



## **SPECIAL NOTICE REGARDING CORONAVIRUS DISEASE 2019 (COVID-19) AND PARTICIPATION IN PUBLIC MEETINGS**

On March 4, 2020, Governor Newsom declared a State of Emergency resulting from the threat of COVID-19. On September 16, 2021, Governor Newsom signed Assembly Bill No. 361 into law. Assembly Bill No. 361 amends Government Code section 54953(e) by adding provisions for remote teleconferencing participation in meetings by members of a legislative body, without the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions. The San Bernardino Valley Municipal Water District adopted a resolution determining, by majority vote, that, as a result of the declared State of Emergency, a meeting in person would present imminent risks to the health or safety of attendees. Accordingly, it has been determined that all Board and Workshop meetings of the San Bernardino Valley Municipal Water District will be held pursuant to the Brown Act and will be conducted via teleconference. There will be no public access to the meeting venue.

### **BOARD OF DIRECTORS WORKSHOP - RESOURCES** **THURSDAY, JULY 7, 2022 – 2:00 P.M.**

#### **PUBLIC PARTICIPATION**

Public participation is welcome and encouraged. You may participate in the July 7, 2022, meeting of the San Bernardino Valley Municipal Water District online and by telephone as follows:

**Dial-in Info: (877) 853 5247 US Toll-free**

**Meeting ID: 979 215 700**

**PASSCODE: 3802020**

**<https://sbvmwd.zoom.us/j/979215700>**

If you are unable to participate online or by telephone, you may also submit your comments and questions in writing for the District's consideration by sending them to [comments@sbvmwd.com](mailto:comments@sbvmwd.com) with the subject line "Public Comment Item #" (insert the agenda item number relevant to your comment) or "Public Comment Non-Agenda Item". Submit your written comments by 6:00 p.m. on Wednesday, July 6, 2022. All public comments will be provided to the Chair and may be read into the record or compiled as part of the record.

**IMPORTANT PRIVACY NOTE: Participation in the meeting via the Zoom app is strongly encouraged. Online participants MUST log in with a Zoom account. The Zoom app is a free download. Please keep in mind: (1) This is a public meeting; as such, the virtual meeting information is published on the World Wide Web and available to everyone. (2) Should you participate remotely via telephone, your telephone number will be your "identifier" during the meeting and available to all meeting participants; there is no way to protect your privacy if you elect to call in to the meeting.**



**SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**  
380 E. Vanderbilt Way, San Bernardino, CA 92408

**BOARD OF DIRECTORS WORKSHOP - RESOURCES**

**AGENDA**

**2:00 PM Thursday, July 7, 2022**

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**CALL TO ORDER**

Chairperson: Director Hayes

Vice-Chair: Director Harrison

**1) INTRODUCTIONS**

**2) PUBLIC COMMENT**

Any person may address the Board on matters within its jurisdiction.

**3) DISCUSSION ITEMS**

3.1 Consider Estimating the Plausible Maximum Water Demand in the Valley District Service Area(Page 3)

[Staff Memo - Consider Estimating the Plausible Maximum Water Demand in the Valley District Service Area](#)

[Proposal from RAND Corporation](#)

3.2 Consider the Proposal to Update the Estimate of New Conservation Water Made Possible by Seven Oaks Dam(Page 11)

[Staff Memo - Consider the Proposal to Update the Estimate of New Conservation Water Made Possible by Seven Oaks Dam](#)

[Geoscience Proposal](#)

[2013 Agreement Regarding Additional Extractions of New Conservation Water from the San Bernardino Area](#)

**4) FUTURE BUSINESS**

**5) ADJOURNMENT**

**PLEASE NOTE:**

Materials related to an item on this Agenda submitted to the Board after distribution of the agenda packet are available for public inspection in the District's office located at 380 E. Vanderbilt Way, San Bernardino, during normal business hours. Also, such documents are available on the District's website at [www.sbvmd.com](http://www.sbvmd.com) subject to staff's ability to post the documents before the meeting. The District recognizes its obligation to provide equal access to those individuals with disabilities. Please contact Melissa Zoba at (909) 387-9228 two working days prior to the meeting with any special requests for reasonable accommodation.



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**DATE:** July 7, 2022

**TO:** Board of Directors' - Resources Workshop

**FROM:** Bob Tincher, Chief Water Resources Officer/Deputy General Manager  
Adekunle Ojo, Manager of Water Resources

**SUBJECT:** Consider Estimating the Plausible Maximum Water Demand in the Valley District Service Area

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### **Staff Recommendation**

Staff is recommending that the Board consider hiring the RAND Corporation to enhance their previous water supply and demand analysis to include an estimate of the plausible maximum water demand in the Valley District service area which can be used to help evaluate the region's long-term water supply strategies. The proposed project cost is \$132,639.

### **Summary**

The *2020 Upper Santa Ana River Watershed Integrated Regional Urban Water Management Plan* (IRUWMP) evaluates the region's water supply and demand. The IRUWMP relies on the most recent population projections which are lower than past projections and results in a "flatter" future demand projection. This flatter demand projection could inadvertently result in a false sense of security regarding the region's projected supplies beyond the 2045 horizon of the IRUWMP. Staff and the Basin Technical Advisory Committee (BTAC) are recommending this analysis of the General Plan of each city in Valley District's service area to estimate the range of plausible maximum water demand at buildout. This study would be the first time the region has bridged the gap between land use planning and water resources planning and would provide valuable input into the next iteration of the IRUWMP that is due in 2026 while also beginning an important relationship between land use planners and the water community.

### **Background**

Valley District hired the RAND Corporation (RAND) to perform an independent analysis of the water demands and supplies in the 2015 *San Bernardino Valley Regional Urban Water Management Plan* (RUWMP). RAND evaluated plausible variations in (1) precipitation, (2) temperature, (3) State Water Project (SWP) infrastructure configurations, (4) SWP environmental

regulations (5) local surface water availability and (6) water use efficiency. The results suggested that the region could overcome its plausible range of uncertainty by increasing the amount that supplies exceed demand from 10% to 15% (Reliability Factor). RAND also developed a computer model to calculate the Reliability Factor that has been provided to staff and can be used to re-evaluate the Reliability Factor each planning cycle (every 5 years) to respond to changing conditions.

Staff is asking the Board to consider hiring RAND to update their previous work to include the latest supply and demand data from the IRUWMP and to calculate a plausible maximum water demand based upon the most recent land use planning data. RAND would also update the computer model to calculate the plausible maximum demand so that staff could update the calculation, based upon changing conditions, along with the Reliability Factor, each planning cycle.

### **District Strategic Plan Application**

This project is consistent with Valley District's Mission Statement to *work collaboratively to provide a reliable and sustainable water supply to support the changing needs of our region's people and environment* and with the following strategies:

- Proactively manage a diverse, adaptable water supply portfolio to maximize the value of the region's water assets
- Drive science-based decision making and proactive risk management
- Build trust by being a collaborative and resourceful partner through effective communication and engagement

### **Fiscal Impact**

The total cost of the project proposal is \$132,639. Funding for this project is included in the General Fund Budget for FY 2022-23 under line item 6360 Consultants.

### **Attachment**

Proposal from RAND Corporation



ANGELA KORDELL  
CONTRACTS ADMINISTRATOR

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PITTSBURGH, PA  
15213-2665

TEL 412.683.2300 X 4273  
FAX 412.683.2800  
akordell@rand.org

June 13, 2022

San Bernardino Valley Municipal Water District  
380 E Vanderbilt Way  
San Bernardino, CA 92408  
Bob Tincher  
Chief Water Resources Officer/Deputy General Manager

Subject: RAND’s Revised Proposal No. 2021-1148 to Evaluate the Ultimate Demand for the San Bernardino Valley Municipal Water District Service Area

Dear Mr. Tincher:

The RAND Corporation (“RAND”) is pleased to submit the enclosed revised proposal as verbally requested for RAND to provide support to Evaluate the Ultimate Demand for the San Bernardino Valley Municipal Water District.

RAND is a non-profit organization providing objective analysis and effective solutions to address the challenges facing the public and private sectors around the world. RAND’s mission requires that we serve the public interest through wide dissemination of our research results. RAND respectfully reserves the right to negotiate mutually agreeable terms, particularly in the areas of intellectual property and publication rights. We are confident that we can reach mutually acceptable terms and conditions consistent with RAND's mission and the objectives of the San Bernardino Valley Municipal Water District.

For questions of a technical nature, please contact Michelle Miro at (310) 393-0411 x6235 or by email at [mmiro@rand.org](mailto:mmiro@rand.org). For contractual or business matters or questions, please contact me at (412) 683-2300 x4273, or by email at [akordell@rand.org](mailto:akordell@rand.org). We thank you for the opportunity to participate in this important project.

Sincerely,

Angela Kordell

**RESEARCH AREAS**

- Children, Families, and Communities
- Cyber and Data Sciences
- Education and Literacy
- Energy and Environment
- Health, Health Care, and Aging
- Homeland Security and Public Safety
- Infrastructure and Transportation
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- Law and Business
- National Security and Terrorism
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## **RAND Proposal to Enhance Plausible Demand for the San Bernardino Valley Municipal Water District Service Area**

### ***Overview***

As a part of its regular planning, the San Bernardino Valley Municipal Valley Water District (Valley District) assesses their likely available supply under a set of future conditions and compares these values to the anticipated demands by the various retail water suppliers. These plans are developed on a five-year cycle and evaluate the next 25 years. Supply development or demand conservation plans are then included to ensure that supply is available to meet demands, above a certain amount of redundancy, or Reliability Factor, into the future.

To augment prior planning efforts, such as the 2015 Regional Urban Water Management Plan (RUWMP), the RAND Corporation analyzed the plausible range of future demand, as well as the plausible range of future supplies under a broad set of conditions. These analyses have informed planning efforts through the selection of a new, variable Reliability Factor capable of accounting for future uncertainty in both supply and demand, as well as by providing specific key benchmarks for adjusting the Reliability Factor.

However, these studies examined the “plausible” range of future demand based on published accounts of technology adoption, local projections of population growth and feasible climate changes for the planning cycle of the RUWMP which projected out to 2040 but did not estimate the maximum, plausible demand based upon planned build-out of the Valley District service area or include plausible reductions in demand based upon anticipated trends in California. Valley District desires to enhance the range of plausible, total demand based upon city, county or other master land use plans. The concept of “build-out demand” therefore estimates a theoretical, plausible upper limit on how much water supply the Valley District would need into the future. This analysis will also evaluate the 2020 IRUWMP methodology for estimating demand in the context of recent studies on water demand projection best practices.

Best practices in estimating future water demand suggest consideration of relevant local and regional planning documents, such as general plans or master plans that may be created by various governmental units or agencies.<sup>1</sup> This is beneficial for a two primary reasons. The first is that reliance on current residential housing density, rather than planned housing density, can often lead to an overestimation of per capita water use. In much of Southern California, a trend towards higher-density housing may mean more residents, but it also suggests smaller homes that may have less demand for outdoor irrigation. A deeper examination of general plans can help inform both per capita water use rates in addition to the number of residents at build-out. The importance of this assessment is underscored by recent work by the Pacific Institute that found that future demand can be inflated due to overestimates of per capita demand.<sup>2</sup> The second benefit of evaluating land use plans is that it allows the estimation of a plausible maximum demand for an area. While current planning documents may forecast out a couple of decades, the region may not reach its full development potential within this timeframe, thereby providing a false sense of security about its ability to meet the long term demands of its residents.

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<sup>1</sup> Heberger, M., Donnelly, K., and H. Cooley (2016). “A Community Guide for Evaluation Future Urban Water Demand”. <https://pacinst.org/wp-content/uploads/2016/08/A-Community-Guide-for-Evaluating-Future-Urban-Water-Demand-1-1.pdf>

<sup>2</sup> Abraham, S., Diringer, S., and H. Cooley (2020). “An Assessment of Urban Water Demand Forecasts in California”. <https://pacinst.org/wp-content/uploads/2020/08/Pacific-Institute-Assessment-Urban-Water-Demand-Forecasts-in-CA-Aug-2020.pdf>

## ***Approach***

RAND proposes to enhance its prior work for the Valley District by calculating the build-out, or maximum, demand for the Valley District service area and incorporating it into prior RAND work, namely the model used to calculate the Reliability Factor. The RAND model enables Valley District to modify key metrics and re-calculate the Reliability Factor. This model will be updated to include the key metrics affecting demand at build-out so that the model can be run, over time, to accommodate changes. To carry out this work, RAND proposes the following set of tasks:

### **1. BTAC Presentation and Kick-Off**

RAND presented the results of the prior work and introduced the concept of enhancing the work to cover build-out demand to the Basin Technical Advisory Committee (BTAC) at their December 2021 meeting. The BTAC was supportive of this effort and pledged their support for providing RAND with relevant datasets, key individuals and important planning documents to review.

As a second part of this task, RAND will plan, in partnership with Valley District staff, a kick-off meeting with retail agencies and local planning officials to be held at the Valley District office. In addition to serving as a mechanism for the Valley District to engage with local planners on water issues, this kick-off meeting will introduce the study, discuss study data collection needs, and hear from planners and agencies in attendance on their impressions on the population growth and development limits of the region.

### **2. Data Collection, Verification and Validation; Planning Document Review**

During the kick-off meeting with local agencies and planners, RAND, in partnership with or via Valley District staff, will issue a data request to retail agencies and/or city planning departments for geospatial and other datasets that complement or underlie master, general or similar plans. These data will allow RAND to validate master plan numbers and quantify the build-out demand across the service area by integrating datasets across cities, agencies and planning districts. Depending on the nature of the data available, RAND may generate a master GIS repository that will be shared with Valley District staff.

Because this project will rely on a range of datasets provided by different entities within the Valley District service area and will span a duration longer than typical planning studies, RAND will carry out both *data verification* and *data validation* processes. The *data verification* process will include a number of checks within the plans or related data files provided to RAND: i) the data provided in individual files are consistent in units, format, etc.; ii) the data is free of erroneous values (e.g., unreasonably high or low values that signal a potential error); iii) the data are well-described and clear (e.g., data labels are consistent and understandable). If errors are found within provided data files during the data verification process that RAND is unable to fix, RAND will follow up with the data provider to clarify values, units or fix other inconsistencies. The *data validation* process will include additional checks to ensure values are reasonable, including: i) total acreage planned for a specific use does not surpass the limits or area of the planning or other authority; ii) the data provided matches the most current plan for build-out that was approved by the land use authority. RAND will also follow up with the data provider for additional information if any issues with data reasonableness are found during the *data validation* process. If either process reveals unreliable data, RAND will work with Valley District staff on the best path to addressing the issue (e.g., replacing the data with a sensitivity analysis, relying on accepted planning standards, etc.)



In parallel to data collection, verification and validation, RAND will also systematically review the most recent city to regional plans that describe planned development. In addition to using these plans to validate and provide transparency into the data described above, during this review, we will incorporate plausible anticipated changes to building codes, indoor and outdoor water demand limits and any other water efficiency measures that would impact future per capita water use. We will also make note of any planned developments (such as data centers) that could introduce a new or specific customer water demand not currently included in the customer types for a specific retail agency or jurisdiction. These variables will enable ongoing, future adjustment of per capita or per customer water use rates over time. If sufficient information is not available from existing per capita or per customer water use rates, RAND will utilize existing peer-reviewed or other authoritative sources that document per capita water use rates from similar demand types.

### 3. Develop Demand Methodology; Generate Initial Estimate of Plausible Maximum Demand

Before enhancing the demand model to calculate build-out demand, RAND will review: i) the demand calculation methodology from the 2020 Upper Santa Ana River Integrated Regional Urban Water Management Plan (IRUWMP); ii) the Pacific Institute's *An Assessment of Urban Water Demand Forecasts in California* that was published in August 2020 (after prior RAND work with the Valley District on demand was completed); iii) other relevant similar reports on best practices for urban water demand forecasting that have become available in recent years. Using these three sets of resources, RAND will either utilize the IRUWMP methodology directly or make recommendations regarding any enhancements to this methodology. Before changes to the IRUWMP demand methodology are made, RAND will work with Valley District staff to ensure any changes are useful and implementable by Valley District staff moving forward.

Once a methodology for calculating build-out demand is determined, RAND will calculate the build-out demand based on the information collected during the previous task. Given the inherent uncertainty in future development patterns, building codes and requirements, RAND will generate three estimates: i) one based upon current building codes and water use efficiency requirements; ii) a second based upon plausible, future building codes and water use efficiency requirements, including any emerging, but not yet implemented policies, such as California Senate Bill 8 and California Senate Bill 9, which promote growth of the housing sector and allow homeowners to add new housing on their property. This will be carried out through the addition of scenarios that change some of the assumptions of the density of residential housing in the Valley District's service area.

RAND will also perform a sensitivity test of the demand methodology, in which some of the planning assumptions will vary based on plausible build-out or per capita water use rates, to understand how sensitive build-out demand is to a given metric.

### 4. Local Engagement with Planning Departments

In addition to the independent analysis of available data and planning documents, RAND will also engage directly with local planning departments to validate buildout calculations or update assumptions that may have changed since planning documents were published. To do so, RAND will develop a semi-structured interview protocol, a common tool used in policy analysis research, that will guide discussions with local planners and ensure consistent feedback is collected across individual discussions. Valley District staff will have the opportunity to review and provide feedback on the protocol. RAND will also work with Valley District staff to refine

the list of interviews. Initial selections will be based on relative size of the agency they represent, their engagement in the kick-off meeting, the age of planning documents and the amount of data/information available to quantify build-out demand for their planning area. Once interviews are complete, RAND will analyze findings and update demand numbers, as needed.

As a conclusion to this task, RAND, in partnership with Valley District staff, will host a short workshop with local planning departments to present initial findings on build-out demand and discuss their implications on regional water management. This workshop represents a key opportunity for the Valley District to continue engaging with planning districts on water-smart planning.

#### 5. Generate Short Report

The motivations for this project, methods and findings will be summarized in a short RAND Report. Per RAND institutional guidelines, this report will be peer-reviewed and published on the RAND website. All data used to calculate build-out demand in Task 2 will be provided to the Valley District staff in either GIS or tabular form, depending on data availability.

#### 6. Update RAND Model

RAND will add the calculation of build-out demand to its existing model used to calculate the Reliability Factor and to identify any future gaps between supply and demand. The existing model was originally developed based on the 2015 Regional Urban Water Management Plan. This model will be revised to use the 2020 Integrated Regional Urban Water Management Plan as its basis. Accordingly, RAND will also update the tool created to accompany the existing model with the build-out demand, as well as additional selection criteria in the tool (e.g., population growth, demand values, and/or projected changes in local temperature and precipitation). The existing tool can be found here: <https://www.rand.org/pubs/tools/TLA1284-1/tool.html>

#### *Timeline*

RAND proposes to work with Valley District staff, including a monthly check in call over the duration of the project, as well as engage with staff for ongoing input and feedback on findings and deliverables. RAND will brief the Board at the close of the project. Given the amount of stakeholder input needed, the timeline for this project is approximately 12 months.

#### *Cost*

The total estimated cost for this work is detailed on the following page.

