

**MEMORANDUM OF UNDERSTANDING TO IMPLEMENT THE HABITAT
CONSERVATION PLAN FOR THE UPPER SANTA ANA RIVER WASH PLAN AND
ASSOCIATED IMPLEMENTING AGREEMENT**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made effective this ___ day of _____, 2015 (“Effective Date”), by and between the following entities (hereinafter individually referred to as a “Party” and collectively referred to as the “Parties”):

CEMEX CONSTRUCTION MATERIALS
PACIFIC, LLC. (“CEMEX”)

ROBERTSON’S READY MIX, LTD.
 (“ROBERTSON’S”)

CITY OF HIGHLAND (“HIGHLAND”)

EAST VALLEY WATER DISTRICT
 (“EVWD”)

CITY OF REDLANDS (“REDLANDS”)

REDLANDS UTILITY DISTRICT (“RUD”)

COUNTY OF SAN BERNARDINO
 (“COUNTY”)

SAN BERNARDINO VALLEY FLOOD
CONTROL DISTRICT (“SBCFCD”)

SAN BERNARDINO VALLEY WATER
CONSERVATION DISTRICT (“SBVWCD”
OR “CONSERVATION DISTRICT”)

SAN BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT (“SBVMWD”)

RECITALS

This MOU is entered into on the basis of the following facts, understandings, and intentions of the Parties:

- A. In 1993, representatives of water, mining, flood control, wildlife and municipalities formed a “Wash Committee” to address local mining issues in the Upper Santa Ana River Wash (the “Wash”). Subsequently, the role of the Wash Committee was expanded to address all of the land functions in the Wash. The Wash Committee met on an as needed basis with other stakeholders in the areas within the Wash, including representatives from mining communities.
- B. In 1997, the Wash Committee began meeting on a regular basis to determine how to accommodate all of the important functions within the Wash. A Policy Action Committee (“PAC”) was established that consisted of elected officials from the County, Highland, Redlands, the Conservation District and the Field Manager

from the BLM. A Technical Advisory Committee (“TAC”) was formed with representatives of the PAC agencies and other water, mining, flood control and wildlife interests. The Conservation District chaired and provided staff support for the Wash Committee, PAC and TAC. The TAC studied how the areas within the Wash could best be used, independent of land ownership boundaries.

- C. In 2000, the TAC created a conceptual plan for the areas within the Wash designated for specific land uses, which formed the basis for what would become the Upper Santa Ana River Wash Plan (“Wash Plan”). The Wash Plan covers approximately 4,900 acres in southwestern San Bernardino County approximately one mile downstream of the Seven Oaks Dam and extending approximately six miles westward from Greenspot Road in Highland to Alabama Street in Redlands (“Plan Area”). The Plan Area is generally depicted in Exhibit A hereto. Under the TAC’s conceptual plan, some land previously designated for mining with high habitat value was proposed for conservation, while other land with lower biological value previously designated for habitat conservation was proposed for mining.
- D. The TAC’s proposed land uses cross land ownership (three public agencies and two private entities), jurisdictions (Highland, Redlands and the County) and land use designations (open space and agriculture/equestrian in Highland and flood control/construction aggregates conservation/habitat preservation in Redlands). In 2002, a task force (the “Task Force”) was formed to create a framework for joint funding and governance of the lands that would become subject to the Wash Plan. The members of the Task Force include: the SBVWCD, the U.S. Department of Interior Bureau of Land Management (“BLM”), County, Highland, Redlands, RUD, EVWD, SBCFCD, CEMEX and Robertson’s. The Task Force also has advisory members including: United States Fish and Wildlife Service (“USFWS”), California Department of Fish and Wildlife (“CDFW”). The SBVWCD is the project manager and provides staff support for the Task Force.
- E. In 2008, the SBVWCD adopted the Wash Plan and certified an associated Environmental Impact Report (“Wash Plan EIR”). SBVMWD joined the Task Force subsequent to the certification of the Wash Plan EIR, and presently plans to coordinate its regional water management activities with development of additional water spreading and related water conservation facilities within the Wash Plan Area.
- F. The Wash Plan anticipates land exchanges, which include: (1) a land exchange between SBVWCD and Robertson’s; (2) a land exchange between BLM and SBVWCD; and (3) a land exchange between Redlands and SBVWCD. The land exchange between BLM and Permittee will require an amendment to the BLM’s South Coast Resource Management Plan (“SCRMP”) and the certification of an Environmental Impact Statement (“EIS”). The various land exchanges are depicted in Exhibit “B” hereto.

- G. The Plan Area is currently used for a variety of purposes including water conservation and storage activities, flood control, habitat conservation, aggregate mining/mineral extraction, agriculture, roadways and airport operations.
- H. The Parties wish to undertake new or expanded mining, water conservation, well and water infrastructure, transportation, flood control, and trail development activities (generally referred to herein as “Covered Activities”) and more specifically defined in paragraph 3.12 of the Implementing Agreement for the Habitat Conservation Plan for the Upper Santa Ana Wash Plan, entered into between SBVWCD and USFWS (“IA”) on portions of the Plan Area (generally referred to herein as “Covered Lands” and more specifically defined in paragraph 3.14 of the IA.) A copy of the IA (excluding the HCP it incorporates) is attached hereto as Exhibit C.
- I. Because the Covered Activities on Covered Lands may impact certain species that are listed as “endangered” and/or “threatened” under State and Federal Law (generally referred to herein as “Covered Species”), the Covered Activities require an incidental take permit (the “Permit”) issued by the USFWS pursuant to Section 10(a)(1)(B) of the Endangered Species Act (“ESA”) to avoid or minimize adverse impacts to the Covered Species. The SBVWCD is in the process of obtaining the Permit from the USFWS.
- J. In connection with obtaining the Permit, the SBVWCD has developed a series of measures, described in the Upper Santa Ana River Wash Plan Habitat Conservation Plan (the “HCP”), to minimize and mitigate to the maximum extent practicable the effects of take of Covered Species incidental to the Parties’ Covered Activities.
- K. Each of the Parties have found and determined that it is in their best interests to join together to implement the Permit, HCP and IA (collectively, the “Project”), to provide an equitable cost-sharing mechanism for the funding of the Project, and to define the projected schedule and scope of work to execute the Project.
- L. Each of the Parties have found and determined that it is in their best interest to join together to implement the Permit, HCP and IA (collectively, the “Project”), to provide an equitable cost-sharing mechanism for the funding of the Project, and to define the procedures necessary to execute the Project. This MOU is intended to function compatibly with, and in support of, the IA and the HCP and the Permit.

