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

Doc#: 2013-0445782



Titles: 1 Pages: 81

Fees	0.00
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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.

28 (2) The Parties wish to collaboratively use all of their respective assets and
29 skills, including but not limited to water rights and facilities necessary or useful for the diversion
30 and storage of water, to improve the reliability of local water supplies for their respective
31 constituents by establishing a collaborative partnership to coordinate the use of their separate
32 resources for mutual advantage.

33
34 (3) The Parties specifically wish to collaborate by increasing opportunities to
35 recharge local surface water supplies, as well as State Project Water, in the San Bernardino Basin
36 Area (the "SBBA"); by reducing the time and cost required to permit and construct essential
37 public infrastructure (such as spreading basins); and by working together to achieve an efficient
38 division of labor in the operation and maintenance of water infrastructure.

39
40 (4) The Parties acknowledge that their water resource management activities
41 in the Santa Ana River wash area proceed in concert with other uses of the lands in that area,
42 including the mining of sand and gravel mineral deposits pursuant to existing leases, and habitat
43 conservation and management, pursuant to a series of multi-agency cooperative initiatives
44 involving local, state, and federal resource management and control agencies. The Parties' goal
45 is to harmonize their water resource activities with these other uses, for the optimization of
46 coordinated use by all.

47
48 (5) The Parties wish to memorialize their joint understandings by means of
49 this Agreement.

50
51 B. Findings.

52
53 (1) The Parties agree that they must increase groundwater storage in the
54 SBBA in order to meet current and future demands for water among their constituents.

55
56 (2) In the past, reasonable disagreements among the Parties have added
57 unintentional and undesirable costs and complexity to the planning and permitting of important
58 water resources projects in the region.

59
60 (3) The Parties believe that it is in their best interests, and the best interest of
61 the public they serve, to cooperate in increasing the available water supply by establishing a new
62 and more productive working relationship.

63
64 (4) In certain years, wet weather conditions and increased availability of State
65 Project Water can create a limited opportunity to improve the reliability of local water supplies
66 by increasing recharge and storage to groundwater. These favorable conditions are temporary
67 and perishable. Therefore, time is of the essence. New inter-agency operating agreements
68 should be established immediately in order to make the most of this and future opportunities
69 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.

- 536 h. *Successors and Assigns.* This Agreement shall be binding on and inure to the
537 benefit of the successors and assigns of the respective Parties to this Agreement.
538 No Party may assign its interests in or obligations under this Agreement without
539 the written consent of the other Parties, which consent shall not be unreasonably
540 withheld or delayed.
- 541 i. *Waivers.* Waiver of any breach or default hereunder shall not constitute a
542 continuing waiver or a waiver of any subsequent breach either of the same or of
543 another provision of this Agreement and forbearance to enforce one or more of
544 the rights or remedies provided in this Agreement shall not be deemed to be a
545 waiver of that right or remedy.
- 546 j. *Attorneys' Fees and Costs.* The prevailing Party in any litigation or other action
547 to enforce or interpret this Agreement shall be entitled to reasonable attorneys'
548 fees, expert witnesses' fees, costs of suit, and other and necessary disbursements
549 in addition to any other relief deemed appropriate by a court of competent
550 jurisdiction.
- 551 k. *Necessary Actions.* Each Party agrees to execute and deliver additional
552 documents and instruments and to take any additional actions as may be
553 reasonably required to carry out the purposes of this Agreement.
- 554 l. *Compliance with Law.* In performing their respective obligations under this
555 Agreement, the Parties shall comply with and conform to all applicable laws,
556 rules, regulations and ordinances.
- 557 m. *Third Party Beneficiaries.* This Agreement shall not create any right or interest in
558 any non-Party or in any member of the public as a third party beneficiary.
- 559 n. *Counterparts.* This Agreement may be executed in one or more counterparts,
560 each of which shall be deemed to be an original, but all of which together shall
561 constitute but one and the same instrument.
- 562 o. *Notices.* All notices, requests, demands or other communications required or
563 permitted under this Agreement shall be in writing unless provided otherwise in
564 this Agreement and shall be deemed to have been duly given and received on: (i)
565 the date of service if served personally or served by facsimile transmission on the
566 Party to whom notice is to be given at the address(es) provided below, (ii) on the
567 first day after mailing, if mailed by Federal Express, U.S. Express Mail, or other
568 similar overnight courier service, postage prepaid, and addressed as provided
569 below, or (iii) on the third day after mailing if mailed to the Party to whom notice
570 is to be given by first class mail, registered or certified, postage prepaid

571

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

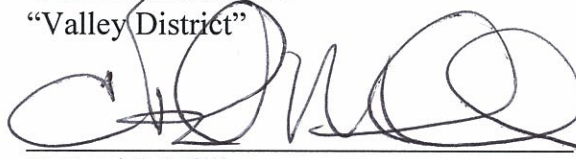
WESTERN MUNICIPAL WATER
DISTRICT
"Western"


Donald D. Galleano
President
Board of Directors

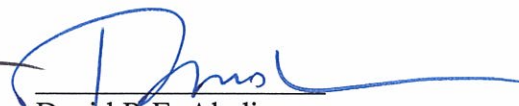
Approved as to form only:


Jeff Ferre
Best, Best & Krieger

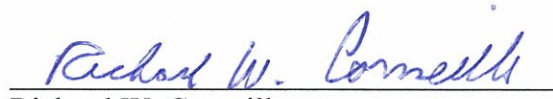
SAN BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT
"Valley District"


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)

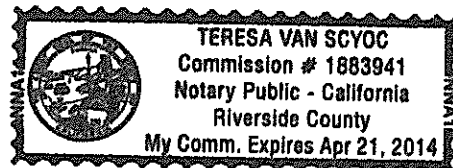
Notary Public, personally appeared Donald D. GALLEANO,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same
in his/~~her~~/their authorized capacity(ies), and that 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)

