216	0	0	114	0	143	0	0	0	0	0	0	0	0	892
18	0	46	1	91	60	40	0	55	0	31	90	1	216	1	0	115	0	147	0	0	0	0	0	0	0	0	894
19	1	47	0	91	61	41	0	56	1	31	90	0	223	0	0	113	1	148	0	0	0	0	0	0	0	0	904
20	0	47	0	91	60	42	0	56	0	31	90	0	223	0	0	112	0	148	0	0	0	0	0	0	0	0	900
21	0	47	0	91	61	40	0	56	0	31	90	1	216	1	0	108	1	148	0	0	0	0	0	0	0	0	891
22	1	50	1	92	60	41	0	55	0	31	90	0	221	0	0	109	0	128	0	0	0	0	0	0	0	0	878
23	0	23	0	38	29	18	0	18	1	15	59	0	140	1	42	81	0	84	0	0	0	0	0	0	0	0	559
24	1	37	0	15	35	20	0	17	0	51	73	0	95	1	95	59	0	68	0	0	0	0	0	0	0	0	509
25	0	67	1	77	81	45	0	59	0	39	88	0	139	1	95	60	0	122	0	0	0	0	0	0	0	0	668
26	0	20	0	90	59	32	0	54	0	31	84	0	185	0	95	60	0	117	0	13	30	0	0	0	0	0	870
27	1	0	0	91	58	32	0	53	1	32	84	1	185	0	96	60	1	118	0	7	86	0	0	0	0	0	908
28	0	0	0	90	59	33	0	52	0	32	85	0	172	1	95	59	0	119	0	6	59	0	0	0	0	0	861
29	0	0	1	91	58	38	0	51	0	32	91	1	170	0	111	59	1	120	0	6	59	0	0	0	0	0	846
30	1	34	0	90	22	49	0	60	0	13	95	1	77	0	203	60	0	120	0	6	61	0	0	0	0	0	892
CFS	13	1,193	9	2,578	1,584	840	0	1,895	7	920	2,571	10	4,163	11	1,083	2,666	12	5,209	0	61	811	0	0	0	0	0	25,434
AF	26	2,386	18	5,109	3,142	1,666	0	3,759	14	1,825	5,100	20	8,257	22	2,148	5,288	24	10,332	0	121	1,212	0	0	0	0	0	56,448

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

01/06/2012

02/06/2012

INVOICE NO. 24924

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

0053-1330(PWR)
561B-4402

**Cross Valley Canal
October 2011**

Estimated power costs for deliveries of Kern Delta Water District Metropolitan Water District SWP supplies delivered to River Turnout No. 2 and 3, Rosedale Rio-Bravo WSD and Arvin-Edison WSD; adjust for lined losses.

Canal Reach	Pumping Plant	MWD SWP Volume AF	Rate \$/AF	Pumping Costs \$
1	1	1,551	3.25	5,040.75
1	2	1,550	3.25	5,037.50
2	3	978	3.25	3,178.50
2	4	977	3.25	3,175.25
2	5	976	5.00	4,880.00
3	6	441	5.00	2,205.00
Extension	7	0	5.00	0.00

TOTAL AMOUNT DUE**\$23,517.00**

Requested By

Prepared By

Approved By

Approved By



ORIGINAL



REMITTANCE



FILE



ACCOUNTING



NUMERICAL CONTROL

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

01/06/2012

02/06/2012

INVOICE NO. 24969

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

0055-1100

580B-4430

020A-5103

0102-1100

Cross Valley Canal
October 2011

Early implementation conveyance fees in the Cross Valley Canal for delivery of Kern Delta Water District deliveries of Metropolitan WD State Water Project supplies to Arvin-Edison WSD and Rosedale Rio-Bravo WSD; adjusted for lined losses.

Reach	MWD SWP Volume AF	Total \$/AF [1]	Conveyance Costs Total \$
1	1,552	1.00	1,552.00
2	979	1.00	979.00
3	443	1.00	443.00
Total Amount Due			2,974.00

TOTAL AMOUNT DUE**\$ 2,974.00**

[1] Conveyance Fee \$1.00 per Reach.

Requested By

Prepared By

Approved By

Approved By



ORIGINAL



REMITTANCE



FILE



ACCOUNTING



NUMERICAL CONTROL

Cross Valley Canal
October 2011 Deliveries - Gross AF

Points of Entry					
	Tupman T/O SWP (AF)	CVC Dewatering Deliveries (AF)	Pionner Inlet KR (AF)	KCWA Armco Reverse SWP Exch. (AF)	CVC Total (AF)
Deliveries by Turnout:					
N-2 Siphon	597	-	-	-	597
Rosedale Rio Bravo Turnout No. 1	2,918	232	-	-	3,150
North Strand Ranch Turnout	1,726	-	-	-	1,726
South Strand Ranch Turnout	276	-	-	-	276
Kern Water Bank P-11 Turnout	1,224	-	-	-	1,224
Section 4 Turnout	2,741	-	-	-	2,741
River Turnout No. 1	4,491	81	-	-	4,572
Rosedale Rio Bravo Turnout No. 2	7,053	-	-	-	7,053
River Turnout No. 2	1,252	52	-	-	1,304
Arvin-Edison Turnout	2,698	-	-	-	2,698
Refill	365	-	-	-	365
Lined Losses - Pools 1-6	80	-	-	-	80
River Turnout No. 3 to River	797	-	-	-	797
Unlined Losses - Pool 7	125	-	-	-	125
Henry C. Garnett Treatment Plant	-	-	-	3,709	3,709
Total	26,343	365	-	3,709	30,417
Deliveries by Turnout/Owner:					
N-2 Siphon	597	-	-	-	597
Cawelo WD					
Rosedale-Rio Bravo Turnout No. 1	193	-	-	-	193
Cawelo WD - AEWS	136	-	-	-	136
Improvement District No. 4 - KDWD	89	-	-	-	89
Kern County Water Agency	571	-	-	-	571
Kern Delta Water District	162	-	-	-	162
Kern-Tulare WD - KCWA M/U	276	-	-	-	276
Lower Tule River ID - KCWA M/U	276	-	-	-	276
Pixley ID - KCWA M/U	1,215	232	-	-	1,447
Rosedale-Rio Bravo WSD					
Nouth Strand Turnout	153	-	-	-	153
Kern County Water Agency	252	-	-	-	252
Kern-Tulare WD - KCWA M/U	1,321	-	-	-	1,321
Rosedale-Rio Bravo WSD					
South Strand Turnout	12	-	-	-	12
Kern County Water Agency	20	-	-	-	20
Kern-Tulare WD - KCWA M/U	244	-	-	-	244
Rosedale-Rio Bravo WSD					
Kern Water Bank P-11 Turnout	808	-	-	-	808
Cawelo WD	298	-	-	-	298
Kern County Water Agency	118	-	-	-	118
Kern-Tulare WD - KCWA M/U					
Section 4 Turnout	46	-	-	-	46
Improvement District No. 4	565	-	-	-	565
Improvement District No. 4 - KCWA	653	-	-	-	653
Kern County Water Agency	1,477	-	-	-	1,477
Kern-Tulare WD - KCWA M/U					
River Turnout No. 1	775	14	-	-	789
Cawelo WD	19	-	-	-	19
Improvement District No. 4	1,935	35	-	-	1,970
Improvement District No. 4 - KCWA	557	32	-	-	589
Kern County Water Agency	1,205	-	-	-	1,205
Kern-Tulare WD - KCWA M/U					
Rosedale Rio Bravo Turnout No. 2	1,460	-	-	-	1,460
Cawelo WD - AEWS	627	-	-	-	627
Improvement District No. 4	130	-	-	-	130
Improvement District No. 4 - KDWD	30	-	-	-	30
Kern County Water Agency	533	-	-	-	533
Kern Delta Water District	59	-	-	-	59
Kern-Tulare WD - KCWA M/U	2,107	-	-	-	2,107
Lower Tule River ID - KCWA M/U	2,107	-	-	-	2,107
Pixley ID - KCWA M/U	-	52	-	-	52
Rosedale-Rio Bravo WSD					
River Turnout No. 2	396	-	-	-	396
Kern County Water Agency	856	-	-	-	856
Kern-Tulare WD - KCWA M/U					
Arvin-Edison Turnout	315	-	-	-	315
Arvin-Edison WSD (Existing)	975	-	-	-	975
Arvin-Edison WSD (New)	266	-	-	-	266
Cawelo WD - AEWS	225	-	-	-	225
County of Fresno - AEWS	225	-	-	-	225
County of Tulare - AEWS	168	-	-	-	168
Hills Valley ID - AEWS	189	-	-	-	189
Improvement District No. 4 - AEWS	24	-	-	-	24
Improvement District No. 4 - KDWD	117	-	-	-	117
Kern County Water Agency	99	-	-	-	99
Kern Delta Water District	11	-	-	-	11
Kern-Tulare WD - KCWA M/U	84	-	-	-	84
Tri-Valley WD - AEWS					
Lined Losses - Pools 1-6	35	-	-	-	35
Arvin-Edison WSD (New)	10	-	-	-	10
Cawelo WD	6	-	-	-	6
Improvement District No. 4	12	-	-	-	12
Improvement District No. 4 - KCWA	4	-	-	-	4
Kern County Water Agency	7	-	-	-	7
Kern Delta Water District	2	-	-	-	2
Kern Tulare Water District	4	-	-	-	4
Rosedale-Rio Bravo WSD					
Refill	14	-	-	-	14
Cawelo WD	35	-	-	-	35
Improvement District No. 4 - KCWA	32	-	-	-	32
Kern County Water Agency	284	-	-	-	284
Rosedale-Rio Bravo WSD					
Unlined Losses - Pools 7	50	-	-	-	50
Improvement District No. 4	3	-	-	-	3
Kern County Water Agency	65	-	-	-	65
Kern Delta Water District	7	-	-	-	7
Kern Tulare Water District					
River Turnout No. 3	476	-	-	-	476
Improvement District No. 4	13	-	-	-	13
Kern County Water Agency	277	-	-	-	277
Kern Delta Water District	31	-	-	-	31
Kern Tulare Water District					
Henry C. Garnett Treatment Plant:					
Improvement District No. 4	-	-	-	3,709	3,709
Total	26,343	365	-	3,709	30,417
Existing Participant Deliveries	21,459	333	-	3,709	19,219
New Participant Deliveries	4,884	32	-	-	11,198
	26,343	365	-	3,709	30,417

Shading denotes forward flow deliveries based on each point of entry into the CVC; _ / _ denotes pools / pump plants utilized (for forward flow).

Kern County Water Agency
Cross Valley Canal - Tupman Turnout Water Balance
State Water Project Deliveries
Month of October 2011
Subject to Adjustment

January 5, 2012
10:27 AM

[illegible][illegible]

NOTES:

- [1] Arvin-Edison Water Storage District made deliveries of Metropolitan Water District State Water Project Table A supplies utilizing Lower-Tule River Irrigation District and Pixley Irrigation District capacities per a short-term agreement with North Kern WSD (per the Agreement for the Management of Conveyance Capacity in the Cross Valley Canal Capacity).
- [2] Kern County Water Agency Member Units' made deliveries of State Water Project Table A supplies utilizing Lower-Tule River Irrigation District, Pixley Irrigation District and Kern-Tulare Water District capacities per long-term agreements which allow for KCWA MU's to utilize unused capacities.
- [3] Deliveries of Cross Valley Canal refill water by Rosedale Rio-Bravo WSD and the Kern County Water Agency MU's with their 2011 State Water Project Table A supply were made pursuant to the Refill/Dewatering Policy Guidelines. Rosedale Rio-Bravo and the KCWA Member Units' received dewatering supplies in October 2011 (see attached delivery summary) and were subsequently responsible for refilling the Cross Valley Canal based upon the total dewatered supplies received.
- [4] In the month of October 2011, Arvin-Edison WSD delivered 632 af of Arvin-Edison WSD Federal supplies to the AEWSD Turnout as part of an operational exchange for 632 af of MWD State Water Project Table A supplies at Rosedale Rio-Bravo Turnout No. 2.

Kern County Water Agency
Cross Valley Canal
Dewatering for Maintenance Deliveries
Month of October 2011
Subject to Adjustment

January 10, 2012
2:09 PM

Date	Reach 1			Reach 2							Reach 3			Extension										T/O Total		
	Pool 1	Pool 2		Pool 3			Pool 4		Pool 5		Pool 6			Pool 7			Pool 8									
	CVC Losses SWP	N-2 Siphon SWP	CVC Losses SWP	RRB 1 Turnout SWP	Strand Siphons SWP	North Strand Turnout SWP	South Strand Turnout SWP	KWB P-11 Turnout SWP	CVC Losses SWP	Nord Siphons SWP	Section 4 Pump SWP	CVC Losses SWP	RTO 1 Turnout SWP	CVC Losses SWP	RRB 2 Turnout SWP	RTO 2 Turnout SWP	CVC Losses SWP	AEWSD T.O. SWP	KTWD Siphons SWP	Unlined Losses SWP	RTO 3 River SWP	RTO 4 Turnout SWP	Unlined Losses SWP		Calloway Turnout SWP	Cawelo PSA SWP
1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10	0	0	0	39	0	0	0	0	0	0	0	0	0	0	14	0	0	0	0	0	0	0	0	0	0	0
11	0	0	0	31	0	0	0	0	0	0	0	0	9	0	12	0	0	0	0	0	0	0	0	0	0	0
12	0	0	0	26	0	0	0	0	0	0	0	0	7	0	0	0	0	0	0	0	0	0	0	0	0	0
13	0	0	0	21	0	0	0	0	0	0	0	0	5	0	0	0	0	0	0	0	0	0	0	0	0	0
14	0	0	0	0	0	0	0	0	0	0	0	0	5	0	0	0	0	0	0	0	0	0	0	0	0	0
15	0	0	0	0	0	0	0	0	0	0	0	0	5	0	0	0	0	0	0	0	0	0	0	0	0	0
16	0	0	0	0	0	0	0	0	0	0	0	0	5	0	0	0	0	0	0	0	0	0	0	0	0	0
17	0	0	0	0	0	0	0	0	0	0	0	0	5	0	0	0	0	0	0	0	0	0	0	0	0	0
18	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
19	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
20	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
21	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
22	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
23	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
24	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
25	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
26	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
27	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
28	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
29	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CFS	0	0	0	117	0	0	0	0	0	0	0	0	41	0	26	0	0	0	0	0	0	0	0	0	0	184
AF	0	0	0	232	0	0	0	0	0	0	0	0	81	0	52	0	0	0	0	0	0	0	0	0	0	365
Total	0	0	0	232	0	0	0	0	0	0	0	0	81	0	52	0	0	0	0	0	0	0	0	0	0	365

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

01/18/2012

02/17/2012

INVOICE NO. 25021

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

0053-1330(PWR)

561B-4402

**Cross Valley Canal
November 2011**

Estimated power costs for deliveries of Kern Delta Water District Metropolitan Water District SWP supplies delivered to River Turnout No. 1, 2 and 3, Rosedale Rio-Bravo WSD and Arvin-Edison WSD; adjust for lined losses.

Canal Reach	Pumping Plant	MWD SWP Volume AF	Rate \$/AF	Pumping Costs \$
1	1	3,995	2.25	8,988.75
1	2	3,993	2.25	8,984.25
2	3	2,256	2.25	5,076.00
2	4	2,254	2.25	5,071.50
2	5	2,252	2.25	5,067.00
3	6	1,730	2.25	3,892.50
Extension	7	0	2.25	0.00

TOTAL AMOUNT DUE**\$37,080.00**

Requested By

Prepared By

Approved By

Approved By

☐ ORIGINAL ☐ REMITTANCE ☐ FILE ☐ ACCOUNTING ☐ NUMERICAL CONTROL

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

01/18/2012

02/17/2012

INVOICE NO. 25023

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

0055-1100

580B-4430

020A-5103

0102-1100

Cross Valley Canal
November 2011

Early implementation conveyance fees in the Cross Valley Canal for delivery of Kern Delta Water District deliveries of Metropolitan WD State Water Project supplies to Arvin-Edison WSD and Rosedale Rio-Bravo WSD; adjusted for lined losses.

Reach	MWD SWP Volume AF	Total \$/AF [1]	Conveyance Costs Total \$
1	3,998	1.00	3,998.00
2	3,012	1.00	3,012.00
3	1,732	1.00	1,732.00
Total Amount Due			<u>8,742.00</u>

TOTAL AMOUNT DUE**\$ 8,742.00**

[1] Conveyance Fee \$1.00 per Reach.

Requested By

Prepared By

Approved By

Approved By

☐ ORIGINAL ☐ REMITTANCE ☐ FILE ☐ ACCOUNTING ☐ NUMERICAL CONTROL

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

02/13/2012

03/14/2012

INVOICE NO. 25088

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

0055-1100

580B-4430

020A-5103

0102-1100

Cross Valley Canal
December 2011

Early implementation conveyance fees in the Cross Valley Canal for delivery of Kern Delta Water District deliveries of San Bernardino Valley MWD State Water Project supplies to Arvin-Edison WSD and Rosedale Rio-Bravo WSD; adjusted for lined losses.

Reach	MWD SWP Volume AF	Total \$/AF [1]	Conveyance Costs Total \$
1	3,858	1.00	3,858.00
2	3,395	1.00	3,395.00
3	3,010	1.00	3,010.00
Total Amount Due			10,263.00

TOTAL AMOUNT DUE**\$ 10,263.00**

[1] Conveyance Fee \$1.00 per Reach.

Requested By

Prepared By

Approved By

Approved By

☐ ORIGINAL ☒ REMITTANCE ☐ FILE ☐ ACCOUNTING ☐ NUMERICAL CONTROL

Cross Valley Canal
December 2011 Deliveries - Gross AF

Points of Entry					
	Tupman T/O SWP (AF)	Tupman T/O FK Recirculation (AF)	Pionner Inlet KR (AF)	KCWA Armco Reverse SWP Exch. (AF)	CVC Total (AF)
Deliveries by Turnout:					
N-2 Siphon	302	-	-	-	302
Rosedale Rio Bravo Turnout No. 1	3,404	-	-	-	3,404
North Strand Ranch Turnout	3,090	-	-	-	3,090
South Strand Ranch Turnout	686	-	-	-	686
Kern Water Bank P-11 Turnout	292	-	-	-	292
Section 4 Turnout	905	141	-	-	1,046
River Turnout No. 1	8,287	2,196	-	-	10,483
Rosedale Rio Bravo Turnout No. 2	13,755	-	-	-	13,755
River Turnout No. 2	3,423	861	-	-	4,284
Arvin-Edison Turnout	7,357	-	-	-	7,357
Lined Losses - Pools 1-6	120	13	-	-	133
River Turnout No. 3 to River	127	-	-	-	127
Unlined Losses - Pool 7	737	-	-	-	737
River Turnout No. 4 to River	7,030	-	-	-	7,030
Henry C. Garnett Treatment Plant	-	-	-	3,247	3,247
Unlined Losses - Pool 8	716	-	-	-	716
Total	50,231	3,211	-	3,247	56,689
Deliveries by Turnout/Participant:					
N-2 Siphon					
Tehachapi-Cummings CWD	302	-	-	-	302
Rosedale-Rio Bravo Turnout No. 1					
Arvin-Edison WSD	643	-	-	-	643
Kern Delta Water District	2,761	-	-	-	2,761
Nouth Strand Turnout					
Buena Vista WSD	32	-	-	-	32
Kern Delta Water District	3,058	-	-	-	3,058
South Strand Turnout					
Kern Delta Water District	686	-	-	-	686
Kern Water Bank P-11 Turnout					
Tehachapi-Cummings CWD	292	-	-	-	292
Section 4 Turnout					
Belridge WSD	85	61	-	-	146
Berrenda Mesa WD	85	20	-	-	105
Improvement District No. 4	48	-	-	-	48
Lost Hills WD	74	60	-	-	134
Rosedale-Rio Bravo WSD	534	-	-	-	534
Semitropic WSD	71	-	-	-	71
Tejon Castaic WD	8	-	-	-	8
River Turnout No. 1					
Belridge WSD	978	941	-	-	1,919
Berrenda Mesa WD	495	315	-	-	810
Improvement District No. 4	1,338	-	-	-	1,338
Lost Hills WD	1,050	940	-	-	1,990
Rosedale-Rio Bravo WSD	1,018	-	-	-	1,018
Semitropic WSD	3,078	-	-	-	3,078
Tehachapi-Cummings CWD	301	-	-	-	301
Tejon Castaic WD	29	-	-	-	29
Rosedale Rio Bravo Turnout No. 2					
Arvin-Edison WSD	12,967	-	-	-	12,967
Improvement District No. 4	88	-	-	-	88
Kern Delta Water District	700	-	-	-	700
River Turnout No. 2					
Belridge WSD	703	335	-	-	1,038
Berrenda Mesa WD	1,720	216	-	-	1,936
Lost Hills WD	599	310	-	-	909
Rosedale-Rio Bravo WSD	373	-	-	-	373
Semitropic WSD	28	-	-	-	28
Arvin-Edison Turnout					
Arvin-Edison WSD	5,482	-	-	-	5,482
Kern Delta Water District	1,875	-	-	-	1,875
Lined Losses - Pools 1-6					
Arvin-Edison WSD	53	-	-	-	53
Belridge WSD	-	6	-	-	6
Berrenda Mesa WD	4	2	-	-	6
Improvement District No. 4	20	-	-	-	20
Kern Delta Water District	28	-	-	-	28
Lost Hills WD	-	5	-	-	5
Rosedale-Rio Bravo WSD	5	-	-	-	5
Semitropic WSD	10	-	-	-	10
River Turnout No. 3					
Improvement District No. 4	127	-	-	-	127
Unlined Losses - Pools 7					
Improvement District No. 4	492	-	-	-	492
Kern Delta Water District	245	-	-	-	245
River Turnout No. 4					
Improvement District No. 4	4,618	-	-	-	4,618
Kern Delta Water District	2,412	-	-	-	2,412
Henry C. Garnett Treatment Plant:					
Improvement District No. 4	-	-	-	3,247	3,247
Unlined Losses - Pools 8					
Improvement District No. 4	475	-	-	-	475
Kern Delta Water District	241	-	-	-	241
Total	50,231	3,211	-	3,247	56,689
Existing Participant Deliveries	28,281	-	-	3,247	31,528
New Participant Deliveries	21,950	3,211	-	-	25,161
	50,231	3,211	-	3,247	56,689

Shading denotes forward flow deliveries based on each point of entry into the CVC; - / - denotes pools / pump plants utilized (for forward flow).

February 10, 2012
11:50 AM

[illegible]

[1] Arvin-Edison Water Storage District made deliveries of Metropolitan Water District State Water Project Table A supplies utilizing Lower-Tule River Irrigation District and Pixley Irrigation District capacities per a short-term agreement with North Kern WSD (per the Agreement for the Management of Conveyance Capacity in the Cross Valley Canal Capacity).

[2] Kern County Water Agency Member Units' made deliveries of State Water Project Table A supplies utilizing Kern-Tulare Water District capacities per long-term agreements which allow for KCWA MU's to utilize unused capacities.

[3] Arvin-Edison WSD delivered a total of 620 af of AEWSD/MWD SWP supplies at Rosedale Turnout No. 2 as part of an operational exchange for 620 af of Arvin-Edison WSD Friant-Kern supplies delivered to the Arvin-Edison Intake Canal.

[4] Kern Delta Water District delivered a total of 206 af to Arvin-Edison WSD at Rosedale Turnout No. 2 as part of an operational exchange for 206 af of Arvin-Edison WSD Friant-Kern supplies at the Arvin-Edison Intake Canal off the Friant-Kern Canal.

[5] Kern Delta Water District delivered a total of 3,940 af of Metropolitan WD SWP supplies in December 2011.

[6] Kern Delta Water District delivered a total of 8,066 af of San Bernardino Valley Municipal Water District SWP supplies in December 2011.

	CVC Losses	N-2 Siphon	CVC Losses	RRB 1 Turnout	Strand Siphons	Strand Turnout	Strand Turnout	KWB P-11 Turnout	CVC Losses	Nord Siphons	Section 4 Pump	CVC Losses	RTO 1 Turnout	CVC Losses	RRB 2 Turnout	RTO 2 Turnout	CVC Losses	AEWSD T.O.	KTWD Siphons	Unlined Losses	RTO 3 River	Unlined Losses	RTO 4 Turnout	Calloway Turnout	Cawelo PSA	T/O Total
Arvin Edison WSD	8	0	7	643	0	0	0	0	6	0	0	8	0	10	12,967	0	14	5,482	0	0	0	0	0	0	0	19,145
Blidge WSD	0	0	0	0	0	0	0	0	0	0	85	0	978	0	0	703	0	0	0	0	0	0	0	0	0	1,766
Berrenda Mesa WD	1	0	0	0	0	0	0	0	0	0	85	1	495	1	0	1,720	1	0	0	0	0	0	0	0	0	2,304
Buena Vista WSD	0	0	0	0	0	32	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	32
Improvement District No. 4	4	0	2	0	0	0	0	0	2	0	48	3	1,338	4	88	0	5	0	0	492	127	475	4,618	0	0	7,206
Kern Delta WD	6	0	6	2,761	0	3,058	686	0	5	0	0	3	0	4	700	0	4	1,875	0	245	0	241	2,412	0	0	12,006
Lost Hills WD	0	0	0	0	0	0	0	0	0	0	74	0	1,050	0	0	589	0	0	0	0	0	0	0	0	0	1,723
Rosedale Rio Bravo WSD	1	0	1	0	0	0	0	0	1	0	534	1	1,018	1	0	373	0	0	0	0	0	0	0	0	0	1,930
Semitropic WSD	2	0	2	0	0	0	0	0	2	0	71	2	3,078	2	0	28	0	0	0	0	0	0	0	0	0	3,187
Tehachapi-Cummings CWD	0	302	0	0	0	0	0	292	0	0	0	0	301	0	0	0	0	0	0	0	0	0	0	0	0	895
Tejon Castaic WD	0	0	0	0	0	0	0	0	0	0	8	0	29	0	0	0	0	0	0	0	0	0	0	0	0	37
Total	22	302	18	3,404	0	3,090	686	292	16	0	905	18	8,287	22	13,755	3,423	24	7,357	0	737	127	716	7,030	0	0	50,231

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

02/13/2012

03/14/2012

INVOICE NO. 25085

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

0053-1330(PWR)
561B-4402

**Cross Valley Canal
December 2011**

Estimated power costs for deliveries of Kern Delta Water District San Bernardino Valley Municipal Water District SWP supplies delivered to River Turnout No. 1, 2 and 4, Rosedale Rio-Bravo WSD and Arvin-Edison WSD; adjust for lined losses.

Canal Reach	Pumping Plant	SBVMWD SWP Volume AF	Rate \$/AF	Pumping Costs \$
1	1	3,853	2.25	8,669.25
1	2	3,849	2.25	8,660.25
2	3	3,221	2.25	7,247.25
2	4	3,219	2.25	7,242.75
2	5	3,216	2.25	7,236.00
3	6	3,006	2.25	6,763.50
Extension	7	1,671	2.25	<u>3,759.75</u>

TOTAL AMOUNT DUE**\$49,578.75**

Requested By

Prepared By

Approved By

Approved By



ORIGINAL



REMITTANCE



FILE



ACCOUNTING



NUMERICAL CONTROL

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

03/08/2012

04/09/2012

INVOICE NO. 25191

RECEIVED
 MAR 12 2012

0053-1330(PWR)

561B-4402

 Kern Delta Water District
 501 Taft Highway
 Bakersfield, CA 93307

Cross Valley Canal
January 2012

Estimated power costs for deliveries of Kern Delta Water District San Bernardino Valley Municipal Water District SWP supplies delivered to River Turnout No. 1, 2 and 4, Rosedale Rio-Bravo WSD and Arvin-Edison WSD; adjust for lined losses.

Canal Reach	Pumping Plant	SBVMWD SWP Volume AF	Rate \$/AF	Pumping Costs \$
1	1	12,515	2.25	28,158.75
1	2	12,502	2.25	28,129.50
2	3	11,881	2.25	26,732.25
2	4	11,867	2.25	26,700.75
2	5	11,849	2.25	26,660.25
3	6	9,360	2.25	21,060.00
Extension	7	4,858	2.25	10,930.50

TOTAL AMOUNT DUE\$168,372.00

VENDOR	K0241
INVOICE #	25191
P.O. #	DWR
DATE	3-8-12
AMOUNT	168,372.00
ACCT. CODE	40540

WATER B.P.

Requested By

Prepared By

Approved By

Approved By

☐ ORIGINAL
 ☐ REMITTANCE
 ☐ FILE
 ☐ ACCOUNTING
 ☐ NUMERICAL CONTROL

Cross Valley Canal
January 2012 Deliveries - Gross AF

	Points of Entry				
	Tupinan T/O SWP (AF)	Tupman T/O CVP (AF)	CVC / Friant-Kern Intertic KR (AF)	KCWA Armo Reverse SWP Exch. (AF)	CVC Total (AF)
Deliveries by Turnout:					
N-2 Siphon	-	-	-	-	2,950
Rosedale Rio Bravo Turnout No. 1	1,244	1,706	-	-	282
North Strand Ranch Turnout	282	-	-	-	93
South Strand Ranch Turnout	93	-	-	-	-
Kern Water Bank P-11 Turnout	-	-	-	-	780
Section 4 Turnout	121	659	-	-	1,759
River Turnout No. 1	-	1,759	-	-	7,199
Rosedale Rio Bravo Turnout No. 2	2,471	1,204	3,524	-	744
River Turnout No. 2	159	585	-	-	3,667
Arvin-Edison Turnout	3,612	55	-	-	138
Lined Losses - Pools 1-6	92	40	6	-	-
River Turnout No. 3 to River	-	-	-	-	890
Unlined Losses - Pool 7	890	-	-	-	4,092
River Turnout No. 4 to River	4,092	-	-	-	3,374
Henry C. Garnett Treatment Plant	-	-	-	3,374	766
Unlined Losses - Pool 8	766	-	-	-	-
Total	13,822	6,008	3,530	3,374	26,734

Deliveries by Turnout/Participant:

Rosedale-Rio Bravo Turnout No. 1

Arvin-Edison WSD
Kern Delta Water District
Kern-Tulare Water District
Rosedale-Rio Bravo WSD

North Strand Turnout

Rosedale-Rio Bravo WSD

South Strand Turnout

Rosedale-Rio Bravo WSD

Section 4 Turnout

Belridge WSD
Berrenda Mesa WD
Lost Hills WD
Rosedale-Rio Bravo WSD

River Turnout No. 1

Belridge WSD
Berrenda Mesa WD
Lost Hills WD

Rosedale Rio Bravo Turnout No. 2

Arvin-Edison WSD
Kern Delta Water District
Kern-Tulare Water District

River Turnout No. 2

Belridge WSD
Berrenda Mesa WD
Lost Hills WD

Arvin-Edison Turnout

Arvin-Edison WSD
Kern Delta Water District

Lined Losses - Pools 1-6

Arvin-Edison WSD
Belridge WSD
Berrenda Mesa WD
Kern Delta Water District
Kern-Tulare Water District
Lost Hills WD
Rosedale-Rio Bravo WSD

Unlined Losses - Pools 7

Kern Delta Water District

River Turnout No. 4

Kern Delta Water District

Henry C. Garnett Treatment Plant:

Improvement District No. 4

Unlined Losses - Pools 8

Kern Delta Water District

Total

Existing Participant Deliveries	1,133	2,980	3,530	3,374	8,006
New Participant Deliveries	12,689	3,028	-	-	18,728
	13,822	6,008	3,530	3,374	26,734

Shading denotes forward flow deliveries based on each point of entry into the CVC; _/ _ denotes pools / pump plants utilized (for forward flow).

Date	Reach 1				Reach 2								Reach 3				Extension									
	Pool 1	Pool 2		Pool 3				Pool 4		Pool 5		Pool 6		Pool 7		Pool 8										
	CVC Losses SWP	N-2 Siphon SWP	CVC Losses SWP	RRB 1 Turnout SWP	Strand Siphons SWP	North Strand Turnout SWP	South Strand Turnout SWP	KWB P-11 Turnout SWP	CVC Losses SWP	Nord Siphons SWP	Section 4 Pump SWP	CVC Losses SWP	RTO 1 Turnout SWP	CVC Losses SWP	RRB 2 Turnout SWP	RTO 2 Turnout SWP	CVC Losses SWP	AEWSD T.O. SWP	KTWD Siphons SWP	Unlined Losses SWP	RTO 3 River SWP	Unlined Losses SWP	RTO 4 Turnout SWP	Calloway Turnout SWP	Cawelo PSA SWP	T/O Total SWP
1	0	0	0	50	0	32	10	0	0	0	13	1	0	0	104	20	0	0	0	14	0	12	80	0	0	336
2	1	0	0	50	0	32	10	0	1	0	13	0	0	1	65	20	0	0	0	15	0	13	81	0	0	302
3	0	0	0	50	0	32	12	0	0	0	13	0	0	0	65	20	1	0	0	14	0	12	80	0	0	299
4	0	0	1	50	0	32	11	0	0	0	13	0	0	0	64	20	0	0	0	15	0	13	80	0	0	299
5	0	0	0	50	0	14	4	0	0	0	9	0	0	1	53	0	0	0	0	14	0	12	81	0	0	238
6	1	0	0	52	0	0	0	0	0	0	0	0	0	0	46	0	0	27	0	15	0	13	80	0	0	234
7	0	0	0	49	0	0	0	0	0	0	0	1	0	0	41	0	0	21	0	14	0	12	80	0	0	218
8	1	0	0	50	0	0	0	0	0	0	0	0	0	1	39	0	0	0	0	15	0	13	80	0	0	199
9	0	0	0	50	0	0	0	0	1	0	0	0	0	0	57	0	0	0	0	14	0	12	83	0	0	217
10	0	0	0	22	0	0	0	0	0	0	0	0	0	0	87	0	1	0	0	15	0	13	81	0	0	219
11	0	0	1	0	0	0	0	0	0	0	0	0	0	0	108	0	0	0	0	14	0	12	81	0	0	216
12	0	0	0	0	0	0	0	0	0	0	0	0	0	0	125	0	0	0	0	15	0	13	82	0	0	235
13	1	0	0	0	0	0	0	0	1	0	0	1	0	1	18	0	0	0	0	14	0	12	65	0	0	113
14	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	57	0	15	0	13	59	0	0	144
15	1	0	1	0	0	0	0	0	0	0	0	0	0	0	30	0	1	101	0	14	0	12	56	0	0	216
16	0	0	0	0	0	0	0	0	0	0	0	0	0	1	30	0	0	104	0	15	0	13	57	0	0	220
17	0	0	0	0	0	0	0	0	0	0	0	0	0	0	30	0	1	102	0	14	0	12	56	0	0	215
18	0	0	1	0	0	0	0	0	0	0	0	0	0	0	30	0	0	104	0	15	0	13	60	0	0	223
19	0	0	0	0	0	0	0	0	0	0	0	1	0	0	14	0	0	116	0	14	0	12	57	0	0	214
20	1	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1	127	0	15	0	13	57	0	0	215
21	0	0	0	0	0	0	0	0	0	0	0	0	0	1	11	0	0	120	0	14	0	12	57	0	0	215
22	0	0	0	0	0	0	0	0	0	0	0	1	0	0	40	0	0	90	0	15	0	13	58	0	0	217
23	0	0	0	23	0	0	0	0	1	0	0	0	0	1	40	0	0	72	0	14	0	12	57	0	0	220
24	0	0	0	40	0	0	0	0	0	0	0	0	0	0	40	0	1	49	0	15	0	13	57	0	0	215
25	1	0	1	40	0	0	0	0	0	0	0	0	0	0	40	0	0	49	0	14	0	12	58	0	0	215
26	0	0	0	40	0	0	0	0	0	0	0	0	0	1	40	0	0	93	0	15	0	13	57	0	0	259
27	0	0	0	11	0	0	0	0	0	0	0	0	0	0	29	0	1	89	0	14	0	12	57	0	0	213
28	0	0	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	95	0	15	0	13	58	0	0	183
29	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	127	0	14	0	12	56	0	0	210
30	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	135	0	15	0	12	56	0	0	219
31	1	0	1	0	0	0	0	0	0	0	0	1	0	1	0	0	1	143	0	14	0	12	56	0	0	230
CFS	8	0	7	627	0	142	47	0	6	0	61	7	0	9	1,246	80	9	1,821	0	449	0	386	2,063	0	0	6,968
AF	16	0	14	1,244	0	282	93	0	12	0	121	14	0	18	2,471	159	18	3,612	0	890	0	766	4,092	0	0	13,822

San Bernardino WSD																											
San Bernardino WSD / San Bernardino																											
Kern Delta WSD / AEB / SD / Friant / Kern / RFB																											
Kern Delta WSD / AEB / SD / Friant / Kern / RFB																											
Kern Delta WSD / AEB / SD / Friant / Kern / RFB																											
San Bernardino WSD																											
San Bernardino WSD																											
Total	16	0	14	1,244	0	282	93	0	12	0	121	14	0	18	2,471	159	18	3,612	0	890	0	766	4,092	0	0	13,822	

NOTES:
[1] As part of an operational exchange, Kern Delta WD delivered San Bernardino Valley Municipal Water District SWP supplies to Arvin-Edison WSD at Rosedale Turnout No. 1 and 2 (total of 1,655 af) in exchange for Arvin-Edison WSD Friant-Kern supplies delivered to Kern Delta at the Arvin-Edison Intake Canal (1,655 af).
[2] As part of an operational exchange, Kern Delta WD delivered San Bernardino Valley Municipal Water District SWP supplies to Kern-Tulare WD at Rosedale Turnout No. 1 and 2 (total of 1,426 af) in exchange for Kern-Tulare WD Friant-Kern supplies delivered to Kern Delta at the Arvin-Edison Intake Canal (1,426 af).

	CVC Losses	N-2 Siphon	CVC Losses	RRB 1 Turnout	Strand Siphons	Strand Turnout	Strand Turnout	KWB P-11 Turnout	CVC Losses	Nord Siphons	Section 4 Pump	CVC Losses	RTO 1 Turnout	CVC Losses	RRB 2 Turnout	RTO 2 Turnout	CVC Losses	AEWSD T.O.	KTWD Siphons	Unlined Losses	RTO 3 River	Unlined Losses	RTO 4 Turnout	Calloway Turnout	Cawelo PSA	T/O Total
Berrenda Mesa WD	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	159	0	0	0	0	0	0	0	0	0	159
Kern Delta WD	15	0	13	610	0	0	0	0	11	0	0	14	0	18	2,471	0	18	3,612	0	890	0	766	4,092	0	0	12,530
Rosedale Rio-Bravo WSD	1	0	1	634	0	282	93	0	1	0	121	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1,133
Total	16	0	14	1,244	0	282	93	0	12	0	121	14	0	18	2,471	159	18	3,612	0	890	0	766	4,092	0	0	13,822

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

03/08/2012

04/09/2012

INVOICE NO. 25193

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

RECEIVED
MAR 12 2012
0055-1100
580B-4430

**Cross Valley Canal
January 2012**

Early implementation conveyance fees in the Cross Valley Canal for delivery of Kern Delta Water District deliveries of San Bernardino Valley MWD State Water Project supplies to Arvin-Edison WSD and River Turnout No. 4 as well as operational exchange deliveries to Rosedale Turnout No. 1 and 2; adjusted for lined losses.

Reach	SBVMWD SWP Volume AF	Total \$/AF [1]	Conveyance Costs Total \$
1	12,530	1.00	12,530.00
2	11,881	1.00	11,881.00
3	9,378	1.00	9,378.00

Total Amount Due 33,789.00

TOTAL AMOUNT DUE**\$ 33,789.00**

[1] Conveyance Fee \$1.00 per Reach.

Requested By

Prepared By

Approved By

Approved By

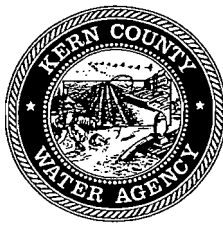
☐ ORIGINAL ☐ REMITTANCE ☐ FILE ☐ ACCOUNTING ☐ NUMERICAL CONTROL

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

05/01/2012

05/31/2012

INVOICE NO. 25328

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

0053-1310

561B-4402

**Cross Valley Canal
February 2012**

Estimated power costs for deliveries of Kern Delta Water District San Bernardino Valley Municipal Water District SWP supplies delivered to River Turnout No. 4 and Arvin-Edison WSD; adjust for lined losses.

Canal Reach	Pumping Plant	SBVMWD SWP Volume AF	Rate \$/AF	Pumping Costs \$
1	1	6,496	2.25	14,616.00
1	2	6,478	2.25	14,575.50
2	3	6,458	2.25	14,530.50
2	4	6,438	2.25	14,485.50
2	5	6,414	2.25	14,431.50
3	6	6,386	2.25	14,368.50
Extension	7	1,273	2.25	<u>2,864.25</u>

TOTAL AMOUNT DUE**\$89,871.75**

Requested By

Prepared By

Approved By

Approved By

☐ ORIGINAL ☒ REMITTANCE ☐ FILE ☐ ACCOUNTING ☐ NUMERICAL CONTROL

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

05/01/2012

05/31/2012

INVOICE NO. 25331

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

0055-1100

580B-4430

Cross Valley Canal
February 2012

Early implementation conveyance fees in the Cross Valley Canal for delivery of Kern Delta Water District deliveries of San Bernardino Valley MWD State Water Project supplies to Arvin-Edison WSD and River Turnout No. 4; adjusted for lined and unlined losses.

Reach	SBVMWD SWP Volume AF	Total \$/AF [1]	Conveyance Costs Total \$
1	6,536	1.00	6,536.00
2	6,478	1.00	6,478.00
3	6,414	1.00	6,414.00
Total Amount Due			19,428.00

TOTAL AMOUNT DUE**\$ 19,428.00**

[1] Conveyance Fee \$1.00 per Reach.

Requested By

Prepared By

Approved By

Approved By

☐ ORIGINAL ☒ REMITTANCE ☐ FILE ☐ ACCOUNTING ☐ NUMERICAL CONTROL

KERN COUNTY WATER AGENCY

P.O. BOX 53

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

05/29/2012

06/28/2012

INVOICE NO. 25429

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

0053-1310

561B-4402

Cross Valley Canal
March 2012

Estimated power costs for deliveries of Kern County Water District Member Units' groundwater via an operational exchange with Kern Delta Water District San Bernardino Valley Municipal Water District SWP supplies on the California Aqueduct, delivered to the Arvin-Edison WSD Turnout; adjust for lined losses.

Canal Reach	Pumping Plant	SBVMWD SWP Volume AF	Rate \$/AF	Pumping Costs \$
1	1	0	2.25	0.00
1	2	0	2.25	0.00
2	3	0	2.25	0.00
2	4	2,850	2.25	6,412.50
2	5	2,821	2.25	6,347.25
3	6	2,787	2.25	6,270.75
Extension	7	0	2.25	0.00

TOTAL AMOUNT DUE**\$19,030.50**

Requested By

Prepared By

Approved By

Approved By

☐ ORIGINAL ☒ REMITTANCE ☐ FILE ☐ ACCOUNTING ☐ NUMERICAL CONTROL



May 29, 2012

Directors:

Ted R. Page
Division 1

Terry Rogers
President
Division 2

Randell Parker
Division 3

Michael Radon
Division 4

Adrienne J. Mathews
Division 5

William W. Van Skike
Vice President
Division 6

Gene A. Lundquist
Division 7

James M. Beck
General Manager

Amelia T. Minaberrigarai
General Counsel

Mr. Mark Mulkay
Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

Re: Estimated power and conveyance invoices for March 2012; Cross Valley
Canal Water Balance Summaries for March 2012

Dear Mr. Mulkay:

Enclosed are the above referenced documents for your records and remittance. If
you have any questions or require further information, please call me at (661) 634-
1491.

Sincerely,

A handwritten signature in black ink, appearing to read "Trent Taylor", with a long horizontal line extending to the right.

Trent Taylor
Water Resources Planner
Kern County Water Agency

Enclosures

(661) 634-1400

Mailing Address
P.O. Box 58
Bakersfield, CA 93302-0058

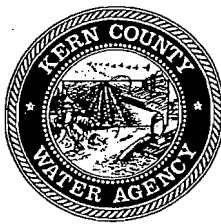
Street Address
3200 Rio Mirada Dr.
Bakersfield, CA 93308

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

05/29/2012

DUE DATE

06/28/2012

INVOICE NO. 25445

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

0055-1310

580B-4430

Cross Valley Canal
March 2012

Early implementation conveyance fees in the Cross Valley Canal for delivery of Kern Delta Water District deliveries of San Bernardino Valley MWD State Water Project supplies, delivered via an operational exchange with Kern County Water Agency Member Units' groundwater supplies, to the Arvin-Edison WSD Turnout; adjusted for lined.

Reach	SBVMWD SWP Volume AF	Total \$/AF [1]	Conveyance Costs Total \$
1		1.00	-
2	2,868	1.00	2,868.00
3	2,821	1.00	2,821.00
Total Amount Due			5,689.00

TOTAL AMOUNT DUE**\$ 5,689.00**

{1} Conveyance Fee \$1.00 per Reach.

Requested By

Prepared By

Approved By

Approved By

☐ ORIGINAL ☒ REMITTANCE ☐ FILE ☐ ACCOUNTING ☐ NUMERICAL CONTROL

Cross Valley Canal
March 2012 Deliveries - Gross AF

	Points of Entry				CVC Total (AF)
	Tupman T/O Groundwater (AF)	Tupman T/O CVP (AF)	CVC / Friant-Kern Intertie KR (AF)	KCWA Armco Reverse SWP Exch. (AF)	
Deliveries by Turnout:					
Reverse - Calif. Aqueduct	7,085	-	-	-	7,085
Rosedale Rio Bravo Turnout No. 1	-	-	-	-	-
North Strand Ranch Turnout	-	-	-	-	-
South Strand Ranch Turnout	-	-	-	-	-
Kern Water Bank P-11 Turnout	-	-	-	-	-
Section 4 Turnout	-	-	-	-	-
River Turnout No. 1	-	-	-	-	-
Rosedale Rio Bravo Turnout No. 2	-	-	-	-	-
River Turnout No. 2	-	-	-	-	-
Arvin-Edison Turnout	3,027	-	-	-	3,027
CVC / FK Intertie	526	-	-	-	526
Lined Losses - Pools 1-6	275	-	-	-	275
River Turnout No. 3 to River	-	-	-	-	-
Unlined Losses - Pool 7	156	-	-	-	156
River Turnout No. 4 to River	-	-	-	-	-
Henry C. Garnett Treatment Plant	135	-	-	2,983	3,118
Unlined Losses - Pool 8	162	-	-	-	162
Total	11,366	-	-	2,983	14,349

Deliveries by Turnout/Participant:					
Reverse - Calif. Aqueduct					
Belridge WSD	791	-	-	-	791
Berrenda Mesa WD	1,096	-	-	-	1,096
Dudley Ridge WD	762	-	-	-	762
Lost Hills WD	985	-	-	-	985
Semitropic WSD	282	-	-	-	282
Westside Mutual WC	890	-	-	-	890
Wheeler Ridge Maricopa WSD	2,279	-	-	-	2,279
Arvin-Edison Turnout					
Kern Delta Water District	2,787	-	-	-	2,787
Kern Tulare WD / ID4 / AEWS Exch.	240	-	-	-	240
CVC / FK Intertie					
Kern Tulare Water District	526	-	-	-	526
Lined Losses - Pools 1-6					
Belridge WSD	19	-	-	-	19
Berrenda Mesa WD	31	-	-	-	31
Dudley Ridge WD	7	-	-	-	7
Improvement District No. 4	18	-	-	-	18
Kern Delta Water District	81	-	-	-	81
Kern-Tulare Water District	35	-	-	-	35
Lost Hills WD	25	-	-	-	25
Semitropic WSD	3	-	-	-	3
Westside Mutual WC	9	-	-	-	9
Wheeler Ridge Maricopa WSD	47	-	-	-	47
Unlined Losses - Pools 7					
Improvement District No. 4	156	-	-	-	156
Henry C. Garnett Treatment Plant:					
Improvement District No. 4	135	-	-	2,983	3,118
Unlined Losses - Pools 8					
Improvement District No. 4	162	-	-	-	162
Total	11,366	-	-	2,983	14,349

Existing Participant Deliveries	1,272	-	-	2,983	5,945
New Participant Deliveries	10,094	-	-	-	8,404
	11,366	-	-	2,983	14,349

Shading denotes forward flow deliveries based on each point of entry into the CVC; _ / _ denotes pools / pump plants utilized (for forward flow).



**Rosedale-Rio Bravo Water
Storage District**

PO Box 20820
Bakersfield, CA 93390-0820

Phone # 661-589-6045

Fax # 661-589-1867

Invoice

Date	Invoice #
4/13/2012	1018

Bill To

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307-6247

Terms

Net 30

Description

Amount

Pioneer Wheeling Charges - December 2011

17,090.00

DWR

40130

4/20/12

Please remit to above address.

Total

\$17,090.00

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



VOICE DATE

DUE DATE

02/15/12

03/16/12

INVOICE NO. 25112

Rosedale-Rio Bravo WSD
PO Box 867
Bakersfield, CA 93302-0867

0102-1310	0
0075-1310	17,090
761B-4430	8,737
761B-4401	6,145
741A-4499	307
761B-4402	1,901
020A-4430	0

**Pioneer Project
Estimated Billing
December 2011**

December 2011:

SWP to Pioneer

Transportation via Section 4 Pump (RRB)	418 af	@	0.00 \$/af	0
Transportation via Section 4 Pump (KCWA)	41 af	@	8.75 \$/af	359
Transportation via Section 4 Pump (KT)	75 af	@	8.75 \$/af	656
Transportation via Section 4 Pump (PG&E)	534 af	@	3.56 \$/af	1,901
Transportation via RTO 1 (RRB):	796 af	@	0.00 \$/af	0
Transportation via RTO 1 (Agency):	79 af	@	11.00 \$/af	869
Transportation via RTO 1 (KT):	143 af	@	11.00 \$/af	1,573
Transportation via RTO 2 (RRB):	292 af	@	0.00 \$/af	0
Transportation via RTO 2 (Agency):	28 af	@	14.25 \$/af	399
Transportation via RTO 2 (KT):	53 af	@	14.25 \$/af	755
Transportation via River Channel	47 af	@	0.00 \$/af	0
Transportation via 2800 Acres:	649 af	@	5.36 \$/af	3,479
Transportation via Basins 1, 9 & 10:	695 af	@	0.93 \$/af	646
O&M:	1,229 af	@	5.00 \$/af	6,145
Facility Replacement:	1,229 af	@	0.25 \$/af	307
Subtotal				\$ 17,090

TOTAL AMOUNT DUE/(REFUNDED)**\$17,090**

1,925 AF DELIVERED.

PASS THRU
TO KOWDPd 3-13-12
chk # 7422

Requested By

Prepared By

Approved By

Approved By

☐ ORIGINAL ☐ REMITTANCE ☐ FILE ☐ ACCOUNTING ☐ NUMERICAL CONTROL



Rosedale-Rio Bravo Water
Storage District

PO Box 20820
Bakersfield, CA 93390-0820

Phone # 661-589-6045

Fax # 661-589-1867

Invoice

Date	Invoice #
4/13/2012	1016

Bill To

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307-6247

Terms

Net 30

Description

Amount

Pioneer Wheeling Charges - November 2011

11,198.88

DWR

40130

4/20/12

Please remit to above address.

