



A REGIONAL WATER AGENCY  
SINCE 1954

## **BOARD OF DIRECTORS WORKSHOP -**

### **RESOURCES/ENGINEERING**

**TUESDAY, APRIL 11, 2023 - 2:00 P.M.**

#### **PUBLIC PARTICIPATION**

Public participation is welcome and encouraged. You may participate in the April 11, 2023, meeting of the San Bernardino Valley Municipal Water District in-person, or online and by telephone as follows:

**Dial-in Info: (877) 853 5247 US Toll-free  
Meeting ID: 824 9230 9440  
PASSCODE: 3802020**

**<https://sbvmwd.zoom.us/j/82492309440>**

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 Monday, April 10, 2023. 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.**



**Director by Teleconference:**

**Director Harrison:** Room 515, Hyatt Regency 1209 L St, Sacramento, CA 95814

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

**BOARD OF DIRECTORS' WORKSHOP - RESOURCES/ENGINEERING**

**AGENDA**

**2:00 PM Tuesday, April 11, 2023**

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**CALL TO ORDER**

Chairperson: Director Hayes

Vice-Chair: Director Harrison

**1) INTRODUCTIONS**

**2) PUBLIC COMMENT**

Members of the public may address the Board regarding any item within the subject matter jurisdiction of the Board; however, no action may be taken on off-agenda items except as authorized by law. Each speaker is limited to a maximum of three (3) minutes.

**3) PRESENTATIONS**

3.1 Summary Findings of the 2022 Change in Storage Report (20 min) - Page 3  
[Staff Memo - Summary Findings of the 2022 Change in Storage Report](#)  
[Excerpt from the 2022 Change in Storage Report](#)

3.2 Update on the Upper Santa Ana River Habitat Conservation Plan (20 min) - Page 17  
[Staff Memo - Update on the Upper Santa Ana River Habitat Conservation Plan](#)

**4) DISCUSSION AND POSSIBLE ACTION ITEMS**

4.1 Consider Operation Agreement for the Santa Ana River Conservation and Conjunctive Use Program (SARCCUP) (20 min) - Page 21  
[Staff Memo - Consider Operation Agreement for the Santa Ana River Conservation and Conjunctive Use Program \(SARCCUP\)](#)  
[SARCCUP Operation Agreement](#)  
[SARCCUP Operation Agreement Exhibits 1 - 4](#)  
[Ordinance No. 79](#)

- 4.2 Consider Adoption of Resolution No.1174 in support Ernesto A. Avila as a candidate for the Association of California Water Agencies' Vice- President(5 min) - Page 157  
Consider Adoption of Resolution No. 1174 in support Ernesto A. Avila as a candidate for the Association of California Water Agencies' Vice- President  
Resolution 1174  
Ernesto A. Avila nomination supporting documents

5) **FUTURE BUSINESS**

6) **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:** April 11, 2023  
**TO:** Board of Directors' – Resources/Engineering Workshop  
**FROM:** Adekunle Ojo, Manager of Water Resources  
**SUBJECT:** Summary Findings of the 2022 Change in Storage Report

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**Staff Recommendations**

Receive and File

**Summary**

Each year, San Bernardino Valley calculate the change in groundwater storage in the San Bernardino, Rialto-Colton, and Yucaipa Basins. Utilizing Geographic Information System and field water level measurements from wells throughout the Basins, the calculation provides a gauge of how groundwater supplies changed from the previous year and shows the effectiveness of water resource management activities and the value of imported water supplies. The calculation uses the highest water levels during the fall after the higher summer pumping that seasonally depresses water levels. The increase or decrease in groundwater storage is influenced by a variety of factors including local precipitation, groundwater production, availability of local and imported water for groundwater recharge, and demand management/water conservation. Below is the summary of the 2022 results:

<b>Basin</b>	<b>Change in Storage (acre-feet) from 2021</b>	<b>Percent Full</b>	<b>Volume in Storage (acre-feet)</b>
Rialto-Colton	(7,970)	86%	1.5 million
San Bernardino Basin (SBB)	(92,643)	82%	4.7 million
Yucaipa	(2,619)	80%	2.2 million

The total decline in groundwater storage is about 103,232 acre-feet, or -1.2%, from 2021 to 2022, which is statistically insignificant in comparison to the overall storage capacity and within the normal annual fluctuations of each basin. The 2022 change in groundwater storage is consistent with the below average precipitation that persisted for most of the calendar year and the limited availability of State Water Project supplies (5% Table A allocation). The combined storage capacity of these



basins is approximately 10.3 million acre-feet and they ended 2022 with 8.4 million acre-feet in storage, averaging 83% full. Given the near average precipitation for the latter part of 2022 and above average precipitation locally and on the State Water Project so far in 2023, we anticipate a significant increase in groundwater storage in the 2023 Change in Storage Report. For historical context, in the three (3) wettest years the region has experienced since the drought began in 1998, the San Bernardino Basin gained almost 224,000 acre-feet of storage in 2005, almost 160,000 acre-feet in 2011, and 160,522 acre-feet in 2019.

### **Background**

San Bernardino Valley has been calculating the change in groundwater storage for the San Bernardino Basin since the early 1970's, and started calculating the same for Rialto-Colton Basin in 2013 and the Yucaipa Basin in 2015. Despite the current long-term drought that began in 1998 and the "feast and famine" hydrology of this service area, our local groundwater basins remain healthy. The San Bernardino Basin, the largest in our service area and the dominant water source, is currently at 82% full; this translates to less than 0.5% decline annually over a 24-year period. Likewise, the Rialto-Colton Basin has experienced a modest decline over the same drought period, from 92% in 1998 to 86% full in 2022, or an average of 0.25% decline annually. The Yucaipa Basin has been stable since 1998, maintaining storage at 80% full over the 24-year period.

The full report for 2022 is available on the District's website at:

<https://www.sbvmd.com/home/showpublisheddocument/10102/638157226134370000>

### **District Strategic Plan Application**

The annual calculation demonstrates the commitment of the District to drive science-based decision making, proactive risk management, and building trust in maximizing the value of the region's water assets.

### **Fiscal Impact**

None

### **Attachment**

Excerpt from the 2022 Change in Storage Report

# **Change in Groundwater Storage for the San Bernardino, Rialto-Colton And Yucaipa Basins**

## **EXECUTIVE SUMMARY AND APPENDIX**



**March 2023**

**San Bernardino Valley Municipal Water District**

Wen Huang, P.E.  
Assistant General Manager/Chief  
Operating Officer


Adekunle Ojo  
Manager of Water Resources

Dan Borell  
Geospatial Services Program Manager

## **ACKNOWLEDGMENT**

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Many public and private water agencies and various individuals have cooperated with the San Bernardino Valley Municipal Water District in furnishing the essential information upon which the Change in Storage Calculation is based.



## SUMMARY OF RESULTS

### *Background*

The Change in Storage calculation provides an indicator, or “gauge”, of current groundwater supplies and how they compare to past years. The San Bernardino Valley Municipal Water District (SBVMWD) has been calculating the change in groundwater storage for the San Bernardino Basin (SBB) since 1970. The first calculation was completed for the years 1934 – 1960 by the State of California Department of Water Resources (DWR) and the results were summarized in Bulletin 104-5, Meeting Water Demands in the Bunker Hill-San Timoteo Area, Geology, Hydrology, and Operation-Economics Studies, Text and Plates (Olson, pp. 90 – 92). The DWR change in storage values were calculated using the Specific Yield Method (Olson, pp. 85 – 98) and a mathematical model developed by TRW, Incorporated, Redondo Beach, California (TRW). In 1980, SBVMWD updated the change in storage calculation to include the years 1961 – 1980 (Van Gelder). In the early 1990’s, SBVMWD created a new change in storage model (SBVMWD Model) using software developed by Environmental Systems Research Institute (ESRI), Redlands, California. Like its predecessors, the SBVMWD Model calculates the change in groundwater storage (volume) using the Specific Yield Method which is based largely on the change in water level measurements and the soil porosity (for a detailed explanation of how the model works, see Appendix: SBVMWD Change in Storage Methodology). In 2014, Valley District began calculating the change in storage for the Yucaipa and Rialto-Colton Basin.

In 2019, SBVMWD performed a study to determine the total amount of usable groundwater storage in the San Bernardino Basin (SBB) and Rialto-Colton Basin (RC) using the Upper Santa Ana River Integrated Groundwater Model (Integrated SAR Model). The usable groundwater storage is the theoretical maximum volume of groundwater that can be stored from the bottom elevation of the aquifer to the maximum water level in the basin (**Calculation details can be found in Appendix: Total Usable Storage**). Storage in the SBB is constrained by the goal to minimize, or eliminate, liquefaction potential in the Pressure Zone Area. In order to achieve this goal, water levels in the Pressure Zone must not be shallower than 50 feet below ground surface. The estimated total usable storage in the SBB is 5,690,000 acre-feet, Rialto-Colton Basin is 1,749,000 acre-feet, and the Yucaipa Basin is 2,796,000 acre-feet.

## **Calculation**

SBVMWD calculates the change in groundwater storage in the San Bernardino, Rialto-Colton and Yucaipa Basins annually. The change in groundwater storage is based upon the Basins geology, and field water level measurements from wells throughout the Basins. Storage is an important metric that SBVMWD uses to gauge the effectiveness of various water resource management activities, such as groundwater recharge. The annual change in storage is then a comparison of the current year's change in groundwater storage with the previous year's value.

The wells used in the SBVMWD Model are shown on Figure 1 and the static water level data for these wells is illustrated on Figure 2. A comparison of current water levels to the first historic low water level/year is shown on Figure 3.