Project Name:	Evaluating the Ultimate Demand for the San Bernardino Valley Municipal Water District Service Area																
Proposal Number:	20211148																
Start Date:	August 1, 2022																
End Date:	July 31, 2023																
				Task 1		Task 2		Task 3		Task 4		Task 5		Task 6		Total	
			RATE	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost
<b>Labor</b>																	
Professional Employee																	
	Miro,Michelle E	Information Scientist, Full	\$ 291.28	16	\$ 4,660	40	\$ 11,651	24	\$ 6,991	16	\$ 4,660	40	\$ 11,651	96	\$ 27,963	232	\$ 67,577
	Research Reviewer, Sr	Research Reviewer, Sr	\$ 401.06	0	\$ -	0	\$ -	0	\$ -	0	\$ -	12	\$ 4,813	8	\$ 3,208	20	\$ 8,021
	Research Reviewer, Sr	Research Reviewer, Sr 2	\$ 401.06	0	\$ -	0	\$ -	0	\$ -	0	\$ -	12	\$ 4,813	0	\$ -	12	\$ 4,813
PRGS	Balagna,Jay	Policy Researcher, Asst - 1st Year	\$ 114.81	24	\$ 2,755	120	\$ 13,777	16	\$ 1,837	120	\$ 13,777	40	\$ 4,592	0	\$ -	320	\$ 36,739
<b>Total</b>				<b>40</b>	<b>\$ 7,416</b>	<b>160</b>	<b>\$ 25,428</b>	<b>40</b>	<b>\$ 8,828</b>	<b>136</b>	<b>\$ 18,438</b>	<b>104</b>	<b>\$ 25,869</b>	<b>104</b>	<b>\$ 31,171</b>	<b>584</b>	<b>\$ 117,150</b>
<b>Non-Labor</b>																	
Travel					\$ 203.00		\$ -		\$ 203.00		\$ 101.00		0		\$ -		\$ 507.00
Independent Consultant Agreement					0		\$ -		\$ -		\$ 500.00		0		\$ 500.00		\$ 1,000.00
Publications					0		\$ -		\$ -		\$ 7,893.00		0		\$ 6,089.00		\$ 13,982.00
Total Non Labor					\$ 203.00		\$ -		\$ 203.00		\$ 8,494.00		\$ -		\$ 6,589.00		\$ 15,489.00
<b>Total Price</b>					<b>\$ 7,619</b>		<b>\$ 25,428</b>		<b>\$ 9,031</b>		<b>\$ 26,932</b>		<b>\$ 25,869</b>		<b>\$ 37,760</b>		<b>\$ 132,639</b>
Independent Consultant Agreement to cover the costs of an External Review of RAND Report																	
Travel Costs Cover - Local travel for workshop and briefing if needed																	
Publications cover the Publication and Editing of RAND Report																	



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**DATE:** July 7, 2022

**TO:** Board of Directors' - Resources Workshop

**FROM:** Bob Tincher, Chief Water Resources Officer/Deputy General Manager  
Adekunle Ojo, Manager of Water Resources

**SUBJECT:** Consider the Proposal to Update the Estimate of New Conservation Water Made Possible by Seven Oaks Dam

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### **Staff Recommendation**

Staff is recommending that the Board place this item on a future regular Board of Directors meeting agenda for consideration.

### **Summary**

The Western-San Bernardino Judgment (Judgment) recognizes that natural safe yield (precipitation) of the San Bernardino Basin (SBB) will change over time due to changes in precipitation and due to the construction of additional facilities that capture “new” water not included in the original calculation of natural safe yield. This new water is referred to as “new conservation” in the Judgment. In 2011, the Watermaster agreed that the new water right obtained by Valley District and Western Municipal Water District (Western), made possible by the construction of Seven Oaks Dam, results in new conservation water and agreed to quantify the amount. The resulting investigation increased the natural safe yield by 42,840 acre-feet which thereby increased the Riverside Entities portion by 11,974 acre-feet and the San Bernardino Entities portion by 30,866 acre-feet. The Watermaster’s 2013 *Agreement Regarding Additional Extractions of New Conservation Water from the San Bernardino Area* requires that this calculation be updated to consider the latest hydrology no less than five (5) years and no more than ten (10) years, or 2023. The Watermaster solicited a proposal from Geoscience Support Services, who performed the initial calculation (see attached), at a cost of \$118,579. The parties are proposing to split the cost, or \$59,289.50 each, with Valley District managing the contract. The work is expected to be completed within 7-8 months.

## **Background**

Practically, any increase in safe yield allows the Riverside Entities to pump additional groundwater from the SBB and benefits the individual water budgets for each of the agencies in the SBB Groundwater Council, which reduces any “gap” between their supply and demand. Although the safe yield has been higher since 2013, both the Riverside Entities and the San Bernardino Entities have not required this additional amount since their pumping has been lower than even the original safe yield amount due to significant demand reduction associated mainly with water conservation.

The attached Geoscience proposal was reviewed by the Watermaster and will provide an updated new conservation amount, considering updated hydrology, that would apply until 2027 and up to 2032. The calculation will also consider any true-up that may be necessary to account for differences between the previous estimate of new conservation and the actual new conservation amount.

## **District Strategic Plan Application**

This project is consistent with Valley District’s Mission Statement to work collaboratively to provide a reliable and sustainable water supply to support the changing needs of our region’s people and environment and with the following strategies:

- Proactively manage a diverse, adaptable water supply portfolio to maximize the value of the region’s water assets
- Drive science-based decision making and proactive risk management
- Build trust by being a collaborative and resourceful partner through effective communication and engagement

## **Fiscal Impact**

The total cost of the project proposal is \$118,579. Funds for these services were budgeted in the Consultants, 6360-line item of the approved FY 2022-2023 General Fund Budget. The cost will be split equally between Valley District and Western Municipal Water District, resulting in a net cost to Valley District of \$59,289.50.

## **Attachments**

1. Geoscience Proposal
2. 2013 Agreement Regarding Additional Extractions of New Conservation Water from the San Bernardino Area

# GEOSCIENCE

The First Name in Groundwater

June 2, 2022

Mr. Bob Tincher, PE  
Chief Water Resources Officer / Deputy General Manager  
San Bernardino Valley Municipal Water District  
380 East Vanderbilt Way  
San Bernardino, CA 92408-3593

**Re: Scope of Work and Cost Estimate to Update the New Conservation Water Calculation**

Dear Bob:

Per your request on April 13, 2022, Geoscience Support Services, Inc. (Geoscience) has prepared this scope of work and cost proposal to provide modeling services to update the New Conservation Water in the San Bernardino Basin Area due to the construction of Seven Oaks Dam. The New Conservation Water calculation for the historical period from 1998 through 2012 and future forecasting period from 2013 through 2051 was performed by Geoscience in 2013 using the OPMODEL and HSPF Watershed Model. This work was conducted for San Bernardino Valley Municipal Water District (Valley District) and Western Municipal Water District (Western) (collectively "Parties"). Per the 2013 *Agreement Regarding Additional Extractions of New Conservation Water from the San Bernardino Basin Area* (see Attachment A), the Parties agreed to update this calculation not less than five years and no more than 10 years, which would be July 2023. The purpose of this modeling is to provide an updated New Conservation Water calculation for the historical period from 2013 through 2021 and future forecasting period from 2022 through 2060. In addition, comparisons of actual New Conservation Water will be made against previous estimates and the amount used by San Bernardino and Riverside entities, which will allow the adjustment of future estimates of New Conservation Water to "true up" any differences.

The following sections discuss the proposed approach, tools, scope of work, schedule, and cost estimate.

## Approach

We propose to use the same approach that we used previously to quantify the New Conservation Water. New Conservation Water in the San Bernardino Basin Area was defined in the 1969 Western Judgment IV (i) as "any increase in replenishment from natural precipitation which results from operation of works and facilities not now in existence [i.e., Seven Oaks Reservoir], other than those works installed and operations

PO Box 220 Claremont, CA 91711  
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[www.gssiwater.com](http://www.gssiwater.com)

which may be initiated to offset losses caused by increased flood channelization.” Under the same Judgment, New Conservation Water does not contribute to the Natural Safe Yield, which is “that portion of the safe yield of the San Bernardino Basin Area which could be derived solely from natural precipitation in the absence of imported water and the return flows therefrom, and without contributions from new conservation” (Western Judgment IV (h), 1969). Calculation of the New Conservation Water permits Watermaster to allow additional extractions by Plaintiffs and users in San Bernardino County equal to the amount of New Conservation Water after the construction of the Seven Oaks Dam in 1998. Each of the Plaintiff parties share the Safe Yield and New Conservation Water as follows:

Party/Plaintiff	Percent of Safe Yield and New Conservation
Valley District	72.05%
City of Riverside	22.49%
Riverside Highland	1.85%
Agua Mansa	3.38%
University of California Regents	0.23%

The methodology for updating the New Conservation Water is provided in Attachment B of this proposal. Attachment B, Table B1, shows all of the terms involved in calculating historical New Conservation Water as well as the method used to determine each term for the historical period (2013-2021). Each of the terms in the New Conservation Water calculation will be calculated based on gaged and observed data, watershed modeling using the HSPF model, daily OPMODEL, or formula. The same methodology will also be used to calculate annual amounts of New Conservation Water going forward for the future period (2022-2060). These annual calculations can be used to either allow additional extractions on a year-to-year basis, or can be used to refine long-term annual forecasts of New Conservation Water.

After the New Conservation Water is calculated, comparisons of actual New Conservation Water will be made against previous estimates and the amount used by San Bernardino and Riverside entities, which will allow the adjustment of future estimates of New Conservation Water to “true up” any differences.

## Tools

Two main tools will be used to calculate and forecast the New Conservation Water in the San Bernardino Basin Area. These are a Hydrologic Simulation Program – Fortran (HSPF) Watershed Model of the area and the daily OPMODEL, which characterizes operations at Seven Oaks Reservoir.

## Scope of Work

For purpose of this project, the following tasks are proposed.

- Task 1 – Collect and Compile Hydrogeologic Data Required for HSPF Watershed Model and OPMODEL for the Period 2013 through 2021,
- Task 2 – Update the HSPF Watershed Model and OPMODEL for the Period from 2013 through 2021,
- Task 3 – Run HSPF Watershed Model and OPMODEL to Quantify New Conservation Water for the Historical Period from 2013 through 2021 (Two Model Runs)
- Task 4 – Run HSPF Watershed Model and OPMODEL to Forecast New Conservation Water for the Future Period from 2022 through 2060 (Three Model Runs),
- Task 5 – Evaluate Differences between Actual, Previously Estimated, and Used New Conservation Water
- Task 6 – Prepare Draft and Final Technical Memorandum
- Task 7 – Project Management and Prepare for Attend Meetings

### **Task 1: Collect and Compile Hydrogeologic Data Required for HSPF Watershed Model and OPMODEL for the Period from 2013 through 2021**

The HSPF Watershed Model and OPMODEL require a variety of data to characterize the water balance and hydrologic processes that occur in a watershed, including:

- Land Use,
- Precipitation,
- Evaporation,
- Streamflow,
- Type of Stream Channel,
- Applied Water,
- Diversions, and
- Wastewater Discharge

We will collect and compile the hydrogeologic data required for the HSPF Watershed Model and OPMODEL for the period from 2013 through 2021.

### **Task 2: Update the HSPF Watershed Model and OPMODEL for the Period from 2013 through 2021**

We will use the hydrogeologic data collected from Task 1 to update the HSPF Watershed Model and OPMODEL for the period from 2013 through 2021. After the HSPF Watershed Model is updated, the model will also be calibrated against measured streamflow data for the period from January 1, 2013, through December 31, 2021, using 2016 (representing the latest available dataset) land use data. The streamflow gaging stations used for model calibration include: Santa Ana River at E Street, San Timoteo Creek near



Loma Linda, Lytle Creek at Colton, Warm Creek near San Bernardino, and Santa Ana River at MWD Crossing. Model calibration will be evaluated in accordance with guidelines provided by the United States Environmental Protection Agency (EPA, 2000). The calibration process will involve adjusting model parameters until the model provided a good fit between the simulated and measured daily and monthly streamflow.

### Task 3: Run HSPF Watershed Model and OPMODEL to Quantify New Conservation Water for the Historical Period from 2013 through 2021 (Two Model Runs)

In order to quantify New Conservation Water for the period 2013 to 2021, Geoscience will run two HSPF Watershed Model and OPMODEL scenarios (i.e., Scenarios 1 and 2) by varying land use conditions, retention basin conditions, stream channel conditions, Seven Oaks Dam conditions, and diversions.

The following table summarizes the assumptions of the proposed HSPF Watershed Model and OPMODEL scenarios.

Scenario	Land Use Conditions	Retention Basin Conditions	Stream Channel Conditions	Seven Oaks Dam in Place	SBVWCD Diversions	Senior Water Rights Diversions	Valley District/Western SAR Diversions
1	1963	1963	1963	No	Seasonal Licenses	Historical	None
2	2016	2016	2016	Yes	Licensed Rights	Historical	2013-2021 Diversions using Existing Facilities

The New Conservation Water can be calculated by comparing the sum of Santa Ana River diversions (by San Bernardino Valley Water Conservation District (SBVWCD) and Valley District/Western) and Santa Ana River (SAR) streambed percolation between Scenario 1 and Scenario 2, as shown in Attachment B, Table B1.

### Task 4: Run HSPF Watershed Model and OPMODEL to Forecast New Conservation Water for the Future Period from 2022 through 2060 (Three Model Runs)

New Conservation Water resulting from the continued operation of the Seven Oaks Reservoir will be also forecasted from 2022 through 2060. Forecasting the annual amounts of New Conservation Water resulting from operation of Seven Oaks Reservoir provides the Plaintiffs another indication of the benefit they may derive from their investment in New Conservation Water, and also establishes a methodology for periodically establishing long-term forecasts of New Conservation Water in the future. It will permit further modification of Adjusted Rights pursuant to the Judgment.

Three different forecast scenarios will be used to estimate New Conservation Water going forward from 2022 through 2060 using three different rates of diversions to the SAR Spreading Grounds (SG). These are:

1. Case A: Existing SAR SG spreading capacity of 195 cfs,
2. Case B: Enhanced SAR SG spreading capacity of 300 cfs, and
3. Case C: Enhanced SAR SG spreading capacity of 500 cfs.

The baseline (Pre Project) scenario with SAR SG at Cuttle Weir of 150 cfs (as experienced during the Safe Yield period) was completed previously. Three model runs will be performed to forecast the New Conservation Water under the spreading ground diversion rates outlined above (Post Project).

Each term involved in the forecast of New Conservation Water will be quantified using the procedures outlined in Attachment B, Table B1, with the HSPF Watershed Model and OPMODEL.

#### **Task 5: Evaluate Differences between Actual, Previously Estimated, and Used New Conservation Water**

Geoscience will evaluate actual New Conservation Water versus previous estimates to quantify the magnitude of any differences and identify the components (e.g., hydrology) contributing to those discrepancies. Geoscience will also compare actual amounts of New Conservation Water to the New Conservation Water used by the San Bernardino and Riverside entities. This will allow any adjustment to future estimates of New Conservation Water to be made to “true up” any differences. The amounts of New Conservation Water used by San Bernardino and Riverside entities will be provided by Valley District.

#### **Task 6: Prepare Draft and Final Technical Memorandum**

Geoscience will prepare a draft technical memorandum summarizing all work conducted for this study. This technical memorandum will include approach and tools, model descriptions, assumptions, and New Conservation Water results, including any adjustment that is needed for the New Conservation Water estimate. Figures and tables will be included in the technical memorandum to show New Conservation Water used by San Bernardino and Riverside entities and modeling results for the calculation of New Conservation Water for the historical period from 2013 through 2021 and future period from 2022 through 2060.

Geoscience will submit the draft technical memorandum to the Parties for review and comments. A Final Technical Memorandum will then be prepared that incorporates all comments received on the draft technical memorandum.

#### **Task 7: Project Management and Prepare for Attend Meetings**

Geoscience will coordinate project activities throughout the project. Project management includes additional hours and costs to cover tasks related to any unforeseen issues or requests that arise during the course of the project.

Geoscience will also prepare for and attend six (6) monthly meetings (including one kick off meeting) to present the approach, modeling assumptions, and results during the modeling efforts.

Geoscience also expects to attend two (2) Watermaster meetings to present the approach, modeling assumptions, and results for the New Conservation Water calculation.

## Schedule

Proposed Tasks 1 through 7 presented above are anticipated to take approximately seven months, including one month for the Parties to review the draft Technical Memorandum.

## Cost Estimate

A breakdown of cost by task and anticipated staff participation is provided in attached Table 1. As shown, the total proposed cost for Task 1 through Task 7 is \$118,579.

If you have any questions, please contact me at (909) 451-6650

Sincerely,

A handwritten signature in blue ink that reads "Johnson Yeh". The signature is fluid and cursive, with the first name "Johnson" and the last name "Yeh" clearly legible.

Johnson Yeh, PhD, PG, CHG  
Principal Geohydrologist  
Encl.

Table 1

**Cost Proposal for Professional Services  
To Provide Modeling Services for New Conservation Water Calculation**

Task Description		GEOSCIENCE SUPPORT SERVICES, INC.						TOTALS			
		Principal Modeler	Senior Modeler	Project Geohydrologist	Senior Associate Modeler	Associate Modeler	GIS/CAD Specialist	Total Geoscience Hours	Labor	Reimbursable Expenses <sup>1</sup>	Total Cost
<i>Hourly Rate:</i>		\$289	\$264	\$213	\$210	\$196	\$155				
1.0	Collect and Compile Hydrogeologic Data Required for HSPF Watershed Model and OPMODEL for the Period from 2013 through 2021	6	12		80	24	16	138	\$ 28,886		\$ 28,886
2.0	Update the HSPF Watershed Model and OPMODEL for the Period from 2013 through 2021	6	12		72			90	\$ 20,022		\$ 20,022
3.0	Run HSPF Watershed Model and OPMODEL to Quantify New Conservation Water for the Historical Period from 2013 through 2021 (Two Model Runs)	4	12		24			40	\$ 9,364		\$ 9,364
4.0	Run HSPF Watershed Model and OPMODEL to Forecast New Conservation Water for the Future Period from 2022 through 2060 (Three Model Runs)	6	18		36			60	\$ 14,046		\$ 14,046
5.0	Evaluate Differences between Actual, Previously Estimated, and Used New Conservation Water	1	4		16			21	\$ 4,705		\$ 4,705
6.0	Prepare Draft and Final Technical Memorandum	4	32	16	40		32	124	\$ 26,372		\$ 26,372
7.0	Project Management and Prepare for Attend Meetings (Assumes Six Monthly Meetings with the Parties and Two Watermaster Meetings)	16	40					56	\$ 15,184		\$ 15,184
<b>TOTAL HOURS AND COST</b>		<b>43</b>	<b>130</b>	<b>16</b>	<b>268</b>	<b>24</b>	<b>48</b>	<b>529</b>	<b>\$ 118,579</b>	<b>\$ -</b>	<b>\$ 118,579</b>

**Notes:**

- 1 Reimbursable Expenses Include Subconsultant Fees, Mileage, and report reproduction costs.  
GEOSCIENCE is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects.  
The work GEOSCIENCE performs does not fall under prevailing wage rate categories.
- 2 Geoscience's Schedule and Consultants Fee included with this bid are valid for a period of 6 months assuming the starting date shown in the attached Project Schedule.
- 3 Geoscience will manage work hours between employee classifications or utilize other employee classifications provided that the total project fee is not exceeded without prior approval of the Owner.  
Geoscience will first request approval from the Owner before work hours are managed between Tasks as listed in the Consultants Fee Schedule.
- 4 Services not Specifically Identified in the Scope of Work are not included in this Agreement for Professional Services.

**ATTACHMENT A**

**2013 Agreement Regarding Additional Extractions of New Conservation Water  
from the San Bernardino Basin Area between Western Municipal Water District  
of Riverside County and San Bernardino Valley Municipal Water District**



**2013 AGREEMENT REGARDING ADDITIONAL EXTRACTIONS  
OF NEW CONSERVATION WATER  
FROM THE SAN BERNARDINO BASIN AREA  
BETWEEN  
WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY  
AND  
SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**

**2013 AGREEMENT REGARDING ADDITIONAL EXTRACTIONS  
OF NEW CONSERVATION WATER  
FROM THE SAN BERNARDINO BASIN AREA**

This Agreement is entered into between San Bernardino Valley Municipal Water District (“Valley District”) and Western Municipal Water District of Riverside County (“Western”) on July 17, 2013.

**RECITALS**

A. Western and Valley District are parties to the Judgment in the case of *Western Municipal Water District of Riverside County v. East San Bernardino County Water District, et al.*, Riverside Superior Court No. 78426 (“Western Judgment” or “Judgment”).

B. The Judgment is administered and enforced by a Watermaster, consisting of a committee of two persons, one representative nominated by Valley District, and one by Western.

C. The Judgment further implements the physical solution in the related Orange County Water District action, as well as determines the rights of the named Plaintiffs to extract water from the San Bernardino Basin Area (“SBBA”), and provide replenishment of the area above Riverside Narrows. Among other provisions, the Judgment provides that the annual “adjusted right” of each Plaintiff to extract and export water from the SBBA is the sum of (a) its base right, which was adjusted based on a determination of safe yield and is currently expressed as a percentage of safe yield; and (b) an equal percentage of any new conservation, provided the conditions described in the Judgment are met. Similarly, the Judgment provides that Valley District shall provide imported water for replenishment of the SBBA at least equal to the amount by which extractions in any five year period exceed the 1959-1963 “base period” extractions (such amount was reduced based on a determination of safe yield and may be increased by the amount of any new conservation).