Total

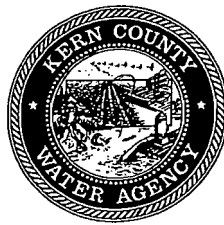
\$11,198.88

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



VOICE DATE

DUE DATE

01/25/12

02/24/12

INVOICE NO. 25032

4/2

Rosedale-Rio Bravo WSD
PO Box 867
Bakersfield, CA 93302-0867

0102-1310	0
0075-1310	14,787
761B-4430	2,314
761B-4401	6,690
741A-4499	335
761B-4402	5,448
020A-4430	0

**Pioneer Project
Estimated Billing
November 2011**

November 2011:
SWP to Pioneer

Transportation via Section 4 Pump (RRB)	1,065 af	@	0.00 \$/af	0
Transportation via Section 4 Pump (KCWA)	54 af	@	8.75 \$/af	473
Transportation via Section 4 Pump (KT)	74 af	@	8.75 \$/af	648
Transportation via Section 4 Pump (PG&E)	1,193 af	@	2.84 \$/af	3,388
Transportation via RTO 1 (RRB):	252 af	@	0.00 \$/af	0
Transportation via RTO 1 (Agency):	13 af	@	11.00 \$/af	143
Transportation via RTO 1 (KT):	17 af	@	11.00 \$/af	187
Transportation via River Channel	1 af	@	0.00 \$/af	0
Transportation via 2800 Acres:	136 af	@	5.36 \$/af	729
Transportation via Basins 1, 9 & 10:	145 af	@	0.93 \$/af	135
O&M:	1,338 af	@	5.00 \$/af	6,690
Facility Replacement:	1,338 af	@	0.25 \$/af	335
Subtotal				\$ 12,726

Additional Charges:

Transportation via Section 4 Pump (April 2011 - PG&E) 1,392 af @ 1.48 \$/af \$ 2,060

TOTAL AMOUNT DUE/(REFUNDED)**\$14,787**

1,475 AF DELIVERED

AEWSD 12% = \$1,527.12

~~KRWSD 88% = \$11,198.88~~

Pl 2/14/12
clt 7370

Requested By

Prepared By

Approved By

Approved By

☐ ORIGINAL ☐ REMITTANCE ☐ FILE ☐ ACCOUNTING ☐ NUMERICAL CONTROL



**Rosedale-Rio Bravo Water
Storage District**

PO Box 20820
Bakersfield, CA 93390-0820

Phone # 661-589-6045

Fax # 661-589-1867

Invoice

Date	Invoice #
4/13/2012	1013

Bill To

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307-6247

Terms

Net 30

Description

Amount

Cross Valley Canal Pumping Costs - September 2011

Pumping Plant No. 1 - \$1761.50

Pumping Plant No. 2 - \$1761.50

Pumping Plant No. 3 - \$747.50

Pumping Plant No. 4 - \$747.50

Pumping Plant No. 5 - \$1150.00

6,168.00

DWR

40540

4/20/12

Please remit to above address.

Total

\$6,168.00

**ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT
CROSS VALLEY CANAL PUMPING COSTS
KERN DELTA WATER DISTRICT - SEPTEMBER 2011**

Deliveries and Pumping Plant Usage			
Description	Volume (AF)	Rate (\$/AF)	Pumping Cost (\$)
Pumping Plant No. 1	542	3.25	1,761.50
Pumping Plant No. 2	542	3.25	1,761.50
Pumping Plant No. 3	230	3.25	747.50
Pumping Plant No. 4	230	3.25	747.50
Pumping Plant No. 5	230	5.00	1,150.00
TOTAL >			6,168.00

Delivery Accounting	
Turnout	AF
Rosedale No. 1 (West)	312
Strand Ranch	0
Rosedale No. 2 (East)	230
CVC Losses	0
TOTAL >	542

✓

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

12/12/2011

DUE DATE

01/11/2012

INVOICE NO. 24801

Rosedale-Rio Bravo WSD
PO Box 20820
Bakersfield, CA 93390-0820

0053-1330(PWR)
561B-4402

Cross Valley Canal
September 2011

Estimated power costs for deliveries of Rosedale Rio-Bravo WSD SWP Table A supplies as well as Arvin-Edison WSD and Kern Delta WD use of RRBWSD capacity to convey Metropolitan WD SWP supplies to Rosedale Turnout No. 1 and 2; adjusted for lined losses.

Canal Reach	Pumping Plant	RRBWSD SWP Volume AF	AEWSD SWP Volume AF	KDWD SWP Total AF	Rate \$/AF	Pumping Costs \$
1	1	4,009	1,608	542	3.25	20,016.75
1	2	4,008	1,608	542	3.25	20,013.50
2	3	837	0	230	3.25	3,467.75
2	4	0	0	230	3.25	747.50
2	5	0	0	230	5.00	1,150.00
3	6	0	0	0	5.00	0.00
Extension	7	0	0	0	5.00	0.00

TOTAL AMOUNT DUE**\$45,395.50**

Requested By

Prepared By

Approved By

Approved By

☒ ORIGINAL ☐ REMITTANCE ☐ FILE ☐ ACCOUNTING ☐ NUMERICAL CONTROL



Rosedale-Rio Bravo Water
Storage District

PO Box 20820
Bakersfield, CA 93390-0820

Phone # 661-589-6045

Fax # 661-589-1867

Invoice

Date	Invoice #
4/13/2012	1014

Bill To

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307-6247

Terms

Net 30

Description

Amount

Cross Valley Canal Pumping Costs - November 2011

Pumping Plant No. 1 - \$8258.25

Pumping Plant No. 2 - \$8255.00

Pumping Plant No. 3 - \$263.25

Pumping Plant No. 4 - \$169.00

Pumping Plant No. 5 - \$260.00

17,205.50

Due

40540

4/20/12

Please remit to above address.

Total

\$17,205.50

ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT
CROSS VALLEY CANAL PUMPING COSTS
KERN DELTA WATER DISTRICT - OCTOBER 2011

Deliveries and Pumping Plant Usage			
Description	Volume (AF)	Rate (\$/AF)	Pumping Cost (\$)
Pumping Plant No. 1	2,541	3.25	8,258.25
Pumping Plant No. 2	2,540	3.25	8,255.00
Pumping Plant No. 3	81	3.25	263.25
Pumping Plant No. 4	52	3.25	169.00
Pumping Plant No. 5	52	5.00	260.00
TOTAL >			17,205.50

Delivery Accounting	
Turnout	AF
Rosedale No. 1 (West)	1,373
Strand Ranch	1,116
Rosedale No. 2 (East)	52
CVC Losses	0
TOTAL >	2,541

✓

AMOUNT OF WATER RECLASSIFIED AS KDWD.

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

01/06/2012

02/06/2012

INVOICE NO. 24922

Rosedale-Rio Bravo WSD
PO Box 20820
Bakersfield, CA 93390-0820

0053-1330(PWR)
561B-4402

Cross Valley Canal
October 2011

Estimated power costs for deliveries of Rosedale Rio-Bravo WSD SWP Table A supplies to Rosedale Turnout No. 1 and 2 as well as refill deliveries per the Refill/Dewatering Policy Guidelines; adjusted for lined losses.

Canal Reach	Pumping Plant	RRBWSD SWP Volume AF	Rate \$/AF	Pumping Costs \$
1	1	2,919	3.25	9,486.75
1	2	2,918	3.25	9,483.50
2	3	81	3.25	263.25
2	4	52	3.25	169.00
2	5	52	5.00	260.00
3	6	0	5.00	0.00
Extension	7	0	5.00	0.00

TOTAL AMOUNT DUE**\$19,662.50**

Requested By

Prepared By

Approved By

Approved By

☒ ORIGINAL ☐ REMITTANCE ☐ FILE ☐ ACCOUNTING ☐ NUMERICAL CONTROL



Rosedale-Rio Bravo Water
Storage District

PO Box 20820
Bakersfield, CA 93390-0820

Phone # 661-589-6045

Fax # 661-589-1867

Invoice

Date	Invoice #
4/13/2012	1015

Bill To

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307-6247

Terms

Net 30

Description

Amount

Cross Valley Canal Power Costs - November 2011

27,101.25

DWR
40540
4/20/12

Please remit to above address.

Total

\$27,101.25

**ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT
CROSS VALLEY CANAL PUMPING COSTS
KERN DELTA WATER DISTRICT - NOVEMBER 2011**

Deliveries and Pumping Plant Usage			
Description	Volume (AF)	Rate (\$/AF)	Pumping Cost (\$)
Pumping Plant No. 1	5,326	2.25	11,983.50
Pumping Plant No. 2	5,324	2.25	11,979.00
Pumping Plant No. 3	0	2.25	0.00
Pumping Plant No. 4	0	2.25	0.00
Pumping Plant No. 5	0	2.25	0.00
SUB-TOTAL >			23,962.50

Delivery Accounting	
Turnout	AF
Rosedale No. 1 (West)	1,845
Strand Ranch	3,481
Rosedale No. 2 (East)	0
CVC Losses	0
TOTAL >	5,326

✓

Pumping Plant Usage ¹			
Description	Volume (AF)	Rate (\$/AF)	Pumping Cost (\$)
Pumping Plant No. 1	0	2.25	0.00
Pumping Plant No. 2	0	2.25	0.00
Pumping Plant No. 3	1,230	2.25	2,767.50
Pumping Plant No. 4	165	2.25	371.25
Pumping Plant No. 5	0	2.25	0.00
SUB-TOTAL >			3,138.75

TOTAL > 27,101.25

¹ CVC Power cost to move RRB water to Pioneer. KDWD agreed to move this water to Pioneer to free capacity in RRB spreading areas.

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

01/18/2012

02/17/2012

INVOICE NO. 25017

Rosedale-Rio Bravo WSD
PO Box 20820
Bakersfield, CA 93390-0820

0053-1330(PWR)
561B-4402

Cross Valley Canal
November 2011

Estimated power costs for deliveries of Rosedale Rio-Bravo WSD SWP Table A supplies to the Pioneer Project utilizing the Section 4 Turnout and River Turnout No. 1. Deliveries of Kern Delta WD at Rosedale Turnout No. 1 and 2 and the North and South Turnouts were made with Kern Delta WD MWD supplies; adjusted for lined losses.

Canal Reach	Pumping Plant	RRBWSD SWP Volume AF	KDWD SWP Volume AF	Rate \$/AF	Pumping Costs \$
1	1	1,318	5,326	2.25	14,949.00
1	2	1,318	5,324	2.25	14,944.50
2	3	1,318	0	2.25	2,965.50
2	4	252	0	2.25	567.00
2	5	0	0	2.25	0.00
3	6	0	0	2.25	0.00
Extension	7	0	0	2.25	0.00

TOTAL AMOUNT DUE**\$33,426.00**

Requested By

Prepared By

Approved By

Approved By

☒ ORIGINAL ☐ REMITTANCE ☐ FILE ☐ ACCOUNTING ☐ NUMERICAL CONTROL



**Rosedale-Rio Bravo Water
Storage District**

PO Box 20820
Bakersfield, CA 93390-0820

Invoice

Date	Invoice #
4/13/2012	1017

Phone # 661-589-6045
Fax # 661-589-1867

Bill To:

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307-6247

Terms

Net 30

Description	Amount
Cross Valley Canal Pumping Costs - December 2011	50,436.00

Dur
40540
4/20/12

Please remit to above address.

Total \$50,436.00

ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT
CROSS VALLEY CANAL PUMPING COSTS
KERN DELTA WATER DISTRICT - DECEMBER 2011

Deliveries and Pumping Plant Usage			
Description	Volume (AF)	Rate (\$/AF)	Pumping Cost (\$)
Pumping Plant No. 1	5,873	2.25	13,214.25
Pumping Plant No. 2	5,872	2.25	13,212.00
Pumping Plant No. 3	4,056	2.25	9,126.00
Pumping Plant No. 4	354	2.25	796.50
Pumping Plant No. 5	353	2.25	794.25
SUB-TOTAL >			37,143.00

Delivery Accounting	
Turnout	AF
Rosedale No. 1 (West)	2,761
Strand Ranch	2,759
Rosedale No. 2 (East)	353
CVC Losses	0
TOTAL >	5,873

Pumping Plant Usage ¹			
Description	Volume (AF)	Rate (\$/AF)	Pumping Cost (\$)
Pumping Plant No. 1	1,510	2.25	3,397.50
Pumping Plant No. 2	1,509	2.25	3,395.25
Pumping Plant No. 3	1,508	2.25	3,393.00
Pumping Plant No. 4	1,089	2.25	2,450.25
Pumping Plant No. 5	292	2.25	657.00
SUB-TOTAL >			13,293.00

TOTAL > 50,436.00

¹ CVC Power cost to move RRB water to Pioneer. KDWD agreed to move this water to Pioneer to free capacity in RRB spreading areas.

KERN COUNTY WATER AGENCY

P.O. BOX 58

BAKERSFIELD, CA 93302-0058

PHONE: 661/634-1400 FAX: 661/634-1428



INVOICE DATE

DUE DATE

02/13/2012

03/14/2012

INVOICE NO. 25082

Rosedale-Rio Bravo WSD
 PO Box 20820
 Bakersfield, CA 93390-0820

0053-1330(PWR)
 561B-4402

**Cross Valley Canal
 December 2011**

Estimated power costs for deliveries of Rosedale Rio-Bravo WSD SWP Table A supplies to the Pioneer Project utilizing the Section 4 Turnout and River Turnout No. 1. Deliveries of Kern Delta WD at Rosedale Turnout No. 1 and 2 and the North and South Turnouts were made with Kern Delta WD MWD and SBVMWD supplies; adjusted for lined losses.

Canal Reach	Pumping Plant	RRBWSD SWP Volume AF	KDWD MWD SWP Volume AF	KDWD SBVMWD SWP Volume AF	Rate \$/AF	Pumping Costs \$
1	1	1,510	3,940	1,933	2.25	16,611.75
1	2	1,509	3,939	1,933	2.25	16,607.25
2	3	1,508	3,937	119	2.25	12,519.00
2	4	1,089	236	118	2.25	3,246.75
2	5	292	236	117	2.25	1,451.25
3	6	0	0	0	2.25	0.00
Extension	7	0	0	0	2.25	0.00

TOTAL AMOUNT DUE**\$50,436.00**

Requested By

Prepared By

Approved By

Approved By

☐ ORIGINAL
 ☒ REMITTANCE
 ☐ FILE
 ☐ ACCOUNTING
 ☐ NUMERICAL CONTROL

Rosedale-Rio Bravo Water Storage
District
PO Box 20820
Bakersfield, CA 93390-0820

Date

Invoice #

12/5/2011

1009

Phone # 661-589-6045

Fax # 661-589-1867

Bill To

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307-6247

RECEIVED
DEC - 6 2011

Terms

Net 30

Description

Amount

CVC Pumping Costs
August 2011
see attached statement

4,959.50

DWR

40540

Please remit to above address.

Total

\$4,959.50

VENDOR	Rosales
INVOICE #	1009
P.O. #	DWR
DATE	12-5-11
AMOUNT	4959.50
ACCT. CODE	40540

WATER B.P.

ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT
CROSS VALLEY CANAL PUMPING COSTS
KERN DELTA WATER DISTRICT - AUGUST 2011

Deliveries and Pumping Plant Usage			
Description	Volume (AF)	Rate (\$/AF)	Pumping Cost (\$)
Pumping Plant No. 1	763	3.25	2,479.75
Pumping Plant No. 2	763	3.25	2,479.75
Pumping Plant No. 3	0	3.25	0.00
Pumping Plant No. 4	0	3.25	0.00
Pumping Plant No. 5	0	3.25	0.00
TOTAL >			4,959.50

Delivery Accounting	
Turnout	AF
Rosedale No. 1 (West)	763
Strand Ranch	0
Rosedale No. 2 (East)	0
CVC Losses	0
TOTAL >	763

RECEIVED
DEC 19 2011

Invoice

Buena Vista Water Storage District
P.O. Box 756
Buttonwillow, CA 93206

Telephone: 661-324-1101

Invoice No.	2669
Customer No.	0780

Bill To

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307
USA

Ship To

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307
USA

Invoice Date	Order Date	SO Number	Ordered By	Customer PO Number	Payment Method												
12/16/2011	12/1/2011				Net 30 Days												
Warehouse	Ship Via	F.O.B.	Salesperson	Resale Number													
MAIN																	
Order Quantity	Ship Quantity	Tax	Item Number / Description	Unit Price	Extended Price												
25,000.00	25,000.00	N	KDEX Kern Delta Exchange 2011 EXCHANGE FEES PURSUANT TO MEMO OF UNDERSTANDING - THIS EXCHANGE IS IN ADDITION TO THE ANNUAL LONG-TERM WATER EXCHANGE AGREEMENT NO. 2 <i>Exchange in place of cuc cost.</i>	15.50	387,500.00												
<div><div><div>DUR 3110 30110</div><div><table><tr><td>VENDOR</td><td>Bo 300</td></tr><tr><td>INVOICE #</td><td>2669</td></tr><tr><td>P.O. #</td><td>DWR</td></tr><tr><td>DATE</td><td>12-16-11</td></tr><tr><td>AMOUNT</td><td>387,500.00</td></tr><tr><td>CT. CODE</td><td></td></tr></table></div><div>85 1/9/12</div></div><div>ok Lm MET</div></div>						VENDOR	Bo 300	INVOICE #	2669	P.O. #	DWR	DATE	12-16-11	AMOUNT	387,500.00	CT. CODE	
VENDOR	Bo 300																
INVOICE #	2669																
P.O. #	DWR																
DATE	12-16-11																
AMOUNT	387,500.00																
CT. CODE																	

Print Date	12/16/11
Print Time	10:29:05 AM
Page No.	1

Total Paid	0.00
Balance Due	387,500.00
Due Date	01/15/12

Subtotal	387,500.00
Freight	0.00
Invoice Total	387,500.00

Printed By: Marinelle

59
1/4/12

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

SPACE ABOVE THIS LINE FOR RECORDER'S
USE

EXEMPT GOVERNMENT AGENCY Per Government Code Sec. 6103

By _____
District Secretary, San Bernardino Valley Water Conservation District

AGREEMENT TO DEVELOP AND OPERATE ENHANCED RECHARGE FACILITIES

This Agreement to Develop and Operate Enhanced Recharge Facilities ("**Agreement**") is entered into and effective this 1st day of October, 2012 by and among the San Bernardino Valley Water Conservation District (the "**Conservation District**"), the San Bernardino Valley Municipal Water District ("**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**."

Recitals

A. General Purposes.

(1) The Parties each hold water rights to the waters of the Santa Ana River and each own and operate facilities that serve to divert and/or store the waters of the Santa Ana River. Furthermore, each Party possesses critical assets and unique skills that the other Parties do not possess.

(2) The Parties wish to collaboratively use all of their respective assets and skills, including but not limited to water rights and facilities necessary or useful for the diversion and storage of water, to improve the reliability of local water supplies for their respective constituents by establishing a collaborative partnership to coordinate the use of their separate resources for mutual advantage.

(3) The Parties specifically wish to collaborate by increasing opportunities to recharge local surface water supplies, as well as State Project Water, in the San Bernardino Basin Area (the "SBBA"); by reducing the time and cost required to permit and construct essential public infrastructure (such as spreading basins); and by working together to achieve an efficient division of labor in the operation and maintenance of water infrastructure.

(4.) The Parties acknowledge that their water resource management activities in the Santa Ana River wash area proceed in concert with other uses of the lands in that area, including the mining of sand and gravel mineral deposits pursuant to existing leases, and habitat conservation and management, pursuant to a series of multi-agency cooperative initiatives involving local, state, and federal resource management and control agencies. The Parties' goal is to harmonize their water resource activities with these other uses, for the optimization of coordinated use by all.

(5) The Parties wish to memorialize their joint understandings by means of this Agreement.

B. Findings.

(1) The Parties agree that they must increase groundwater storage in the SBBA in order to meet current and future demands for water among their constituents.

(2) In the past, reasonable disagreements among the Parties have added unintentional and undesirable costs and complexity to the planning and permitting of important water resources projects in the region.

(3) The Parties believe that it is in their best interests, and the best interest of the public they serve, to cooperate in increasing the available water supply by establishing a new and more productive working relationship.

(4) In certain years, wet weather conditions and increased availability of State Project Water can create a limited opportunity to improve the reliability of local water supplies by increasing recharge and storage to groundwater. These favorable conditions are temporary and perishable. Therefore, time is of the essence. New inter-agency operating agreements should be established immediately in order to make the most of this and future opportunities because they occur on an irregular and unpredictable basis.

(5) Because of the limited and sporadic opportunities to augment local water supplies, the Parties intend for this Agreement to continue for a long period, thereby allowing the utilization of such limited water supplies.

Agreements

1. *Term.* The term of this Agreement shall commence on the Effective Date first written above and shall continue for a term of twenty five (25) years ("Initial Term") , unless terminated earlier as provided in this Agreement. This Agreement may be extended by written agreement among all parties for up to five additional, consecutive five year terms ("Extension Terms"), on the same terms and conditions stated herein, provided that prior to the expiration of the term then in effect, all parties agree in writing to the applicable extension, by action of their legislative bodies, to extend the Agreement for another term.

2. *Duties of the Conservation District.*

a. *Lease of Facilities for the Purpose of Groundwater Recharge to Valley District and Western.* The Conservation District hereby leases to Valley District and Western, for the term of this Agreement and on the terms specified herein, the surface of the lands shown on Exhibit 1 during the term of this Agreement ("**Leased Property**"). Exhibit 1A provides the legal description for the lands owned in fee by the Conservation District and Exhibit 1B provides the legal description of lands made available under existing easements under ownership by the Bureau of Land Management. Exhibit 1 is attached hereto and incorporated herein by reference. Valley District and Western shall have the right to enter upon and use the Leased Property, and any reasonably necessary subsurface areas incident thereto. Such entry and use shall be only for the purpose of recharging, storing or conveying water from any source (collectively "**recharging of water**" herein) into or through the percolation basins and other facilities owned or controlled by the Conservation District, whether existing as of the effective date of this Agreement, or as may be constructed pursuant to the terms of this Agreement, as such existing and contemplated future facilities are depicted in Exhibit 2, which is attached hereto and incorporated herein by reference). The Conservation District reserves all rights in and to the Leased Property not expressly conveyed as a part of this lease. Specific terms of this lease are as follows:

(1) Valley District and Western may construct, operate, maintain, repair, reconstruct and rehabilitate diversion facilities, recharge basins, pumps and other ancillary facilities or equipment located within the Leased Property as Valley District and Western may reasonably deem necessary for the recharging of water on the Leased Property,

111 recognizing that the Parties intend that the Conservation District shall
112 be responsible for the operation and maintenance of such facilities.

113 (2) Included within this lease are all rights of reasonable ingress and egress
114 as may be useful or necessary, in Valley District and/or Western's sole
115 discretion, for the purpose of the recharging of water on the Leased
116 Property, provided that such activities shall not interfere with: (i) any
117 conservation easements that may now exist, or may be established
118 consistent with the Conservation District's Upper Santa Ana River
119 Wash Land Management and Habitat Conservation Plan, on said lands,
120 or (ii) other easements existing as of the effective date of this
121 Agreement.

122 (3) The designs for any such facilities or other tenant improvements must
123 be approved, in advance by the Conservation District, which approval
124 shall not be unreasonably withheld or delayed, and are subject to any
125 limitations on the Conservation's District's holding of the Leased
126 Property. The Conservation District shall cooperate reasonably with
127 Valley District and Western to obtain local, state, or federal permits that
128 may be required to construct or operate such facilities approved by the
129 Conservation District.

130 (4) The Conservation District will utilize its best efforts under all existing
131 and future lease agreements and easements with other individuals,
132 organizations or entities operating on the Leased Property to harmonize
133 the objective of Valley District and Western making full use of the
134 facilities on the Leased Property for the recharge of water, consistent
135 with the hydrological design limitations of these facilities, with any
136 competing uses of the properties on which such facilities are or may be
137 located.

138 (5) The Parties recognize that the Conservation District has negotiated lease
139 agreements with mining companies that allow the Conservation District
140 to engage in recharge of water that may periodically interfere with or
141 prevent mining, without liability on the part of the Conservation
142 District, which agreements are attached hereto as Exhibits 3 and 4. The
143 Conservation District represents and warrants that these are the only
144 current agreements that authorize mining on the Leased Property, and
145 represents and warrants that the copies of these agreements attached as
146 Exhibits 3 and 4 are true and correct copies of those agreements. Based
147 on those representations, the Parties believe that they can
148 collaboratively manage the recharge of water to avoid liability arising
149 from any incompatibility between the recharging of water and any

activities otherwise authorized under the mining leases. Toward this end, the Parties agree as follows:

- (a) During the winter season (from October 1 to March 31), the Parties will consult with each other on a regular basis to determine the quantity of water that may be recharged without interfering with mining operations.
- (b) In the event that the recharging of water threatens to substantially limit or interfere with mining operations, the Parties shall immediately confer to determine how to maximize the recharge without unduly interfering with mining activity. Towards this end, the parties acknowledge that the Conservation District has the right, from time to time and as it deems necessary in the exercise of its reasonable discretion, to utilize all or any portion of the areas subject to the mining leases for its water recharge, conservation, spreading, and other operations, provided such activities are undertaken utilizing best efforts to avoid storing water so as to require temporary use of the mining lease areas. In connection with the exercise of their activities on the Leased Property hereunder, Valley District and Western shall assist the Conservation District to make every effort to minimize the time of any interruption of the mining lessees' activities on the Leased Property, to permit sufficient time for the Conservation District to observe all requirements for notice to mining lessees required under the applicable leases in the event of conflicts, and to harmonize their recharge of water with the then-current and anticipated immediate future excavation and other activities of the mining lessees, with the overall goal that the mining activity and the water conservation activity can harmoniously exist, without interruption to either.
- (c) Any decisions about the proper scope, location, or amount of recharging of water after such consultation with appropriate agencies shall be made solely by the Conservation District in the exercise of its reasonable discretion, consistent with paragraph 4(d) (2) below, and consistent with the principle of ensuring that the optimum quantity of water possible is replenished within the San Bernardino Basin Area.

In the event the Conservation District determines, in the exercise of its reasonable discretion, that portions of the Leased Property cannot be made available to Valley District and Western, and such determination is made at a time when water supplies are otherwise

190 immediately available to Valley District and Western for recharge
191 into facilities on the leased land; Conservation District will not
192 object, directly or indirectly, to efforts by Valley District and/or
193 Western to deliver water supplies that cannot be spread on the
194 Leased Property to other locations, *provided that* in determining
195 where to deliver such water supplies, Valley District and Western
196 act consistent with the priority of first delivering water for direct
197 delivery or spreading within the SBBA, then delivering water for
198 direct delivery or spreading within the boundaries of Valley
199 District, then delivering water for direct delivery, spreading or
200 storage within Western, and then delivering water for direct
201 delivery, spreading or storage outside of Western.

202 In such event, the parties shall meet and confer in good faith, under
203 the auspices of the Joint Operations Committee provided for in
204 paragraph 4(b) below, regarding whether some proportional refund
205 to Valley District, Western, or both of a portion the gross lease fee
206 paid for the given year in which the Leased Premises were
207 unavailable for the recharge of water may be appropriate, and if so,
208 in what amount.

- 209 b. *Operation and Maintenance of Spreading Basins.* The Conservation District shall
210 operate and maintain all new and existing facilities, located on the areas depicted
211 in Exhibit 2 hereto, in good working condition, to ensure that the recharge of
212 water continues efficiently, in accordance with a mutually-agreed schedule of
213 regular maintenance and any supplemental agreements governing special or
214 emergency maintenance responsibilities. The Conservation District shall set aside
215 a portion of the gross lease fee provided for in Paragraph 3(a) below received
216 from Valley and Western, in accordance with the Conservation District's Reserve
217 Policy, to ensure sufficient funds are available to meet the agreed maintenance
218 obligations.
- 219 c. *Ownership of New Facilities* Upon expiration or other proper termination of this
220 Agreement, however, improvements made on land owned or controlled by the
221 Conservation District shall become Conservation District property, to be used by
222 the Conservation District for water management and the recharge of water.
- 223 d. *Groundwater Charge.* All parties producing water in the Conservation District's
224 jurisdictional boundaries shall be subject to all then-applicable groundwater
225 charges, and this Agreement shall not exempt nor excuse any party, including
226 Valley District and Western, from the levy or payment thereof. Notwithstanding,
227 the parties recognize that they do not intend that groundwater charges would be
228 required to be paid on production of water pursuant to measures taken for the
229 emergency alleviation of high groundwater conditions, or the implementation of

other basin management objectives as may be approved by the Basin Technical Advisory Commission ("BTAC") or other similar organization including all of the parties hereto that may perform a substantially similar role under any Conjunctive Use Plan that may be implemented for the SBBA. The Conservation District agrees to consider implementing reasonable measures to reduce or eliminate groundwater charges for groundwater production devoted to such agreed purposes, whether by exemption, or refund of charges otherwise paid, as may be consistent with applicable law.

3. *Duties of Valley District and Western.*

a. *Gross Lease Fee.* Valley District and Western shall together pay to the Conservation District a gross lease fee of \$350,000/year for the right to the recharge of water through the existing percolation basins and other facilities owned by the Conservation District, and the right to construct and have operated additional recharge and conveyance facilities on the Leased Property. The parties acknowledge and affirm that the gross lease fee is a lease payment for access to and use of the Leased Property, only, and for partial offset to the costs of operation and maintenance of facilities thereon same by the Conservation District. The gross lease fee does not include, and is not intended to replace or offset, any charges for the acquisition, conveyance, storage, or production of water, that may otherwise apply by or among the parties, or third parties, whether now or in the future.

b. Valley District and Western, or either of them, shall pay the gross lease fee, in advance, by October 1st of each year, which sum may be apportioned by the Conservation District to its Groundwater Enterprise and other funds.

(1) Valley District and Western shall annually adjust the gross lease fee to account for inflation using the U.S. Bureau of Labor Statistics Consumer Price Index (CPI-U) for the Los Angeles District. The base year for such payments will be 2012.

(2) In the event that Valley District and/or Western construct new percolation basins or other facilities useful or necessary for the recharge of water, the Parties shall adjust the gross lease fee proportionally to reflect the additional operation and maintenance costs that will be incurred by the Conservation District in operating and maintaining those new facilities, as may be agreeable to the Parties.

c. *Permitting for New or Augmented Spreading Basins.* Valley District and Western shall be responsible for obtaining all federal, state and local permits (including conducting environmental review under the California Environmental Quality Act or the National Environmental Policy Act) that may be required to construct

additional facilities for the recharge of water supplied by Valley and Western. If, after 10 years, Valley and Western have been unable to obtain the necessary permits, either or both may terminate this lease agreement subject to the provisions of paragraph 9.c. below. Valley District and Western shall bear all costs associated with protecting, repairing or replacing the material infrastructure improvements (including pipelines, gates, valves, weirs, fencing, gauges, etc.) installed by Valley District and Western on lands owed by the Conservation District.

d. *Resource Management.*

- (1) Valley District and Western shall coordinate their operations to harmonize with mineral resource extractions, to avoid any potential liability under mineral leases, or other uses authorized by the Conservation District on the Leased Property.
- (2) Valley District and Western shall negotiate supplemental payments to the Conservation District where unusual and unforeseen circumstances necessitate extraordinary maintenance expenses that are in excess of the budget prepared and approved by the Joint Operations Committee.
- (3) Valley District and Western shall cooperate with the Conservation District in developing a long-term resource management plan to govern multiple-use activities in Reach 5 of the Santa Ana River wash (i.e., the Upper Santa Ana River Wash Land Management and Habitat Conservation Plan).

4. *Duties of All Parties*

- a. *No Rights to Other Party(ies)' Water or Facilities.* Except as provided for in paragraph 2(c) above, the Conservation District will not assert any claim to own or control the new facilities constructed, or the additional water recharged by, Valley District and Western under the terms of this Agreement, provided that these activities occur in conformance with this Agreement. Valley District and Western will not assert any claim to own or control any water that is percolated in the new or existing recharge basins that is not supplied by Valley District or Western, nor make any attempt to acquire or control land or facilities owned by the Conservation District.. Valley District and Western acknowledge and represent to Conservation District that this Agreement provides for and constitutes "compatible use" of the Conservation District's property and facilities, as that term is utilized in California Code of Civil Procedure sections 1240.510 et seq., thereby eliminating any need for any exercise of eminent domain by any party to acquire any additional interest in the Leased Property from any other party.

b. *Establishment of Joint Operations Committee.* The Parties shall establish and participate in a Joint Operations Committee (the "JOC") to serve in an advisory capacity to the Conservation District, which shall assist the Conservation District to develop a schedule and budget for planned operation and maintenance activities relating to the recharge of water on the Leased Property, and perform other functions as otherwise specified herein, under such rules and procedures as it shall formulate and unanimously approve. The JOC shall meet at least twice a year to plan water recharge, review financial and water accounting matters implicated hereunder, and review performance.

c. *Joint Reporting.* The Parties shall jointly provide planning documents, monitoring reports, and other records that may be requested by authorized agencies to demonstrate compliance with federal, state or local laws and regulations. Specifically, the Parties shall continue to cooperate in the preparation and submission of annual reports to the California State Water Resources Control Board, which reports will follow the format used by the Parties in reporting the use of water for calendar year 2010. A copy of the report filed with the California State Water Resources Control Board is attached hereto as Exhibit 5 and incorporated herein by reference.

d. *Water Resources Management.*

(1) The Parties will continue to coordinate all recharge of water with one another to protect and enhance the safe yield in the SBBA. Specifically, the Parties will: (i) jointly develop the Regional Conjunctive Use Plan (or its equivalent) through the Basin Technical Advisory Committee, (ii) seek additional opportunities to increase safe yield in the SBBA by engaging in cooperative joint development of new water supply projects or conservation programs in the region, and (iii) cooperate with one another to document the water resource management benefits accrued by establishing and implementing this Agreement.

(2) The parties agree to dedicate and use the water made available pursuant to their respective water rights in and to the Santa Ana River to give priority to preserving the safe yield of the SBBA, as part of the reasonable and prudent management of their entire portfolio of water resources. All parties shall refrain from contesting any water rights claimed or held by one another at any time during the term of this Agreement, so long as such water rights are exercised in the manner consistent with this Agreement.

(3) The Parties will not export native water from the SBBA, or recharge water on behalf of agencies located outside the SBBA, except as

provided for by the 1969 *Western* Judgment and/or by the Regional
Conjunctive Use Plan (or its equivalent).

5. *Amendments.* The Parties will negotiate amendments, including but not limited to areal
expansion of the scope of activities, to this Agreement in good faith and not unreasonably
withhold consent.

6. *Liberal Construction.* The Parties shall construe all terms and conditions in this
Agreement in a manner which most favors increasing available water supplies by
encouraging greater recharge of water in the area.

7. *Indemnification*

a. *Generally.* Each Party shall indemnify, defend and hold harmless the other
Parties, their directors, officers, employees and agents from and against all
damages, liabilities, claims, actions, demands, costs and expenses (including, but
not limited to, costs of investigations, lawsuits and any other proceedings whether
in law or in equity, settlement costs, attorneys' fees and costs), and penalties or
violations of any kind, which arise out of, result from, or are related to a Party's
performance of its obligations under this Agreement. In extending such
indemnification, however, no party hereto waives any sovereign or governmental
immunities, privileges, or rights that they may have or enjoy under any applicable
law, including but not limited to California Government Code sections 810 et
seq., and except as otherwise specifically provided for hereunder, and each party
reserves all such immunities, privileges and rights, and any claims or other
procedures applicable to same, that may presently exist or hereafter be created, to
themselves, as against each of the other parties, and as against any third party.

b. *Indemnification Procedures.* Any Party that is an indemnified party (the
"**Indemnified Party**") that has a claim for indemnification against the other Party
(the "**Indemnifying Party**") under this Agreement, shall promptly notify the
Indemnifying Party in writing, specifying the nature of the claim, the grounds
upon which the Indemnified Party believes the Indemnifying Party is liable in
whole or in part for the liability or other obligation asserted under the claim, and
including any appropriate demand for defense or indemnification, or both. No
delay on the part of the Indemnified Party in notifying the Indemnifying Party
shall relieve the Indemnifying Party from any obligation unless (and then solely to
the extent) the Indemnifying Party is prejudiced. Further, the Indemnified Party
shall promptly notify the Indemnifying Party of the existence of any claim,
demand, or other matter to which the indemnification obligations apply, and shall
give the Indemnifying Party a reasonable opportunity to defend the same at its
own expense and with counsel of its own selection, *provided* that the Indemnified
Party shall at all times also have the right to fully participate in the disputed
matter at its own expense. If the Indemnifying Party refuses to provide the

indemnity, or within a reasonable time after written notice from the Indemnified Party, fails to defend a claim, demand or other matter to which the indemnification obligations apply, the Indemnified Party shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle (exercising reasonable business judgment), the claim or other matter, on behalf, or for the account, and at the risk, of the Indemnifying Party. If the claim is one that cannot by its nature be defended solely by the Indemnifying Party, then the Indemnified Party shall make available all information and assistance to the Indemnifying Party that the Indemnifying Party may reasonably request. In the event of any dispute between the Indemnified party and the Indemnifying Party as to whether the claim is one to which the indemnification obligations apply, the matter shall be resolved in the manner of resolution of disputes, as provided in paragraph 9 hereunder. Except as specifically provided otherwise in Paragraph 9(b) (4) below with respect to tolling of limitations periods, the notice provided for hereunder shall be in addition to, and not in place of, any other notice that may be provided for or otherwise required under law.

8. *Force Majeure.* In addition to any other specific provisions of this Agreement, a Party hereto shall not be deemed to be in default under this Agreement where failure or delay in performance of any of such Party's obligations under this Agreement is caused by floods, earthquakes, winds, other Acts of God, power outages, equipment failure, acts of vandalism, fires or other casualties, wars, riots or similar hostilities, strikes and other labor difficulties beyond the Party's control, (including the Party's employment force), enactment of new or conflicting, laws or regulations, including any new listing of endangered species or designation of critical habitat for endangered species, court actions (such as restraining orders or injunctions), judicial actions such as issuance of restraining orders and injunctions, or other causes beyond such Party's control. If any one or more of such events occur, the term of this Agreement and the time for performance by any Party of any of its obligations hereunder shall be extended by the period of time that such one or more events prevented or delayed such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years. In the event that said period of time must be extended by more than five years, this Agreement shall automatically terminate.

9. *Administration of Agreement*

- a. *Books and Records.* Each Party shall have access to and the right to examine any of the other Party's pertinent books, documents, papers or other records (including, without limitation, records contained on electronic media) relating to the performance of that Party's obligations pursuant to this Agreement. Each Party shall retain all such books, documents, papers or other records to facilitate such review in accordance with that Party's record retention policy. Access to each Party's books and records shall be during normal business hours only.

Nothing in this paragraph shall be construed to operate as a waiver of any applicable privileges.

- b. *Disputes.* The Parties recognize that there may be disputes regarding the obligations of the Parties or the interpretation of this Agreement. The Parties agree that they may attempt to resolve disputes as follows:

(1) *Statement Describing Alleged Violation of Agreement.* A Party or Parties alleging a violation of this Agreement (the "**Initiating Party(ies)**") shall provide a written statement describing all facts that it believes constitute a violation of this Agreement to the Party(ies) alleged to have violated the terms of this Agreement (the "**Responding Party(ies)**").

(2) *Response to Statement of Alleged Violation.* The Responding Party(ies) shall have sixty days from the date of the written statement to prepare a written response to the allegation of a violation of this Agreement and serve that response on the Initiating Party(ies) or to cure the alleged violation to the reasonable satisfaction of the Initiating Party(ies). The Initiating Party(ies) and the Responding Party(ies) shall then meet within thirty days of the date of the response to attempt to resolve the dispute amicably.

(3) *Mediation of Dispute.* If the Initiating Party(ies) and the Responding Party(ies) cannot resolve the dispute within ninety days of the date of the written response, they shall engage a mediator, experienced in water-related disputes, to attempt to resolve the dispute. Each Party shall ensure that it is represented at the mediation by a Director or Councilperson. These representatives of the Initiating Party(ies) and the Responding Party(ies) may consult with staff and/or technical consultants during the mediation and such staff and/or technical consultants may be present during the mediation. The costs of the mediator shall be divided evenly between the Initiating Party(ies) and the Responding Party(ies).

(4) *Prior to Claims Under California Tort Claims Act.* The Parties agree that the procedure described in this paragraph represents an effort to resolve disputes without the need for a formal claim under the California Tort Claims Act or other applicable law. The period of time for the presentation of a claim by one Party against another shall be tolled for the period from the date on which the Initiating Party(ies) file a written statement until the date upon which the mediator renders a decision.

- 461 (5) *Reservation of Rights.* Nothing in this paragraph shall require a Party to
462 comply with a decision of the mediator and, after the completion of the
463 mediation process described above, each Party shall retain and may
464 exercise at any time all legal and equitable rights and remedies it may
465 have to enforce the terms of this Agreement; provided, that prior to
466 commencing litigation, a Party shall provide at least five calendar days'
467 written notice of its intent to sue to all Parties.

468 c. *Termination of Agreement*

- 469 (1) *Failure to Obtain Permits.* The Parties recognize and acknowledge that
470 the implementation of this Agreement may require one or more Parties
471 to obtain permits or other regulatory approvals from one or more local,
472 state or federal regulatory agencies, including but not limited to the
473 Regional Water Quality Control Board, the California Department of
474 Fish & Game and the U.S. Fish & Wildlife Service or the U.S. Army
475 Corps of Engineers. Because of the significant regulatory uncertainties
476 associated with obtaining these permits or regulatory approvals, the
477 Parties agree that, if Valley District and Western have not received all
478 regulatory permits or approvals required or useful for groundwater
479 replenishment on the Leased Property within ten years from the
480 effective date of this Agreement, Valley District and/or Western may
481 terminate this Agreement at any time by providing the Conservation
482 District with one-year's written notice of such termination. In the event
483 that Valley District or Western, but not both wish to terminate this
484 Agreement, the Party wishing to terminate this Agreement shall be
485 allowed to terminate the Agreement as to itself and the remaining two
486 Parties may continue the Agreement on such terms as they deem to be
487 equitable.

- 488 (2) *Material Breach.* If one Party deems that another Party has materially
489 breached one of the provisions of this Agreement, the Parties shall use
490 the dispute resolution procedures set forth in paragraph 9. b. above in
491 an effort to resolve the dispute amicably. If, the dispute resolution
492 process described in paragraph 9. b. above is not successful in
493 resolving the dispute, any Party may terminate this Agreement for
494 material breach thereof, and may seek any remedy that it would
495 otherwise be entitled to in a court of law.

- 496 d. *Recordation of Agreement.* All Parties agree that this Agreement constitutes a
497 lease of certain lands by the Conservation District to Valley District and Western
498 for the purpose of constructing, operating, maintaining, repairing and
499 rehabilitating percolation basins and ancillary facilities on the Leased Property,
500 and consequently, all Parties agree that this Agreement should be recorded in the

Official Records of the County of San Bernardino. Valley District shall, within ten days of the effective date of this Agreement, cause this agreement to be recorded in the Official Records of the County of San Bernardino and shall promptly provide the Conservation District and Western with recorded copies of this Agreement upon receipt of such copies from the County of San Bernardino.

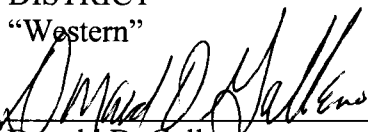
10. *General Provisions.*

- a. *Authority.* Each signatory of this Agreement represents that s/he is authorized to execute this Agreement on behalf of the Party for which s/he signs. Each Party represents that it has legal authority to enter into this Agreement and to perform all obligations under this Agreement.
- b. *Amendment.* This Agreement may be amended or modified only by a written instrument executed by each of the Parties to this Agreement.
- c. *Jurisdiction and Venue.* This Agreement shall be governed by and construed in accordance with the laws of the State of California, except for its conflicts of law rules. Any suit, action, or proceeding brought under the scope of this Agreement shall be brought and maintained to the extent allowed by law in the County of San Bernardino, California.
- d. *Headings.* The paragraph headings used in this Agreement are intended for convenience only and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the Parties to this Agreement.
- e. *Construction and Interpretation.* This Agreement has been arrived at through negotiations and each Party has had a full and fair opportunity to revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in the construction or interpretation of this Agreement.
- f. *Entire Agreement.* This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and, save as expressly provided in this Agreement, supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this Agreement.
- g. *Partial Invalidity.* If, after the date of execution of this Agreement, any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable. However, in lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

- h. *Successors and Assigns.* This Agreement shall be binding on and inure to the benefit of the successors and assigns of the respective Parties to this Agreement. No Party may assign its interests in or obligations under this Agreement without the written consent of the other Parties, which consent shall not be unreasonably withheld or delayed.
- i. *Waivers.* Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement and forbearance to enforce one or more of the rights or remedies provided in this Agreement shall not be deemed to be a waiver of that right or remedy.
- j. *Attorneys' Fees and Costs.* The prevailing Party in any litigation or other action to enforce or interpret this Agreement shall be entitled to reasonable attorneys' fees, expert witnesses' fees, costs of suit, and other and necessary disbursements in addition to any other relief deemed appropriate by a court of competent jurisdiction.
- k. *Necessary Actions.* Each Party agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out the purposes of this Agreement.
- l. *Compliance with Law.* In performing their respective obligations under this Agreement, the Parties shall comply with and conform to all applicable laws, rules, regulations and ordinances.
- m. *Third Party Beneficiaries.* This Agreement shall not create any right or interest in any non-Party or in any member of the public as a third party beneficiary.
- n. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
- o. *Notices.* All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing unless provided otherwise in this Agreement and shall be deemed to have been duly given and received on: (i) the date of service if served personally or served by facsimile transmission on the Party to whom notice is to be given at the address(es) provided below, (ii) on the first day after mailing, if mailed by Federal Express, U.S. Express Mail, or other similar overnight courier service, postage prepaid, and addressed as provided below, or (iii) on the third day after mailing if mailed to the Party to whom notice is to be given by first class mail, registered or certified, postage prepaid

- 572 **Table of Exhibits**
- 573 Exhibit 1 Leased Property including Exhibit 1A and 1B
- 574 Exhibit 2 Existing and Future Facilities
- 575 Exhibit 3 CEMEX Lease
- 576 Exhibit 4 Robertson's Ready Mix Lease
- 577 Exhibit 5 2010 State Water Rights Filing


WESTERN MUNICIPAL WATER
DISTRICT
"Western"


Donald D. Galleano
President
Board of Directors

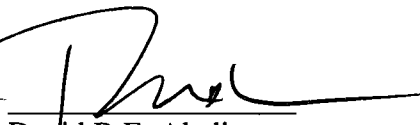
Approved as to form only:


Jeff Ferre
Best, Best & Krieger

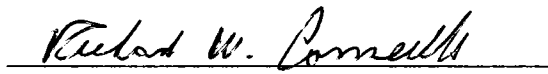
SAN BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT
"Valley District"


C. Patrick Milligan
President
Board of Directors


Approved as to form only:


David R.E. Aladjem
Special District Counsel

SAN BERNARDINO VALLEY WATER
CONSERVATION DISTRICT
"Conservation District"


Richard W. Corneille
President
Board of Directors

Approved as to form only:


David B. Cosgrove
General Counsel

State of California

County of Riverside)

On Dec 19, 2012, before me, Teresa Van Scyoc,
(insert name and title of the officer)

Notary Public, personally appeared Donald D. Galeano,
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

Teresa Van Scyoc

(Seal)



State of California)
County of San Bernardino)

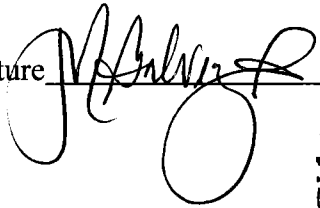
On Dec. 12, 2012, before me, M. Galvez, Notary Public,
(insert name and title of the officer)

Notary Public, personally appeared Richard W. Corneille and no one else,
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.

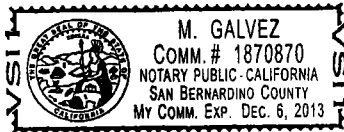
I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



State of California

County of San Bernardino

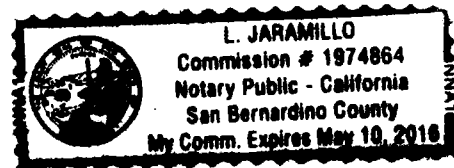
On Dec. 12, 2012, before me, L. Jaramillo, Notary Public
(insert name and title of the officer)

Notary Public, personally appeared C. Patrick Milligan,
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.

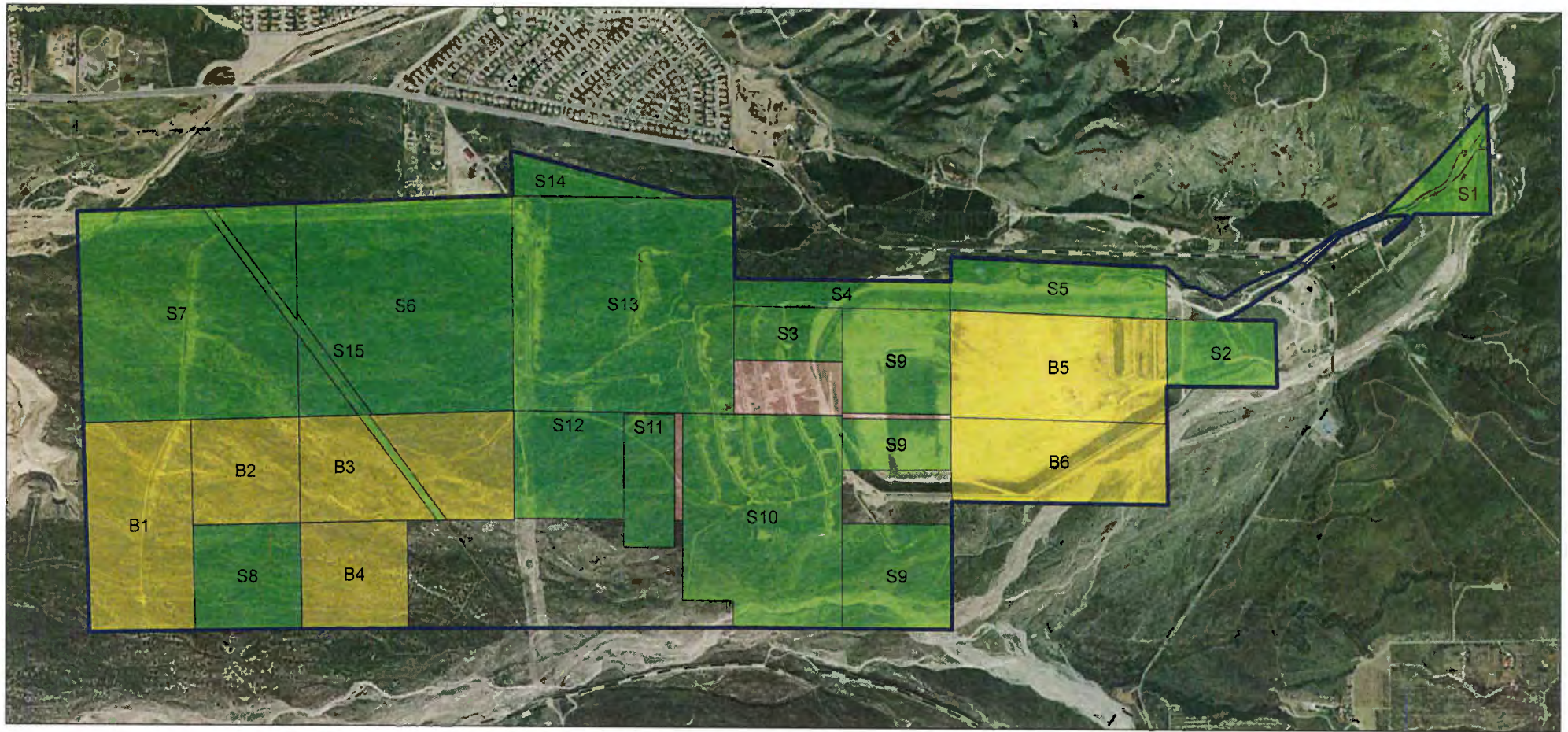
WITNESS my hand and official seal.