## Summary of 2022 Results

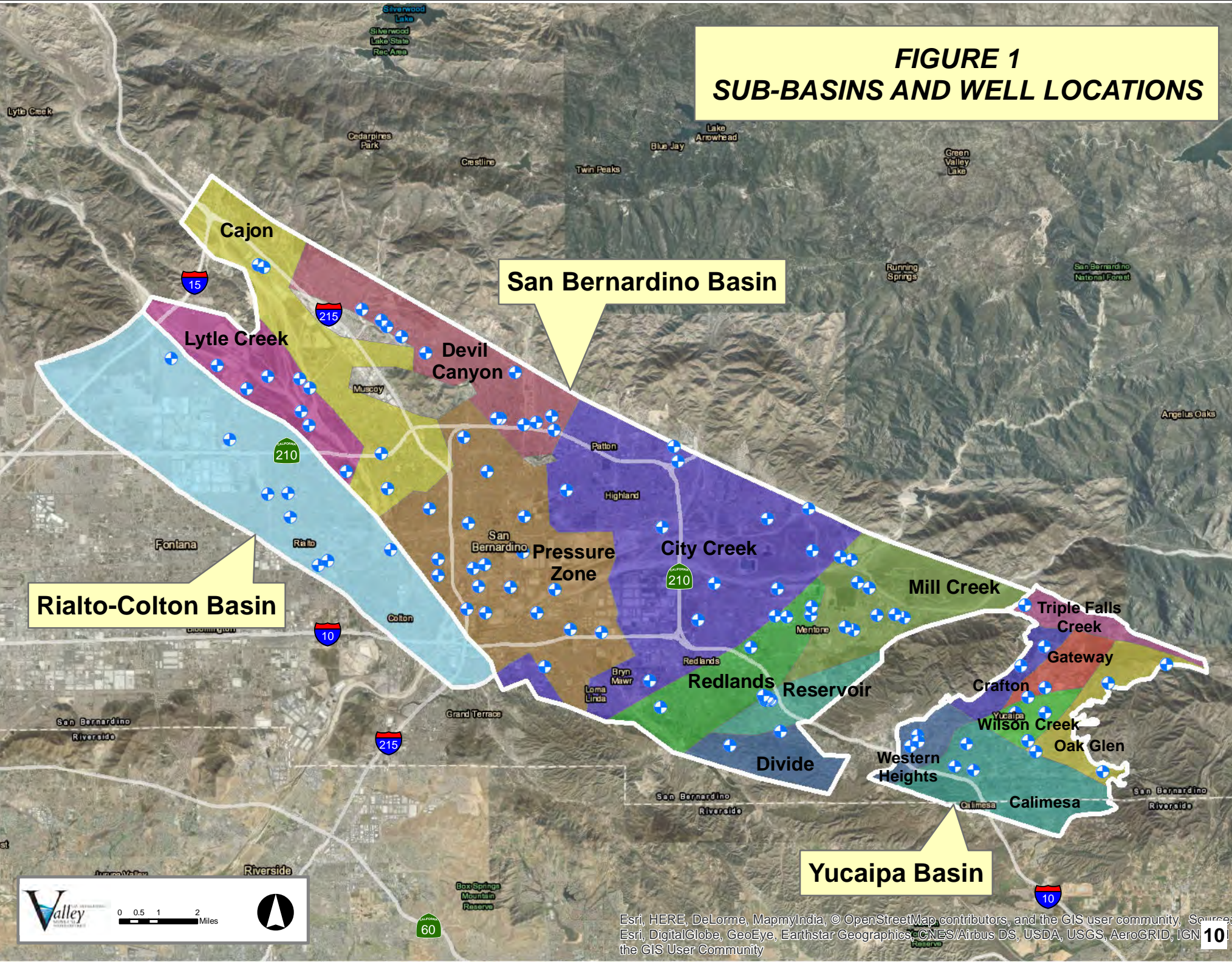
Due to the current drought which began in 1998, the volume of groundwater in storage for the San Bernardino Basin (SBB) and Rialto-Colton Basin continues to be at historic lows. Given the below average precipitation index of 29.48 inches, or 95% of the historic mean of 31.03 inches received in Water Year 2021-2022 and relatively low amount of imported water through the State Water Project (5% Table A allocation in 2022), the decline in groundwater storage was moderate for the San Bernardino Basin and relatively flat for Rialto-Colton and Yucaipa Basins. The reductions in each of the basins represent a 1.2% decrease in total storage from 2021.

The change in storage results are summarized in Table 2.

<b>Basin</b>	<b>Total Usable Storage (acre-feet)</b>	<b>2022 Change in Storage (acre-feet)</b>	<b>2022 Total Storage (acre-feet)</b>	<b>Percent Full (%)</b>
Rialto-Colton Basin	1,749,000	(7,970)	1,508,721	86%
San Bernardino Basin	5,690,000	(92,643)	4,658,475	82%
Yucaipa Basin	2,796,000	(2,619)	2,242,459	80%
	<b>10,235,000</b>	<b>(103,232)</b>	<b>8,409,655</b>	<b>83%</b>



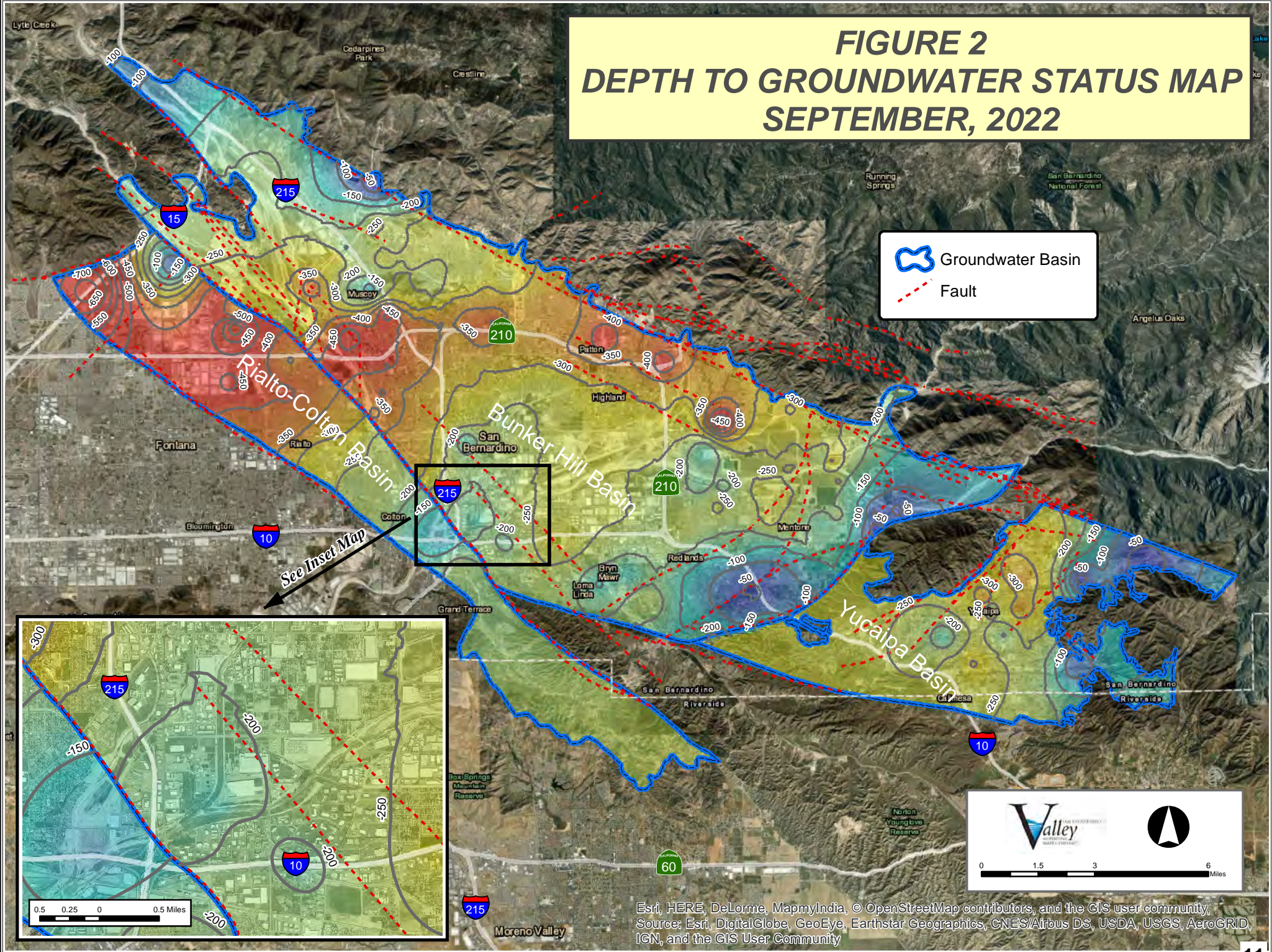
**FIGURE 1  
SUB-BASINS AND WELL LOCATIONS**



Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, and the GIS user community, Sources: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN 10 the GIS User Community



**FIGURE 2**  
**DEPTH TO GROUNDWATER STATUS MAP**  
**SEPTEMBER, 2022**



See Inset Map

Valley  
 WATER RESOURCES

Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, and the GIS user community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



**FIGURE 3**  
**COMPARISON OF CURRENT WATER LEVELS TO 1ST HISTORIC LOW**

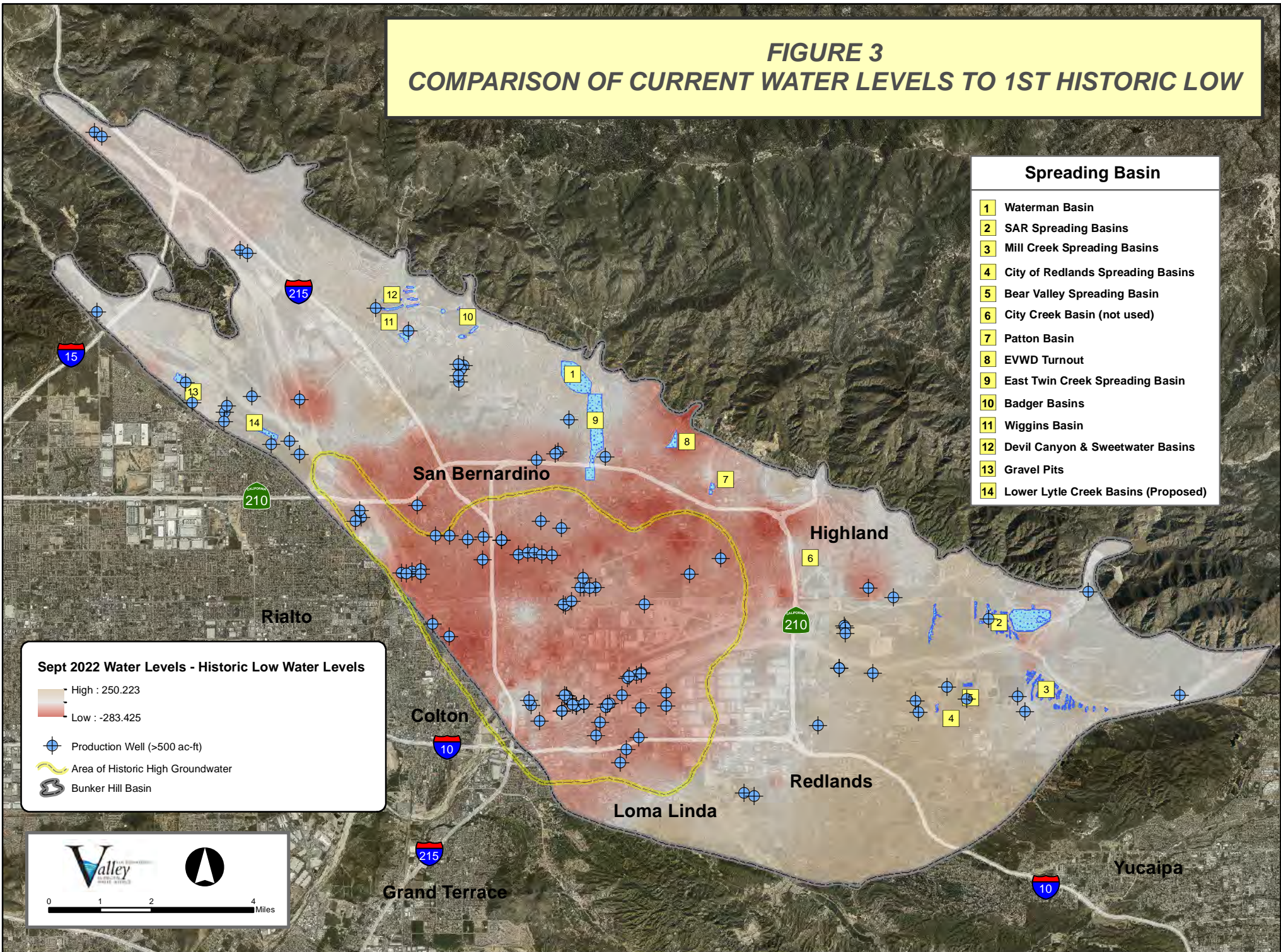




Figure 5: Rialto-Colton Basin Change in Storage Results (in acre-feet)