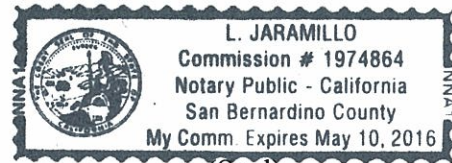
On Dec 12, 2012, before me, L. Jaramillo Notary Public
(insert name and title of the officer)

Notary Public, personally appeared C. Patrick Mulligan,
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

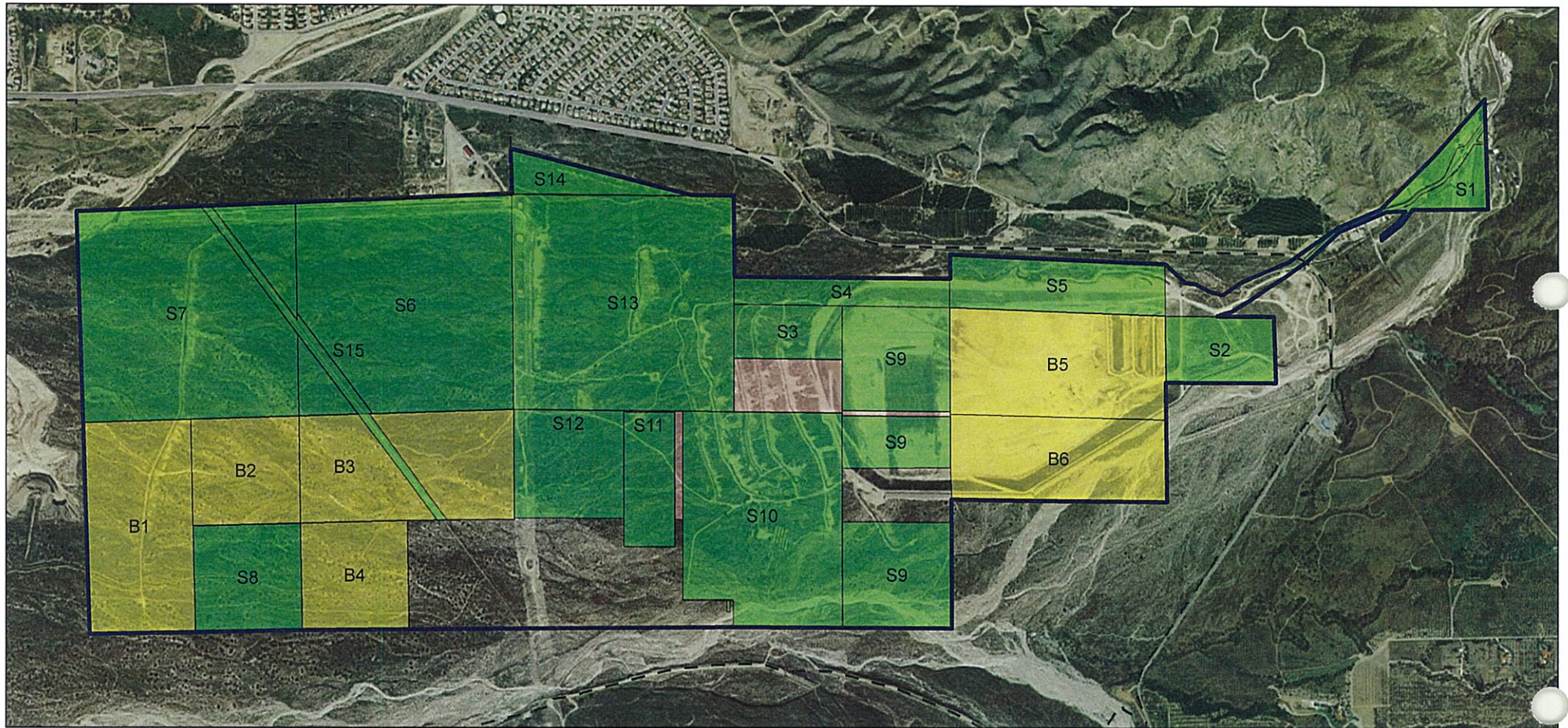
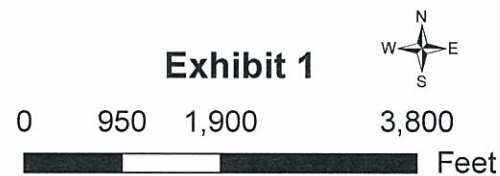


Exhibit 1



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.

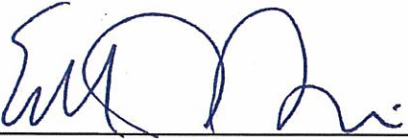
PARCEL S13: (A.P. NO. 0297-051-01 AND 0297-051-02)
THE NORTHWEST QUARTER OF SAID SECTION 7.

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.