Signature L. Jaramillo



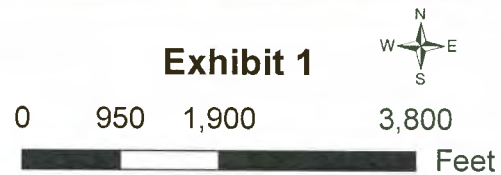
(Seal)

EXHIBIT 1



- Wash Plan Area Boundary
- SAR Recharge Area (1485 Acres)
- SBVWCD Lands (952 Acres)
- BLM Property Access (513 Acres)
- Other Ownership Limited Access

Exhibit 1



C. Brudin
14 Sept 2012
M:\2011 Projects\Land Ownership District_Exhibit1_Edits.mxd



EXHIBIT 1A
LEGAL DESCRIPTION
SBVWCD LANDS

THOSE PORTIONS OF SECTIONS 4, 6, 7 AND 8, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN AND THOSE PORTIONS OF SECTION 12, TOWNSHIP 1 SOUTH, RANGE 3 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF HIGHLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

PARCEL S1: (A.P. NO. 0297-041-07)

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 4, SAID PORTION LYING SOUTHEASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE SOUTHWESTERLY TO THE SOUTHWEST CORNER OF SAID SECTION 4.

PARCEL S2: (A.P. NO. 0297-061-01)

THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 8.

PARCEL S3: (A.P. NO. 0297-051-06)

THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 7, COMPRISING 20 ACRES, MORE OR LESS.

PARCEL S4: (A.P. NO. 0297-051-05)

THE SOUTH 20 ACRES OF THE NORTH OF THE NORTHEAST QUARTER OF SAID SECTION 7.

PARCEL S5: (A.P. NO. 0297-061-03)

THE SOUTH HALF OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 8, COMPRISING 40 ACRES, MORE OR LESS.

PARCEL S6: (A.P. NO. 0291-151-02)

THE NORTHEAST QUARTER OF SAID SECTION 12, EXCEPT RAILROAD RIGHT-OF-WAY AND EXCEPT STATION AT APLIN AND COMPRISING 157 ACRES, MORE OR LESS.

PARCEL S7: (A.P. NO. 0291-151-01)

THE NORTHWEST QUARTER OF SAID SECTION 12, EXCEPT RAILROAD RIGH-OF-WAY.

PARCEL S8: (A.P. NO. 0291-161-04)

THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 12.

PARCEL S9: (A.P. NO. 0297-051-07, 0297-051-08, 0297-051-09, 0297-051-10, 0297-071-09, 0297-071-10, 0297-071-13, 0297-071-14, 0297-071-16, 0297-071-17)

LOTS 1 THROUGH 6 AND LOTS 9 THROUGH 12 OF VAN BUREN TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 69 OF MAP IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL S10: (A.P. NO. 0297-071-08)

THE WEST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 7, COMPRISING 80 ACRES, MORE OR LESS.

LEGAL DESCRIPTION (Continued)

PARCEL S11: (A.P. NO. 0297-071-02, 0297-071-03, 0297-071-04)

LOTS 4 THROUGH 15 OF CHICAGO SUBDIVISION TO REDLANDS, AS SHOWN ON A MAP RECORDED IN BOOK 12, PAGE 52 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL S12: (A.P. NO. 0168-311-06)

THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 7.

PARCEL S13: (A.P. NO. 0297-051-01 AND 0297-051-02)

THE NORTHWEST QUARTER OF SAID SECTION 7.

PARCEL S14: (A.P. NO. 0297-011-07)

THAT PORTION OF THE SOUTHWEST QUARTER OF SAID SECTION 6, LYING SOUTH OF THE SOUTH LINE OF THE EXISTING METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA PIPELINE RIGHT OF WAY AS THE SAME NOW EXISTS. EXCEPT THAT PORTION THEREOF CONVEYED TO THE NORTHFORK WATER COMPANY BY DEED RECORDED MARCH 7, 1909 IN BOOK 388 OF DEEDS, PAGE 120, RECORDS OF SAID COUNTY.

PARCEL S15: (A.P. NO. 0291-151-05)

PARCEL 1 OF THAT CERTAIN DEED RECORDED JUNE 28, 1984 AS INSTRUMENT NO. 84-152554 OF OFFICIAL RECORDS, RECORDS OF SAID COUNTY.

SUBJECT TO ALL RESERVATIONS, RESTRICTIONS, EASEMENTS, OFFERS OF DEDICATIONS, RIGHTS AND RIGHT OF WAYS OF RECORD.

This legal description was prepared by me or under my direction.


By: 
Edward J. Bonadiman, P.L.S.
Date: 09/17/2012 L. S. #:7529



EXHIBIT 1B
LEGAL DESCRIPTION
BLM PROPERTY ACCESS

THOSE PORTIONS OF SECTION 8, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN AND THOSE PORTIONS OF SECTION 12, TOWNSHIP 1 SOUTH, RANGE 3 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF HIGHLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

PARCEL B1: (A.P. NO. 0297-161-05)
THE WEST HALF THE SOUTHWEST QUARTER OF SAID SECTION 12.

PARCEL B2: (A.P. NO. 0297-161-06)
THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 12.

PARCEL B3: (A.P. NO. 0297-161-01)
THE NORTH HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 12.

PARCEL B4: (A.P. NO. 0297-161-03)
THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 12.

PARCEL B5: (A.P. NO. 0297-061-02)
THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 8.

PARCEL B6: (A.P. NO. 0297-061-02)
THE NORTH HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 8.

SUBJECT TO ALL RESERVATIONS, RESTRICTIONS, EASEMENTS, OFFERS OF DEDICATIONS, RIGHTS AND RIGHT OF WAYS OF RECORD.

This legal description was prepared by me or under my direction.

By: _____

Edward J. Bonadiman, P.L.S.
Date: 09/17/2012 L. S. #:7529

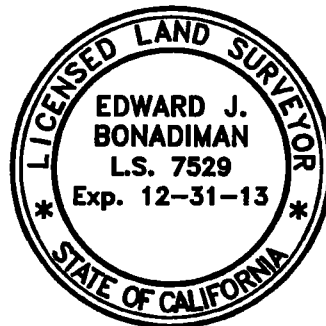
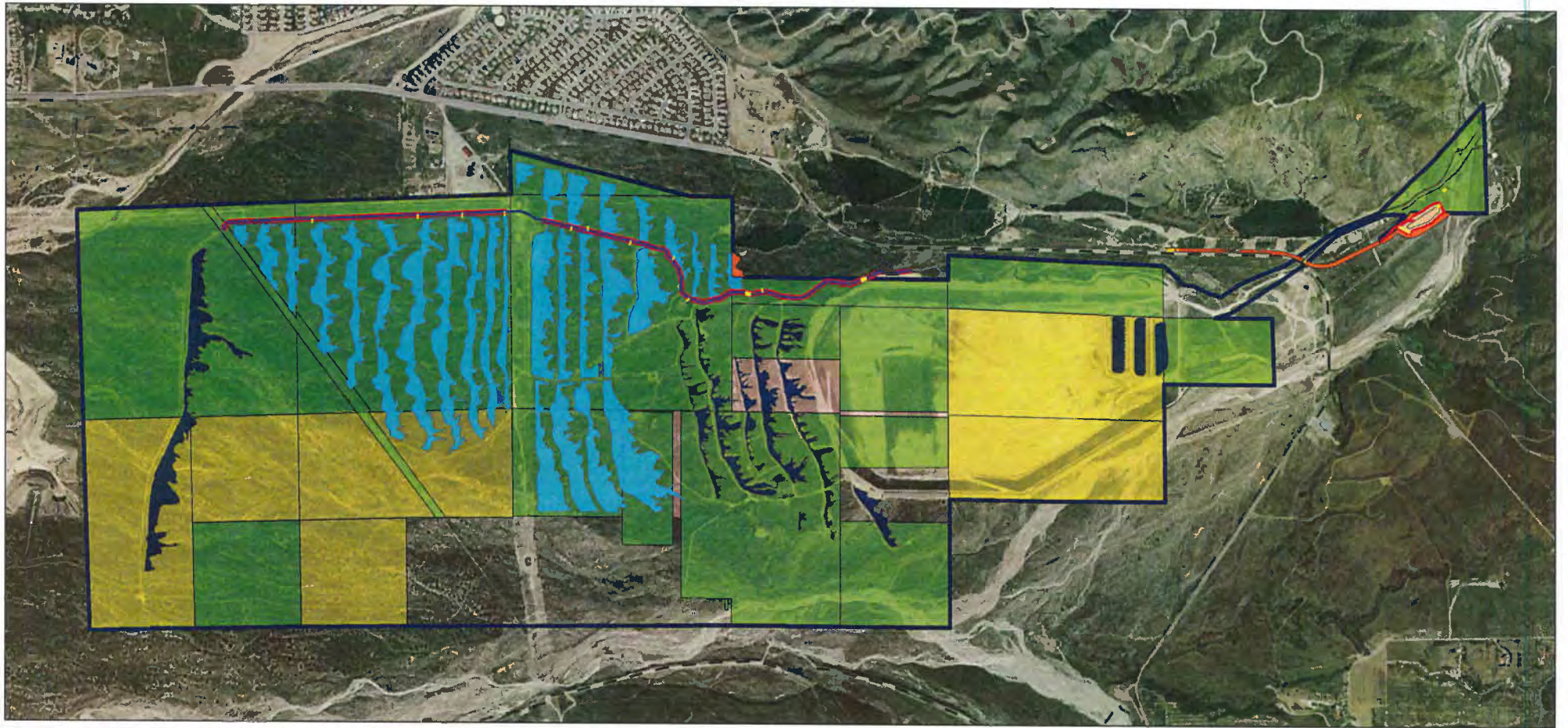


EXHIBIT 2



Legend

- | | |
|-----------------------------|---------------------------------|
| --- Wash Plan Area Boundary | Pipeline Easement |
| Structures | Planned Improvements |
| Canal | SAR Recharge Area (1485 Acres) |
| Access Road | SBVWCD Lands (952 Acres) |
| Existing Basins | BLM Property Access (513 Acres) |
| Sedimentation Basins | Other Ownership Limited Access |

Exhibit 2



C. Brudin
14 Sept 2012

M:\2011 Projects\Land Ownership District_Exhibit1.mxd



Exhibit 3

Cemex Lease

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

San Bernardino Valley Water
Conservation District
1630 West Redlands Boulevard
Suite A
Redlands, CA 92373-8032

Attn: General Manager

FREE RECORDING REQUESTED
UNDER GOVERNMENT CODE
SECTION 6103

THIS SPACE FOR RECORDER'S USE ONLY

MINERAL LEASE FOR EXTRACTION OF SAND AND GRAVEL MATERIALS

THIS MINERAL LEASE FOR EXTRACTION OF SAND AND GRAVEL MATERIALS ("Lease") is entered into this 1 day of November, 2011, by and between SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT ("District") and CEMEX CONSTRUCTION MATERIALS PACIFIC, LLC ("Lessee"). This Lease is entered into in consideration of all of the following:

A. District is a California Water Conservation District, duly formed and existing under California Water Code section 74000 et seq. District has the authority to enter into leases of property it owns pursuant to provisions of California Water Code section 74550, and other provisions of law. Lessee is a limited liability corporation, with its principal place of business located in El Dorado Hills, California. Lessee is the successor-in-interest to a prior lease agreement between the District and C. L. Pharris Sand & Gravel, Inc.

B. District's and Lessee's predecessor-in-interest, C. L. Pharris Sand & Gravel, Inc., entered into a "Lease Agreement" dated September 10, 1979. That Lease Agreement authorized various excavation and sale of sand, gravel, and related material from property owned by the District, on terms and conditions stated therein, and incorporating prior leases between the parties (collectively "Original Lease").

C. The Original Lease was amended variously between the parties over time, culminating on a "Lease Amendment" dated July 10, 1997. Under the "Lease Amendment," the term of the lease was defined as an initial term ending June 1, 2011, with nine (9) additional successive five (5) year options to renew. The Lease Amendment required renewal notices to be in writing, made no later than six (6) months prior to the expiration of the then-existing term. The parties followed these procedures through the first five (5)-year extension of the term.

D. A dispute then arose between Lessee and the District regarding Lessee's expressed intent to enter an additional five (5)-year term under the lease. District rejected Lessee's attempt to exercise an additional five (5)-year option as untimely, and considers the lease effectively terminated as of June 1, 2011. Lessee believes that the option for an additional five (5)-year period under the lease was properly exercised, and that the term of the original lease, as modified by the Lease Amendment, continues until June 1, 2016.

E. The parties have met and conferred pursuant to a "Tolling Agreement Re Lease Dispute," they entered into on or about June 1, 2011 and extended on August 31, 2011 to resolve their differences. Pursuant to such discussions, the parties have now determined to enter into a new lease, defining new terms, and replacing, superseding, and rendering of no further effect the Original Lease, the Lease Amendment, and all previous agreements between District and Lessee with respect to lease of the District's property.

NOW, THEREFORE, in consideration of all of the foregoing, the parties do hereby set forth the terms of their new and sole lease agreement as follows:

1.0 Definitions. As used herein, the following terms shall have the following defined meanings:

1.1. "DISTRICT" shall mean the San Bernardino Valley Water Conservation District.

1.2. "LESSEE" shall mean Cemex Construction Materials Pacific, LLC, and its successors and assigns.

1.3. "PREMISES" shall mean all those properties owned by DISTRICT, more specifically described in the legal description attached hereto as Exhibit "A" and as more specifically depicted in the plat map attached hereto as Exhibit "B," with the exception of the northeasterly one-quarter of Section 12, which shall not be included within the PREMISES.

1.4. "MATERIAL" shall mean sand, rock, gravel, and kindred substances, lying on or under the PREMISES, and suitable for commercial extraction, processing, and sale, and any saleable by-products from same.

1.5. "Ton" shall mean a measurement of 2,000 pounds of material aggregate, by weight.

1.6. "INDEX" shall mean the Bureau of Labor Statistics Producer Price Index for Mining (Except Oil and Gas): NAICS 212, or if such index is no longer published or kept, such similar index as may be agreed to by the parties.

1.7. "FAIR MARKET ROYALTY" shall mean the prevailing market royalty rate being paid for Material within the markets served or able to be served by Material from the Premises, and such markets as may be reasonably comparable thereto, as of a then-present data value.

1.8. "WASH PLAN" shall mean the Upper Santa Ana River Wash Land Management and Habitat Conservation Plan, a comprehensive land use, property exchange, and mining and related permitting effort undertaken by District, Lessee, and a number of other public and private entities for realignment of prior leases for sand and gravel extraction, and for accommodation of water conservation and species habitat preservation.

1.9. "TRANSFER PREMISES" shall mean those properties which District and Lessee agree are appropriate for replacement of any portion of the Premises which may be exchanged to the federal government, Bureau of Land Management, or other entity, under the implementation and effectuation of the Wash Plan, or otherwise rendered unavailable for extraction, processing, and sale of Material. The parties contemplate that the Transfer Premises will consist of a portion of those properties already proposed to be exchanged from the Bureau of Land Management to the District under the Wash Plan, or otherwise transferred from the federal government to the District for the purposes of making such transferred areas available for mining. District and Lessee agree, however, that availability of, and the specific areas of the Transfer Premises cannot be determined precisely at this time, and that the exact areas, locations and parameters of the Transfer Premises will have to be determined in connection with the ultimate approvals that might be obtained through the Wash Plan.

1.10. "COMMENCEMENT DATE" shall be the date this Lease becomes effective, November 1, 2011.

1.11. "LEASE YEAR" shall mean the year following the commencement date in the first year of this Lease, and for every subsequent year, the period beginning each year on the anniversary of the Commencement Date, and continuing one (1) year thereafter.

1.12. "ORANGE STREET PLANT SITE" shall mean that area generally described in the legal description and depicted on the plat map collectively attached as Exhibit "D" hereto, consisting of approximately 100 acres, on which Lessee has, as of the Commencement Date, established and maintains a mining processing plant.

1.13. "REDLANDS AGGREGATES SITE" shall mean the area generally described in the legal description and depicted on the plat map collectively attached as Exhibit "E" hereto.

2.0 Lease of Premises and Rights Conferred.

2.1. Under this Lease, District hereby grants to Lessee the right to come onto the Premises, and to dig, excavate, transport, wash, process, crush, convey, stockpile, and sell all Material on the Premises, consistent with any applicable federal, state, or local regulations, and conditions of any permits that may be applicable thereto. This Lease includes the right to maintain all processing plants, structures, facilities, and equipment legally established by Lessee and existing on the Premises as of the Commencement Date, as are necessary or suitable for the defined purposes of the Lease. Lessee may also establish such other plants, buildings, paved roadways, structures, or other permanent improvements, or any silt ponds or places for the deposition of impermeable materials (collectively "Improvements") on the Premises, as may be necessary or appropriate for accomplishment of the purposes of the Lease, subject to the prior

written approval of the District as to the location, extent, specifications, and composition of such improvements. District's approval shall not be unreasonably withheld, conditioned or delayed. District's approval of Lessee's Improvements shall be directed to District's reserved water spreading and other reserved rights in, to, and for the Premises under this Lease, and the compliance and consistency of such Improvements with the terms and conditions of this Lease, and shall not be directed to the suitability of such Improvements for Lessee's purposes, nor the design, effectiveness, safety, nor engineering suitability of such Improvements, except insofar as District may, but is not required to, confirm that such Improvements as proposed meet otherwise applicable legal requirements and standards. Lessee shall not undertake any construction of such improvements without prior District review and approval of the plan for the location and other specifications for such improvements. District shall have a period of 45 days after submission of the complete construction plans and working drawings by Lessee of any proposed improvement construction to approve, conditionally approve, or disapprove such proposed improvements. Any disapproval by District shall be accompanied by written statement of the reasons therefor, including an explanation of what would be required for approval. Upon District's failure to approve, conditionally approve, or disapprove the Improvements construction within the 45 day period, the plans shall be deemed approved as submitted, so long as they are consistent with all other applicable legal requirements and standards. Lessee may relocate any Improvements located on the Premises, subject to District's approval, in the same manner as for Lessee's original establishment of Improvements. District may require Lessee to remove any Improvements placed on the Premises for which Lessee failed to provide the 45 day notice and opportunity for review and approval of District called for hereunder to the extent such Improvements violate applicable legal requirements, without any liability of District to Lessee. Such Improvements so constructed shall be the property of Lessee during the duration of the Lease, and shall be removed by Lessee upon the expiration or earlier termination of this Lease; provided, however, District may in writing elect to permit Lessee to leave any or all of the Improvements on the Premises after expiration of the Lease, in which case all such Improvements shall become the property of the District. Lessee shall assume all maintenance and insurance responsibilities for any Improvements constructed on the Premises. In addition, Lessee shall provide District no less than forty-five (45) days' notice before Lessee establishes any staging areas, processing areas, unpaved but graded and compacted haul routes, and equipment servicing areas which do not otherwise fit the definition of Improvements provided above, though such facilities shall not require District's prior approval before Lessee may be permitted to place them on the Premises. Further, Lessee shall provide to District no less than fifteen (15) days' notice before Lessee establishes any portable crushing or processing sites, which do not otherwise fit the definition of Improvements provided above, though such facilities shall likewise not require District's prior approval before Lessee may be permitted to place them on the Premises.

2.2. Premises Leased in "As Is" Condition. Lessee acknowledges that it is granted lease rights to the Premises, and the right to move Material therefrom, on an "as is" basis, and Lessee takes and operates the Premises without reliance on any representation by the District, or any of its officers, employees, agents, or representatives, or any other person, concerning the extent or quality of the Material on the Premises, its fitness for Lessee's intended use, or any particular purpose or use, its income producing history, potential, or capabilities, its value, or any other promise, representation, or inducement not expressly set forth in writing in

this Lease. District represents and warrants that it has not caused nor is aware of any environmental conditions relating to the Premises.

2.3. No Warranty. Lessee acknowledges that neither the District, nor any of its officers, employees, agents, or representatives, has made any written or oral representation, promise, or warranty, express or implied, arising out of or in connection with the Material on the Premises, or the transfer of Premises, if any, its fitness for Lessee's intended use, or any purpose or use, its income producing history, potential or capabilities, its value, the likely success or outcome of the Wash Plan, or any other matter not expressly set forth in writing in this Lease. Lessee acknowledges it has inspected, and occupied, the Premises prior to the execution of this Lease. Lessee acknowledges it takes and accepts the Premises in the condition in which the Material on the Premises (or lack thereof) exists as of the Commencement Date this Lease. Lessee assumes that any and all change in the condition of the rock on the Premises either before the Commencement Date or during the term of this Lease.

3.0 Lease Term.

3.1. Original Term. This lease shall begin on the Commencement Date, and shall continue in full force and effect for a period of four (4) years thereafter.

3.2. Options to Renew and Right of First Refusal. So long as Lessee shall not be in material breach of this Lease, Lessee shall have one (1) additional, successive six -year option to renew ("Option to Renew"). The renewal shall be on the terms of this Lease, or such additional or revised terms as the parties may then agree to.

3.3. Procedure for Exercise of Options.

(a) Initial Option. In the event Lessee elects to exercise the Option to Renew, Lessee shall provide written notice to District in writing. Such Option to Renew shall be made no later than one hundred eighty (180) days prior to the expiration of the Original Term of this Lease, to the person and in the manner set forth herein for the provision of Notices in Section 14.1 below.

(b) Exclusive Negotiation Period. In the event Lessee fails to exercise the six (6) year option provided for above, this Lease shall terminate as of the expiration of the initial four-year term. In the event Lessee does exercise the six (6) year option, Lessee shall have an Exclusive Negotiation Period with the District to meet and confer with District regarding the terms and conditions of a renewal or replacement lease for the Premises. Such Exclusive Negotiation Period shall run concurrently with the final ninety (90) days of the six (6) year option period so exercised by Lessee. The Exclusive Negotiation Period shall arise only upon the expiration of the exercised six (6) year option term; there shall be no Exclusive Negotiation Period upon the termination of the Lease, for whatever reason, or in the event of a Lessee default. During the Exclusive Negotiation Period, District shall not make any effort to sell, lease, offer, market, or solicit proposals with or from any party for the excavation, processing, or sale of Material from the Premises, except Lessee. Neither District nor Lessee shall be

obligated to enter into any type of an agreement during or as a result of the Exclusive Negotiation Period, but the parties shall meet and confer in good faith to discuss and explore the possibility of entering into such an agreement, should the parties determine that doing so would be in their mutual benefit.

(c) Right of First Refusal. In the event the Exclusive Negotiation Period occurs, and fails to result in an agreement between District and Lessee, and only in such event, Lessee shall have a Right of First Refusal upon any offer District may make to any other party for the right to excavate, process, or sell Material from all or any part of the Premises. Such Right of First Refusal shall entitle Lessee to priority acceptance of any such offer District may make to any other party, on the identical terms, conditions, requirements, and stipulations as the District makes, and is willing to accept, from any other party. The Right of First Refusal shall begin on the expiration of the Exclusive Negotiation Period, and shall continue for a period of three (3) years thereafter. District shall, prior to making or soliciting any offer for the right to excavate, process, or sell Material from the Premises advise the party or parties with whom it is dealing of the Lessee's Right of First Refusal. District shall require any offer it receives from any party to excavate, process, or sell Material from all or a portion of the Premises, and which it is prepared to accept and is authorized by its legislative body to accept, to be reduced to writing, and shall within thirty (30) days of any such offer, provide a written copy to Lessee, to the person and in the manner provided for in Section 14.1, Notices, below. Lessee shall have thirty (30) days thereafter to accept or reject the offer. In the event Lessee accepts the offer, District and Lessee shall enter into an agreement, on the identical terms as proposed to District and conveyed to Lessee. In the event Lessee rejects the offer, the Right of First Refusal shall thereupon terminate, and be of no further force and effect.

4.0 Royalty and Rental Payments.

4.1. Orange Street Plant Site Rent. Lessee shall pay to District, throughout the entire term of this Lease and any holdover period, the sum of Four Thousand Dollars (\$4,000.00) per month for the lease of the Orange Street Plant Site ("Orange Street Plant Site Rent"). Such rent shall be in addition to, and shall not be credited against, any royalty amounts due, including guaranteed annual minimum royalty, which may be otherwise due and owing under this Lease.

4.2. Royalty. In addition to the plant site rent, Lessee shall pay a royalty to District, for every ton of Material removed from the Premises, as measured by State certified truck scales and recorded by a standardized, nationally recognized ticketing system whose mechanics and accuracy are disclosed and available to, and verifiable by, District. Lessee shall keep true, complete, and accurate records of all Material excavated on and removed from the Premises, and an accounting of all Material excavated and removed from the Redlands Aggregates Site. Lessee shall report such figures, under penalty of perjury, to District on a monthly basis, in a form as District may reasonably specify and require. The parties shall track, calculate, and collect the royalty due on the excavated Material based on the amount of tonnage of Material sold or otherwise removed from the Premises and the Redlands Aggregates Site.

Any differences between the amount of Material excavated and the amount of Material sold or otherwise removed from the Premises shall be reconciled by way of a biannual audit. On or before ninety (90) days following the execution of this Agreement by both parties, District and Lessee shall jointly select and retain a party to perform a baseline aerial topographic survey of the Premises and the Redlands Aggregates Site. The parties shall share equally in the expense of the baseline aerial topographic survey, and once it is generated and delivered, the parties shall meet and confer to work out any issues or disagreements they may have regarding it, and both shall indicate in writing their approval of same, once any issues with the baseline survey that may arise are resolved. Once approved by both parties, the baseline aerial topographic survey shall serve as the beginning survey for later aerial topographic surveys to be performed under this Lease, for volumetric calculations of material excavated, inventoried, deposited into silt ponds, and removed from the premises by deduction. The volumetric results will be used to assess, compare, and reconcile the truck scale weight measurements. Based upon the results of the area topographic survey, Lessee and District shall reconcile the amounts paid on the tonnage sold or otherwise removed from the Premises and the Redlands Aggregates Site, and make any necessary adjustments to account for differences in the royalties due for Material from the Premises, and that from the Redlands Aggregates Site, and reconcile any amounts due or any credit for any amounts that may be overpaid during the immediately preceding twenty-four (24) month period. In the event the parties are unable to come to an agreement on such reconciliation, the matter shall be submitted to binding arbitration, as provided for herein.

4.3. Royalty Rate. For the first twelve (12) month period following the Commencement Date, the royalty rate shall be set at Fifty-Five Cents (\$0.55) per ton. As of the first anniversary of the Commencement Date, the royalty rate shall be the Fair Market Royalty. On or before ninety (90) days prior to the first anniversary of the Commencement Date, the parties shall meet and confer, in an attempt to come to an agreement on the Fair Market Royalty. The parties shall provide, one to the other, any and all market analyses, appraisals, or other valuation Materials or opinions upon which their proposed Fair Market Royalty is based. If no agreement is reached within thirty (30) days of the parties' exchange of such information, the matter shall be submitted to binding arbitration, as provided for herein. The arbitrator shall select either one or the other of the parties' original Fair Market Royalty proposals, and the Fair Market Royalty rate so selected shall be the royalty rate paid by Lessee to the District for the remainder of the term, subject to any Index adjustment. The arbitrator shall not have the authority or discretion to compromise between the two parties' proposals, nor to come to an independent determination of the Fair Market Royalty rate. In the arbitration, no party may rely on, or submit to the arbitrator, any Material which was not originally exchanged pursuant to the exchange of Fair Market Royalty proposals ninety (90) days before the Commencement Date. The arbitrator shall only select one of the parties' Fair Market Royalty rates, which he or she determines most accurately determines the appropriate Fair Market Royalty.

4.4. Index Adjustment. All royalty rates shall be adjusted annually, on each anniversary of the Commencement Date, by any change in the Index, using 2012 as the base year. In no event, however, shall such change in any one year amount to a change in the applicable royalty rate more than fifty percent (50%), higher or lower, than the immediately preceding Fair Market Royalty rate. Such fifty percent limitation shall operate only to serve as the cap or floor for the year in which the change in the Index results in a change in the royalty rate of 50% or more, and not to change prospectively the Index calculation for succeeding years.

4.5. Guaranteed Annual Royalty; Orange Street Plant Site Material as Recovery of Credits.

(a) Guaranteed Annual Royalty Payments. Notwithstanding the level of excavation or sale of Material from the Premises, Lessee shall pay to District a guaranteed annual royalty, in addition to the Orange Street Plant Site rent. Such guaranteed annual royalty shall be in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) for the first year of the Lease, and shall increase by an additional One Hundred Thousand Dollars (\$100,000.00) on each anniversary of the Commencement Date thereafter; provided, however, such guaranteed annual royalty shall not exceed \$550,000.00 annually. Such guaranteed annual royalty shall be paid in equal monthly installments, and shall be submitted along with all reporting by Lessee of its excavation and sales activities on the Premises and the Redlands Aggregate Site, comparing the amounts of guaranteed annual royalty paid, against the actual amount of Material excavated, and the actual amount of Material sold or otherwise removed from the Premises. The guaranteed annual royalty amount shall be paid by Lessee to the District; provided, however, to the extent District has Annual Royalty Credits in excess of Three Million Four Hundred Thousand Dollars (\$3,400,000.00) ("Royalty Credits Cap"), Lessee's obligation to pay Guaranteed Annual Royalty Payments shall be suspended until such time as the Annual Royalty Credits are reduced below the Royalty Credits Cap., All per-ton royalty rates applicable to Material excavated by Lessee in excess of the guaranteed annual royalty rate shall be paid at the then-prevailing royalty rate, in addition to guaranteed annual royalty.

(b) Guaranteed Annual Royalty Credits. To the extent the per-ton royalty rate paid by Lessee in any given Lease Year is less than the amount of guaranteed annual royalty, Lessee shall be credited for the difference against any per-ton royalties otherwise due in any succeeding Lease Years above the guaranteed annual royalty due in such Lease Year, until all such credits have been offset against per-ton royalties in excess of applicable guaranteed annual rental. In no event shall such credit ever diminish or decrease the amount of guaranteed annual royalty due.

(c) Orange Street Plant Site Holdover to Retire Guaranteed Annual Royalty Credits. Except in the event of a Lessee default under Section 10.1 below, should this Lease expire or otherwise terminate prior to the time Lessee's guaranteed annual royalty credits have been retired, Lessee shall have the right, but not the obligation, to hold over and continue to occupy the Orange Street Plant site only, to remove any Improvements or other equipment or operations thereon, and to excavate and sell Material from such site. Such holdover right shall begin on the date the Lease expires or is terminated for any reason, including Lessee's exercise of its right of termination under Section 10.3 below. No guaranteed annual royalty or other royalty amounts shall be paid to District on the Material excavated and sold by Lessee from the Orange Street Plant Site during the holdover period, and such amounts of such per-ton royalties as would otherwise be applicable to the Material, as adjusted by the Index through and

including the holdover period, shall be applied to reduce the credits for guaranteed annual royalty payments made in excess of royalties paid on a per-ton basis. Lessee shall pay the Orange Street Plant site rent for all time that Lessee occupies the Orange Street Plant site during such holdover period, and such Orange Street Plant Site rental shall be adjusted by the Index, using the Effective Date as the base period and the beginning of the holdover period as the adjustment date for application of the Index adjustment. Thereafter, on each anniversary date of the beginning of the holdover period, the Orange Street Plant Site rent shall be adjusted again, per the Index. Such Orange Street Plant Site rent shall not be offset against or reduced to retire any guaranteed annual royalty credits. Lessee's right to hold over on the Orange Street Plant site shall continue only until the per-ton royalty amounts applicable to such Material excavated and sold by Lessee from the Orange Street Plant Site during the holdover period are equal to the sum total of guaranteed annual royalty credits for Lessee's payments of guaranteed annual royalty in excess of per-ton royalty, which accrued prior to the holdover period, but in no event longer than five (5) years from the time of the Lease's expiration or earlier termination. Any guaranteed annual royalty credits not retired within the applicable holdover period shall be lost, and forfeited without any further liability from District to Lessee.

4.6. Late Payments. Any payment due hereunder shall be made within thirty (30) days of the expiration of the month during which the excavations occurred, or the sales or other transfers occurred. Late payments shall incur a one and one-half percent per month late charge, which charge shall be added to, and considered to be additional, rent.

5.0 Permits.

5.1. Wash Plan Processing. As of the Commencement Date the parties are cooperating as part of the Upper Santa Ana River Wash Land Management and Habitat Conservation Plan Task Force ("Task Force") to process and secure approval of the Wash Plan. Under the agreement forming the Task Force, each of the participants was assigned a certain percentage of allocation for the overall costs of the Wash Plan. Beginning on the Commencement Date, and continuing until the Wash Plan gets final approval, or either parties' participation in the Task Force agreement shall have been finally terminated, either as provided in paragraph 23 of that agreement, or upon dissolution of the Task Force pursuant to paragraph 22 of the Task Force agreement, Lessee shall advance to District one-half of District's share of the Wash Plan processing and consultant costs, under the allocation as defined in the Task Force agreement. All such advanced costs shall be credited against any guaranteed annual royalty otherwise owing from Lessee to District, and to the extent such advanced costs exceed the amount of guaranteed annual royalty, shall be credited against future years' guaranteed annual royalty, until the entire amount of such advanced costs has been retired.

5.2. Lessee's Obligation to Secure Permits. Notwithstanding the parties' mutual efforts to effectuate the Wash Plan, it is and shall be the Lessee's sole responsibility to secure any and all land entitlements, SMARA permits or approvals, conditional use permits, or any and all discretionary permits required for Lessee to operate and maintain its operations on the Premises for the excavation, processing, removal, and sale of Material therefrom, including

any reclamation plans, or requirements, from all applicable federal, state and local jurisdictions (collectively "permits" herein). In the event the Wash Plan fails to result in the grant of such permits, Lessee shall diligently and continuously take all other actions necessary to obtain all permits required to accomplish the Material excavation purposes set forth herein, and shall obtain such permits at Lessee's sole cost and expense. Lessee shall submit to District, no less than forty five (45) days prior to submission of any permit application, or forty five (45) days prior to accepting any conditions that may be imposed on any such permit, all information, studies, applications, and other information relative to the permit or the proposed terms and conditions proposed to be imposed on same, for District's prior, written approval. District's review shall be limited to such permit applications, and / or permit conditions that the District determines, in the exercise of its reasonable discretion, could impair its ability to perform its water storage, conservation or spreading activities, or District's other reserved rights and uses in the Premises under this Lease, and / or impact the Premises beyond the term of this Lease. District shall not unreasonably disapprove the permit nor the conditions thereto. Lessee shall not finalize the permit, nor take any action in furtherance of conducting activities pursuant to any permit, until the District has approved the permit and any conditions thereto. In the event District fails to approve or disapprove any permit submitted to it by Lessee, provided that all proposed conditions have been documented and forwarded to District, within forty five (45) days from District's receipt of same from Lessee, the permit and conditions thereto shall be deemed approved by the District.

5.3. District Cooperation With Permits. District agrees that within the bounds of its reasonable discretion as reserved in Section 5.2 above, it will reasonably cooperate with Lessee and Lessee's efforts to obtain applicable permits and land use entitlements to allow Lessee to fulfill the purposes of this Lease, including, but not limited to, execution of petitions, applications or authorizations for applications. No consent given under this Lease by the District shall affect or limit Lessee's obligations under this Lease, nor shall any approvals or consents given by the District, in its capacity as the owner of the Premises, be deemed to be approval as to compliance or conformance of any application or any permit with applicable governmental codes, laws, orders, rules, or regulations.

5.4. Habitat Mitigation Dedications. District and Lessee acknowledge that effectuation of the Wash Plan, or potentially other permits should the Wash Plan not come fruition, may require the dedication by District of various areas, within or without the Premises, for endangered or threatened species habitat preservation or management. Notwithstanding this, however, District and Lessee agree to cooperate reasonably in an effort to effectuate the Wash Plan, as consistently as possible with the identified mitigation areas from the Final Environmental Impact Report for the Wash Plan certified by the District in 2008. The parties acknowledge the need to meet and confer, between themselves and other members of the Task Force, regarding the proper identification of any such required mitigation areas, the degree of reserved water conservation activity the District may require as a result of any encumbrance of District property for such purposes, and the nature and cost of habitat management strategies appropriate for such areas, none of whose specifics is presently known at this time. District and Lessee agree to cooperate reasonably on such subjects, in an attempt to effectuate the purposes of the Wash Plan and the purposes of this Lease.

5.5. Lessee Indemnification re Permit Challenges. Except as to such permits as may be obtained by the parties pursuant to the Wash Plan, Lessee shall indemnify, defend and hold the District harmless from any action, judicial or otherwise, contesting the validity of any permit granted to Lessee by the District or any other permitting jurisdiction, and Lessee shall promptly pay any judgment or award against the District in any such action, and shall take all other measures necessary to diligently defend and resolve any challenge to the validity of any such permit.

5.6. Transfer of Permits. Upon the expiration or earlier termination of this Lease, all transferable permits applicable to the Premises shall immediately transfer to the District, and Lessee shall take all actions required to complete such transfer, and otherwise cooperate fully with the District in accomplishing everything required to complete such transfer.

6.0 Use and Operation of Premises.

6.1. Safeguards. Lessee shall, at all times during this Lease, maintain proper and adequate safeguards on the Premises to assure its orderly use, and to prevent intrusion from trespassers, playing children and vandals.

6.2. No Waste or Nuisance. Lessee shall not maintain, commit or permit the maintenance of or commission of any waste or any nuisance (as defined in California Civil Code section 3479) within the premises. Lessee shall not use or permit the use of the Premises for any unlawful purpose.

6.3. Hazardous Materials Lessee shall not cause, permit or suffer the release or dumping of any Hazardous Materials on the Premises at any time. As used in this Lease, the term "Hazardous Materials" shall mean:

(a) Hazardous wastes, hazardous materials, hazardous substances, hazardous constituents, toxic substances or related materials, whether solids, liquids or gases, including but not limited to, substances deemed as "hazardous wastes," "hazardous materials," "hazardous substances," "toxic substances," "pollutants," "contaminants," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.*; the Toxic Substance Control Act ("TSCA"), 15 U.S.C. § 2601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. § 1802; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 9601, *et seq.*; the Clean Water Act ("CWA"), 33 U.S.C. § 1251, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300, *et seq.*; the Clean Air Act ("CAA"), 42 U.S.C. § 7401, *et seq.*; the Hazardous Waste Control Law, California Health & Safety Code § 2025, *et seq.* and Health & Safety Code § 33349; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health & Safety Code Div. 20, Ch. 6.8; the Hazardous Materials Release Response Plans and Inventory Act, California Health & Safety Code Div. 20, Ch. 6.95; the Underground Storage of Hazardous Substances Act, California Health & Safety Code Div. 20, Ch. 6.7; the Porter-Cologne Act, California Water

Code § 13050, *et seq.*; and in any permits, licenses, approvals, plans, rules, regulations, or ordinances adopted, or other criteria and guidelines promulgated pursuant to, the preceding laws (collectively, the "Environmental Laws"); and

(b) Any other substances, constituents or wastes subject to any applicable federal, state or local law, regulation or ordinance, including any Environmental Law now in effect, including but not limited to petroleum, refined petroleum products, waste oil, waste aviation or motor vehicle fuel, asbestos, lead in water, paint or elsewhere, radon, polychlorinated biphenyls (PCBs), and ureaformaldehyde.

Lessee shall defend, indemnify, and hold District harmless for any release of any Hazardous Materials on the Premises caused by or arising from Lessee's possession of the Premises, or any of its activities undertaken thereunder except cause by the negligence or willful misconduct of District or any breach of District's warranties. Such indemnification shall include promptly paying any and all costs for site characterization, remediation, and any and all judgments for damages to persons or property, including any penalties, regulatory fines, or any other liabilities which may arise out of the Hazardous Materials released.

6.4. Maintenance and Perimeter Controls. Lessee shall, to the satisfaction of the District, keep and maintain the Premises and all improvements of any kind thereon in a state of good repair, clean, safe, and in compliance with all regulatory standards, laws, ordinances, statutes, and regulations applicable thereto, and any licenses or permits in connection therewith. Lessee shall maintain, and repair, fencing around the exterior boundaries of any active excavation on the Premises, so as to prevent purposeful or accidental intrusion by unauthorized persons or parties; provided, however, Lessee shall not be responsible or liable for maintenance, repair, or fencing around any portion of the Premises devoted to District's water spreading facilities on which no active excavation occurs. District shall be given keys, combinations, or other means of access through any such gates that may be connected or maintained pursuant to this requirement. Lessee and District shall each indemnify the other for any claims, liabilities, losses, or damages to persons or property caused by the indemnifying party's negligence or willful misconduct regarding such perimeter controls.

6.5. Mining Controls. In addition to complying with the conditions of any mining permit or other governmental approval relating to its mining activities, Lessee shall conduct its mining activities on the Premises subject to the following conditions and limitations:

(a) Timing. Lessee will notify the District in writing regarding which specific areas of the Lease Property will be mined, and at what times. Such notice shall be for the purpose of permitting the District to utilize portions of the Premises which are not actively being mined by Lessee, for water spreading activities or other activities which do not unreasonably inhibit or interfere with Lessee's proposed mining activity, which right is specifically granted to and reserved by the District. District and Lessee agree to reasonably coordinate their respective activities to minimize any interference with both groundwater recharge activities and mining activities.

(b) Mining Within Acceptable Distance to Groundwater.

(i) For all mining areas, Lessee shall establish, at its own cost, groundwater monitoring wells, at such times, and in such locations and numbers, as may be reasonably required by District to determine groundwater levels in the vicinity of active mining areas. Such wells shall be established in numbers and at locations sufficient to provide information regarding groundwater levels throughout the full extent of Lessee's active mining operations. District shall at all times have access to such wells, and may utilize such wells at any time to monitor or characterize groundwater levels; provided, however, District shall promptly replace or repair any damage caused by the District to the monitoring wells. Lessee does not warrant or confirm the accuracy of the monitoring wells and the District assumes all risk in utilizing the information obtained from the monitoring wells. District shall operate and maintain such wells, provided that Lessee shall not conduct any operations on the Premises which could damage or destroy such monitoring wells. Lessee shall promptly repair or replace any wells damaged by Lessee's mining or other activities, at Lessee's cost.

(ii) In the event groundwater levels in or around Lessee's mining operations rise to a point that is within twenty feet (20') of any active excavation, all such operations shall thereupon immediately be halted by Lessee, until such time as the groundwater table level drops to a point more than twenty feet (20') below the level of any active mining operations. Lessee shall be released from any payment obligations which accrue during any period in which Lessee is required to halt excavation activities under this subsection (ii). In addition, Lessee's Guaranteed Annual Royalty shall be reduced proportionally based on the number of days Lessee is required to cease excavation activities.

(iii) In the event of any unplanned cessation of mining activity by Lessee because of groundwater levels, District shall use its best efforts to redirect surface water recharge to areas which will not exacerbate high groundwater conditions in areas of active mining operations, and shall continue to do so until 1) the high groundwater conditions have abated, and mining activities can resume within the necessary twenty foot (20') separation between mining activities and groundwater levels in the affected area of active mining operations, or 2) it appears that District's operations are not affecting groundwater levels in the affected area of active mining operations, or 3) District has no reasonable alternative to spreading water in or around the areas of active mining operations.

(c) Depths. The Premises shall be mined in phased depths, as follows:

(i) In the initial phase, all of the Premises may be mined to a maximum depth of seventy-five feet (75').

(ii) In the second phase, all of the Premises may be mined to an additional depth of twenty-five feet (25'), provided:

(a) No more than fifteen percent (15%) of reserves are available to Lessee in the Premises above the Phase I depth limit of seventy-five feet (75') (excluding any reserves that are located at the Orange Street Plant Site which), lands are being utilized for processing, shipping, and storage of Materials; and

(b) Groundwater monitoring well information indicates such additional twenty-five foot depth can be achieved without posing an unreasonable risk of contamination, evaporation, or other risk, to groundwater.

(iii) The third phase will permit mining of the Lease Property to an additional depth of twenty feet (20'), provided:

(a) No more than fifteen percent (15%) of reserves are available to Lessee in the Premises above the Phase II depth limit of one hundred feet (100') (excluding any reserves that are located at the Orange Street Plant Site), which lands are being utilized for processing, shipping, and storage of Materials; and

(b) Groundwater monitoring wells indicate such additional depth can be achieved without posing an unreasonable risk of contamination, evaporation, or other risk, to groundwater.

(d) Side Slopes. For all portions of the Premises which are located in Section 12, mining shall be conducted in such manner that the ultimate side slope excavations and pit bottoms are never at any time steeper than 3:1 as measured from permitted setbacks. For those portions of the Premises located in Section 9, 10, and 11, side slopes shall be no steeper than 2:1 except existing slopes mined prior to the Effective Date left a finished slope steeper than 2:1, and the parties agree that Lessee has no obligation to correct those slopes. The ultimate side slopes, except at the Northwest corner of the Redlands Aggregate North parcel (south ½ of the northeast ¼ of Section 11, T1S, R3W, SBBM), and except where such side slopes were already in their final configuration as of the Effective Date of the July 10, 1997 Lease Amendment, shall be maintained in their natural condition, not reconstructed or recompacted.

6.6. Silt Deposits. District agrees that Lessee may deposit silt or impermeable fines within the Premises, only as follows:

(a) Alabama Pit No. 2 may be filled to its full capacity.

(b) The existing silt located along the north edge of the Johnson South Parcel and the existing silt pond on the Johnson North Parcel (consisting of the 80 acre parcel located in the South one-half of the Northwest one-quarter of

Section 11, T1S, R3W, SBBM), as shown and delineated in Exhibit "C" hereto, may remain, and effective on the Effective Date District waives any demand or claim for removal of silts deposited in such area by Lessee. District's waiver is of District's right, if any, to demand removal of such silts under its contractual rights as Lessor, and District makes no further representation or warranty regarding Lessee's ability to maintain any silts already deposited or whether such deposits comply with any applicable laws, statutes, regulations, or permit conditions of any kind. In addition, Lessee may use the Johnson North Parcel (but no portion of the Johnson South Parcel) for future deposit of silts or impermeable fines. Lessee shall not conduct any mining activity on the Premises north of the existing Johnson North parcel silt pond, except as may ultimately be allowed under the Wash Plan. The existing silt pond on the Johnson North Parcel (consisting of the 80 acre parcel located in the South one-half of the Northwest one-quarter of Section 11, T1S, R3W, SBBM), may remain. In addition, Lessee may use this area for future deposit of silts or impermeable fines. Lessee shall not conduct any mining activity on the Premises north of the existing Johnson North parcel silt pond.

(c) For both the Alabama Pit No. 2 and the Johnson North Parcel silt ponds, Lessee shall reclaim the areas by grading the top level of such silts or impermeable Materials according to the reasonable specifications of District, and by backfilling with non-silt, pervious earth Material of at least ten feet (10') of depth, and construct shallow water percolation basins and dikes thereon above the ten feet of pervious Material, all to the reasonable specifications of the District, so as to make the reclaimed land usable for spreading water in shallow surface ponds. Lessee shall not be responsible for payment of royalty for any Material excavated exclusively for such purposes.

(d) All pit bottoms shall be scarified to a depth of two feet (2'), as part of Lessee's reclamation activities, prior to quitting any mining site.

6.7. Lessee Production of Water. In addition to the groundwater monitoring wells provided for in Section 6.5 (2) (i), Lessee may sink such groundwater wells, or otherwise produce water from the Premises, as may be reasonably required in the quarrying, processing, and transportation of Material excavated and sold or removed from the Premises. Any wells established by Lessee on the Premises shall be considered improvements, and shall be subject to the requirements of Section 2.1 above. Lessee shall, in addition to any and all other payments due under this Lease, pay any groundwater charges associated with production of groundwater from the Premises, at then-applicable rates, and shall pay any and all other permitting or other charges required to establish and operate such wells. In connection with such wells, Lessee shall, upon reasonable request by the District, provide such information regarding groundwater levels, or water quality, produced from such wells, as Lessee otherwise does or is required to produce as a well operator, at no additional charge to District

7.0 District's Reservations.

7.1. District's Reservation for Water Conservation Activities. District reserves the right, from time to time and as it deems necessary in the exercise of its reasonable discretion, to utilize all or any portion of the Premises for its water recharge, conservation, spreading, and other operations. In connection with the exercise of this reserved right, the Conservation District shall make every effort to harmonize its water conservation activities with the then-current and anticipated immediate future excavation and other activities of Lessee, with the goal that the mining activity and the water conservation activity can harmoniously exist, without interruption to either. In the exercise of these reserved conservation rights, District shall do all of the following:

(a) Provide Lessee no less than forty-eight (48) hours' notice of its need to utilize portions of any active excavation areas, or areas of active haul road or other transport of excavated Material to and from areas of excavation and the plant site or stockpiling sites utilized in connection with the same.

(b) District shall not take all then-permitted portions of the Premises, which at that time Lessee is or could actively mine, out of production.

(c) Except in circumstances of sudden threatening precipitation, threat of immediate flooding from dam releases or other causes, or other immediate danger to persons or property, District shall meet and confer with Lessee to determine the appropriate areas for the exercise of the District's reserved water spreading rights as they impact active areas of excavation or other Lessee activities, to harmonize the need for areas of spreading with the needs of portions of the Premises for the activities permitted or authorized by this lease.

7.2. No Liability. Notwithstanding the procedural restrictions above, District shall have no liability to Lessee for any interruptions to excavations, or any other activities Lessee may undertake on the Lease, from the exercise of its reserved water spreading rights except as otherwise provided herein.

7.3. Inspection and Monitoring. District shall have the right, at all times during the pendency of this Lease, and at its own expense, to have an inspector remain on the Premises, including any plant site, scales, or sales areas, to observe, monitor, and inspect all aspects of Lessee's operations, and to confirm the validity and accuracy of Lessee's record keeping with respect to excavation and sale and removal of Material, and Lessee's compliance with all other aspects of the Lease. Such inspector shall be required to have all reasonable safety clearances or certifications required to access such areas of the Premises as District desires to monitor, as may be required under federal, state, or local statute, ordinance, or regulation. In addition, the inspector shall comply with Lessee's reasonable operating procedures and regulations, and shall undertake its monitoring activities in such a way as not to unduly disrupt, delay, or interfere with Lessee's operations.

7.4. Periodic Inspections. Whether or not District exercises its right to have an inspector on the Premises, District may, at any time during the pendency of this Lease, and upon no less than twenty four (24) hours' notice, come on to the Premises to assure compliance with permit conditions, conditions of the Lease, or the proper counting of tonnages excavated or sold.

7.5. Confidentiality of Information. All information received by the District pursuant to any inspector it maintains on the Premises, or any of its periodic inspections, shall be used solely for the purpose of assuring compliance with the terms of the Lease, and shall be considered confidential to Lessee, and kept confidential by District to the full extent permitted by the law. In connection with the receipt of such information, both District and Lessee specifically intend that the information is considered to be protected under Government Code section 6254(e), and shall not constitute a public record.