Usable Storage: 1,749,000 acre-feet

2022 Volume in Storage: 1,508,721 acre-feet (86%)

1,800,000  
1,600,000  
1,400,000  
1,200,000  
1,000,000  
800,000  
600,000  
400,000  
200,000  
0

1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021

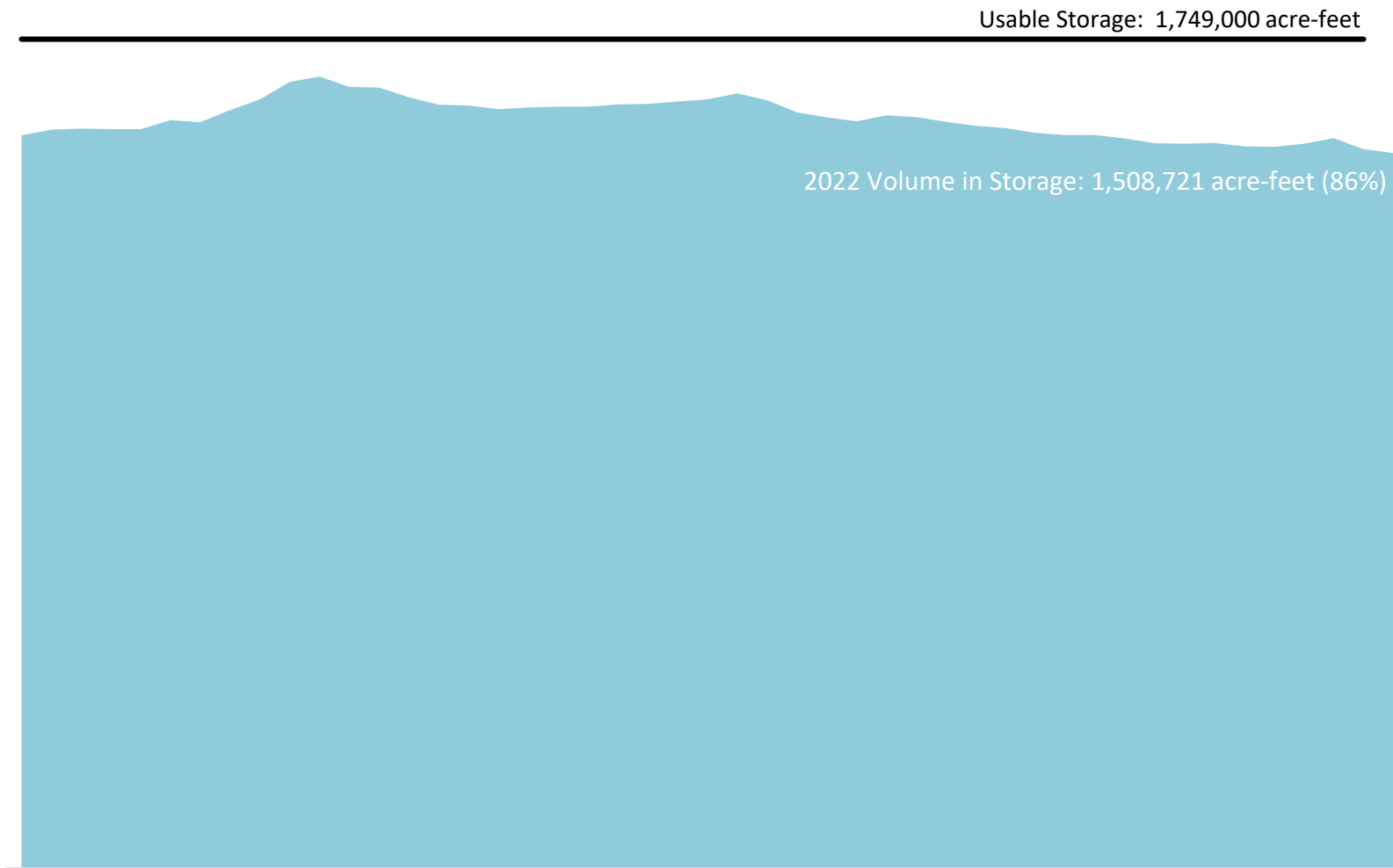


Figure 6: Yucaipa Basin Change in Storage Results (in acre-feet)

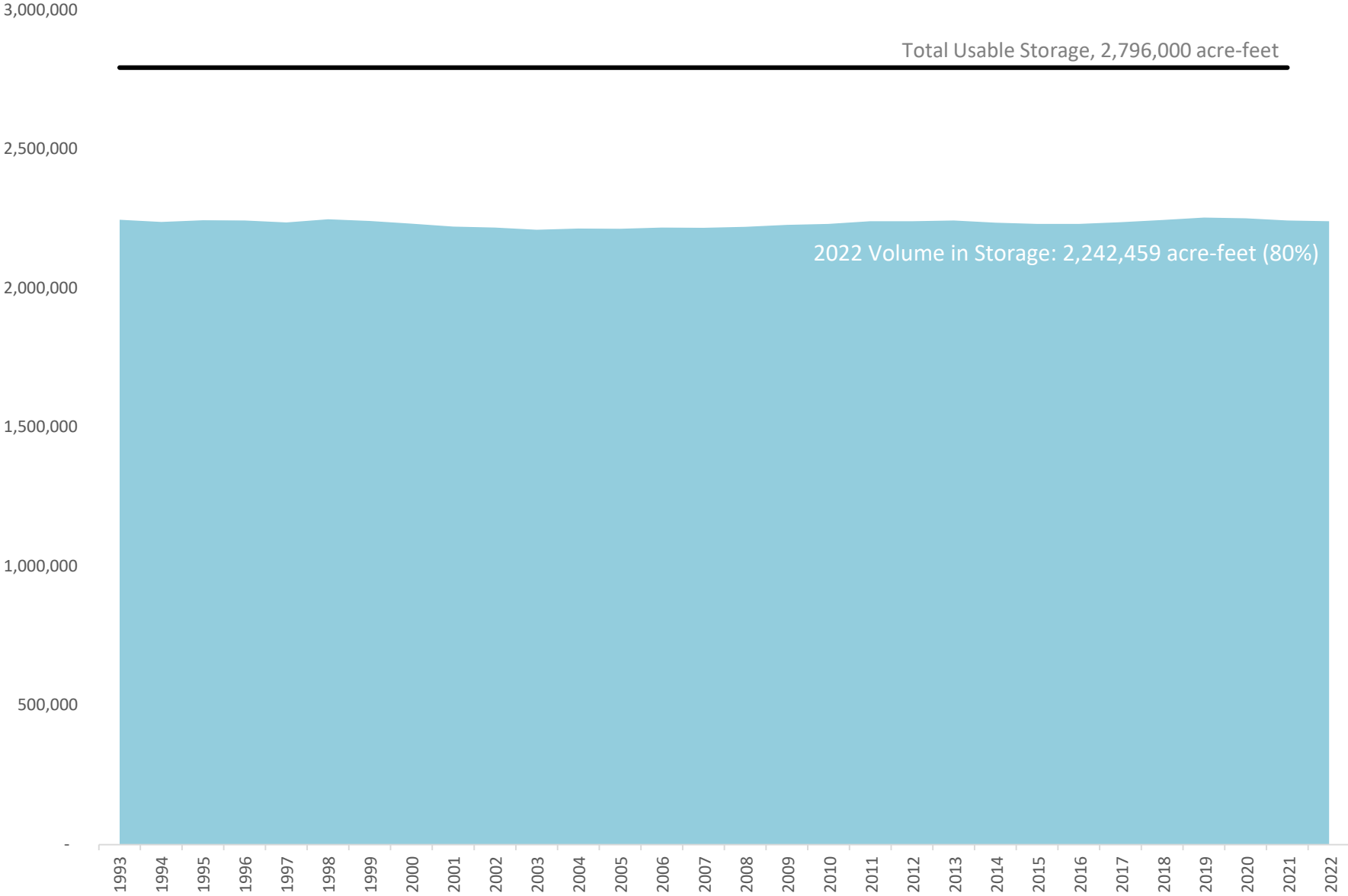
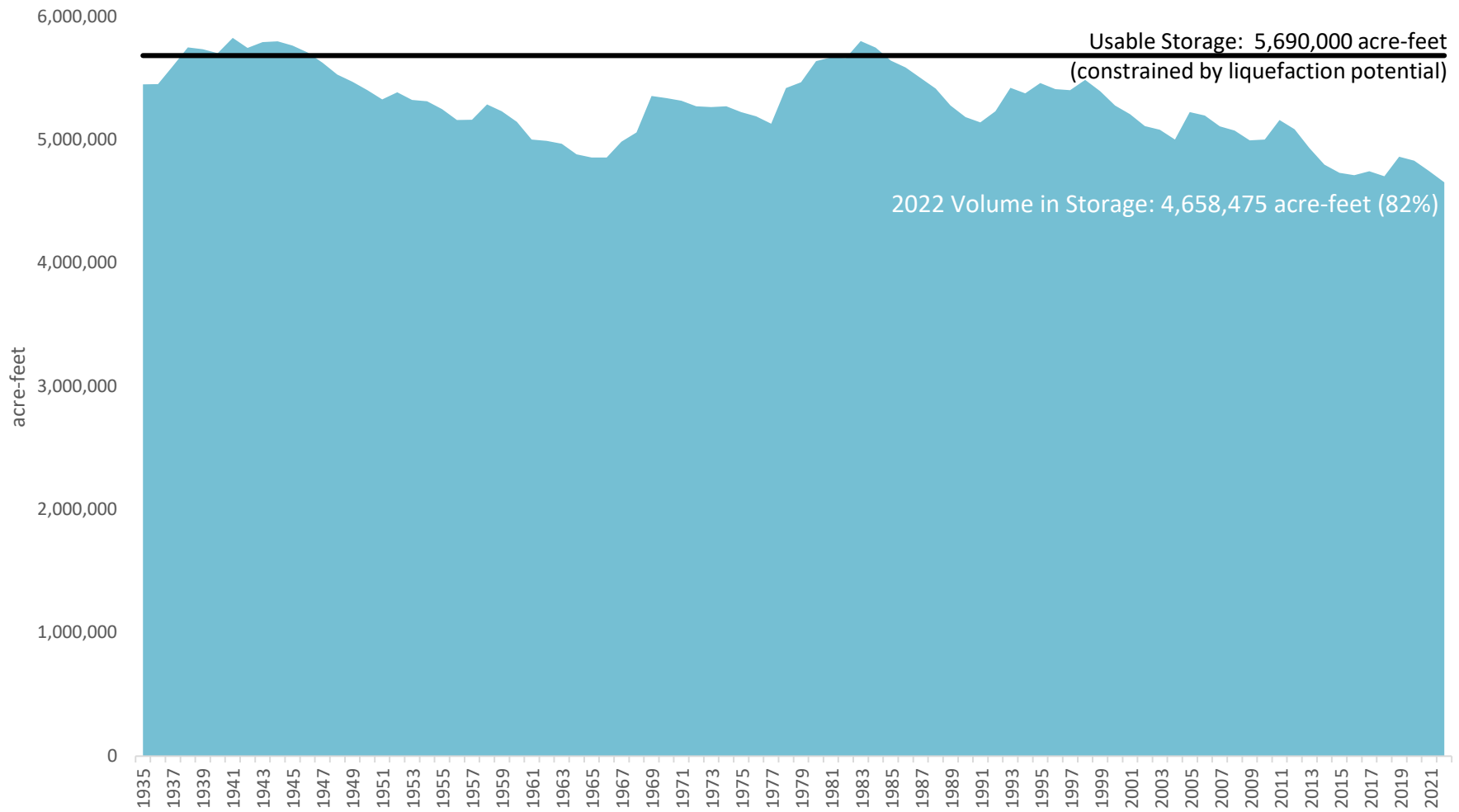


Figure 7: San Bernardino Basin Change in Storage Results (in acre feet)



The calculations in the SBB and Yucaipa are performed for each individual sub-basin. The increase or decrease of individual sub-basin change in storage values are influenced by a variety of factors such as local precipitation, groundwater production, groundwater recharge, proximity to river and creeks, and water conservation.