D. “New Conservation” is defined in the Judgment as “[a]ny increase in replenishment from natural precipitation which results from operation of works and facilities not now in existence, other than those works installed and operations which may be initiated to offset losses caused by increased flood control channelization.”

E. The Seven Oaks Dam is a component of the Santa Ana River Mainstem Project and was originally conceived as a way to address anticipated flooding on the Santa Ana River. In addition to providing flood control benefits and related incidental water conservation, Western and Valley District wished to formally include water conservation as an element of the facility. In 1991, Western and Valley District jointly filed an application to appropriate water conserved as part of the Seven Oaks project. The State Water Resources Control Board approved the application and issued permits to Western and Valley District in 2010.

F. Construction on the Dam began in the mid 1990s. Western, Valley District and Plaintiffs in the above-referenced action agreed to a methodology for participation in the project and a cost sharing formula pursuant to Paragraph VI(b)2 of the Judgment. Based on the cost sharing formula, Western, Valley District and Plaintiffs entered cost sharing agreements to study the feasibility of water conservation and to fund the physical improvements necessary to achieve water conservation in connection with the operation of the Dam.

G. The acquisition of the water rights permit and the related infrastructure improvements allow Western and Valley District to fully utilize water conserved by the project for replenishment of the SBBA.

H. As part of the 1991-2010 water rights permitting process, Western and Valley District developed models and other analytical tools to forecast hydrology and calculate water conservation. Over the last 2 years, a collaborative group of stakeholders has been meeting to further develop the models and procedures necessary to forecast long-term average New Conservation.

I. In addition to utilizing the recently-developed models and analytical tools to project future long-term average New Conservation, Watermaster has utilized the models and analytical tools to calculate the amount of New Conservation that occurred from 1998 through 2012. Watermaster was previously unable to calculate such New Conservation because the models and analytical tools were still being developed.

J. Consistent with the Judgment and cost-sharing agreements, Plaintiffs have paid their proportionate share of New Conservation-related costs through December 31, 2012 and are therefore entitled to the benefits associated with their allocated share of New Conservation that occurred from 1998 through 2012 due to operation of the Dam.

K. The Judgment does not provide a mechanism by which to allocate New Conservation retroactively. However, Paragraph VI(b)6 of the Judgment provides that Western and Valley District may enter into agreements providing for additional extractions from the SBBA. Western and Valley District have utilized Paragraph VI(b)6 in the past to allow additional extractions from the SBBA.

L. In addition, Western, Valley District and the City of Riverside are parties to an "Agreement Relating to the Diversion of Water from the Santa Ana River System" ("Diversion Agreement") dated March 20, 2007, wherein the parties acknowledge that water conservation in the SBBA associated with the operation of Seven Oaks Dam may cause adverse impacts on the Riverside Basin. The parties agreed that one method of mitigating such adverse impacts was to provide for additional Plaintiff extractions in the SBBA in an amount equal to the amount of replenishment in the SBBA that would have occurred in the Riverside Basin in the absence of the Seven Oaks Project, in exchange for a like amount of reduction in extractions in the Riverside Basin near the key wells used to measure Valley District's compliance with the Judgment objectives

M. Parties to the Diversion Agreement also agreed to implement an accounting methodology under the Western Judgment that will allow Plaintiffs to fully utilize their water



rights in the SBBA. In conjunction with this Agreement, the full use of such water rights could be facilitated by amending the August 18, 2004 Paragraph VI(b)6 agreement entitled “Western Replenishment and Extraction Agreement” which would allow Plaintiffs, in any year in which their entitlement was not fully used, to return any amount of water up to the amount of imported water previously acquired from Western.

N. The primary purpose of this Agreement is to provide for additional extractions of water from the SBBA by Plaintiffs and users within Valley District without replenishment by Valley District in amounts equal to the amount of New Conservation determined by Watermaster to have occurred from 1998 through 2012 due to operation of the Dam. As to future New Conservation associated with the operation of the Dam, Watermaster will utilize Paragraph VI(b)1, VI(b)2, and VI(c) to account for such New Conservation, as provided herein. In addition, another purpose of this Agreement is to ensure implementation of specific provisions of the 2007 Diversion Agreement related to New Conservation, as referenced in Recitals L and M, above.

O. Although the Judgment does not require court approval of Paragraph VI(b)6 agreements, the parties have historically sought court approval of such agreements.

NOW, THEREFORE, in consideration of the mutual covenants of the parties, and based upon the recitals above, IT IS HEREBY AGREED TO AS FOLLOWS:

1. Definition of Additional Extractions. As used herein, the term “additional extractions” means any extraction of water by Plaintiffs in the above-referenced action in excess of the amounts permitted by the Judgment; with respect to entities other than Plaintiffs in such action, the term means any extractions in excess of the total amount of water that can be produced from the SBBA without any replenishment obligation. No replenishment obligations shall be incurred on account of any additional extractions made pursuant to this Agreement.

2. Amount of Additional Extractions. Watermaster has determined that the total quantity of New Conservation resulting from operation of the Seven Oaks Dam for the period of 1998 through 2012 is 42,840 acre-feet. Consistent with the Judgment, such amount may be extracted by Plaintiffs and non-plaintiff entities producing water within the SBBA as additional extractions pursuant to this Agreement.

3. Allocation of Additional Extractions to Plaintiffs. Plaintiffs may make additional extractions from the SBBA for use within Western in any future year in the aggregate amount of 11,974 AF, or 27.95% of the 1998-2012 New Conservation water. Such amount shall be allocated among individual Plaintiffs as follows:

a.	City of Riverside	9,635 AF
b.	Meeks and Daley Water Co.	1,448 AF
c.	Riverside Highland Water Co.	793 AF
d.	Regents of University of California	98 AF

Such individual allocations are in proportion to Plaintiffs' respective shares of the safe yield of the SBBA.

4. Allocation of Additional Extractions to Other Entities. Entities in San Bernardino County other than Plaintiffs who produce water within the SBBA may make additional extractions from the SBBA in any future year in the amount of 30,866 AF, or 72.05% of the 1998-2012 New Conservation water.

5. Periodic Changes in Paragraph VI(b) and VI(c) Allowable Extractions. Periodically Watermaster shall consider making changes in:

(a) the portion of Plaintiffs' "adjusted right" related to New Conservation determined pursuant to Paragraph VI(b); and

(b) the New Conservation to which users in Valley District are entitled pursuant to Paragraph VI(c).

Such periodic consideration and any resulting changes shall be made to ensure that over a long-term period, equal to or greater than the number of years used to forecast the average amount of New Conservation, the amount of New Conservation allowed to be extracted is the same as it would have been if the New Conservation had been made available to Plaintiffs and users within Valley District each year in amounts equal to the actual amount of conserved water that is replenished. Any change shall be made prospectively in order to ensure that such change does not result in a change or reconciliation of a prior year "adjusted right" for Plaintiffs or an amount of New Conservation available for use by users within Valley District.

Periodic consideration of changes in the allowable extractions related to New Conservation shall occur for the duration of the forecast period at intervals of not less than five years nor more than ten years. The periodic consideration of change in the long-term average increase in allowable extractions related to New Conservation shall account for physical improvements in storage, diversion or recharge capability that may result in an increase in the forecast of the long-term average amount of New Conservation; and prospectively account for changes in the long-term forecast that arise from annual determinations of actual New Conservation and/or improvements in the data base and the analytical tools and procedures used to forecast New Conservation.

6. Paragraph VI(b) Service Area Delivery Limitations. The service area delivery limitations provided in Paragraphs V and VI of the Western Judgment shall not apply to New Conservation.

7. Assignment. Any Plaintiff may assign all or a portion of that Plaintiff's right to make additional extractions, as provided in Paragraph 3 herein, to any other Plaintiff.

8. Potential Reductions in Additional Extractions. If at any time prior to the extraction of all additional extractions pursuant to this Agreement Watermaster determines that New Conservation that occurred from 1998-2012 is causing a decrease in the natural safe yield of the SBBA by increasing subsurface outflow or rejecting native recharge that would have

occurred in the absence of Seven Oaks Dam, then Watermaster shall reduce the then-remaining amount of additional extractions provided for in Paragraph 2 and the subsequent amounts allocated to Plaintiffs and Valley District in Paragraphs 3 and 4 by an amount equal to the increase in subsurface outflow or rejected native recharge.

9. Annual Reports. Watermaster shall exclude any additional extractions under this Agreement from extractions in the Annual Report Tables 3A through 3D showing extractions by Plaintiffs. Watermaster shall also exclude additional extractions by entities other than Plaintiffs from the determination of extractions in Table 2 of the Annual Report.

10. Riverside Basin Mitigation Account. Any amount of replenishment in the SBBA resulting from the operation of Seven Oaks Dam and related diversion and spreading facilities that, in the absence of such operation, would have been replenished in the Riverside Basin, shall not be considered New Conservation and shall not be allocated for use by Plaintiffs and users within Valley District and shall instead be included in a Riverside Basin Mitigation Account. Watermaster shall maintain a record of the amount of water in the Riverside Basin Mitigation Account. Western shall maintain in force an agreement with the City of Riverside that provides for the City to increase extractions from its wells in the SBBA by a specified amount and reduce extractions from its Flume Tract wells in the Riverside Basin by the same amount. The agreement shall provide that such change in the location of extractions is subject to the following:

(a) Western and Valley District will jointly determine the specified amount of the change in extractions and the time period for such change; and

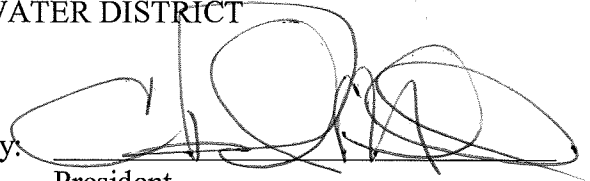
(b) The City of Riverside will change the location of extractions as determined by Western and Valley District unless Riverside is unable to do so because of physical or prior contractual constraints.

Watermaster shall account for the required extractions from the SBBA as additional extractions pursuant to Section 9 of this agreement and shall include the amount of the additional SBBA extractions as an extraction by the City of Riverside from Riverside North in the Annual Report Table 5.

11. Amendment to the Paragraph VI(b)6 Western Replenishment and Extraction Agreement. Paragraph 5 of the “Western Replenishment and Extraction Agreement” dated August 18, 2004 is hereby amended to also provide that, “Any Plaintiff at its option may assign and transfer to Western an amount of water equal to its unused water right in the SBBA in any year provided the aggregate amount of such transfers may not exceed the Plaintiffs aggregate amount of previously transferred right to extract imported water pursuant to this paragraph.”

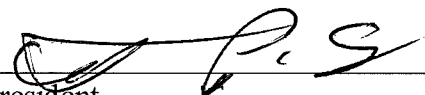
SAN BERNARDINO VALLEY MUNICIPAL  
WATER DISTRICT

Date: July 16, 2013

By:   
President

By: Ed Klger  
Secretary


WESTERN MUNICIPAL WATER  
DISTRICT OF RIVERSIDE COUNTY

By:   
President

By: Debra D. Monte  
Secretary

APPROVED AS TO FORM:

By:   
Jill N. Willis  
Best Best & Krieger

By:   
David R. E. Aladjem  
Downey Brand LLP

LAW OFFICES OF  
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P.O. BOX 1028  
RIVERSIDE, CALIFORNIA 92502

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2 BEST BEST & KRIEGER LLP  
3 3390 University Ave., 5th Floor  
4 P.O. Box 1028  
5 Riverside, California 92502  
6 Telephone: (951) 686-1450  
7 Facsimile: (951) 686-3083

EXEMPT FROM FILING FEES PURSUANT TO  
GOVERNMENT CODE SECTION 6013

5 Attorneys for Plaintiff  
6 Western Municipal Water District of Riverside  
7 County

7 BRUCE D. VARNER, Bar No. 033068  
8 VARNER & BRANDT LLP  
9 3750 University Ave., 6th Floor  
10 Riverside, California 92501  
11 Attorneys for Defendant  
12 San Bernardino Valley Municipal Water District

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF RIVERSIDE

13 WESTERN MUNICIPAL WATER  
14 DISTRICT OF RIVERSIDE COUNTY, et  
15 al.,

15 Plaintiffs,

16 v.

17 EAST SAN BERNARDINO COUNTY  
18 WATER DISTRICT, et al.,

19 Defendants.

Case No. CIV 78426  
Judge: Richard J. Oberholzer

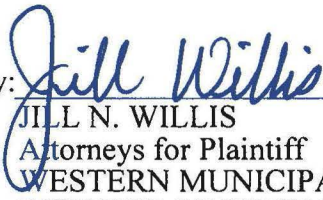
NOTICE OF ENTRY OF ORDER  
APPROVING 2013 AGREEMENT  
REGARDING ADDITIONAL  
EXTRACTIONS OF NEW CONSERVATION  
WATER FROM THE SAN BERNARDINO  
BASIN AREA

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1 NOTICE IS HEREBY GIVEN that on November 19, 2013, the Court entered its Order  
2 Approving 2013 Agreement Regarding Additional Extractions of New Conservation Water From  
3 the San Bernardino Basin Area, a copy of which is attached as Exhibit "A".  
4

5 Dated: November 21, 2013

BEST BEST & KRIEGER LLP

6  
7 By:   
8 JILL N. WILLIS  
9 Attorneys for Plaintiff  
10 WESTERN MUNICIPAL WATER  
11 DISTRICT OF RIVERSIDE COUNTY  
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01376.00079\8419178.1

# EXHIBIT “A”

LAW OFFICES OF  
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8 Attorneys for Plaintiff  
9 Western Municipal Water District of Riverside  
10 County

11 BRUCE D. VARNER, Bar No. 033068  
12 VARNER & BRANDT LLP  
13 3750 University Ave., 6th Floor  
14 Riverside, California 92501  
15 Attorneys for Defendant  
16 San Bernardino Valley Municipal Water District

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
18 COUNTY OF RIVERSIDE

19 WESTERN MUNICIPAL WATER  
20 DISTRICT OF RIVERSIDE COUNTY, et  
21 al.,

22 Plaintiffs,

23 v.

24 EAST SAN BERNARDINO COUNTY  
25 WATER DISTRICT, et al.,

26 Defendants.

EXEMPT FROM FILING FEES PURSUANT TO  
GOVERNMENT CODE SECTION 6013

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

NOV 19 2013

K. Rahlwes

Case No. CIV 78426  
Judge: RICHARD J. OBERHOLZER

ORDER APPROVING 2013  
AGREEMENT REGARDING ADDITIONAL  
EXTRACTIONS OF NEW CONSERVATION  
WATER FROM THE SAN BERNARDINO  
BASIN AREA

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LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
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RIVERSIDE, CALIFORNIA 92502

**PROPOSED] ORDER**

1  
2 The motion filed mutually by the Plaintiff, Western Municipal Water District of Riverside  
3 County ("Western") and Defendant, San Bernardino Valley Municipal Water District ("Valley  
4 District"), came for hearing before this court on November 19, 2013 at 9:00 a.m. After  
5 reviewing the Motion for Order Approving 2013 Agreement Regarding Additional Extractions of  
6 New Conservation Water from the San Bernardino Basin Area and supporting papers, and the  
7 opposition (if any) thereto, and after providing an opportunity for oral argument at the time of  
8 hearing on the Motion, the Court hereby approves the July 17, 2013 Agreement Regarding  
9 Additional Extractions of New Conservation Water from the San Bernardino Basin Area as  
10 attached hereto in final form as Exhibit "A".

11 IT IS ORDERED

**RICHARD J. OBERHOLZER**

12 Dated: NOV 19 2013

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14 Judge of the Superior Court

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# EXHIBIT “A”

**2013 AGREEMENT REGARDING ADDITIONAL EXTRACTIONS  
OF NEW CONSERVATION WATER  
FROM THE SAN BERNARDINO BASIN AREA  
BETWEEN  
WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY  
AND  
SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**

**2013 AGREEMENT REGARDING ADDITIONAL EXTRACTIONS  
OF NEW CONSERVATION WATER  
FROM THE SAN BERNARDINO BASIN AREA**

This Agreement is entered into between San Bernardino Valley Municipal Water District ("Valley District") and Western Municipal Water District of Riverside County ("Western") on July 17, 2013.

**RECITALS**

A. Western and Valley District are parties to the Judgment in the case of *Western Municipal Water District of Riverside County v. East San Bernardino County Water District, et al.*, Riverside Superior Court No. 78426 ("Western Judgment" or "Judgment").

B. The Judgment is administered and enforced by a Watermaster, consisting of a committee of two persons, one representative nominated by Valley District, and one by Western.

C. The Judgment further implements the physical solution in the related Orange County Water District action, as well as determines the rights of the named Plaintiffs to extract water from the San Bernardino Basin Area ("SBBA"), and provide replenishment of the area above Riverside Narrows. Among other provisions, the Judgment provides that the annual "adjusted right" of each Plaintiff to extract and export water from the SBBA is the sum of (a) its base right, which was adjusted based on a determination of safe yield and is currently expressed as a percentage of safe yield; and (b) an equal percentage of any new conservation, provided the conditions described in the Judgment are met. Similarly, the Judgment provides that Valley District shall provide imported water for replenishment of the SBBA at least equal to the amount by which extractions in any five year period exceed the 1959-1963 "base period" extractions (such amount was reduced based on a determination of safe yield and may be increased by the amount of any new conservation).

D. "New Conservation" is defined in the Judgment as "[a]ny increase in replenishment from natural precipitation which results from operation of works and facilities not now in existence, other than those works installed and operations which may be initiated to offset losses caused by increased flood control channelization."

E. The Seven Oaks Dam is a component of the Santa Ana River Mainstem Project and was originally conceived as a way to address anticipated flooding on the Santa Ana River. In addition to providing flood control benefits and related incidental water conservation, Western and Valley District wished to formally include water conservation as an element of the facility. In 1991, Western and Valley District jointly filed an application to appropriate water conserved as part of the Seven Oaks project. The State Water Resources Control Board approved the application and issued permits to Western and Valley District in 2010.

F. Construction on the Dam began in the mid 1990s. Western, Valley District and Plaintiffs in the above-referenced action agreed to a methodology for participation in the project and a cost sharing formula pursuant to Paragraph VI(b)2 of the Judgment. Based on the cost sharing formula, Western, Valley District and Plaintiffs entered cost sharing agreements to study the feasibility of water conservation and to fund the physical improvements necessary to achieve water conservation in connection with the operation of the Dam.

G. The acquisition of the water rights permit and the related infrastructure improvements allow Western and Valley District to fully utilize water conserved by the project for replenishment of the SBBA.

H. As part of the 1991-2010 water rights permitting process, Western and Valley District developed models and other analytical tools to forecast hydrology and calculate water conservation. Over the last 2 years, a collaborative group of stakeholders has been meeting to further develop the models and procedures necessary to forecast long-term average New Conservation.

I. In addition to utilizing the recently-developed models and analytical tools to project future long-term average New Conservation, Watermaster has utilized the models and analytical tools to calculate the amount of New Conservation that occurred from 1998 through 2012. Watermaster was previously unable to calculate such New Conservation because the models and analytical tools were still being developed.

J. Consistent with the Judgment and cost-sharing agreements, Plaintiffs have paid their proportionate share of New Conservation-related costs through December 31, 2012 and are therefore entitled to the benefits associated with their allocated share of New Conservation that occurred from 1998 through 2012 due to operation of the Dam.

K. The Judgment does not provide a mechanism by which to allocate New Conservation retroactively. However, Paragraph VI(b)6 of the Judgment provides that Western and Valley District may enter into agreements providing for additional extractions from the SBBA. Western and Valley District have utilized Paragraph VI(b)6 in the past to allow additional extractions from the SBBA.