7.6. Audit. District may, no more frequently than once every two (2) years, and at its own expense require a full audit of Lessee's books, records, receipts, accounts, and any or all other information pertinent to the payment of plant site rent, royalties, or guaranteed annual royalty hereunder, including tonnages of Material excavated, sold, or otherwise transferred from the Premises the Redlands Aggregates Site, or both. Lessee shall reasonably and promptly cooperate with any and all requests made by District in connection with such audit, and any and all information received by the District in connection with such audit shall be considered confidential, as provided in the immediately preceding Section. To the extent the audit reveals any discrepancies between the amounts of plant site rent, royalty, or guaranteed annual royalties due, or any claimed offsets for Wash Plan processing costs or other items that may be agreed to between the parties as a legitimate offset to any amounts otherwise owing under the Lease, the party from whom either payment or refund is owing shall promptly pay the amount indicated by the audit. In the event of any disagreement as to the accuracy or results of the audit, the matter shall be submitted to binding arbitration, as provided for herein.

8.0 Binding Arbitration. In the event of any dispute arising under this Lease, including but not limited to disputes with respect to tonnages of Material excavated or sold or otherwise removed from the site, amounts of plant site rent, per-ton royalty, or guaranteed annual royalty, advanced costs for Wash Plan processing, or other amounts claimed due from one party to the other under this Lease, the determination of Fair Market Royalty, or any other controversy or dispute arising under this Lease, the matter shall be submitted to binding arbitration. To the extent not otherwise provided herein, any party wishing to submit any disagreement or alleged breach or noncompliance with any of the covenants or other provisions of this Lease shall first make demand upon the other party, in writing, specifying the issue, the amounts claimed due if known, and the steps it requires of the other party to resolve the dispute. Following such written notice, the parties shall, unless a different time period is specifically provided for otherwise herein, meet and confer in an attempt to resolve the dispute for a period of fourteen (14) days thereafter. In the event parties are unable to come to resolution, either party may demand that the matter may be submitted to binding arbitration. If such a demand is made, both parties shall, within five (5) business days of the receipt of the written demand to submit to arbitration, submit to the other a list of three (3) proposed arbitrators. Following exchange of such lists, the parties shall attempt to mutually select a single arbitrator to arbitrate the dispute. In the event the parties are unable to do so, each of the parties shall strike two arbitrators from the list of the other party, and the two remaining listed arbitrators shall thereupon decide upon a third arbitrator, who shall be someone other than the three originally listed by either party. Arbitrations regarding Fair Market Royalty shall proceed as provided for in Section 4.3 above. Arbitrations on all other subjects shall proceed according to such rules as the parties may reasonably agree to, and in the absence of their ability to agree, upon such rules as may be imposed by the single selected arbitrator. The decision of the arbitrator shall be final and binding, with each party waiving any

right to jury or other judicial determination of the dispute, except that the award may be corrected, or vacated, as provided by Code of Civil Procedure sections 1280 et seq. Notwithstanding Code of Civil Procedure section 1286.4 and 1286.8, the award may also be vacated or corrected if it is clearly contrary to law. Each party shall initially bear its own costs and fees in connection with the prosecution and hearing of the arbitration, and shall pay one-half (1/2) of the costs of the arbitrator. The advanced share of the arbitrator's costs and expenses, and attorneys' fees, expert witness fees, and the fees of any audit shall be considered as recoverable costs of the arbitration, and the reasonable costs thereof shall be recoverable by the prevailing party, in addition to any other relief that might be awarded.

9.0 Insurance. Lessee shall maintain, and keep in effect, all of the following policies of insurance at all times it occupies the Premises:

9.1. Workers' Compensation Insurance. By signature hereunder, Lessee certifies that Lessee is aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Lessee will comply with such provisions before commencing the performance or the work of this Agreement.

9.2. Workers' Compensation and Employer's Liability Insurance. Lessee, its agents, and its sub-contractors shall cover or insure under the applicable laws relating to workers' compensation insurance, all of their employees employed directly by them or through subcontractors in carrying out the work contemplated under this Agreement, all in accordance with the Workers' Compensation and Insurance Act, Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Lessee shall provide employer's liability insurance in the amount of, at least, \$1,000,000 per accident for bodily injury and disease.

9.3. Liability Insurance. Lessee shall provide and maintain at all times during the performance of this Agreement, the following commercial general liability insurance:

(a) Coverage. Coverage shall be at least as broad as the following:

(1) Commercial General Liability. Commercial General Liability coverage (Occurrence Form CG 0001) in the amount of two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2501 or insurer's equivalent endorsement provided to the District) or the general aggregate limit shall be twice the required occurrence limit.

(2) Required Provisions. All policies specified hereunder shall state or be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days (10 days for nonpayment of premium) prior written notice by U.S. mail has been given to the District.

(3) Required Format. All of the liability insurance shall be provided on policy forms satisfactory to the District. All insurance

correspondence, notations, certificates, or other documents from the insurance carrier or agent/broker shall each separately reference the District project number.

(4) Deductibles and Self-Insured Retention. Any deductible or self-insurance retention must be declared to and approved by the District. At the option of the District, the insurer shall reduce or eliminate such deductibles or self-insured retention.

(5) Acceptability of Insurers. Insurance is to be placed with insurers having a current A.M. Best's rating of no less than A-:VII or equivalent or as otherwise approved by the District.

(6) Evidences and Cancellation of Insurance. Prior to execution of this Agreement, Lessee shall file with the District evidence of insurance satisfactory to the District. The insurer will give by U.S. mail written notice to the District at least thirty (30) days prior to the effective date of any cancellation, except for nonpayment of premium for which ten (10) days prior written notice will be given. Lessee shall, upon demand of the District, deliver to the District all such policy or policies of insurance and the receipts for payment of premiums thereon.

9.4. Subcontractors. In the event that Lessee employs other contractors as part of the services covered by this Agreement, it shall be the Lessee's responsibility to confirm that each subcontractor meets the minimum insurance requirements specified above.

10.0 Default or Termination.

10.1. Default by Lessee. Each and every covenant and agreement contained in this Lease is declared to be a condition to the Lease, and to the rights hereby granted to Lessee. Lessee shall be considered to have materially breached this Lease, giving the District the remedies set forth in Section 10.2 below, in the event that any one or more of the following occur:

(a) Lessee fails or refused to pay to the District any royalties or other rentals due hereunder when due, and such royalty or rent remains unpaid for thirty (30) days after written notice by the District to Lessee; or

(b) Lessee defaults in the performance of or breaches any covenant, condition, or provision contained in this requirement other than set forth in Section 10.1 (a) hereinabove, and such default or breach is not cured within thirty (30) days after written notice thereof is served by the District on Lessee, or if such cure is physically impossible to cure within thirty (30) days, Lessee has begun and diligently prosecuted such cure.

(c) Lessee becomes insolvent. For the purposes of this Lease, Lessee shall be conclusively presumed to have become insolvent if (i) a receiver is appointed to take possession of all or substantially all of Lessee's property

because of insolvency; or (ii) Lessee makes a general assignment for the benefit of creditors; or (iii) Lessee allows any judgment against Lessee to remain unsatisfied or unbonded for a period of thirty (30) days or longer; or (iv) an attachment or execution is levied upon or against any or all of Lessee's right, title, or interests in or under this Lease, and the same shall not have been released within thirty (30) days from the date thereof; or (v) proceedings or receivership in bankruptcy have been instituted against Lessee; or (vi) Lessee is adjudicated bankrupt.

(d) Any disagreement between the parties as to whether a default has occurred shall be decided by binding arbitration, as provided for herein.

10.2. Remedies on Lessee's Default. Should Lessee breach this Lease, the District may, in addition to any other remedy given the District by law or in equity:

(a) Continue this Lease in effect by not terminating Lessee's right to possession of the Premises, in which event District shall be entitled to enforce all of the District's rights and remedies under this Lease, including the right to recover the royalties and other rental payments specified herein, as such royalties and payments become due under this Lease; or

(b) Terminate this Lease and Lessee's right to possession of the Premises;

(c) In the event Lessee becomes insolvent, the District may, by giving thirty (30) days' written notice to Lessee or to the person appointed to manage Lessee's affairs at the address for such person appearing in the official records of the court that appointed such person, terminate this Lease and forfeit Lessee's rights under the Premises and in any Improvements or facilities on or appurtenant to the Premises.

The remedies herein shall not be exclusive, but shall be cumulative and in addition to any and all of the remedies now or hereafter allowed by law or otherwise authorized in this Lease, and the exercise of one or more of said rights, powers, elections, or remedies shall not impair the District's right to exercise any other right, power, election, or remedy.

10.3. Lessee's Right of Termination. Lessee may terminate this Lease, with or without cause, at any time after the first anniversary of the Commencement Date, by providing District no less than one hundred and eighty (180) days' written notice. Upon giving such notice, and until the one hundred eighty day period passes, the Lease shall remain in effect, and Lessee shall fulfill all obligations of Lessee hereunder which accrues during the one hundred eighty (180) days, including the payment of Orange Street Plant Site rent, guaranteed annual royalty and any per-ton royalty amounts.

10.4. Surrender of Possession. At the expiration or termination of this Lease, for whatever reason, Lessee shall execute, acknowledge, and deliver to the District a Quitclaim Deed conveying all right, title, and interest of the Lessee to the Premises, both land and improvements. Thereafter, Lessee shall promptly, but in any event no later than six (6) months

following the expiration or earlier termination of the Lease, remove all Improvements (unless the requirements for such removal has been waived in writing by District), portable buildings, equipment, and personal property placed on the Premises by Lessee, and clear the Premises of all debris, and otherwise surrender to the District the Premises in good order and clean condition.

10.5. Quiet Enjoyment. District represents, covenants and warrants that Lessee, upon paying the rent and performing the covenants herein provided, shall peacefully and quietly have, hold and enjoy the Premises, subject to District's reserved rights hereunder.

11.0 Encumbrance, Assignment, and Subletting.

11.1. Hypothecation.

(a) Lessee shall have the right at any time, from time to time, and subject to prior written approval of the District (except to the extent any Improvements are subject to an encumbrance prior to the execution of this Lease), to subject the leasehold estate and any or all Improvements placed or to be placed on the Premises to one or more deeds of trust or other security instruments (collectively "Leasehold Deed of Trust" herein) as security for a loan or loans or other obligation of Lessee, provided that:

(i) The Leasehold Deed of Trust and all rights acquired under it shall be subject and subordinate to each and all of the covenants, conditions, and restrictions stated in this Lease, and to all rights and interest of the District except as otherwise provided herein, and

(ii) Lessee shall give District prior notice of any such Leasehold Deed of Trust, and shall accompany the notice with a true copy of the note and deed of trust.

11.2. Assignment and Sublease; Transfer Restrictions. Lessee may assign or sublease all or a portion of its interest hereunder to any other entity, but only with the prior written permission of the District. For the purposes of this Lease, an "assignment" shall include a transfer to any person or group of persons acting in concert, of more than twenty-five percent (25%) of the present ownership and/or control of Lessee in the aggregate, taking all transfers into account on a cumulative basis, except transfers of such ownership or control interest between members of the same immediate family, or transfer to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the transferor's immediate family. In the event Lessee or its successor is a corporation or trust, such transfer shall refer to the transfer of the issued and outstanding capital stock of Lessee, or of the beneficial interests of such trust; in the event that Lessee or its successor is a limited or general partnership, such transfer shall refer to the transfer of more than twenty-five percent (25%) of the limited or general partnership interest; in the event that Lessee or its successor is a joint venture, such transfer shall refer to the transfer of more than twenty-five percent (25%) of the ownership and/or successor control of any such joint venture partner, taking all transfers into account on a cumulative basis.

11.3. Licenses. Lessee shall have the right to grant licenses for ingress and egress to the Premises in connection with any assignment or sublease, provided such licenses are

made specifically subject to the covenants contained in this Lease, and do not extend beyond the term of this Lease. Upon any assignment, the assigning Lessee shall have no further obligation or liability under this Lease with respect to the portion assigned, except for such obligations that arose from the period of such assigning Lessee's occupancy of the Premises, and the new Lessee shall agree in writing to be bound by all terms and conditions hereof.

12.0 Transfer Premises. The parties agree to cooperate reasonably in defining the Transfer Premises, either before or upon the final approval of the Wash Plan, if the Wash Plan becomes effectuated. The Transfer of Premises shall be identified by way of appropriate legal description and plat maps, and shall be incorporated as Premises to which this Lease applies by way of a written amendment to this Lease. The Transfer of Premises shall not be replaced for any portion of the Premises without the mutual agreement of District and Lessee.

13.0 Condemnation. If during the term of this Lease, all or any portion of the Premises is acquired for public use by the use of eminent domain, or transfer under threat of eminent domain, the following shall apply:

(a) District shall be entitled to all compensation awarded for the taking of the Premises, including any leasehold bonus value, except that Lessee shall be entitled to any portion of the award representing the value of its leasehold improvements (less any reversionary value allocable to District upon the scheduled end of the lease term), moveable equipment, inventory, moving expenses or relocation benefits, any award for loss of Lessee's business goodwill, and any separately-assessed attorneys fees or costs which are awarded solely to Lessee.

(b) If the entire Premises are taken pursuant to any condemnation proceeding, or acquisition under threat of condemnation, the Lease shall terminate in its entirety, effective on the date the acquiring entity takes actual possession of the Premises. If only a part of the Premises is taken pursuant to any condemnation proceeding, or acquisition under threat of condemnation, and the part taken is so essential that the remainder Premises subject to the Lease is no longer suitable for the purposes of the Lease, Lessee shall have the option to terminate this Lease. Such option shall be exercised in writing, no later than: (1) thirty (30) days after the filing of any complaint in eminent domain and service of same upon Lessee; or (2) within thirty (30) days of Lessee being notified, by District or any other party, of the acquiring entity's intent to acquire by eminent domain, accompanied by a legal description or other detailed indication of the specific area and property interests the acquiring entity proposes to take, whichever of the two occurs earlier. Any dispute between the District and Lessee as to whether a part taking taken is so essential that the remainder Premises subject to the Lease is no longer suitable for the purposes of the Lease shall be submitted to binding arbitration as provided herein if no condemnation action is then pending, and if such an action is pending, by the court hearing and determining such action.

(c) If only a part of the Premises is taken pursuant to a condemnation proceeding or acquisition under threat of condemnation, and there is either (1) no such material impairment of Lessee's use of the remaining portion of the Premises, or (2) Lessee otherwise elects not to terminate this Lease as provided in this Section, then the Lease shall terminate only as to the portion taken, effective on the date the acquiring entity takes actual possession of the portion taken, and the Lease shall continue in full force and effect as to the remaining portion of the Premises.

(d) If any portion of the plant site is taken as part of a partial taking, the plant site rent shall be reduced, in a percentage equal to the percentage the land taken area from the plant site bears to the total area of the plant site before the taking, such reduction to be effective on the date the Lease terminates as to the portion of the plant site taken. There shall be no reduction to the guaranteed annual royalty or the per-tonnage royalty, however.

14.0 Assignment and Transfer. The qualifications and identity of Lessee are of particular concern to District. It is because of those qualifications and identity that District has entered into this Agreement with Lessee. Accordingly, except as expressly set forth herein, Lessee shall not, whether voluntarily, involuntarily or by operation of law, assign, transfer or convey all or any part of this Agreement or any rights hereunder or in this Lease or the Premises without District's prior written approval, which shall not be unreasonably withheld, delayed or conditioned on items not related to the prospective assignee's financial ability to perform Lessee's requirements and obligations under this Lease, or the prospective assignee's ability to comply with the terms, conditions, or requirements of any applicable permit, entitlement, development condition, or provision of law governing the mining activities to be carried out on the premises under this Lease. Notwithstanding the foregoing, Lessee may assign its interest in this Lease to (a) an entity whose majority interest is owned or controlled by Lessee; or (b) a limited partnership or limited liability company whose general partner or managing member is Lessee. The term "control," as used in the immediately preceding sentence, means, with respect to a person that is a corporation, the right to exercise, directly or indirectly, at least 50% of the voting rights attributable to the shares of the controlled corporation, and, with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person

If District approves the assignment, the approval shall be subject to the satisfaction of the following conditions ("**Transfer Conditions**"):

(a) All of the obligations of this Lease shall have been assumed by the transferee pursuant to a written assignment and assumption agreement(s) in a form reasonably approved by District's legal counsel.

(b) The organizational documents of the transferee and a good standing certificate of the transferee shall have been submitted to District.

(c) There shall be no default of Lessee of this Agreement and no event has occurred that would constitute a default with the giving of notice or the passage of time.

15.0 Miscellaneous Provisions.

15.1. Notices. As expressly provided to the contrary herein, any notice, consent, report, demand document, or other such item to be given, delivered, furnished, or received hereunder, shall be deemed given, delivered, furnished, or received when given in writing and personally delivered to an authorized agent of the applicable party, or upon delivery by United States Postal Service, first class registered or certified mail, postage prepaid, return receipt requested, or by national "overnight courier," such as Federal Express, at the time of delivery shown upon receipt, and in any case, delivered to the address, addresses, and persons as each party may from time to time, by written notice designate to the other, and who initially are:

If to District: San Bernardino Valley Water Conservation District
1630 West Redlands Boulevard
Suite A
Redlands, California 92373
Attn: General Manager

With a Copy to: Rutan & Tucker
611 Anton Boulevard
Suite 1400
Costa Mesa, CA 92626
Attn: David B. Cosgrove

If to Lessee: Cemex Construction Materials Pacific, LLC
5180 Golden Foothills Parkway
Suite 200
El Dorado Hills, CA
Attn: Tom Powell

With a Copy to: Cemex
920 Memorial City Way, Suite 100
Houston, TX 77024

Attn: General Counsel

15.2. Interpretation. The terms of this Lease shall be construed in accordance with the meaning of the language used, and shall not be construed for or against either party by reason of authorship. This lease contains the full agreement of the parties with respect to the subject matter contained herein, and supersedes all prior leases, negotiations, agreements, and/or representations, whether oral or written. Specifically, this Lease supersedes the "Lease Agreement" dated September 10, 1979, between the District and C. L. Pharris Sand and Gravel, Inc., the "Lease Amendment" dated July 10, 1997 between the District and C. L. Pharris Sand

and Gravel, Inc., dba Sunwest Materials, and any other prior lease agreements between the parties with respect to any portion of the Premises. All such prior lease agreements are superseded and replaced by this Lease Agreement, including any options, rights of first refusal, or other rights that may arise thereunder, all of which are of no force or effect. This Lease constitutes the entire lease agreement between District and Lessee.

15.3. Amendment. This Lease may be amended at any time by mutual agreement of the parties, by an instrument in writing, signed by both parties, and referencing that it is an amendment to this Lease.

15.4. Corporate Authority. The persons executing this Lease on behalf of the parties hereto warrant that (i) the party on whose behalf the signature appears is duly organized and existing; (ii) such party is authorized to execute and deliver this Lease on behalf of such party; (iii) by so executing this Lease, such party is bound to the provisions of this Lease; and (iv) by entering into this Lease, such party does not violate any provision to any other agreement to which said party is bound. .

15.5. Binding on Successors. Subject to the transfer restrictions stated elsewhere in this Lease, this Lease shall be binding upon each party's respective successors and assigns.

15.6. Time is of the Essence. Time is of the essence in this Lease. Failure to comply with any requirement, including but not limited to any time requirement of this Lease shall constitute a material breach of the Lease.

15.7. Severability. The invalidity or illegality of any provision of this Lease shall not affect the remainder of the Lease. The parties hereby declare that it is their intent that, in the event one or more portions of the Lease is declared invalid or unenforceable, they intend that the remainder of the Lease continue to bind both parties, unless the severed remainder is so essential to the terms of this Lease that additional performance of the Lease is impossible or so uncertain as to render meaningful performance impossible or unrealistic.

15.8. Force Majeure. The time limits provided herein for performance of any actions required hereunder shall be extended during any time, but only during such time, as a party is unable to perform obligations to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, inaccessibility of transportation or critical infrastructure, governmental restrictions or priority litigation, acts of God, or other similar causes beyond the control of, and without the fault of, the party charged to perform. The party to perform shall continue to exercise reasonable diligence to minimize the period of delay during any period of force majeure. An extension of time for any such cause shall be limited to the period of the delay, and shall commence to run from the time of the commencement of the force majeure, provided notice by the party be to perform claiming such extension is sent to the other party within ten (10) days of the commencement of the cause.

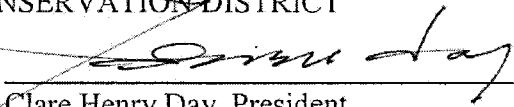
15.9. Attorneys' Fees. In the event of any suit to enforce any provision of this Lease, or to prevent or to correct any breach of this agreement, the prevailing party in such

action or proceeding, in addition to any other relief which may be granted, legal or equitable, shall be entitled to reasonable attorneys' fees. As used herein, "attorneys' fees" shall include costs for legal services, and all other reasonable costs for investigating the action, including the taking of depositions and discovery, and any other recoverable costs. All such fees shall be deemed accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to final judgment. The court in any such action shall be requested to name a prevailing party.

15.10. Counterparts. This Lease may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

Dated: _____

SAN BERNARDINO VALLEY WATER
CONSERVATION DISTRICT

By: 
Clare Henry Day, President

APPROVED AS TO FORM:

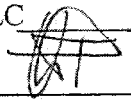
RUTAN & TUCKER, LLP



By: David B. Cosgrove
General Counsel

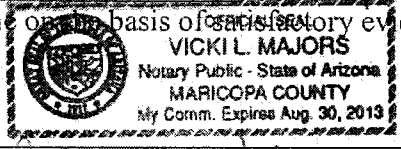
Dated: _____

CEMEX CONSTRUCTION MATERIALS
PACIFIC, LLC

By: 
V.P.,

State of Arizona
County of Maricopa

Subscribed and sworn to (or affirmed) before me on this 28th day
of October, 2011, by OSCAR FRIAS,
proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

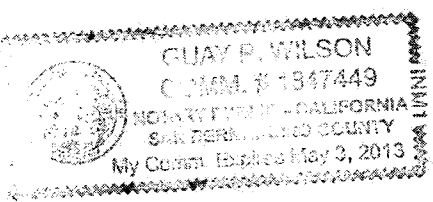


Seal: _____
Signature Vicki L. Majors

State of California
County of San Bernardino

Subscribed and sworn to (or affirmed) before me on this 21 day
of October, 2011, by Clara Reyes Diaz,
proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Seal: GUAY P. WILSON
Signature G. P. Wilson



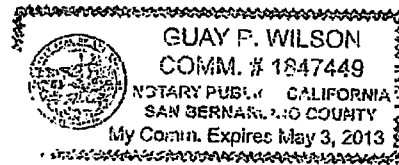
State of California

County of ~~Orange~~ ^{San Bernadino}

Subscribed and sworn to (or affirmed) before me on this 31 day
of October, 2011, by Chase Terry
proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Seal: Guay P Wilson

Signature G P Wilson



State of California

County of ~~Orange~~ ^{San Bernadino}

Subscribed and sworn to (or affirmed) before me on this _____ day
of _____, 2011, by _____
proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Seal: _____

Signature _____

Exhibit "A"
Legal Descriptions of: "PREMISES" Properties

	<u>Approx. Acres</u>
<u>Parcel I-1:</u> (Portion of WCD Parcel 11-2) North one-half of the North one-half of Section 11, T. 1 S. R. 3 W., SBB&M, excepting therefrom the North 40 feet.	155
<u>Parcel I-2:</u> (Portion of WCD Parcel 11-1) South one-half of the Southeast Quarter of Section 11, T. 1 S., R. 3 W., SBB&M	80
<u>Parcel I-3:</u> (WCD Parcels 12-2 and 12-3) North one-half of Section 12, T. 1 S., R. 3 W., SBB&M, except that portion lying northeasterly of the southwesterly right-of-way of the AT&SFe Railroad.	143
<u>Parcel I-3a:</u> (WCD Parcel 12-3) Three rights-of-way 80 feet wide across the AT&SFe right- of-way in the Southwest Quarter of the Northeast Quarter of said Section 12, as described in the deed from Charles Elliott to the San Bernardino & Eastern Railway Company	

Recorded December 15, 1891
Book 144, page 16 of Records of
San Bernardino County, California.

<u>Parcel II-A:</u> (Portion of WCD Parcel 11-2) East one-half of the South one-half of the North one-half of Section 11, T. 1 S., R. 3 W., SBB&M	80
<u>Parcel II-B:</u> (WCD Parcel 11-3) North one-half of the Northwest Quarter of the Southwest Quarter of Section 11, T. 1 S., R. 3 S., SBB&M	20
<u>Parcel II-C:</u> (WCD Parcel 11-4) Northeast Quarter of the Southwest Quarter of Section 11, T. 1 S., R. 3 W., SBB&M	40

Saving and excepting from the above parcels the main canal of lessor which crosses the property in an east-west direction and reserving unto lessor an easement 40 feet wide across the property adjacent to the Southerly boundary.

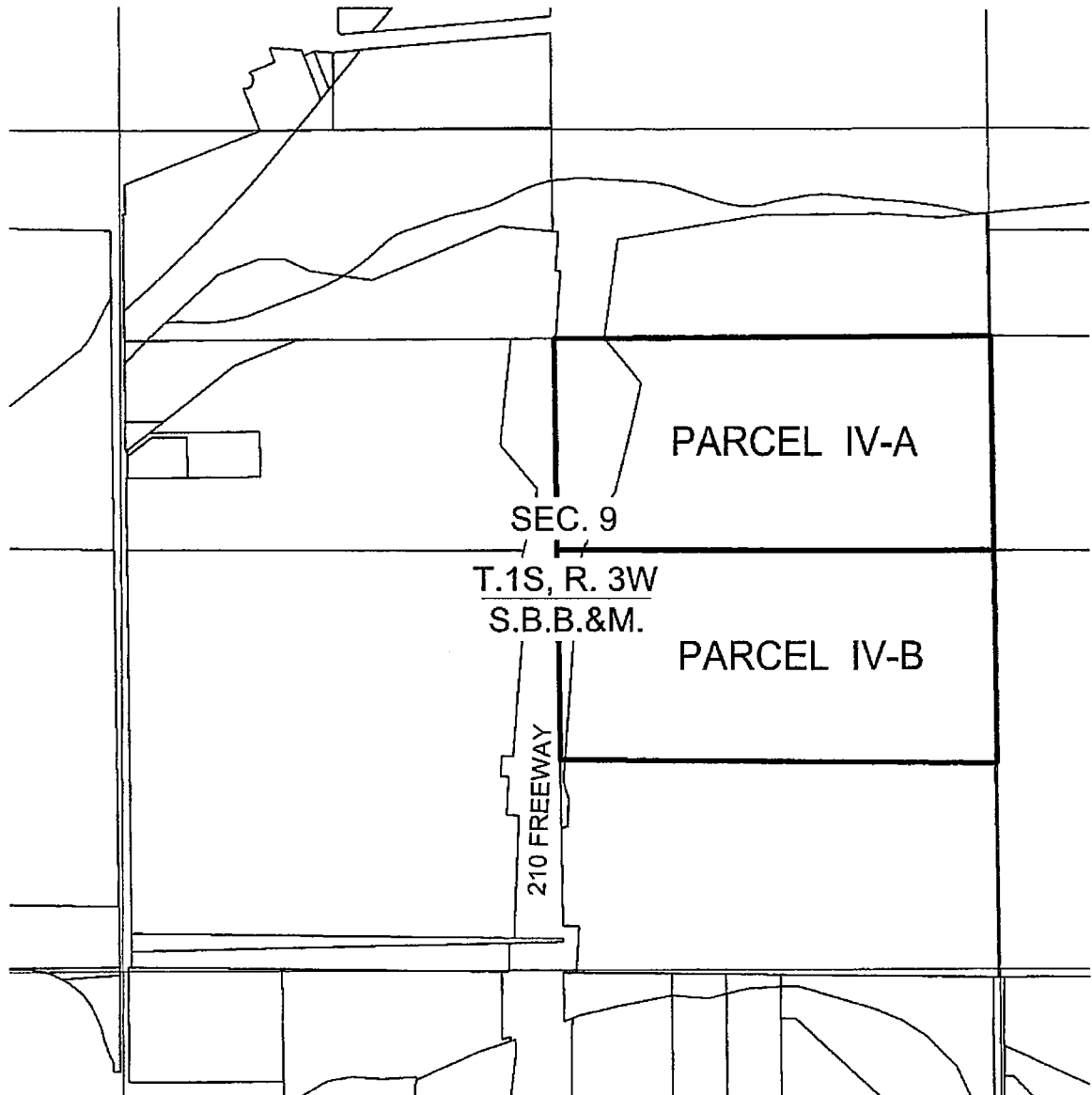
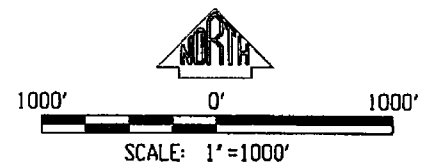
<u>Parcel II-D:</u> (Portion of WCD Parcel 10-2) A non-exclusive easement across the North 60 feet of the North one-half of the Southeast Quarter of Section 10, T. 1 S., R. 3 W., SBB&M.	
---	--

	<u>Approx. Acres</u>
<u>Parcel II-E:</u> (Portion of WCD Parcel 11-2) West one-half of the South one-half of the North one-half of Section 11, T. 1 S., R. 3 W., SBB&M	80
<u>Parcel III-A:</u> (Portion of WCD Parcel 11-1) The North one-half of the Southeast Quarter of Section 11, T. 1 S., R. 3 W., SBB&M	80
<u>Parcel III-B:</u> (WCD Parcel 10-2) The North one-half of the Southeast Quarter of Section 10, T. 1 S., R. 3 W., SBB&M, except the westerly 130+ feet thereof.	75
<u>Parcel IV-A:</u> (WCD Parcel 9-2) South one-half of the Northeast Quarter of Section 9, T. 1 S., R. 3 W., SBB&M.	80
<u>Parcel IV-B:</u> (Portion of WCD Parcel 9-1) North one-half of the Southeast Quarter of Section 9, T. 1 S., R. 3 W., SBB&M.	80

EXHIBIT "B"

NOV. 15, 2011

SHEET 1 OF 4



SEE SHEET 2 OF 4



JOSEPH E. BONADIMAN & ASSOCIATES INC.
consulting engineers land surveyors

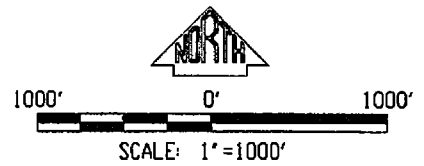
234 N. Arrowhead Ave., San Bernardino, CA. 92408
Phone: (909)885-3806 Fax: (909)381-1721

EXHIBIT "B"

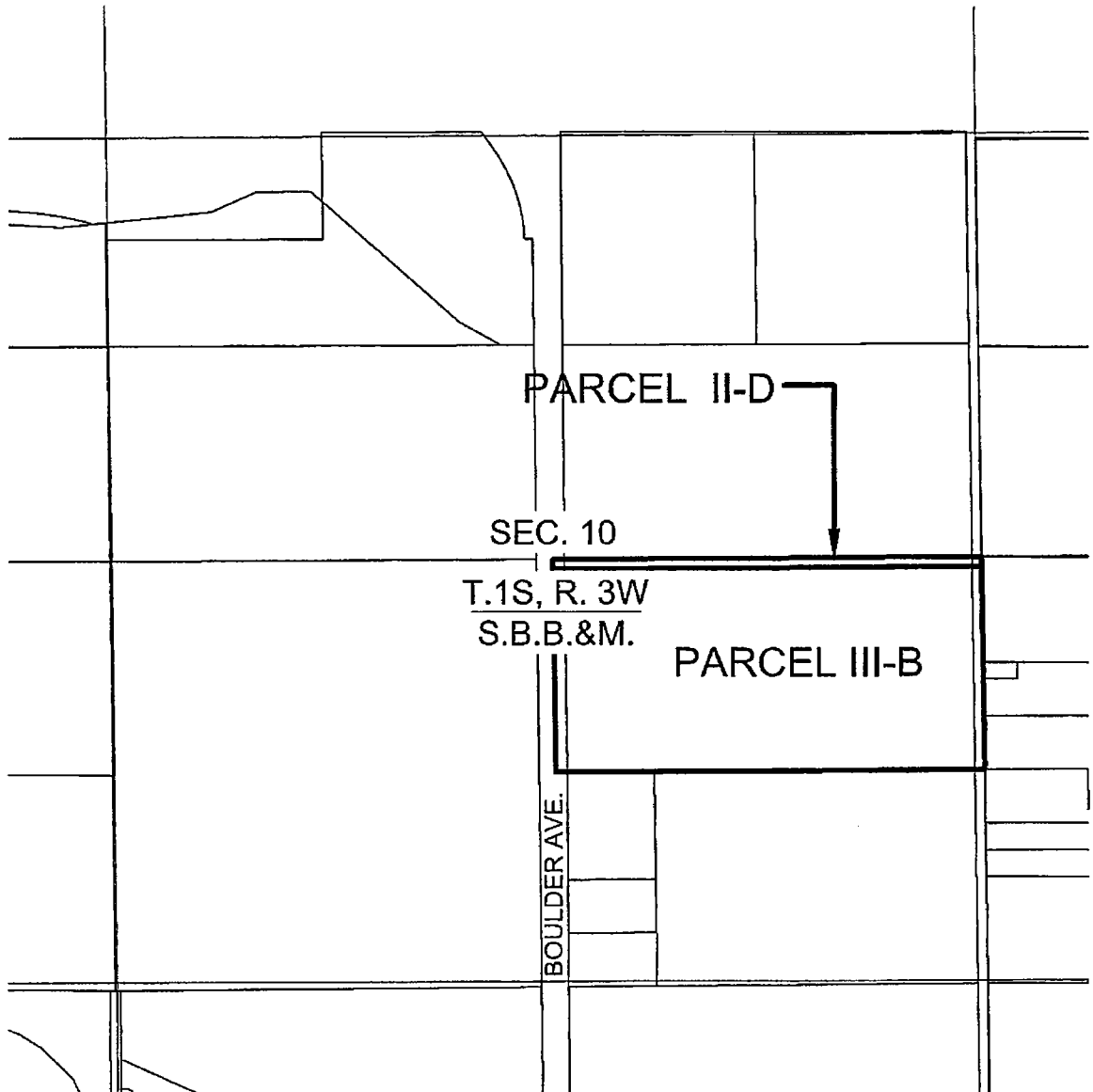
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NOV. 15, 2011

SHEET 2 OF 4



SEE SHEET 1 OF 4



SEE SHEET 3 OF 4



JOSEPH E. BONADIMAN & ASSOCIATES INC.
consulting engineers land surveyors

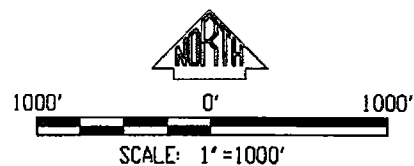
234 N. Arrowhead Ave., San Bernardino, CA. 92408
Phone: (909)885-3806 Fax: (909)381-1721

EXHIBIT "B"

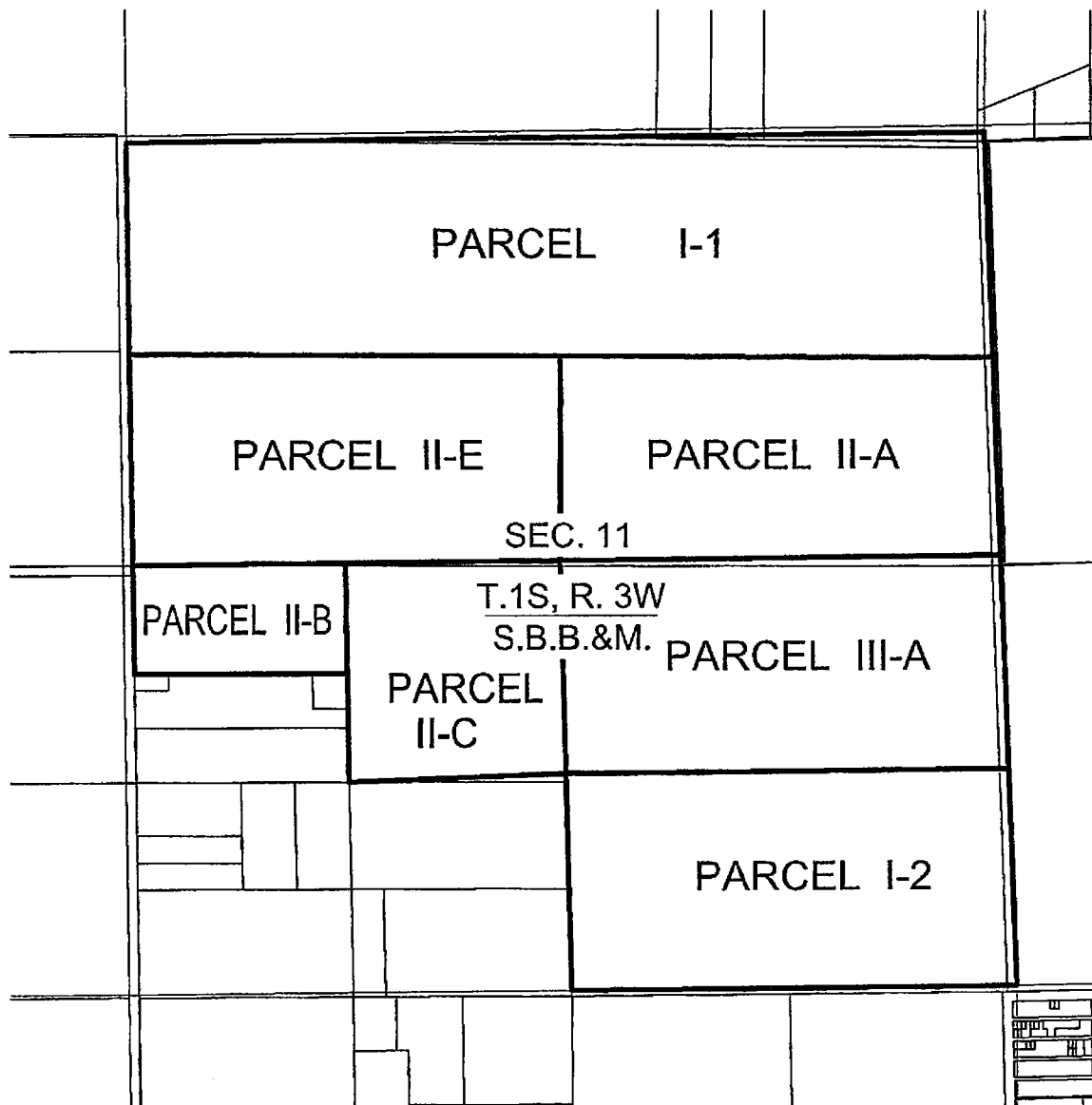
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NOV. 15, 2011

SHEET 3 OF 4



SEE SHEET 2 OF 4



SEE SHEET 4 OF 4



JOSEPH E. BONADIMAN & ASSOCIATES INC.
consulting engineers land surveyors

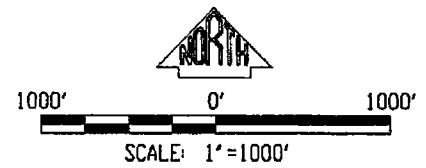
234 N. Arrowhead Ave., San Bernardino, CA. 92408
Phone: (909)885-3806 Fax: (909)381-1721

EXHIBIT "B"

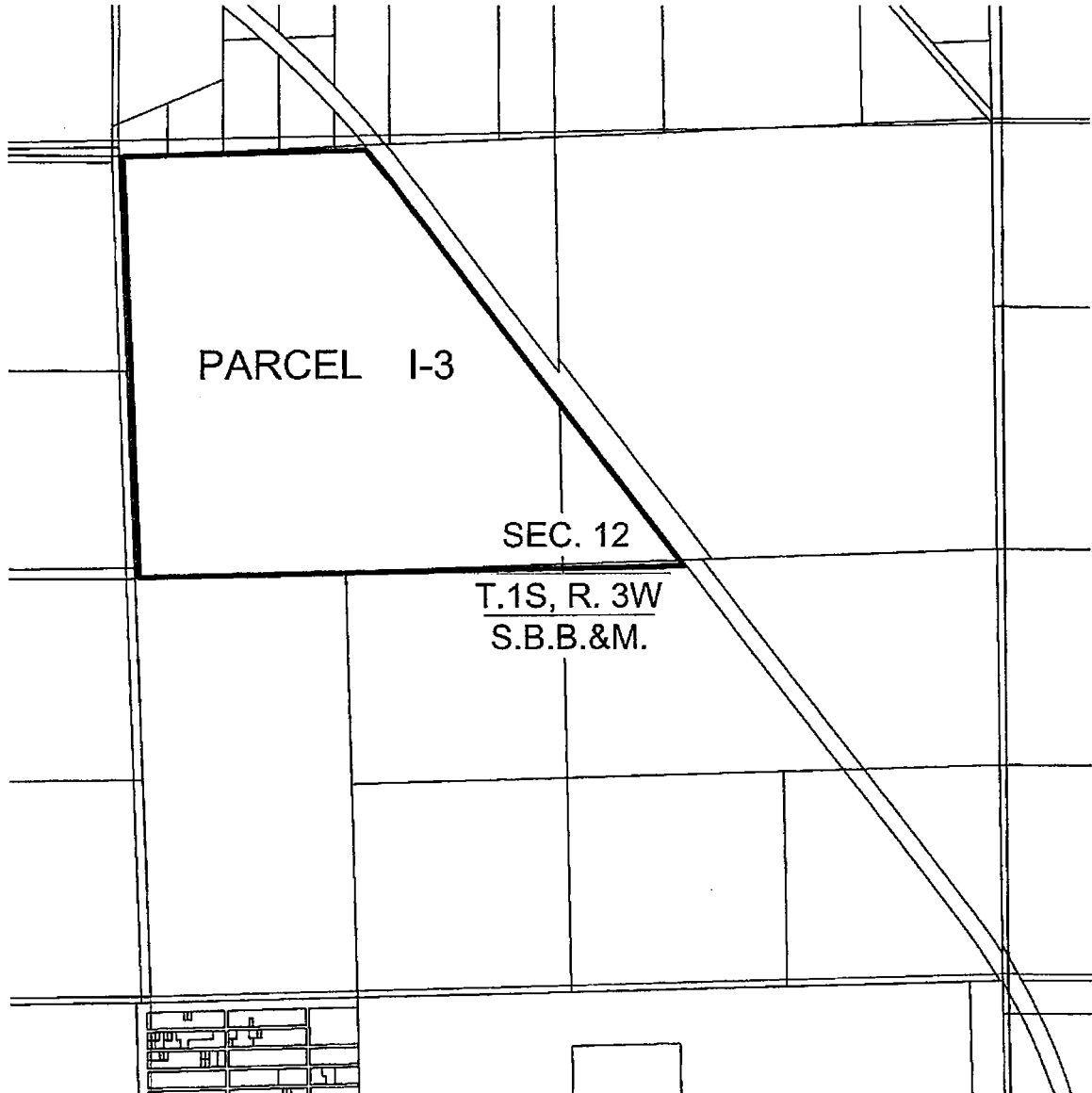
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NOV. 15, 2011

SHEET 4 OF 4



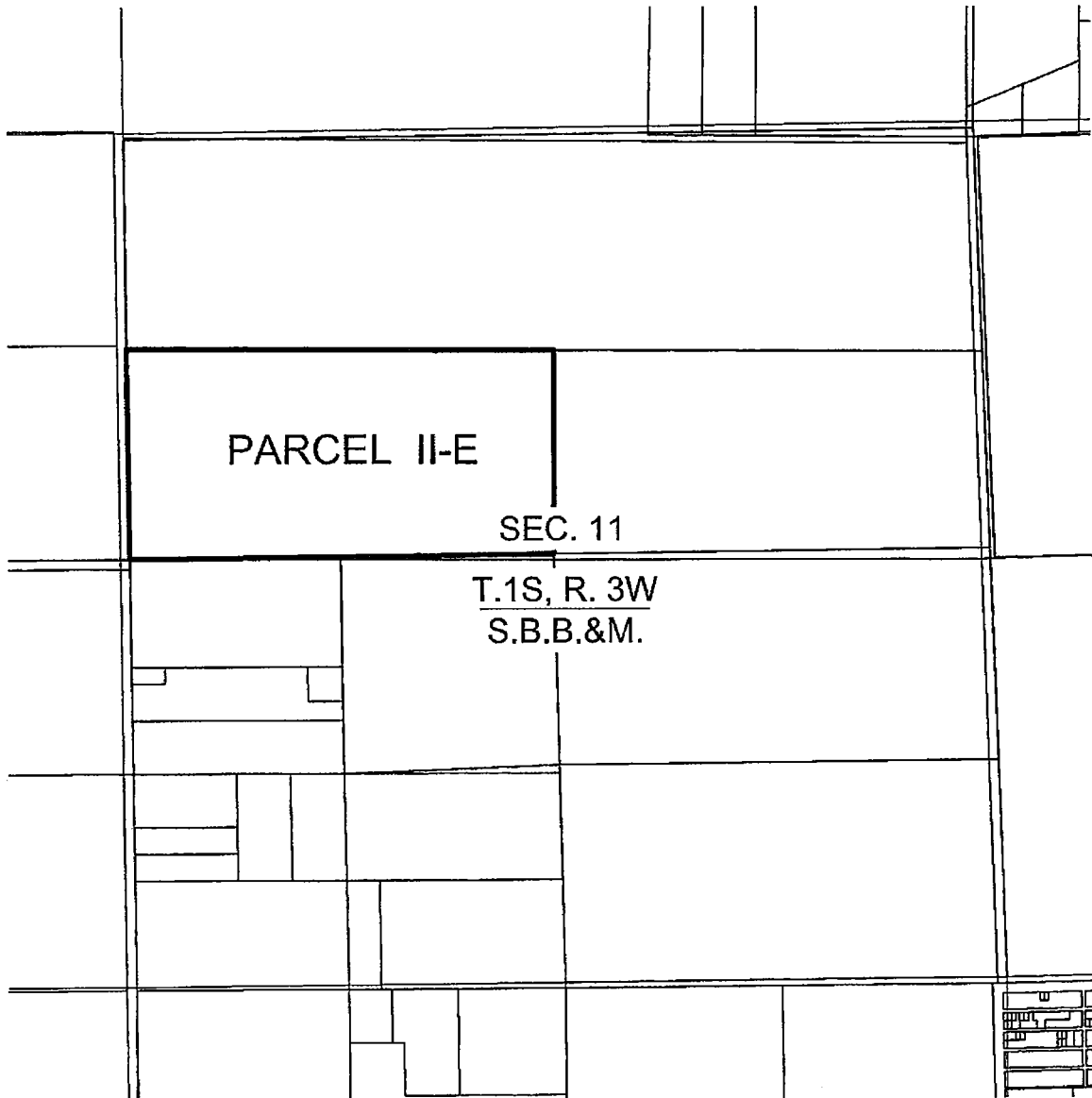
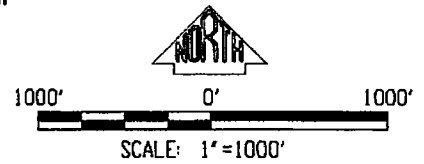
SEE SHEET 3 OF 4



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consulting engineers land surveyors

234 N. Arrowhead Ave., San Bernardino, CA. 92408
Phone: (909)885-3806 Fax: (909)381-1721

EXHIBIT "C"
"SILT DEPOSIT AREA"
NOV. 15, 2011



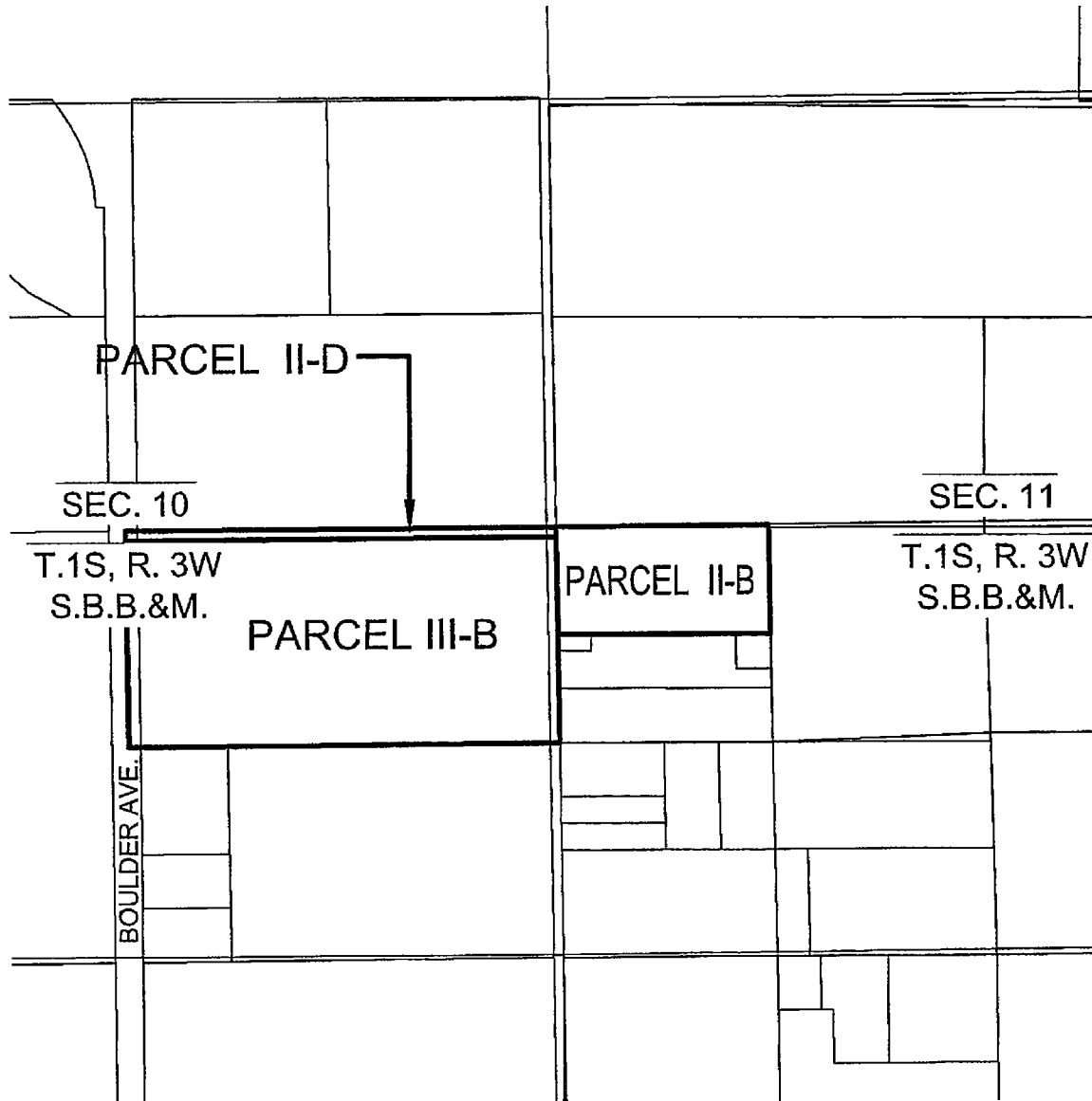
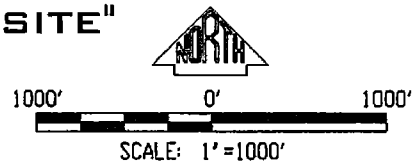
JOSEPH E. BONADIMAN & ASSOCIATES INC.
consulting engineers land surveyors

234 N. Arrowhead Ave., San Bernardino, CA. 92408
Phone: (909)885-3806 Fax: (909)381-1721

EXHIBIT "D"

"ORANGE STREET PLANT SITE"

NOV. 15, 2011



JOSEPH E. BONADIMAN & ASSOCIATES INC.
consulting engineers land surveyors

234 N. Arrowhead Ave., San Bernardino, CA. 92408
Phone: (909)885-3806 Fax: (909)381-1721

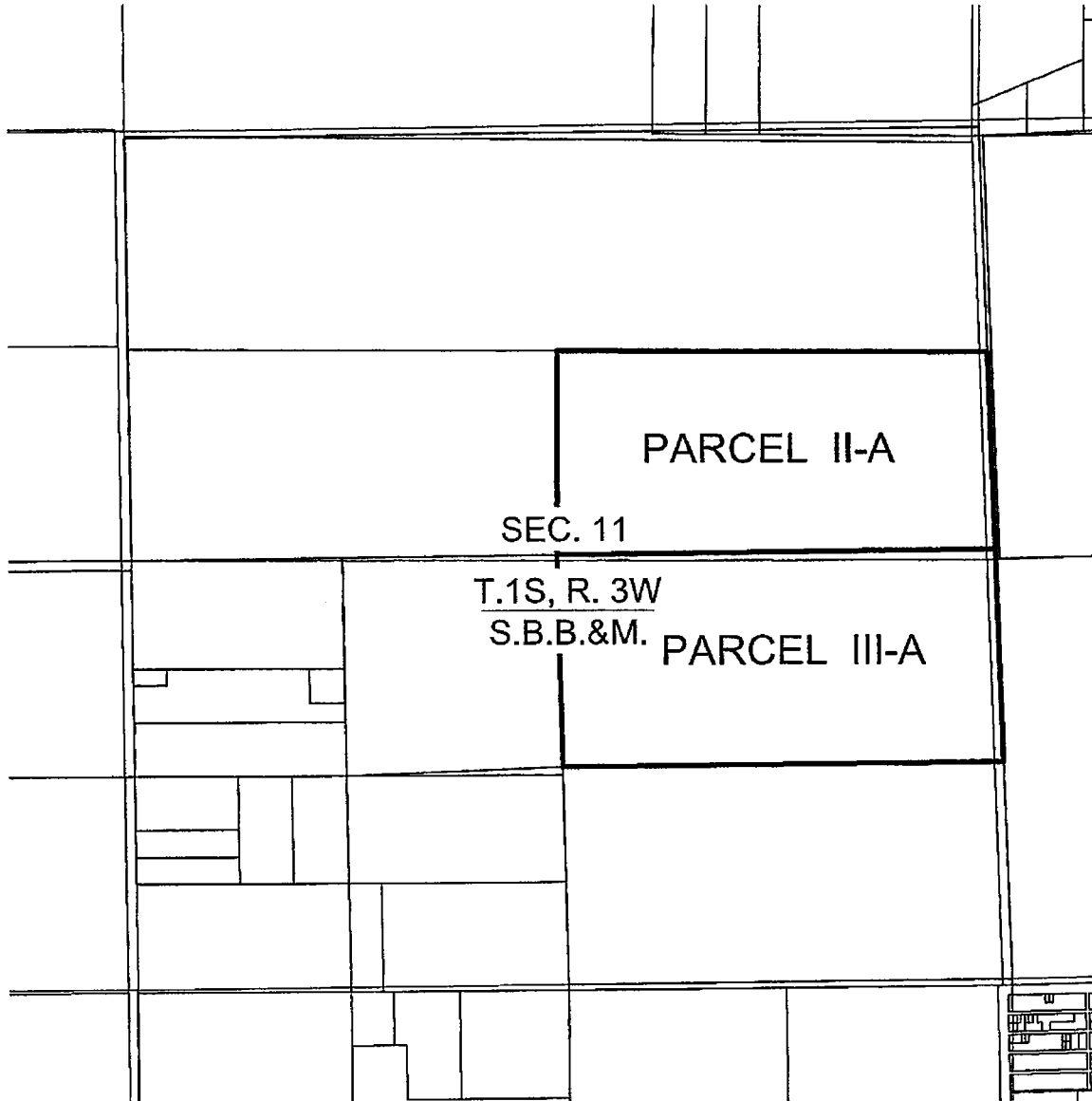
EXHIBIT "E"

"REDLANDS AGGREGATES SITE"

NOV. 15, 2011



1000' 0' 1000'
SCALE: 1"=1000'



JOSEPH E. BONADIMAN & ASSOCIATES INC.
consulting engineers land surveyors

234 N. Arrowhead Ave., San Bernardino, CA. 92408
Phone: (909)885-3806 Fax: (909)381-1721

Exhibit 4

Roberton's Ready Mix

Lease

AGREEMENT

This Agreement is made on this 14 day of August, 2003, by and between San Bernardino Valley Water Conservation District ("District") and Robertson's Ready Mix, Ltd., ("Robertson's"), together "Parties" or individually, "Party".