Figure 8. 2022 Change in Storage for the San Bernardino Basin, by sub-basin.

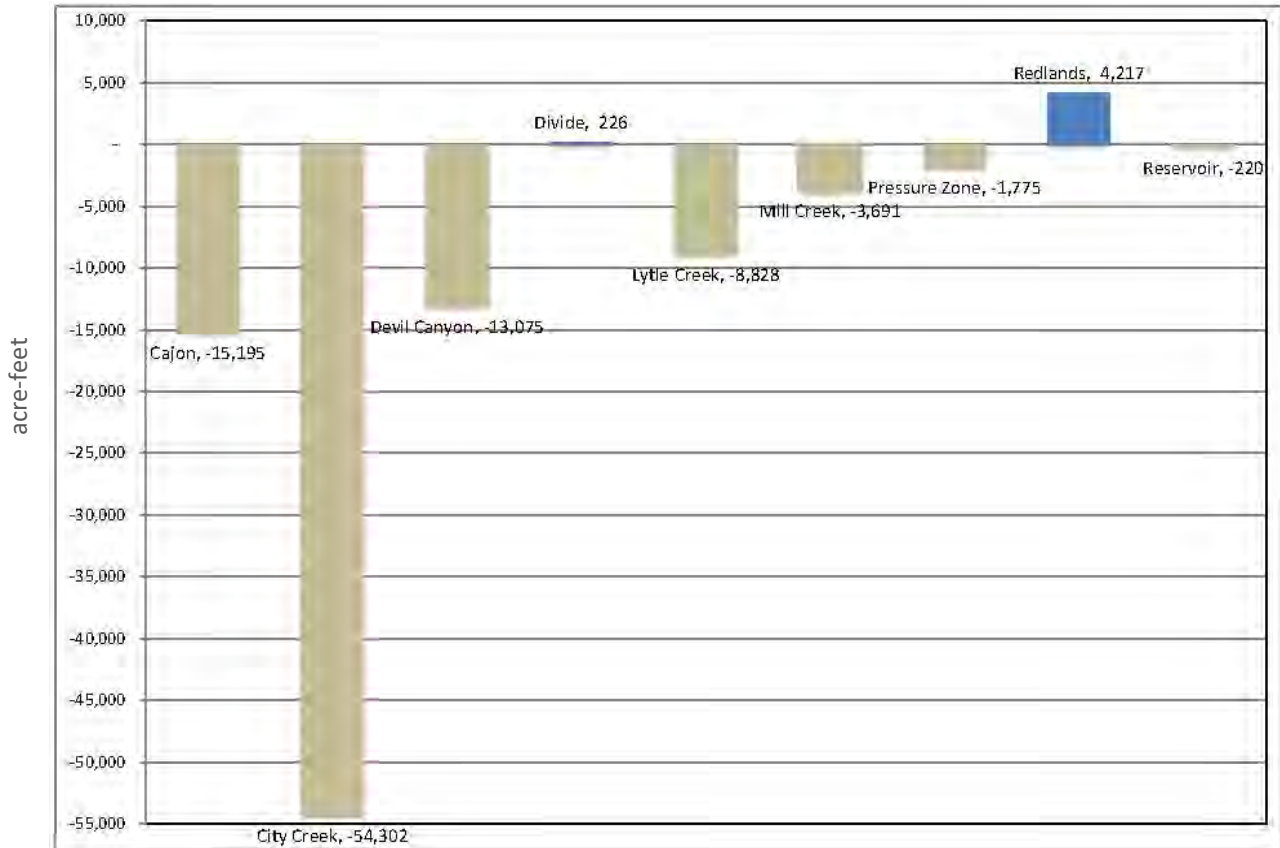
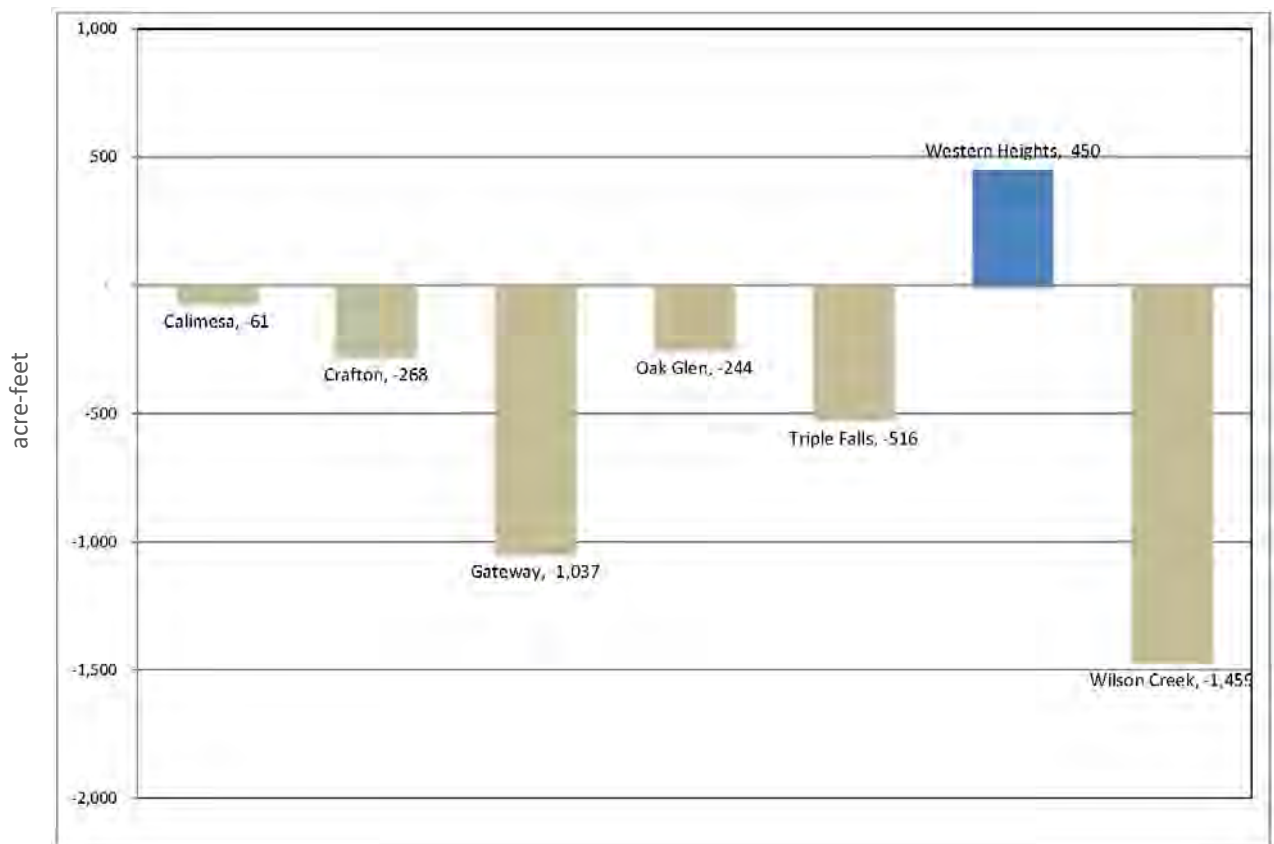


Figure 9. 2022 Change in Storage for the Yucaipa Basin, by sub-basin.





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**DATE:** April 11, 2023  
**TO:** Board of Directors' – Resources/Engineering Workshop  
**FROM:** Joanna Gibson, Executive Director, Upper SAR HCP Program  
**SUBJECT:** Update on the Upper Santa Ana River Habitat Conservation Plan

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**Staff Recommendations**

Receive and File.

**Summary**

Staff is providing a status update on the Upper Santa Ana River Habitat Conservation Plan, associated permits, and other related commitments.

**Background**

Due to numerous endangered and threatened species issues associated with water supply projects in the upper Santa Ana River watershed a habitat conservation plan (HCP) is being collaboratively developed by staffs from Valley District and other agencies in our region with projects needing endangered and threatened species permit coverage. On April 15, 2014, the Board of Directors authorized Valley District's participation and role as lead agency for the development of the HCP. The HCP currently has eleven funding partners, including Valley District, and is close to completion.

The Permittees to the HCP include:

San Bernardino Valley Municipal Water District,  
Rialto Utility Authority,  
East Valley Water District,  
West Valley Water District,  
Inland Empire Utilities Agency,  
Riverside Public Utilities,  
Western Municipal Water District,  
San Bernardino Valley Water Conservation  
District,

San Bernardino Municipal Water Department,  
Orange County Water District, and  
Metropolitan Water District of Southern  
California.

The Permittees will receive an Incidental Take Permit (ITP) issued from the U.S. Fish and Wildlife Service (USFWS), making them co-permittees. The 12<sup>th</sup> Permittee is Southern California Edison<sup>1</sup> (SCE). SCE may apply for a separate ITP under the HCP, if SCE chooses to pursue separate coverage. This separate ITP would provide incidental take coverage for Covered Activities proposed at hydroelectric facilities in San Antonio, Lytle, and Mill Creek, and the Santa Ana River and several tributaries. In total, the ITP will allow for the capture and recharge of approximately 80,000 afy of local water supply through new stormflow diversions, dry weather (runoff) diversions, and recharge of treated wastewater (>100 projects).

The HCP is a valuable tool because it provides a mechanism for Partners, Wildlife Agencies, and other stakeholders to collaboratively address impacts to federally listed species on a regional scale and over the long term. Together, Permittees will be able to anticipate, discuss, and/or resolve controversies and conflicts during the HCP planning process that may result from project implementation or compensatory mitigation.