TERMS & CONDITIONS

SECTION 1: DUTIES OF THE PARTIES

- A. Duties of the SBVWCD.** The SBVWCD is the holder of the Permit and is a party to the IA. As such, the Parties agree that the duties of the SBVWCD shall include the following:

1. Issuing Certificates of Inclusion to the Parties in accordance with the Permit, HCP, IA and the procedures and criteria set forth in Section 3 of this MOU;
2. Establishing a non-wasting endowment to finance annual management, monitoring and administration costs (estimated to be approximately \$400,000 per year in perpetuity) in accordance with Chapter 7 of the HCP;
3. Effectuating the land transfers as referenced in Section 5 of this MOU; and
4. Assuring that, as holder of the Permit, it can implement and enforce the requirements of the Permit for Covered Activities on Covered Lands.

B. Duties of the Other Parties. The Parties are members of the Task Force and desire to perform certain Covered Activities on Covered Lands. As such, the Parties agree that the duties of each Party (other than the SBVWCD) shall include the following:

1. Obtaining a Certificate of Inclusion from the SBVWCD prior to commencing any Covered Activity on Covered Lands that could result in a Take (as that term is defined in Section 3.25 of the IA), in accordance with Section 3 of this MOU;
2. Paying its allocated share of the funding for both the “jump start” implementation costs of the HCP for its initial seven (7) year period, and paying the allocated proportionate costs of the funding assigned to the Covered Activity proposed by such Party, toward the necessary non-wasting endowment for financing the overall management, monitoring, and administration costs of the Project. The list of Covered Activities, the acreages of impact anticipated for each, and the amount of funding contribution attributable to each are reflected in the schedule attached hereto as Exhibit “D”;
3. Paying the SBVWCD for the costs it incurs processing the Party’s application for a Certificate of Inclusion that are not covered by the proceeds of the above-mentioned non-wasting endowment;
4. Effectuating any land transfer under Section 5 of this MOU;
5. Indemnifying and defending the SBVWCD and all other parties for any Take that exceeds or is not authorized by a Certificate of Inclusion;
6. Complying with all applicable provisions of the Permit, HCP, IA and federal, state and local laws and regulations;
7. To the extent any of the properties identified as newly conserved mitigation lands under the HCP are owned or otherwise subject to easement, license, or other possessory interest by a Party proposing a

Covered Activity, and such property is required to be actively managed under the terms of the habitat management requirements of the Permit, such Party shall, prior to the initiation of the Covered Activity for which the newly conserved mitigation lands are intended to mitigate, transfer to the SBVWCD all right, title and interest to transfer a full, unencumbered fee interest thereto, to allow the SBVWCD or its designee to perform all habitat management actions and strategies required by the Project.

SECTION 3: CERTIFICATES OF INCLUSION.

A. Purpose of Certificate of Inclusion. Any Party who wishes to undertake a Covered Activity on any Covered Lands, and who wishes to do so under the Permit, shall first secure from the SBVWCD a Certificate of Inclusion. The purpose of the Certificate of Inclusion shall be to effectuate the planned “rough step” phasing of the various Covered Activities encompassed within the Project, identifying the precise activities being proposed as part of the Covered Activity, comparing the scope and anticipated impacts from such activities to those contemplated in the environmental and habitat impact assessments done as part of the HCP and Permit, and assuring that the mitigation preservation and management activities required under the Project for such proposed activities are funded, in place, and capable of being sustained.

B. Funding Requirements for the Certificate of Inclusion.

1. Jump Start Funding. USFWS has required the Project to commit the total sum of Two Hundred Thirty-One Thousand Dollars (\$231,000.00), or the equivalent of seven years at Thirty-Three Thousand Dollars (\$33,000.00) each year, at the time of the issuance of the Permit. These initial “jump start” funds have been included in the allocated amounts of funding required from the various Covered Activities listed in Exhibit “D” hereto. At present, the Parties anticipate that at the time of Permit issuance enough Covered Activities will be initially funded by the various Parties that the original \$231,000.00 threshold will be met. To the extent this is not the case, however, the Parties, and each of them, agree to pay the SBVWCD the proportionate share of such amount as may be required to meet the original \$231,000.00 threshold amount, in the same proportion that the total funding for all of each Party’s proposed Covered Activities bears to the total funding costs of all Covered Activities. To the extent such contributions to meet the original \$231,000.00 threshold are required, all amounts so paid shall be credited to the first funding requirements otherwise due from the Party who paid.
2. Funding for Covered Activities. A Party proposing a Covered Activity shall deposit with the SBVWCD the full payment of the funding amounts shown on Exhibit “D” as relating to the proposed Covered Activity, at the time of submitting an application for a Certificate of Inclusion. Such payment shall be retained by the SBVWCD through the processing of the application for

the Certificate of Inclusion. In the event the Certificate of Inclusion is granted, the SBVWCD shall retain the payment as part of the non-wasting endowment. In the event the Certificate of Inclusion is not granted, the SBVWCD shall return the payment to the depositing Party, provided that in the event of any appeal or dispute resolution proceedings relating to the SBVWCD's action on the Certificate of Inclusion, such deposit shall be retained by the SBVWCD until final resolution of the appeal or dispute resolution proceeding.