RECITALS

A. District is a California water conservation district duly formed and operating under Sections 74000, et seq., of the California Water Code, and operating as a water conservation district, having as a purpose the recharge of ground water supply and maintenance of groundwater basins underlying its jurisdiction area.

B. Robertson's is a California limited partnership, duly formed and organized pursuant to the laws of the State of California, with its principal place of business in Corona, California. Robertson's engages in the business of excavating, processing, and selling rock, sand, gravel and other like substances ("Aggregates").

C. On or about October 5, 1992, the Parties entered into a Lease Agreement for Mineral Extractions ("Cone Camp Lease") pursuant to which Robertson's, on the satisfaction of certain conditions, would have the right to extract Aggregates from that property defined as the "Premises" in the Cone Camp Lease, and commonly referred to as "Cone Camp Quarry." A copy of the Cone Camp Lease is appended hereto, denoted Exhibit "A".

D. Some time in or about 1993, the Parties, together with other entities interested in mining, flood control, resource management and conservation, and municipalities, formed the Santa Ana River Wash Area Coordinated Planning Activities Committee ("Wash Committee") to address land use issues related to the Upper Santa Ana River Wash ("Wash").

E. The Wash Committee examined the most appropriate manner in which to use the Wash for the benefit of all landowners without regard to the existing interests in real property situated in the Wash. The Wash Committee determined that there should be a balance of land uses to accommodate the varied and competing concerns. The Wash Committee further determined that in order to achieve land use balance, the existing and potential uses must be reallocated among specific portions of the Wash.

F. Deliberations of the Wash Committee resulted in the drafting, circulation, and approval of a "Proposed Land Management and Habitat Conservation Plan for the Upper Santa Ana River Wash" ("Concept Plan"), which sets out concepts for realignment of mining, water conservation, recreation, habitat preservation, and other uses in the Santa Ana River Wash and was conceptually endorsed by all members of the Wash Committee, including the Parties. A copy of the Concept Plan as presently conceived is attached as Exhibit "B." This Concept Plan is subject to revision as the parties impacted continue to refine and negotiate its parameters. Implementation of the Concept Plan, as it may evolve over time, will require the formation of a Task Force, of which the Parties shall be members, to fund studies for environmental review of proposed mining, transfer of various property ownerships and lease interests, habitat conservation plans, recreational facilities, regional infrastructure, and water supply and conservation activities, and to implement such activities. A Task Force Agreement has been

prepared and circulated among applicable Wash Committee members, including the Parties, to guide and fund implementation of the Concept Plan. It has been reviewed and approved by the Parties, in the form attached hereto as Exhibit "C," and shall be executed by the Parties upon or prior to execution of this Agreement.

G. The Parties have found and determined that it is in their individual best interests to join together with other members of the Task Force to manage activities in connection with the planning, environmental review, and implementation of the Concept Plan (collectively the "Project").

H. The Cone Camp Lease requires that Robertson's "diligently and continuously take all actions necessary to obtain any and all licenses, permits, or other governmental entitlements.... required to accomplish the excavation purpose set out [therein]". There is currently pending before the city of Highland Robertson's application ("Cone Camp Application") for entitlements to mine Aggregates from the Cone Camp Quarry.

I. Robertson's has represented to the District that it has reached an agreement with Cemex Construction Materials, LP ("Cemex"), an entity engaged in business similar to that in which Robertson's is engaged, concerning the allocation, between Robertson's and Cemex, of the right to extract Aggregates from property which is contemplated for the excavation of Aggregates under the Concept Plan.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN THE PARTIES AGREE AS FOLLOWS:

Section 1. Definitions.

In addition to capitalized terms defined elsewhere in this Agreement, the following terms shall be defined as follows:

1.1 "Effective Date" shall mean the date on which both Parties have executed the Task Force Agreement and this Agreement.

1.2 "Section," except as may be qualified to refer to the Cone Camp Lease, shall be deemed to be a reference to a portion of this Agreement.

1.3 "WPA" shall mean the Wash Planning Area, as that term is used and defined in the Concept Plan.

1.4 "Robertson's WPA Allocation" shall mean that portion of the WPA which is allocated, through written agreement between Robertson's and Cemex attached as Exhibit "D", to Robertson's for the mining of Aggregates. Robertson's agrees it must obtain approval from District for any substantial changes to this allocation prior to such changes being effective. Any change within the land acreage specifically dimensioned in Exhibit "D" as 1847' x 1303', that does not change the amount allocated to Robertson's for mining by more than 50% of the area of that dimensioned parcel, shall not constitute a substantial change; all other changes to the allocation agreement shall be considered substantial. The "Robertson's WPA Allocation" specifically excludes the real property located within the WPA and owned by Robertson's,

and/or its affiliate RRM Properties, Ltd., A California limited partnership, in fee as of the Effective Date.

1.5 "Premises Transfer Date" shall occur upon transfer of ownership of interest to the District of those portions of the WPA that fall within Robertson's WPA Allocation, and which, as of the date of this Agreement, are owned by the United States, through the Bureau of Land Management.

1.6 "Concept Plan Termination Date" shall mean any date prior to the Premises Transfer Date upon which either Party's participation in the Task Force Agreement shall have been finally terminated, as provided in Paragraph 23 of the Task Force Agreement, or upon dissolution of the Task Force pursuant to Paragraph 22 of the Task Force Agreement. Upon occurrence of the Premises Transfer Date, there shall be no Concept Plan Termination Date.

1.7 "Concept Plan Term" shall mean the period between the Effective Date and the occurrence of the earlier of the (1) Concept Plan Termination Date; or (2) Premises Transfer Date.

Section 2. Obligations During Concept Plan Term.

2.1 Prosecution of Concept Plan. The Parties, and each of them, agree that for so long as the Concept Plan, as may be modified consistent with the provisions of Section 2.3, below, but otherwise in substantially the same form as set forth in the Task Force Agreement, is being diligently and in good faith pursued, they will not, prior to January 1, 2006, terminate their participation under the Task Force Agreement pursuant to Paragraph 23 of the Task Force Agreement. Notwithstanding the foregoing, in the event that prior to January 1, 2006, Robertson's contribution to the total Task Force funding exceeds that required to be paid by CEMEX, or exceeds, by more than 0.25 percent of the total Task Force funding, that required to be paid by the District, Robertson's shall be free to exercise its rights of termination under Paragraph 23 of the Task Force Agreement. . During the Concept Plan Term each of the Parties shall use their best efforts to achieve the Premises Transfer Date; provided, however, that neither Party shall be considered to be in breach of this provision unless a party who believes that a breach has occurred first provides to the other Party written notice informing the notified Party of the specific nature of the alleged breach of this provision, the reasons therefore, the actions the notifying Party alleges must be taken to cure the alleged breach and provides to the noticed Party either, (a) reasonable opportunity to cure the breach, or (b) in the event the breach is of the nature that a cure cannot be promptly effected, reasonable opportunity to prepare and prosecute a plan pursuant to which the breach will be cured, or (c) in the event the alleged breach is one that cannot be cured, a good faith effort to meet and confer regarding whether mutually satisfactory alternative arrangements can be made. In the event of any dispute regarding either Party's alleged breach of this "best efforts" obligation, the matter shall be resolved through the binding arbitration mechanism set forth in Section 8.06 of the Cone Camp Lease.

2.2 Suspension of Robertson's Duty to Obtain Permits. During the Concept Plan Term, Robertson's obligations pursuant to paragraph 5.05 of the Cone Camp Lease, to diligently and continuously take all actions necessary to obtain any and all licenses, permits, or other governmental entitlements required to accomplish the excavation purpose set out in the Cone

Camp Lease, shall be suspended. Such suspension shall begin on the Effective Date and shall continue until the earlier occurrence of: A) the Premises Transfer Date or B) the Concept Plan Termination Date. Robertson's shall not pursue such licenses, permits, or other governmental entitlements for any excavation of any portion of the "Premises," as originally defined in the Cone Camp Lease, at any time during the Concept Plan Term.

2.3 District to Support Robertson's Attempt to Amend Concept Plan. Robertson's has advised District that during the Concept Plan Term, Robertson's will seek Task Force Approval to amend the present iteration of the Concept Plan, to expand the Concept Plan mining area to include additional property owned by Robertson's. District agrees that it will support Robertson's attempt to so amend the Concept Plan, provided it is consistent with District's water conservation and land management objectives.

2.4 Incorporation of Defined Terms into Cone Camp Lease. Beginning on the Effective Date hereof, the following terms, as they are defined herein, shall be deemed incorporated, as applicable, into the Cone Camp Lease: Premises Transfer Date, Concept Plan Term; Concept Plan Termination Date; Robertson's WPA Allocation; and Cone Camp Quarry.

Section 3. Rights and Obligations on Premises Transfer Date

3.1 Transfer of Premises. The Premises shall, upon the Premises Transfer Date, immediately and automatically be deemed to mean and refer to the Robertson's WPA Allocation and the Cone Camp Lease shall no longer apply to the Cone Camp Quarry. Upon the Premises Transfer Date, the parties shall prepare, and may record, such documents as may be necessary or appropriate to reflect the proper legal descriptions or other identification of the transferred Premises, but the transfer of the Premises from the area originally defined in the Cone Camp Lease to the Robertson's WPA Allocation shall not be conditioned or dependent upon such documentation, but rather shall occur immediately upon occurrence of the Premises Transfer Date.

3.2 Revival of Robertson's Duty to Obtain Permits on Premises Transfer Date. Immediately upon the Premises Transfer Date, Robertson's obligations pursuant to Section 5.05 of the Cone Camp Lease, to diligently and continuously take all actions necessary to obtain any and all licenses, permits, or other governmental entitlements required to accomplish the excavation purpose set out in the Cone Camp Lease, shall revive, and shall apply to the Robertson's WPA Allocation, as provided in Section 3.1 of this agreement.

3.3 Commencement Date on Premises Transfer Date. Immediately upon occurrence of the Premises Transfer Date, Section 1.01 of the Cone Camp Lease shall be automatically amended to read as follows:

1.01 Commencement Date. The Commencement Date of the Lease Term shall be the date sixty (60) days after occurrence of the Premises Transfer Date.

In applying the foregoing provision it is the intention of the Parties that in the event that Premises Transfer Date does not occur by January 1, 2007, the Cone Camp Lease shall not be terminated, but shall survive, subject to modification triggered by the happening of either Premises Transfer Date or Concept Plan Termination Date.

Section 4. Rights and Obligations on Concept Plan Termination Date.

4.1 Revival of Robertson's Duty to Obtain Permits on Concept Plan Termination Date. Immediately upon the Concept Plan Termination Date, Robertson's obligations pursuant to Section 5.05 (A) of the Cone Camp Lease, to diligently and continuously take all actions necessary to obtain any and all licenses, permits, or other governmental entitlements required to accomplish the excavation purpose set out in the Cone Camp Lease, shall revive.

4.2 Commencement Date on Concept Plan Termination Date. Immediately upon occurrence of the Concept Plan Termination Date, Section 1.01 of the Cone Camp Lease shall be amended to read as follows:

1.01 Commencement Date. The Commencement Date of the Lease Term shall, at Robertson's election, either be (x) the date sixty (60) days after the Concept Plan Termination Date, or (y) January 1, 2003, provided, however, that in no event shall District be required to refund any portion of the Phase I Payment before the expiration of one (1) full year following the date Robertson's provides to District written notice of its election hereunder. Robertson's election shall be made in writing and delivered to District prior to the 60th day following Concept Plan Termination Date.

In applying the foregoing provision it is the intention of the Parties that in the event that Concept Plan Termination Date does not occur by January 1, 2007, the Cone Camp Lease shall not be terminated, but shall survive, subject to modification triggered by the happening of either Premises Transfer Date or Concept Plan Termination Date.

Section 5. Mancino Property. Effective immediately upon the Effective Date, the original Cone Camp Lease shall be amended to exclude from the definition of "Premises" therein, all of the property more specifically described in Exhibit "E" hereto (the "Mancino Property").

Section 6. Waiver. Each of the Parties herein fully waives its right to claim that any act, omission, or inaction of the other Party, prior to the Effective Date, constituted: (a) a breach of any of the provisions of the Cone Camp Lease, or any obligation arising thereunder or in connection therewith, or (b) any basis for reformation or rescission of all or any part of the Cone Camp Lease, for which any relief, legal or equitable, and specifically, but not by way of limitation, monetary damages, were or could have been available, either as affirmative relief, or as an offset against any other claim. This waiver extends to all claims or causes of action, whether presently known or unknown, and in connection with such waiver, both parties specifically waive any operation or applicability of California Civil Code section 1542, which provides:

"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 represents and warrants it has consulted with counsel regarding the nature and consequences of waiving the operation of Civil Code section 1542, and knowingly and willingly has decided to waive it.

Section 7. No Obligation on Robertson's to Transfer. Robertson's execution of this Agreement, its execution of the Task Fore Agreement, anything expressed or implied in either document, and/or its participation in advancing the Concept Plan, whether taken individually or collectively in any combination, shall not be construed or interpreted to require Robertson's to transfer, encumber or agree to any use restrictions being placed upon any real property Robertson's owns in fee on the Effective Date; or to cause any such real property be transferred, encumbered, or restricted as to use. Nothing in this Section 7 affects or relieves Robertson's obligation to transfer the Premises, as provided in section 3 above, however.

Section 8. Notices. All notices required to be provided hereunder, shall be in writing, and either served personally or sent by United States Mail. For these purposes, the addresses for the Parties are as follows:

As to Robertson's Ready Mix, Ltd.

President
Robertson's Ready Mix, Ltd.
200 South Main Street
Suite 200
Corona CA 92878

As to District

General Manager
San Bernardino Valley Water
Conservation District
1630 West Redland Blvd., Suite A
Redlands CA 92373

Notices shall be deemed delivered on the date of personal service or on the third day following deposit in the United States Mail. Any Party may change the address or person to whom notices are to be directed hereunder, by written notice to the other Party.

Section 9. Entire Agreement. This Agreement, in connection with the unaffected portions of the original Cone Camp Lease, contains the entire agreement of the Parties hereto with respect to the matters contained herein and supersedes all negotiations, prior discussions, and preliminary agreements or understandings, written or oral. No waiver or modification of this Agreement shall be binding unless consented to by the Parties in writing.

Section 10. Cooperation; Further Acts. The Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. The Parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary, appropriate or convenient to carry out the purposes of this Agreement.

Section 11. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California.

Section 12. Attorneys' Fees. In an action or proceeding involving a dispute between the Parties arising out of this Agreement, including arbitration, the prevailing Party shall be entitled to receive from the other Party, reasonable attorneys' fees. The term "attorneys' fees" shall include reasonable costs for investigating the action, conducting discovery, cost of appeal, costs

and fees for expert witnesses, and all other normally allowable costs incurred in such litigation, whether or not such litigation is prosecuted to final judgment.

Section 13. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

Section 14. Construction: Captions. The language of this Agreement shall be construed according to its fair meaning, and not for or against any Party hereto based on authorship. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

Section 15. Severability. Each provision of this Agreement shall be severable from the whole. If any provision of this Agreement shall be found contrary to law, it is the intention of the Parties that the remainder of this Agreement shall continue in full force and effect.

Section 16. Incorporation of Recitals. The Recitals are incorporated herein and made an operative part of this Agreement.


Section 17. Authority to Enter into Agreement. The Parties warrant they have all requisite power and authority to execute and perform this Agreement. Each person executing this Agreement on behalf of their party warrants that he or she has the legal power, right, and authority to make this Agreement and bind his or her respective Party, and that in so doing, such Party is not thereby in breach of any other contract or agreement.

Section 18. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

Section 19. Assignment. Neither Party shall assign its rights or delegate its responsibilities hereunder without the express written consent of the other Party, which consent shall not be unreasonably withheld. This Agreement, including the rights of first refusal and options granted hereunder, shall be binding on all successors and is intended to and shall run with the land.

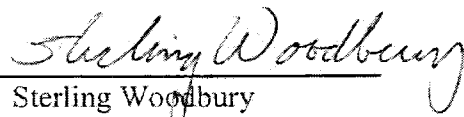
Section 20. Recordation. Within fifteen (15) days of the Effective Date, the Parties shall have this Agreement recorded with the County Recorder for the County of San Bernardino, State of California.

ROBERTSON'S READY MIX, LTD.,
a California limited partnership
By: Robertson's Ready Mix, Ltd.
a California corporation
Its General Partner

By: 
Dennis Troesh
Its: President

July 29, 2003

Date: 8/11/03
SAN BERNARDINO VALLEY WATER
CONSERVATION DISTRICT,
a political subdivision of the State of
California

By: 
Sterling Woodbury

Its: President of the Board of
Directors

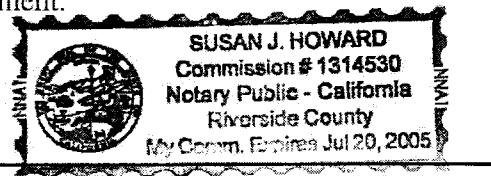
Date: 8/11/03

State of California)
) ss.
County of Riverside)

On July 29, 2003, 2003, before me
Susan J. Howard, notary public, personally appeared Dennis Troesh, personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person whose
name is subscribed to the within instrument and acknowledged to me that he executed the same
in his authorized capacity, and that by his signature on the instrument the person, or the entity
upon behalf of which the person acted executed the instrument.

Witness my hand and official seal

Susan J. Howard



State of California)
) ss.
County of Riverside)

On August 11, 2003, before me
Colleen E. Theuer, notary public, personally appeared Sterling Woodbury,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person
whose name is subscribed to the within instrument and acknowledged to me that he executed the
same in his authorized capacity, and that by his signature on the instrument the person, or the
entity upon behalf of which the person acted executed the instrument.

Witness my hand and official seal

Colleen E. Theuer

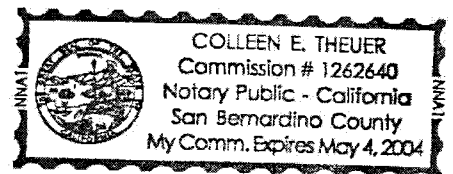


Exhibit List

<u>Description</u>	<u>Designation:</u>
Cone Camp Lease	A
Concept Plan	B
Task Force Agreement	C
Allocation Agreement Between Robertson's and Cemex	D
Legal Description of Portion of Mancino Property Excluded from "Premises" of Original Cone Camp Lease	E

Exhibit 5

2010 State Water Rights

Filing

[FINAL SUBMITTED VERSION]

REPORT OF LICENSEE FOR 2010

Primary Owner: SAN BERNARDINO VALLEY W C D

Application Number: A002217

License Number: 002831

Compliance with License Terms and Conditions	
The project has been abandoned and I request revocation of my water right license	No
I have reviewed my water right license	Yes
I am complying with all terms and conditions	Yes
Description of noncompliance with terms and conditions	
Intake location has been changed	
Description of intake location changes	
Type of use has changed	
Description of type of use changes	
Place of use has changed	
Description of place of use changes	

Purpose of Use	
Other	Groundwater Recharge

Month	Amount directly diverted or collected to storage (Acre-Feet)	Amount used (Acre-Feet)
January	241.0	0.0
February	285.0	0.0
March	1412.0	0.0
April	1977.0	0.0
May	1756.0	0.0
June	0.0	0.0
July	0.0	0.0
August	0.0	0.0
September	0.0	0.0
October	0.0	0.0
November	0.0	0.0
December	0.0	0.0
Total	5671	0

Month	Maximum Rate of Diversion (CFS)
January	
February	
March	
April	
May	

June	
July	
August	
September	
October	
November	
December	

Reservoir name	Spilled this year	Feet below spillway at maximum storage	Completely emptied	Feet below spillway at minimum storage	Method used to measure water level
NA	No	0.0	No	0.0	NA

Conservation of Water	
Are you now employing water conservation efforts?	Yes
Description of water conservation efforts	Cooperative Water Recharge for Basin
Amount of water conserved	5671.0 Acre-Feet

Water Quality and Wastewater Reclamation	
During the period covered by this Report, did you use reclaimed water from a wastewater treatment facility, water from a desalination facility, or water polluted by waste to a degree which unreasonably affects the water for other beneficial uses?	No
Amount of reclaimed, desalinated, or polluted water used	

Conjunctive Use of Groundwater and Surface Water	
During the period covered by this Report, were you using groundwater in lieu of available surface water authorized under your license?	No
Amounts of groundwater used	

Additional Remarks
Maximum Rate of Diversion not recorded for 2010 Cooperative Recharge with the Region's water entities occurs additional explanation is shown in the attached file.

Attachments	
File Name	Size
Water Rights Filing Explanaiton Final June 27 2011.pdf	13 KB

Contact Information of the Person Submitting the Form	
First Name	Daniel
Last Name	Cozad
Relation to Water Right	Authorized Official
I read the above and agree	Yes

[FINAL SUBMITTED VERSION]

REPORT OF LICENSEE FOR 2010

Primary Owner: SAN BERNARDINO VALLEY W C D

Application Number: A004807

License Number: 002832

Compliance with License Terms and Conditions	
The project has been abandoned and I request revocation of my water right license	No
I have reviewed my water right license	Yes
I am complying with all terms and conditions	Yes
Description of noncompliance with terms and conditions	
Intake location has been changed	
Description of intake location changes	
Type of use has changed	
Description of type of use changes	
Place of use has changed	
Description of place of use changes	

Purpose of Use	
Other	GROUND WATER RECHARGE

Month	Amount directly diverted or collected to storage (Acre-Feet)	Amount used (Acre-Feet)
January	0.0	0.0
February	0.0	0.0
March	0.0	0.0
April	0.0	0.0
May	0.0	0.0
June	0.0	0.0
July	0.0	0.0
August	0.0	0.0
September	0.0	0.0
October	39.0	39.0
November	0.0	0.0
December	268.0	268.0
Total	307	307

Month	Maximum Rate of Diversion (CFS)
January	0.0
February	0.0
March	0.0
April	0.0
May	0.0

June	0.0
July	0.0
August	0.0
September	0.0
October	0.0
November	0.0
December	0.0

Reservoir name	Spilled this year	Feet below spillway at maximum storage	Completely emptied	Feet below spillway at minimum storage	Method used to measure water level
ASDF	No	0.0	Yes		STICK

Conservation of Water	
Are you now employing water conservation efforts?	Yes
Description of water conservation efforts	Cooperative Groundwater Management with Regional Agencies.
Amount of water conserved	307.0 Acre-Feet

Water Quality and Wastewater Reclamation	
During the period covered by this Report, did you use reclaimed water from a wastewater treatment facility, water from a desalination facility, or water polluted by waste to a degree which unreasonably affects the water for other beneficial uses?	No
Amount of reclaimed, desalinated, or polluted water used	

Conjunctive Use of Groundwater and Surface Water	
During the period covered by this Report, were you using groundwater in lieu of available surface water authorized under your license?	No
Amounts of groundwater used	

Additional Remarks
Maximum Rate of Diversion not recorded for 2010 Cooperative Recharge with the Region's water entities occurs additional explanation is shown in the attached file.

Attachments	
File Name	Size
Water Rights Filing Explanaiton Final June 27 2011.pdf	13 KB

Contact Information of the Person Submitting the Form	
First Name	Daniel
Last Name	Cozad
Relation to Water Right	Authorized Official
I read the above and agree	Yes

SWRCB Annual Water Rights Report

Annotation to Accompany Filings by SBVWCD and SBVMWD/WMWD

During 2010, the San Bernardino Valley Water Conservation District (SBVWCD) and San Bernardino Valley Municipal Water District (SBVMWD)/Western Municipal Water District (WMWD) diverted water at the Cuttle Weir to replenish the groundwater basin. Each agency's season of diversion, total quantity of diversion and water rights are listed in the following table.

Agency	Season of Diversion	Total Quantity of Water Diverted	Water Right
SBVWCD	1/1/10 to 5/31/10	5,671 af	License No. 2831
SBVMWD/WMWD	6/29/10 to 12/31/10*	14,934 af	Permit No. 21264
SBVWCD	10/1/10 to 12/31/10	307 af	License No. 2832

* The State Water Resources Control Board issued Permit No. 21264 on June 29, 2010.

Diversion of approximately 882 acre feet to replenish the groundwater basin were shifted outside the Season of Diversion due to operations of the Seven Oaks Dam by the USACOE and are not being accounted for in this table. Such diversions occurred under water rights, jointly utilized under the Santa Ana River and Mill Creek Cooperative Water Project.

Additionally, SBVMWD/WMWD and SBVWCD are finalizing negotiations to expand our contractual relationships to cooperatively utilize and expand District facilities to maximize the water diverted for recharge jointly under these permits and licenses. Notwithstanding our intentions, should these negotiations for cooperative agreement not be fruitful, both districts may need to revise their filings.

This Agreement for the Cooperative Use of Unused Well Capacity, the Texas Grove Reservoir and the Central Feeder ("Agreement") is entered into and effective this 2nd day of April, 2013 ("Effective Date") by and between the City of Redlands ("City") and San Bernardino Valley Municipal Water District ("Valley District"). City and Valley District are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

- A. City owns the 3.9 million gallon Texas Grove Reservoir, which is shown on the map attached hereto as Exhibit “A” and incorporated herein by reference. The Texas Grove Reservoir is located adjacent to the Valley District Redlands Pump Station.
- B. Valley District desires to purchase 2.3 million gallons of capacity in the existing City of Redlands' Texas Grove Reservoir which is already intertied with the Valley District Central Feeder system.
- C. City is willing to sell Valley District 2.3 million gallons of capacity in the Texas Grove Reservoir.
- D. City owns various water wells that deliver water to the Texas Grove Reservoir.
- E. Valley District has constructed the Central Feeder Project Phase 1, which includes the Redlands Pump Station and a 78-inch pipeline (the “**Central Feeder**”) that connects to the Metropolitan Water District of Southern California’s Inland Feeder Pipeline and the East Branch Extension of the State Water Project. The Central Feeder is shown on the map attached hereto as Exhibit “A.” Valley District further intends to construct new wells in the San Bernardino Basin Area (the “**SBBA**”), in, or upstream of, the Area of Historic High Groundwater (the “**AHHG**” or the “**Pressure Zone**”) that could deliver water to the Central Feeder.
- F. From time to time, Valley District intends to use its proposed wells to dewater the AHHG during periods when the Boards of Directors for Valley District and Western Municipal Water District (“**Western**”) agree additional extractions are needed to mitigate the risks associated with high groundwater which include the flooding of basements and the increased risk of property damage and personal injury from soil liquefaction during an earthquake. These Valley District wells may also be used to extract: (i) State Water Project water that has been “banked” in the SBBA, (ii) Western’s portion of Santa Ana River water diverted and stored in the SBBA under State Water Resources Control Board permits 21264 and 21265, or (iii) “new conservation water,” as defined in the *Western Judgment* (*Western Municipal Water District et al. v. East San Bernardino County Water District et al.*, Riverside County

SBVMWD LEGAL
DOCUMENT 2392

Superior Court Case No. 78426, April 17, 1969) and determined by the Western-San Bernardino Watermaster that is banked in the SBBA. Additionally, Valley District intends to consult with other water agencies with interests in the SBBA, by working with the Basin Technical Advisory Committee, in order to ensure Valley District and Western Boards of Directors are provided with the most up-to-date technical information upon which to base decisions.

- G. To postpone the need to construct its own wells and related transmission pipelines, Valley District desires to utilize the City's water wells when the City is not using such wells (unused capacity) to pump and deliver water to the Central Feeder via the Texas Grove Reservoir and Redlands Pump Station.
- H. City wishes to make its unused water well capacity available to Valley District provided that it does not cause lower water levels and, thereby, increase pumping costs for City's own customers nor cause water quality degradation for Total Dissolved Solids ("TDS") in the SBBA that causes Redlands Wastewater Treatment Plant discharges to exceed permitted concentrations.
- I. City and Valley District, in addition to other parties, entered into the "Settlement Agreement Relating to the Diversion of Water From the Santa Ana River System (the **"Seven Oaks Accord"**)" on July 21, 2004. One of the provisions of the Seven Oaks Accord provides for participation in a "groundwater spreading program" that would, among other things, maintain groundwater levels at relatively constant levels in the SBBA.
- J. Valley District and the Santa Ana Regional Water Quality Control Board entered into the "Cooperative Agreement to Protect Water Quality and Encourage the Conjunctive Uses of Imported Water in the Santa Ana River Basin" (the **"RWQCB Agreement"**) on January 16, 2008, which requires preparation of a report on water quality conditions in the SBBA every three years.
- K. City and Valley District wish to cooperate in the operation of facilities for the mutual benefit of the Parties.

Agreements

1. *Valley District Purchase of Storage Rights in the Texas Grove Reservoir*

- a. *Storage Rights.* City hereby sells, and Valley District hereby purchases, all rights to the use of the upper 2.3 million gallons of usable storage capacity in the existing Texas Grove Reservoir, for the life of the reservoir, which capacity is understood by the Parties to be at, or above, elevation 1338.9 feet MSL NGVD. City shall retain all storage rights to the use of that portion of the Texas Grove Reservoir below elevation 1338.9 feet MSL NGVD. Neither Party shall interfere

Redlands Facilities/Central Feeder
March 2013
Page 2

with the other Party's use of its share of the storage capacity of the Texas Grove Reservoir, unless such storage capacity is needed to meet fire fighting demands by City. In such instances, City shall have the right to use all water available in the Texas Grove Reservoir. City shall cooperate with Valley District and allow Valley District to construct City-approved facilities necessary to utilize Valley District's full storage rights in the Texas Grove Reservoir.

- b. *Payment by Valley District for Storage Rights.* Valley District shall pay City the sum of \$2,168,426 for the rights described in paragraph 1a within 30 calendar days after the Effective Date of this Agreement. Valley District will make such payment by electronic funds transfer into a fund approved by City. City shall provide Valley District with a written receipt, acknowledging payment in full, within 7 calendar days of the electronic funds transfer.
- c. *Operation and Maintenance.* City shall be responsible for the day to day operation and maintenance of the Texas Grove Reservoir, except for the 42-inch nozzle connecting the Texas Grove Reservoir to Valley District's Redlands Pump Station which shall be the responsibility of Valley District.
 - (1) *Ordinary Operation and Maintenance.* City shall operate the Texas Grove Reservoir in accordance with the terms of this Agreement and in accordance with good engineering practices, including normal maintenance of the reservoir.
 - (2) *Substantial Work.* In the event City determines, in its reasonable engineering judgment, that substantial work (i.e., more than \$50,000 in a calendar year) is needed to properly maintain the Texas Grove Reservoir, City shall promptly consult with Valley District and, before commencing any work, City shall give written notice to Valley District of: (i) the work to be performed, (ii) the estimated cost of the proposed work, and (iii) the contractor(s) that will perform work. City may only commence such work upon receipt of written approval from Valley District, which approval shall not be unreasonably withheld or delayed.
 - (3) *Emergency Circumstances.* Nothing in paragraph 1c(2) shall be construed to prevent City from taking any action it reasonably believes necessary in the event of an emergency. City shall notify Valley District of the existence of an emergency as soon as reasonably possible and shall, to the extent feasible under the circumstances, coordinate a response with Valley District.
 - (4) *Reimbursement by Valley District.* Valley District shall reimburse City for 63% of the costs to operate and maintain the Texas Grove Reservoir, as determined based on the calculations attached hereto as Exhibit "B" and

entitled "City of Redlands Reservoir #1 (Texas Grove Reservoir)." Reimbursable costs shall include, but not be limited to, actual and reasonable costs of City staff, consultants and contractors for operating and maintaining the Texas Grove Reservoir.

- (5) *Invoices to Valley District.* City shall invoice Valley District for such operation and maintenance costs quarterly in arrears and Valley District shall pay such invoices within 30 calendar days of the date of the invoice. Invoices shall indicate, in reasonable detail, the cost of each action undertaken by City to operate and maintain the Texas Grove Reservoir, including the date of the service, the individuals performing the service, the hourly rate of such individuals, and the costs of any materials. In the event Valley District objects to any costs identified on an invoice, Valley District shall pay the undisputed costs and shall invoke the dispute resolution process described in paragraph 10c below for the objectionable costs.
2. *Term of Agreement.* This Agreement shall have an initial term of five years from its Effective Date and shall automatically renew for subsequent five-year terms thereafter unless terminated as provided for in paragraph 8 below.
3. *Cooperative Operation of City Wells and the Central Feeder*
 - a. *Delivery of Water by City to Valley District.*
 - (1) *Estimate of unused capacity by City.* No later than each November 1, City shall provide Valley District with a written estimate of the availability of water during the following calendar year, up to a maximum of 20,000 acre-feet. City shall make this estimate in its sole and reasonable discretion. City may base its estimate on hydrologic conditions, groundwater levels, facility limitations, demand for water within City, or any other reasonable factor.
 - (2) *Valley District Water Order.* No later than each December 1 of each year, Valley District shall provide City with a written order for water for the following calendar year, up to a maximum amount equal to City's estimate of unused capacity.
 - (3) *Water delivery to Texas Grove Reservoir.* City shall operate its water production and distribution systems to provide Valley District with the amount of water ordered by Valley District at the Texas Grove Reservoir. Valley District shall install or cause to be installed a meter to measure deliveries by City to Valley District. City shall have the right to read the

meter on a monthly basis and inspect the meter at least annually in order to ensure the accurate calculation of water delivered to Valley District.

- (4) *Modification of City's Estimate.* The Parties understand and acknowledge that a number of factors, including but not limited to greater/lesser precipitation or changes in customer demand for water, may modify City's ability to supply Valley District with ordered water. It is the intent of the Parties that this Agreement not interfere with City's obligation to serve its customers.

(a) City may increase or decrease its estimate of water available to Valley District at any time during a calendar year as may be reasonable to provide water service to City's customers. City will use reasonable, good faith efforts to meet Valley District's water demands.

(b) In the event of an emergency, as defined in California Public Contract Code Section 1102, City may take any actions it deems reasonably necessary to respond to the emergency and provide water service to its customers. City shall promptly consult with Valley District and jointly develop a plan that will provide Valley District water as soon as practicable after the conclusion of the emergency.

- b. *Payment by Valley District for Water.* Valley District shall pay City the actual production cost, as determined pursuant to paragraph 3b(1) below, and the Operations, Maintenance and Repair ("**OMR**") cost, as determined pursuant to paragraph 3b(2) below, for water delivered to Valley District at the Texas Grove Reservoir.

(1) *Payment for Production Cost.* Valley District shall pay City for City's actual cost of producing water pursuant to this Agreement. Such actual costs may be determined by using either: (i) energy and treatment costs for the water production facilities that City specifically operates to meet Valley District's water order or (ii) a weighted average cost of energy and treatment for all City facilities producing water during a period in which City delivers water to Valley District. City shall determine, and notify Valley District in writing, which method will be used to determine the actual cost of producing water for Valley District prior to delivery of water to Valley District. Absent notification, the Parties shall use method (ii) above until notice is given.

(2) *Payment for OMR Cost.* Valley District shall pay City's actual costs to operate, maintain and repair its water production and distribution facilities

(including, without limitation, production wells, booster pumps, treatment facilities, etc.) for the benefit of Valley District. Specifically, Valley District shall pay all costs, including staff time, associated with City's operation of its water production and distribution facilities to deliver water to Valley District. In addition, Valley District shall pay its fair share of City's costs to maintain and repair its water production and distribution facilities. This cost shall be equal to the City's actual per acre-foot cost for maintenance and repair of its water production and distribution facilities over the preceding three calendar years, multiplied by the number of acre-feet ordered by Valley District.

(3) *Invoices to Valley District.*

(a) *Production Cost Invoices.* City shall invoice Valley District for production costs at least quarterly in arrears and Valley District shall pay such invoices within 30 calendar days of the date of the invoice. Invoices shall indicate, method used to determine production costs as described in paragraph 3b(1), facilities used to provide Valley District water, and cost for chemicals and power used. In the event Valley District objects to any costs identified on an invoice, Valley District shall pay the undisputed costs and shall invoke the dispute resolution process described in paragraph 10c below for the objectionable costs.

(b) *OMR Cost Invoices.* City shall invoice Valley District for OMR costs at least quarterly in arrears and Valley District shall pay such invoices within 30 calendar days of the date of the invoice. Invoices shall indicate, in reasonable detail, the information necessary to calculate costs as described in paragraph 3b(2). For expenses and work outside of what should normally be expected, City shall identify expenses and/or work performed and include date expense was made or work was performed, facilities involved, the individuals or company performing the service, hourly rate of such individuals or company, and costs of any materials or service using the methodology provided on Exhibit "C." In the event Valley District objects to any costs identified on an invoice, Valley District shall pay the undisputed costs and shall invoke the dispute resolution process described in paragraph 10c below for the objectionable costs.

c. *Water Quality Reporting.* The City shall provide Valley District with copies of all reports submitted to the Santa Ana Regional Quality Control Board.

- d. *Future Actions.* The Parties understand and acknowledge that this Agreement is intended not only to serve as the basis for cooperative operations beginning in 2013, but is also intended to serve as the basis for long-term cooperation. The Parties agree they will consider amending this Agreement at appropriate times to reflect additional facilities and new opportunities to improve the conjunctive management of the SBBA and/or water supply reliability for the San Bernardino Valley.
- 4. *Water Level and Water Quality Monitoring.* The Parties shall cooperate in monitoring water levels and water quality to ensure that the terms of this Agreement do not have an adverse impact on water levels or water quality in the SBBA.
 - a. The Parties shall monitor water levels using the Basin Technical Advisory Committee annual Regional Water Management Plan and/or, independently, to ensure compliance with the water level requirements of the Seven Oaks Accord.
 - b. The Parties agree to monitor any water quality impacts to Total Dissolved Solids (“**TDS**”) using data provided in the triennial report prepared for the Santa Ana Regional Water Quality Control Board pursuant to the Santa Ana Regional Water Quality Control Board Agreement.
- 5. *Impacts to Water Levels.* If it is determined by the Parties that the water level requirements in the Seven Oaks Accord are not being met, Valley District will take one of the following actions:
 - a. *Stop taking deliveries.* Valley District will cease to water through City facilities until water levels are in compliance with the requirements of the Seven Oaks Accord.
 - b. *Deliver Exchange Water to City.* To offset the pumping costs associated with lower water levels, Valley District will provide water to City, on a 1:1 basis (“**Exchange Water**”), for deliveries made to Valley District after water levels are determined to be out of compliance with the Seven Oaks Accord and up until the point water levels are determined to be in compliance with the Seven Oaks Accord.
 - (1) *Sources of Exchange Water.* Valley District may obtain such Exchange Water from the State Water Project, from the Santa Ana River, from Mill Creek, from sources outside the SBBA or from “new conservation” as that term is defined in the *Western Judgment (Western Municipal Water District et al. v. East San Bernardino County Water District et al.* (Riverside County Superior Court No. 78426, April 17, 1969). The selection of sources of Exchange Water shall be within the sole discretion of Valley District but water diverted from the Santa Ana River shall not

comprise more than 50% of the Exchange Water delivered to City during any three-year reporting period, as defined in paragraph 4a below.

- (2) *Delivery of Exchange Water.* Valley District shall deliver Exchange Water to City as soon as feasible but no later than three calendar years after the calendar year in which City delivered water to Valley District. Valley District shall deliver Exchange Water to one or more of the following agreed upon locations:
- (a) San Bernardino Valley Water Conservation District Mill Creek Spreading Grounds;
 - (b) San Bernardino Valley Water Conservation District Santa Ana River Spreading Grounds;
 - (c) Bear Valley Mutual Water Company Airport Spreading Grounds;
 - (d) City's San Bernardino Avenue Spreading Grounds (formerly Bear Valley Mutual Water Company Judson Ponds);
 - (e) Such other spreading grounds that directly benefit City's wells and other wells in the surrounding area, as the Parties may determine through mutual consent in the future.

Valley District shall calculate and document deliveries of Exchange Water to City at the above locations in a manner that both Parties agree to be reasonable, recognizing that several of the above locations are owned by non-parties to this Agreement.

In the event Valley District is unable to deliver Exchange Water to City within a three consecutive calendar year time period, Valley District shall increase the amount of Exchange Water delivered to City by 5% of the overdue balance for every calendar year beyond the three calendar years allowed until the Exchange Water is delivered. The Parties shall use a "first-in, first-out" accounting to track Exchange Water for multiple years.

- (3) *In-Lieu Recharge.*
- (a) In the event spreading of Exchange Water is not prudent: (i) due to high groundwater conditions in the pressure zone, (ii) because such spreading would have adverse impacts on groundwater contaminants, or (iii) because City determines it would be beneficial for City to take deliveries of Exchange Water at a water treatment plant in lieu of the spreading grounds identified in

paragraph 5b(2), City may take deliveries of up to 50% of Exchange Water at its Horace Hinckley Surface Water Treatment Plant or Henry Tate Surface Water Treatment Plant, at its sole discretion. Valley District shall deliver the remaining Exchange Water to such locations that Valley District, in its sole discretion, determines appropriate for sound management of the SBBA.

- (b) If City chooses to take delivery of Exchange Water at the Henry Tate Surface Water Treatment Plant, City may receive up to 10% of the total Exchange Water delivered in a calendar year at Henry Tate Surface Water Treatment Plant at no cost to the City.

6. *Impacts to Water Quality.* If it is determined by the Parties that pumping by City for delivery to Valley District, under the terms of this Agreement, is the sole cause for the City violating one or more of its permits from the Santa Ana Regional Water Quality Control Board, Valley District will take one of the following actions:
 - a. *Stop taking deliveries.* Valley District will cease to water through City facilities until water levels are in compliance with the Seven Oaks Accord.
 - b. *Recharge high quality water.* Valley District will recharge lower TDS water in a mutually agreeable locations until TDS has returned to acceptable levels.
 - c. *Any combination.* Valley District may use one, or both, of the above, at its discretion, to reduce the TDS level until the TDS has returned to mutually agreed upon acceptable levels.
 - d. *Violation of Santa Ana Regional Water Quality Control Board TDS discharge limit on Redlands wastewater plant.* In the event the Santa Ana Regional Water Quality Control Board orders City to remedy an increase in the TDS limit for City's wastewater treatment plant that the Parties agree has been caused by conditions derived by the activities associated with this Agreement, Valley District shall take any or all of the actions identified in subparagraphs a-c above until water quality has returned to acceptable levels. Additionally, Valley District and City will work together to resolve the condition with the Santa Ana Regional Water Quality Control Board identify a solution to the condition, and fund an appropriate solution.
7. *Natural Disaster or Civil Unrest.* In the event that the Texas Grove Reservoir suffers from substantial damage due to natural disaster (e.g., earthquake, flooding or otherwise) or due to civil unrest (e.g., rioting, terrorist attack, or otherwise), neither Party shall be obliged to rebuild/reconstruct the Texas Grove Reservoir in its current configuration or to its current capacity. Instead, the Parties shall promptly meet and confer, determine a rebuilding plan/configuration that is reasonable and financially feasible under the

circumstances at the time, and then rebuild/reconstruct the Texas Grove Reservoir as quickly as practicable.

8. *Termination of Agreement.* Either Party may terminate this Agreement, with or without cause, by providing written notice of termination to the other Party at least one year prior to the conclusion of the then-current term of this Agreement. Valley District's purchase of storage rights at, or above, elevation 1338.9 feet MSL NGVD shall survive termination of this Agreement and, after termination, Valley District may use its storage rights by supplying water available to Valley District from any source. In the event that Valley District has not completed its delivery of Exchange Water to City as required by paragraph 5b above, that obligation shall survive any termination of this Agreement.
9. *Indemnification.* Each Party shall defend and indemnify the other Party and the other Party's elected officials, officers, employees, agents and authorized volunteers from and against all claims, demands, or liability for damages arising out of the Party's performance of the terms of this Agreement where such liability is caused or claimed or alleged to be caused by the willful misconduct, sole negligence or active negligence of the Party or any person or organization for whom or which the Party is legally liable.

In particular, Valley District shall defend and indemnify City's elected officials, officers, employees, agents and authorized volunteers for any and all claims, demands or liability arising from: (i) Valley District or its contractors' construction of the Central Feeder; (ii) the movement of groundwater contaminants due to the spreading of Exchange Water by Valley District and increased pumping; or (iii) a reduction in static groundwater levels due to extraction of water by City for delivery to Valley District.

The provisions of this Section 9 shall survive any termination of this Agreement.

10. *Administration of Agreement*
 - a. *Workers' Compensation.* Each Party certifies that it is aware of the provisions of section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code and each Party shall comply with such provisions before commencing the performance of any work under this Agreement. Each Party and any contractors or subcontractors shall keep workers' compensation insurance for their employees in effect during all work covered by this Agreement. Upon request, each Party shall provide the other with the certificate required by Labor Code section 3700.
 - b. *Books and Records.* Each Party shall have access to and the right to examine the other Party's pertinent books, documents, papers or other records (including, without limitation, records contained on electronic media) relating to the performance of that Party's obligations pursuant to this Agreement. The Parties

shall each retain all such books, documents, papers or other records to facilitate such review. Access to each Party's books and records shall be during normal business hours only. Nothing in this paragraph shall be construed to operate as a waiver of any applicable privileges.

- c. *Disputes.* The Parties recognize there may be disputes regarding the obligations of the Parties or the interpretation of this Agreement. The Parties agree they may attempt to resolve disputes as follows:
- (1) *Statement Describing Alleged Violation of Agreement.* A Party alleging a violation of this Agreement (the "**Initiating Party**") shall provide a written statement describing all facts it believes constitute a violation of this Agreement to the Party alleged to have violated the terms of this Agreement (the "**Responding Party**").
 - (2) *Response to Statement of Alleged Violation.* The Responding Party shall have sixty calendar days from the date of the written statement to prepare a written response to the allegation of a violation of this Agreement and serve that response on the Initiating Party or to cure the alleged violation to the reasonable satisfaction of the Initiating Party. The Initiating Party and the Responding Party shall then meet within thirty calendar days of the date of the response to attempt to resolve the dispute amicably.
 - (3) *Mediation of Dispute.* If the Initiating Party and the Responding Party cannot resolve the dispute within ninety calendar days of the date of the written response, they shall engage a mediator, experienced in water-related disputes, to attempt to resolve the dispute. Each Party shall ensure that it is represented at the mediation by an employee of such Party. These representatives of the Initiating Party and the Responding Party may consult with staff and/or technical consultants during the mediation and such staff and/or technical consultants may be present during the mediation. The costs of the mediator shall be borne by the unsuccessful Party.
 - (4) *Reservation of Rights.* Nothing in this paragraph 10c shall require a Party to comply with the dispute resolution process contained herein, and each Party retains and may exercise at any time all legal and equitable rights and remedies it may have to enforce the terms of this Agreement.