L. In addition, Western, Valley District and the City of Riverside are parties to an "Agreement Relating to the Diversion of Water from the Santa Ana River System" ("Diversion Agreement") dated March 20, 2007, wherein the parties acknowledge that water conservation in the SBBA associated with the operation of Seven Oaks Dam may cause adverse impacts on the Riverside Basin. The parties agreed that one method of mitigating such adverse impacts was to provide for additional Plaintiff extractions in the SBBA in an amount equal to the amount of replenishment in the SBBA that would have occurred in the Riverside Basin in the absence of the Seven Oaks Project, in exchange for a like amount of reduction in extractions in the Riverside Basin near the key wells used to measure Valley District's compliance with the Judgment objectives

M. Parties to the Diversion Agreement also agreed to implement an accounting methodology under the Western Judgment that will allow Plaintiffs to fully utilize their water

rights in the SBBA. In conjunction with this Agreement, the full use of such water rights could be facilitated by amending the August 18, 2004 Paragraph VI(b)6 agreement entitled "Western Replenishment and Extraction Agreement" which would allow Plaintiffs, in any year in which their entitlement was not fully used, to return any amount of water up to the amount of imported water previously acquired from Western.

N. The primary purpose of this Agreement is to provide for additional extractions of water from the SBBA by Plaintiffs and users within Valley District without replenishment by Valley District in amounts equal to the amount of New Conservation determined by Watermaster to have occurred from 1998 through 2012 due to operation of the Dam. As to future New Conservation associated with the operation of the Dam, Watermaster will utilize Paragraph VI(b)1, VI(b)2, and VI(c) to account for such New Conservation, as provided herein. In addition, another purpose of this Agreement is to ensure implementation of specific provisions of the 2007 Diversion Agreement related to New Conservation, as referenced in Recitals L and M, above.

O. Although the Judgment does not require court approval of Paragraph VI(b)6 agreements, the parties have historically sought court approval of such agreements.

NOW, THEREFORE, in consideration of the mutual covenants of the parties, and based upon the recitals above, IT IS HEREBY AGREED TO AS FOLLOWS:

1. Definition of Additional Extractions. As used herein, the term "additional extractions" means any extraction of water by Plaintiffs in the above-referenced action in excess of the amounts permitted by the Judgment; with respect to entities other than Plaintiffs in such action, the term means any extractions in excess of the total amount of water that can be produced from the SBBA without any replenishment obligation. No replenishment obligations shall be incurred on account of any additional extractions made pursuant to this Agreement.

2. Amount of Additional Extractions. Watermaster has determined that the total quantity of New Conservation resulting from operation of the Seven Oaks Dam for the period of 1998 through 2012 is 42,840 acre-feet. Consistent with the Judgment, such amount may be extracted by Plaintiffs and non-plaintiff entities producing water within the SBBA as additional extractions pursuant to this Agreement.

3. Allocation of Additional Extractions to Plaintiffs. Plaintiffs may make additional extractions from the SBBA for use within Western in any future year in the aggregate amount of 11,974 AF, or 27.95% of the 1998-2012 New Conservation water. Such amount shall be allocated among individual Plaintiffs as follows:

a.	City of Riverside	9,635 AF
b.	Meeks and Daley Water Co.	1,448 AF
c.	Riverside Highland Water Co.	793 AF
d.	Regents of University of California	98 AF

Such individual allocations are in proportion to Plaintiffs' respective shares of the safe yield of the SBBA.

4. Allocation of Additional Extractions to Other Entities. Entities in San Bernardino County other than Plaintiffs who produce water within the SBBA may make additional extractions from the SBBA in any future year in the amount of 30,866 AF, or 72.05% of the 1998-2012 New Conservation water.

5. Periodic Changes in Paragraph VI(b) and VI(c) Allowable Extractions. Periodically Watermaster shall consider making changes in:

(a) the portion of Plaintiffs' "adjusted right" related to New Conservation determined pursuant to Paragraph VI(b); and

(b) the New Conservation to which users in Valley District are entitled pursuant to Paragraph VI(c).

Such periodic consideration and any resulting changes shall be made to ensure that over a long-term period, equal to or greater than the number of years used to forecast the average amount of New Conservation, the amount of New Conservation allowed to be extracted is the same as it would have been if the New Conservation had been made available to Plaintiffs and users within Valley District each year in amounts equal to the actual amount of conserved water that is replenished. Any change shall be made prospectively in order to ensure that such change does not result in a change or reconciliation of a prior year "adjusted right" for Plaintiffs or an amount of New Conservation available for use by users within Valley District.

Periodic consideration of changes in the allowable extractions related to New Conservation shall occur for the duration of the forecast period at intervals of not less than five years nor more than ten years. The periodic consideration of change in the long-term average increase in allowable extractions related to New Conservation shall account for physical improvements in storage, diversion or recharge capability that may result in an increase in the forecast of the long-term average amount of New Conservation; and prospectively account for changes in the long-term forecast that arise from annual determinations of actual New Conservation and/or improvements in the data base and the analytical tools and procedures used to forecast New Conservation.

6. Paragraph VI(b) Service Area Delivery Limitations. The service area delivery limitations provided in Paragraphs V and VI of the Western Judgment shall not apply to New Conservation.

7. Assignment. Any Plaintiff may assign all or a portion of that Plaintiff's right to make additional extractions, as provided in Paragraph 3 herein, to any other Plaintiff.

8. Potential Reductions in Additional Extractions. If at any time prior to the extraction of all additional extractions pursuant to this Agreement Watermaster determines that New Conservation that occurred from 1998-2012 is causing a decrease in the natural safe yield of the SBBA by increasing subsurface outflow or rejecting native recharge that would have

occurred in the absence of Seven Oaks Dam, then Watermaster shall reduce the then-remaining amount of additional extractions provided for in Paragraph 2 and the subsequent amounts allocated to Plaintiffs and Valley District in Paragraphs 3 and 4 by an amount equal to the increase in subsurface outflow or rejected native recharge.

9. Annual Reports. Watermaster shall exclude any additional extractions under this Agreement from extractions in the Annual Report Tables 3A through 3D showing extractions by Plaintiffs. Watermaster shall also exclude additional extractions by entities other than Plaintiffs from the determination of extractions in Table 2 of the Annual Report.

10. Riverside Basin Mitigation Account. Any amount of replenishment in the SBBA resulting from the operation of Seven Oaks Dam and related diversion and spreading facilities that, in the absence of such operation, would have been replenished in the Riverside Basin, shall not be considered New Conservation and shall not be allocated for use by Plaintiffs and users within Valley District and shall instead be included in a Riverside Basin Mitigation Account. Watermaster shall maintain a record of the amount of water in the Riverside Basin Mitigation Account. Western shall maintain in force an agreement with the City of Riverside that provides for the City to increase extractions from its wells in the SBBA by a specified amount and reduce extractions from its Flume Tract wells in the Riverside Basin by the same amount. The agreement shall provide that such change in the location of extractions is subject to the following:

(a) Western and Valley District will jointly determine the specified amount of the change in extractions and the time period for such change; and

(b) The City of Riverside will change the location of extractions as determined by Western and Valley District unless Riverside is unable to do so because of physical or prior contractual constraints.

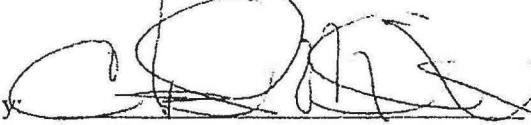
Watermaster shall account for the required extractions from the SBBA as additional extractions pursuant to Section 9 of this agreement and shall include the amount of the additional SBBA extractions as an extraction by the City of Riverside from Riverside North in the Annual Report Table 5.


11. Amendment to the Paragraph VI(b)6 Western Replenishment and Extraction Agreement. Paragraph 5 of the "Western Replenishment and Extraction Agreement" dated August 18, 2004 is hereby amended to also provide that, "Any Plaintiff at its option may assign and transfer to Western an amount of water equal to its unused water right in the SBBA in any year provided the aggregate amount of such transfers may not exceed the Plaintiffs aggregate amount of previously transferred right to extract imported water pursuant to this paragraph."




Date: July 16, 2013

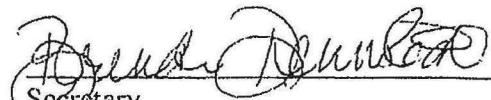
SAN BERNARDINO VALLEY MUNICIPAL  
WATER DISTRICT

By:   
President

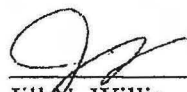
By:   
Secretary


WESTERN MUNICIPAL WATER  
DISTRICT OF RIVERSIDE COUNTY

By:   
President

By:   
Secretary

APPROVED AS TO FORM:

By:   
Jill N. Willis  
Best Best & Krieger

By:   
David R. E. Aladjem  
Downey Brand LLP

**PROOF OF SERVICE**

At the time of service I was over 18 years of age and not a party to this action. My business address is 3750 University Avenue, Suite 125, P.O. Box 1028, Riverside, California 92502. On November 21, 2013, I served the following document(s):

Notice of Entry of Order Approving 2013 Agreement Regarding Additional Extractions of New Conservation Water from the San Bernardino Basin Area

**By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

**By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below (specify one):

Deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Riverside, California.

**By personal service.** At \_\_\_ a.m./p.m., I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an Individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

**By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service for service. A Declaration of Messenger is attached.

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**By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

**By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Gregory P. Priamos, Esq.  
City of Riverside  
City Attorney's Office  
3900 Main Street  
Riverside, CA 92522

Thomas P. Evans  
Public Utilities Director  
City of Riverside  
Riverside Public Utilities Department  
3900 Main Street, 4th Floor  
Riverside, CA 92522

General Manager  
Elsinore Valley Municipal Water District  
31315 Chaney Street  
P.O.B. 3000  
Lake Elsinore, VA 92531-3000

John E. Brown, Esq.  
General Counsel,  
Elsinore Valley Municipal Water District  
Best Best & Krieger LLP  
2855 E. Guasti Road, Ste. 400  
Ontario, CA 91761

Charles Robinson  
General Counsel of The Regents  
Vice President - Legal Affairs  
University of California  
1111 Franklin Street, 8th Floor  
Oakland, CA 94607-5200

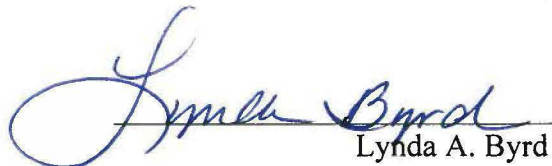
Don Hough  
General Manager  
Riverside Highland Water Company  
12374 Michigan St.  
Grand Terrace, CA

Joe Aklufi  
Aklufi & Wysocki  
3403 Tenth Street  
Riverside, CA 92501

Bruce D. Varner  
Varner & Brandt LLP  
3750 University Avenue, 6th Floor  
Riverside, CA 92501

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 21, 2013, at Riverside, California.

  
Lynda A. Byrd

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
3390 UNIVERSITY AVENUE, 5TH FLOOR  
P.O. BOX 1028  
RIVERSIDE, CALIFORNIA 92502

1 JILL N. WILLIS, Bar No. 200121  
2 BEST BEST & KRIEGER LLP  
3 3390 University Ave., 5th Floor  
4 P.O. Box 1028  
5 Riverside, California 92502  
6 Telephone: (951) 686-1450  
7 Facsimile: (951) 686-3083

8 Attorneys for Plaintiff  
9 Western Municipal Water District of Riverside  
10 County

11 BRUCE D. VARNER, Bar No. 033068  
12 VARNER & BRANDT LLP  
13 3750 University Ave., 6th Floor  
14 Riverside, California 92501  
15 Attorneys for Defendant  
16 San Bernardino Valley Municipal Water District

EXEMPT FROM FILING FEES PURSUANT TO  
GOVERNMENT CODE SECTION 6013

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

OCT 15 2013

C. Constante

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
18 COUNTY OF RIVERSIDE

19 WESTERN MUNICIPAL WATER  
20 DISTRICT OF RIVERSIDE COUNTY, et  
21 al.,

22 Plaintiffs,

23 v.

24 EAST SAN BERNARDINO COUNTY  
25 WATER DISTRICT, et al.,

26 Defendants.

Case No. CIV 78426  
Judge:

NOTICE OF MOTION AND MOTION FOR  
ORDER APPROVING 2013 AGREEMENT  
REGARDING ADDITIONAL  
EXTRACTIONS OF NEW CONSERVATION  
WATER FROM THE SAN BERNARDINO  
BASIN AREA

Hearing Date: November 19, 2013  
Time: 9:00 a.m.  
Department: 11

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LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
3390 UNIVERSITY AVENUE, 5TH FLOOR  
P.O. BOX 1028  
RIVERSIDE, CALIFORNIA 92502

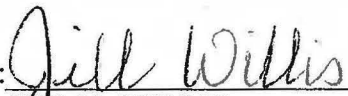
1 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:  
2 NOTICE IS HEREBY GIVEN that on November 19, 2013 at 9:00 a.m., in  
3 Department 11, the above-entitled Court, located at 4050 Main Street, Riverside, California, the  
4 San Bernardino Valley Municipal Water District ("Valley District") and Western Municipal  
5 Water District of Riverside County ("Western") will move this Court, pursuant to its continuing  
6 jurisdiction in this case, to issue an order approving the 2013 Agreement Regarding Additional  
7 Extractions of New Conservation Water From The San Bernardino Basin Area ("Agreement")  
8 between the San Bernardino Valley Municipal Water District ("Valley District") and Western  
9 Municipal Water District of Riverside County ("Western") providing for additional extractions  
10 from the San Bernardino Basin Area. The Agreement is dated July 17, 2013 and is attached  
11 hereto as Exhibit "A."

12 This Motion is made pursuant to the continuing jurisdiction of the Court, and the  
13 provisions of the Judgment providing for additional extractions.

14 The Motion will be based on this Notice, the following Points and Authorities, the  
15 Declaration of John V. Rossi and Samuel H. Fuller attached as Exhibit "B," all other matters in  
16 the Clerk's files herein, and such other evidence or grounds as may be presented at the hearing.


17 Dated: October 15, 2013

BEST BEST & KRIEGER LLP

18  
19 By:   
20 JILL N. WILLIS  
21 Attorneys for Plaintiff  
22 Western Municipal Water District of  
Riverside County

23 Dated: October 15, 2013

VARNER & BRANDT LLP

24  
25 By:   
26 BRUCE D. VARNER  
27 Attorney for Defendant  
28 San Bernardino Valley Municipal  
Water District

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POINTS AND AUTHORITIES

1  
2 1. Water rights adjudications are proper cases for retention of jurisdiction, and the  
3 kind of provision reserving jurisdiction in this case have been approved by the California  
4 Supreme Court. (*Allen v. California Water Co.* (1946) 20 Cal.2d 466, 488; *City of Los Angeles v.*  
5 *City of Glendale* (1943) 23 Cal.2d 68, 81; *Pasadena v. Alhambra* (1949) 33 Cal.2d 908,  
6 936-937.)

7 2. The Court in this case has reserved continuing jurisdiction upon the application of  
8 any party over matters not specifically set forth in the Judgment which might occur in the future,  
9 which would be of benefit to the parties in the utilization of the surface and groundwater supply  
10 described in the Judgment, and would not be inconsistent with the respective rights of the parties  
11 as established and determined in such Judgment. (Section XIV(a)(8).)

12 3. “New Conservation” is defined in the Judgment as “[a]ny increase in  
13 replenishment from natural precipitation which results from operation of works and facilities not  
14 now in existence, other than those works installed and operations which may be initiated to offset  
15 losses caused by increased flood control channelization.” (Section IV(i).)

16 4. The Seven Oaks Dam is a component of the Santa Ana River Mainstem Project  
17 and was originally conceived as a way to address anticipated flooding on the Santa Ana River. In  
18 addition to providing flood control benefits and related incidental water conservation, Western  
19 and Valley District wished to formally include water conservation as an element of the facility.  
20 In 1991, Western and Valley District jointly filed an application to appropriate water conserved as  
21 part of the Seven Oaks project. The State Water Resources Control Board approved the  
22 application and issued permits to Western and Valley District in 2010. (Declaration of John V.  
23 Rossi and Samuel H. Fuller [“Decl.”], ¶ 2.)

24 5. As part of the 1991-2010 water rights permitting process, Western and Valley  
25 District developed models and other analytical tools to forecast hydrology and calculate water  
26 conservation. Over the last 2 years, a collaborative group of stakeholders has been meeting to  
27 further develop the models and procedures necessary to forecast long-term average New  
28 Conservation. (Decl. ¶ 3.)

1           6.       In addition to utilizing the recently-developed models and analytical tools to  
2 project future long-term average New Conservation, Western and Valley District have utilized the  
3 models and analytical tools to calculate the amount of New Conservation that occurred from 1998  
4 through 2012. (Decl. ¶ 4.)

5           7.       The Judgment does not provide a mechanism by which to allocate New  
6 Conservation retroactively. However, Paragraph VI(b)6 provides that Western and Valley  
7 District may enter into agreements providing for additional extractions from the SBBA. Western  
8 and Valley District have utilized Paragraph VI(b)6 in the past to allow additional extractions from  
9 the SBBA.

10          8.       Watermaster has determined that the total quantity of New Conservation resulting  
11 from operation of the Seven Oaks Dam for the period of 1998 through 2012 is 42,840 acre-feet.  
12 (Decl. ¶ 5.) Consistent with the Judgment, such amount should be allocated among individual  
13 Plaintiffs as follows, in proportion to Plaintiffs' respective shares of the safe yield of the SBBA:

14           City of Riverside	9,635 AF
15           Meeks and Daley Water Co.	1,448 AF
16           Riverside Highland Water Co.	793 AF
17           Regents of University of California	98 AF

18 (Decl. ¶ 6.)

19          9.       Entities in San Bernardino County other than Plaintiffs who produce water within  
20 the SBBA should be permitted to make additional extractions from the SBBA in any future year  
21 in the amount of 30,866 AF, or 72.05% of the 1998-2012 New Conservation water, consistent  
22 with those parties' shares of safe yield in the SBBA. (Decl. ¶ 7.)

23          10.       The Agreement attached hereto as Exhibit "A" is consistent with the Judgment.  
24 Thus, pursuant to the Court's continuing jurisdiction over this matter, Western and Valley District  
25 request that the Court approve the Agreement attached hereto as Exhibit "A."


LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
3390 UNIVERSITY AVENUE, 5TH FLOOR  
P.O. BOX 1028  
RIVERSIDE, CALIFORNIA 92502

1 Dated: October 15, 2013

BEST BEST & KRIEGER LLP

2

3

By:   
JILL N. WILLIS  
Attorneys for Plaintiff  
Western Municipal Water District of  
Riverside County

4

5


6

7 Dated: October 15, 2013

VARNER & BRANDT LLP

8

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By:   
BRUCE D. VARNER  
Attorney for Defendant  
San Bernardino Valley Municipal  
Water District

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# EXHIBIT “A”

**2013 AGREEMENT REGARDING ADDITIONAL EXTRACTIONS  
OF NEW CONSERVATION WATER  
FROM THE SAN BERNARDINO BASIN AREA  
BETWEEN  
WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY  
AND  
SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**

**2013 AGREEMENT REGARDING ADDITIONAL EXTRACTIONS  
OF NEW CONSERVATION WATER  
FROM THE SAN BERNARDINO BASIN AREA**

This Agreement is entered into between San Bernardino Valley Municipal Water District (“Valley District”) and Western Municipal Water District of Riverside County (“Western”) on July 17, 2013.

**RECITALS**

A. Western and Valley District are parties to the Judgment in the case of *Western Municipal Water District of Riverside County v. East San Bernardino County Water District, et al.*, Riverside Superior Court No. 78426 (“Western Judgment” or “Judgment”).

B. The Judgment is administered and enforced by a Watermaster, consisting of a committee of two persons, one representative nominated by Valley District, and one by Western.

C. The Judgment further implements the physical solution in the related Orange County Water District action, as well as determines the rights of the named Plaintiffs to extract water from the San Bernardino Basin Area (“SBBA”), and provide replenishment of the area above Riverside Narrows. Among other provisions, the Judgment provides that the annual “adjusted right” of each Plaintiff to extract and export water from the SBBA is the sum of (a) its base right, which was adjusted based on a determination of safe yield and is currently expressed as a percentage of safe yield; and (b) an equal percentage of any new conservation, provided the conditions described in the Judgment are met. Similarly, the Judgment provides that Valley District shall provide imported water for replenishment of the SBBA at least equal to the amount by which extractions in any five year period exceed the 1959-1963 “base period” extractions (such amount was reduced based on a determination of safe yield and may be increased by the amount of any new conservation).