C. Two Tiered Procedure for Issuance of A Certificate of Inclusion.

1. Tier 1 — Initial Consistency Determination.

- a. A party proposing a Covered Activity shall submit to the SBVWCD, in writing, an application for a Certificate of Inclusion. Such application shall describe in detail the Covered Activity, identify the amount of Impact or "Take" being proposed in connection therewith, include specific reference to the Project's environmental review and/or habitat impact assessment analyses where the Covered Activity was described and analyzed, identify the mitigation, avoidance and minimization efforts or management requirements applicable to the Covered Activity under the Project, and demonstrate how the mitigation being offered, funded, managed, or otherwise contributed to by the proposing Party meets the requirements of the Permit, the HCP, and the IA with respect to the proposed Covered Activity.
- b. Within fourteen (14) days of receiving a Party's complete application for a Certificate of Inclusion, the SBVWCD's staff shall make an initial determination of whether the proposed Covered Activity is consistent with the Permit, HCP and IA (the "Initial Consistency Determination").
- c. If the SBVWCD determines the proposed Covered Activity is not consistent (or if the Conservation District does not have sufficient information to determine whether or not the proposed Covered Activity is consistent), it must notify the Party, in writing, of the basis for this determination.
- d. Upon receiving notice that the proposed Covered Activity is not consistent with the Permit, HCP and IA, a Party may either amend and resubmit its request, or it may appeal the Conservation District's Initial Consistency Determination to the USFWS.
- e. The costs the Conservation District incurs in making Initial Consistency Determinations shall be funded by the proceeds of the non-wasting endowment.

2. Tier 2 — Processing the Request for a Certificate of Inclusion

- a. If the proposed Covered Activity is determined by SBVWCD to be consistent with the Permit, HCP and IA, the SBVWCD shall proceed with processing the request for the Certificate of Inclusion. Upon making a positive Initial Consistency Determination, the SBVWCD shall advise the Party of the estimated reasonable costs for the processing of the request for the Certificate of Inclusion, which cost the Party shall thereupon deposit with the SBVWCD.
- b. The costs of processing a request for a Certificate of Inclusion shall not be funded by the proceeds of the non-wasting endowment. A Party applying for a Certificate of Inclusion must pay the reasonable costs of processing its request for a Certificate of Inclusion. The SBVWCD shall not be obligated to process a request for a Certificate of Inclusion until the Party who made the request provides a reasonable deposit sufficient to fund the time, materials, and work of processing the request.
- c. The SBVWCD's decision to issue a Certificate of Inclusion to a Party shall be reported to the USFWS. Consistent with the IA, the USFWS shall have fourteen (14) days to review the matter, and shall either concur with the determination to issue the Certificate of Inclusion, or if it does not concur, specify in writing to SBVWCD and the applicant the precise grounds upon which it believes the proposed covered Activity is inconsistent with the Permit, IA, or the MOU, and what it believes must be modified in order to achieve such consistency. As provided in the IA, failure of USFWS to respond in writing within such fourteen (14) day period shall result in the Certificate of Inclusion being deemed consistent, and properly issued.
- d. The SBVWCD's decision to deny a Certificate of Inclusion to a Party may be appealed by the Applicant to the USFWS, provided, that the USFWS shall not be required to act in a manner contrary to the requirements of the Anti-Deficiency Act, 31 U.S.C. § 1341 *et seq.*, as may be amended from time to time. The "deemed consistent" determination if USFWS fails to concur or otherwise respond to the SBVWCD's issuance of a Certificate of Inclusion shall not be affected by the Anti-Deficiency Act, however.

D. Criteria for Issuance of Certificate of Inclusion.

1. The SBVWCD shall not issue a Certificate of Inclusion unless a proposed Covered Activity satisfies all of the following criteria:

a. The proposed Covered Activity is consistent in substance and scope with the Covered Activities described in the Permit, HCP and IA.

b. The Party has provided sufficient mitigation for the proposed Covered Activity's impacts.

c. The Party applying for the Certificate of Inclusion has contractually committed to bind itself to comply with all requirements of the Permit and the IA in connection with the implementation, operation, and maintenance of the Covered Activity.

d. Looking at the Plan Area as a whole, issuing a Certificate of Inclusion for the proposed Covered Activity will not render the Plan Area out of compliance with the "rough step" mitigation phasing requirements of the Permit, HCP, and IA (which require mitigation to stay 5% ahead of Take).

2. It is the Party's burden to demonstrate why the Take implicated in the proposed Covered Activity is not greater than the Take that was contemplated in the Permit, HCP and IA. To satisfy this burden, the Party shall submit such reasonably required biological reports, species surveys, construction drawings, final environmental documents, and GIS files as have not been already provided, or as many require updating, if previously provided. All such information shall be provided in formats that are consistent with the existing HCP administrative database.