11. *CEQA Compliance.*

The Parties have determined that, because the activities contemplated under the terms of this Agreement involve the cooperative use of existing facilities within the capacity of those

facilities and within the limits established by existing regulations, the implementation of this Agreement is exempt from environmental review pursuant to Title 14, section 15301 of the Code of California Regulations. Within five business days of the Effective Date of this Agreement, the Parties will file a Notice of Exemption with the County Clerk for the County of San Bernardino, which Notice is attached hereto as Exhibit "D" and incorporated herein by reference.

12. *General Provisions.*

- a. *Authority.* Each signatory of this Agreement represents that he is authorized to execute this Agreement on behalf of the Party for which he signs. Each Party represents that it has legal authority to enter into this Agreement and to perform all obligations under this Agreement.
- b. *Amendment.* This Agreement may be amended or modified only by a written instrument executed by each of the Parties to this Agreement.
- c. *Jurisdiction and Venue.* This Agreement shall be governed by and construed in accordance with the laws of the state of California, except for its conflicts of law rules. Any suit, action, or proceeding brought under the scope of this Agreement shall be brought and maintained to the extent allowed by law in the County of San Bernardino, California.
- d. *Headings.* The paragraph headings used in this Agreement are intended for convenience only and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the Parties to this Agreement.
- e. *Construction and Interpretation.* This Agreement has been arrived at through negotiations and each Party has had a full and fair opportunity to revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in the construction or interpretation of this Agreement.
- f. *Entire Agreement.* This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this Agreement.
- g. *Partial Invalidity.* If, after the Effective Date of this Agreement, any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable. However, in lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

- h. *Successors and Assigns.* This Agreement shall be binding on and inure to the benefit of the successors and assigns of the respective Parties to this Agreement. No Party may assign its interests in or obligations under this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld or delayed.
- i. *Waivers.* Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement and forbearance to enforce one or more of the remedies provided in this Agreement shall not be deemed to be a waiver of that remedy.
- j. *Attorneys' Fees and Costs.* The prevailing Party in any litigation or other action to enforce or interpret this Agreement shall be entitled to reasonable attorneys' fees (including fees for use of in-house counsel by a Party), expert witnesses' fees, costs of suit, and other necessary disbursements in addition to any other relief deemed appropriate by a court of competent jurisdiction.
- k. *Necessary Actions.* Each Party agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out the purposes of this Agreement.
- l. *Representations and Warranties.* Each representation and warranty contained herein or made pursuant hereto shall be deemed to be material and to have been relied upon and shall survive the execution, delivery and termination of this Agreement.
- m. *Compliance with Law.* In performing their respective obligations under this Agreement, the Parties shall comply with and conform to all applicable laws, rules, regulations and ordinances.
- n. *Third Party Beneficiaries.* This Agreement shall not create any right or interest in any non-Party or in any member of the public as a third party beneficiary.
- o. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
- p. *Notices.* All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing unless provided otherwise in this Agreement and shall be deemed to have been duly given and received on: (i) the date of service if served personally or served by facsimile transmission on the Party to whom notice is to be given at the address(es) provided below, (ii) on the first day after mailing, if mailed by Federal Express, U.S. Express Mail, or other

similar overnight courier service, postage prepaid, and addressed as provided below, or (iii) on the third day after mailing if mailed to the Party to whom notice is to be given by first class mail, registered or certified, postage prepaid, addressed as follows:

CITY OF REDLANDS:

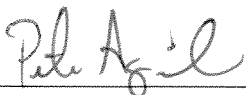
City of Redlands
35 Cajon Street
Redlands, CA 92373
(909) 798-7533
(909) 798-7535 (FAX)
Attn: Municipal Utilities and Engineering Director

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT:

San Bernardino Valley Municipal Water District
380 East Vanderbilt Way
San Bernardino, CA 92408
(909) 387-9211
(909) 387-9247 (FAX)
Attn: General Manager

A Party may change its address for the receipt of notices by providing the other Party with notice of the same pursuant to this paragraph 12p.

CITY OF REDLANDS

By: 
Pete Aguilar, Mayor

**SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT**

By: 
C. Patrick Milligan,
President, Board of Directors

ATTEST:

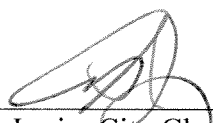

Sam Irwin, City Clerk

Exhibit "A" Facility Map

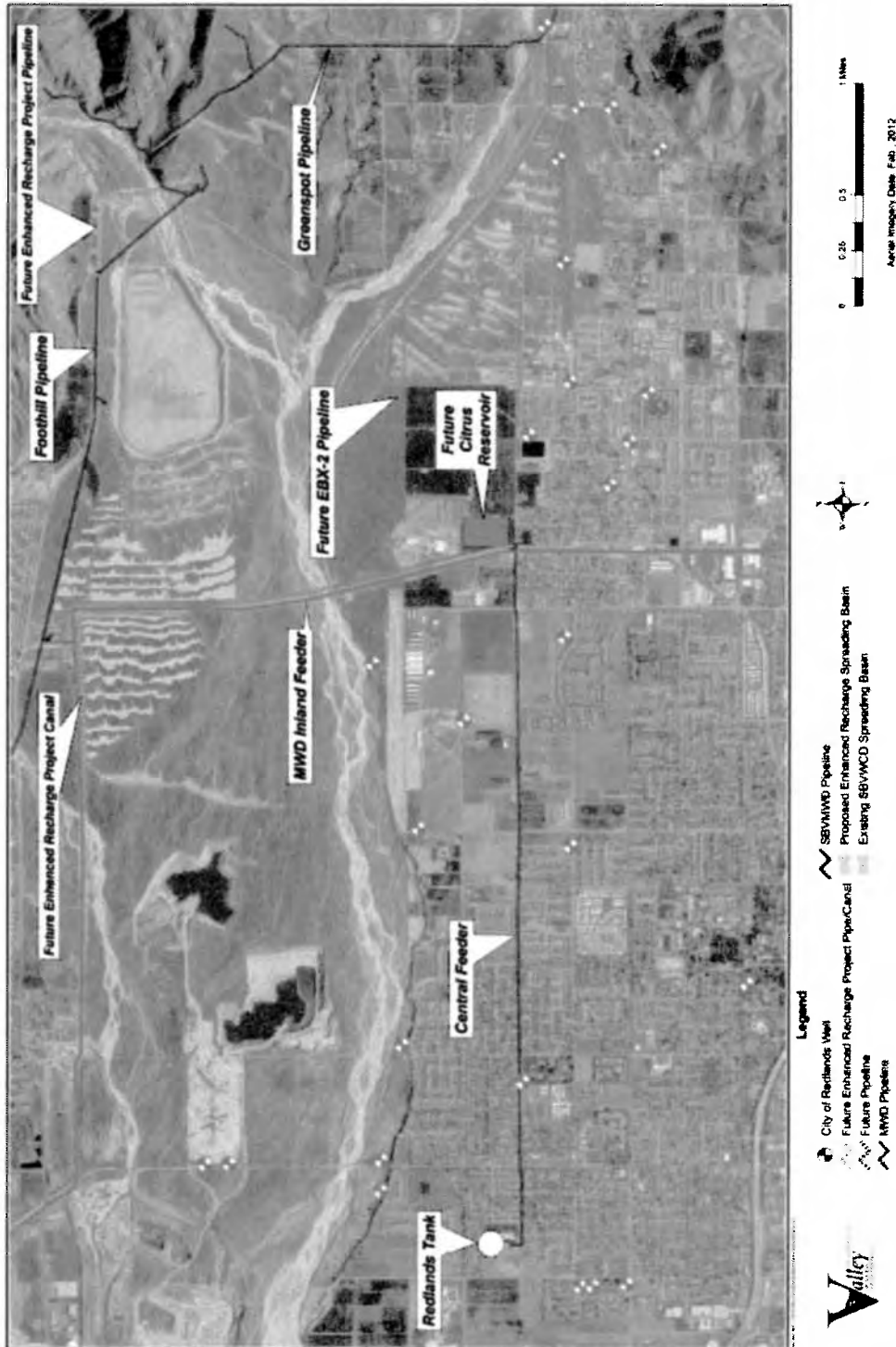


Exhibit "B" Reimbursement Cost Calculations

CITY OF REDLANDS RESERVOIR #1 (TEXAS ST. RESERVOIR) CAPACITIES

AREA OF TANK

RADIUS	90.0 FT.
PI	3.1416
TOTAL AREA (AT) $RAD*PI$	25446.9 SQFT.

HEIGHT OF WATER STORED IN TANK

HIGH WATER SURFACE (H.W.S.)	1351.0 FT.	
BOTTOM OF TANK ELEVATION (TB)	1330.7 FT.	ELEVATION OF RING FOOTING
WATER HEIGHT (WC)	20.3 FT.	

VOLUME OF CONE (Vc) $Vc=(PI*R^2*H)/3$ $R=90'$, $H=1.0$ 8482.3 CUFT. ACCOUNTS FOR VOLUME LOST DUE TO SLOPING TANK BOTTOM

MAX. WATER STORAGE CAPACITY $((AT*WC)-Vc)$ 508853.2 CUFT.
MAX. WATER STORAGE IN GALLONS 3806730.7 GAL. 7.481 GAL./CUFT.

MAX. USABLE STORAGE $((WC-1.0')*AT)$ 491888.6 CUFT. BOTTOM FOOT OF MAX. STORAGE IS NOT USABLE

MAX. USABLE STORAGE IN GALLONS (WSU) 3679818.5 GAL. 7.481 GAL./CUFT.

USABLE STORAGE FOR SBVMWD

H.W.S.	1351.0 FT.
INVERT AT OUTLET OF STANDPIPE	1338.9 FT.
MAXIMUM USABLE HEIGHT OF WATER (WU)	12.1 FT.

SBVMWD USABLE STORAGE $(AT*WU)$ 307907.5 CUFT.
SBVMWD USABLE STORAGE IN GALLONS (WSV) 2303456.0 GAL. 7.481 GAL./CUFT.

CoR USABLE STORAGE BELOW SBVMWD STORAGE

INVERT AT OUTLET OF STANDPIPE	1338.9 FT.
HIGH POINT IN TANK = $TB+1.0'$	1331.7 FT.
MAXIMUM USABLE HEIGHT OF WATER (WR)	7.2 FT.

CoR USABLE STORAGE $(AT*WR)$ 183981.1 CUFT.
CoR USABLE STORAGE IN GALLONS (WSR) 1376362.5 GAL. 7.481 GAL./CUFT.

PERCENTAGE OF USABLE WATER STORAGE CALCULATED BY AGENCY

CITY OF REDLANDS	$((WSR/WSU)*100\%)$	37.4%
SBVMWD	$((WSV/WSU)*100\%)$	62.6%

Exhibit "C"

Operation Maintenance and Repair (OMR) shall be calculated as follows: total actual expenditures listed below (Expenditures), multiplied by the percent shown, divided by AF produced in City system multiplied by percent delivered to Valley District.

$$\frac{\text{Total Actual City Expenditures (\$)}}{\text{Total Production (acre-ft)}} \times (\% \text{ Sold to Valley District}) = \$ __ / \text{AF}$$

where,

Total Actual City Expenditures = 50% (4000* Salaries) + (4010 Overtime Salaries) + (4012 Stand By) + (5317 Service for Function Facility) + (5590 Street Repair) + 50% (5710_Special Contractual Services)

*Codes are from the City of Redlands Water Fund 501403

Exhibit "D"
Draft Notice of Exemption

Notice of Exemption

To: County Clerk
County of San Bernardino
222 W. Hospitality Lane
San Bernardino, CA 92415-0022

From: San Bernardino Valley Municipal Water District
380 East Vanderbilt Way
San Bernardino, CA 92408

City of Redlands
35 Cajon Street
Redlands, CA 92373

Project Title: Agreement for Use of Water Facilities

Project Location - Specific: City of Redlands – Texas Grove Reservoir

Project Location - City: Redlands **Project Location - County:** San Bernardino

Description of Nature, Purpose and Beneficiaries of Project: The Project is an agreement between the San Bernardino Valley Municipal Water District ("Valley District") and the City of Redlands ("City") (collectively, the "Parties") providing for the cooperative use of existing water storage facilities and well capacity. Under the agreement, Valley District will purchase 2.3 million gallons of capacity in the City's existing Texas Grove Reservoir which is connected to Valley District's Redlands Pump Station that delivers water to Valley District's Central Feeder Pipeline. Valley District will have an annual option of purchasing up to 20,000 acre-feet of existing well capacity to the extent such capacity is not needed by the City in any given year. The purpose of the Project is to postpone the need for Valley District to construct new water facilities in the area. The project involves the operation of existing facilities within existing limits established by applicable laws, regulations, agreements, and permits.

Name of Public Agency Approving Project: San Bernardino Valley Municipal Water District and City of Redlands

Name of Person or Agency Carrying Out Project: San Bernardino Valley Municipal Water District, City of Redlands

Exempt Status: (check one)

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
☒ Categorical Exemption. State type and section number: Sec. 15301, 15303
☐ Statutory Exemptions. State code number: _____

Reasons why project is exempt: The Project is categorically exempt under section 15301 of the CEQA Guidelines because it involves the operation of existing facilities within existing limits established by applicable laws, regulations, agreements, and permits. Valley District will make use of existing storage and well capacity not needed by the City, thus there will be no expansion of those facilities. The connection between the Reservoir and existing pipelines is categorically exempt under section 15301 as an addition to existing structures, and alternatively is categorically exempt under section 15303 as an extension of an existing pipeline of the length necessary to serve the Reservoir.

Lead Agency
Contact Person: Doug Headrick, General Manager

Area Code/Telephone/Extension: (909) 387-9226

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: _____ Date: _____ Title: General Manager

☒ Signed by Lead Agency Date received for filing at OPR: _____

☐ Signed by Applicant

1295299.1

March 2013
Page 19

436331

Notice of Exemption

To: County Clerk
County of San Bernardino
222 W. Hospitality Lane
San Bernardino, CA 92415-0022

From: San Bernardino Valley Municipal Water District
380 East Vanderbilt Way
San Bernardino, CA 92408

City of Redlands
35 Cajon Street
Redlands, CA 92373

CLERK OF THE BOARD

APR 09 2013

COUNTY OF
SAN BERNARDINOProject Title: Agreement for Use of Water FacilitiesProject Location - Specific: City of Redlands - Texas Grove ReservoirProject Location - City: RedlandsProject Location - County: San Bernardino

Description of Nature, Purpose and Beneficiaries of Project: The Project is an agreement between the San Bernardino Valley Municipal Water District ("Valley District") and the City of Redlands ("City") (collectively, the "Parties") providing for the cooperative use of existing water storage facilities and well capacity. Under the agreement, Valley District will purchase 2.3 million gallons of capacity in the City's existing Texas Grove Reservoir which is connected to Valley District's Redlands Pump Station that delivers water to Valley District's Central Feeder Pipeline. Valley District will have an annual option of purchasing up to 20,000 acre-feet of existing well capacity to the extent such capacity is not needed by the City in any given year. The purpose of the Project is to postpone the need for Valley District to construct new water facilities in the area. The project involves the operation of existing facilities within existing limits established by applicable laws, regulations, agreements, and permits.

Name of Public Agency Approving Project: San Bernardino Valley Municipal Water District and City of RedlandsName of Person or Agency Carrying Out Project: San Bernardino Valley Municipal Water District, City of Redlands**Exempt Status:** (check one)

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
☒ Categorical Exemption. State type and section number: Sec. 15301, 15303
☐ Statutory Exemptions. State code number: _____

Reasons why project is exempt: The Project is categorically exempt under section 15301 of the CEQA Guidelines because it involves the operation of existing facilities within existing limits established by applicable laws, regulations, agreements, and permits. Valley District will make use of existing storage and well capacity not needed by the City, thus there will be no expansion of those facilities. The connection between the Reservoir and existing pipelines is categorically exempt under section 15301 as an addition to existing structures, and alternatively is categorically exempt under section 15303 as an extension of an existing pipeline of the length necessary to serve the Reservoir.

Lead AgencyArea Code/Telephone/Extension: (909) 387-9226Contact Person: Douglas Headrick, General Manager**If filed by applicant:**

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: Douglas HeadrickDate: 4/8/13Title: General Manager

- ☒ Signed by Lead Agency
☐ Signed by Applicant

Date received for filing at OPR:

State of California—Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
2013 ENVIRONMENTAL FILING FEE CASH RECEIPT

RECEIPT#	438331
STATE CLEARING HOUSE # (if applicable)	

SEE INSTRUCTIONS ON REVERSE. TYPE OR PRINT CLEARLY

LEAD AGENCY <u>San Bernardino Valley Municipal Water District</u>	DATE <u>4/9/13</u>
COUNTY/STATE AGENCY OF FILING <u>San Bernardino County</u>	DOCUMENT NUMBER
PROJECT TITLE <u>Agreement for Use of Water Facilities</u>	City of Redlands
PROJECT APPLICANT NAME <u>San Bernardino Valley Municipal Water District</u>	PHONE NUMBER <u>(626) 387-9226</u>
PROJECT APPLICANT ADDRESS <u>380 East Vanderbilt Way</u>	STATE <u>CA</u>
<u>San Bernardino</u>	ZIP CODE <u>92408</u>

PROJECT APPLICANT (Check appropriate box):

☒ Local Public Agency ☐ School District ☐ Other Special District ☐ State Agency ☐ Private Entity

CHECK APPLICABLE FEES:

<input type="checkbox"/> Environmental Impact Report (EIR)	\$2,995.25	\$	
<input type="checkbox"/> Mitigated/Negative Declaration (ND)(MND)	\$2,156.25	\$	
<input type="checkbox"/> Application Fee Water Diversion (State Water Resources Control Board Only)	\$850.00	\$	
<input type="checkbox"/> Projects Subject to Certified Regulatory Programs (CRP)	\$1,018.50	\$	
<input checked="" type="checkbox"/> County Administrative Fee	\$50.00	\$	<u>50.00</u>
<input checked="" type="checkbox"/> Project that is exempt from fees			
<input checked="" type="checkbox"/> Notice of Exemption			
<input type="checkbox"/> DFW No Effect Determination (Form Attached)			
<input type="checkbox"/> Other		\$	<u>0</u>

PAYMENT METHOD:

☐ Cash ☐ Credit ☒ Check ☐ Other

TOTAL RECEIVED \$ 50.00

SIGNATURE

X Pamela

TITLE

Pamela

WHITE - PROJECT APPLICANT

YELLOW - DFW/ASB

PINK - LEAD AGENCY

GOLDEN ROD - COUNTY CLERK

DFG 754.5a (Rev. 11/12)

San Bernardino Valley Municipal Water District

CLERK OF THE BOARD
6600 · TAXES & LICENSES

NOTICE OF EXEMPTION
TEXAS GROVE RESERVOIR

4/8/2013

396103

50.00

CHECKING
CLERK OF THE
BOARD OF SUPERVISORS
13 APR -9 PM 1:21
COUNTY OF SAN BERNARDINO
CALIFORNIA

50.00

San Bernardino Valley Municipal Water District

CLERK OF THE BOARD
6600 · TAXES & LICENSES

NOTICE OF EXEMPTION
TEXAS GROVE RESERVOIR

4/8/2013

396103

50.00

CHECKING

50.00

PRODUCT SSLT104

USE WITH 91663 ENVELOPE

MCBEE To Reorder: 1-800-662-2331 or www.mcbeeinc.com

**2013 AGREEMENT REGARDING ADDITIONAL EXTRACTIONS
OF NEW CONSERVATION WATER
FROM THE SAN BERNARDINO BASIN AREA
BETWEEN
WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY
AND
SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**

**2013 AGREEMENT REGARDING ADDITIONAL EXTRACTIONS
OF NEW CONSERVATION WATER
FROM THE SAN BERNARDINO BASIN AREA**

This Agreement is entered into between San Bernardino Valley Municipal Water District ("Valley District") and Western Municipal Water District of Riverside County ("Western") on July 17, 2013.

RECITALS

A. Western and Valley District are parties to the Judgment in the case of *Western Municipal Water District of Riverside County v. East San Bernardino County Water District, et al.*, Riverside Superior Court No. 78426 ("Western Judgment" or "Judgment").

B. The Judgment is administered and enforced by a Watermaster, consisting of a committee of two persons, one representative nominated by Valley District, and one by Western.

C. The Judgment further implements the physical solution in the related Orange County Water District action, as well as determines the rights of the named Plaintiffs to extract water from the San Bernardino Basin Area ("SBBA"), and provide replenishment of the area above Riverside Narrows. Among other provisions, the Judgment provides that the annual "adjusted right" of each Plaintiff to extract and export water from the SBBA is the sum of (a) its base right, which was adjusted based on a determination of safe yield and is currently expressed as a percentage of safe yield; and (b) an equal percentage of any new conservation, provided the conditions described in the Judgment are met. Similarly, the Judgment provides that Valley District shall provide imported water for replenishment of the SBBA at least equal to the amount by which extractions in any five year period exceed the 1959-1963 "base period" extractions (such amount was reduced based on a determination of safe yield and may be increased by the amount of any new conservation).

D. "New Conservation" is defined in the Judgment as "[a]ny increase in replenishment from natural precipitation which results from operation of works and facilities not now in existence, other than those works installed and operations which may be initiated to offset losses caused by increased flood control channelization."

E. The Seven Oaks Dam is a component of the Santa Ana River Mainstem Project and was originally conceived as a way to address anticipated flooding on the Santa Ana River. In addition to providing flood control benefits and related incidental water conservation, Western and Valley District wished to formally include water conservation as an element of the facility. In 1991, Western and Valley District jointly filed an application to appropriate water conserved as part of the Seven Oaks project. The State Water Resources Control Board approved the application and issued permits to Western and Valley District in 2010.

F. Construction on the Dam began in the mid 1990s. Western, Valley District and Plaintiffs in the above-referenced action agreed to a methodology for participation in the project and a cost sharing formula pursuant to Paragraph VI(b)2 of the Judgment. Based on the cost sharing formula, Western, Valley District and Plaintiffs entered cost sharing agreements to study the feasibility of water conservation and to fund the physical improvements necessary to achieve water conservation in connection with the operation of the Dam.

G. The acquisition of the water rights permit and the related infrastructure improvements allow Western and Valley District to fully utilize water conserved by the project for replenishment of the SBBA.

H. As part of the 1991-2010 water rights permitting process, Western and Valley District developed models and other analytical tools to forecast hydrology and calculate water conservation. Over the last 2 years, a collaborative group of stakeholders has been meeting to further develop the models and procedures necessary to forecast long-term average New Conservation.

I. In addition to utilizing the recently-developed models and analytical tools to project future long-term average New Conservation, Watermaster has utilized the models and analytical tools to calculate the amount of New Conservation that occurred from 1998 through 2012. Watermaster was previously unable to calculate such New Conservation because the models and analytical tools were still being developed.

J. Consistent with the Judgment and cost-sharing agreements, Plaintiffs have paid their proportionate share of New Conservation-related costs through December 31, 2012 and are therefore entitled to the benefits associated with their allocated share of New Conservation that occurred from 1998 through 2012 due to operation of the Dam.

K. The Judgment does not provide a mechanism by which to allocate New Conservation retroactively. However, Paragraph VI(b)6 of the Judgment provides that Western and Valley District may enter into agreements providing for additional extractions from the SBBA. Western and Valley District have utilized Paragraph VI(b)6 in the past to allow additional extractions from the SBBA.

L. In addition, Western, Valley District and the City of Riverside are parties to an "Agreement Relating to the Diversion of Water from the Santa Ana River System" ("Diversion Agreement") dated March 20, 2007, wherein the parties acknowledge that water conservation in the SBBA associated with the operation of Seven Oaks Dam may cause adverse impacts on the Riverside Basin. The parties agreed that one method of mitigating such adverse impacts was to provide for additional Plaintiff extractions in the SBBA in an amount equal to the amount of replenishment in the SBBA that would have occurred in the Riverside Basin in the absence of the Seven Oaks Project, in exchange for a like amount of reduction in extractions in the Riverside Basin near the key wells used to measure Valley District's compliance with the Judgment objectives

M. Parties to the Diversion Agreement also agreed to implement an accounting methodology under the Western Judgment that will allow Plaintiffs to fully utilize their water

rights in the SBBA. In conjunction with this Agreement, the full use of such water rights could be facilitated by amending the August 18, 2004 Paragraph VI(b)6 agreement entitled “Western Replenishment and Extraction Agreement” which would allow Plaintiffs, in any year in which their entitlement was not fully used, to return any amount of water up to the amount of imported water previously acquired from Western.

N. The primary purpose of this Agreement is to provide for additional extractions of water from the SBBA by Plaintiffs and users within Valley District without replenishment by Valley District in amounts equal to the amount of New Conservation determined by Watermaster to have occurred from 1998 through 2012 due to operation of the Dam. As to future New Conservation associated with the operation of the Dam, Watermaster will utilize Paragraph VI(b)1, VI(b)2, and VI(c) to account for such New Conservation, as provided herein. In addition, another purpose of this Agreement is to ensure implementation of specific provisions of the 2007 Diversion Agreement related to New Conservation, as referenced in Recitals L and M, above.

O. Although the Judgment does not require court approval of Paragraph VI(b)6 agreements, the parties have historically sought court approval of such agreements.

NOW, THEREFORE, in consideration of the mutual covenants of the parties, and based upon the recitals above, IT IS HEREBY AGREED TO AS FOLLOWS:

1. Definition of Additional Extractions. As used herein, the term “additional extractions” means any extraction of water by Plaintiffs in the above-referenced action in excess of the amounts permitted by the Judgment; with respect to entities other than Plaintiffs in such action, the term means any extractions in excess of the total amount of water that can be produced from the SBBA without any replenishment obligation. No replenishment obligations shall be incurred on account of any additional extractions made pursuant to this Agreement.

2. Amount of Additional Extractions. Watermaster has determined that the total quantity of New Conservation resulting from operation of the Seven Oaks Dam for the period of 1998 through 2012 is 42,840 acre-feet. Consistent with the Judgment, such amount may be extracted by Plaintiffs and non-plaintiff entities producing water within the SBBA as additional extractions pursuant to this Agreement.

3. Allocation of Additional Extractions to Plaintiffs. Plaintiffs may make additional extractions from the SBBA for use within Western in any future year in the aggregate amount of 11,974 AF, or 27.95% of the 1998-2012 New Conservation water. Such amount shall be allocated among individual Plaintiffs as follows:

- | | | |
|----|-------------------------------------|----------|
| a. | City of Riverside | 9,635 AF |
| b. | Meeks and Daley Water Co. | 1,448 AF |
| c. | Riverside Highland Water Co. | 793 AF |
| d. | Regents of University of California | 98 AF |

Such individual allocations are in proportion to Plaintiffs' respective shares of the safe yield of the SBBA.

4. Allocation of Additional Extractions to Other Entities. Entities in San Bernardino County other than Plaintiffs who produce water within the SBBA may make additional extractions from the SBBA in any future year in the amount of 30,866 AF, or 72.05% of the 1998-2012 New Conservation water.

5. Periodic Changes in Paragraph VI(b) and VI(c) Allowable Extractions. Periodically Watermaster shall consider making changes in:

(a) the portion of Plaintiffs' "adjusted right" related to New Conservation determined pursuant to Paragraph VI(b); and

(b) the New Conservation to which users in Valley District are entitled pursuant to Paragraph VI(c).

Such periodic consideration and any resulting changes shall be made to ensure that over a long-term period, equal to or greater than the number of years used to forecast the average amount of New Conservation, the amount of New Conservation allowed to be extracted is the same as it would have been if the New Conservation had been made available to Plaintiffs and users within Valley District each year in amounts equal to the actual amount of conserved water that is replenished. Any change shall be made prospectively in order to ensure that such change does not result in a change or reconciliation of a prior year "adjusted right" for Plaintiffs or an amount of New Conservation available for use by users within Valley District.

Periodic consideration of changes in the allowable extractions related to New Conservation shall occur for the duration of the forecast period at intervals of not less than five years nor more than ten years. The periodic consideration of change in the long-term average increase in allowable extractions related to New Conservation shall account for physical improvements in storage, diversion or recharge capability that may result in an increase in the forecast of the long-term average amount of New Conservation; and prospectively account for changes in the long-term forecast that arise from annual determinations of actual New Conservation and/or improvements in the data base and the analytical tools and procedures used to forecast New Conservation.

6. Paragraph VI(b) Service Area Delivery Limitations. The service area delivery limitations provided in Paragraphs V and VI of the Western Judgment shall not apply to New Conservation.

7. Assignment. Any Plaintiff may assign all or a portion of that Plaintiff's right to make additional extractions, as provided in Paragraph 3 herein, to any other Plaintiff.

8. Potential Reductions in Additional Extractions. If at any time prior to the extraction of all additional extractions pursuant to this Agreement Watermaster determines that New Conservation that occurred from 1998-2012 is causing a decrease in the natural safe yield of the SBBA by increasing subsurface outflow or rejecting native recharge that would have

occurred in the absence of Seven Oaks Dam, then Watermaster shall reduce the then-remaining amount of additional extractions provided for in Paragraph 2 and the subsequent amounts allocated to Plaintiffs and Valley District in Paragraphs 3 and 4 by an amount equal to the increase in subsurface outflow or rejected native recharge.

9. Annual Reports. Watermaster shall exclude any additional extractions under this Agreement from extractions in the Annual Report Tables 3A through 3D showing extractions by Plaintiffs. Watermaster shall also exclude additional extractions by entities other than Plaintiffs from the determination of extractions in Table 2 of the Annual Report.

10. Riverside Basin Mitigation Account. Any amount of replenishment in the SBBA resulting from the operation of Seven Oaks Dam and related diversion and spreading facilities that, in the absence of such operation, would have been replenished in the Riverside Basin, shall not be considered New Conservation and shall not be allocated for use by Plaintiffs and users within Valley District and shall instead be included in a Riverside Basin Mitigation Account. Watermaster shall maintain a record of the amount of water in the Riverside Basin Mitigation Account. Western shall maintain in force an agreement with the City of Riverside that provides for the City to increase extractions from its wells in the SBBA by a specified amount and reduce extractions from its Flume Tract wells in the Riverside Basin by the same amount. The agreement shall provide that such change in the location of extractions is subject to the following:

(a) Western and Valley District will jointly determine the specified amount of the change in extractions and the time period for such change; and

(b) The City of Riverside will change the location of extractions as determined by Western and Valley District unless Riverside is unable to do so because of physical or prior contractual constraints.

Watermaster shall account for the required extractions from the SBBA as additional extractions pursuant to Section 9 of this agreement and shall include the amount of the additional SBBA extractions as an extraction by the City of Riverside from Riverside North in the Annual Report Table 5.

11. Amendment to the Paragraph VI(b)6 Western Replenishment and Extraction Agreement. Paragraph 5 of the "Western Replenishment and Extraction Agreement" dated August 18, 2004 is hereby amended to also provide that, "Any Plaintiff at its option may assign and transfer to Western an amount of water equal to its unused water right in the SBBA in any year provided the aggregate amount of such transfers may not exceed the Plaintiffs aggregate amount of previously transferred right to extract imported water pursuant to this paragraph."

SAN BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT

Date: July 16, 2013

By: 

President

By: Ed Keger

Secretary

WESTERN MUNICIPAL WATER
DISTRICT OF RIVERSIDE COUNTY

By: 

President

By: 

Secretary

APPROVED AS TO FORM:

By: 

Jill N. Willis

Best Best & Krieger

By: 

David R. E. Aladjem

Downey Brand LLP

DEPARTMENT OF PUBLIC WORKS

FLOOD CONTROL • LAND DEVELOPMENT & CONSTRUCTION • OPERATIONS
SOLID WASTE MANAGEMENT • SURVEYOR • TRANSPORTATION



COUNTY OF SAN BERNARDINO

825 East Third Street • San Bernardino, CA 92415-0835 • (909) 387-8104
Fax (909) 387-8130

GERRY NEWCOMBE
Director of Public Works

July 26, 2013

Mr. C. Patrick Mulligan, President
Board of Directors
San Bernardino Valley Municipal Water District
380 East Vanderbilt Way
San Bernardino, CA 92408

Re: **PLANNING MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN BERNARDINO
COUNTY FLOOD CONTROL DISTRICT AND THE SAN BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT – AGREEMENT NO. 13-608**

Dear Mr. Mulligan:

Please find enclosed the executed copy of the above-referenced agreement which was approved, by the Board of Supervisors on behalf of the San Bernardino County Flood Control District on July 23, 2013, for your records.

If you have any questions, please contact Kenneth Eke at (909) 387-8120

Sincerely,

KENNETH C. EKE, P.E., Chief
Flood Control Planning Division

KE:dja

Enclosure

cc: Front File
Reading File

SBVMWD LEGAL
DOCUMENT **2404**

GREGORY C. DEVEREAUX
Chief Executive Officer

ROBERT A. LOVINGOOD
JANICE RUTHERFORD
JOSIE GONZALES

Board of Supervisors
First District JAMES RAMOS
Second District GARY C. OVITT
Fifth District

Third District
Fourth District

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT
AND RECORD OF ACTION**

July 23, 2013

**FROM: GERRY NEWCOMBE, Director
Flood Control District**

**SUBJECT: PLANNING MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN
BERNARDINO COUNTY FLOOD CONTROL DISTRICT AND THE SAN
BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**

RECOMMENDATION(S)

Acting as the governing body of the San Bernardino County Flood Control District, approve a ten year Planning Memorandum of Understanding (**Agreement No. 13-608**) between the San Bernardino County Flood Control District and the San Bernardino Valley Municipal Water District for the purpose of working together in the planning and evaluation of San Bernardino County Flood Control District facilities for joint use by the San Bernardino County Flood Control District and the San Bernardino Valley Municipal Water District for both flood control and groundwater replenishment operations.

(Presenter: Gerry Newcombe, Director, 387-7906)

BOARD OF SUPERVISORS COUNTY GOALS AND OBJECTIVES

**Pursue County Goals and Objectives by Working with Other Public Agencies.
Implement the Countywide Vision.**

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The Planning Memorandum of Understanding (MOU) does not commit the San Bernardino County Flood Control District (FCD) to any expenditure other than staff time which has been accounted for in the 2013-14 budget. Site specific agreements may be brought to the Board of Supervisors at a later date that will contain provisions bringing revenue to FCD.

BACKGROUND INFORMATION

Approval of this item will authorize FCD to enter into an MOU with the San Bernardino Valley Municipal Water District (Valley District) to work cooperatively in the planning and evaluation of the possible joint use of FCD's facilities for both flood control and groundwater replenishment operations. The MOU does not bind FCD to any project. Any proposed use of FCD properties by Valley District that originates from this MOU is at the sole discretion of FCD.

Page 1 of 2

cc: Flood Control-Eke w/agreement &
Newcombe
Contractor c/o Flood Control
w/agreement
Auditor-Controller/Treasurer/Tax
Collector-Accounts Payable Manager
w/agreement
EBIX-BPO c/o Risk Management
CAO-Nelson & Olhasso
File - w/agreement
ml 07/25/13
ITEM 42

Record of Action of the Board of Supervisors

APPROVED (CONSENT CALENDAR)

**COUNTY OF SAN BERNARDINO
County Flood Control District**

MOTION	AYE	AYE	SECOND	MOVE	AYE
	1	2	3	4	5

LAURA H. WELCH, CLERK OF THE BOARD

BY 

DATED: July 23, 2013

**PLANNING MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN
BERNARDINO COUNTY FLOOD CONTROL DISTRICT AND THE SAN
BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
JULY 23, 2013
PAGE 2 OF 2**

FCD owns and operates a number of flood control facilities within Valley District's operational boundaries. Valley District and FCD first entered into a cooperative agreement for Valley District to deliver water to several FCD detention basins for purposes of recharging the groundwater basin in 1972, and both agencies have continued to cooperatively use these facilities ever since. Valley District is now interested in expanding the number of facilities used in this effort, in addition to upgrading the facilities currently used, in order to maximize the amount of water recharge performed while acknowledging the primary goal of FCD facilities is to maintain adequate flood protection for the safety and protection of the public. FCD and Valley District wish to jointly explore the opportunities to use existing flood control basins and perhaps other facilities owned by either party, for the combined purposes of adequate flood control and useful and beneficial water replenishment operations. The MOU establishes the framework for FCD and Valley District to work together to plan and evaluate the environmental, operational and financial impacts of such combined use of their facilities. The MOU does not authorize or guarantee any specific project and the parties will comply with the California Environmental Quality Act (CEQA) prior to approving any specific project. Any future use of a facility shall be subject to the parties' approval of a site specific agreement. The MOU remains in effect for a term of ten years and provides that the parties may agree to extend the MOU for subsequent ten-year periods. Either party may terminate the MOU prior to its expiration date, but only if there is cause (e.g. breach of the agreement), and after providing the other party a 60-day written notice and opportunity to cure.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Scott Runyan, Deputy County Counsel, 387-5455) on June 28, 2013, County Administrative Office (Cory Nelson, Administrative Analyst, 387-4378) on July 1, 2013, and Finance and Administration (Mary Jane Olhasso, Assistant Executive Officer, 387-4599) on July 8, 2013.



**San Bernardino County
Flood Control District**

F A S

CONTRACT TRANSMITTAL

FOR OFFICIAL USE ONLY

ORIGINAL

<input checked="" type="checkbox"/> New <input type="checkbox"/> Change <input type="checkbox"/> Cancel	FAS Vendor Code	SC	Dept.	A	Contract Number 13-608
ePro Vendor Number					ePro Contract Number
Flood Control District			Dept. 094	Orgn. 094	Contractor's License No.
Contract Representative Kenneth C. Eke, Chief, FC Planning Division			Telephone 909-387-8120		Total Contract Amount
Contract Type <input type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input checked="" type="checkbox"/> Other: Grant					
If not encumbered or revenue contract type, provide reason:					
Commodity Code		Contract Start Date	Contract End Date	Original Amount \$	Amendment Amount
Fund RFL	Dept. 093	Organization 093	Appr.	Obj/Rev Source GRC/PROJ/JOB No. F02481	Amount
Fund RFF	Dept. 092	Organization 092	Appr.	Obj/Rev Source GRC/PROJ/JOB No. F02482	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source GRC/PROJ/JOB No.	Amount
Project Name PLANNING MOU SBVMWD			Estimated Payment Total by Fiscal Year		
			FY	Amount	I/D
			FY 13/14		

CONTRACTOR San Bernardino Valley Municipal Water District

Federal ID No. or Social Security No. _____

Contractor's Representative C. Patrick Mulligan, President, Board of Directors

Address 380 East Vanderbilt Way, San Bernardino, CA 92408

Phone 909-387-9200

Nature of Contract: Planning Memorandum of Understanding (MOU) between the San Bernardino County Flood Control District (FCD) and the San Bernardino Valley Municipal Water District (Valley District) to work cooperatively in the planning and evaluation of the possible joint use of FCD's facilities for both flood control and groundwater replenishment operations.

Approved as to Legal Form (sign in blue ink) Counsel Date <u>7-19-13</u>	Reviewed as to Contract Compliance Date <u>7/22/13</u>	Presented to Board for Signature Date <u>7/22/13</u>
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(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

Auditor-Controller/Treasurer/Tax Collector Use Only

<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

**Planning Memorandum of Understanding
San Bernardino County Flood Control District (FCD) and
San Bernardino Valley Municipal Water District (Valley District)**

1. *Recitals*

- a. WHEREAS, the FCD was created by the San Bernardino County Flood Control Act of 1939, found in Chapter 43 of the California Water Code Appendix (Flood Control Act), and its primary statutory objects and purposes are to provide for the control of flood and storm waters and secondarily to conserve such flood and storm waters, and other waters, for beneficial uses in FCD's district area by spreading, storing, retaining, and through percolation.
- b. WHEREAS, Valley District was formed in 1954 as a regional agency formed to plan a long-range water supply for the San Bernardino Valley and it imports water into its service area from the State Water Project and manages groundwater storage within its boundaries.
- c. WHEREAS, FCD owns and operates a number of flood control facilities within Valley District's boundaries.
- d. WHEREAS, Valley District and FCD first entered into a cooperative agreement for Valley District to deliver water to FCD detention basins for purposes of recharging the groundwater basin in 1972, and Valley District and FCD have continued to cooperatively use these facilities ever since.
- e. WHEREAS, Valley District is interested in continuing to cooperatively use FCD's flood control facilities to promote groundwater recharge while acknowledging the primary goal of FCD facilities to maintain adequate flood protection for the safety and protection of the public.
- f. WHEREAS, as a general matter, FCD and Valley District wish to jointly explore the opportunities to use existing flood control basins (and perhaps other facilities owned by either party) for the combined purposes of adequate flood control and useful and beneficial water replenishment operations.
- g. WHEREAS, FCD and Valley District wish to enter into this Planning Memorandum of Understanding (MOU) to describe in general terms their interests in coordinating their efforts to plan and evaluate the environmental and financial impacts of such combined use of FCD's facilities.
- h. WHEREAS, as provided herein, this MOU does not authorize nor guarantee any specific project and the parties will comply with the California Environmental Quality Act (CEQA) prior to approving any specific project.

NOW, THEREFORE, it is mutually agreed as follows:

2. *Understandings*

a. *Priorities*

- i. The parties recognize that flood control is a higher, better and more necessary public use of the property and facilities owned by the FCD pursuant to the Flood Control Act and other state and federal law. This MOU shall be subject to the paramount legal duties and obligations of FCD pursuant to the Flood Control Act.
- ii. The FCD shall have the sole discretionary authority to determine what constitutes “adequate flood protection” for the operation of its facilities.
- iii. FCD shall have the sole discretionary authority to determine which of its facilities are available for use in re-charge activities proposed by the Valley District. Any future use of a FCD facility shall be subject to the parties’ approval of a site specific agreement.
- iv. Based on the priorities and discretion provided in this Section 2.a., “Priorities”, as well as the general planning nature of this MOU, FCD and Valley District acknowledge and agree that no implied covenants attach to this agreement, including, but not limited to, the implied covenant of good faith and fair dealing.

b. *Term*

This MOU shall have a term of 10 years from the date on which the last party executes this MOU. This MOU may be extended by the parties for subsequent 10-year periods, subject to approval by both parties.

c. *General Planning Efforts*

- i. Once a specific plan is initiated by Valley District for the specific use of a particular flood control facility, the parties agree to allocate sufficient staff time and resources to evaluate the joint use/operation of that existing facility for adequate flood control purposes in conjunction with water replenishment. Valley District shall provide to FCD all of the details associated with the proposed use for each FCD facility including, but not limited to, any proposed improvements (including a statement as to which entity will own the improvements after a project specific agreement terminates) and a proposed operational plan for each FCD facility. This information will also include the amount of estimated recharge for both

native stormwater and State Water Project water (if any), or other sources of water, for each facility, and quality of such water.

- ii. The joint evaluation may consider replenishment with both native water and water from the State Water Project or other sources and shall also consider the potential effects of groundwater replenishment to the environment, including, but not limited to, an evaluation of whether such activities will introduce water quality pollutants or mobilize existing groundwater contamination, or will cause land subsidence, liquefaction, or seepage to low lying lands in any basin to be impacted by the replenishment activities of Valley District. The parties acknowledge that Valley District will be the agency primarily leading this evaluation as it has the appropriate expertise concerning groundwater storage and the quality of waters from sources such as the State Water Project. FCD will independently review Valley District's evaluation.
- iii. Considering the statutory purposes of the FCD and the goals of Valley District, both parties agree that they will determine, on a case by case basis, which agency will be in charge of seeking permits for projects and which agency will be the "Lead Agency" for purposes of complying with CEQA.
- iv. Valley District will work cooperatively with FCD towards Valley District's goal of maximizing the quantity of water that can be replenished annually from the existing flood control basins, while maintaining or improving the protection of the public from the dangers of flooding. In general, FCD will not object to Valley District's use of FCD's fee owned properties or the modification of existing flood control basins that are owned in fee by FCD by means of the installation of dual-purpose facilities, *provided that*: (i) Valley District is responsible for all regulatory and other costs associated with said activities, and (ii) the incremental cost of those modifications is paid by Valley District, and (iii) FCD reviews and is satisfied with the individual circumstances surrounding the proposed project and the existing flood control facility. Nothing in this paragraph is intended to alter the sole discretionary authority of the FCD concerning the uses of its facilities.
- v. The parties will also collaborate with other local, state and federal agencies with regulatory authority over these activities, including, but not limited to, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the California Regional Water Quality Control Board, the California Department of Fish and Wildlife and any others.

- vi. Valley District agrees to pay a reasonable use fee for the use of the FCD's land and facilities as agreed to by both parties on a case by case basis.
- vii. Valley District acknowledges and agrees that future project specific agreements with FCD will include indemnification and insurance provisions developed by FCD's counsel and FCD's Risk Management Department that adequately protect FCD from any and all claims, actions, losses, and damages arising out of the water conservation and replenishment activities described in this MOU. The parties agree that such indemnification and insurance provisions will be negotiated in consideration of the individual circumstances surrounding each existing flood control facility on a case-by-case basis.
- viii. Valley District acknowledges and agrees that future project specific agreements with FCD will also require FCD permits.

3. *General Provisions*

- a. *Early Termination.* Either party may terminate this agreement prior to its expiration date for cause, *provided* that it has provided 60-day written notice and opportunity to cure to the other party prior to termination.
- b. *Recitals Incorporated Herein.* The parties agree and acknowledge that the recitals set forth above are true and correct and are fully incorporated in this MOU.
- c. *Non-Exclusive Agreement.* Nothing in this MOU shall prevent either party from working cooperatively with other individuals, public agencies or private organizations to improve flood protection or groundwater recharge within that party's respective jurisdiction.
- d. *Authority.* Each signatory of this MOU represents that he/she is authorized to execute this MOU on behalf of the party for which he/she signs. Each party represents that it has legal authority to enter into this MOU and to perform all obligations under this MOU.
- e. *Amendment.* This MOU may be amended or modified only by a written instrument executed by each of the parties to this MOU.
- f. *Jurisdiction and Venue.* This MOU shall be governed by and construed in accordance with the laws of the state of California, except for its conflicts of law rules. Any suit, action, or proceeding brought under the scope of this MOU shall be brought and maintained to the extent allowed by law in the County of San Bernardino, California.

- g. *Headings.* The paragraph headings used in this MOU are intended for convenience only and shall not be used in interpreting this MOU or in determining any of the rights or obligations of the parties to this MOU.
- h. *Construction and Interpretation.* This MOU has been arrived at through negotiations and each party has had a full and fair opportunity to revise the terms of this MOU. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in the construction or interpretation of this MOU.
- i. *Entire Agreement.* This MOU constitutes the entire agreement of the parties with respect to the subject matter of this MOU and supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this MOU.
- j. *Attorneys' Fees and Costs.* Regardless of whether it is the prevailing party in any litigation or other action to enforce or interpret this MOU, each party shall bear its own attorneys' and expert witnesses' fees, costs of suit and other necessary disbursements. This paragraph shall not apply to the costs or attorney(s) fees relative to Section 3.p., "Indemnification and Insurance."
- k. *Necessary Actions.* Each party agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out the purposes of this MOU.
- l. *Third Party Beneficiaries.* This MOU shall not create any right or interest in any non-party or in any member of the public as a third party beneficiary.
- m. *Counterparts.* This MOU may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
- n. *Notices.* All notices, requests, demands or other communications required or permitted under this MOU shall be in writing unless provided otherwise in this MOU and shall be deemed to have been duly given and received on: (i) the date of service if served personally or served by facsimile transmission on the party to whom notice is to be given at the address(es) provided below, (ii) on the first day after mailing, if mailed by Federal Express, U.S. Express Mail, or other similar overnight courier service, postage prepaid, and addressed as provided below, or (iii) on the third day after mailing if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage prepaid, addressed as follows:

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

Director
Department of Public Works
County of San Bernardino
825 East Third Street
San Bernardino, California 92415
Telephone: (909) 387-7906
Facsimile: (909) 387-7911

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

General Manager
San Bernardino Valley Municipal Water District
380 East Vanderbilt Way
San Bernardino, California 92408
Telephone: (909) 387-9200
Facsimile: (909) 387-9247

- o. *Assignment.* This MOU may not be assigned by either party without the written consent of the other party.
- p. *Indemnification and Insurance.* FCD agrees to indemnify, defend (with counsel approved by Valley District) and hold harmless Valley District, its employees, officers, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability resulting from FCD's negligent acts or omissions which arise from FCD's performance of its obligations under this MOU. Valley District agrees to indemnify, defend (with counsel approved by FCD) and hold harmless the FCD, its employees, officers, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability resulting from the Valley District's negligent acts or omissions which arise from the Valley District's performance of its obligations under this MOU. In the event, FCD and/or Valley District is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this MOU, FCD and/or Valley District shall indemnify the other to the extent of its comparative fault. FCD and Valley District shall maintain throughout the term of this MOU such policies of insurance or legally sufficient self-insurance for Professional Liability (as applicable), Automobile Liability, Comprehensive General Liability, and Workers' Compensation that are adequate to protect against all liabilities and indemnification responsibilities arising out of the performance of the terms, conditions or obligations of this MOU.

IN WITNESS WHEREOF, the parties have caused this MOU to be executed by their duly authorized officers or representatives as of the last day and year appearing below.

----- **Signatures on Following Page** -----

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT

By: _____

C. Patrick Milligan
President, Board of Directors

Date: _____

7-16-13

ATTEST:

By: _____

Clerk

APPROVED AS TO FORM:
SPECIAL DISTRICT COUNSEL

By: _____

David R.E. Aladjem
Special Counsel

Date: _____

7/18/13

SAN BERNARDINO COUNTY FLOOD
CONTROL DISTRICT

By: _____

Janice Rutherford, Chair, Board of
Supervisors

Date: _____

JUL 28 2013

SIGNED AND CERTIFIED THAT A COPY
OF THIS CONTRACT HAS BEEN
DELIVERED TO THE CHAIRMAN OF
THE BOARD

Laura H. Welch
Clerk of the Board of Supervisors
of the County of San Bernardino



By: _____

APPROVED AS TO FORM:
COUNTY COUNSEL

By: _____

Scott Runyan
Deputy County Counsel

Date: _____

7-19-13

AMENDMENT TO AGREEMENT TO FORM THE UPPER SANTA ANA RIVER WASH LAND MANAGEMENT AND HABITAT CONSERVATION PLAN TASK FORCE

THIS AMENDMENT TO AGREEMENT TO FORM THE UPPER SANTA ANA RIVER WASH LAND MANAGEMENT AND HABITAT CONSERVATION PLAN TASK FORCE ("Amendment") is made effective this 1st day of September, 2013, by and between the following entities (hereinafter individually referred to as a "Party" and collectively referred to as the "Parties"):

CEMEX CONSTRUCTION MATERIALS, LP ("CEMEX")	ROBERTSON'S READY MIX, LTD ("ROBERTSON'S")
CITY OF HIGHLAND ("HIGHLAND")	EAST VALLEY WATER DISTRICT ("EVWD")
CITY OF REDLANDS ("REDLANDS")	REDLANDS MUNICIPAL UTILITIES AND ENGINEERING DEPARTMENT ("RMUED")
COUNTY OF SAN BERNARDINO ("SAN BERNARDINO COUNTY")	SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT ("SBCFCD")
SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT ("SBVWCD" OR "CONSERVATION DISTRICT")	UNITED STATES BUREAU OF LAND MANAGEMENT ("BLM")
	SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT ("VALLEY DISTRICT")

RECITALS

This Amendment is entered into on the basis of the following facts, understandings, and intentions of the Parties:

A. All Parties hereto, except Valley District, entered into that certain "Agreement to Form the Upper Santa Ana River Wash Land Management and Habitat Conservation Plan Task Force" on November 20, 2002 ("Original Agreement"), for the purposes of advancing environmental planning and permitting in connection with the Upper Santa Ana River Wash Land Management Plan ("Wash Plan").