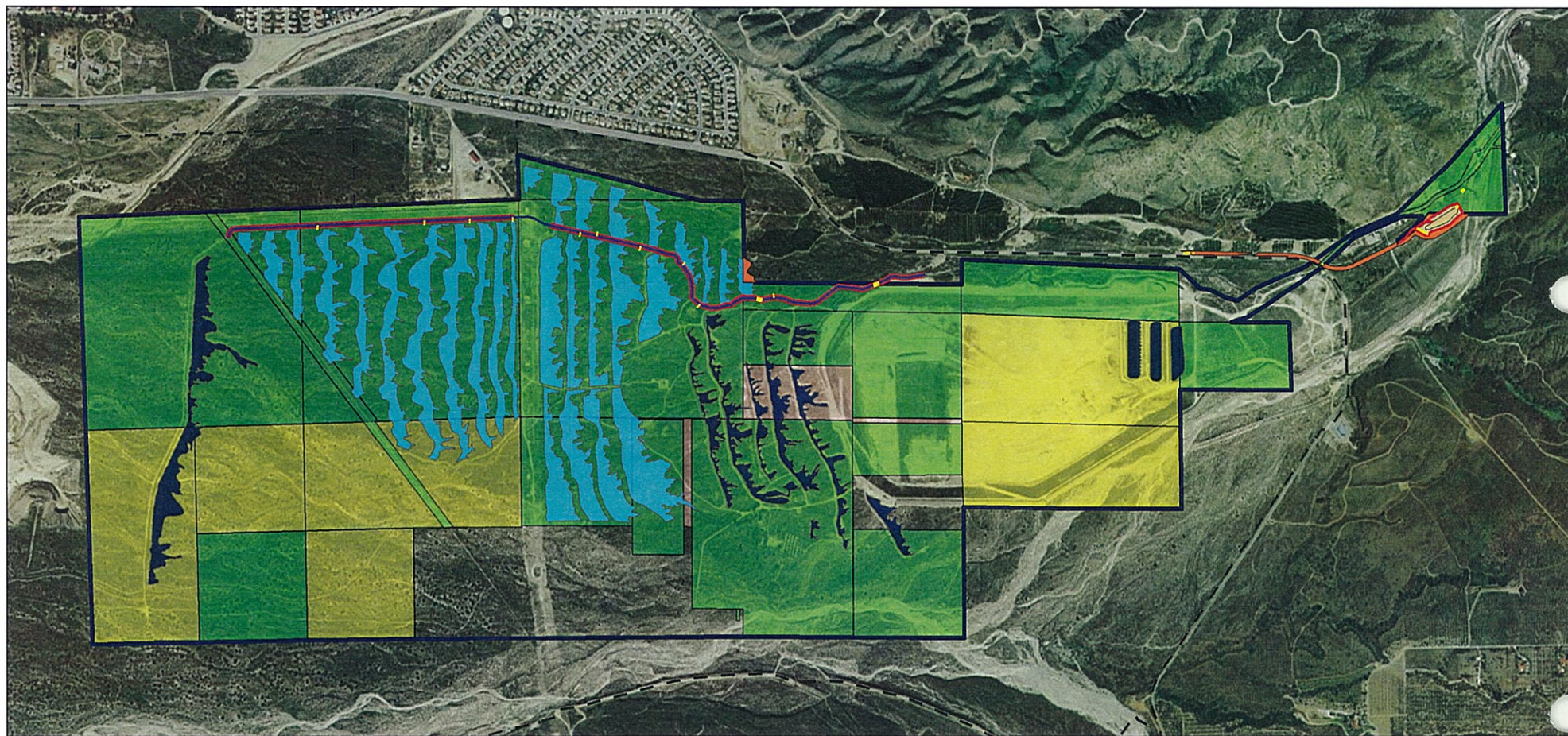
By: _____

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 inspection 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: _____

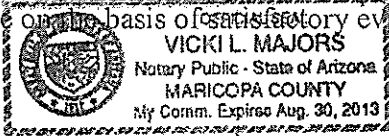
CEMEX CONSTRUCTION MATERIALS
PACIFIC, LLC

By: _____

V.P.

Arizona
State of California
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 ~~Orange~~ San Bernardino

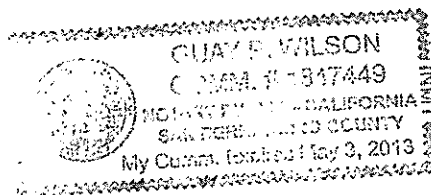
Subscribed and sworn to (or affirmed) before me on this 21 day
of October, 2011, by Clara Reyes Day,
proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Seal:

GUAY P WILSON

Signature

G P Wilson



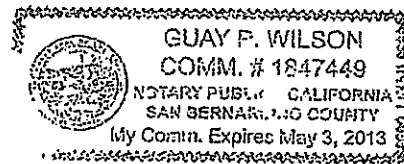
State of California

County of ~~Orange~~ ^{San} Bernardino

Subscribed and sworn to (or affirmed) before me on this 31 day
of October, 2011, by Chris Perry
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 Bernardino

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.