D. “New Conservation” is defined in the Judgment as “[a]ny increase in replenishment from natural precipitation which results from operation of works and facilities not now in existence, other than those works installed and operations which may be initiated to offset losses caused by increased flood control channelization.”

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F. Construction on the Dam began in the mid 1990s. Western, Valley District and Plaintiffs in the above-referenced action agreed to a methodology for participation in the project and a cost sharing formula pursuant to Paragraph VI(b)2 of the Judgment. Based on the cost sharing formula, Western, Valley District and Plaintiffs entered cost sharing agreements to study the feasibility of water conservation and to fund the physical improvements necessary to achieve water conservation in connection with the operation of the Dam.

G. The acquisition of the water rights permit and the related infrastructure improvements allow Western and Valley District to fully utilize water conserved by the project for replenishment of the SBBA.

H. As part of the 1991-2010 water rights permitting process, Western and Valley District developed models and other analytical tools to forecast hydrology and calculate water conservation. Over the last 2 years, a collaborative group of stakeholders has been meeting to further develop the models and procedures necessary to forecast long-term average New Conservation.

I. In addition to utilizing the recently-developed models and analytical tools to project future long-term average New Conservation, Watermaster has utilized the models and analytical tools to calculate the amount of New Conservation that occurred from 1998 through 2012. Watermaster was previously unable to calculate such New Conservation because the models and analytical tools were still being developed.

J. Consistent with the Judgment and cost-sharing agreements, Plaintiffs have paid their proportionate share of New Conservation-related costs through December 31, 2012 and are therefore entitled to the benefits associated with their allocated share of New Conservation that occurred from 1998 through 2012 due to operation of the Dam.

K. The Judgment does not provide a mechanism by which to allocate New Conservation retroactively. However, Paragraph VI(b)6 of the Judgment provides that Western and Valley District may enter into agreements providing for additional extractions from the SBBA. Western and Valley District have utilized Paragraph VI(b)6 in the past to allow additional extractions from the SBBA.

L. In addition, Western, Valley District and the City of Riverside are parties to an "Agreement Relating to the Diversion of Water from the Santa Ana River System" ("Diversion Agreement") dated March 20, 2007, wherein the parties acknowledge that water conservation in the SBBA associated with the operation of Seven Oaks Dam may cause adverse impacts on the Riverside Basin. The parties agreed that one method of mitigating such adverse impacts was to provide for additional Plaintiff extractions in the SBBA in an amount equal to the amount of replenishment in the SBBA that would have occurred in the Riverside Basin in the absence of the Seven Oaks Project, in exchange for a like amount of reduction in extractions in the Riverside Basin near the key wells used to measure Valley District's compliance with the Judgment objectives

M. Parties to the Diversion Agreement also agreed to implement an accounting methodology under the Western Judgment that will allow Plaintiffs to fully utilize their water

rights in the SBBA. In conjunction with this Agreement, the full use of such water rights could be facilitated by amending the August 18, 2004 Paragraph VI(b)6 agreement entitled "Western Replenishment and Extraction Agreement" which would allow Plaintiffs, in any year in which their entitlement was not fully used, to return any amount of water up to the amount of imported water previously acquired from Western.

N. The primary purpose of this Agreement is to provide for additional extractions of water from the SBBA by Plaintiffs and users within Valley District without replenishment by Valley District in amounts equal to the amount of New Conservation determined by Watermaster to have occurred from 1998 through 2012 due to operation of the Dam. As to future New Conservation associated with the operation of the Dam, Watermaster will utilize Paragraph VI(b)1, VI(b)2, and VI(c) to account for such New Conservation, as provided herein. In addition, another purpose of this Agreement is to ensure implementation of specific provisions of the 2007 Diversion Agreement related to New Conservation, as referenced in Recitals L and M, above.

O. Although the Judgment does not require court approval of Paragraph VI(b)6 agreements, the parties have historically sought court approval of such agreements.

NOW, THEREFORE, in consideration of the mutual covenants of the parties, and based upon the recitals above, IT IS HEREBY AGREED TO AS FOLLOWS:

1. Definition of Additional Extractions. As used herein, the term "additional extractions" means any extraction of water by Plaintiffs in the above-referenced action in excess of the amounts permitted by the Judgment; with respect to entities other than Plaintiffs in such action, the term means any extractions in excess of the total amount of water that can be produced from the SBBA without any replenishment obligation. No replenishment obligations shall be incurred on account of any additional extractions made pursuant to this Agreement.

2. Amount of Additional Extractions. Watermaster has determined that the total quantity of New Conservation resulting from operation of the Seven Oaks Dam for the period of 1998 through 2012 is 42,840 acre-feet. Consistent with the Judgment, such amount may be extracted by Plaintiffs and non-plaintiff entities producing water within the SBBA as additional extractions pursuant to this Agreement.

3. Allocation of Additional Extractions to Plaintiffs. Plaintiffs may make additional extractions from the SBBA for use within Western in any future year in the aggregate amount of 11,974 AF, or 27.95% of the 1998-2012 New Conservation water. Such amount shall be allocated among individual Plaintiffs as follows:

a.	City of Riverside	9,635 AF
b.	Meeks and Daley Water Co.	1,448 AF
c.	Riverside Highland Water Co.	793 AF
d.	Regents of University of California	98 AF

Such individual allocations are in proportion to Plaintiffs' respective shares of the safe yield of the SBBA.

4. Allocation of Additional Extractions to Other Entities. Entities in San Bernardino County other than Plaintiffs who produce water within the SBBA may make additional extractions from the SBBA in any future year in the amount of 30,866 AF, or 72.05% of the 1998-2012 New Conservation water.

5. Periodic Changes in Paragraph VI(b) and VI(c) Allowable Extractions. Periodically Watermaster shall consider making changes in:

(a) the portion of Plaintiffs' "adjusted right" related to New Conservation determined pursuant to Paragraph VI(b); and

(b) the New Conservation to which users in Valley District are entitled pursuant to Paragraph VI(c).

Such periodic consideration and any resulting changes shall be made to ensure that over a long-term period, equal to or greater than the number of years used to forecast the average amount of New Conservation, the amount of New Conservation allowed to be extracted is the same as it would have been if the New Conservation had been made available to Plaintiffs and users within Valley District each year in amounts equal to the actual amount of conserved water that is replenished. Any change shall be made prospectively in order to ensure that such change does not result in a change or reconciliation of a prior year "adjusted right" for Plaintiffs or an amount of New Conservation available for use by users within Valley District.

Periodic consideration of changes in the allowable extractions related to New Conservation shall occur for the duration of the forecast period at intervals of not less than five years nor more than ten years. The periodic consideration of change in the long-term average increase in allowable extractions related to New Conservation shall account for physical improvements in storage, diversion or recharge capability that may result in an increase in the forecast of the long-term average amount of New Conservation; and prospectively account for changes in the long-term forecast that arise from annual determinations of actual New Conservation and/or improvements in the data base and the analytical tools and procedures used to forecast New Conservation.

6. Paragraph VI(b) Service Area Delivery Limitations. The service area delivery limitations provided in Paragraphs V and VI of the Western Judgment shall not apply to New Conservation.

7. Assignment. Any Plaintiff may assign all or a portion of that Plaintiff's right to make additional extractions, as provided in Paragraph 3 herein, to any other Plaintiff.

8. Potential Reductions in Additional Extractions. If at any time prior to the extraction of all additional extractions pursuant to this Agreement Watermaster determines that New Conservation that occurred from 1998-2012 is causing a decrease in the natural safe yield of the SBBA by increasing subsurface outflow or rejecting native recharge that would have

occurred in the absence of Seven Oaks Dam, then Watermaster shall reduce the then-remaining amount of additional extractions provided for in Paragraph 2 and the subsequent amounts allocated to Plaintiffs and Valley District in Paragraphs 3 and 4 by an amount equal to the increase in subsurface outflow or rejected native recharge.

9. Annual Reports. Watermaster shall exclude any additional extractions under this Agreement from extractions in the Annual Report Tables 3A through 3D showing extractions by Plaintiffs. Watermaster shall also exclude additional extractions by entities other than Plaintiffs from the determination of extractions in Table 2 of the Annual Report.

10. Riverside Basin Mitigation Account. Any amount of replenishment in the SBBA resulting from the operation of Seven Oaks Dam and related diversion and spreading facilities that, in the absence of such operation, would have been replenished in the Riverside Basin, shall not be considered New Conservation and shall not be allocated for use by Plaintiffs and users within Valley District and shall instead be included in a Riverside Basin Mitigation Account. Watermaster shall maintain a record of the amount of water in the Riverside Basin Mitigation Account. Western shall maintain in force an agreement with the City of Riverside that provides for the City to increase extractions from its wells in the SBBA by a specified amount and reduce extractions from its Flume Tract wells in the Riverside Basin by the same amount. The agreement shall provide that such change in the location of extractions is subject to the following:

(a) Western and Valley District will jointly determine the specified amount of the change in extractions and the time period for such change; and

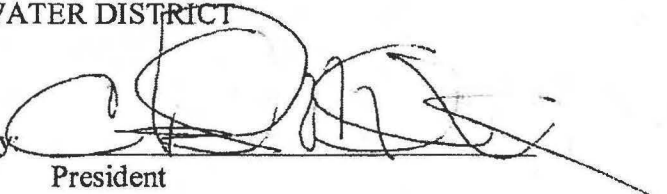
(b) The City of Riverside will change the location of extractions as determined by Western and Valley District unless Riverside is unable to do so because of physical or prior contractual constraints.


Watermaster shall account for the required extractions from the SBBA as additional extractions pursuant to Section 9 of this agreement and shall include the amount of the additional SBBA extractions as an extraction by the City of Riverside from Riverside North in the Annual Report Table 5.

11. Amendment to the Paragraph VI(b)6 Western Replenishment and Extraction Agreement. Paragraph 5 of the "Western Replenishment and Extraction Agreement" dated August 18, 2004 is hereby amended to also provide that, "Any Plaintiff at its option may assign and transfer to Western an amount of water equal to its unused water right in the SBBA in any year provided the aggregate amount of such transfers may not exceed the Plaintiffs aggregate amount of previously transferred right to extract imported water pursuant to this paragraph."

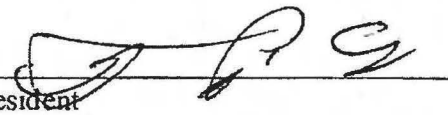
Date: July 16, 2013

SAN BERNARDINO VALLEY MUNICIPAL  
WATER DISTRICT

By:   
President

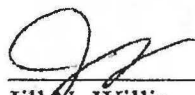
By:   
Secretary


WESTERN MUNICIPAL WATER  
DISTRICT OF RIVERSIDE COUNTY

By:   
President

By:   
Secretary

APPROVED AS TO FORM:

By:   
Jill N. Willis  
Best Best & Krieger

By:   
David R. E. Aladjem  
Downey Brand LLP



# EXHIBIT “B”




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City of Riverside	9,635 AF
Meeks and Daley Water Co.	1,448 AF
Riverside Highland Water Co.	793 AF
Regents of University of California	98 AF

7. Entities in San Bernardino County other than Plaintiffs who produce water within the SBBA should be permitted to make additional extractions from the SBBA in any future year in the amount of 30,866 AF, or 72.05% of the 1998-2012 New Conservation water, consistent with those parties' shares of safe yield in the SBBA.

8. Each of the deponents hereby declares, under penalty of perjury, that the foregoing is true and correct.

Dated: October 1, 2013

  
\_\_\_\_\_  
JOHN V. ROSSI

Dated: October 1, 2013

  
\_\_\_\_\_  
SAMUEL H. FULLER

**PROOF OF SERVICE**

At the time of service I was over 18 years of age and not a party to this action. My business address is 3750 University Avenue, Suite 125, P.O. Box 1028, Riverside, California 92502. On October 15, 2013, I served the following document(s):

Notice of Motion and Motion for Order Approving 2013 Agreement Regarding Additional Extractions of New Conservation Water from the San Bernardino Basin Area

**By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

**By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below (specify one):

Deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Riverside, California.

**By personal service.** At \_\_\_ a.m./p.m., I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an Individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

**By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service for service. A Declaration of Messenger is attached.



2 **By overnight delivery.** I enclosed the documents in an envelope or package  
3 provided by an overnight delivery carrier and addressed to the persons at the  
4 addresses listed below. I placed the envelope or package for collection and  
5 overnight delivery at an office or a regularly utilized drop box of the overnight  
6 delivery carrier.

7 **By e-mail or electronic transmission.** Based on a court order or an agreement of  
8 the parties to accept service by e-mail or electronic transmission, I caused the  
9 documents to be sent to the persons at the e-mail addresses listed below. I did not  
10 receive, within a reasonable time after the transmission, any electronic message or  
11 other indication that the transmission was unsuccessful.

12 Gregory P. Priamos, Esq.  
13 City of Riverside  
14 City Attorney's Office  
15 3900 Main Street  
16 Riverside, CA 92522

17 Thomas P. Evans  
18 Public Utilities Director  
19 City of Riverside  
20 Riverside Public Utilities Department  
21 3900 Main Street, 4th Floor  
22 Riverside, CA 92522

23 General Manager  
24 Elsinore Valley Municipal Water District  
25 31315 Chaney Street  
26 P.O.B. 3000  
27 Lake Elsinore, VA 92531-3000

28 John E. Brown, Esq.  
General Counsel, Elsinore Valley Municipal  
Water District  
Best Best & Krieger LLP  
2855 E. Guasti Road, Ste. 400  
Ontario, CA 91761

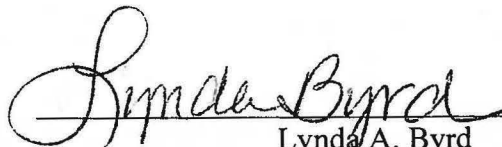
Charles Robinson  
General Counsel of The Regents  
Vice President - Legal Affairs  
University of California  
1111 Franklin Street, 8th Floor  
Oakland, CA 94607-5200

Don Hough  
General Manager  
Riverside Highland Water Company  
1450 East Washington Street  
Colton, CA 92324

Joe Aklufi  
Aklufi & Wysocki  
3403 Tenth Street  
Riverside, CA 92501

I declare under penalty of perjury under the laws of the State of California that the  
above is true and correct.

Executed on October 15, 2013, at Riverside, California.

  
Lynda A. Byrd

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
3750 UNIVERSITY AVENUE, SUITE 125  
P.O. BOX 1028  
RIVERSIDE, CALIFORNIA 92502

**ATTACHMENT B**

**New Conservation Water Calculation Methodology**



## ATTACHMENT B: New Conservation Water Calculation Methodology

### 1.1 New Conservation Water

Table B1 shows all of the terms involved in calculating and forecasting New Conservation Water as well as the method used to determine each term for both the calculation (2013-2021) and forecast (2022-2060) periods. Each of the terms in the New Conservation Water calculation will be calculated based on gaged and observed data, watershed modeling using the HSPF Watershed Model, daily OPMODEL, or formula. The term numbers at the top of each column in Table B1 are used in the sections that follow to refer to each term.

The amount of New Conservation [31] water available for use in the SBBA by Plaintiffs and Valley District can be calculated as the difference between Post Project Conservation [28] and Pre Project Conservation [13]. Pre Project Conservation refers to the Conservation that would have occurred in absence of the Seven Oaks Reservoir. Post Project Conservation refers to the Conservation experienced after the construction of and under the operation of the reservoir. After the New Conservation is calculated or forecasted, it can be allocated to each party or Plaintiff [32 through 36] by multiplying it by the percentages provided in the table of the Approach Section.

#### 1.1.1 Pre Project Conservation

The Pre Project condition required that the Pre Project hydrology be synthesized from the available data. Historical data is available from the United States Geological Survey (USGS), Orange County Flood Control District (OCFCD), U.S. Army Corps of Engineers (USACE), and the San Bernardino Valley Water Conservation District (SBVWCD). This data will be used to establish relationships for the estimation of flow terms that would have occurred in the absence of Seven Oaks Reservoir. Pre Project Conservation is the sum of the recharge from the SAR spreading grounds (SAR SG) [19], SBBA River Reach [22], and Colton/Riverside Basins River Reach [26] in the absence of the Seven Oaks Dam and Reservoir. Therefore, each of these recharge terms needed to be quantified.

##### 1.1.1.1 Pre Project Spreading Grounds Recharge

Recharge at the SAR SG [19] is calculated as the difference between SAR SG diversions [17] and losses due to evaporation [18] (calculated based on a water balance of the SAR SG). SAR SG diversions are equal to the diversions made at Cuttle Weir and overflow from the Southern California Edison (SCE) System [16B]. Pre Project SCE overflow is assumed to be the average flow from the Safe Yield Period. SAR SG diversions at Cuttle Weir were modeled from a regression equation established between known flow at the Mentone Gage [16A] and SBVWCD diversion practices during the Safe Yield Period (see Section **Error! Reference source not found.** in the Geoscience's 2013 Report). Pre Project SAR flows just upstream of Cuttle Weir

are represented by the inflow to Seven Oaks Reservoir. Since there is no gaging station just upstream of the reservoir, the inflow (or uncontrolled SAR flow) needed to be estimated by the conservation equation, which depends partly on the SAR Flows at Mentone [14] and the Seven Oaks change in flows [15]. Use of the conservation equation in determining uncontrolled SAR flow is discussed in Section **Error! Reference source not found.** in the Geoscience's 2013 Report.

#### 1.1.1.2 Pre Project SBBA River Reach Recharge

Recharge to the SBBA River Reach [22] is calculated by the HSPF Watershed Model. This recharge depends on the SAR inflow from upstream, tributary inflow, and evapotranspiration (ET) losses. The remainder of the water not recharged in the SBBA River Reach or lost to ET represents the SBBA River Reach outflow [23] and SAR inflow into the Colton/Riverside Basins River Reach [24A]. This is equal to the sum of the inflow terms (i.e., SBBA inflow from the SAR [20A] and tributary creeks [20B]) minus the sum of the outflow terms (i.e., ET losses [21] and SBBA recharge [22]).

#### 1.1.1.3 Pre Project Colton/Riverside River Reach Recharge

As in the SBBA River Reach, recharge in the Colton/Riverside Basins River Reach [26] is calculated by the HSPF Watershed Model. Inflow from the SAR [24A] represents the outflow from the SBBA River Reach [23]. Outflow from the Colton/Riverside Basins River Reach [27] is equal to the sum of the inflow terms (i.e., Colton/Riverside inflow from the SAR [24A] and tributary creeks [24B], and discharges from wastewater treatment plants) minus the sum of the outflow terms (i.e., ET losses [25] and Colton/Riverside Basins recharge [26]).

### 1.1.2 Post Project Conservation

The Post Project conditions will be based on the available data. Adjustments were made to the historical data as needed to accurately estimate the Post Project condition. Post Project Conservation is the sum of the recharge from the SAR SG [4], SBBA River Reach [7], and Colton/Riverside Basins River Reach [11] under the operation conditions at the Seven Oaks Reservoir. Each of these recharge terms therefore needed to be quantified as outlined in the following sections. Post Project Conservation will be measurable going forward in time, and the quality of both data sets (Pre and Post Project Conservation) should improve over time.

#### 1.1.2.1 Post Project Spreading Grounds Recharge

Recharge at the SAR SG [4] is calculated as the difference between the SAR SG diversions [2] and the SAR SG losses due to evaporation [3] (calculated based on a water balance of the SAR SG). During the calculation of New Conservation from 2013 through 2021, SAR SG diversions are equal to the flow at the



Parshall Flume. This flow includes SAR diversions at Cuttle Weir as well as overflow from the SCE System [1B]. Diversions at Cuttle Weir during both the calculation and forecast periods are dependent on the SAR Flows at Mentone [1A]. For the forecast period, SAR SG diversions are equal to the sum of water diverted at Cuttle Weir (determined by the Daily OPMODEL) and the overflow from the SCE System [1B]. This overflow is assumed to be the average from the Safe Yield Period. Since recharge at the SAR SG is limited by the mounding of recharge water below the surface, the Integrated SAR Model will be used to estimate the annual volume of water that could be recharged in the SAR SG during the forecast period.