To fully capitalize on the value of HCP planning efforts and our extensive mitigation needs, the scope of the HCP expanded into an environmental compliance program (Program). Components of this Program include:

- *Upper Santa Ana River Habitat Conservation Plan* – The HCP provides federal Endangered Species Act (ESA) Incidental Take Coverage that will allow Permittees to construct, operate, and maintain water infrastructure projects and other facilities for 50 years, which can be extended. Twenty-two species are covered (Covered Species) by the HCP including the Santa Ana sucker, San Bernardino kangaroo rat, Santa Ana River woolly-star, and least Bell's vireo, to name a few.
- *California Environmental Quality Act (CEQA) / National Environmental Policy Act (NEPA)* – CEQA and NEPA are typically developed simultaneously, however because of changes to the NEPA process in 2020 (imposition of page limits [150 pages], and timelines [one year]), the documents were separated. Though separate, it is important that they are consistent.
- *Multi-Project 2081 Permit(s)* – A Multi-project Incidental Take Permit application was submitted to the California Department of Fish and Wildlife (CDFW) for species listed as threatened and endangered under the California Endangered Species Act (CESA). Eight

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<sup>1</sup> Or their transferee/assignee.

of the HCP Covered Species are State-listed under the California Endangered Species Act (7 endangered, 1 threatened).

- *Programmatic Aquatic Resources Permits* – Programmatic permits are being pursued to satisfy regulatory requirements for impacts to jurisdictional waters of the U.S. (U.S. Army Corps of Engineers (404, 408)) and/or waters of the State (Santa Ana Regional Water Quality Control Board (401), and California Department of Fish and Wildlife (Fish and Game Code Section 1602 Streambed Alteration Agreement)). Programmatic permits will outline the process for project-specific notification and streamlined review that will be used by Partners and regulators as Permittees are ready to build projects. The notification process will involve an essentially “templated” project-specific submission to each regulatory agency, followed by an expedited agency review and concurrence.
- *Compensatory Mitigation Reserve Program* - The primary objective of the HCP conservation activities is to increase the amount, distribution, and quality of habitat for Covered Species within the HCP Planning Area in a manner that replaces the environmental values lost or degraded with the implementation of Covered Activities. Recent land acquisitions have significantly contributed to the HCP Program’s ability to fulfill these requirements.
- *Tributaries Restoration Projects* – These projects are a component of the HCP Program. Four tributaries along the Santa Ana River in Riverside are proposed for restoration through the Santa Ana River Conservation and Conjunctive Use Project (SARCCUP). The SAWPA member agencies received \$4M in grant money and will provide \$6M in local matching funds towards restoration of four tributaries to the SAR. An additional \$2M in grant funding was awarded by the Bureau of Reclamation for the Anza Creek Tributary Restoration Project.
- *Up-Front Mitigation* - In addition to the SARCCUP projects, early habitat acquisition and uplift (habitat improvement) strategies are being implemented at some of our alluvial fan mitigation sites to ensure that the HCP Program can “stay-ahead” of impacts. If mitigation were to follow impacts, there would be a temporal loss of available habitat for Covered Species. This temporal loss would require additional mitigation and expense to the Permittees.



- *Santa Ana sucker* – Multiple mitigation and conservation strategies are being pursued, developed, and implemented to satisfy commitments identified in existing permits/agreements (e.g., Sterling Natural Resource Center).
- *Upper Santa Ana River Sustainable Resources Alliance* – The HCP Program will be implemented by the Upper Santa Ana River Sustainable Resources Alliance, a joint powers authority.

At this workshop, staff will present an overview and update on progress towards completion of the HCP and other associated permitting efforts.

#### **District Strategic Plan Application**

Development and completion of the HCP is a goal of Valley District's Strategic Plan.

#### **Fiscal Impact**

Informational update.

#### **Attachment**

None.



**DATE:** April 11, 2023  
**TO:** Board of Directors' Workshop – Resources/Engineering  
**FROM:** Bob Tincher, Chief of State Water Initiatives/Deputy General Manager  
**SUBJECT:** Consider Operation Agreement for the Santa Ana River Conservation and Conjunctive Use Program (SARCCUP)

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### **Staff Recommendation**

Staff recommends that the Board of Directors authorize the Chief Executive Officer/General Manager to execute the *Operation of the Santa Ana River Conservation and Conjunctive Use Program Water Banking Facilities Interagency Agreement* (SARCCUP Operation Agreement) or forward it to a Board of Directors meeting for consideration. This agreement has been reviewed by House Counsel and approved as to form.

### **Summary**

The SARCCUP water bank is a joint project with Eastern Municipal Water District, Orange County Water District, Western Municipal Water District and Valley District (Partners) that will store up to 137,000 acre-feet of mostly Valley District surplus State Water Project water along with any other supplemental water supplies, in groundwater basins throughout the Santa Ana River Watershed and will provide each Partner up to about 11,000 acre-feet of stored water for up to 3 consecutive dry years. Under the proposed SARCCUP Operation Agreement, the Partners will collaborate to purchase water for the groundwater bank and to deliver the stored water when requested. Each Partner will pay all of the costs associated with their proportionate share of the stored water and costs to deliver their share of the water, as they request. Per Valley District Ordinance No. 79, staff would present any requests to declare surplus water to the Board for consideration before any surplus water would be sold under the two surplus water sale agreements previously approved by the Board.

## **Background**

Proposition 84, The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, authorized over \$1.5 billion for water supply and water quality projects (Chapter 2) throughout the State of California. The funding was allocated by region with the Santa Ana Watershed (Region) being allocated \$114 million under Chapter 2 and SAWPA being chosen, by the region, to administer the grant funds. The State released funding under Prop 84 in four (4) rounds. Of the \$64.2 million awarded during the final round, the SARCCUP project received \$55 million, or 85%.

SARCCUP was developed when the Partners decided to explore the possibility of building one, or more, watershed-scale projects that would provide benefits to the entire watershed and might only be feasible given a large grant or other outside funding. The foundational project was a watershed-scale groundwater bank that would enable Valley District to make its surplus SWP water available to the rest of the watershed and provide dry year yield to the watershed during periods of drought. SARCCUP generally consists of the following project elements:

1. **Arundo removal (640 acres), and habitat creation/restoration projects for Santa Ana Sucker (60 acres) (\$7.5 million grant); saving 2,000 acre-feet per year (AFY):** OCWD is the lead for Arundo removal within approximately 640 acres along the Santa Ana River. This work is estimated to reduce water consumption by about 13,000 acre-feet per year. Valley District is the lead for the habitat creation/restoration which includes the restoration of four tributary sites along the Santa Ana River in support of the Upper Santa Ana River Habitat Conservation Plan (HCP): Hidden Valley Creek, Anza Creek, Lower Hole Creek, and Old Ranch Creek. This project will create 2.8 miles of improved stream habitat for Santa Ana Sucker and restore 60 acres of riparian habitat for the benefit riparian birds and other native species in the Santa Ana River watershed. Stream habitat will be improved by removing non-native vegetation, trash and debris, and reshaping of the streambeds, and planting and seeding with native vegetation. The estimated cost of the habitat improvement projects (exclusive of OCWD's Arundo project) is about \$11 million dollars. Valley District will receive about \$4.5 million of grant funds through SARCCUP with the remainder, or about \$6.5 million, being shared by the HCP partners. Valley District's share of this cost is about 40%, or about \$2.5 million. These projects are estimated to begin construction this summer.
2. **Water use efficiency (\$2 million grant); saving 7,439 AFY:** expanded the prior Proposition 84, Round 2 water use efficiency program to include a funding incentive for the removal of 1.5 million square feet of turf and also provide funds to help up to five (5) agencies switch to a water budget based rate structure. This portion of SARCCUP is administered by the Santa Ana Watershed Project Authority Project (SAWPA) Agreement 22 Committee.

3. **Create water bank in the watershed (\$48 million grant):** create a diversified water bank to store wet year water and then deliver that water during droughts, providing dry year yield. The storage locations and dry year yield amounts are as follows:

<b>Basin</b>	<b>Storage</b>	<b>Dry Year Yield (AF/Y for 3 Yrs)</b>
Bedford-Coldwater	4,500	<b>11,417/Partner</b>
Chino	7,000	
Orange County	36,000	
Riverside	6,000	
San Bernardino	64,000	
Hemet/San Jacinto	19,500	
<b>TOTAL</b>	<b>137,000</b>	

The water bank portion of SARCCUP is administered by the SAWPA Project Agreement 23 Committee (PA 23). The four (4) SARCCUP Partner Agencies have developed an Interagency Banking Facilities Operation Agreement (Attachment 1) that details the Operating Committee roles and responsibilities for decision making surrounding available surplus water for purchase and storage through the program. In addition, the Operating Committee will track the SARCCUP transactions and operations for transparency and accountability through a software platform which was completed in December 2022. The PA 23 Committee voted to support this agreement on April 4, 2023.

Valley District's portion of SARCCUP storage in the San Bernardino Basin is proposed to be used by Yucaipa Valley Water District (YVWD) and San Gorgonio Pass Water Agency (SGPWA) in support of the proposed three-party agreement with these agencies. The *Upper Santa Ana River Watershed Integrated Regional Water Management Plan* estimates that if the region invests in proposed improvements to the SWP, local stormwater capture projects and local recycled water projects that the region will have surplus SWP supplies. The Board has developed procedures for declaring surplus water in Ordinance No. 79. The Board has also entered into two surplus water sales agreements. The first agreement is with the Yucaipa Valley Water District and San Gorgonio Pass Water Agency that offers the first right of refusal for the first 5,000 acre-feet of any surplus water. Any surplus water not utilized by the first agreement or above the cap of the first agreement is then offered to Metropolitan Water District of Southern California who, in turn, agreed to offer up to 50% of that surplus water to its member agencies participating in SARCCUP. Any revenue generated by Valley District from the sale of surplus SWP water could be used to offset the cost of regional projects and/or further offset the cost of SWP water supplies to the retail water agencies within the Valley District service area.

### **District Strategic Plan Application**

The creation of SARCCUP in partnership with the other regional water agencies demonstrated all of the Valley District's values: collaborative, trustworthy, innovative and driven. The SARCCUP water bank relies on Valley District surplus water supplies that could be sold to SARCCUP which will benefit Valley District, the Watershed and Southern California which in turn demonstrates the following Valley District priorities: resilient, integrated and cost-effective. SARCCUP also implements the following Valley District strategies: a) proactively manage a diverse, adaptable water supply portfolio to maximize the value of the region's water assets, and b) build trust by being a collaborative and resourceful partner through effective communication and engagement.

### **Fiscal Impact**

There is no cost to execute this agreement. Any Valley District costs during the term of this agreement are expected to be offset by revenues collected from the other SARCCUP participants and YVWD and SGPWA. Projected costs and revenues would be shared with the Board of Directors annually when developing the budget.

### **Attachments**

1. Operation of the Santa Ana River Conservation and Conjunctive Use Program Water Banking Facilities Interagency Agreement
2. Ordinance No. 79

OPERATION OF THE SANTA ANA RIVER CONSERVATION AND CONJUNCTIVE USE PROGRAM WATER  
BANKING FACILITIES

INTERAGENCY AGREEMENT

This Interagency Agreement (“Agreement”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between EASTERN MUNICIPAL WATER DISTRICT (“EMWD”), WESTERN MUNICIPAL WATER DISTRICT (“WMWD”), ORANGE COUNTY WATER DISTRICT (“OCWD”), and the SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT (“Valley District”). EMWD, WMWD, OCWD, and Valley District may sometimes be collectively referred to herein as the “Parties” or individually as a “Party.”