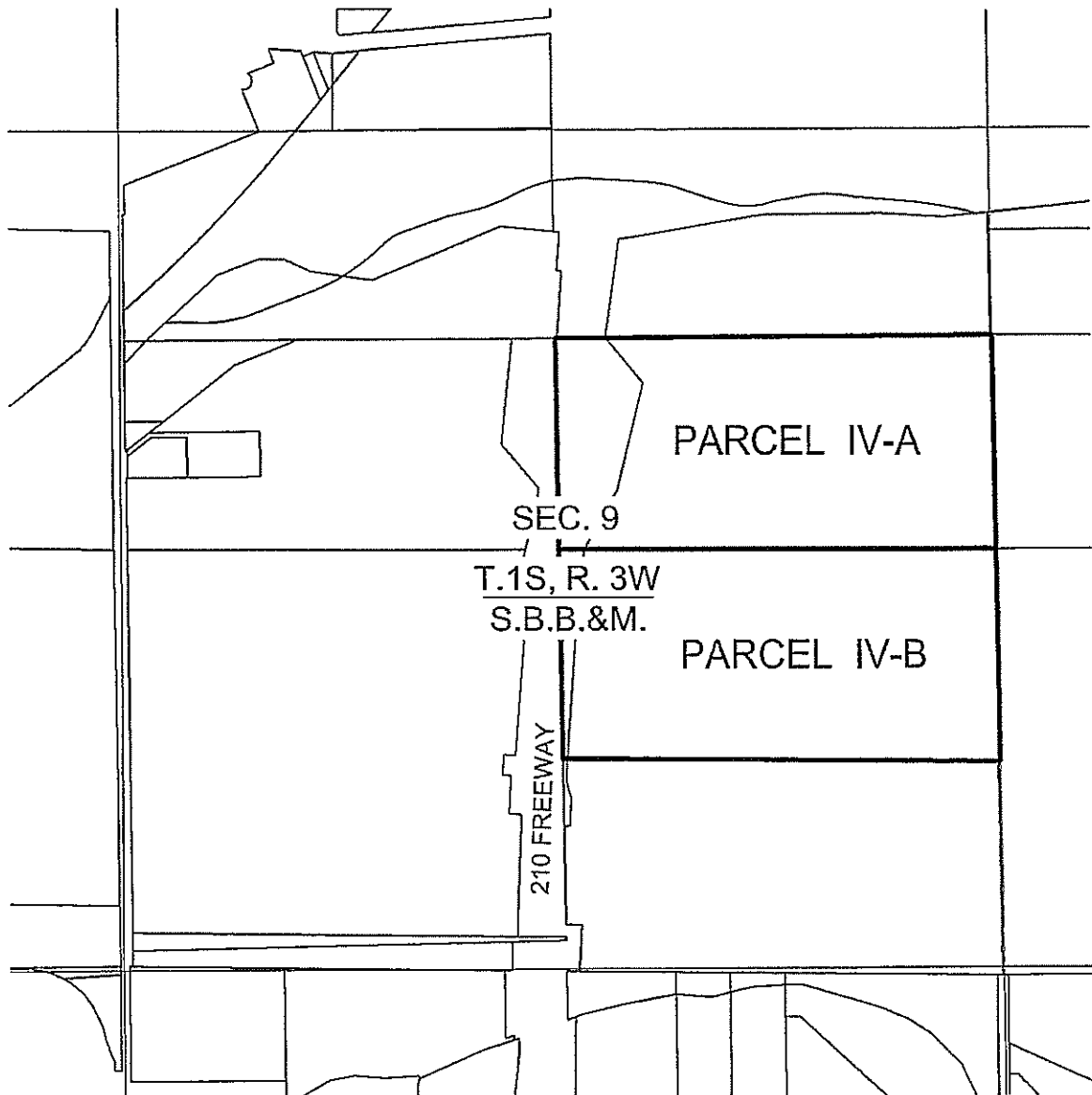
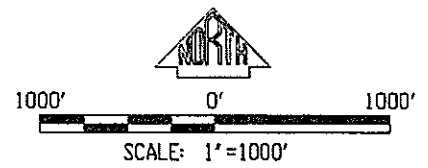
Parcel II-D: (Portion of WCD Parcel 10-2)
A non-exclusive easement across the North 60 feet of the North one-half of the Southeast Quarter of Section 10, T. 1 S., R. 3 W., SBB&M.

	<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

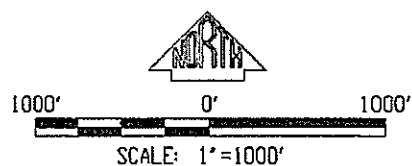
234 N. Arrowhead Ave., San Bernardino, CA. 92408
Phone: (909)885-3806 Fax: (909)381-1721

EXHIBIT "B"

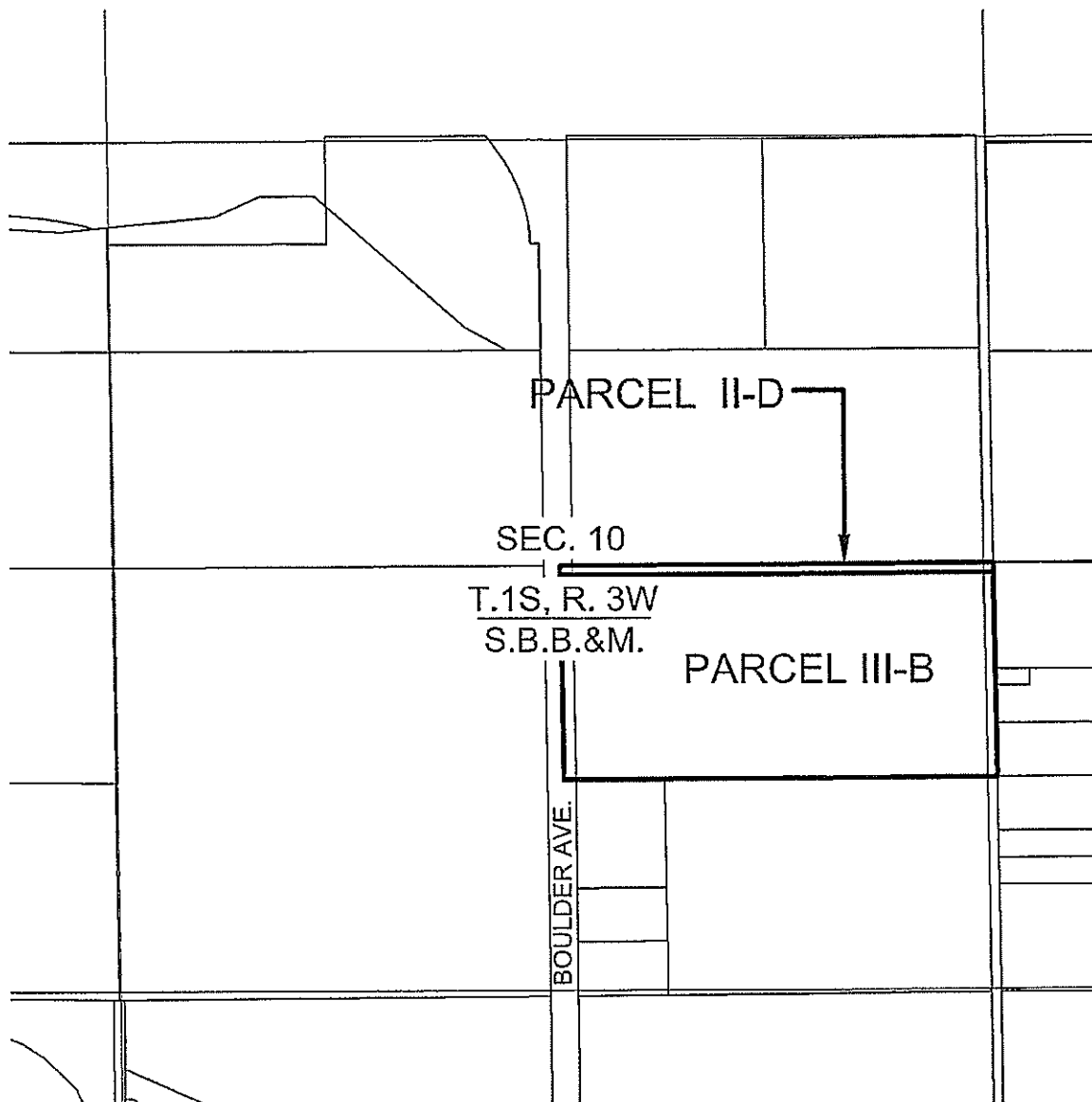
(CONTINUED)