E. Party's Responsibility to Avoid Overtake. It is the Party's responsibility to ensure that its activities and projects on Covered Lands do not result in a Take that differs from or exceeds the Take authorized by the Permit. Even if a Party has been issued a Certificate of Inclusion, the Party implementing the Covered Activity shall be and remain legally and financially liable for any violation of the Permit, HCP or IA by its own Covered Activities on Covered Lands.

SECTION 4: FUNDING MECHANISMS.

A. SBVWCD as Steward of Funds. The Parties appoint and empower the SBVWCD as the entity authorized to collect, hold, invest, manage, distribute, and apply all funds contributed to the non-wasting endowment, and any and all investment or other proceeds that may flow therefrom, in furtherance of the mitigation management and maintenance responsibilities required by the Project. The endowment shall be held, managed, invested, and disbursed solely for, and permanently restricted to, the long-term stewardship of the Wash Plan Area. The endowment may be held in a qualified Trust and shall be held, managed, invested, disbursed, and governed as consistent with the Uniform Prudent

Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code).

B. Organizational Options for Management of Funds. The SBVWCD may hold, invest, manage, distribute, and apply the non-wasting endowment, in the Conservation District's discretion, pursuant to any of the following mechanisms:

1. As District funds, segregated into a separate enterprise fund, and accounted for consistent with standards promulgated by the Governmental Accounting Standards Board, or any successor entity;
2. In conjunction with or transferred to a non-profit corporation formed for the purpose of administering the non-wasting endowment for the purposes of the Project; or
3. As part of a joint powers agency with one or more additional entities, formed for the purpose of administering the non-wasting endowment for the purposes of the Project.

C. Investment Plan. Within one (1) year of the issuance of the Permit, the SBVWCD shall create, consider, and circulate for review and comment among all Parties, an Endowment Investment Policy governing its dealings with the non-wasting endowment. The Endowment Investment Policy will identify the individuals or entities with authority to direct investment of the funds of the non-wasting endowment, the types of investments eligible for investment of the non-wasting endowment's funds, the investment strategy for such investment, and the manner in which such investments will be directed to meeting the threshold rates of return needed to sustain the habitat mitigation program costs of the Project without reducing or imperiling the non-wasting endowment's principal. The Endowment Investment Policy shall be reviewed annually by the SBVWCD, and may be amended or adjusted as necessary to assure the investment of the funds in the non-wasting endowment is meeting applicable criteria on returns to sustain the Project.

D. Annual Investment Report. The SBVWCD shall provide all Parties an annual report on the funds in the non-wasting endowment. The annual report will include all of the following: (1) the balance of each individual endowment at the beginning of the reporting period; (2) The amount of any contribution to the endowment during the reporting period including, but not limited to, gifts, grants, and contributions received; (3) The net amounts of investment earnings, gains, and losses during the reporting period, including both realized and unrealized amounts; (4) The amounts distributed during the reporting period that accomplish the purpose for which the endowment was established; (5) The administrative expenses charged to the endowment from internal or third-party sources during the reporting period; (6) The balance of the endowment or other fund at the end of the reporting period; (7) The specific asset allocation

percentages including, but not limited to, cash, fixed income, equities, and alternative investments.

- E. Audit.** No less frequently than biannually, the SBVWCD shall cause to be performed an independent audit of the non-wasting endowment fund, the costs of which shall be paid from the fund. The results of such audit shall be provided to any Party, at the requesting Party's expense, upon request.

SECTION 5: LAND TRANSFERS.

- A. Conservation Land Transferred to the SBVWCD.** All land transferred to the SBVWCD for conservation purposes shall be transferred to the SBVWCD in unencumbered fee simple.
- B. Land Exchange Between SBVWCD and Robertson's.** Prior to the completion of Phase 1 as described in Table S-1 of the HCP, SBVWCD and Robertson's will effectuate the land exchange shown on Exhibit "B."
- C. Land Exchange Between BLM and Conservation District.** Prior to initiation of Phase 2 as described in Table S-1 of the HCP, BLM and the SBVWCD will effectuate the land exchange shown on Exhibit "B," subject to an amendment the BLM's South Coast Resource Management Plan ("SCRMP") and the certification of an Environmental Impact Statement ("EIS").
- D. Land Exchange Between Redlands and SBVWCD.** Prior to Prior to the completion of Phase 1 as described in Table S-1 of the HCP, Redlands and SBVWCD will effectuate the land exchange shown on Exhibit "B."

SECTION 6: ENFORCEMENT.

The SBVWCD may revoke, suspend, or modify any Certificate of Inclusion issued to any Party, if such Party is determined based upon substantial evidence to have violated the Permit, IA, or this MOU, or engaged in unauthorized Take, pursuant to the procedures below:

- A. Notices of Suspected Violation.** If the SBVWCD has reason to believe a Party with a Certificate of Inclusion has violated the terms of the Permit, the IA, or this MOU, as part of a Covered Activity, or has otherwise engaged in unauthorized Take, it shall notify the holder of the Certificate of Inclusion, in writing. Such notice shall specify the nature, extent, and location of the violation, and make reference to the evidence or information upon which the suspected violation is based.
- B. Response to Notice.** A Party receiving a Notice of Suspected Violation shall have ten (10) days to respond thereto in writing. The response shall include such plans, maps, constructions drawings, reports, photographs, surveys, or

other materials as may be available and appropriate to document the conditions of the alleged violation arising from the Covered Activity, and if the violation is acknowledged, the reasons therefore, and the Party's plan of remedial action to remedy the violation and assure consistency with the Permit and the IA.