RECITALS

WHEREAS, the Santa Ana River Conservation and Conjunctive Use Program (hereinafter referred to as the “SARCCUP”) is a multi-agency, watershed-wide groundwater storage and recovery project involving multiple basins in the Santa Ana River Watershed. The SARCCUP’s goal is to store available water during wet years in local groundwater basins throughout the watershed and extract the stored water during dry years to reduce the impacts from multi-year droughts; and

WHEREAS, the SARCCUP includes four (4) water banking sites where water acquired as provided herein will be purchased and stored. Three (3) of the sites are located within the service area of the Metropolitan Water District of Southern California (“Metropolitan”). More specifically, three of the four sites are located in the Metropolitan member agency service areas of EMWD, WMWD, and the Municipal Water District of Orange County (“MWDOC”), as depicted in *Exhibit 1*, which is attached hereto and incorporated herein by reference. The facilities within MWDOC’s service area are located within, owned, and operated exclusively by OCWD, and the Parties acknowledge that each Party has, or may have in the future, recharge operations at its banking site utilizing a variety of different water sources that are not derived from SARCCUP, and such recharge operations shall continue to occur outside of the framework and obligations established by this Agreement. The fourth site is within the boundaries of Valley District in the San Bernardino Basin Area (“SBBA”), which is located outside of Metropolitan’s service area. The SARCCUP includes water delivery interconnections between SBBA and SARCCUP facilities in the Metropolitan service area; and

WHEREAS, on April 16, 2017, the Department of Water Resources (“DWR”) and the Santa Ana Watershed Project Authority (“SAWPA”) entered into a funding agreement (hereinafter referred to as the “DWR/SAWPA Funding Agreement”) regarding the award of Proposition 84 Integrated Regional Water Management Program funding in an amount of \$44,943,011. The DWR/SAWPA Funding Agreement outlines the operational requirements that the parties must fulfill. WMWD, EMWD, OCWD, and Valley District have each entered into sub-grantee agreements with SAWPA to receive grant funding and to undertake the construction, maintenance operation and management obligations for the SARCCUP program that are included in DWR/SAWPA Funding Agreement; and

WHEREAS, on June 15, 2021, Valley District and Metropolitan entered into a Coordinated Operating and Surplus Water Agreement (hereinafter referred to as the “Valley District/Metropolitan Agreement”), which is attached hereto as *Exhibit 2*, whereby Valley District may offer to sell to Metropolitan, and Metropolitan may purchase from Valley District, surplus State Water Project (“SWP”) water. Under the Valley District/Metropolitan Agreement, Metropolitan will offer to sell an amount of

water equivalent to 50% of the amount of water Metropolitan purchases from Valley District for storage within the SARCCUP water banking sites and use within Metropolitan’s service area; and

WHEREAS, on November 9, 2021, Metropolitan, EMWD, WMWD, MWDOC, OCWD, and the Inland Empire Utilities Agency (“IEUA”) entered into an agreement regarding SARCCUP (hereinafter referred to as the “November 2021 SARCCUP Agreement”). The November 2021 SARCCUP Agreement, which is attached hereto as *Exhibit 3*, provides the mechanism whereby Metropolitan will equally offer for purchase by WMWD, EMWD, and MWDOC an amount equivalent to 50% of the amount that Metropolitan purchases from Valley District during a calendar year for delivery to the SARCCUP water banking sites. MWDOC will purchase water offered by Metropolitan through the November 2021 SARCCUP Agreement on behalf of and as requested by OCWD. WMWD, EMWD, and OCWD may also offer water provided under the agreement to IEUA and MWDOC; and

WHEREAS, on December 9, 2021, EMWD, WMWD, MWDOC, OCWD and IEUA entered into a separate agreement (“December 2021 SARCCUP Agreement”) governing Allocated Water,<sup>1</sup> which is attached hereto as *Exhibit 4*, which prescribes the priority and process for the Parties hereto accessing Allocated Water and places conditions on how, when, and where MWDOC may use Allocated Water; and

WHEREAS, as owners and operators of the four (4) SARCCUP water banking sites, WMWD, EMWD, OCWD, and Valley District will make all operating decisions regarding the SARCCUP water banking facilities including, but not limited to, the quantity of water that they store and extract within the water banks under the SARCCUP, and will maintain other agreements as necessary to store and extract water in their respective groundwater basins; and

WHEREAS, the purpose of this Agreement, therefore, is to formalize the mutual understandings of the Parties and to set forth the terms, conditions, financial considerations, and other provisions under which the Parties agree to be bound for the operations of the water banking facilities;

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties hereby agree as follows:

#### AGREEMENT

1. SARCCUP Operating Committee

To administer the SARCCUP water banking operations, a SARCCUP Operating Committee (hereinafter referred to as the “Operating Committee”) shall be formed comprised of representatives from WMWD, EMWD, OCWD, and Valley District, for the purpose of determining the amount of water purchased under the November 2021 SARCCUP Agreement

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1 The term “Allocated Water” as used herein shall have the same meaning as defined in Recital 7 of the December 2021 SARCCUP Agreement, which reads:

*MWD and Valley District have agreed that when Valley District's SWP water is made available to MWD and MWD acquires that water, MWD will make available to the MWD member agency Parties for the SARCCUP program a minimum amount of its Full Service supply equivalent to fifty-percent (50%), or more, of the water it acquires from Valley District ("Allocated Water").*

and from other sources, the amount of water stored in each of the water banking sites, the amount and location of the extraction of stored water, and any other SARCCUP-related issues requiring coordination between the Operating Committee members. The Operating Committee will administer and make certain decisions consistent with the requirements of the November 2021 SARCCUP Agreement and December 2021 SARCCUP Agreement, document water banking and financial transactions, coordinate with MWDOC, IEUA, and Metropolitan as needed, ensure that proper reporting is conducted, and conduct other activities as required. The Operating Committee shall be constituted and operate as follows:

- a. WMWD, EMWD, OCWD, and Valley District shall each have one vote per agency on the Operating Committee. Each Party's representative on the Operating Committee shall be that Party's General Manager. Each Party shall designate in writing an executive level alternate staff representative that has the authority to make operational and financial commitments on behalf of the Party when its General Manager is unavailable. Each Party may have more than one individual participate in the Operating Committee as a non-voting member (e.g., Operations, Finance, Planning/Water Resources staff). Representatives of MWDOC, Metropolitan, and IEUA may also participate in the Operating Committee meetings as interested, non-voting parties and observers.
- b. Members of the Operating Committee shall designate a Chair and Vice Chair to preside over the meetings. Chair and Vice-Chair positions will follow a standard rotation, annually, which will be determined at the first Operating Committee meeting. A majority vote is required for an item to pass, except where otherwise stated herein.
- c. The Operating Committee shall meet at least annually but may meet more frequently as necessary to conduct SARCCUP business.
- d. The Operating Committee may choose to hire consultants, as needed, for various activities to support the SARCCUP. Costs will be shared equally among the Operating Committee members for activities that support the entire Operating Committee. Costs for consultant activities that the Operating Committee determines at the time of hiring will benefit less than all Operating Committee members will be shared equally among those members who enjoy the particular benefit, unless otherwise approved by the Operating Committee. Any costs incurred by Operating Committee members at the request of the Operating Committee shall be reimbursed in the same manner as a consultant retained by the Operating Committee. Any disputes over allocation of consultant costs shall be resolved per Section 18 of this Agreement. Consultant support may include but not be limited to:
  - i. Scheduling, administering, and preparing and distributing agendas, meeting minutes and other documentation.
  - ii. Accounting for transactions including purchases, deliveries, water in storage (by basin and by owner), extractions, transfers, exchanges, and cost accounting.
  - iii. Development and maintenance of a Decision Support Model to evaluate various storage, delivery, and extraction options.



2. Procedures for Water Purchases and Deliveries to Storage of Supplies Purchased Under the November 2021 SARCCUP Agreement:

For water supply purchases under the November 2021 SARCCUP Agreement, the amount of water purchased requires that EMWD, WMWD, and OCWD unanimously convey their respective Allocated Water purchase amount by written notification to Metropolitan. For such purchases, the Operating Committee shall implement the following procedures:

- a. On or before July 1 of each year water is available, Metropolitan shall notify and offer for purchase an equal allocation of water to EMWD, WMWD, and OCWD (to be delivered by MWDOC). On or before July 10 of each year that MWD makes Allocated Water available, the Operating Committee will confer and, if EMWD, WMWD, or OCWD choose to take less than their respective share of the allocated water, the remaining amount of Allocated Water available will then be offered equally to the other Operating Committee agencies. This approach shall continue until all the available water has been allocated or EMWD, WMWD, or OCWD are not willing to buy the remaining available water.
- b. If EMWD, WMWD, or OCWD are not willing to take the remaining available Allocated Water, the Operating Committee shall offer such water to IEUA, and if IEUA declines or does not take the full amount of remaining Allocated Water, to MWDOC. Per Section 1.a of the December 2021 SARCCUP Agreement, the Operating Committee, on behalf of EMWD, WMWD, and OCWD shall notify IEUA and MWDOC on or before July 15 that Allocated Water is available for purchase and the amount of Allocated Water still available.
- c. The final allocation of Allocated Water between the Parties to this Agreement, or purchases by IEUA and/or MWDOC, shall be made only by unanimous vote of Operating Committee members EMWD, WMWD, and OCWD, with Valley District abstaining.
- d. Upon completion of the vote in Section 1.c above, the Operating Committee shall notify Metropolitan, and send a notification letter to Metropolitan summarizing the purchases by each agency eligible to receive Allocation Water. The notification letter shall be prepared and signed by Operating Committee members EMWD, WMWD, OCWD and by MWDOC and IEUA if they are taking Allocated Water and submitted to Metropolitan. This notification letter will serve as the official order for water under Section 1.c of the November 2021 SARCCUP Agreement.

3. Procedures for Purchases and Deliveries of Other Sources of Water Supply:

Should sources of water other than those made available under the November 2021 SARCCUP Agreement become available for banking purposes pursuant to the SARCCUP, the Operating Committee members may choose to purchase such water either collectively or individually. If water from other sources is purchased collectively by two or more Operating Committee members, the decision to purchase such water shall be made only by unanimous vote of those members of the Operating Committee making such purchases.

4. Determining Points of Delivery for Purchased Water:

When water is available for purchase from Metropolitan or other sources, the Operating Committee shall confer regarding the point(s) of delivery and storage location(s) for such water.

Factors to be considered by the Operating Committee shall include but not be limited to the available storage capacity at each of the four (4) SARCCUP water banking sites, costs associated with the delivery and storage of purchased water in each of the four (4) SARCCUP water banking sites and the amount of water in storage in the water banking sites previously purchased by each of the Operating Committee members. The points of delivery and storage locations for purchased water shall be approved only by unanimous vote of those Operating Committee members accepting water into their respective banking sites. Any such vote for water made available under the November 2021 SARCCUP Agreement shall be taken by August 15 of the applicable year. Once approved, the points of delivery for water being purchased from Metropolitan shall be included in the notification letter submitted to Metropolitan as described in Section 2d of this Agreement.

5. Scheduling of Deliveries:

Operating Committee members storing water shall take delivery of and store water within the same calendar year in which the water is purchased absent any other approved scheduling by Metropolitan or other entities providing water for banking purposes.

6. Purchase and Storage Transaction Reporting:

Operating Committee members shall submit self-certified documentation of purchase and storage transactions to the Operating Committee within 30 days of the transaction occurring for record keeping, accounting and financial reconciliation.