NOV. 15, 2011

SHEET 2 OF 4



SEE SHEET 1 OF 4



SEE SHEET 3 OF 4



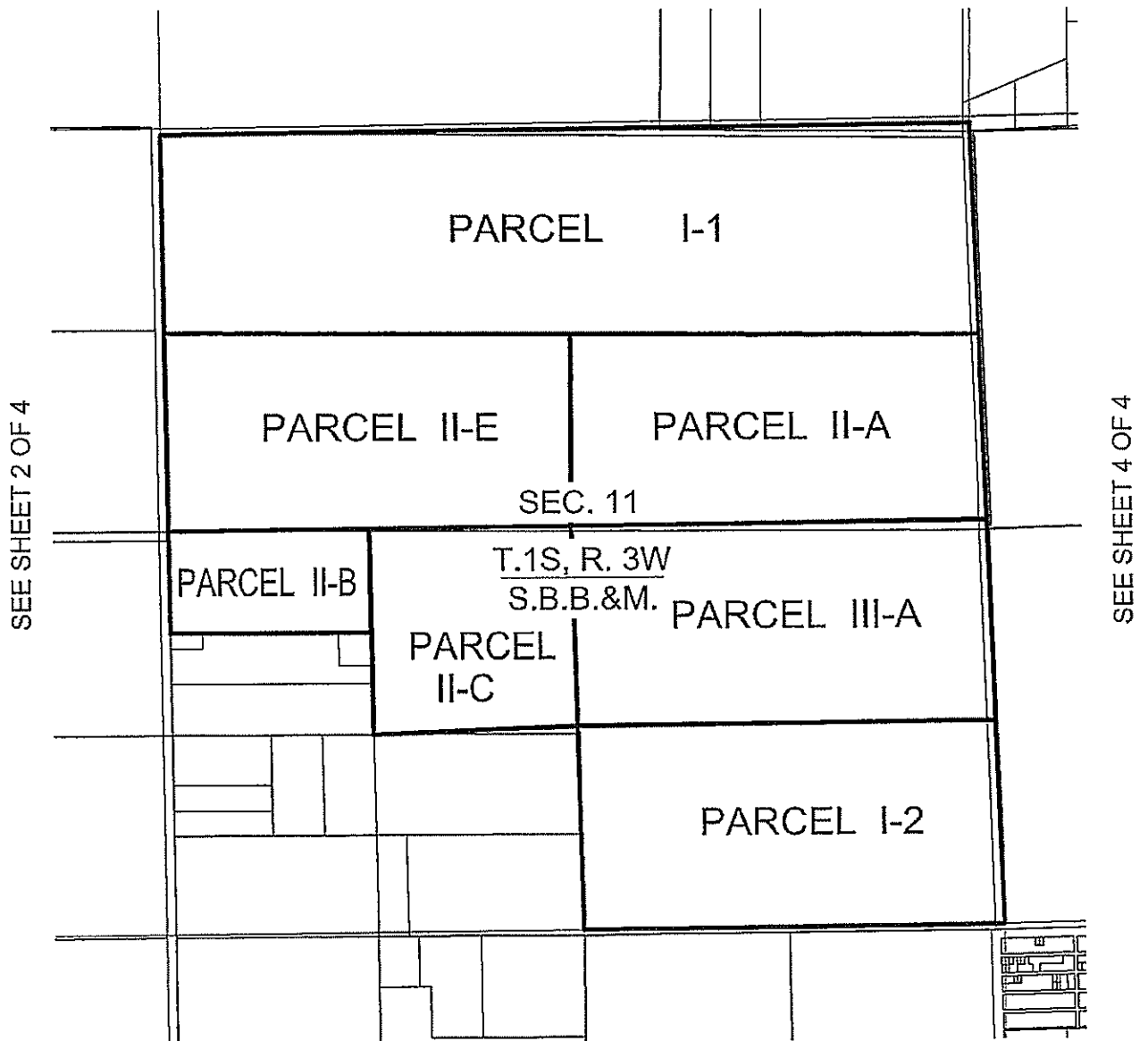
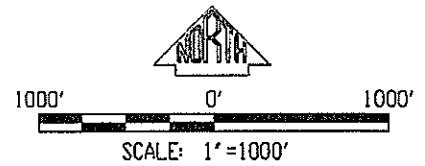
JOSEPH E. BONADIMAN & ASSOCIATES INC.
consulting engineers land surveyors

234 N. Arrowhead Ave., San Bernardino, CA. 92408
Phone: (909)885-3806 Fax: (909)381-1721

EXHIBIT "B"
(CONTINUED)

NOV. 15, 2011

SHEET 3 OF 4



JOSEPH E. BONADIMAN & ASSOCIATES INC.
consulting engineers land surveyors

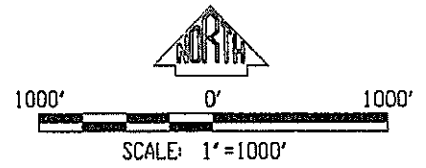
234 N. Arrowhead Ave., San Bernardino, CA. 92408
Phone: (909)885-3806 Fax: (909)381-1721

EXHIBIT "B"