C. Reporting of Violation. To the extent any suspected violation may threaten the Project with noncompliance with the terms of the Permit, or the IA, or otherwise may raise issues of compliance or enforcement under the Federal or California Endangered Species Act, the SBVWCD may report the suspected violation to the USFWS, the California Department of Fish and Wildlife, or both. Nothing in this MOU authorizes or assigns any enforcement authority under such acts to the SBVWCD, however. The Parties shall comply with any enforcement proceedings or orders made by the USFWS or California Department of Fish and Wildlife arising out of any such suspected violation.

D. Revocation, Suspension or Modification of Certificate of Inclusion. The SBVWCD may revoke, suspend, or modify a previously-issued Certificate of Inclusion if a documented violation in connection with the Covered Activity results in a Take that exceeds the "rough step" proportionality of mitigation to Take specified for the Project, or otherwise brings the Project out of compliance in such a way that threatens any other Covered Activity, or the Project as a whole.

SECTION 7: DISPUTE RESOLUTION.

A. Exhaustion Requirement for Disputes Regarding Certificates of Inclusion. Disputes regarding the SBVWCD's initial consistency determination or the SBVWCD's issuance or non-issuance of a Certificate of Inclusion, or revocation, suspension, or modification of a Certificate of Inclusion, each of which are ministerial decisions, may be appealed to the USFWS. If a Party disagrees with the USFWS determination, it may appeal that determination in accordance with the "Formal Dispute Resolution" procedure set forth in subsection C below.

B. Informal Dispute Resolution. Unless the Parties to a dispute elect another dispute resolution process, all Parties shall use the following process to attempt to resolve disputes that do not relate to the SBVWCD's issuance, non-issuance, revocation, suspension, or modification of a Certificate of Inclusion:

1. A Party shall notify the other Party (or Parties) of the alleged noncompliance with, or violation of the MOU, the basis for contending that the noncompliance or violation has occurred, and the remedies the notifying Party proposes to correct the alleged noncompliance or violation. The notified Party (or Parties) shall have 30 days, or such other time as may be agreed to by the Parties, to respond. During this time either Party may seek clarification of the information provided in the initial notice. The Parties shall use all practicable, reasonable efforts to provide any information then available to it that may be responsive to such inquiries.

2. Within 10 days after such response is provided or was due, a representative from each Party shall meet and negotiate in good faith toward a solution satisfactory to all Parties, or shall establish a mutually acceptable process and timetable to seek such a solution.
3. If after 10 days, any issues cannot be resolved through such negotiations, the Parties shall engage in nonbinding mediation or any other mutually acceptable alternative dispute resolution (“ADR”) process. The Parties shall commence the ADR process within 60 days.
4. The Parties shall make a good faith effort to resolve their dispute(s) through the ADR process. If the Parties have not resolved the dispute(s) within 30 days of commencing the ADR process, the informal dispute resolution process shall be deemed exhausted.
5. The costs of the ADR process shall be borne equally by all Parties to the dispute.
6. The Parties may, by mutual agreement, extend any of the deadlines set forth above in this subsection.

C. Formal Dispute Resolution. In the event of any dispute(s) arising out of this MOU, which such dispute(s) is not resolved by Information Dispute Resolution, shall be submitted to binding arbitration, and all Parties waive any and all rights which they may have to have such dispute submitted to, and decided by, a jury. Such dispute(s) shall be submitted to binding arbitration in the County of San Bernardino, State of California, before an arbitrator selected by all Parties to the dispute. In the event any dispute arises, any Party may submit the dispute to binding arbitration by providing written notice to the other(s), which notice shall include the nature of the dispute, and the aggrieved Party's request/demand from the other(s) as to the action required to resolve the dispute. Thereafter, the Parties shall meet and confer in an attempt to resolve the dispute(s), and if it cannot be resolved within thirty (30) days, each Party shall simultaneously provide the other(s) in writing a list of three (3) arbitrators acceptable to the Party for resolution of the dispute. In the event the Parties are unable to agree upon an arbitrator within five (5) business days of the exchange of lists of arbitrator candidates, the matter will be submitted to the nearest local office of JAMS, who shall within three (3) business days thereafter provide the Parties with a list of arbitrators numbering one more than the number of parties to the dispute. Each Party shall strike one name from the list, and the remaining name shall be the arbitrator who will serve to finally resolve the dispute. Disputes shall be arbitrated according to the arbitration rules the Parties may agree to, or in the event the parties cannot agree, under such rules as may be determined by the arbitrator. The decision of the arbitrator will be final and binding, and all Parties specifically waive any and all appeal, whether judicial or otherwise, therefrom.

SECTION 8: INDEMNIFICATION.

Neither the SBVWCD 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 SBVWCD, or in connection with any work, authority or jurisdiction delegated to the SBVWCD acting as an administrator under the Permit, the HCP, the IA or this MOU, including as steward of the non-wasting endowment. All Parties, and each of them, indemnify, defend, and hold the SBVWCD in its capacity as the administrator of the Permit, HCP, IA and this MOU, and as steward of the non-wasting endowment, harmless from any claim, demand, suit of law or equity, or other proceeding arising from or relating to the SBVWCD's performance of its obligations contemplated by the Permit, HCP, IA and this MOU.

In connection therewith, each Party agrees to indemnify, defend, and hold harmless the SBVWCD and its officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of (1) the SBVWCD's collection investment, transfer, management, distribution, and application of non-wasting endowment funds; (2) the SBVWCD's processing, grant, or denial, administration, and enforcement of Certificates of Compliance; (3) the SBVWCD's administration and enforcement of the Permit and the IA on the Covered Activities, and the Party's projects and activities on Covered Lands, including without limitation, projects and activities that are not authorized by or exceed the scope of the Permit, HCP, IA, any applicable certificate of inclusion or this MOU.