#### 1.1.2.2 Post Project SBBA River Reach Recharge

Recharge to the SBBA River Reach [7] is calculated by the HSPF Watershed Model. This recharge depends on the SAR inflow from upstream, tributary inflow, and evapotranspiration (ET) losses. The remainder of the water not recharged in the SBBA River Reach or lost to ET represents the SBBA River Reach outflow [8] and SAR inflow into the Colton/Riverside Basins River Reach [9A]. This is equal to the sum of the inflow terms (i.e., SBBA inflow from the SAR [5A] and tributary creeks [5B]) minus the sum of the outflow terms (i.e., ET losses [6] and SBBA recharge [7]).

#### 1.1.2.3 Post Project Colton/Riverside Basins River Reach Recharge

As in the SBBA River Reach, recharge in the Colton/Riverside Basins River Reach [11] is calculated by the HSPF Watershed Model. Inflow from the SAR [9A] represents the outflow from the SBBA River Reach [8]. Outflow from the Colton/Riverside Basins River Reach [12] is equal to the sum of the inflow terms (i.e., Colton/Riverside inflow from the SAR [9A] and tributary creeks [9B], and discharges from wastewater treatment plants) minus the sum of the outflow terms (i.e., ET losses [10] and Colton/Riverside Basins recharge [11]).

### 1.2 Riverside Agreement Recharge Account

The Riverside Agreement Recharge Account [39] is calculated as the Pre Project Colton/Riverside Basins River Reach Recharge [26] minus the Post Project Colton/Riverside Basins River Reach Recharge [11]. This also represents the decrease in recharge in the Colton and Riverside Basins [38] due to operation of the Seven Oaks Reservoir.

### 1.3 Increase in Recharge in the SBBA

The increase in recharge in the SBBA [37] due to operation of the Seven Oaks Reservoir is calculated as the sum of Post Project recharge in the SBBA (i.e., SAR SG recharge [4] plus SBBA River Reach recharge [7]) minus the sum of Pre Project recharge in the SBBA (also SAR SG recharge [19] plus SBBA River Reach

recharge [22]). It can also be calculated as the total New Conservation [31] plus the Riverside Agreement Recharge Account value [38 or 39].

**New Conservation Terms and Calculation Method**

	[1A]	[1B]	[2]	[3]	[4]	[5A]	[5B]	[6]	[7]	[8]	[9A]	[9B]	[10]	[11]	[12]	[13]
POST PROJECT CONSERVATION																
TASK	SAR Spreading Grounds Recharge					SBBA River Reach Recharge					Colton/Riverside Basins River Reach Recharge					Post Project Conservation
	SAR Flows at Mentone	Inflow from SCE System	SAR Spreading Grounds Diversion	SAR Spreading Grounds Losses	SAR Spreading Grounds Recharge	Inflow from SAR	Inflow from SAR Tributaries	ET Losses	Recharge	Outflow	Inflow from SAR	Inflow from SAR Tributaries	ET Losses	Recharge	Outflow	
<b>Calculate New Conservation 2013-2021</b>	Gage at Mentone	[2]-Diversions at Cuttle Weir	Flow at Parshall Flume	Based on Water Balance	[2]-[3]	[1A]+[1B]-[2]	SCRBWM	SCRBWM	SCRBWM	[5A]+[5B]-[6]-[7]	[8]	SCRBWM	SCRBWM	SCRBWM	[9A]+[9B]-[10]-[11]	[4]+[7]+[11]
<b>Forecast New Conservation</b>	Daily OPMODEL	Average from Safe Yield Period	Daily OPMODEL/SBBA RBFM	Based on Water Balance	[2]-[3]	[1A]+[1B]-[2]	SCRBWM	SCRBWM	SCRBWM	[5A]+[5B]-[6]-[7]	[8]	SCRBWM	SCRBWM	SCRBWM	[9A]+[9B]-[10]-[11]	[4]+[7]+[11]

	[14]	[15]	[16A]	[16B]	[17]	[18]	[19]	[20A]	[20B]	[21]	[22]	[23]	[24A]	[24B]	[25]	[26]	[27]	[28]
PRE PROJECT CONSERVATION																		
TASK	SAR Spreading Grounds Recharge					SBBA River Reach Recharge					Colton/Riverside Basins River Reach Recharge					Post Project Conservation		
	SAR Flows Measured at Mentone	Seven Oaks Change in Flows	Uncontrolled SAR Flows at Mentone	Inflow from SCE System	SAR Spreading Grounds Diversion	SAR Spreading Grounds Losses	SAR Spreading Grounds Recharge	Inflow from SAR	Inflow from SAR Tributaries	ET Losses	Recharge	Outflow	Inflow from SAR	Inflow from SAR Tributaries	ET Losses		Recharge	Outflow
<b>Calculate New Conservation 2013-2021</b>	Gage at Mentone	Seven Oaks Dam Operated in 2002	Conservation Equation	Average from Safe Yield Period	Diversion from Regression Equation + [16B]	Based on Water Balance	[17]-[18]	[16A]+[16B]-[17]	SCRBWM	SCRBWM	SCRBWM	[20A]+[20B]-[21]-[22]	[23]	SCRBWM	SCRBWM	SCRBWM	[24A]+[24B]-[25]-[26]	[19]+[22]+[26]
<b>Forecast New Conservation</b>	Gage at Mentone	No Seven Oaks	Gage at Mentone	Average from Safe Yield Period	Diversion from Regression Equation + [16B]	Based on Water Balance	[17]-[18]	[16A]+[16B]-[17]	SCRBWM	SCRBWM	SCRBWM	[20A]+[20B]-[21]-[22]	[23]	SCRBWM	SCRBWM	SCRBWM	[24A]+[24B]-[25]-[26]	[19]+[22]+[26]

	[29]	[30]	[31]	[32]	[33]	[34]	[35]	[36]	[37]	[38]	[39]
NEW CONSERVATION											
TASK	New Conservation			New Conservation Allocation					Riverside Agreement Recharge Account		
	Conservation		New Conservation	Riverside	Riverside Highland	Agua Mansa	Univ. of CA	Valley District	Increase in Recharge in SBBA	Decrease in Recharge in Colton and Riverside Basins	Amount Added to Riverside Agreement Recharge
	Post Project	Pre Project									
<b>Calculate New Conservation 2013-2021</b>	[13]	[28]	[29]-[30]	[31] x 0.2249	[31] x 0.0185	[31] x 0.0338	[31] x 0.0023	[31] x 0.7205	[4]+[7]-[19]-[22]	[26]-[11]	[38]
<b>Forecast New Conservation</b>	[13]	[28]	[29]-[30]	[31] x 0.2249	[31] x 0.0185	[31] x 0.0338	[31] x 0.0023	[31] x 0.7205	[4]+[7]-[19]-[22]	[26]-[11]	[38]

**2013 AGREEMENT REGARDING ADDITIONAL EXTRACTIONS  
OF NEW CONSERVATION WATER**

**FROM THE SAN BERNARDINO BASIN AREA**

**BETWEEN**

**WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY**

**AND**

**SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**

**2013 AGREEMENT REGARDING ADDITIONAL EXTRACTIONS  
OF NEW CONSERVATION WATER  
FROM THE SAN BERNARDINO BASIN AREA**

This Agreement is entered into between San Bernardino Valley Municipal Water District (“Valley District”) and Western Municipal Water District of Riverside County (“Western”) on July 17, 2013.

**RECITALS**

A. Western and Valley District are parties to the Judgment in the case of *Western Municipal Water District of Riverside County v. East San Bernardino County Water District, et al.*, Riverside Superior Court No. 78426 (“Western Judgment” or “Judgment”).

B. The Judgment is administered and enforced by a Watermaster, consisting of a committee of two persons, one representative nominated by Valley District, and one by Western.

C. The Judgment further implements the physical solution in the related Orange County Water District action, as well as determines the rights of the named Plaintiffs to extract water from the San Bernardino Basin Area (“SBBA”), and provide replenishment of the area above Riverside Narrows. Among other provisions, the Judgment provides that the annual “adjusted right” of each Plaintiff to extract and export water from the SBBA is the sum of (a) its base right, which was adjusted based on a determination of safe yield and is currently expressed as a percentage of safe yield; and (b) an equal percentage of any new conservation, provided the conditions described in the Judgment are met. Similarly, the Judgment provides that Valley District shall provide imported water for replenishment of the SBBA at least equal to the amount by which extractions in any five year period exceed the 1959-1963 “base period” extractions (such amount was reduced based on a determination of safe yield and may be increased by the amount of any new conservation).

D. “New Conservation” is defined in the Judgment as “[a]ny increase in replenishment from natural precipitation which results from operation of works and facilities not now in existence, other than those works installed and operations which may be initiated to offset losses caused by increased flood control channelization.”

E. The Seven Oaks Dam is a component of the Santa Ana River Mainstem Project and was originally conceived as a way to address anticipated flooding on the Santa Ana River. In addition to providing flood control benefits and related incidental water conservation, Western and Valley District wished to formally include water conservation as an element of the facility. In 1991, Western and Valley District jointly filed an application to appropriate water conserved as part of the Seven Oaks project. The State Water Resources Control Board approved the application and issued permits to Western and Valley District in 2010.

F. Construction on the Dam began in the mid 1990s. Western, Valley District and Plaintiffs in the above-referenced action agreed to a methodology for participation in the project and a cost sharing formula pursuant to Paragraph VI(b)2 of the Judgment. Based on the cost sharing formula, Western, Valley District and Plaintiffs entered cost sharing agreements to study the feasibility of water conservation and to fund the physical improvements necessary to achieve water conservation in connection with the operation of the Dam.

G. The acquisition of the water rights permit and the related infrastructure improvements allow Western and Valley District to fully utilize water conserved by the project for replenishment of the SBBA.

H. As part of the 1991-2010 water rights permitting process, Western and Valley District developed models and other analytical tools to forecast hydrology and calculate water conservation. Over the last 2 years, a collaborative group of stakeholders has been meeting to further develop the models and procedures necessary to forecast long-term average New Conservation.

I. In addition to utilizing the recently-developed models and analytical tools to project future long-term average New Conservation, Watermaster has utilized the models and analytical tools to calculate the amount of New Conservation that occurred from 1998 through 2012. Watermaster was previously unable to calculate such New Conservation because the models and analytical tools were still being developed.

J. Consistent with the Judgment and cost-sharing agreements, Plaintiffs have paid their proportionate share of New Conservation-related costs through December 31, 2012 and are therefore entitled to the benefits associated with their allocated share of New Conservation that occurred from 1998 through 2012 due to operation of the Dam.

K. The Judgment does not provide a mechanism by which to allocate New Conservation retroactively. However, Paragraph VI(b)6 of the Judgment provides that Western and Valley District may enter into agreements providing for additional extractions from the SBBA. Western and Valley District have utilized Paragraph VI(b)6 in the past to allow additional extractions from the SBBA.

L. In addition, Western, Valley District and the City of Riverside are parties to an "Agreement Relating to the Diversion of Water from the Santa Ana River System" ("Diversion Agreement") dated March 20, 2007, wherein the parties acknowledge that water conservation in the SBBA associated with the operation of Seven Oaks Dam may cause adverse impacts on the Riverside Basin. The parties agreed that one method of mitigating such adverse impacts was to provide for additional Plaintiff extractions in the SBBA in an amount equal to the amount of replenishment in the SBBA that would have occurred in the Riverside Basin in the absence of the Seven Oaks Project, in exchange for a like amount of reduction in extractions in the Riverside Basin near the key wells used to measure Valley District's compliance with the Judgment objectives

M. Parties to the Diversion Agreement also agreed to implement an accounting methodology under the Western Judgment that will allow Plaintiffs to fully utilize their water

rights in the SBBA. In conjunction with this Agreement, the full use of such water rights could be facilitated by amending the August 18, 2004 Paragraph VI(b)6 agreement entitled “Western Replenishment and Extraction Agreement” which would allow Plaintiffs, in any year in which their entitlement was not fully used, to return any amount of water up to the amount of imported water previously acquired from Western.

N. The primary purpose of this Agreement is to provide for additional extractions of water from the SBBA by Plaintiffs and users within Valley District without replenishment by Valley District in amounts equal to the amount of New Conservation determined by Watermaster to have occurred from 1998 through 2012 due to operation of the Dam. As to future New Conservation associated with the operation of the Dam, Watermaster will utilize Paragraph VI(b)1, VI(b)2, and VI(c) to account for such New Conservation, as provided herein. In addition, another purpose of this Agreement is to ensure implementation of specific provisions of the 2007 Diversion Agreement related to New Conservation, as referenced in Recitals L and M, above.

O. Although the Judgment does not require court approval of Paragraph VI(b)6 agreements, the parties have historically sought court approval of such agreements.

NOW, THEREFORE, in consideration of the mutual covenants of the parties, and based upon the recitals above, IT IS HEREBY AGREED TO AS FOLLOWS:

1. Definition of Additional Extractions. As used herein, the term “additional extractions” means any extraction of water by Plaintiffs in the above-referenced action in excess of the amounts permitted by the Judgment; with respect to entities other than Plaintiffs in such action, the term means any extractions in excess of the total amount of water that can be produced from the SBBA without any replenishment obligation. No replenishment obligations shall be incurred on account of any additional extractions made pursuant to this Agreement.

2. Amount of Additional Extractions. Watermaster has determined that the total quantity of New Conservation resulting from operation of the Seven Oaks Dam for the period of 1998 through 2012 is 42,840 acre-feet. Consistent with the Judgment, such amount may be extracted by Plaintiffs and non-plaintiff entities producing water within the SBBA as additional extractions pursuant to this Agreement.

3. Allocation of Additional Extractions to Plaintiffs. Plaintiffs may make additional extractions from the SBBA for use within Western in any future year in the aggregate amount of 11,974 AF, or 27.95% of the 1998-2012 New Conservation water. Such amount shall be allocated among individual Plaintiffs as follows:

a.	City of Riverside	9,635 AF
b.	Meeks and Daley Water Co.	1,448 AF
c.	Riverside Highland Water Co.	793 AF
d.	Regents of University of California	98 AF

Such individual allocations are in proportion to Plaintiffs' respective shares of the safe yield of the SBBA.

4. Allocation of Additional Extractions to Other Entities. Entities in San Bernardino County other than Plaintiffs who produce water within the SBBA may make additional extractions from the SBBA in any future year in the amount of 30,866 AF, or 72.05% of the 1998-2012 New Conservation water.

5. Periodic Changes in Paragraph VI(b) and VI(c) Allowable Extractions. Periodically Watermaster shall consider making changes in:

(a) the portion of Plaintiffs' "adjusted right" related to New Conservation determined pursuant to Paragraph VI(b); and

(b) the New Conservation to which users in Valley District are entitled pursuant to Paragraph VI(c).

Such periodic consideration and any resulting changes shall be made to ensure that over a long-term period, equal to or greater than the number of years used to forecast the average amount of New Conservation, the amount of New Conservation allowed to be extracted is the same as it would have been if the New Conservation had been made available to Plaintiffs and users within Valley District each year in amounts equal to the actual amount of conserved water that is replenished. Any change shall be made prospectively in order to ensure that such change does not result in a change or reconciliation of a prior year "adjusted right" for Plaintiffs or an amount of New Conservation available for use by users within Valley District.

Periodic consideration of changes in the allowable extractions related to New Conservation shall occur for the duration of the forecast period at intervals of not less than five years nor more than ten years. The periodic consideration of change in the long-term average increase in allowable extractions related to New Conservation shall account for physical improvements in storage, diversion or recharge capability that may result in an increase in the forecast of the long-term average amount of New Conservation; and prospectively account for changes in the long-term forecast that arise from annual determinations of actual New Conservation and/or improvements in the data base and the analytical tools and procedures used to forecast New Conservation.

6. Paragraph VI(b) Service Area Delivery Limitations. The service area delivery limitations provided in Paragraphs V and VI of the Western Judgment shall not apply to New Conservation.

7. Assignment. Any Plaintiff may assign all or a portion of that Plaintiff's right to make additional extractions, as provided in Paragraph 3 herein, to any other Plaintiff.

8. Potential Reductions in Additional Extractions. If at any time prior to the extraction of all additional extractions pursuant to this Agreement Watermaster determines that New Conservation that occurred from 1998-2012 is causing a decrease in the natural safe yield of the SBBA by increasing subsurface outflow or rejecting native recharge that would have



occurred in the absence of Seven Oaks Dam, then Watermaster shall reduce the then-remaining amount of additional extractions provided for in Paragraph 2 and the subsequent amounts allocated to Plaintiffs and Valley District in Paragraphs 3 and 4 by an amount equal to the increase in subsurface outflow or rejected native recharge.

9. Annual Reports. Watermaster shall exclude any additional extractions under this Agreement from extractions in the Annual Report Tables 3A through 3D showing extractions by Plaintiffs. Watermaster shall also exclude additional extractions by entities other than Plaintiffs from the determination of extractions in Table 2 of the Annual Report.

10. Riverside Basin Mitigation Account. Any amount of replenishment in the SBBA resulting from the operation of Seven Oaks Dam and related diversion and spreading facilities that, in the absence of such operation, would have been replenished in the Riverside Basin, shall not be considered New Conservation and shall not be allocated for use by Plaintiffs and users within Valley District and shall instead be included in a Riverside Basin Mitigation Account. Watermaster shall maintain a record of the amount of water in the Riverside Basin Mitigation Account. Western shall maintain in force an agreement with the City of Riverside that provides for the City to increase extractions from its wells in the SBBA by a specified amount and reduce extractions from its Flume Tract wells in the Riverside Basin by the same amount. The agreement shall provide that such change in the location of extractions is subject to the following:

(a) Western and Valley District will jointly determine the specified amount of the change in extractions and the time period for such change; and

(b) The City of Riverside will change the location of extractions as determined by Western and Valley District unless Riverside is unable to do so because of physical or prior contractual constraints.

Watermaster shall account for the required extractions from the SBBA as additional extractions pursuant to Section 9 of this agreement and shall include the amount of the additional SBBA extractions as an extraction by the City of Riverside from Riverside North in the Annual Report Table 5.

11. Amendment to the Paragraph VI(b)6 Western Replenishment and Extraction Agreement. Paragraph 5 of the “Western Replenishment and Extraction Agreement” dated August 18, 2004 is hereby amended to also provide that, “Any Plaintiff at its option may assign and transfer to Western an amount of water equal to its unused water right in the SBBA in any year provided the aggregate amount of such transfers may not exceed the Plaintiffs aggregate amount of previously transferred right to extract imported water pursuant to this paragraph.”

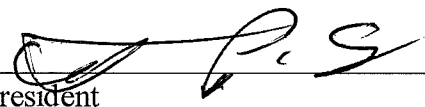
SAN BERNARDINO VALLEY MUNICIPAL  
WATER DISTRICT

Date: July 16, 2013

By:   
President

By: Ed Klger  
Secretary

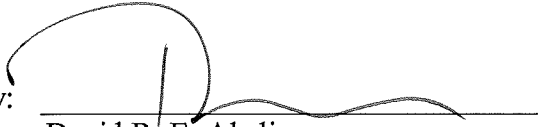
WESTERN MUNICIPAL WATER  
DISTRICT OF RIVERSIDE COUNTY

By:   
President

By: Debra D. Monte  
Secretary

APPROVED AS TO FORM:

By:   
Jill N. Willis  
Best Best & Krieger

By:   
David R. E. Aladjem  
Downey Brand LLP

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
3390 UNIVERSITY AVENUE, 5TH FLOOR  
P.O. BOX 1028  
RIVERSIDE, CALIFORNIA 92502

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2 BEST BEST & KRIEGER LLP  
3 3390 University Ave., 5th Floor  
4 P.O. Box 1028  
5 Riverside, California 92502  
6 Telephone: (951) 686-1450  
7 Facsimile: (951) 686-3083

EXEMPT FROM FILING FEES PURSUANT TO  
GOVERNMENT CODE SECTION 6013

5 Attorneys for Plaintiff  
6 Western Municipal Water District of Riverside  
7 County

7 BRUCE D. VARNER, Bar No. 033068  
8 VARNER & BRANDT LLP  
9 3750 University Ave., 6th Floor  
10 Riverside, California 92501  
11 Attorneys for Defendant  
12 San Bernardino Valley Municipal Water District

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF RIVERSIDE

13 WESTERN MUNICIPAL WATER  
14 DISTRICT OF RIVERSIDE COUNTY, et  
15 al.,

15 Plaintiffs,

16 v.