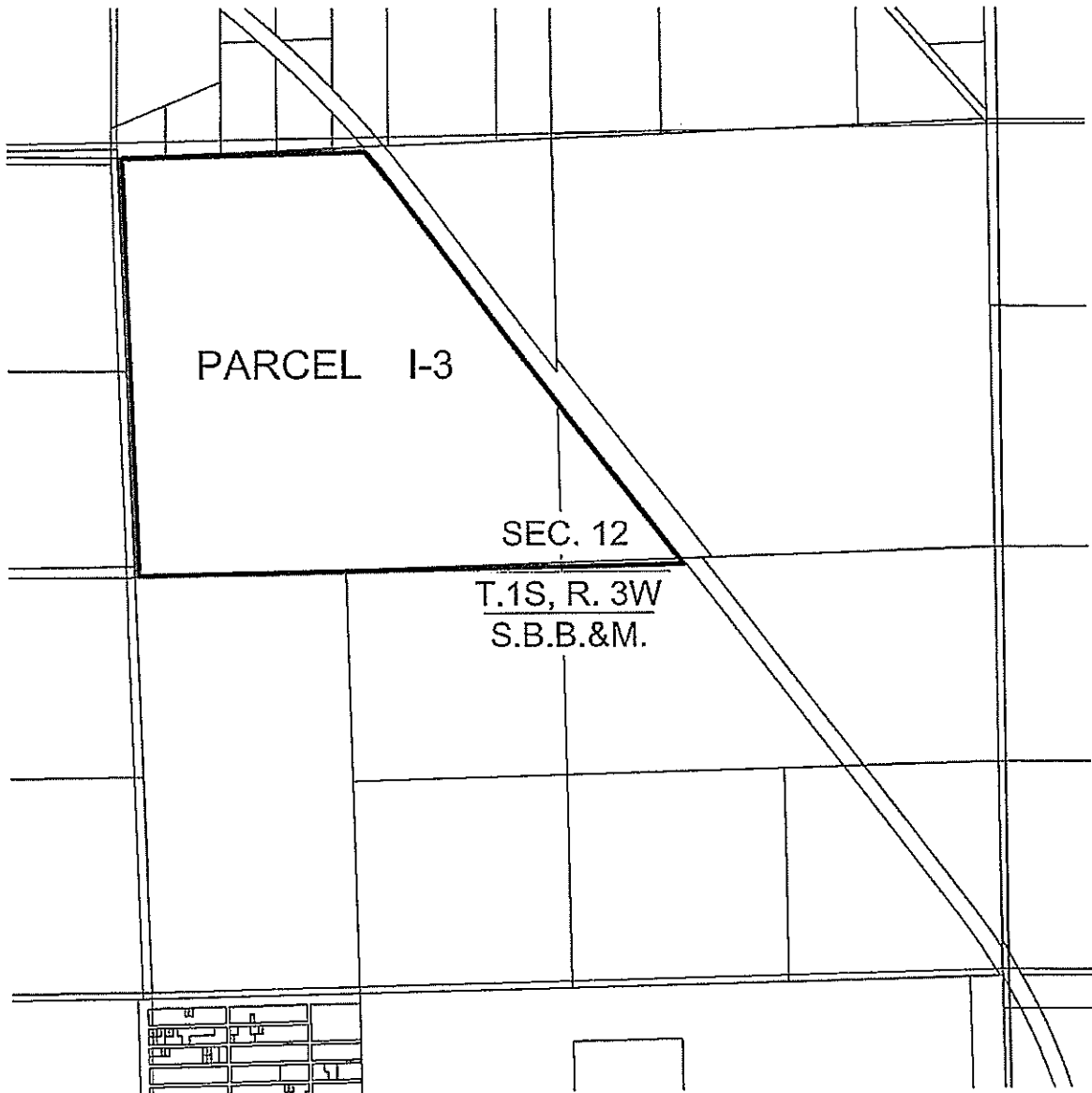
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NOV. 15, 2011