The foregoing agreement to indemnify, defend, and hold the SBVWCD harmless excludes any liability determined to arise from gross negligence or willful misconduct by SBVWCD. 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 MOU.

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 MOU, 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 MOU shall be to the extent permitted by the Federal Tort Claims Act.

SECTION 9: 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 Pacific, 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 EVWD:
General Manager
East Valley Water District
P.O. Box 3427
San Bernardino, CA 92413

As to Redlands:
Community Development Director
City of Redlands
P.O. Box 3005
Redlands, CA 92373

As to RUD:
Chief of Water Resources
Redlands Utilities Department
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 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 SBVWCD:
General Manager
San Bernardino Valley Water District
1630 W. Redlands Blvd, Suite A
Redlands, CA 92373-0581

As to SBVMWD:
Attn: General Manager
San Bernardino Valley
Municipal Water District
380 East Vanderbilt Way
San Bernardino, CA 92408

SECTION 10: ENTIRE AGREEMENT.

This MOU 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 Parties. No waiver or modification of this MOU shall be binding unless consented to by all Parties in writing.

SECTION 11: 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 12: COOPERATION: FURTHER ACTS.

All parties agree to use reasonable care and diligence to perform their respective obligations under this MOU. 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 MOU.

SECTION 13: GOVERNING LAW.

This MOU shall be governed by and construed under the laws of the State of California. Federal agency participation under this MOU, however, shall be governed by the applicable federal laws.

SECTION 14: ATTORNEYS' FEES.

In the event a Party's Covered Activity or other action results in any type of enforcement action by USFWS, CDFW, or other regulatory agency, and such enforcement action involves or implicates SBVWCD or any other Party, the Party whose Covered Activity or other action gives rise to the enforcement action shall defend, indemnify, and hold harmless SBVWCD, and any such other Party. Such indemnification shall include payment of the reasonable costs of legal defense of such action with counsel of the indemnified Party's own choosing. In any other action or proceeding involving a dispute between the Parties arising out of this MOU, 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 15: NO THIRD PARTY BENEFICIARIES.

There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

SECTION 16: CONSTRUCTION: CAPTIONS.

The language of this MOU 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 MOU.

SECTION 17: SEVERABILITY.

Each provision of this MOU 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 MOU shall continue in full force and effect.

SECTION 18: INCORPORATION OF RECITALS.

The Recitals are incorporated herein and made an operative part of this MOU.

SECTION 19: AUTHORITY TO ENTER INTO AGREEMENT.

All Parties warrant that they have all requisite power and authority to execute and perform this MOU. Each person executing this MOU on behalf of their party warrants that he or she has the legal power, right, and authority to make this MOU 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 20: COUNTERPARTS.

This MOU may be signed in counterparts, each of which shall constitute an original.

SECTION 21: EFFECTIVE DATE

The Effective Date of this MOU 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 MOU.

SECTION 22: TERMINATION.

- A. Any Party may voluntarily terminate its participation under the MOU at any time upon delivery of at least 60 days prior all other Parties.
- B. Upon a Party's termination from participation under the MOU, the Conservation District may return the portion of that Party's pro-rata contribution not otherwise committed to habitat management as part of the non-wasting endowment, and expended by the Project Manager after paying invoices for all charges incurred during the period that Party participated in the Project.
- C. The termination of any Party or Parties shall not affect the remaining Parties' obligations under this MOU.

IN WITNESS WHEREOF, the Parties hereto have entered into this MOU as of the day and year set forth below, the last of which shall be the effective date of this MOU.

- Exhibits: A Wash Plan Area
 B Land Exchanges Map
 C Implementing Agreement
 F Covered Activities Schedule

APPROVED AS TO FORM:

Counsel for CEMEX

CEMEX CONSTRUCTION MATERIALS
PACIFIC, LLC

APPROVED AS TO FORM:

Counsel for Robertson's Ready Mix, Ltd.

ROBERTSON'S READY MIX, LTD

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:

REDLANDS UTILITIES DEPARTMENT

City Attorney

Mayor

Attest: _____
City Clerk

APPROVED AS TO FORM:

COUNTY OF SAN BERNARDINO

County Counsel

Chairperson, Board of Supervisors

Attest: _____
Clerk of the Board

APPROVED AS TO FORM:

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

General Counsel

Chairperson, Board of Supervisors

Attest: _____
Clerk of the Board

APPROVED AS TO FORM:

CITY OF REDLANDS

City Attorney

Mayor

Attest: _____
City Clerk

APPROVED AS TO FORM:

CITY OF HIGHLAND

[_____
[City Attorney]

[_____
[Mayor]

[Attest: _____]
[City Clerk]

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

APPROVED AS TO FORM:

SAN BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT

General Counsel

President, Board of Directors

Attest: _____
Secretary of the Board



K:\In\GIS\Projects\SB\WCD\0544_13_WashPlan\HCP\matdoc\HCP\01_Regional_Context_and_Plan_Bndrv.mxd Date: 3/26/2015 3:41:53