7. Procedures for Extractions from Storage:

Members of the Operating Committee may extract stored water from a SARCCUP storage site in one or more of the following ways:

- a. Water owned by an Operating Committee member may be extracted by that Operating Committee member, or its designee, from a SARCCUP banking site controlled by that Operating Committee member (hereinafter referred to as "Direct Use").
- b. Water owned by one Operating Committee member that is stored in a SARCCUP banking site controlled by another Operating Committee member may be pumped by the other Operating Committee member and delivered to the Operating Committee member that owns the water by direct conveyance (hereinafter referred to as "Direct Delivery").
- c. Water owned by EMWD, WMWD, or OCWD in a SARCCUP banking site controlled by another Operating Committee member may be pumped by the other Operating Committee member and used locally, with an offsetting reduction in Metropolitan water delivered to the other Operating Committee member when Allocated Water is next made available, or can be made up from any other mutually acceptable source (hereinafter referred to as "In-Lieu Delivery").

Operating Committee members wanting to extract water from storage for Direct Use may do so at any time at their sole discretion. Operating Committee members wanting to extract water from storage for Direct Delivery or In-Lieu Delivery to another Operating Committee member, may do so only by unanimous approval of the affected Operating Committee members at an

Operating Committee meeting or by separate written agreement executed by the affected Operating Committee members.

8. Extraction Transaction Reporting:

Operating Committee members extracting water shall submit self-certified documentation of all extraction transactions and any associated written agreements, as applicable, to the Operating Committee within 30 days of the transaction occurring for record keeping, accounting, and financial reconciliation.

9. Preparation of Projected Costs for Operating Committee Planning and Transactions:

No later than January 30 of each year, each Operating Committee member shall prepare and submit to the Operating Committee the projected dollar per acre foot unit costs applicable to such Operating Committee member's SARCCUP banking site for the upcoming calendar year (hereinafter referred to as "Projected Costs"). Operating Committee members shall use the Projected Costs as the basis for planning and completing transactions in the upcoming calendar year. Projected Costs prepared by the Operating Committee members shall include, but not be limited to, the following:

- a. Metropolitan water purchase costs (applicable to EMWD, WMWD, and OCWD only), including the Metropolitan Full Service Treated and Untreated Rates and the Metropolitan Readiness-to-Serve (RTS) charge for water delivered to each agency's banking site.
- b. Water purchase costs for sources of supply other than that purchased under the November 2021 SARCCUP Agreement for water delivered to each agency's banking site.
- c. Delivery and recharge costs applicable to each agency's banking site including conveyance, recharge operations and other related operations and maintenance.
- d. Groundwater extraction costs applicable to each agency's banking site including pumping, treatment, and conveyance (if applicable) and other applicable operations and maintenance.

10. Invoicing and Payment for Water Purchase and Storage Transactions:

For all water purchase and storage transactions, Operating Committee members requesting the purchase and storage shall pay the following:

- a. For water purchased under the November 2021 SARCCUP Agreement, Operating Committee members EMWD, WMWD, and OCWD (through MWDOC) shall pay the Metropolitan water purchase costs described in Section 9a in effect at the time, as invoiced by Metropolitan.
- b. For sources of supply other than those purchased under the November 2021 SARCCUP Agreement, Operating Committee members EMWD, WMWD, and OCWD will pay water purchase costs as described in Section 9b, if applicable, as determined by the specific source and transaction terms.

- c. For all water purchase and storage transactions, Operating Committee members requesting the purchase and storage shall pay extraction charges, conveyance charges, and wheeling charges, if applicable. The Operating Committee members' charges may be updated from time to time by unanimous agreement of the Operating Committee members. Operating Committee members shall vote to approve updates to members' respective charges that accurately reflect the costs associated with SARCCUP. Such approvals shall not be unreasonably withheld. Each purchasing Operating Committee member shall be responsible for its own costs for recharge within its own banking site for recharge and use by that Operating Committee member.
- d. Operating Committee members from whom the purchase and storage was requested shall within 30 days provide documentation and present an invoice, based upon this Section 10, to the Operating Committee member requesting the purchase and storage. The Operating Committee member requesting the purchase and storage shall pay the invoice within 30 days of receipt. All documentation of purchase and storage transactions and invoices shall be submitted to the Operating Committee within 30 days of the transaction occurring for record keeping, accounting and final financial reconciliation.

11. Invoicing and Payment for Extraction Transactions:

As water is extracted from water banking sites for Direct Delivery or In-Lieu Delivery, Operating Committee members will incur extraction charges. To the extent not invoiced under Section 10, should an Operating Committee member incur such expenses, the Operating Committee member incurring such costs shall within 30 days provide documentation and present an invoice, based upon Projected Costs, to the Operating Committee member requesting the extraction. The Operating Committee member requesting the extraction shall pay the invoice within 30 days of receipt. All documentation of extraction transactions and invoices shall be submitted to the Operating Committee within 30 days of the transaction occurring for record keeping, accounting and final financial reconciliation.

12. Accounting:

The Operating Committee will track the operations of the SARCCUP banking sites for all transactions that occur per this Agreement for transparency and accountability. The tracking may be provided by a consultant or an Operating Committee member (hereinafter referred to as the "Accounting Entity"), selected by majority vote of the Operating Committee, and may include an application that tracks all transactions and related information including but not limited to purchases, deliveries, water in storage (by banking site and by owner), extractions, transfers, and invoiced transaction costs. The application may be maintained by an Operating Committee member or consultant, as determined by the Operating Committee. An Operating Committee member selected to serve as Accounting Entity may invoice the Operating Committee for its administrative costs.

13. Financial Reconciliation of Transactions:

By January 30 of each year, Operating Committee members may submit to the Accounting Entity any differences between Projected Costs used for invoicing, and actual costs incurred by the Operating Committee members for individual transactions occurring in the prior calendar year. By March 1 of each year, the Accounting Entity shall complete a financial reconciliation for all

transactions during that calendar year. The Operating Committee shall review the reconciliation and determine if there are any adjustments to invoiced costs, storage balances, or other discrepancies that require correction. Based upon the findings of the Operating Committee, individual Operating Committee members may submit adjusted invoices to other Operating Committee members, where applicable, for previously completed transactions. Adjusted invoices shall be paid within 30 days of receipt. All documentation of corrections and adjusted invoices shall be submitted to the Operating Committee within 30 days of the transaction occurring for record keeping, accounting and final financial reconciliation.

14. Accounting Entity Reporting:

By April 1 of each year, the Accounting Entity shall prepare and submit to the Operating Committee an Annual Operating Report for the preceding calendar year. The Annual Operating Report shall contain a record of all transactions and related information including but not limited to purchases, deliveries, balances of water in storage (by banking site and by owner), extractions, transfers, water losses and other information deemed necessary by the Operating Committee members. The report shall also include the annual financial reconciliation provided in Section 13. The determination of water losses to be included in the Annual Operating Report shall be based upon technical quantification of physical losses or water loss requirements applied to storage by the Watermasters or managers of the basins in which water is stored. The Annual Operating Report shall be approved by the Operating Committee, and may be disseminated to Watermasters, Metropolitan or other interested parties. Financial reconciliation data may or may not be included in the disseminated Annual Operating Report, at the discretion of the Operating Committee. Within 30 days after the end of the first, second, and third calendar quarters, the Accounting Entity shall also prepare a report of all purchase and storage transactions, extraction transaction and transfers occurring in the prior quarter. This report shall be included as an informational item in the following Operating Committee meeting agenda materials. The Operating Committee may request that the Accounting Entity periodically generate additional operating reports on an as-needed basis.

15. Water Transfers:

Operating Committee members may transfer water owned by the Operating Committee members between banking sites by written agreement. Such transfers shall be reviewed by the Operating Committee for consistency with the requirements of the Valley District/Metropolitan Agreement, the November 2021 SARCCUP Agreement, and the Metropolitan Act and Administrative Code. Transfers found to be consistent with such requirements shall be deemed approved by the Operating Committee. The amounts of water transferred between the banking sites and/or any change in ownership of the water shall be reported to the Operating Committee. Financial transactions among the Operating Committee members for the sale and transfer of stored water shall be the responsibility of the Operating Committee members participating in the transactions. All documentation of water transfers and invoices shall be submitted to the Operating Committee within 30 days of the transaction occurring for record keeping, accounting and final financial reconciliation.

16. Extraordinary Supply Benefits:

Operating Committee members EMWD, WMWD, and OCWD (through MWDOC) shall be responsible for submitting to Metropolitan all documentation necessary to secure Extraordinary

Supply benefits in accordance with Appendix G of Metropolitan's Water Supply Allocation Plan, or any successor to that plan. EMWD, WMWD and OCWD (through MWDOC) shall also be responsible for determining how Extraordinary Supply benefits are applied to their respective agencies and sub-agencies, as applicable.

17. Term, Termination:

The Parties acknowledge that certain provisions of this Agreement are based upon the November 2021 SARCCUP Agreement which has a termination date of December 31, 2035, unless the State Water Contract between Metropolitan and the State of California is extended past 2035, in which case, the November 2021 SARCCUP Agreement will have the same termination date. The term of this Agreement shall be coterminous with the term of November 2021 SARCCUP Agreement.

18. Disputes:

In the event of a dispute between or amongst the Parties, the Operating Committee members, after a good faith effort to meet and confer and resolve the dispute, shall attempt to resolve the dispute utilizing the services of a mutually agreed upon mediator prior to initiating litigation or arbitration proceedings. Fees incurred for such mediation shall be equally shared amongst those Parties involved in the dispute. Should the matter remain unresolved for a period not to exceed 180 calendar days following the initial written notice of a dispute, any Party involved in said dispute may institute legal proceedings. It is hereby agreed amongst the Parties that the use, or attempted use of mediation shall be a condition precedent to any legal proceeding hereunder, and any statutes of limitation or other time-related defenses shall be tolled during the pendency of the mediation process. The Parties waive all claim presentation requirements with respect to disputes under this Agreement.

19. Governing Law:

This Agreement, and the rights of the Parties hereto, shall be construed and governed in accordance with the laws of the State of California.

20. Agreement Enforcement:

In the event any proceeding is commenced by any Party or Parties to this Agreement against another to enforce its or their rights or obligations thereunder, each Party shall be responsible for its own costs and attorney fees.

21. Partial Invalidity:

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated.

22. Amendments:

This Agreement may be amended or modified only by written consent of all Parties hereto.

23. Notices:

Any notice required under this Agreement to be given or delivered to any Party shall be deemed to have been received when personally delivered or mailed in the United States mail addressed as follows:

EMWD Eastern Municipal Water District  
Post Office Box 8300  
Perris, Ca. 92572-8300  
Attn: General Manager

WMWD Western Municipal Water District  
14205 Meridian Parkway  
Riverside, Ca. 92518  
Attn: General Manager

OCWD Orange County Water District  
Post Office Box 8300  
Fountain Valley, Ca. 92728-8300  
Attn: General Manager

Valley District San Bernardino Valley Municipal Water District  
380 East Vanderbilt Way  
San Bernardino, Ca. 92408  
Attn: CEO/General Manager

24. Order of Precedence:

The Parties hereby acknowledge, understand, and agree that in the event of any conflict between this Agreement and the Valley District/Metropolitan Agreement the December 2021 SARCCUP Agreement, the November 2021 SARCCUP Agreement, or any of them, the requirements of such prior agreements shall prevail.