B. Since the time the Original Agreement was entered into, planning for the Wash Plan has advanced in all phases, including with respect to groundwater recharge and other water conservation facilities. In connection with such facilities, Conservation District and Valley District have entered into a series of agreements to allow for joint use

of Conservation District property, and construction of additional facilities as part of an Enhanced Recharge Program with Valley District, to fulfill various of the Wash Plan objectives regarding expanded groundwater recharge and water conservation capabilities.

C. The Original Agreement provided, in paragraph 2 (G), that all Parties acknowledged and agreed that the effectiveness of the Task Force may be improved by the addition of other entities that had interest in the work of the Task Force, and given Valley District's intended role in contributing to expanding groundwater recharge facilities in the Wash Plan area, Valley District is such an entity.

D. At a Task Force meeting held July 16, 2013, the Task Force reviewed cost estimates for the completion of environmental review and permitting activities for the Wash Plan, and the individual members will be going to their respective governing bodies for funding authorization for the completion of such environmental review and permitting activities. In addition, the Task Force has refined its description of covered activities to be included within the "take" and other permitting authorizations proposed to be pursued, such that the Wash Plan process is now at a point where responsible estimates for long-term habitat maintenance and other costs can be generated, and an equitable distribution of such costs over parties sponsoring, or benefitting from, component projects of the overall Wash Plan can be determined.

E. The Parties therefore wish to amend the Original Agreement to add Valley District as a regular member of the Task Force, and to specify their going-forward intentions for additional consultations for deriving an equitable cost-sharing allocation for the costs that may be incurred by the Task Force members for implementation of the Habitat Conservation Plan and other permanent funding requirements that may attend final Wash Plan approval.

NOW, THEREFORE, the Parties do hereby agree as follows:

1. Valley District is, and henceforth shall be, a "Regular Member" of the Task Force under Section 2 (A) of the Original Agreement. Valley District shall pay a one-time fee into the Fund (provided in Section 5 (C) of the Task Force Agreement) of \$275,000.00. Such amount shall be utilized by the Conservation District, as Project Manager, to help offset the Conservation District's share of interim and estimated costs of completion of the environmental and permitting documentation for the Wash Plan. The Task Force at its meeting on July 16, 2013 approved estimated costs for planning and consulting services.

2. The Parties agree to meet and confer, in order to rework the contribution levels specified in Exhibit "B-1" to the Original Agreement, for those expenses that will be required of the Task Force members for costs for implementation of the Habitat Conservation Plan and other implementation funding requirements that may attend final Wash Plan approval. As presently contemplated, the basis for the allocation of such implementation costs shall be allocated on a proportionate acreage basis as it relates to the habitat disturbances attributable to the portions of the

component projects of the Wash Plan advanced by, sponsored by, or benefitting Task Force members, with offsetting credit being given to the amount of habitat as acreage being contributed by various Task Force members. The Task Force will refine such costs allocations once the PAR analysis and final permitting costs are more fully determined.

3. Except as specifically amended herein, the Original Agreement remains in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have entered into the Amendment as of the day and year first set forth above.

APPROVED AS TO FORM:

Counsel for CEMEX

CEMEX CONSTRUCTION MATERIALS,
LP

APPROVED AS TO FORM:

Counsel for Robertson's Ready Mix, Ltd.

ROBERTSON'S READY MIX, LTD.

UNITED STATES BUREAU OF LAND
MANAGEMENT

Field Manager

APPROVED AS TO FORM:

General Counsel

SAN BERNARDINO VALLEY WATER
CONSERVATION DISTRICT

President, Board of Directors

Attest: _____
Secretary of the Board

APPROVED AS TO FORM:

General Counsel

EAST VALLEY WATER DISTRICT

President, Board of Directors

Attest: _____
Secretary of the Board

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

APPROVED AS TO FORM:

City Attorney

REDLANDS MUNICIPAL UTILITIES AND
ENGINEERING DEPARTMENT

Mayor

Attest: _____
City Clerk

APPROVED AS TO FORM:

County Counsel

COUNTY OF SAN BERNARDINO

Chairperson, Board of Supervisors

Attest: _____
Clerk of the Board

APPROVED AS TO FORM:

General Counsel

SAN BERNARDINO COUNTY FLOOD
CONTROL DISTRICT

Chairperson, Board of Supervisors

Attest: _____
Clerk of the Board

APPROVED AS TO FORM:

City Attorney

CITY OF REDLANDS

Mayor

Attest: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF HIGHLAND

Mayor


Attest: _____
City Clerk

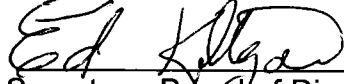
[SIGNATURES CONTINUED ON FOLLOWING PAGE]

APPROVED AS TO FORM:


General Counsel

SAN BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT


President, Board of Directors

Attest: 
Secretary, Board of Directors

AGREEMENT TO FORM THE UPPER SANTA ANA RIVER WASH LAND MANAGEMENT AND HABITAT CONSERVATION PLAN TASK FORCE

THIS AGREEMENT is made effective this 20th day of Nov, 2002, by and between the following entities (hereinafter individually referred to as a "Party" and collectively referred to as the "Parties"):

CEMEX CONSTRUCTION MATERIALS,
LP ("CEMEX")

ROBERTSON'S READY MIX, LTD
("ROBERTSON'S")

[CITY OF HIGHLAND ("HIGHLAND")]

EAST VALLEY WATER DISTRICT
("EVWD")

CITY OF REDLANDS ("REDLANDS")

REDLANDS UTILITIES DEPARTMENT
("RUD")

COUNTY OF SAN BERNARDINO ("SAN
BERNARDINO COUNTY")

SAN BERNARDINO COUNTY FLOOD
CONTROL DISTRICT ("SBCFCD")

SAN BERNARDINO VALLEY WATER
CONSERVATION DISTRICT ("SBVWCD"
OR "CONSERVATION DISTRICT")

UNITED STATES BUREAU OF LAND
MANAGEMENT ("BLM")

RECITALS

This Agreement is entered into on the basis of the following facts, understandings, and intentions of the Parties:

A. Representatives of numerous agencies, including water, mining, flood control, resource management and conservation, and municipalities, formed the Santa Ana River Wash Area Coordinating Planning Activities Committee ("Wash Committee") to address local mining issues and other land functions on the Upper Santa Ana River Wash ("Wash"). A Policy Action Committee ("PAC") was subsequently established, consisting of elected officials from San Bernardino County, Highland, Redlands, and the Conservation District, as well as the Field Manager of the BLM. A Technical Advisory Committee ("TAC") was also formed with representatives from the PAC agencies, and other water, mining, flood control, and resource protection interests.

B. The Wash Committee examined the most appropriate manner in which to use the Wash for the benefit of all landowners without regard to preexisting planning of the Wash or current land ownership. Ultimately, the Wash Committee determined that there should be a balance of land uses to accommodate the needs of mineral extraction, water conservation, habitat protection, and municipal infrastructure

requirements (i.e. utilities, trails, etc.). To achieve land use balance, current land uses must be reassigned to better accommodate mineral extraction, water conservation, and habitat. To effect such change, an exchange of existing land ownership between BLM and the Conservation District, and a transfer of leasehold interests between the mining companies and the Conservation District will be required.

C. The TAC reached a general consensus in early 2000 regarding the designation of specific areas of the Wash for the desired uses. The result of this multi-jurisdictional effort was the creation of a proposed Land Management and Habitat Conservation Plan for the Upper Santa Ana River Wash ("Concept Plan"). The Concept Plan establishes the framework for balancing ongoing and future land activities proposed for the Wash Planning Area ("WPA"), including habitat protection areas and recreational trail alignments. The Concept Plan was reviewed and endorsed by the governing boards and/or officials with approval authority from each of the Parties, and various other agencies involved in the deliberations on the Concept Plan.

D. Each of the Parties have found and determined that it is in their best interests to join together to: manage activities in connection with the necessary refinements, environmental review, and implementation of the Land Management and Habitat Conservation Plan (collectively the "Project"); provide an equitable cost-sharing mechanism for the funding of the Project; and, define the projected schedule and scope of work to execute the Project.

E. The Parties hereto now enter into this Agreement to establish a Task Force, consisting of a representative from each party, to oversee and administer the preparation of plans, environmental review documents, public notices and hearings, and other activities requisite to the formulation and, if adopted, execution of the Project.

F. In entering into this Agreement, the Parties reserve their discretionary authority with regard to the execution of the Project, including but not limited to, any land use and planning authority under state and local law, authority, designated under the Surface and Mining Recovery Act ("SMARA"), and CEQA approval of their own discretionary decisions executing the Project.

TERMS & CONDITIONS

SECTION 1: DESCRIPTION OF PROJECT.

The Project to be undertaken by the Task Force consists of all of the following:

A. Refinement and expansion of the Concept Plan (Exhibit "A") to develop the Component Plans of a "Land Management and Habitat Conservation Plan for the Upper Santa Ana River Wash" ("Plan"), which includes the following:

1. A Mining and Reclamation Plan under the Surface Mining and Reclamation Act ("SMARA") designating the areas as generally depicted in Exhibit "A" to be devoted to sand, gravel, and mineral extraction and the terms and conditions under which such extraction may proceed, which will be provided by CEMEX and

Robertson's to the appropriate municipality, Highland or Redlands, for review and approval;

2. A Water Conservation Plan, which describes the scope, extent, and location of water diversions, conveyance, spreading, and monitoring activities, which will be provided by the Conservation District;

3. A Recreation Plan, which coordinates the planning and development of trails, parks, and public recreation areas, which will be provided by Conservation District, San Bernardino County, and Redlands;

4. An Infrastructure Plan, which describes the location of pipelines, utility corridors, roads, highways, and communication facilities, which will be provided by the Conservation District, EVWD, and Redlands;

5. A Habitat Protection Plan, which will be provided by the Conservation District to identify habitat areas that may be considered to protect threatened and endangered species at such time as other activities within the Wash are presented to the appropriate agency for entitlements, approvals and /or land use permits; and

6. A Flood Control Plan, which describes flood control facilities/activities including detention and retention basins, drains, and storm water conveyance facilities, which will be provided by SBCFCD.

B. Preparation of preliminary documents necessary to conduct an environmental analysis, including the following:

1. A Project Description for the environmental analysis based on the Component Plans described above;

2. Alternative land balancing plans to be studied in the environmental analysis;

3. A plan outline, including actions, required funding, and the administrative or legislative measures needed to implement the Project, which will be known as the Implementation Action Plan; and

4. A draft agreement to execute the Implementation Action Plan, which will be known as the Implementation Agreement.

C. Preparation of an EIR/EIS for implementation of the Plan, including a mitigation monitoring plan, based on the Component Plans in 1.A. above, and the preliminary documents in 1.B. above.

D. Completion of a proposed land exchange between BLM and Conservation District. BLM, working with the Conservation District, shall undertake activities to assess, and if appropriate, implement by way of a Memorandum of Understanding or

other appropriate instrument with the Conservation District, a land exchange. The assessment and potential implementation of the land exchange will analyze whether portions of property currently owned by BLM can feasibly and beneficially be exchanged for portions of property owned by the Conservation District.

E. Preparation of the implementation documents based on the completed EIR/EIS, including the following:

1. A certification of the EIR and record of decision for the EIS;
2. An Implementation Action Plan; and
3. A Habitat Conservation Plan, including a programmatic Section 10a Take Permit.

F. Task Force submit the EIR/EIS, Implementation Action Plan, and Habitat Conservation Plan to the appropriate agencies for their action and, if adopted, subsequent implementation.

SECTION 2: CREATION OF THE TASK FORCE.

There is hereby created a task force that shall be known as the Upper Santa Ana River Wash Land Management and Habitat Conservation Plan Task Force ("Wash Task Force" or "Task Force"). The Task Force shall oversee and direct preparation of the Project and shall be comprised of regular and advisory members as follows:

A. Regular Members.

Each Party who contributes financially to fund the Project in accordance with Exhibit "B" to this Agreement, as may be amended from time to time, or contributes with in-kind services that result in a product for use by the Task Force commensurate with the level of contribution identified in Exhibit "B," shall be deemed a Regular Member of the Task Force. Any dispute regarding whether "in-kind" services contributions by a Party entitles such Party to status as a Regular Member shall be submitted to all then-existing Task Force Regular Members, and will be decided by a majority vote of the Task Force Regular Members. Each Regular Member shall be entitled to appoint two (2) representatives to the Task Force concurrently with the execution of this Agreement. Each Regular Member shall appoint (1) representative to oversee and contribute to the technical/staff aspects of the Task Force's work, and one (1) member of the legislative body, Board of Directors, or other body with ultimate decision making and policy making authority for the Regular Member, who shall be the voting member of the Task Force. Notwithstanding that each Regular Member shall have two (2) representatives to the Task Force, each Regular Member shall have and exercise only one (1) vote. The identity of each of the appointed representatives from each respective Party shall be promptly communicated to the Project Manager. Appointed representatives to the Task Force shall serve at the pleasure of the governing body of the respective appointing Party, and may be removed by them at any time, with or without cause; provided, however, that the Parties acknowledge and agree the continuity of representation on the

Task Force is important to the overall effectiveness of the Task Force, and the Parties further agree to ensure such continuity whenever possible.

B. Advisory Members.

1. Any member of the TAC, which is not a Regular Member of the Task Force, and any other public or governmental agency, may with the approval of a majority of the Regular Members of the Task Force, designate representatives as non-voting advisors to the Task Force ("Advisory Members"). The Task Force will formally recognize these Advisory Members and ensure all materials and products of the Task Force are provided to the Advisory Members. A list of Advisory Members will be maintained by the Project Manager.

2. The California Department of Water Resources (DWR), the California Department of Fish and Game (DFG), and the United States Fish and Wildlife Service (USFWS), County of Orange, and the City of Highland are hereby designated as Advisory Members to the Task Force.

3. Advisory Members may be admitted as Regular Members, with voting privileges, with approval by a majority vote of Regular Members of the Task Force.

C. Function.

1. The Task Force shall oversee and direct the preparation of all of the component elements of the Project.

2. The Task Force shall assist in the selection of a consultant to assist in planning and implementing the Project ("Consultant"). The Consultant selected must be acceptable to the Federal lead agency.

3. The Task Force shall meet periodically for the purpose of reviewing and evaluating the work product of the Task Force and the Consultant.

4. The Task Force shall administer this Agreement, subject to the reserved right of each of the Parties to approve their respective financial appropriations to Task Force budgets.

5. The Task Force shall propose contribution levels for each Party, subject to Section 4.D. herein. The contribution level for each Party shall initially be those set out in Exhibit "B" hereto.

6. The Task Force shall, in consultation with the Consultant, prepare and adopt a project schedule ("Project Schedule"). When completed, the Project Schedule will be circulated among all Regular and Advisory Members, and will be maintained by the Project Manager.

D. Committees.

The Task Force may establish working committees, which shall be designated from a pool of Regular and Advisory members who shall be selected by and serve at the pleasure of the Task Force.

E. Designation of Officers.

The Task Force shall designate and appoint one of its representatives to act as Chair and another of its members to act as Vice-Chair, both of which shall be selected from the pool of Regular Members. The Conservation District shall perform the functions of project administrator, including secretarial and treasurer duties.

F. Meetings

Regular meetings of the Task Force shall be held at the Conservation District offices, or such other place as may be agreed upon by the Task Force. At the first meeting, the Task Force shall provide for the time and place of its regular meetings. Special meetings may be called at the request of the Chair or of a majority of Regular Members to the Task Force. A majority of Regular Members of the Task Force shall constitute a quorum for the purposes of transacting business. Except as otherwise provided herein, all actions of the Task Force shall be passed and adopted upon the affirmative vote of a majority of the quorum of Regular Members. All meetings of the Task Force shall be conducted in accordance with California's Open Meeting Laws. The Project Manager shall keep or cause to be kept, minutes of the meetings of the Task Force, copies of which shall be forwarded to each Task Force representative and to each Party. The Task Force may adopt, from time to time, such additional rules and regulations for the conduct of its affairs as may be required.

G. Additional Parties.

The Parties to this Agreement acknowledge and agree that the effectiveness of the Task Force may be improved by the addition of other entities that have interest in the work of the Task Force. Such entities may join the Task Force upon approval of a majority of the Regular Members of the Task Force, and upon such terms and conditions as are acceptable to such Regular Members, including, but not limited to, cash contributions to past, present, and/or future work of the Task Force.

H. City of Highland as Regular Member.

At the time of execution of this Agreement, the City of Highland has expressed its interest in joining the Task Force as a Regular Member, and the parties to this Agreement contemplate and desire that it do so. Provided City of Highland approves and executes this Agreement within One Hundred Eighty (180) days of the Effective Date, and pays its share of the Task Force Contribution Levels as set forth in Exhibit "B-1," for application to all expenses incurred by the Task Force from the Effective Date and following, City of Highland may join the Task Force, as a Regular Member, without the necessity of an approving vote of the Regular Members. In the event City of

Highland so joins the Task Force pursuant to the terms and conditions of this Section 2 (H), and effective immediately and prospectively from the date it does, various provisions of this Agreement shall be thereupon automatically be amended, all as more specifically set out in Exhibit "D" hereto.

SECTION 3: LEAD AGENCY DESIGNATION

A. Consistent with the First Amendment to the Memorandum of Understanding Regarding Coordinated Planning Activities Pertaining to the Santa Ana River Wash Area dated August 13, 1997, ("MOU") and its designation of the Conservation District as the Permanent Chair of the Policy Action Committee, the Conservation District is hereby designated as the Lead Agency for all non-federal activities associated with the Project under the California Environmental Quality Act ("CEQA").

B. The BLM is hereby designated as the Lead Agency for all federal activities associated with the Project under the National Environmental Policy Act ("NEPA").

SECTION 4: PROJECT MANAGER.

A. The Conservation District shall serve as the Project Manager, at the pleasure of the Task Force. The Project Manager shall act as the primary liaison and contact between the Consultant, the Task Force, and the Parties to the Second Amendment.

B. The duties of the Project Manager shall include the following:

1. Serve as the Lead Agency under CEQA and as assistant to BLM, which is the Lead Agency under NEPA; provided, however, that on issues relating to definition of level of significance for impacts, existence of and mitigation for significant adverse environmental impacts, and formulation of a mitigation monitoring program for those portions of the Project which involve mining activity within the jurisdictional boundaries of Redlands, and which require permits under SMARA, the Project Manager shall accept and incorporate into the EIR/EIS the determinations of Redlands for such aspects of the Project.

2. Administer the cost-sharing formula, which designates the percentage of the total cost of the Project, as approved by each Party to fund the Project;

3. Coordinate communications between the Consultant and the Parties;

4. Provide the Consultant with copies of all earlier studies and EIRs, which may be helpful to the Consultant to complete the Project;

5. Gather and transmit data to the Consultant from the Parties;

6. Provide periodic reports to the Task Force of the progress of the Project;
7. Report to and solicit input from the Task Force regarding policy issues that may arise;
8. Oversee the billing for all aspects of the Project;
9. Receive and pay all appropriate invoices for the Consultant;
10. Review the Consultant's charges and advise the Task Force of any problems associated with the Project;
11. Facilitate meetings of the Task Force and maintain records of the Task Force;
12. The Project Manager shall, through a written Notice to Proceed, cause the Consultant to commence the Project, and shall cause the Consultant to perform all services within the time period(s) established in the Project Schedule, and in conformity with the approved Project Flow Diagram, attached hereto as Exhibit "C"; and,
13. Either approve or deny by way of written response any requests for minor adjustments to the time period(s) specified in the Project Schedule.

C. Administration of Task Force Work.

The Conservation District shall make its personnel available as reasonably necessary to the Task Force to perform the secretarial, clerical, administrative, legal general counsel, and financial management duties requested by the Task Force. The Task Force shall compensate the Conservation District for the Conservation District's actual costs incurred in providing such services to the Task Force, upon presentation of an invoice detailing the services rendered and costs thereof, and approval of the same by the Task Force.

SECTION 5: FUNDING MECHANISM.

A. The current estimated cost for the preparation of plans and environmental review for the Project is \$823,258, or \$973,258 if the consultant prepares the Implementation Agreement. The Task Force shall periodically approve a contribution amount to be requested of all Regular Members, to be paid to and managed by the Project Manager consistent with the provisions of this Section 4, from which the Project Manager will meet the expenses incurred in implementing the Project. Contributions shall be apportioned among the Parties, as agreed to by the Parties. The initial levels of contribution are identified in Exhibit "B" to this Agreement.

B. The Conservation District as Project Manager shall coordinate Consultant retention, direction, coordination, and oversight in the planning and implementation of

the Project, and shall serve as the agency through which funds are to be conveyed and disbursed for the purpose of completing the Project.

C. The Conservation District shall establish a fund ("Fund") into which it will cause to be deposited all of the contributions received from the Task Force towards the estimated cost of the Project. It is intended that this Fund finance the Project in its entirety. In establishing the Fund, the Conservation District shall assure that all interest earned by the Fund is to be paid into the Fund, and made solely available for the funding of the Project. The Task Force may from time to time propose a cost-sharing formula differing from that attached as Exhibit "B", which designates the percentage of the total cost of the Project each Party will be required to contribute to the Fund. Upon approval by the Task Force of a contribution amount to be requested of the Regular Members, the Project Manager shall submit invoices to each Party requesting payment of their respective contributions, pursuant to the formula attached as Exhibit "B," or as otherwise proposed by the Task Force. Payment of these invoices shall be made to the Conservation District within 30 days of receipt of such invoice. If any Regular Member fails to timely remit payment of its share of the invoices in accordance to Exhibit "B" to this Agreement, the voting rights of such Regular Member shall be suspended until such time as the full amount of the invoice is paid, or the final resolution of any dispute regarding the invoice, as provided below. During such period of suspension, the Party shall enjoy only those rights and privileges as an Advisory Member of the Task Force.

D. Each Party reserves the right to approve its own contribution level to the Project, as well as its ultimate payment authority of invoices issued by the Project Manager, in whole or in part, on a per-invoice basis.

E. The Project Manager shall have authority and control of disbursements from the Fund. The Project Manager shall provide the Task Force with an accounting on at least a quarterly basis showing all disbursements, accrued interest, and other debits and credits to the Fund for the preceding quarter. Any amounts paid to the Project Manager shall not be subject to refund, except as provided herein.

F. Should a dispute arise between the Project Manager and any Party(ies) with respect to either an invoice submitted by the Consultant or any other disbursement from the Fund, the complaining Party(ies) shall notify the Project Manager in writing, specifying the nature of the objections, the reasons therefor, and the action the complaining Party(ies) requests the Project Manager to take in resolution of the dispute. Upon receipt of any such written objection, the Project Manager shall meet or otherwise confer with the complaining Party(ies) in a good faith effort to resolve the dispute. In the event such efforts do not result in resolution of the dispute within ten (10) days of the Project Manager's receipt of the written objection, the Project Manager shall refer the matter to the Task Force, and shall provide it with any and all receipts, invoices, or other documents necessary for the prompt resolution of the dispute. The Task Force shall consider and resolve the matter at its next scheduled meeting, but no later than thirty (30) days following the Project Manager's referral of the dispute to the Task Force. In resolving the dispute, the decision of the majority of the Regular Members of the Task Force shall be final.

G. Upon completion of the Project, or earlier termination of this Agreement, any unexpended Funds shall be returned to the Parties in proportion to their financial contribution.

SECTION 6: OWNERSHIP OF DOCUMENTS.

All work produced in association with the Project (including originals prepared by anyone in connection with, or pertaining to, the work of the Task Force) shall become the property of the Regular Members of the Task Force, and each of them.

SECTION 7: INDEMNIFICATION.

Neither the Project Manager nor any officer or employee thereof shall be responsible to any other Party for any damage or liability occurring by reason of anything done, or omitted to be done, by the Consultant, or in connection with any work, authority or jurisdiction delegated to the Project Manager under this Agreement. All Parties, and each of them, hold the Project Manager harmless from any claim, demand, suit of law or equity, or other proceeding arising from or relating to the Project Manager's performance of its obligations contemplated by this Agreement. Nothing herein shall be read or understood as indemnifying or holding the Conservation District, or any officer or employee thereof, harmless from any claim, demand, suit on law or equity, or other proceeding arising from or relating from the acts or omissions of the Conservation District while acting as a Party to this Agreement.

In addition, each Party agrees to indemnify, defend, and hold harmless each other Party and its officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of its obligations under this Agreement.

In the event any Party is found to be comparatively at fault for any claim, action, or loss, or damage that results from their respective obligations under this Agreement, the Party(s) found to be at fault shall indemnify the other(s) to the extent of its comparative fault.

Federal agencies' obligations under this Agreement shall be to the extent permitted by the Federal Tort Claims Act.

SECTION 8: NOTICES.

All notices required to be provided hereunder, except meeting notices, shall be in writing, and either served personally or sent by United States Mail. Meeting notices may be provided by electronic mail correspondence. For these purposes, the addresses for the Parties and Advisory Members are as follows:

As to Cemex Construction Materials, LP:
Regional Environmental Manager
CEMEX
P.O. Box 4120
Ontario, CA 91761-1607

As to Robertson's Ready Mix:
Robertson's Ready Mix, Ltd.
Attention: Rich Robertson
P.O. Box 33140
Riverside, CA 92519

[As to Highland:
Community Development Director
City of Highland
27215 Base Line
Highland, CA 92346]

As to Redlands:
Community Development Director
City of Redlands
P.O. Box 3005
Redlands, CA 92373

As to SBCFCD:
Director
San Bernardino Co. Flood Control District
825 E. Third Street
San Bernardino, CA 92415-0835

As to Conservation District:
General Manager
San Bernardino Valley Water District
P.O. Box 1839
Redlands, CA 92373-0581

As to USFWS:
Field Supervisor
U.S. Fish & Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008

As to County of Orange:
Attn: Mike Wellborn
Planning and Development Services
County of Orange
P.O. Box 4048
Santa Ana, CA 92702-4048

As to EVWD:
General Manager
East Valley Water District
P.O. Box 3427
San Bernardino, CA 92413

As to RUD:
Chief of Water Resources
Redlands Utilities Department
P.O. Box 3005
Redlands, CA 92373

As to San Bernardino County:
Land Use Services Department
Advance Planning Division
County of San Bernardino
385 North Arrowhead Avenue – 3rd Floor
San Bernardino, CA 92415-0182

As to BLM:
Field Manager, Palm Springs-South Coast
Field Office
Bureau of Land Management
P.O. Box 581260
North Palm Springs, CA 92258-1260

As to DFG:
Department of Fish & Game
P.O. Box 1217
Redlands, CA 92373

As to DWR:
Recreation and Environmental Studies
Department of Water Resources
770 Fairmont
Glendale, CA 91203

SECTION 9: ENTIRE AGREEMENT.

This Task Force Agreement contains the entire agreement of the Parties hereto with respect to the matters contained herein, and supersedes all negotiations, prior discussions, and preliminary agreements or understandings, written or oral relating to

the Task Force and Project Manager. No waiver or modification of this Agreement shall be binding unless consented to by all Parties in writing.

SECTION 10: WAIVER.

No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

SECTION 11: COOPERATION: FURTHER ACTS.

All parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. All parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary, appropriate or convenient to carry out the purposes of this Agreement.

SECTION 12: GOVERNING LAW.

This Agreement shall be governed by and construed under the laws of the State of California. Federal agency participation under this Agreement, however, shall be governed by the applicable federal laws.

SECTION 13: ATTORNEYS' FEES.

In the event the Task Force initiates or defends any litigation or other judicial or administrative proceeding in connection with the Project or this Agreement, retention of counsel to represent the Task Force, if required, shall be by the Project Manager, subject to the approval of the Task Force. The costs of such retention will be invoiced to the members of the Task Force in the same manner, and subject to the same procedures, as all other consultant costs invoiced to the Task Force. In any action or proceeding involving a dispute between the Parties arising out of this Agreement, the prevailing Party shall be entitled to receive from the other Party, reasonable attorneys' fees. The term "attorneys' fees" shall include reasonable costs for investigating the action, conducting discovery, cost of appeal, costs and fees for expert witnesses, and all other normally allowable costs incurred in such litigation, whether or not such litigation is prosecuted to final judgment. Service of process on any Party shall be made in any manner permitted by law and shall be effective whether served inside or outside of California.

Notwithstanding the foregoing, attorneys' fees and costs' recoverable against the United States, however, shall be governed by applicable federal laws.

SECTION 14: NO THIRD PARTY BENEFICIARIES.

There are no intended third party beneficiaries of any right or obligation assumed by the Parties. No member of, or delegate to, Congress or Federal Resident

Commissioner, shall be entitled to any share of this Agreement, or to any benefit that may arise from it.

SECTION 15: CONSTRUCTION: CAPTIONS.

The language of this Agreement shall be construed according to its fair meaning, and not for or against any Party hereto based on authorship. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

SECTION 16: SEVERABILITY.

Each provision of this Agreement shall be severable from the whole. If any provision of this Memorandum shall be found contrary to law, it is the intention of all the Parties, and each of them, that the remainder of this Agreement shall continue in full force and effect.

SECTION 17: INCORPORATION OF RECITALS.

The Recitals are incorporated herein and made an operative part of this Agreement.

SECTION 18: AUTHORITY TO ENTER INTO AGREEMENT.

All Parties warrant that they have all requisite power and authority to execute and perform this Agreement. Each person executing this Agreement on behalf of their party warrants that he or she has the legal power, right, and authority to make this Agreement and bind his or her respective Party, and that in so doing, such Party is not thereby in breach of any other contract or agreement.

SECTION 19: COUNTERPARTS.

This Agreement may be signed in counterparts, each of which shall constitute an original.

SECTION 20: EFFECTIVE DATE

The Effective Date of this Agreement shall be latest of the dates set next to the signatures of the parties hereto evidencing signature by all the parties hereto, which latest date shall be inserted into the preamble to this Agreement.

SECTION 21: NO ASSIGNMENT.

The rights and obligations of this Agreement may not be transferred, assigned, or encumbered by any Party hereto without the prior, express, written consent of a majority of the Regular Members of the Task Force.

SECTION 22: DISSOLUTION.

The Task Force may be dissolved upon a 2/3 majority vote of the regular members. Upon such dissolution, the Project Manager is entitled to pay all outstanding invoices, and distribute any remaining money in the Fund among the contributing members pro-rata according to each Party's respective financial contribution.

SECTION 23: TERMINATION.

A. Any Party may voluntarily terminate its participation under the Agreement at any time upon delivery of at least 60 days prior written notice to the Task Force.

B. The Task Force may, upon a 2/3 majority vote, terminate any Party's participation under the Agreement upon that Party's failure to make its pro-rata contribution:

- (1) Within 30 days of the date said Party's contribution becomes due; OR
- (2) Within 45 days after the Task Force resolves said Party's dispute over the payment of an invoice in favor of payment as set forth in Section 4(F) of this Agreement.

C. Upon a Party's termination from participation under the Agreement, the Project Manager shall return the portion of that Party's pro-rata contribution not expended by the Project Manager after paying invoices for all charges incurred during the period that Party served as a Member of the Task Force.

D. The termination of any member or members of the Task Force shall not affect the remaining Parties' obligations under this Agreement, except for redistribution of contributions described herein. This Agreement shall remain in effect until such time as 2/3 of the regular members vote to dissolve the Task Force as provided by Section 22 of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year set forth below, the last of which shall be the effective date of this Agreement.

APPROVED AS TO FORM:

Counsel for CEMEX

APPROVED AS TO FORM:



Counsel for Robertson's Ready Mix, Ltd.

CEMEX CONSTRUCTION MATERIALS,
INC.

ROBERTSON'S READY MIX, LTD

UNITED STATES BUREAU OF LAND
MANAGEMENT

Field Manager

APPROVED AS TO FORM:

General Counsel

SAN BERNARDINO VALLEY WATER
CONSERVATION DISTRICT

President, Board of Directors

Attest: _____
Secretary of the Board

APPROVED AS TO FORM:

General Counsel

EAST VALLEY WATER DISTRICT

President, Board of Directors

Attest: _____
Secretary of the Board

APPROVED AS TO FORM:

City Attorney

REDLANDS UTILITIES DEPARTMENT

Mayor

Attest: _____
City Clerk

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year set forth below, the last of which shall be the effective date of this Agreement.

APPROVED AS TO FORM:

CEMEX CONSTRUCTION MATERIALS, INC.

Counsel for CEMEX

APPROVED AS TO FORM:

ROBERTSON'S READY MIX, LTD

Counsel for Robertson's Ready Mix, Ltd.

UNITED STATES BUREAU OF LAND
MANAGEMENT



Field Manager

APPROVED AS TO FORM:

SAN BERNARDINO VALLEY WATER
CONSERVATION DISTRICT

General Counsel

President, Board of Directors

Attest: _____
Secretary of the Board

APPROVED AS TO FORM:

EAST VALLEY WATER DISTRICT

General Counsel

President, Board of Directors

Attest: _____
Secretary of the Board

APPROVED AS TO FORM:

REDLANDS UTILITIES DEPARTMENT

City Attorney

Mayor

Attest: _____
City Clerk

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year set forth below, the last of which shall be the effective date of this Agreement.

APPROVED AS TO FORM:

CEMEX CONSTRUCTION MATERIALS, INC.

Counsel for CEMEX

APPROVED AS TO FORM:

ROBERTSON'S READY MIX, LTD

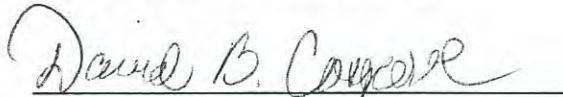
Counsel for Robertson's Ready Mix, Ltd.

UNITED STATES BUREAU OF LAND
MANAGEMENT

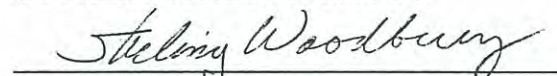
Field Manager

APPROVED AS TO FORM:

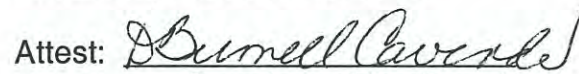
SAN BERNARDINO VALLEY WATER
CONSERVATION DISTRICT



General Counsel



President, Board of Directors

Attest: 

Secretary of the Board

APPROVED AS TO FORM:

EAST VALLEY WATER DISTRICT

General Counsel

President, Board of Directors

Attest: _____
Secretary of the Board

APPROVED AS TO FORM:

REDLANDS UTILITIES DEPARTMENT

City Attorney

Mayor

Attest: _____
City Clerk

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year set forth below, the last of which shall be the effective date of this Agreement.

APPROVED AS TO FORM:

Counsel for CEMEX

CEMEX CONSTRUCTION MATERIALS,
LP

APPROVED AS TO FORM:

Counsel for Robertson's Ready Mix, Ltd.

ROBERTSON'S READY MIX, LTD

UNITED STATES BUREAU OF LAND
MANAGEMENT

Field Manager

APPROVED AS TO FORM:

General Counsel

SAN BERNARDINO VALLEY WATER
CONSERVATION DISTRICT

President, Board of Directors

Attest: _____
Secretary of the Board

APPROVED AS TO FORM:

General Counsel

EAST VALLEY WATER DISTRICT

Vice  George E. "Skip" Wilson
President, Board of Directors

Attest:  Robert E. Martin
Secretary of the Board

APPROVED AS TO FORM:

City Attorney

REDLANDS UTILITIES DEPARTMENT

Mayor

Attest: _____
City Clerk

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year set forth below, the last of which shall be the effective date of this Agreement.

APPROVED AS TO FORM:

Counsel for CEMEX

CEMEX CONSTRUCTION MATERIALS,
LP

APPROVED AS TO FORM:

Counsel for Robertson's Ready Mix, Ltd.

ROBERTSON'S READY MIX, LTD

UNITED STATES BUREAU OF LAND
MANAGEMENT

Field Manager

APPROVED AS TO FORM:

General Counsel

SAN BERNARDINO VALLEY WATER
CONSERVATION DISTRICT

President, Board of Directors

Attest: _____
Secretary of the Board

APPROVED AS TO FORM:

General Counsel

EAST VALLEY WATER DISTRICT

President, Board of Directors

Attest: _____
Secretary of the Board

APPROVED AS TO FORM:

N/A
City Attorney

REDLANDS UTILITIES DEPARTMENT



Mayor

Attest: 

City Clerk

APPROVED AS TO FORM:

County Counsel

COUNTY OF SAN BERNARDINO

Fred Aguilar
Chairperson, Board of Supervisors

Attest: J. Rene Bastian
Clerk of the Board

APPROVED AS TO FORM:

County Counsel

SAN BERNARDINO COUNTY FLOOD
CONTROL DISTRICT

Fred Aguilar
Chairperson, Board of Supervisors

Attest: J. Rene Bastian
Clerk of the Board

APPROVED AS TO FORM:

City Attorney

CITY OF REDLANDS

Mayor

Attest: _____
City Clerk

[APPROVED AS TO FORM:]

[_____
[City Attorney]]

[CITY OF HIGHLAND]

[_____
Mayor]

[Attest: _____
[City Clerk]]

APPROVED AS TO FORM:

County Counsel

APPROVED AS TO FORM:

General Counsel

APPROVED AS TO FORM:

N/A
City Attorney

[APPROVED AS TO FORM:]

[_____
[City Attorney]]

COUNTY OF SAN BERNARDINO

Chairperson, Board of Supervisors


Attest: _____
Clerk of the Board

SAN BERNARDINO COUNTY FLOOD
CONTROL DISTRICT


Chairperson, Board of Supervisors

Attest: _____
Clerk of the Board

CITY OF REDLANDS



Mayor

Attest: 

City Clerk

[CITY OF HIGHLAND]

[_____
[Mayor]]

[Attest: _____
[City Clerk]]

APPROVED AS TO FORM:

County Counsel

APPROVED AS TO FORM:

General Counsel

APPROVED AS TO FORM:

City Attorney

[APPROVED AS TO FORM:]

[]
[City Attorney]

COUNTY OF SAN BERNARDINO

Chairperson, Board of Supervisors

Attest: _____
Clerk of the Board

SAN BERNARDINO COUNTY FLOOD
CONTROL DISTRICT

Chairperson, Board of Supervisors


Attest: _____
Clerk of the Board

CITY OF REDLANDS

Mayor

Attest: _____
City Clerk

[CITY OF HIGHLAND]

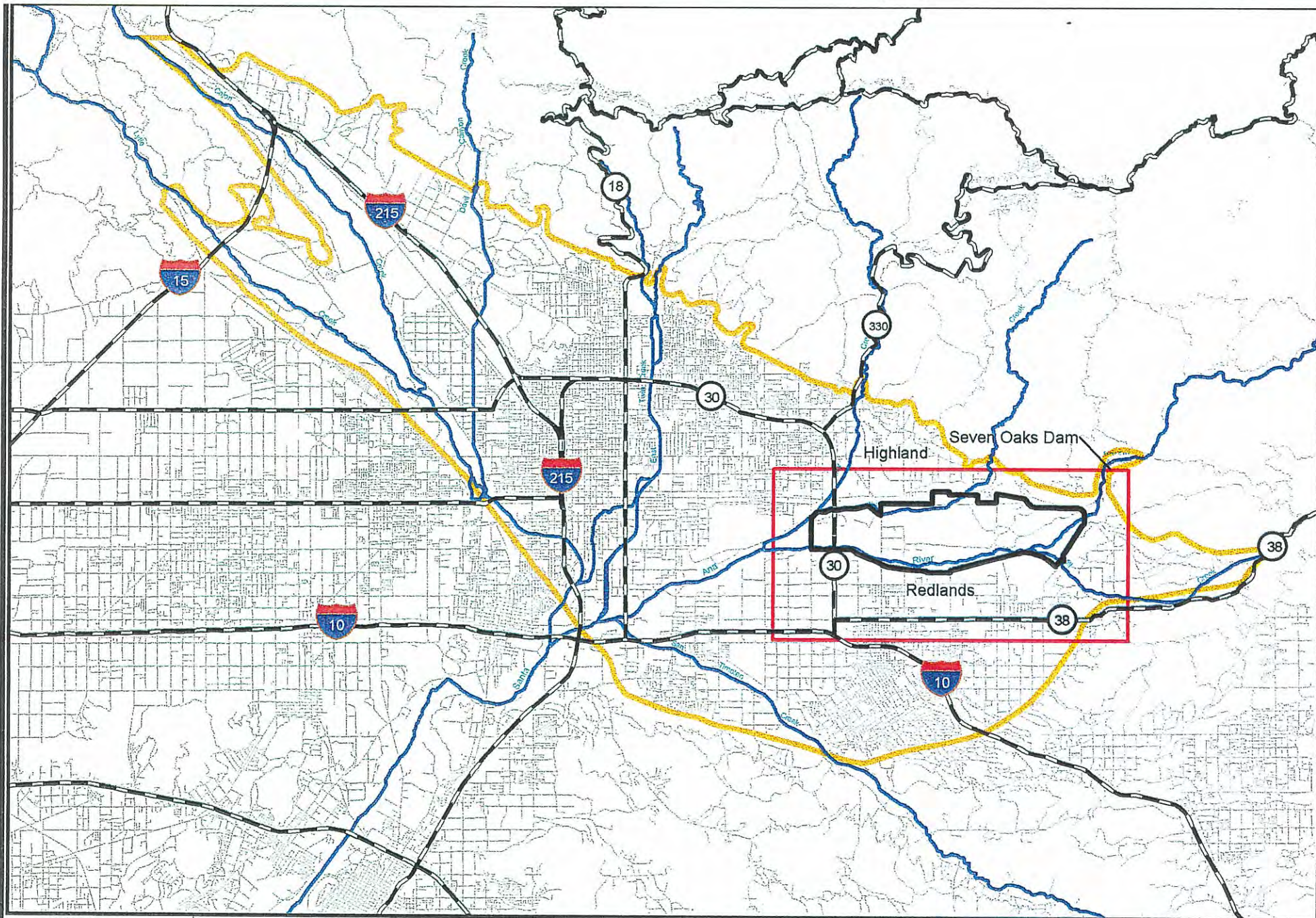
[]
[Mayor]

[Attest: ]
[City Clerk]

EXHIBIT “A”: CONCEPT PLAN (Executive Summary)

AREAS TO BE MINED UNDER SMARA, AREAS FOR WATER CONSERVATION,

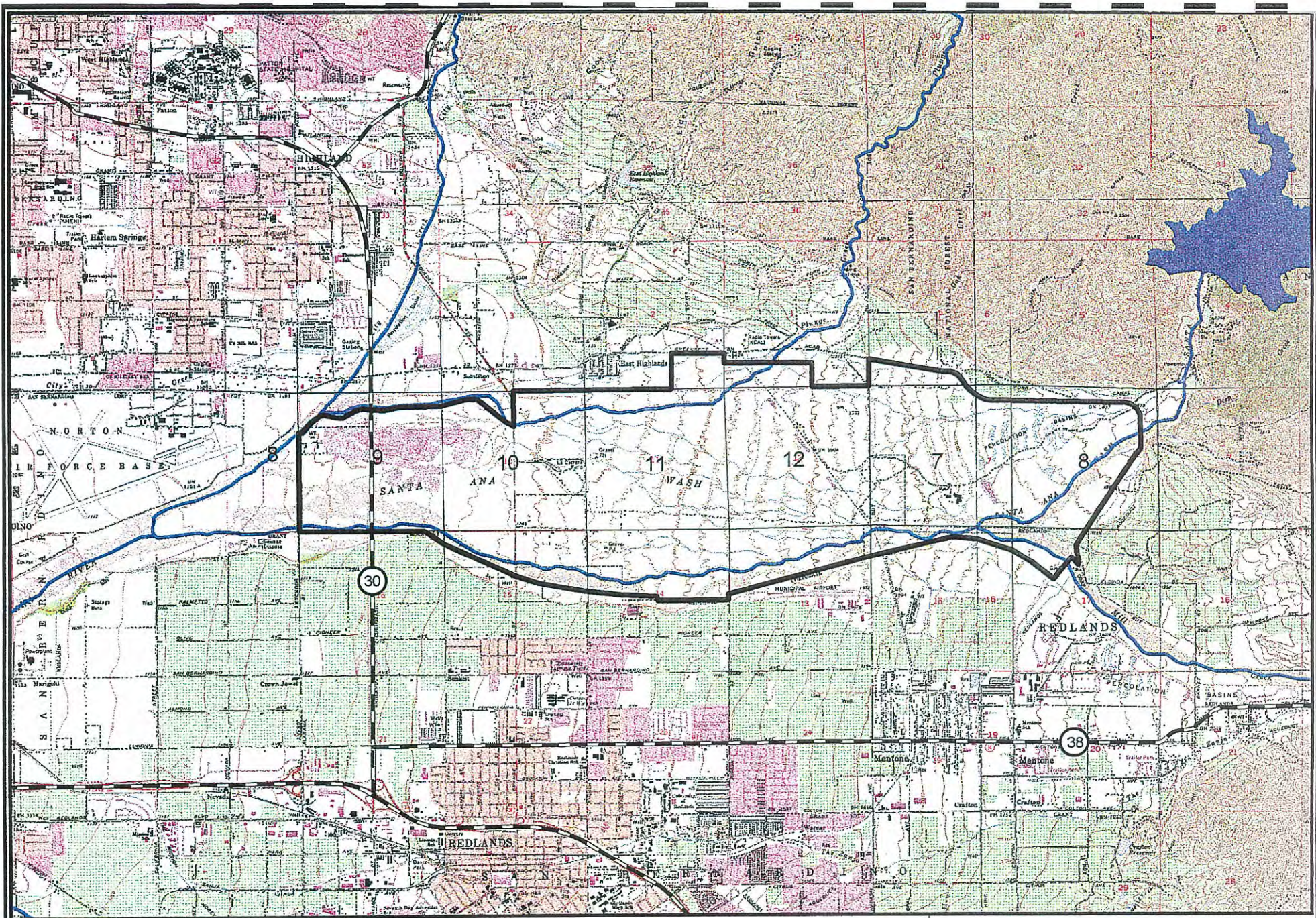
AND AREAS FOR PROTECTION OF HABITAT



**Santa Ana Wash Planning Area (Plan B) -
Location Map (Fig. 1)**

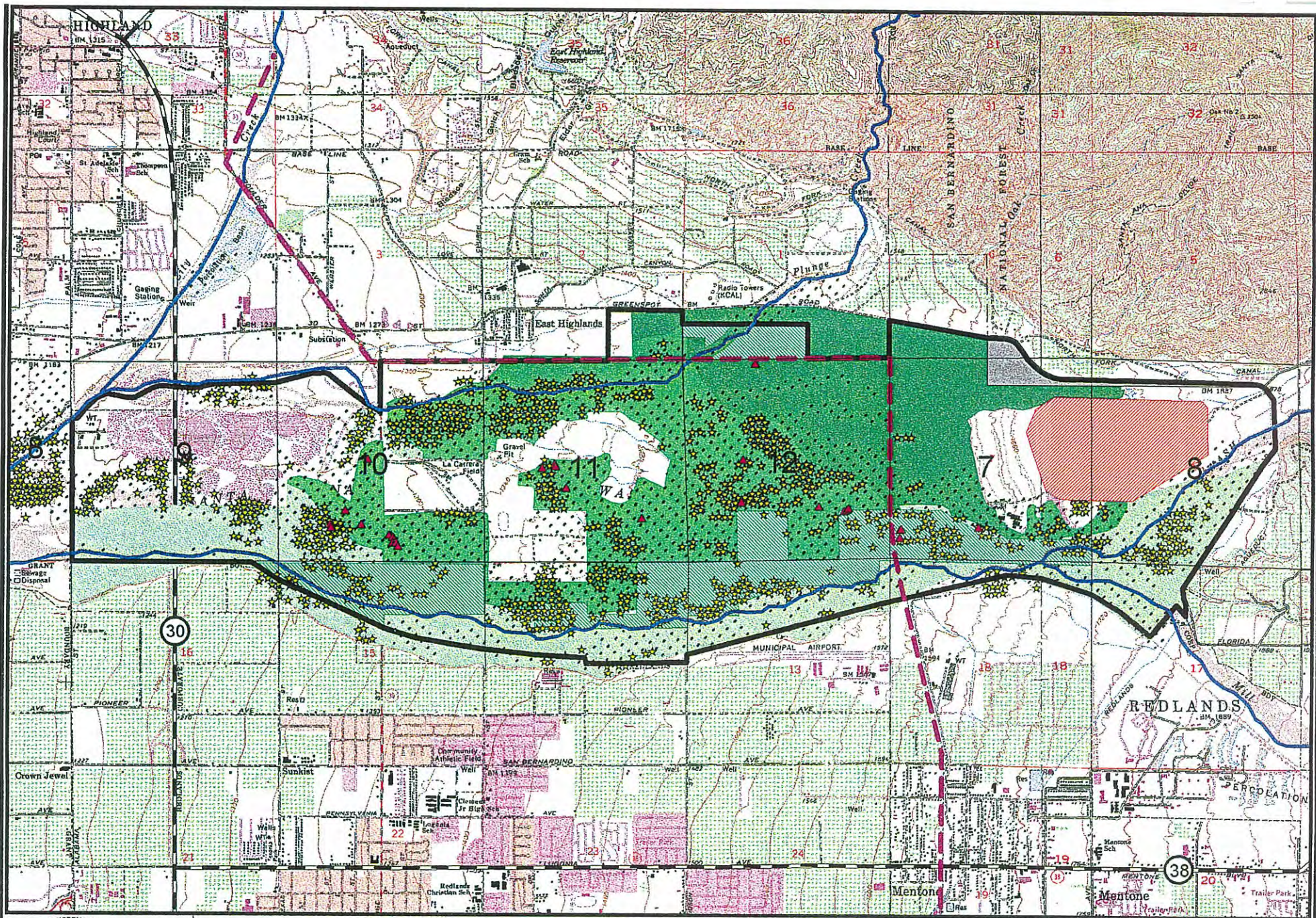
Interstate
 Highway
 Roads

WPA Boundary
 Area of Interest
 Bunker Hill Basin



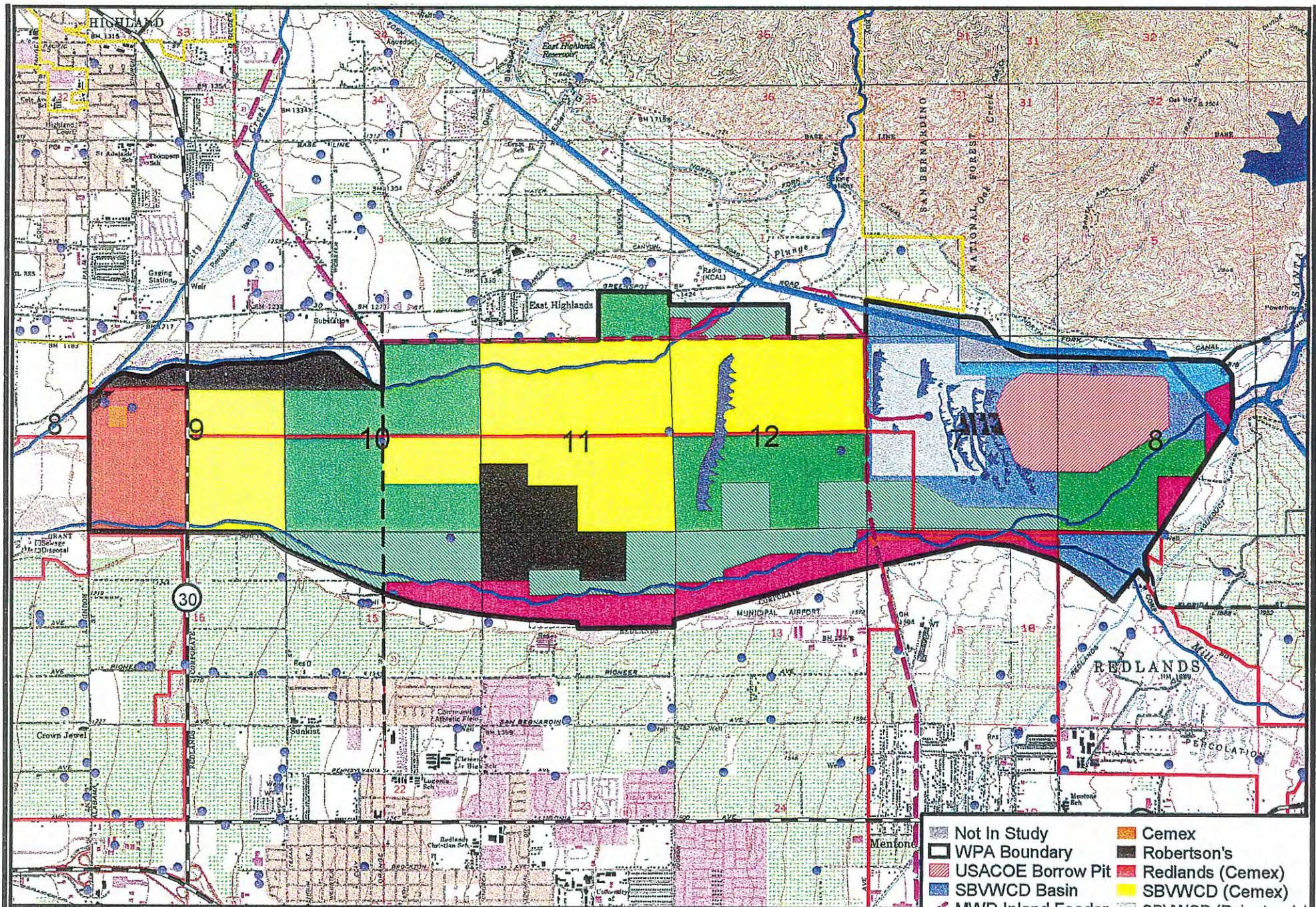
**Santa Ana Wash Planning Area (Plan B) -
Wash Planning Area (Fig. 2)**