**Wash Plan Area
Exhibit A**

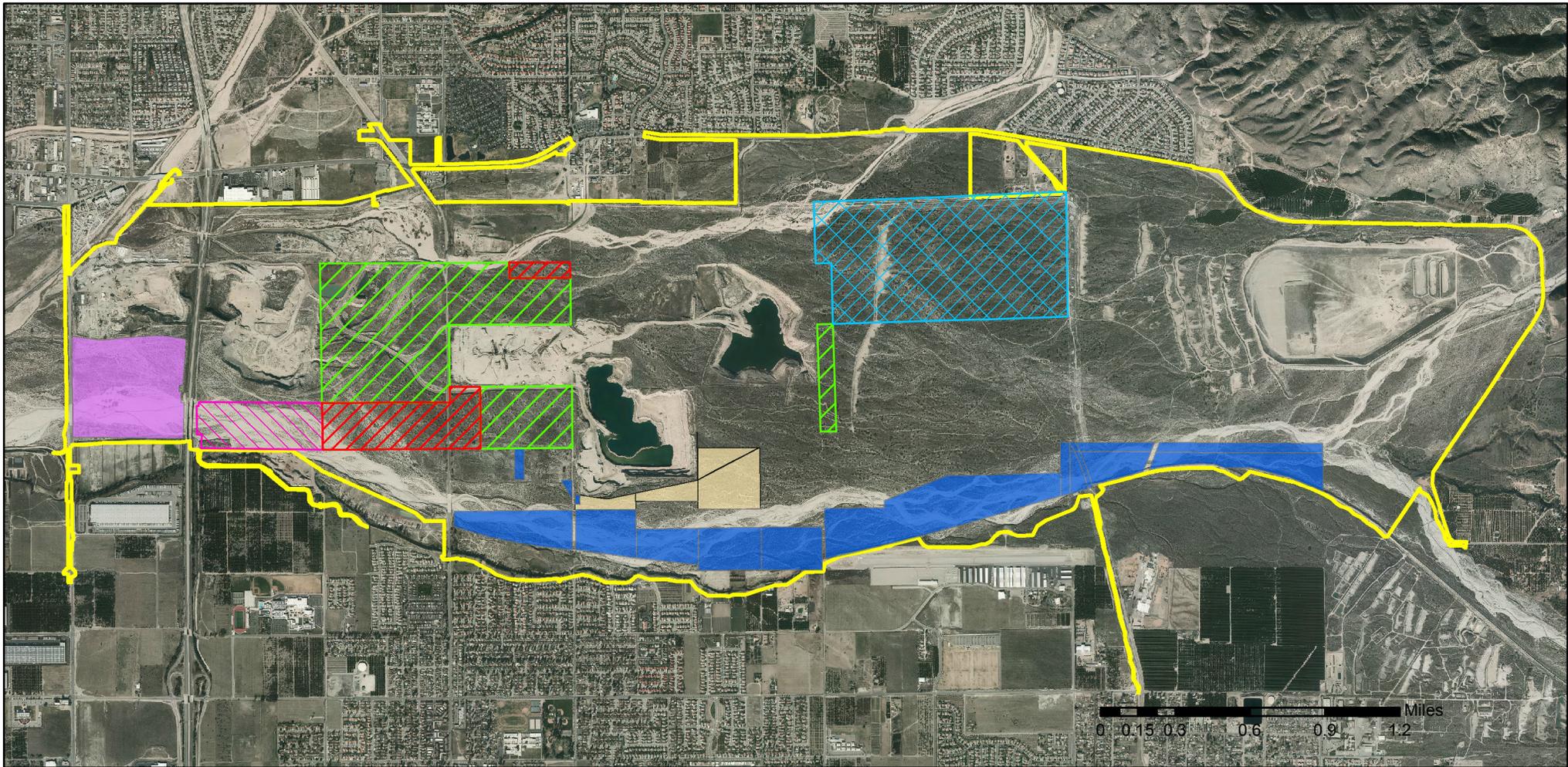


Land Transfers Exhibit B



Coordinate System:
NAD 1983 StatePlane California V FIPS 0405 Feet
Projection: Lambert Conformal Conic
Datum: North American 1983
Source: SBVWCD GIS
GIS Contact: Katelyn Scholte & Jakob Larson

September 10, 2015



SBVWCD - BLM Exchange

-  Non-Federal Exchange Parcels
-  Federal Equalization Parcels
-  Federal Exchange Parcels
-  Non-Federal Equalization Parcels