17 EAST SAN BERNARDINO COUNTY  
18 WATER DISTRICT, et al.,

19 Defendants.

Case No. CIV 78426  
Judge: Richard J. Oberholzer

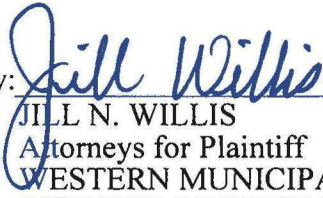
NOTICE OF ENTRY OF ORDER  
APPROVING 2013 AGREEMENT  
REGARDING ADDITIONAL  
EXTRACTIONS OF NEW CONSERVATION  
WATER FROM THE SAN BERNARDINO  
BASIN AREA

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1 NOTICE IS HEREBY GIVEN that on November 19, 2013, the Court entered its Order  
2 Approving 2013 Agreement Regarding Additional Extractions of New Conservation Water From  
3 the San Bernardino Basin Area, a copy of which is attached as Exhibit "A".  
4

5 Dated: November 21, 2013

BEST BEST & KRIEGER LLP

6  
7 By:   
8 JILL N. WILLIS  
9 Attorneys for Plaintiff  
10 WESTERN MUNICIPAL WATER  
11 DISTRICT OF RIVERSIDE COUNTY  
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RIVERSIDE, CALIFORNIA 92502

01376.00079\8419178.1

# EXHIBIT “A”

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6 Telephone: (951) 686-1450  
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8 Attorneys for Plaintiff  
9 Western Municipal Water District of Riverside  
10 County

11 BRUCE D. VARNER, Bar No. 033068  
12 VARNER & BRANDT LLP  
13 3750 University Ave., 6th Floor  
14 Riverside, California 92501  
15 Attorneys for Defendant  
16 San Bernardino Valley Municipal Water District

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
18 COUNTY OF RIVERSIDE

19 WESTERN MUNICIPAL WATER  
20 DISTRICT OF RIVERSIDE COUNTY, et  
21 al.,

22 Plaintiffs,

23 v.

24 EAST SAN BERNARDINO COUNTY  
25 WATER DISTRICT, et al.,

26 Defendants.

EXEMPT FROM FILING FEES PURSUANT TO  
GOVERNMENT CODE SECTION 6013

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

NOV 19 2013

K. Rahlwes

Case No. CIV 78426  
Judge: RICHARD J. OBERHOLZER

ORDER APPROVING 2013  
AGREEMENT REGARDING ADDITIONAL  
EXTRACTIONS OF NEW CONSERVATION  
WATER FROM THE SAN BERNARDINO  
BASIN AREA

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LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
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P.O. BOX 1028  
RIVERSIDE, CALIFORNIA 92502

**PROPOSED] ORDER**

1  
2 The motion filed mutually by the Plaintiff, Western Municipal Water District of Riverside  
3 County ("Western") and Defendant, San Bernardino Valley Municipal Water District ("Valley  
4 District"), came for hearing before this court on November 19, 2013 at 9:00 a.m. After  
5 reviewing the Motion for Order Approving 2013 Agreement Regarding Additional Extractions of  
6 New Conservation Water from the San Bernardino Basin Area and supporting papers, and the  
7 opposition (if any) thereto, and after providing an opportunity for oral argument at the time of  
8 hearing on the Motion, the Court hereby approves the July 17, 2013 Agreement Regarding  
9 Additional Extractions of New Conservation Water from the San Bernardino Basin Area as  
10 attached hereto in final form as Exhibit "A".

11 IT IS ORDERED

**RICHARD J. OBERHOLZER**

12 Dated: NOV 19 2013

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14 Judge of the Superior Court

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# EXHIBIT “A”



**2013 AGREEMENT REGARDING ADDITIONAL EXTRACTIONS  
OF NEW CONSERVATION WATER  
FROM THE SAN BERNARDINO BASIN AREA  
BETWEEN  
WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY  
AND  
SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**

**2013 AGREEMENT REGARDING ADDITIONAL EXTRACTIONS  
OF NEW CONSERVATION WATER  
FROM THE SAN BERNARDINO BASIN AREA**

This Agreement is entered into between San Bernardino Valley Municipal Water District ("Valley District") and Western Municipal Water District of Riverside County ("Western") on July 17, 2013.

**RECITALS**

A. Western and Valley District are parties to the Judgment in the case of *Western Municipal Water District of Riverside County v. East San Bernardino County Water District, et al.*, Riverside Superior Court No. 78426 ("Western Judgment" or "Judgment").

B. The Judgment is administered and enforced by a Watermaster, consisting of a committee of two persons, one representative nominated by Valley District, and one by Western.

C. The Judgment further implements the physical solution in the related Orange County Water District action, as well as determines the rights of the named Plaintiffs to extract water from the San Bernardino Basin Area ("SBBA"), and provide replenishment of the area above Riverside Narrows. Among other provisions, the Judgment provides that the annual "adjusted right" of each Plaintiff to extract and export water from the SBBA is the sum of (a) its base right, which was adjusted based on a determination of safe yield and is currently expressed as a percentage of safe yield; and (b) an equal percentage of any new conservation, provided the conditions described in the Judgment are met. Similarly, the Judgment provides that Valley District shall provide imported water for replenishment of the SBBA at least equal to the amount by which extractions in any five year period exceed the 1959-1963 "base period" extractions (such amount was reduced based on a determination of safe yield and may be increased by the amount of any new conservation).

D. "New Conservation" is defined in the Judgment as "[a]ny increase in replenishment from natural precipitation which results from operation of works and facilities not now in existence, other than those works installed and operations which may be initiated to offset losses caused by increased flood control channelization."

E. The Seven Oaks Dam is a component of the Santa Ana River Mainstem Project and was originally conceived as a way to address anticipated flooding on the Santa Ana River. In addition to providing flood control benefits and related incidental water conservation, Western and Valley District wished to formally include water conservation as an element of the facility. In 1991, Western and Valley District jointly filed an application to appropriate water conserved as part of the Seven Oaks project. The State Water Resources Control Board approved the application and issued permits to Western and Valley District in 2010.

F. Construction on the Dam began in the mid 1990s. Western, Valley District and Plaintiffs in the above-referenced action agreed to a methodology for participation in the project and a cost sharing formula pursuant to Paragraph VI(b)2 of the Judgment. Based on the cost sharing formula, Western, Valley District and Plaintiffs entered cost sharing agreements to study the feasibility of water conservation and to fund the physical improvements necessary to achieve water conservation in connection with the operation of the Dam.

G. The acquisition of the water rights permit and the related infrastructure improvements allow Western and Valley District to fully utilize water conserved by the project for replenishment of the SBBA.

H. As part of the 1991-2010 water rights permitting process, Western and Valley District developed models and other analytical tools to forecast hydrology and calculate water conservation. Over the last 2 years, a collaborative group of stakeholders has been meeting to further develop the models and procedures necessary to forecast long-term average New Conservation.

I. In addition to utilizing the recently-developed models and analytical tools to project future long-term average New Conservation, Watermaster has utilized the models and analytical tools to calculate the amount of New Conservation that occurred from 1998 through 2012. Watermaster was previously unable to calculate such New Conservation because the models and analytical tools were still being developed.

J. Consistent with the Judgment and cost-sharing agreements, Plaintiffs have paid their proportionate share of New Conservation-related costs through December 31, 2012 and are therefore entitled to the benefits associated with their allocated share of New Conservation that occurred from 1998 through 2012 due to operation of the Dam.

K. The Judgment does not provide a mechanism by which to allocate New Conservation retroactively. However, Paragraph VI(b)6 of the Judgment provides that Western and Valley District may enter into agreements providing for additional extractions from the SBBA. Western and Valley District have utilized Paragraph VI(b)6 in the past to allow additional extractions from the SBBA.

L. In addition, Western, Valley District and the City of Riverside are parties to an "Agreement Relating to the Diversion of Water from the Santa Ana River System" ("Diversion Agreement") dated March 20, 2007, wherein the parties acknowledge that water conservation in the SBBA associated with the operation of Seven Oaks Dam may cause adverse impacts on the Riverside Basin. The parties agreed that one method of mitigating such adverse impacts was to provide for additional Plaintiff extractions in the SBBA in an amount equal to the amount of replenishment in the SBBA that would have occurred in the Riverside Basin in the absence of the Seven Oaks Project, in exchange for a like amount of reduction in extractions in the Riverside Basin near the key wells used to measure Valley District's compliance with the Judgment objectives

M. Parties to the Diversion Agreement also agreed to implement an accounting methodology under the Western Judgment that will allow Plaintiffs to fully utilize their water

rights in the SBBA. In conjunction with this Agreement, the full use of such water rights could be facilitated by amending the August 18, 2004 Paragraph VI(b)6 agreement entitled "Western Replenishment and Extraction Agreement" which would allow Plaintiffs, in any year in which their entitlement was not fully used, to return any amount of water up to the amount of imported water previously acquired from Western.

N. The primary purpose of this Agreement is to provide for additional extractions of water from the SBBA by Plaintiffs and users within Valley District without replenishment by Valley District in amounts equal to the amount of New Conservation determined by Watermaster to have occurred from 1998 through 2012 due to operation of the Dam. As to future New Conservation associated with the operation of the Dam, Watermaster will utilize Paragraph VI(b)1, VI(b)2, and VI(c) to account for such New Conservation, as provided herein. In addition, another purpose of this Agreement is to ensure implementation of specific provisions of the 2007 Diversion Agreement related to New Conservation, as referenced in Recitals L and M, above.

O. Although the Judgment does not require court approval of Paragraph VI(b)6 agreements, the parties have historically sought court approval of such agreements.

NOW, THEREFORE, in consideration of the mutual covenants of the parties, and based upon the recitals above, IT IS HEREBY AGREED TO AS FOLLOWS:

1. Definition of Additional Extractions. As used herein, the term "additional extractions" means any extraction of water by Plaintiffs in the above-referenced action in excess of the amounts permitted by the Judgment; with respect to entities other than Plaintiffs in such action, the term means any extractions in excess of the total amount of water that can be produced from the SBBA without any replenishment obligation. No replenishment obligations shall be incurred on account of any additional extractions made pursuant to this Agreement.

2. Amount of Additional Extractions. Watermaster has determined that the total quantity of New Conservation resulting from operation of the Seven Oaks Dam for the period of 1998 through 2012 is 42,840 acre-feet. Consistent with the Judgment, such amount may be extracted by Plaintiffs and non-plaintiff entities producing water within the SBBA as additional extractions pursuant to this Agreement.

3. Allocation of Additional Extractions to Plaintiffs. Plaintiffs may make additional extractions from the SBBA for use within Western in any future year in the aggregate amount of 11,974 AF, or 27.95% of the 1998-2012 New Conservation water. Such amount shall be allocated among individual Plaintiffs as follows:

a.	City of Riverside	9,635 AF
b.	Meeks and Daley Water Co.	1,448 AF
c.	Riverside Highland Water Co.	793 AF
d.	Regents of University of California	98 AF

Such individual allocations are in proportion to Plaintiffs' respective shares of the safe yield of the SBBA.

4. Allocation of Additional Extractions to Other Entities. Entities in San Bernardino County other than Plaintiffs who produce water within the SBBA may make additional extractions from the SBBA in any future year in the amount of 30,866 AF, or 72.05% of the 1998-2012 New Conservation water.

5. Periodic Changes in Paragraph VI(b) and VI(c) Allowable Extractions. Periodically Watermaster shall consider making changes in:

(a) the portion of Plaintiffs' "adjusted right" related to New Conservation determined pursuant to Paragraph VI(b); and

(b) the New Conservation to which users in Valley District are entitled pursuant to Paragraph VI(c).

Such periodic consideration and any resulting changes shall be made to ensure that over a long-term period, equal to or greater than the number of years used to forecast the average amount of New Conservation, the amount of New Conservation allowed to be extracted is the same as it would have been if the New Conservation had been made available to Plaintiffs and users within Valley District each year in amounts equal to the actual amount of conserved water that is replenished. Any change shall be made prospectively in order to ensure that such change does not result in a change or reconciliation of a prior year "adjusted right" for Plaintiffs or an amount of New Conservation available for use by users within Valley District.

Periodic consideration of changes in the allowable extractions related to New Conservation shall occur for the duration of the forecast period at intervals of not less than five years nor more than ten years. The periodic consideration of change in the long-term average increase in allowable extractions related to New Conservation shall account for physical improvements in storage, diversion or recharge capability that may result in an increase in the forecast of the long-term average amount of New Conservation; and prospectively account for changes in the long-term forecast that arise from annual determinations of actual New Conservation and/or improvements in the data base and the analytical tools and procedures used to forecast New Conservation.

6. Paragraph VI(b) Service Area Delivery Limitations. The service area delivery limitations provided in Paragraphs V and VI of the Western Judgment shall not apply to New Conservation.

7. Assignment. Any Plaintiff may assign all or a portion of that Plaintiff's right to make additional extractions, as provided in Paragraph 3 herein, to any other Plaintiff.

8. Potential Reductions in Additional Extractions. If at any time prior to the extraction of all additional extractions pursuant to this Agreement Watermaster determines that New Conservation that occurred from 1998-2012 is causing a decrease in the natural safe yield of the SBBA by increasing subsurface outflow or rejecting native recharge that would have

occurred in the absence of Seven Oaks Dam, then Watermaster shall reduce the then-remaining amount of additional extractions provided for in Paragraph 2 and the subsequent amounts allocated to Plaintiffs and Valley District in Paragraphs 3 and 4 by an amount equal to the increase in subsurface outflow or rejected native recharge.

9. Annual Reports. Watermaster shall exclude any additional extractions under this Agreement from extractions in the Annual Report Tables 3A through 3D showing extractions by Plaintiffs. Watermaster shall also exclude additional extractions by entities other than Plaintiffs from the determination of extractions in Table 2 of the Annual Report.

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(a) Western and Valley District will jointly determine the specified amount of the change in extractions and the time period for such change; and

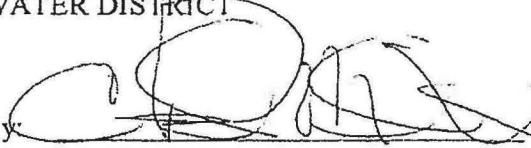
(b) The City of Riverside will change the location of extractions as determined by Western and Valley District unless Riverside is unable to do so because of physical or prior contractual constraints.


Watermaster shall account for the required extractions from the SBBA as additional extractions pursuant to Section 9 of this agreement and shall include the amount of the additional SBBA extractions as an extraction by the City of Riverside from Riverside North in the Annual Report Table 5.

11. Amendment to the Paragraph VI(b)6 Western Replenishment and Extraction Agreement. Paragraph 5 of the "Western Replenishment and Extraction Agreement" dated August 18, 2004 is hereby amended to also provide that, "Any Plaintiff at its option may assign and transfer to Western an amount of water equal to its unused water right in the SBBA in any year provided the aggregate amount of such transfers may not exceed the Plaintiffs aggregate amount of previously transferred right to extract imported water pursuant to this paragraph."


Date: July 16, 2013

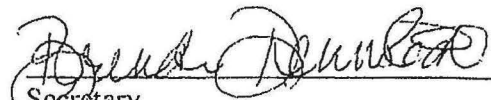
SAN BERNARDINO VALLEY MUNICIPAL  
WATER DISTRICT

By:   
President

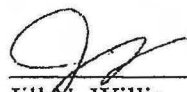
By:   
Secretary


WESTERN MUNICIPAL WATER  
DISTRICT OF RIVERSIDE COUNTY

By:   
President

By:   
Secretary

APPROVED AS TO FORM:

By:   
Jill N. Willis  
Best Best & Krieger

By:   
David R. E. Aladjem  
Downey Brand LLP

**PROOF OF SERVICE**

At the time of service I was over 18 years of age and not a party to this action. My business address is 3750 University Avenue, Suite 125, P.O. Box 1028, Riverside, California 92502. On November 21, 2013, I served the following document(s):

Notice of Entry of Order Approving 2013 Agreement Regarding Additional Extractions of New Conservation Water from the San Bernardino Basin Area

**By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

**By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below (specify one):

Deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Riverside, California.

**By personal service.** At \_\_\_ a.m./p.m., I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an Individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

**By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service for service. A Declaration of Messenger is attached.



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**By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

**By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Gregory P. Priamos, Esq. City of Riverside City Attorney's Office 3900 Main Street Riverside, CA 92522	Thomas P. Evans Public Utilities Director City of Riverside Riverside Public Utilities Department 3900 Main Street, 4th Floor Riverside, CA 92522
--	--

General Manager Elsinore Valley Municipal Water District 31315 Chaney Street P.O.B. 3000 Lake Elsinore, VA 92531-3000	John E. Brown, Esq. General Counsel, Elsinore Valley Municipal Water District Best Best & Krieger LLP 2855 E. Guasti Road, Ste. 400 Ontario, CA 91761
---	--

Charles Robinson General Counsel of The Regents Vice President - Legal Affairs University of California 1111 Franklin Street, 8th Floor Oakland, CA 94607-5200	Don Hough General Manager Riverside Highland Water Company 12374 Michigan St. Grand Terrace, CA
---	---

Joe Aklufi Aklufi & Wysocki 3403 Tenth Street Riverside, CA 92501	Bruce D. Varner Varner & Brandt LLP 3750 University Avenue, 6th Floor Riverside, CA 92501
--	--

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 21, 2013, at Riverside, California.

  
Lynda A. Byrd

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
3390 UNIVERSITY AVENUE, 5TH FLOOR  
P.O. BOX 1028  
RIVERSIDE, CALIFORNIA 92502

1 JILL N. WILLIS, Bar No. 200121  
2 BEST BEST & KRIEGER LLP  
3 3390 University Ave., 5th Floor  
4 P.O. Box 1028  
5 Riverside, California 92502  
6 Telephone: (951) 686-1450  
7 Facsimile: (951) 686-3083

8 Attorneys for Plaintiff  
9 Western Municipal Water District of Riverside  
10 County

11 BRUCE D. VARNER, Bar No. 033068  
12 VARNER & BRANDT LLP  
13 3750 University Ave., 6th Floor  
14 Riverside, California 92501  
15 Attorneys for Defendant  
16 San Bernardino Valley Municipal Water District

EXEMPT FROM FILING FEES PURSUANT TO  
GOVERNMENT CODE SECTION 6013

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

OCT 15 2013

C. Constante

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
18 COUNTY OF RIVERSIDE

19 WESTERN MUNICIPAL WATER  
20 DISTRICT OF RIVERSIDE COUNTY, et  
21 al.,

22 Plaintiffs,

23 v.

24 EAST SAN BERNARDINO COUNTY  
25 WATER DISTRICT, et al.,

26 Defendants.

Case No. CIV 78426  
Judge:

NOTICE OF MOTION AND MOTION FOR  
ORDER APPROVING 2013 AGREEMENT  
REGARDING ADDITIONAL  
EXTRACTIONS OF NEW CONSERVATION  
WATER FROM THE SAN BERNARDINO  
BASIN AREA

Hearing Date: November 19, 2013  
Time: 9:00 a.m.  
Department: 11

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LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
3390 UNIVERSITY AVENUE, 5TH FLOOR  
P.O. BOX 1028  
RIVERSIDE, CALIFORNIA 92502

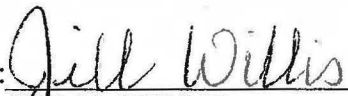
1 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:  
2 NOTICE IS HEREBY GIVEN that on November 19, 2013 at 9:00 a.m., in  
3 Department 11, the above-entitled Court, located at 4050 Main Street, Riverside, California, the  
4 San Bernardino Valley Municipal Water District ("Valley District") and Western Municipal  
5 Water District of Riverside County ("Western") will move this Court, pursuant to its continuing  
6 jurisdiction in this case, to issue an order approving the 2013 Agreement Regarding Additional  
7 Extractions of New Conservation Water From The San Bernardino Basin Area ("Agreement")  
8 between the San Bernardino Valley Municipal Water District ("Valley District") and Western  
9 Municipal Water District of Riverside County ("Western") providing for additional extractions  
10 from the San Bernardino Basin Area. The Agreement is dated July 17, 2013 and is attached  
11 hereto as Exhibit "A."

12 This Motion is made pursuant to the continuing jurisdiction of the Court, and the  
13 provisions of the Judgment providing for additional extractions.