- Highway
- Section Lines
- Rivers/Creeks
- WPA Boundary
- SOD Impoundment



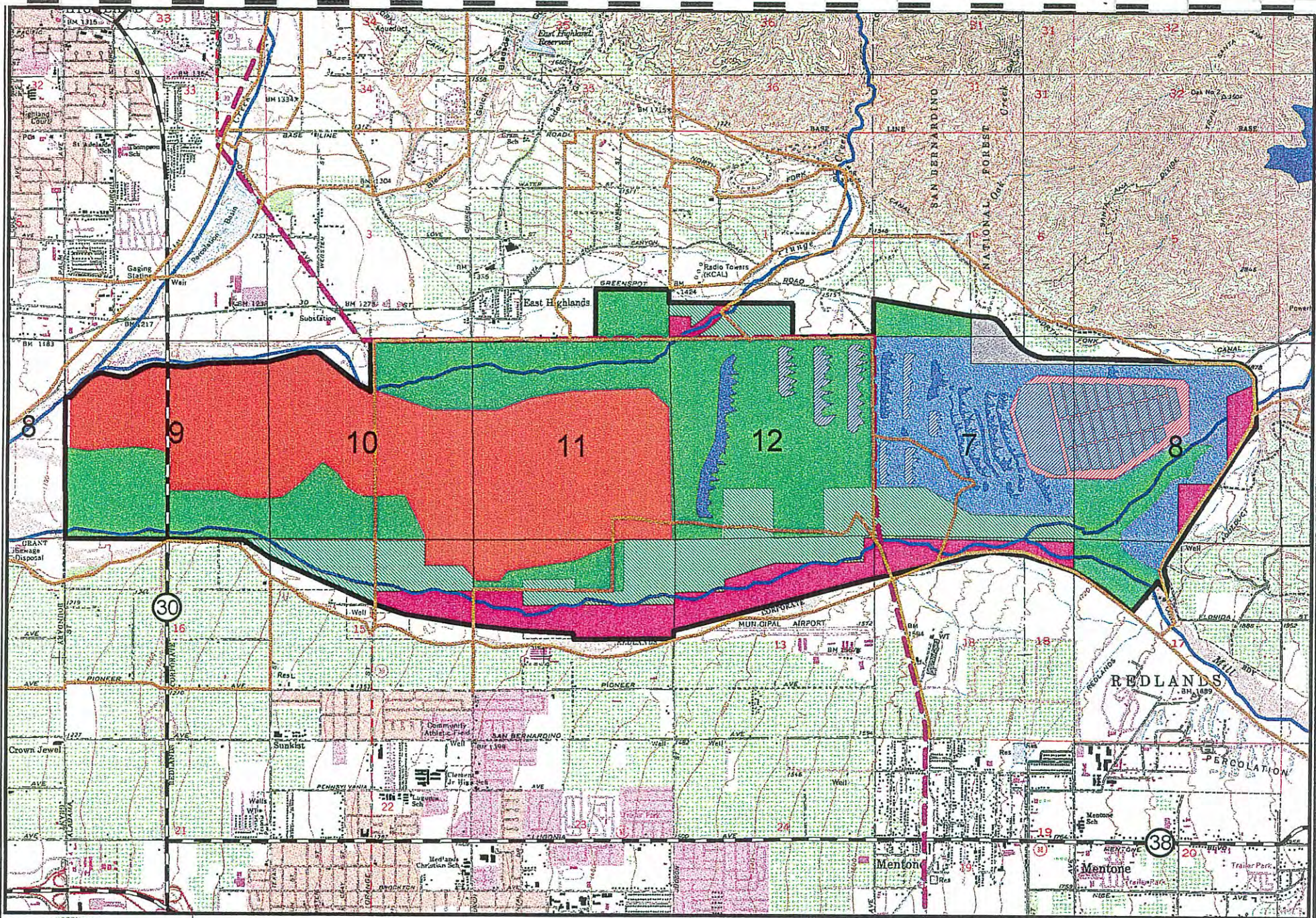
**Santa Ana Wash Planning Area (Plan B) -
Biological Resources (Fig. 3)**

- | | |
|--------------------|----------------------|
| Pioneer Sage Scrub | WPA Boundary |
| Interm. Sage Scrub | USACOE Borrow Pit |
| Mature Sage Scrub | Woolly Star Preserve |
| Spineflower | Poss. K-rat Hab. |
| Woolly Star | Not In Study |



**Santa Ana Wash Planning Area (Plan B) -
Land Ownership & Water Facilities (Fig. 4)**

- | | |
|-------------------|----------------------|
| Not In Study | Cemex |
| WPA Boundary | Robertson's |
| USACOE Borrow Pit | Redlands (Cemex) |
| SBWWCD Basin | SBWWCD (Cemex) |
| MWD Inland Feeder | SBWWCD (Robertson's) |
| Muni Facilities | SBWWCD |
| EVWD Pipeline | SBWWCD Easement |
| SBWWCD Canal | Woolly Star Preserve |
| Redlands boundary | SBCFCD |
| Highland boundary | BLM |



Santa Ana Wash Planning Area (Plan B) - Land and Habitat Management Plan (Fig. 5)

- | | |
|-------------------|-----------------------|
| Not In Study | Mining |
| WPA Boundary | Flood Control |
| USACOE Borrow Pit | Habitat / Water Cons. |
| SBWCD Basin | Water Cons. / Habitat |
| Planned Basin | Woolly Star Preserve |

EXHIBIT "B": TASK FORCE CONTRIBUTION LEVELS

Allocation to the Parties of their share of the costs associated with the Project is as set forth below in the following proportions:

<u>AGENCY</u>	<u>RESPONSIBILITY FOR FINANCIAL CONTRIBUTION</u>
CEMEX	24.774
ROBERTSON'S READY MIX	24.774
SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT	24.644
EAST VALLEY WATER DISTRICT	3.226
REDLANDS UTILITIES DEPARTMENT	3.226
COUNTY OF SAN BERNARDINO	6.452
SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT	6.452
CITY OF REDLANDS	6.452

Should the cost to complete financing of the Project exceed the total current estimated charges set forth above, the Task Force will have the responsibility of obtaining any required additional funding from each of the Parties. Any such additional funding shall be assessed to those Parties in the above-mentioned proportions, or as otherwise determined by the Task Force.

Note that in the event the City of Highland joins the Task Force as a Regular Member pursuant to the provisions of Section 2 (H) of this Agreement, the contribution levels set forth here will be superseded by the levels set forth in Exhibit "B-1."

**EXHIBIT "B-1": TASK FORCE CONTRIBUTION LEVELS IN THE EVENT CITY OF
HIGHLAND JOINS AS A REGULAR MEMBER**

Allocation to the Parties of their share of the costs associated with the Project is as set forth below in the following proportions:

<u>AGENCY</u>	<u>RESPONSIBILITY FOR FINANCIAL CONTRIBUTION</u>
CEMEX	23.272
ROBERTSON'S READY MIX	23.272
SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT	23.152
EAST VALLEY WATER DISTRICT	3.030
REDLANDS UTILITIES DEPARTMENT	3.030
COUNTY OF SAN BERNARDINO	6.061
SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT	6.061
CITY OF HIGHLAND	6.061
CITY OF REDLANDS	6.061

Should the cost to complete financing of the Project exceed the total current estimated charges set forth above, the Task Force will have the responsibility of obtaining any required additional funding from each of the Parties. Any such additional funding shall be assessed to those Parties in the above-mentioned proportions, or as otherwise determined by the Task Force.

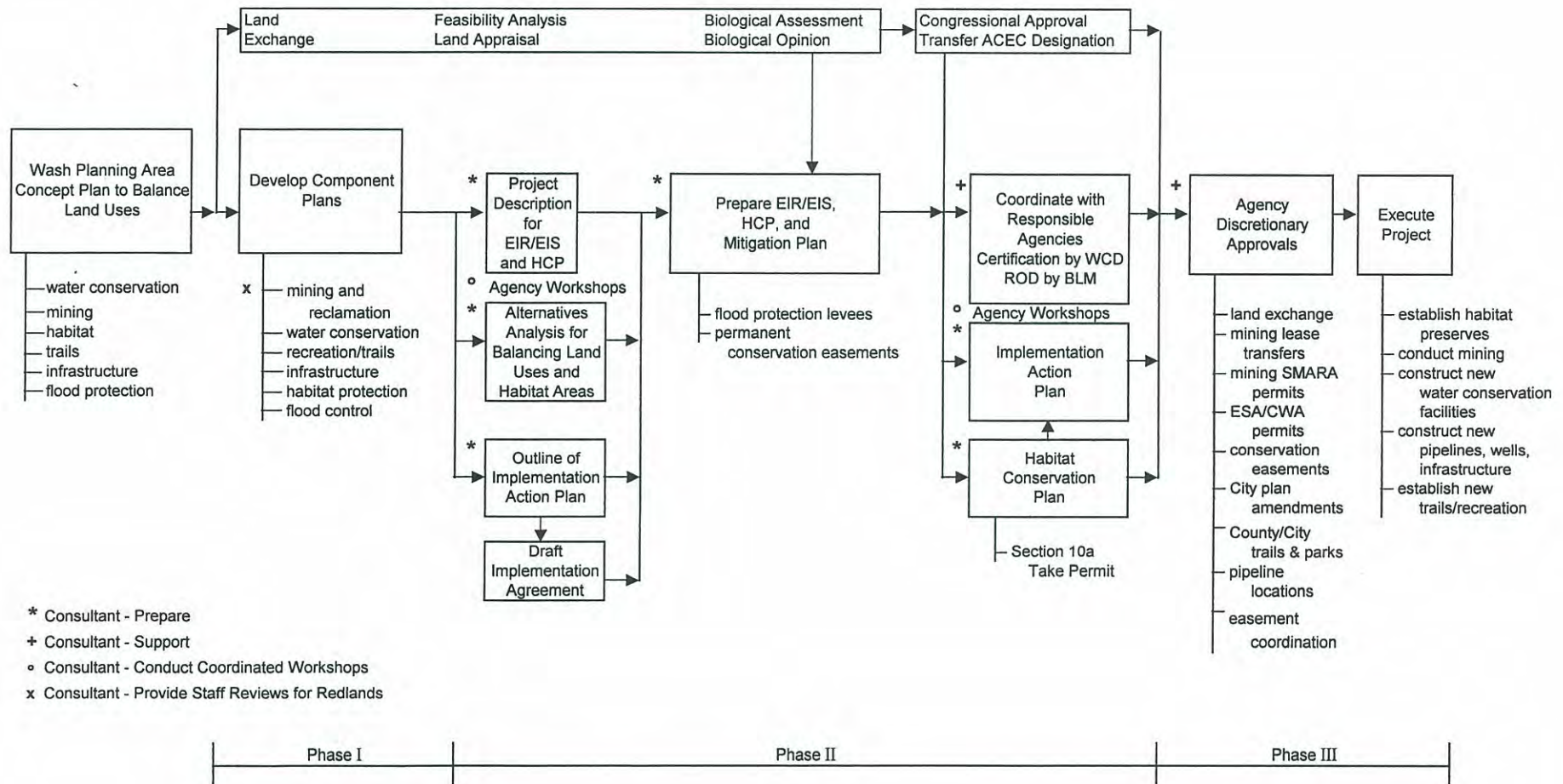
This schedule of contribution levels shall only become effective if the City of Highland joins the Task Force as a Regular Member pursuant to the provisions of Section 2 (H) of this Agreement.

EXHIBIT "C": PROJECT FLOW DIAGRAM

EXHIBIT "C"

PROPOSED LAND MANAGEMENT & HABITAT CONSERVATION PLAN "PROJECT"

10/03/01
02/13/02
Special



**EXHIBIT "C-1": PROJECT FLOW DIAGRAM IN THE EVENT CITY OF HIGHLAND
JOINS AS A REGULAR MEMBER**

EXHIBIT "C-1"

PROPOSED LAND MANAGEMENT & HABITAT CONSERVATION PLAN "PROJECT"

10/03/01
02/13/02
Special

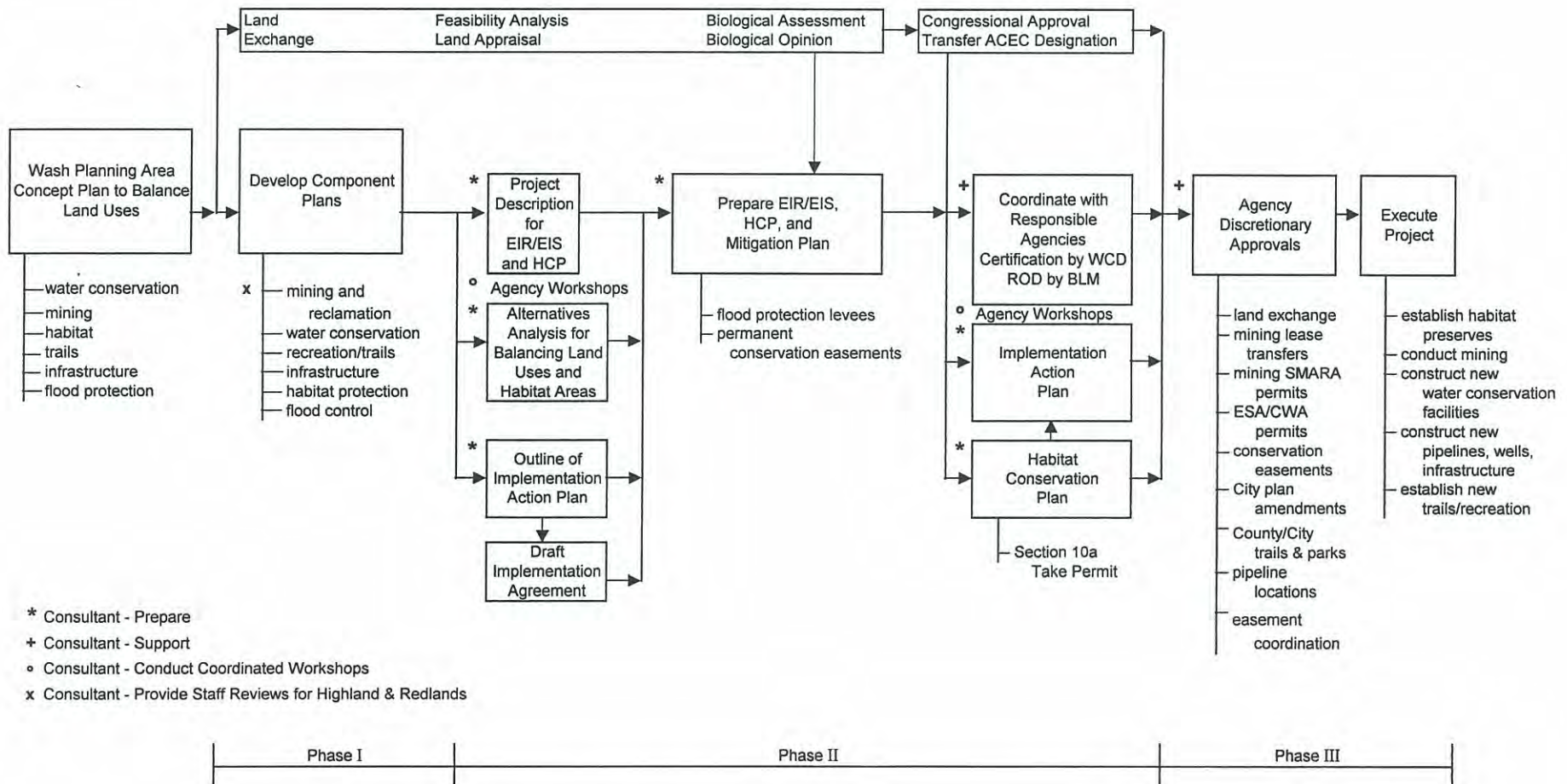


EXHIBIT "D": REVISIONS TO AGREEMENT IN THE EVENT CITY OF HIGHLAND JOINS AS A REGULAR MEMBER

In the event the City of Highland joins the Task Force as a Regular Member pursuant to, and in compliance with, the provisions of Section 2 (H) of this agreement, the parties hereto have agreed to certain modifications of the text of the Task Force Agreement, which will serve as amendments thereto, effective immediately and prospectively upon inclusion of the City of Highland as a Regular Member pursuant to Section 2 (H). These amendments are set out below:

Section 1 (A) 3): A Recreation Plan, which coordinates the planning and development of trails, parks, and public recreation areas, which will be provided by Conservation District, San Bernardino County, Highland, and Redlands.

Section 1 (A)(4): An Infrastructure Plan, which describes the location of pipelines, utility corridors, roads, bridges, highways, and communication facilities, which will be provided by the Conservation District, San Bernardino County, Highland, and Redlands.

Section 1 (F): Task Force submit the EIR/EIS, Implementation Action Plan, and Habitat Conservation Plan to the appropriate agencies for their action and, if adopted, subsequent implementation. The EIR/EIS shall not be certified by the Lead Agency as to those portions of the Project occurring within the jurisdictional boundaries of the City of Highland if, prior to the time the Lead Agency certifies the EIR/EIS, it has been disapproved by the City Council of the City of Highland. The EIR/EIS shall not be certified by the Lead Agency as to those portions of the Project occurring within the jurisdictional boundaries of the City of Redlands if, prior to the time the Lead Agency certifies the EIR/EIS, it has been disapproved by the City Council of the City of Redlands.

Section 2 (B)(2): The California Department of Water Resources (DWR), the California Department of Fish and Game (DFG), the United States Fish and Wildlife Service (USFWS), and County of Orange are hereby designated as Advisory members of the Task Force.

Section 4 (B)(1): Revise Section 4 (B)(1). to read as follows:

Serve as the Lead Agency under CEQA and as assistant to BLM, which is the Lead Agency under NEPA, provided, however, that on issues relating to definition of level of significance for impacts, existence of and mitigation for significant adverse environmental impacts, and formulation of a mitigation monitoring program for those portions of the Project requiring permits under SMARA, the Project Manager shall accept and incorporate into the EIR/EIS the collective determinations of the applicable agencies with SMARA permitting authority for such aspects of the Project, and in the absence of any agreement by such agencies, shall refer determination of such issues to the Task Force;

Exhibit "B": Replace with Exhibit "B-1."

**EXHIBIT "D": REVISIONS TO AGREEMENT IN THE EVENT CITY OF HIGHLAND
JOINS AS A REGULAR MEMBER
(CONTINUED)**

Exhibit "C": Replace with Exhibit "C-1."

**UPPER SANTA ANA RIVER WASH LAND MANAGEMENT
AND HABITAT CONSERVATION PLAN TASK FORCE
("Task Force")**

LIST OF TASK FORCE MEMBER AGENCIES

(December 10, 2002)

REGULAR MEMBERS

<u>Member Agency</u>	<u>Governing Member</u>	<u>Technical Member</u>
City of Highland		
City of Redlands		
City of Redlands Municipal Utilities		
County of San Bernardino		
County Flood Control District		
East Valley Water District		
Robertson's Ready Mix, Ltd.		
CEMEX, USA		
U.S. Bureau of Land Management		
Water Conservation District		

ADVISORY MEMBERS

<u>Member Agency</u>	<u>Member</u>
U.S. Army Corps of Engineers	
U. S. Fish & Wildlife Service	
California Dept of Fish & Game	
California Dept of Water Resources	
County of Orange	



SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT

1630 West Redlands Boulevard, Suite A
Redlands, CA 92373-8032
(909) 793-2503
Fax: (909) 793-0188

P.O. Box 1839
Redlands, CA 92373-0581
Email: info@sbvwcd.dst.ca.us

December 10, 2002

Jack Woodbury
San Bernardino Valley WCD
31919 Florida Street
Mentone, CA 92346

RE: Agreement to Form the Upper Santa Ana River Wash Land Management and
Habitat Conservation Plan Task Force

Dear Mr. Woodbury:

As previously announced, all of the required signatures have been obtained for the Task Force Agreement ("Agreement") referenced above. Attached are the signature pages that you should insert in your copy of the Agreement. On page 1 of the Agreement, you should write in "20th" day of "November" 2002 as the effective day. In accordance with the Agreement, the San Bernardino Valley Water Conservation District ("District") shall be the Task Force Project Manager.

As a reminder, the Agreement was prepared to accommodate the City of Highland because there was a potential delay in their decision to participate. As we now know, the City of Highland agreed to participate several months ago. Therefore, please annotate the appropriate paragraphs of the Agreement to refer to Exhibit "D," *"Revisions to Agreement in the Event City of Highland Joins as a Regular Member."*

Section 2 of the Agreement identifies the criteria for Regular and Advisory Members of the Task Force, and stipulates that each Regular Member will have two representatives: one to oversee and contribute to the technical/staff aspects and one from the governing body. The names of those representatives should be forwarded to the Project Manager at this time. Advisory Members should also submit representative names to the Project Manager at this time. A list of current Regular and Advisory Members is attached.

On December 20, the former Wash Committee Technical Advisory Committee (TAC) will meet for a Pre-final review of the proposed scope of work prior to the Project Manager issuing a Notice to Proceed to LSA Associates, Inc., who will prepare the environmental documentation for the Concept Plan. Following that review, an invoice will be submitted to each Regular member for its share of the consultant's cost, based

BOARD
OF
DIRECTORS

Bert Marcum, Jr.
Clare Henry Day

Arnold L. Wright
Sterling Woodbury

Cheryl A. Tubbs
Melody Henriques
Manuel Aranda, Jr.

GENERAL
MANAGER

D. Burnell Cavender, AICP

on the distribution of costs shown on Exhibit "B-1": *Task Force Contribution Levels in the Event City of Highland Joins as a Regular Member*, of the Agreement, and attached hereto.

The District is looking forward to starting calendar year 2003 by issuing a Notice to Proceed to prepare the environmental documentation. Please note that the first task in the scope of work is to complete the Project Description. Therefore, please review Section 1 of the Agreement as a reminder of the responsibilities of the Task Force and the Regular Members for preparing the "Component Plans." When the Notice to Proceed is issued, we will not want to delay the consultant by not having Component Plans ready for review. It has already been 6 years since we started developing the Concept Plan. As Project Manager, we will do our best to assure the environmental documentation is prepared within the estimated 18 months.

We thank you for your past and continued perseverance and willingness to work toward a coordinated plan that we all know intuitively is the right thing to do. We look forward to continued good working relations among the Task Force members.

Sincerely,



D. Burnell Cavender, AICP
General Manager

Enclosures: Signature Pages (9)
 List of Regular and Advisory Members
 Exhibit "B-1"

Copy to: David B. Cosgrove, Esq, Rutan & Tucker

PROPOSED

**LAND MANAGEMENT
AND HABITAT CONSERVATION PLAN
FOR THE
UPPER SANTA ANA RIVER WASH**

EXECUTIVE SUMMARY

PREPARED FOR THE
SANTA ANA RIVER WASH AREA COORDINATED
PLANNING ACTIVITIES COMMITTEE

BY

STAFF OF THE
SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT

APRIL 2001
(Figures Revised December 2001)

PROPOSED LAND MANAGEMENT AND HABITAT CONSERVATION PLAN FOR THE UPPER SANTA ANA RIVER WASH

D. Burnell Cavender, AICP
General Manager
San Bernardino Valley Water Conservation District

Introduction

The land area between the mouth of the Santa Ana River Canyon, down stream of the new Seven Oaks Dam on the east, Interstate 215 (I-215) on the west, the cities of Highland and Redlands to the north and south, respectively, is known locally as the Upper Santa Ana River Wash (Wash) (Fig 1). A part of that Wash, containing approximately 5,200 acres, from the canyon mouth to Alabama Street on the west and bounded by the cities, has been the subject of intense planning the past three years. This area is known as the Wash Planning Area or the "WPA" (Fig 2).

Historically, the Wash was a natural flood plain and alluvial fan. In the past, the flood plain has provided a place to convey frequently devastating flood waters and deposit sediment. The alluvial deposit provides excellent geologic conditions to establish settling basins for percolating surface water to the groundwater basin, providing a significant part of the water supply for the local region. These same geologic conditions provide regionally significant deposits of sand and gravel as classified by the California Department of Conservation, that are used to support the local economy. In recent years, the value of the Wash as habitat for a variety of sensitive, threatened, and endangered species has become more apparent due to the decrease in this type of habitat throughout Southern California (Fig 3). Because the Wash is a unique open space and corridor, the County of San Bernardino (County) and the cities of Highland and Redlands are also planning to establish a series of recreational trails in and around the Wash. These important functions within the Wash, flood control, water conservation, mineral extraction, and wildlife habitat, are often in direct competition for much of the same land. It has been apparent since the early 1980s that a land management plan for the future use of the Wash would be needed to maintain other public services (water supply facilities, transportation and utility corridors, and recreation/trails), provide areas for the extraction of valuable construction materials, and preserve declining sensitive habitats.

In 1993, representatives of numerous agencies, including water, mining, flood control, wildlife and municipal interests, formed a Wash Committee to address local mining issues. Subsequently, the role of the Committee was expanded to address all the land functions in the Wash. The Wash Committee began meeting again in 1997 to determine how to use the WPA to accommodate all the important functions identified above. A Policy Action Committee (PAC) was established consisting of elected officials from the County, cities of Highland and Redlands, and the San Bernardino Valley Water Conservation District (District), and the Field Manager from the U.S. Bureau of Land Management (BLM). A Technical Advisory Committee (TAC) was formed with

representatives of the PAC agencies and other water, mining, flood control, and wildlife interests. The District chairs and provides staff support for the Committees.

The TAC, in concept, wiped the WPA clean of land ownership lines (Fig 4) and began anew to decide how the land could best be used. As a result of extensive workshops during 1998 and 1999, a conceptual Coordinated WPA map has been developed. As expected, the way the land might best be used and the way the land use was planned were not the same, nor does it conform to current land ownership. For example, the TAC found that some land proposed for mining was better suited for joint use by water conservation and wildlife habitat while other areas proposed for habitat preservation could be used better for mining. It became apparent that to make a plan work, land ownership would have to change, in particular, a land transfer or exchange between the BLM and the District, and areas leased by the District for mining.

A general consensus of the TAC was reached in early 2000 on the areas within the WPA designated for the specified land uses, which is the basis of the Land Management and Habitat Conservation Plan (Plan) (Fig 5). As stated, the proposed designations for land use crossed land ownership (3 public and 2 private) and land use authority lines (2 cities and the County). The TAC determined that mining expansion is best addressed by consolidating the future mining activity into one large area adjacent to existing mining operations within the western half of the WPA. This focuses extraction activities on lands currently disturbed by mining and lands with the least long-term wildlife habitat value. Furthermore, the TAC determined that portions of the BLM land designated as Areas of Critical Environmental Concern (ACEC) were either previously disturbed or were fragmented by adjacent mining activities, and thus would be better suited for mining expansion. Some of the most intact, viable wildlife habitat areas are contained within lands that are leased for future mining and currently used for water conservation. The TAC concluded that some of these lands were best suited for joint use as water and habitat conservation rather than mining. For example, the up-gradient side of a percolation basin dike could be wetted and periodically contain water for water-dependent species; whereas, the down-gradient side could generally remain undisturbed, except for maintenance and repair of the percolation basin dike and, therefore, could support other wildlife species common to the WPA.

Refinements in land use boundaries were made and agency and jurisdictional coordination was accomplished. The result of this effort is a proposed Plan that designates areas of the WPA for specific uses. The Plan will allow the existing and future Wash activities and land functions to occur and establish habitat preserves.

It is imperative that the principles that will govern the use, management, and conservation of the WPA be set forth in legally binding documents to which all concerned parties can agree. The PAC believes that there are sufficient lands in the WPA that can be divided equitably among the advocates to accommodate the needs for water conservation and supply facilities, aggregate extraction, and flood protection, while providing land for wildlife habitat and recreation.

It is equally important to note that if this coordinated Plan is not implemented, the consequences could be very grave for each of the primary use groups. Without the Plan, attempts to expand water conservation to meet future demands, develop additional aggregate resources, or effectively protect habitat will likely be held up by legal proceedings. Such action could result in

piecemeal planning, thus impairing the ability to reach an effective compromise. If local land use agencies make decisions regarding mining development in the WPA, without considering a coordinated plan, there could be greater environmental degradation and reduced ability to meet future water supply demands. On the other hand, if local officials make land use decisions that significantly restrict water conservation activities and mining, the reduced availability of water and aggregate resources may impact the economic development of the region. The affect of not implementing this Plan is that none of the groups would be able to accomplish its goals.

Proposed Project Description Summary

The proposed project is a Land Management and Habitat Conservation Plan (Plan) for the Upper Santa Ana River Wash Planning Area. The land area addressed in this Plan is part of the overall alluvial fan and flood plain located along the Santa Ana River one mile downstream from the new Seven Oaks Dam between the cities of Highland on the north and Redlands to the south. The City of San Bernardino, to the northwest, is the largest city in the San Bernardino Valley. The WPA covers approximately 5,200 acres and starts at the canyon mouth at Greenspot Road, extends for some six miles to Alabama Street, and is as much as two miles wide.

The Plan will coordinate and accommodate existing ongoing and anticipated future activities planned to occur in the WPA, establish habitat preserve areas, and provide recreational trails. Each function will occupy designated specific areas within the WPA best suited for that function and will also accommodate the other competing uses for the overall benefit of the WPA. These existing and future activities include the following:

- Water conservation of both native and (when necessary) imported water resources for groundwater basin replenishment to augment public water supplies;
- Flood control, and management of the Seven Oaks Dam releases;
- Aggregate extraction and processing;
- Protection and conservation of sensitive and listed native species and habitat;
- Recreation planning including a portion of the Santa Ana River trail system; and
- Utilities, transportation, and water supply corridors and facilities.

The final approved Plan, its associated actions and permits, and environmental review will provide the necessary information for jurisdictional approvals for the described activities to move forward. The Plan, when implemented will be considered a "Win-Win-Win" for all the water, utility and service functions, mineral resource management, and environmental resource preservation.

As staff for the Wash Committee, the District invites your questions and support for this inter-relational concept plan. You may call me at 909-793-2503, or write to me at P.O. Box 1839, Redlands, CA 92373.

Coordinated Operations Agreement

This Coordinated Operations Agreement (“**Agreement**”) is entered into and effective this 9 day of September, 2013 (the “**Effective Date**”) by and between the San Bernardino Municipal Water Department (the “**Department**”) and San Bernardino Valley Municipal Water District (“**Valley District**”). The Department and Valley District are each sometimes referred to herein as a “**Party**” and are collectively referred to as the “**Parties**.”

Recitals

- A. The Department owns certain water delivery facilities serving the residents of the City of San Bernardino, including certain groundwater wells, the Encanto pumping station, the 10th Street Pipeline, and the Virginia Street Pipeline, all of which are identified more fully on the map attached hereto as **Exhibit A**, which is incorporated herein by reference (“**Department Facilities**”).
- B. By agreement dated June 15, 2005, Valley District purchased 61.98% of the capacity in Department’s 10th Street Transmission Main and 46.73% of the capacity in Department’s Virginia Street Transmission Main.
- C. Valley District owns certain water delivery facilities in and through the City of San Bernardino which are identified more fully on the map attached hereto as **Exhibit A**, which is incorporated herein by reference (“**Valley District Facilities**”).
- D. At Valley District’s request, the Department has been operating and making Department deliveries utilizing Valley District’s Baseline Feeder Extension South Pipeline.
- E. Both the Department and Valley District from time to time have unused capacity in their respective water delivery facilities.
- F. The Parties share an interest in using their respective facilities to increase operational flexibility, improve water supply reliability in their respective service areas, encourage the efficient use of capacity within the each Party’s water delivery system and provide the public with more reliable water service as efficiently as possible.
- G. The Parties wish to enable each other to make use of unused capacity in their respective facilities whenever possible and so wish to provide for the coordinated operation of those facilities.
- H. The Parties agree that if either Party uses the other’s water delivery facilities to deliver water, that Party using the facilities should be responsible for the increased cost associated with that Party’s use.

- I. The Parties wish to continue the spirit of cooperation they enjoy by memorializing in this Agreement their desire to share their respective water production, transmission and distribution facilities.

Agreements

The Parties agree as follows:

1. *Term.* This Agreement shall have an initial term of twenty-five (25) years from its Effective Date and shall automatically renew for subsequent ten-year terms thereafter unless terminated as provided for in paragraph 2 below.
2. *Termination.* This Agreement may be terminated by either Party: (i) at the end of the initial term or any subsequent term, with or without cause, upon written notice provided at least one year prior to the end of the initial or subsequent term; or (ii) for cause upon 90-days' written notice, *provided* that the Parties have, prior to the notice of termination, attempted to resolve the dispute as provided in paragraph 13.c below.
3. *Other Agreements.* This agreement is not intended to modify or change any other agreement the Parties may have together.
4. *Facilities Subject to This Agreement.* This Agreement governs the Parties' coordinated operation and use of the Department Facilities and the Valley District Facilities as described in Exhibit A, respectively. The Parties may amend this Agreement to add additional water delivery facilities owned by either Party upon the written consent of the other Party. Neither Party shall unreasonably delay or deny its consent for the addition of facilities owned by the other Party.
5. *Priority.* Save as may be provided by any other written agreement existing as of the Effective Date of this Agreement, each Party shall have priority for the use of the other Party's facilities, as set forth in Exhibit A, over any non-Party to this Agreement. Nothing in this Agreement, however, shall be construed to create a right by either Party to any specific share of the capacity in the other Party's facilities except for that capacity already purchased in Department's facilities by Valley District.
6. *Coordinated Operations.* This Agreement provides for the Parties' coordinated use of unused capacity within their respective water delivery facilities.
 - a. *Operation of Department Facilities.* The Department shall operate the Department Facilities to serve Valley District as follows:
 - (1) When Valley District requests a change to the current flow rate in one or more of the Department Facilities, Valley District shall request that change in writing at least 24 hours in advance, except in case of emergency.

(2) If the Valley District request is for flow through facilities in which Valley District has purchased capacity, Department's staff shall make the operational changes needed to provide the requested flow rate to Valley District for the duration requested.

(3) If the Valley District request is for flow through Department facilities in which Valley District does not own capacity and Department, in its sole discretion, determines that there will be unused and available capacity in that Department Facility, the Department's staff shall make the changes needed to provide the requested flow rate to Valley District for the duration requested.

b. *Operation of Valley District's Baseline Feeder Extension South Pipeline.* The Department shall operate the Baseline Feeder Extension South Pipeline on behalf of Valley District as follows:

(1) If the Department wishes to change the flow rate in the Valley District Facilities to make better use of unused and available capacity, the Department will provide Valley District with at least 24 hours' written notice of such change in flow rate. Valley District may, in its sole discretion, veto such modification of flow rates if Valley District believes that the modification in flow rates would not serve the interests of Valley District or its other customers.

(2) Valley District will coordinate deliveries of water with the Department staff operating the pipeline.

(3) The Baseline Feeder Extension South Pipeline presently conveys potable drinking water for the Department. Department agrees to fulfill all monitoring and other requirements associated with operating a potable water line per all applicable state and federal laws.

c. *Operation of other Valley District Facilities.* Valley District shall operate Valley District Facilities to serve the Department as follows:

(1) If the Department wishes to change the flow rate of a Valley District Facility to make better use of unused and available capacity, the Department will provide Valley District with at least 24 hours' written notice of such a change in flow rate. Valley District may, in its sole discretion, veto such modification of flow rates if Valley District believes that the modification in flow rates would not serve the interests of Valley District or its other customers.

(2) If the Department request is for flow through Valley District facilities, Valley District, in its sole discretion, determines that there will be unused and available capacity in that Valley District Facility, the Valley District

staff shall make the changes needed to provide the requested flow rate to the Department for the duration requested.

7. *Establishment of Joint Operations Committee.* The Parties shall establish and participate in a Joint Operations Committee (the "**JOC**") to serve in an advisory capacity to both Parties regarding their coordinated operation of the Department Facilities and the Valley District Facilities. The JOC shall establish which costs for the Department Facilities and the Valley District Facilities are eligible for reimbursement, and shall perform such other functions as determined by the Parties. The JOC shall meet at least twice a year to review the financial and water accounting needed to implement this Agreement.

8. *Maintenance.* Valley District shall be responsible for performing routine maintenance on Valley District Facilities, and Department shall be responsible for performing routine maintenance on Department Facilities. However, each Party shall be reimbursed for any JOC approved maintenance costs associated with the shared use of the facilities as described in Section 9 below.

9. *Eligible Reimbursement Costs.* Each Party will reimburse the other Party for its use of that Party's facilities as follows:

a. *Valley District Facility Replacement Costs.* Since Valley District's facilities were constructed and paid for entirely by Valley District, Valley District shall pay all replacement costs.

b. *Valley District Baseline Feeder Extension South Pipeline.* The Department will continue to provide and pay for all operations costs associated with the Baseline Feeder Extension South Pipeline provided that the Department is the sole user of this facility. At such time that Valley District and/or its partner Western Municipal Water District begin to operate this facility, the Department shall pay its proportional share of the operations costs as calculated in paragraph c, below.

c. *Valley District Operations Costs.* The Department will reimburse Valley District for **Fixed Costs** and **Variable Costs** associated with the Department's use of the Valley District Facilities, as provided in this paragraph. Department's total reimbursement to Valley District shall be the sum of the Fixed Cost and the Variable Cost in each calendar year.

(1) *Fixed Costs.* **Fixed Costs** shall consist of the sum of: (i) sampling costs, and (ii) permit compliance costs incurred by Valley District in the operation of its Facilities. Department shall pay Valley District a portion of total Fixed Costs for the operation of the Valley District Facilities that is equal to the proportion of the total capacity of the Valley District Facilities which is authorized for Department's use in that calendar year.

(2) *Variable Costs.* **Variable Costs** shall consist of the sum of: (a) energy costs associated with the use of the Valley District Facilities; (b) repair costs; and (c) personnel costs for the use of the Valley District Facilities.

Department shall pay Valley District the portion of the total Variable Costs for the operation of the Valley District Facilities that is equal to the proportion of the total capacity of the Valley District Facilities which is authorized for Department's use in that calendar year.

d. *Department Facilities.* Valley District will reimburse Department for **Fixed Costs** and **Variable Costs** associated with Valley District's use of the Department Facilities, as provided in this paragraph. Valley District's total reimbursement to the Department shall be the sum of the Fixed Cost and the Variable Cost in each calendar year.

(1) *Replacement Costs.* For all of the Department facilities in which Valley District has purchased capacity, Valley District shall pay its proportionate share of any replacement costs.

(2) *Fixed Costs.* **Fixed Costs** shall consist of the sum of: (i) sampling costs, and (ii) permit compliance costs incurred by the Department in the operation of the Department Facilities. Valley District shall pay the Department a portion of total Fixed Costs for the operation of the Department Facilities that is equal to the capacity which Valley District has purchased in Department facilities or its proportionate share, based on the capacity that has been authorized for Valley District use in that calendar year.

(3) *Variable Costs.* **Variable Costs** shall consist of the sum of: (a) energy costs associated with the use of the Department Facilities; (b) repair costs and (c) personnel costs for the use of the Department Facilities. Valley District shall pay the Department a portion of the total Variable Costs for the operation of the Department Facilities that is equal to the proportion of the total flows conveyed through the Department Facilities during a calendar year that were conveyed at the request of Valley District in that year.

e. *Fair Compensation.* For the purposes of Water Code Section 1810, both Parties agree that the payment structure set forth in this paragraph 8 constitutes fair compensation for each Party's use of unused capacity in the other Party's facilities.

10. *Invoices.* Each Party shall invoice the other Party for eligible reimbursement costs, as described in paragraph 8 above, annually in arrears on each March 1. Invoices shall include a full cost accounting, and must indicate, in reasonable detail, the cost of each action undertaken to operate and maintain the facilities in question. Invoices shall include all information reasonably necessary for each Party to confirm the other Party's calculation of reimbursement costs. In the event that either Party objects to any costs identified on an invoice, that Party shall pay the undisputed costs and shall invoke the dispute resolution process set forth in paragraph 13.c below for the objectionable costs.

11. *Payment Schedule.* Within 45 days of the date that an invoice is provided to a Party, the Party shall pay the invoicing Party for any costs that are not subject to an objection.

12. *Indemnification.*

a. *Indemnification by Department.* The Department shall indemnify, defend and hold harmless Valley District, its directors, officers, employees and agents from and against all damages, liabilities, claims, actions, demands, costs and expenses (including, but not limited to, costs of investigations, lawsuits and any other proceedings whether in law or in equity, settlement costs, attorneys' fees and costs), and penalties or violations of any kind, which arise out of, result from, or are related to the implementation of this Agreement by Department.

b. *Indemnification by Valley District.* Valley District shall indemnify, defend and hold harmless Department, its directors, officers, employees and agents from and against all damages, liabilities, claims, actions, demands, costs and expenses (including, but not limited to, costs of investigations, lawsuits and any other proceedings whether in law or in equity, settlement costs, attorneys' fees and costs), and penalties or violations of any kind, which arise out of, result from, or are related to the implementation of this Agreement by Valley District.

c. *Indemnification Procedures.* Any Party that is an indemnified party (the "**Indemnified Party**") that has a claim for indemnification against another Party (the "**Indemnifying Party**") under this Agreement, shall promptly notify the Indemnifying Party in writing, *provided, however*, that no delay on the part of the Indemnified Party in notifying the Indemnifying Party shall relieve the Indemnifying Party from any obligation unless (and then solely to the extent) the Indemnifying Party is prejudiced. Further, the Indemnified Party shall promptly notify the Indemnifying Party of the existence of any claim, demand, or other matter to which the indemnification obligations would apply, and shall give the Indemnifying Party a reasonable opportunity to defend the same at its own expense and with counsel of its own selection, *provided* that the Indemnified Party shall at all times also have the right to fully participate in the disputed matter at its own expense. If the Indemnifying Party, within a reasonable time after notice from the Indemnified Party, fails to defend a claim, demand or other matter to which the indemnification obligations would apply, the Indemnified Party shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle (exercising reasonable business judgment), the claim or other matter, on behalf, or for the account, and at the risk, of the Indemnifying Party. If the claim is one that cannot by its nature be defended solely by the Indemnifying Party, then the Indemnified Party shall make available all information and assistance to the Indemnifying Party that the Indemnifying Party may reasonably request.

13. *Administration of Agreement.*

- a. *Recordation of Agreement.* Valley District shall, within ten days of the Effective Date of this Agreement, cause this Agreement to be recorded in the Official Records of the County of San Bernardino. Valley District shall provide the Department with a recorded copy of this Agreement promptly upon the receipt of such copy from the County of San Bernardino.
- b. *Books and Records.* Each Party shall have access to and the right to examine any of the other Party's pertinent books, documents, papers or other records (including, without limitation, records contained on electronic media) relating to the performance of that Party's obligations pursuant to this Agreement. The Parties shall each retain all such books, documents, papers or other records to facilitate such review. Access to each Party's books and records shall be during normal business hours only. Nothing in this paragraph shall be construed to operate as a waiver of any applicable privileges.
- c. *Disputes.* The Parties recognize that there may be disputes regarding the obligations of the Parties or the interpretation of this Agreement. The Parties agree that they may attempt to resolve disputes as follows:
- (1) *Statement Describing Alleged Violation of Agreement.* A Party alleging a violation of this Agreement (the "**Initiating Party**") shall provide a written statement describing all facts that it believes constitute a violation of this Agreement to the Party alleged to have violated the terms of this Agreement (the "**Responding Party**").
 - (2) *Response to Statement of Alleged Violation.* The Responding Party shall have sixty days from the date of the written statement to prepare a written response to the allegation of a violation of this Agreement and serve that response on the Initiating Party or to cure the alleged violation to the reasonable satisfaction of the Initiating Party. The Initiating Party and the Responding Party shall then meet within thirty days of the date of the response to attempt to resolve the dispute amicably.
 - (3) *Mediation of Dispute.* If the Initiating Party and the Responding Party cannot resolve the dispute within ninety days of the date of the written response, they shall engage a mediator, experienced in water-related disputes, to attempt to resolve the dispute. Each Party shall ensure that it is represented at the mediation by a Commissioner or Director. These representatives of the Initiating Party and the Responding Party may consult with staff and/or technical consultants during the mediation and such staff and/or technical consultants may be present during the mediation. The costs of the mediator shall be divided evenly between the Initiating Party and the Responding Party.
 - (4) *Reservation of Rights.* Nothing in this paragraph 13.c shall require a Party to comply with the dispute resolution process contained herein and each Party retains and may exercise at any time all legal and equitable rights

and remedies it may have to enforce the terms of this Agreement;
provided, that prior to commencing litigation, a Party shall provide at least
five calendar days' written notice of its intent to sue to all Parties.

14. *No Changes to Water Rights.* This Agreement is an agreement for the coordinated use of the Department Facilities and the Valley District Facilities only. Nothing in this Agreement shall validate, invalidate or modify, in any way, any rights to water held or claimed by a Party.

15. *Ownership of Department and Valley District Facilities.* Nothing in this Agreement shall be construed so as to change the ownership of such facilities or to provide one Party with a real property interest in the facilities of the other Party

16. *General Provisions.*

- a. *Authority.* Each signatory of this Agreement represents that s/he is authorized to execute this Agreement on behalf of the Party for which s/he signs. Each Party represents that it has legal authority to enter into this Agreement and to perform all obligations under this Agreement.

- b. *Amendment.* This Agreement may be amended or modified only by a written instrument executed by each of the Parties to this Agreement.

- c. *Jurisdiction and Venue.* This Agreement shall be governed by and construed in accordance with the laws of the State of California, except for its conflicts of law rules. Any suit, action, or proceeding brought under the scope of this Agreement shall be brought and maintained to the extent allowed by law in the County of San Bernardino, California.

- d. *Headings.* The paragraph headings used in this Agreement are intended for convenience only and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the Parties to this Agreement.

- e. *Construction and Interpretation.* This Agreement has been arrived at through negotiations and each Party has had a full and fair opportunity to revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in the construction or interpretation of this Agreement.

- f. *Entire Agreement.* This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this Agreement.

- g. *Partial Invalidity.* If, after the date of execution of this Agreement, any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be

309 fully severable. However, in lieu thereof, there shall be added a provision as
310 similar in terms to such illegal, invalid or unenforceable provision as may be
311 possible and be legal, valid and enforceable.

312 h. *Successors and Assigns.* This Agreement shall be binding on and inure to the
313 benefit of the successors and assigns of the respective Parties to this Agreement.
314 No Party may assign its interests in or obligations under this Agreement without
315 the written consent of the other Parties, which consent shall not be unreasonably
316 withheld or delayed.

317 i. *Waivers.* Waiver of any breach or default hereunder shall not constitute a
318 continuing waiver or a waiver of any subsequent breach either of the same or of
319 another provision of this Agreement and forbearance to enforce one or more of
320 the remedies provided in this Agreement shall not be deemed to be a waiver of
321 that remedy.

322 j. *Attorneys' Fees and Costs.* The prevailing Party in any litigation or other action
323 to enforce or interpret this Agreement shall be entitled to reasonable attorneys'
324 fees, expert witnesses' fees, costs of suit, and other and necessary disbursements
325 in addition to any other relief deemed appropriate by a court of competent
326 jurisdiction.

327 k. *Necessary Actions.* Each Party agrees to execute and deliver additional
328 documents and instruments and to take any additional actions as may be
329 reasonably required to carry out the purposes of this Agreement.

330 l. *Compliance with Law.* In performing their respective obligations under this
331 Agreement, the Parties shall comply with and conform to all applicable laws,
332 rules, regulations and ordinances.

333 m. *Third Party Beneficiaries.* This Agreement shall not create any right or interest in
334 any non-Party or in any member of the public as a third party beneficiary.

335 n. *Counterparts.* This Agreement may be executed in one or more counterparts,
336 each of which shall be deemed to be an original, but all of which together shall
337 constitute but one and the same instrument.

338 o. *Notices.* All notices, requests, demands or other communications required or
339 permitted under this Agreement shall be in writing unless provided otherwise in
340 this Agreement and shall be deemed to have been duly given and received on: (i)
341 the date of service if served personally, by facsimile transmission or by electronic
342 mail on the Party to whom notice is to be given at the address(es) provided below,
343 (ii) on the first day after mailing, if mailed by Federal Express, U.S. Express Mail,
344 or other similar overnight courier service, postage prepaid, and addressed as
345 provided below, or (iii) on the third day after mailing if mailed to the Party to
346 whom notice is to be given by first class mail, registered or certified, postage
347 prepaid, addressed as follows:
348

CITY OF SAN BERNARDINO MUNICIPAL WATER DEPARTMENT

City of San Bernardino Municipal Water Department
300 N. D Street, 5th Floor
San Bernardino California 92418
(909) 384-5141
Attention: General Manager

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT:

San Bernardino Valley Municipal Water District
380 E. Vanderbilt Way
San Bernardino, CA
(909) 387-9200
Attn: General Manager

A Party may change its address for notice by providing thirty days' advance written notice of such change to the other Party.

----- SIGNATURES ON FOLLOWING PAGE -----

CITY OF SAN BERNARDINO MUNICIPAL WATER DEPARTMENT

By: Stacey Aldstadt
Stacey Aldstadt
General Manager

Dated: Sept. 9th, 2013.

Approved as to form only:

By: Andrew M. Hitchings
Andrew M. Hitchings
Somach Simmons & Dunn

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

By: Douglas A. Headrick
Douglas Headrick
General Manager

Dated: Aug. 20, 2013.

Approved as to form only:

By: David R.E. Aladjem
David R.E. Aladjem
Downey Brand LLP