 Robertson's - SBVWCD Transfer

 Redlands - SBVWCD Transfer

 SBCFCD - SBVWCD Transfer

MOU Exhibit D

HCP Covered Activity ID	Covered Party (Participant)	Covered Activity	Habitat and Land Impacts				Total
			Permanent Impacts	Temporary Impacts	O&M Impacts	Foot Print Acres	Estimated Total
CD.01	SBVWCD	Existing Recharge Basins	65.093	22.780	22.783	110.66	\$ 25,854.30
CD.02	SBVWCD	Existing Access Roads	36.296	8.096	12.088	56.48	\$ 5,874.82
CD.03	SBVWCD	Conservation District Canal	21.800			21.80	\$ 38,411.67
CD.04	SBVWCD	Existing Wells	0.150	1.560	0.360	2.07	\$ 2,058.73
Ceme.01	Mining Entities	Mining Entities Haul Road Extension	1.190			1.19	\$ 3,767.01
EVWD.03	EVWD	Grove Maintenance	6.705			6.71	\$ 8,051.32
EVWD.04	EVWD	Existing Wells	0.509	0.150	0.153	0.81	\$ 2,493.15
EVWD.05	EVWD	Existing Wells	0.500	0.150	0.150	0.80	\$ 4,523.78
EVWD.06	EVWD	Existing Wells	0.501	0.150	0.150	0.80	\$ 2,484.69
EVWD.07	EVWD	EVWD Pipe 125	4.200			4.20	\$ 12,897.85
EVWD.08	EVWD	EVWD No 125	0.250	0.090	0.090	0.43	\$ 296.99
FC.01	SBCFCD	Plunge Creek Sediment Removal	38.197		37.093	75.29	\$ 154,686.25
FC.02	SBCFCD	Access Road Maintenance	22.715		7.098	29.81	\$ 59,385.39
FC.03	SBCFCD	Existing Levees	41.049		14.364	55.41	\$ 227,865.42
FC.04	SBCFCD	Existing Levees	15.194			15.19	\$ 17,891.88
FC.09	SBCFCD	Elder/Plunge Creek Restoration-Res. Forseeable Proj.	12.766	48.575	0.000	61.34	\$ 58,081.82
High.01	Highland	Greenspot Road Bridge and Realignment	8.216			8.22	\$ 38,377.23
High.02	Highland	Alabama Street Improvements	6.800			6.80	\$ 18,338.30
High.03	Highland	Greenspot Road Improvements	35.469			35.47	\$ 47,263.94
High.04	Highland	Orange Street/Boulder Avenue Improvements	4.870			4.87	\$ 22,818.77
High.10	Highland	Weaver Street Channel Maintenance	5.243	1.835	1.835	8.91	\$ 19,321.24
High.11	Highland	Greenspot Road Drain Outlets	0.295	0.103	0.103	0.50	\$ 1,113.03
High.12	Highland	Church Street Channel	0.964	0.337	0.337	1.64	\$ 1,392.59
High.13	Highland	Alabama Street Trail	0.720		0.278	1.00	\$ 764.38
High.14	Highland	Boulder Avenue/Orange Street Trail	1.900		0.278	2.18	\$ 1,844.74
High.15	Highland	Cone Camp Road Trail	4.113		0.278	4.39	\$ 18,405.87
High.16	Highland	Greenspot Road Trail	0.405		0.278	0.68	\$ 9,018.48
High.19	Highland	Old Rail Line Trail	1.499		0.278	1.78	\$ 4,282.60
High.20	Highland	Plunge Creek Trail	0.599		0.278	0.88	\$ 2,821.10
High.21	Highland	Pole Line Trail	3.700		0.278	3.98	\$ 4,385.24
High.22	Highland	Weaver Street Trail	0.410		0.278	0.69	\$ 2,520.55
Mine.01	Mining Entities	Existing and New Mining	1098.000			1098.00	\$ 7,623,988.22
Redl.02	Redlands	Church Street Drainage	0.130	2.550	0.047	2.73	\$ 2,268.20
Redl.03	Redlands	Judson Street Drainage	0.025	0.420	0.009	0.45	\$ 208.84
Redl.04	Redlands	Orange Street Drainage	0.100	2.770	0.035	2.91	\$ 1,247.36
Redl.05	Redlands	Wabash Street Drainage	0.048	1.100	0.017	1.17	\$ 1,041.98
Redl.06	Redlands	Borrow Pit South Rim Trail	2.140		0.278	2.42	\$ 2,285.19
Redl.07	Redlands	Redlands Aqueduct Tunnel	2.300			2.30	\$ 2,137.32
Redl.08	Redlands	Redlands Well Connector Pipeline	0.090	0.200		0.29	\$ 158.07
Redl.09	Redlands	Santa Ana River Trail	35.300		0.556	35.86	\$ 39,821.13
Redl.10	Redlands	Orange Street Well Access Road				0.00	\$ 31.53
Redl.11	Redlands	N. Orange 2, N. Orange 1, and Orange Street Wells	2.100	0.270	0.270	2.64	\$ 2,142.74
Redl.12	Redlands	Trail Across WSPA	8.147	0.152	0.152	8.45	\$ 8,291.40
Redl.13	Redlands	N. Orange 3 Wells and Connector Pipeline	0.760	1.030	0.050	1.84	\$ 3,879.16
Redl.14	Redlands	Alabama Street Improvements	5.700			5.70	\$ 5,967.55
Redl.15	Redlands	Orange Street Improvements	1.900			1.90	\$ 2,874.68
Redl.16	Redlands	Alabama Street Trail	0.720		0.278	1.00	\$ 764.38
Redl.17	Redlands	Orange Street Trail	1.900		0.278	2.18	\$ 1,844.74
VD.01.1	SBVMWD	Planned Spreading Basins and Assoc. Infrastructure	148.900	43.580	44.670	237.15	\$ 1,213,301.78
VD.01.2	SBVMWD	Planned Spreading Basins and Assoc. Infrastructure	3.061	1.070	1.071	5.20	\$ 3,612.53
VD.01.3	SBVMWD	Planned Spreading Basins and Assoc. Infrastructure	0.500	0.150	0.150	0.80	\$ 16,891.28
VD.02	SBVMWD	East Branch Extension Phase 2	13.310	2.000		15.31	\$ 17,150.24
VD.03	SBVMWD	Foothill Pipeline	5.200			5.20	\$ 22,610.90
VD.04	SBVMWD	Orange Street Connector	15.200	23.000		38.20	\$ 29,758.08
VD.05	SBVMWD	Plunge Pool Pipeline	9.400	14.500		23.90	\$ 103,724.53
VD.06	SBVMWD	SARC Pipeline and Turnout	4.050	3.000		7.05	\$ 4,843.00
VD.07	SBVMWD	Santa Ana Low Turnout Rebuild	0.750	1.000		1.75	\$ 2,467.50
VD.09	SBVMWD	Wells and Connector Pipeline	2.580	4.930	0.350	7.86	\$ 77,289.72
VD.10	SBVMWD	Alabama Street Connector Pipeline	15.250	25.170		40.42	\$ 29,604.83
TOTAL:			1719.88	210.72	147.04	2077.64	\$ 10,037,500