14 The Motion will be based on this Notice, the following Points and Authorities, the  
15 Declaration of John V. Rossi and Samuel H. Fuller attached as Exhibit "B," all other matters in  
16 the Clerk's files herein, and such other evidence or grounds as may be presented at the hearing.


17 Dated: October 15, 2013

BEST BEST & KRIEGER LLP

18  
19 By:   
20 JILL N. WILLIS  
21 Attorneys for Plaintiff  
22 Western Municipal Water District of  
Riverside County

23 Dated: October 15, 2013

VARNER & BRANDT LLP

24  
25 By:   
26 BRUCE D. VARNER  
27 Attorney for Defendant  
28 San Bernardino Valley Municipal  
Water District

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POINTS AND AUTHORITIES

1  
2 1. Water rights adjudications are proper cases for retention of jurisdiction, and the  
3 kind of provision reserving jurisdiction in this case have been approved by the California  
4 Supreme Court. (*Allen v. California Water Co.* (1946) 20 Cal.2d 466, 488; *City of Los Angeles v.*  
5 *City of Glendale* (1943) 23 Cal.2d 68, 81; *Pasadena v. Alhambra* (1949) 33 Cal.2d 908,  
6 936-937.)

7 2. The Court in this case has reserved continuing jurisdiction upon the application of  
8 any party over matters not specifically set forth in the Judgment which might occur in the future,  
9 which would be of benefit to the parties in the utilization of the surface and groundwater supply  
10 described in the Judgment, and would not be inconsistent with the respective rights of the parties  
11 as established and determined in such Judgment. (Section XIV(a)(8).)

12 3. “New Conservation” is defined in the Judgment as “[a]ny increase in  
13 replenishment from natural precipitation which results from operation of works and facilities not  
14 now in existence, other than those works installed and operations which may be initiated to offset  
15 losses caused by increased flood control channelization.” (Section IV(i).)

16 4. The Seven Oaks Dam is a component of the Santa Ana River Mainstem Project  
17 and was originally conceived as a way to address anticipated flooding on the Santa Ana River. In  
18 addition to providing flood control benefits and related incidental water conservation, Western  
19 and Valley District wished to formally include water conservation as an element of the facility.  
20 In 1991, Western and Valley District jointly filed an application to appropriate water conserved as  
21 part of the Seven Oaks project. The State Water Resources Control Board approved the  
22 application and issued permits to Western and Valley District in 2010. (Declaration of John V.  
23 Rossi and Samuel H. Fuller [“Decl.”], ¶ 2.)

24 5. As part of the 1991-2010 water rights permitting process, Western and Valley  
25 District developed models and other analytical tools to forecast hydrology and calculate water  
26 conservation. Over the last 2 years, a collaborative group of stakeholders has been meeting to  
27 further develop the models and procedures necessary to forecast long-term average New  
28 Conservation. (Decl. ¶ 3.)

1           6.       In addition to utilizing the recently-developed models and analytical tools to  
2 project future long-term average New Conservation, Western and Valley District have utilized the  
3 models and analytical tools to calculate the amount of New Conservation that occurred from 1998  
4 through 2012. (Decl. ¶ 4.)

5           7.       The Judgment does not provide a mechanism by which to allocate New  
6 Conservation retroactively. However, Paragraph VI(b)6 provides that Western and Valley  
7 District may enter into agreements providing for additional extractions from the SBBA. Western  
8 and Valley District have utilized Paragraph VI(b)6 in the past to allow additional extractions from  
9 the SBBA.

10          8.       Watermaster has determined that the total quantity of New Conservation resulting  
11 from operation of the Seven Oaks Dam for the period of 1998 through 2012 is 42,840 acre-feet.  
12 (Decl. ¶ 5.) Consistent with the Judgment, such amount should be allocated among individual  
13 Plaintiffs as follows, in proportion to Plaintiffs' respective shares of the safe yield of the SBBA:

14           City of Riverside	9,635 AF
15           Meeks and Daley Water Co.	1,448 AF
16           Riverside Highland Water Co.	793 AF
17           Regents of University of California	98 AF

18 (Decl. ¶ 6.)

19          9.       Entities in San Bernardino County other than Plaintiffs who produce water within  
20 the SBBA should be permitted to make additional extractions from the SBBA in any future year  
21 in the amount of 30,866 AF, or 72.05% of the 1998-2012 New Conservation water, consistent  
22 with those parties' shares of safe yield in the SBBA. (Decl. ¶ 7.)

23          10.       The Agreement attached hereto as Exhibit "A" is consistent with the Judgment.  
24 Thus, pursuant to the Court's continuing jurisdiction over this matter, Western and Valley District  
25 request that the Court approve the Agreement attached hereto as Exhibit "A."


LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
3390 UNIVERSITY AVENUE, 5TH FLOOR  
P.O. BOX 1028  
RIVERSIDE, CALIFORNIA 92502

1 Dated: October 15, 2013

BEST BEST & KRIEGER LLP

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By:   
JILL N. WILLIS  
Attorneys for Plaintiff  
Western Municipal Water District of  
Riverside County

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5


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7 Dated: October 15, 2013

VARNER & BRANDT LLP

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By:   
BRUCE D. VARNER  
Attorney for Defendant  
San Bernardino Valley Municipal  
Water District

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# EXHIBIT “A”

**2013 AGREEMENT REGARDING ADDITIONAL EXTRACTIONS  
OF NEW CONSERVATION WATER  
FROM THE SAN BERNARDINO BASIN AREA  
BETWEEN  
WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY  
AND  
SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**



**2013 AGREEMENT REGARDING ADDITIONAL EXTRACTIONS  
OF NEW CONSERVATION WATER  
FROM THE SAN BERNARDINO BASIN AREA**

This Agreement is entered into between San Bernardino Valley Municipal Water District (“Valley District”) and Western Municipal Water District of Riverside County (“Western”) on July 17, 2013.

**RECITALS**

A. Western and Valley District are parties to the Judgment in the case of *Western Municipal Water District of Riverside County v. East San Bernardino County Water District, et al.*, Riverside Superior Court No. 78426 (“Western Judgment” or “Judgment”).

B. The Judgment is administered and enforced by a Watermaster, consisting of a committee of two persons, one representative nominated by Valley District, and one by Western.

C. The Judgment further implements the physical solution in the related Orange County Water District action, as well as determines the rights of the named Plaintiffs to extract water from the San Bernardino Basin Area (“SBBA”), and provide replenishment of the area above Riverside Narrows. Among other provisions, the Judgment provides that the annual “adjusted right” of each Plaintiff to extract and export water from the SBBA is the sum of (a) its base right, which was adjusted based on a determination of safe yield and is currently expressed as a percentage of safe yield; and (b) an equal percentage of any new conservation, provided the conditions described in the Judgment are met. Similarly, the Judgment provides that Valley District shall provide imported water for replenishment of the SBBA at least equal to the amount by which extractions in any five year period exceed the 1959-1963 “base period” extractions (such amount was reduced based on a determination of safe yield and may be increased by the amount of any new conservation).

D. “New Conservation” is defined in the Judgment as “[a]ny increase in replenishment from natural precipitation which results from operation of works and facilities not now in existence, other than those works installed and operations which may be initiated to offset losses caused by increased flood control channelization.”

E. The Seven Oaks Dam is a component of the Santa Ana River Mainstem Project and was originally conceived as a way to address anticipated flooding on the Santa Ana River. In addition to providing flood control benefits and related incidental water conservation, Western and Valley District wished to formally include water conservation as an element of the facility. In 1991, Western and Valley District jointly filed an application to appropriate water conserved as part of the Seven Oaks project. The State Water Resources Control Board approved the application and issued permits to Western and Valley District in 2010.

F. Construction on the Dam began in the mid 1990s. Western, Valley District and Plaintiffs in the above-referenced action agreed to a methodology for participation in the project and a cost sharing formula pursuant to Paragraph VI(b)2 of the Judgment. Based on the cost sharing formula, Western, Valley District and Plaintiffs entered cost sharing agreements to study the feasibility of water conservation and to fund the physical improvements necessary to achieve water conservation in connection with the operation of the Dam.

G. The acquisition of the water rights permit and the related infrastructure improvements allow Western and Valley District to fully utilize water conserved by the project for replenishment of the SBBA.

H. As part of the 1991-2010 water rights permitting process, Western and Valley District developed models and other analytical tools to forecast hydrology and calculate water conservation. Over the last 2 years, a collaborative group of stakeholders has been meeting to further develop the models and procedures necessary to forecast long-term average New Conservation.

I. In addition to utilizing the recently-developed models and analytical tools to project future long-term average New Conservation, Watermaster has utilized the models and analytical tools to calculate the amount of New Conservation that occurred from 1998 through 2012. Watermaster was previously unable to calculate such New Conservation because the models and analytical tools were still being developed.

J. Consistent with the Judgment and cost-sharing agreements, Plaintiffs have paid their proportionate share of New Conservation-related costs through December 31, 2012 and are therefore entitled to the benefits associated with their allocated share of New Conservation that occurred from 1998 through 2012 due to operation of the Dam.

K. The Judgment does not provide a mechanism by which to allocate New Conservation retroactively. However, Paragraph VI(b)6 of the Judgment provides that Western and Valley District may enter into agreements providing for additional extractions from the SBBA. Western and Valley District have utilized Paragraph VI(b)6 in the past to allow additional extractions from the SBBA.

L. In addition, Western, Valley District and the City of Riverside are parties to an "Agreement Relating to the Diversion of Water from the Santa Ana River System" ("Diversion Agreement") dated March 20, 2007, wherein the parties acknowledge that water conservation in the SBBA associated with the operation of Seven Oaks Dam may cause adverse impacts on the Riverside Basin. The parties agreed that one method of mitigating such adverse impacts was to provide for additional Plaintiff extractions in the SBBA in an amount equal to the amount of replenishment in the SBBA that would have occurred in the Riverside Basin in the absence of the Seven Oaks Project, in exchange for a like amount of reduction in extractions in the Riverside Basin near the key wells used to measure Valley District's compliance with the Judgment objectives

M. Parties to the Diversion Agreement also agreed to implement an accounting methodology under the Western Judgment that will allow Plaintiffs to fully utilize their water

rights in the SBBA. In conjunction with this Agreement, the full use of such water rights could be facilitated by amending the August 18, 2004 Paragraph VI(b)6 agreement entitled "Western Replenishment and Extraction Agreement" which would allow Plaintiffs, in any year in which their entitlement was not fully used, to return any amount of water up to the amount of imported water previously acquired from Western.

N. The primary purpose of this Agreement is to provide for additional extractions of water from the SBBA by Plaintiffs and users within Valley District without replenishment by Valley District in amounts equal to the amount of New Conservation determined by Watermaster to have occurred from 1998 through 2012 due to operation of the Dam. As to future New Conservation associated with the operation of the Dam, Watermaster will utilize Paragraph VI(b)1, VI(b)2, and VI(c) to account for such New Conservation, as provided herein. In addition, another purpose of this Agreement is to ensure implementation of specific provisions of the 2007 Diversion Agreement related to New Conservation, as referenced in Recitals L and M, above.

O. Although the Judgment does not require court approval of Paragraph VI(b)6 agreements, the parties have historically sought court approval of such agreements.

NOW, THEREFORE, in consideration of the mutual covenants of the parties, and based upon the recitals above, IT IS HEREBY AGREED TO AS FOLLOWS:

1. Definition of Additional Extractions. As used herein, the term "additional extractions" means any extraction of water by Plaintiffs in the above-referenced action in excess of the amounts permitted by the Judgment; with respect to entities other than Plaintiffs in such action, the term means any extractions in excess of the total amount of water that can be produced from the SBBA without any replenishment obligation. No replenishment obligations shall be incurred on account of any additional extractions made pursuant to this Agreement.

2. Amount of Additional Extractions. Watermaster has determined that the total quantity of New Conservation resulting from operation of the Seven Oaks Dam for the period of 1998 through 2012 is 42,840 acre-feet. Consistent with the Judgment, such amount may be extracted by Plaintiffs and non-plaintiff entities producing water within the SBBA as additional extractions pursuant to this Agreement.

3. Allocation of Additional Extractions to Plaintiffs. Plaintiffs may make additional extractions from the SBBA for use within Western in any future year in the aggregate amount of 11,974 AF, or 27.95% of the 1998-2012 New Conservation water. Such amount shall be allocated among individual Plaintiffs as follows:

a.	City of Riverside	9,635 AF
b.	Meeks and Daley Water Co.	1,448 AF
c.	Riverside Highland Water Co.	793 AF
d.	Regents of University of California	98 AF

Such individual allocations are in proportion to Plaintiffs' respective shares of the safe yield of the SBBA.

4. Allocation of Additional Extractions to Other Entities. Entities in San Bernardino County other than Plaintiffs who produce water within the SBBA may make additional extractions from the SBBA in any future year in the amount of 30,866 AF, or 72.05% of the 1998-2012 New Conservation water.

5. Periodic Changes in Paragraph VI(b) and VI(c) Allowable Extractions. Periodically Watermaster shall consider making changes in:

(a) the portion of Plaintiffs' "adjusted right" related to New Conservation determined pursuant to Paragraph VI(b); and

(b) the New Conservation to which users in Valley District are entitled pursuant to Paragraph VI(c).

Such periodic consideration and any resulting changes shall be made to ensure that over a long-term period, equal to or greater than the number of years used to forecast the average amount of New Conservation, the amount of New Conservation allowed to be extracted is the same as it would have been if the New Conservation had been made available to Plaintiffs and users within Valley District each year in amounts equal to the actual amount of conserved water that is replenished. Any change shall be made prospectively in order to ensure that such change does not result in a change or reconciliation of a prior year "adjusted right" for Plaintiffs or an amount of New Conservation available for use by users within Valley District.

Periodic consideration of changes in the allowable extractions related to New Conservation shall occur for the duration of the forecast period at intervals of not less than five years nor more than ten years. The periodic consideration of change in the long-term average increase in allowable extractions related to New Conservation shall account for physical improvements in storage, diversion or recharge capability that may result in an increase in the forecast of the long-term average amount of New Conservation; and prospectively account for changes in the long-term forecast that arise from annual determinations of actual New Conservation and/or improvements in the data base and the analytical tools and procedures used to forecast New Conservation.

6. Paragraph VI(b) Service Area Delivery Limitations. The service area delivery limitations provided in Paragraphs V and VI of the Western Judgment shall not apply to New Conservation.

7. Assignment. Any Plaintiff may assign all or a portion of that Plaintiff's right to make additional extractions, as provided in Paragraph 3 herein, to any other Plaintiff.

8. Potential Reductions in Additional Extractions. If at any time prior to the extraction of all additional extractions pursuant to this Agreement Watermaster determines that New Conservation that occurred from 1998-2012 is causing a decrease in the natural safe yield of the SBBA by increasing subsurface outflow or rejecting native recharge that would have

occurred in the absence of Seven Oaks Dam, then Watermaster shall reduce the then-remaining amount of additional extractions provided for in Paragraph 2 and the subsequent amounts allocated to Plaintiffs and Valley District in Paragraphs 3 and 4 by an amount equal to the increase in subsurface outflow or rejected native recharge.

9. Annual Reports. Watermaster shall exclude any additional extractions under this Agreement from extractions in the Annual Report Tables 3A through 3D showing extractions by Plaintiffs. Watermaster shall also exclude additional extractions by entities other than Plaintiffs from the determination of extractions in Table 2 of the Annual Report.

10. Riverside Basin Mitigation Account. Any amount of replenishment in the SBBA resulting from the operation of Seven Oaks Dam and related diversion and spreading facilities that, in the absence of such operation, would have been replenished in the Riverside Basin, shall not be considered New Conservation and shall not be allocated for use by Plaintiffs and users within Valley District and shall instead be included in a Riverside Basin Mitigation Account. Watermaster shall maintain a record of the amount of water in the Riverside Basin Mitigation Account. Western shall maintain in force an agreement with the City of Riverside that provides for the City to increase extractions from its wells in the SBBA by a specified amount and reduce extractions from its Flume Tract wells in the Riverside Basin by the same amount. The agreement shall provide that such change in the location of extractions is subject to the following:

(a) Western and Valley District will jointly determine the specified amount of the change in extractions and the time period for such change; and

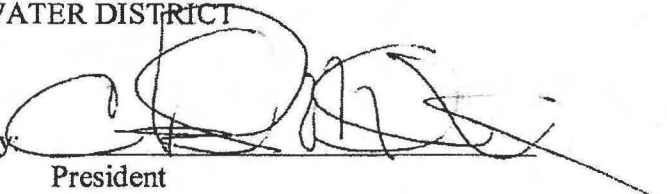
(b) The City of Riverside will change the location of extractions as determined by Western and Valley District unless Riverside is unable to do so because of physical or prior contractual constraints.


Watermaster shall account for the required extractions from the SBBA as additional extractions pursuant to Section 9 of this agreement and shall include the amount of the additional SBBA extractions as an extraction by the City of Riverside from Riverside North in the Annual Report Table 5.

11. Amendment to the Paragraph VI(b)6 Western Replenishment and Extraction Agreement. Paragraph 5 of the "Western Replenishment and Extraction Agreement" dated August 18, 2004 is hereby amended to also provide that, "Any Plaintiff at its option may assign and transfer to Western an amount of water equal to its unused water right in the SBBA in any year provided the aggregate amount of such transfers may not exceed the Plaintiffs aggregate amount of previously transferred right to extract imported water pursuant to this paragraph."

Date: July 16, 2013

SAN BERNARDINO VALLEY MUNICIPAL  
WATER DISTRICT

By:   
President

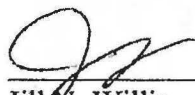
By:   
Secretary


WESTERN MUNICIPAL WATER  
DISTRICT OF RIVERSIDE COUNTY

By:   
President

By:   
Secretary

APPROVED AS TO FORM:

By:   
Jill N. Willis  
Best Best & Krieger

By:   
David R. E. Aladjem  
Downey Brand LLP

# EXHIBIT “B”






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City of Riverside	9,635 AF
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Riverside Highland Water Co.	793 AF
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7. Entities in San Bernardino County other than Plaintiffs who produce water within the SBBA should be permitted to make additional extractions from the SBBA in any future year in the amount of 30,866 AF, or 72.05% of the 1998-2012 New Conservation water, consistent with those parties' shares of safe yield in the SBBA.

8. Each of the deponents hereby declares, under penalty of perjury, that the foregoing is true and correct.

Dated: October 1, 2013

  
 \_\_\_\_\_  
 JOHN V. ROSSI

Dated: October 1, 2013

  
 \_\_\_\_\_  
 SAMUEL H. FULLER

**PROOF OF SERVICE**

At the time of service I was over 18 years of age and not a party to this action. My business address is 3750 University Avenue, Suite 125, P.O. Box 1028, Riverside, California 92502. On October 15, 2013, I served the following document(s):

Notice of Motion and Motion for Order Approving 2013 Agreement Regarding Additional Extractions of New Conservation Water from the San Bernardino Basin Area

**By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

**By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below (specify one):

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Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Riverside, California.

**By personal service.** At \_\_\_ a.m./p.m., I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an Individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

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4 addresses listed below. I placed the envelope or package for collection and  
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9 documents to be sent to the persons at the e-mail addresses listed below. I did not  
10 receive, within a reasonable time after the transmission, any electronic message or  
11 other indication that the transmission was unsuccessful.

12 Gregory P. Priamos, Esq.  
13 City of Riverside  
14 City Attorney's Office  
15 3900 Main Street  
16 Riverside, CA 92522

17 Thomas P. Evans  
18 Public Utilities Director  
19 City of Riverside  
20 Riverside Public Utilities Department  
21 3900 Main Street, 4th Floor  
22 Riverside, CA 92522

23 General Manager  
24 Elsinore Valley Municipal Water District  
25 31315 Chaney Street  
26 P.O.B. 3000  
27 Lake Elsinore, VA 92531-3000

28 John E. Brown, Esq.  
General Counsel, Elsinore Valley Municipal  
Water District  
Best Best & Krieger LLP  
2855 E. Guasti Road, Ste. 400  
Ontario, CA 91761

Charles Robinson  
General Counsel of The Regents  
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I declare under penalty of perjury under the laws of the State of California that the  
above is true and correct.

Executed on October 15, 2013, at Riverside, California.

  
Lynda A. Byrd

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