SHEET 4 OF 4



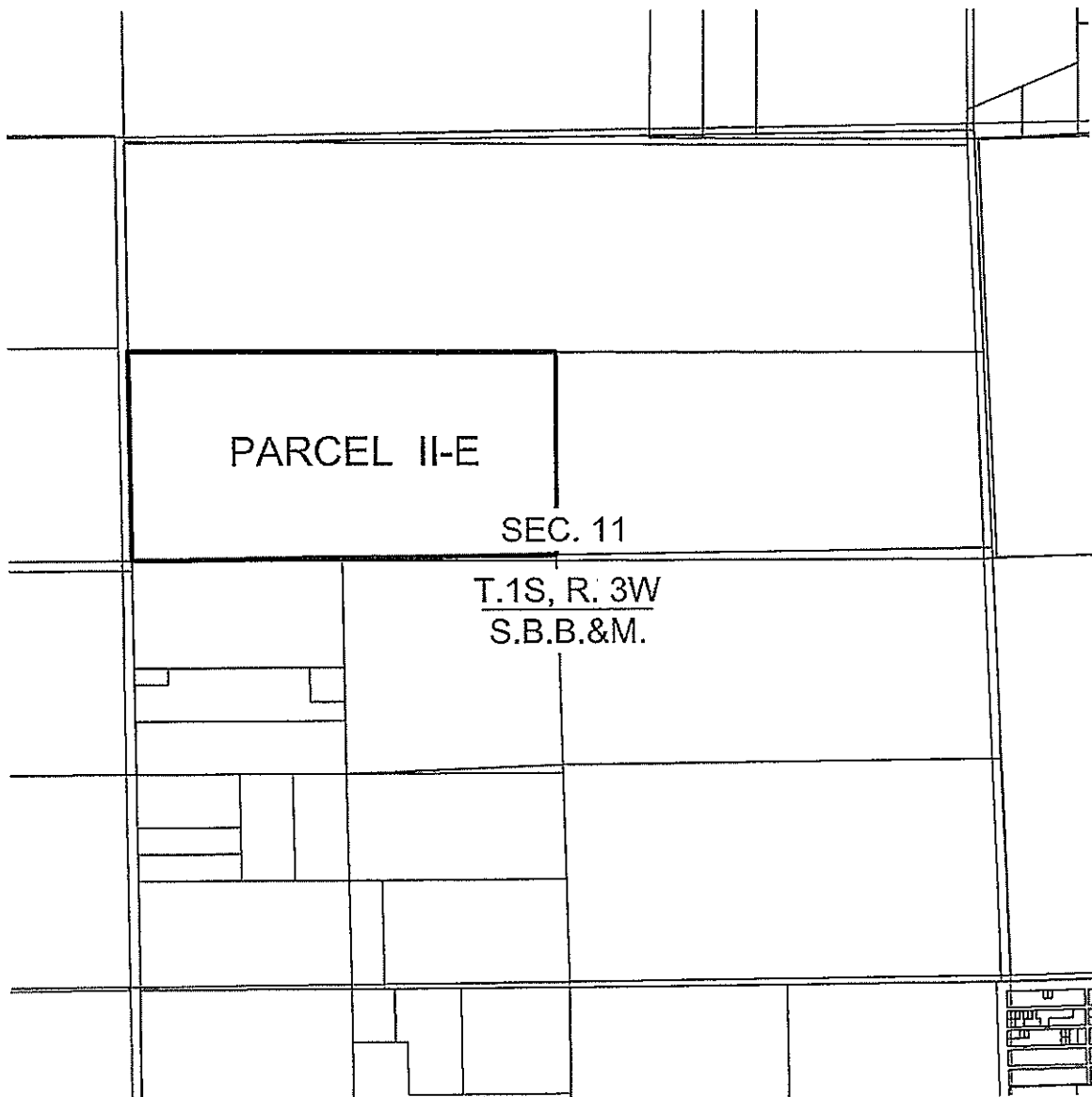
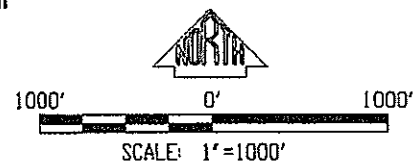
SEE SHEET 3 OF 4



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 "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

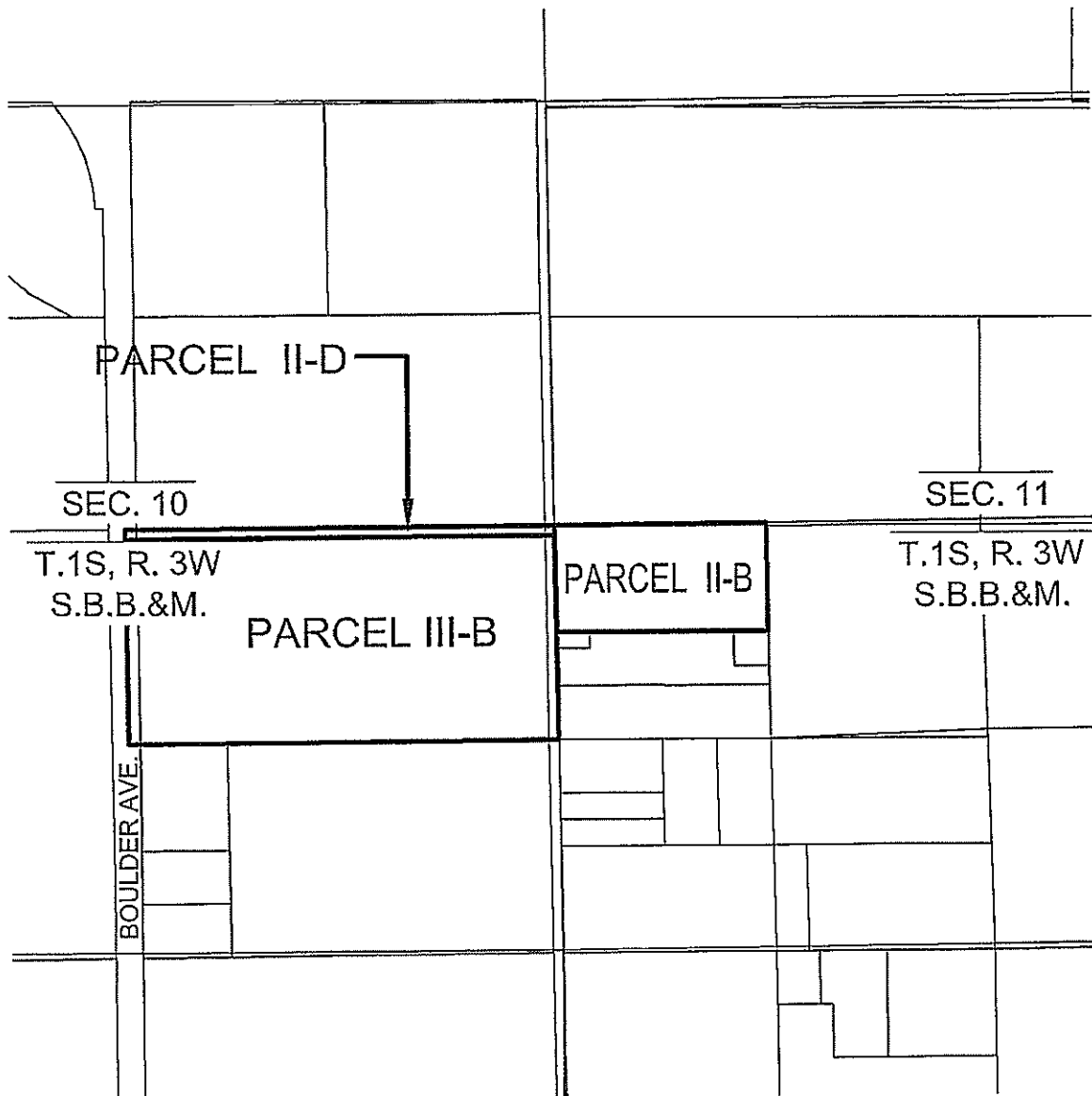
EXHIBIT "D"

"ORANGE STREET PLANT SITE"

NOV. 15, 2011



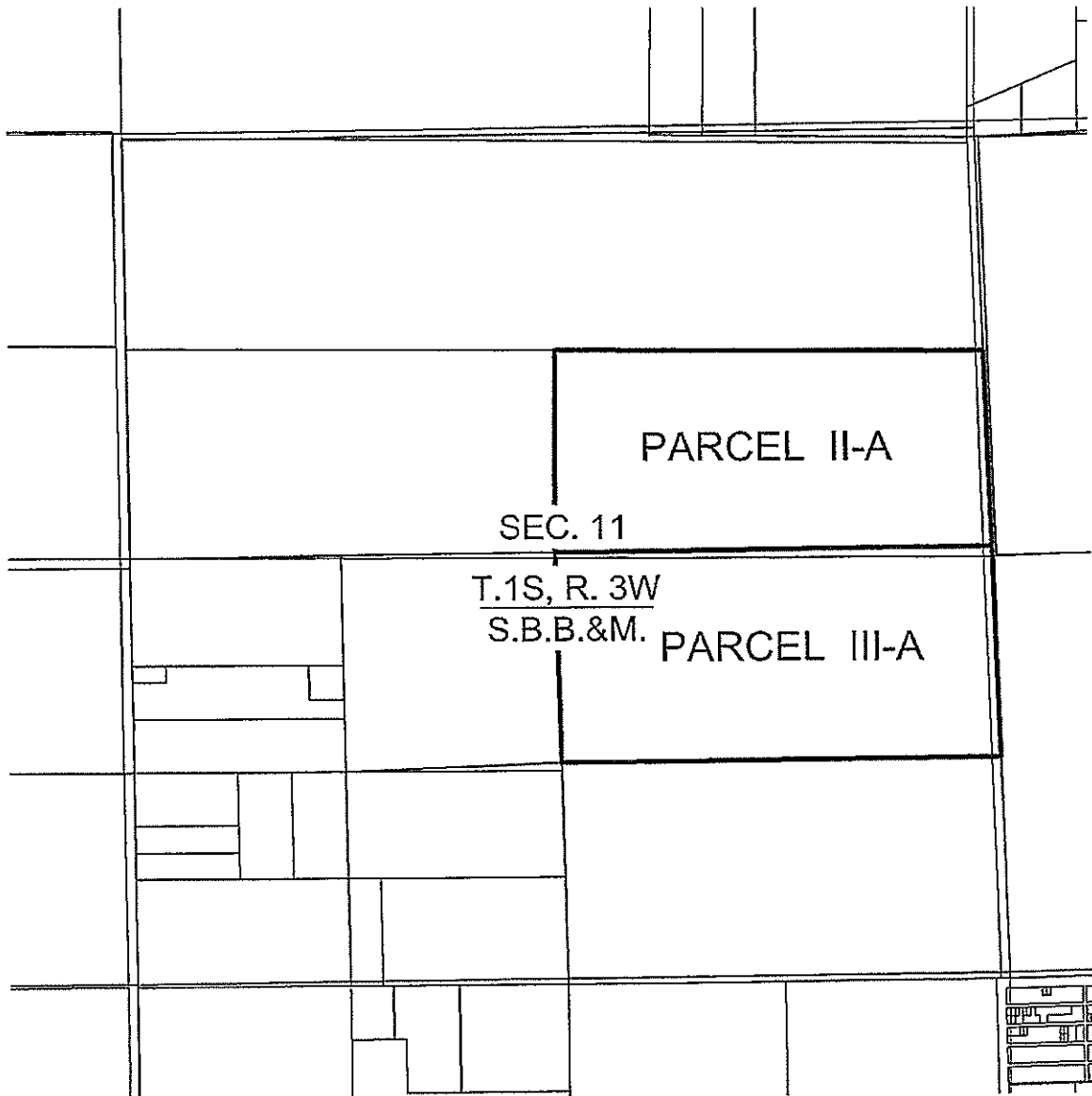
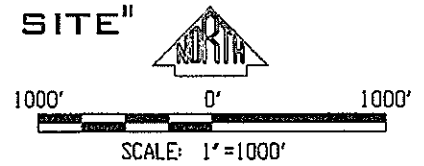
1000' 0' 1000'
SCALE: 1"=1000'



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 "E"
"REDLANDS AGGREGATES 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 4

Roberton's Ready Mix

Lease

AGREEMENT

This Agreement is made on this 11th 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.

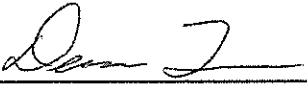
Section 17. Authority to Enter into Agreement. The Parties warrant they have all requisite power and authority to execute and perform this Agreement. Each person executing this Agreement on behalf of their party warrants that he or she has the legal power, right, and authority to make this Agreement 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.

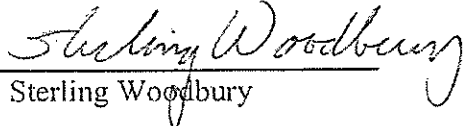
Section 20. Recordation. Within fifteen (15) days of the Effective Date, the Parties shall have this Agreement recorded with the County Recorder for the County of San Bernardino, State of California.

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

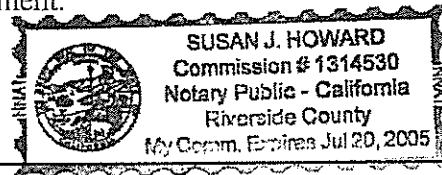
Date: 8/11/03

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

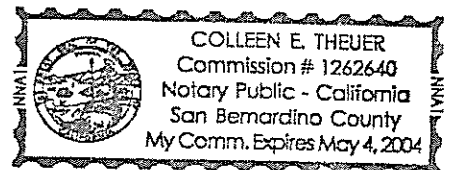


Exhibit List

<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.