25. Preparation of this Agreement:

This Agreement shall not be construed against the Party preparing it but shall be construed as if all Parties prepared it.

26. Counterparts:

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute but one instrument.

27. Authority to Enter Agreement:

Each Party warrants that the individuals who have signed this Agreement on its behalf have the legal power, right, and authority to make this Agreement and bind such Party.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first written, above.

Dated: \_\_\_\_\_, 2023.

EASTERN MUNICIPAL WATER DISTRICT

By: \_\_\_\_\_  
Joe Mouawad  
General Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Stephen O'Neill  
District Counsel

Dated: \_\_\_\_\_, 2023.

WESTERN MUNICIPAL WATER DISTRICT

By: \_\_\_\_\_  
Craig Miller  
General Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Holland Stewart  
Deputy General Counsel



Dated: \_\_\_\_\_, 2023.

ORANGE COUNTY WATER DISTRICT

By: \_\_\_\_\_  
Cathy Green  
President

By: \_\_\_\_\_  
Michael Markus  
General Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Jeremy N. Jungreis  
General Counsel

Dated: \_\_\_\_\_, 2023.

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

By: \_\_\_\_\_  
Heather Dyer  
CEO/General Manager

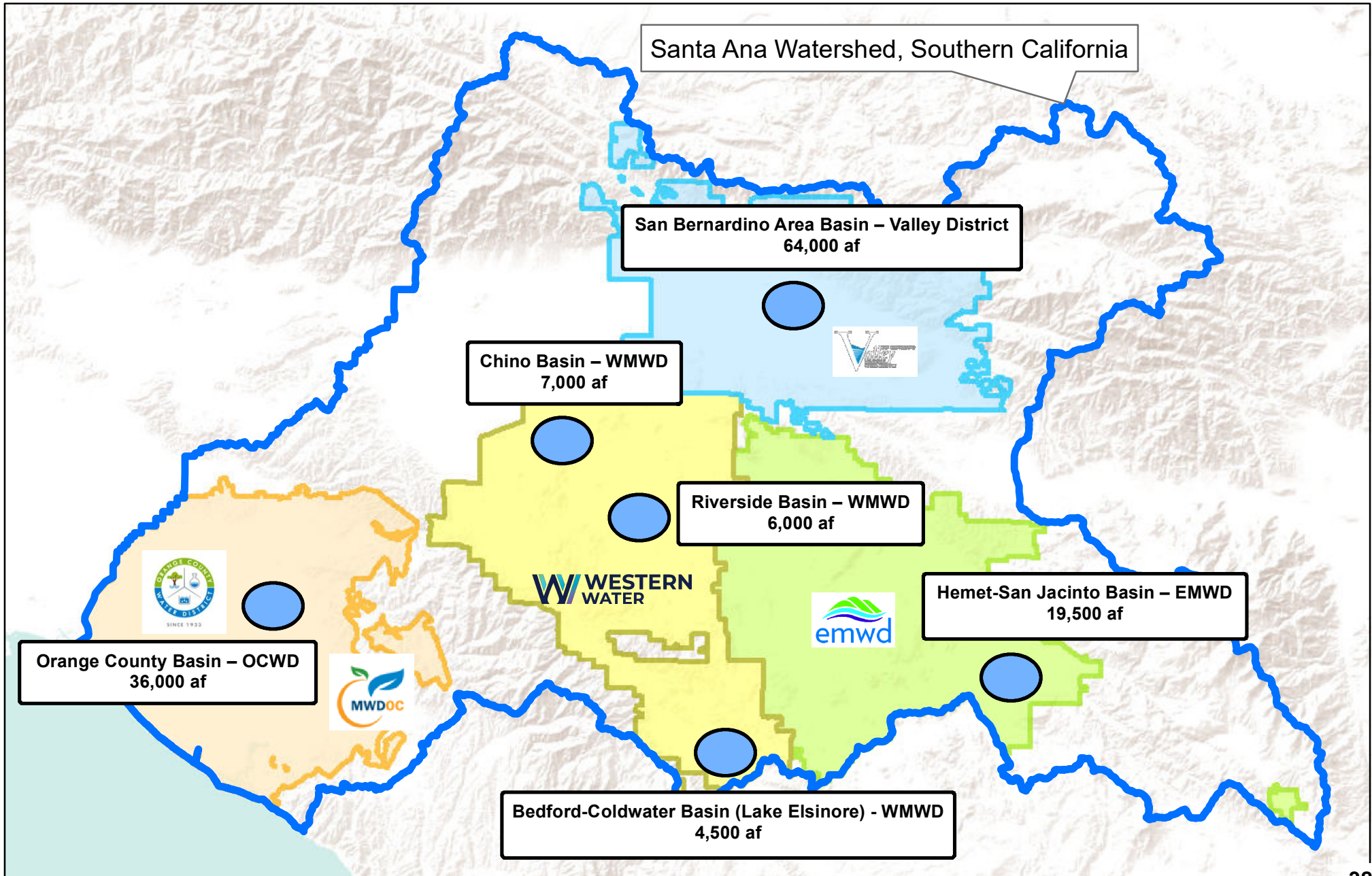
APPROVED AS TO FORM:

By: \_\_\_\_\_  
Bradley E. Neufeld  
General Counsel

# Exhibit 1

# Exhibit 1

## Santa Ana River Conservation and Conjunctive Use Program – Water Banking



## **Exhibit 2**

## Exhibit 2

### COORDINATED OPERATING AND SURPLUS WATER AGREEMENT BETWEEN THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA AND SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

This Coordinated Operating and Surplus Water Agreement (Agreement) is entered into and effective this 15<sup>th</sup> day of June, 2021 by and between The Metropolitan Water District of Southern California (Metropolitan) and San Bernardino Valley Municipal Water District (Valley District), collectively referred to as “Parties” and individual as a “Party.”

#### Recitals

A. Metropolitan is a metropolitan water district organized under the Metropolitan Water District Act, codified at section 109-1, et seq. of West’s Appendix to the California Water Code, and is engaged in developing, storing, and distributing water in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura.

B. Valley District is a public agency of the State of California engaged in developing, transporting, storing and wholesale delivery of water in portions of the counties of San Bernardino and Riverside.

C. Metropolitan and Valley District each have long-term contracts with the California Department of Water Resources (DWR) which set forth the terms and conditions of their participation in the State Water Project (SWP).

D. Metropolitan and Valley District have existing facilities for conveyance of SWP water located within Valley District. Metropolitan and Valley District have constructed conveyance facilities within Valley District that enable moving SWP water from DWR’s Devil Canyon Powerplant to Metropolitan’s Diamond Valley Lake in Riverside County and the southeastern portion of Valley District’s service area, respectively.

E. In 2000, Metropolitan and Valley District entered into a Coordinated Operating Agreement (COA) that provided for coordinated operation of their respective resources within Valley District to increase reliability of their respective water supplies. Both Metropolitan and Valley District have benefited from the COA including, but not limited to:

- i. The ability for both Parties to coordinate the operation of their distribution systems under emergency situations.
- ii. Metropolitan was able to utilize Valley District’s Foothill Pipeline to convey approximately 610,000 acre-feet (AF) of water to Diamond Valley Reservoir while MWD’s Inland Feeder was under construction.
- iii. Metropolitan purchased 223,500 AF of water from Valley District that benefited the Metropolitan service area.

- iv. Valley District used the proceeds from the water sales to Metropolitan to offset the cost of facilities in Valley District's service area.
- v. Metropolitan enhanced the Valley District delivery system by constructing the Foothill Pump Station, at Metropolitan's expense, in order to fill Diamond Valley Reservoir.
- vi. Metropolitan allowed Valley District to participate in Metropolitan's Kern-Delta water storage program.
- vii. Metropolitan allowed Valley District to use its pipeline fabrication plant and related technical services in an emergency situation.

F. The COA expired in 2016. Metropolitan and Valley District wish to continue their partnership with this new Agreement that continues in the same cooperative spirit of the COA. The overarching goal of this Agreement is to continue to identify opportunities for coordinated operation of the Parties' individual systems to realize mutual benefit and to facilitate the sale of a portion of Valley District's surplus SWP water to Metropolitan.

### Agreement

The Parties hereby agree as follows:

#### 1. *Cooperation Generally*

- a. *Identification of Projects.* Metropolitan and Valley District will continue to work together to identify water-related projects which may be of mutual benefit. Any projects so identified will be further examined regarding their technical and financial feasibility by Metropolitan, Valley District, and/or mutually agreed-to consultants. Such projects may include, but are not limited to:
  - i. Interconnection of conveyance facilities.
  - ii. Coordinated use of SWP water supplies consistent with the existing SWP contract rights of Metropolitan and Valley District, and the water rights of local groundwater and surface water users.
  - iii. Coordinated use of SWP water supplies and facilities in support of the Santa Ana River Conservation and Conjunctive Use Program (SARCCUP).
  - iv. Coordinated use of facilities to maximize the delivery of water diverted from the Santa Ana River under Valley District's and Western Municipal Water District's water rights permits.
  - v. Use of existing and/or new facilities for the production and conveyance of water for conjunctive use operation in the San Bernardino Basin.

- b. *Deliveries Within the Other Party's Service Area Prohibited.* Metropolitan and Valley District will not deliver water from any source, including but not limited to SWP water supplies (except as required or provided for under the Riverside County Superior Court judgment No. 78426 and Orange County Superior Court judgment No 117628) into each other's respective service areas, except as provided herein or as agreed to in writing by the Parties.

2. *Sale of Valley District Surplus SWP Water*

- a. *Declaration of Surplus SWP Water.* No later than June 1 of each year, Valley District will determine, in its sole discretion, the quantity of surplus SWP water that it may have over and above the demands of its customers, per its Ordinance 79, as amended.
- b. *Surplus SWP Water First Made Available to the San Gorgonio Pass Water Agency.* Valley District will first offer 5,000 AF of its surplus SWP water each year for sale to the San Gorgonio Pass Water Agency.
- c. *Remaining Surplus SWP Water Made Available to Metropolitan.* Valley District will offer to Metropolitan, and Metropolitan may purchase, all of Valley District's remaining surplus SWP water, provided that Metropolitan agrees that an amount equivalent to up to half of the water that Metropolitan purchases from Valley District may qualify as Extraordinary Supply under Metropolitan's Water Supply Allocation Plan for Metropolitan's member agencies participating in the SARCCUP, provided that such storage meets all of Metropolitan's requirements.
- d. *Storage of Surplus Water in Valley District's Service Area.* Metropolitan allows Valley's Surplus SWP Water purchased by Metropolitan to be temporarily stored within the boundaries of Valley District provided that it is ultimately used within Metropolitan's service area during the term of this Agreement. Valley District and Metropolitan agree to work cooperatively with DWR on an agreement to effectuate these deliveries.
- e. *Recovery of SARCCUP Water within Valley District's Boundaries.* When a member agency of Metropolitan wishes to recover SARCCUP water stored within Valley District's boundaries, Valley District will coordinate a delivery, by exchange with Metropolitan, or a delivery through local facilities that were constructed by SARCCUP agencies. Valley District will notify Metropolitan when the water is recovered from Valley District's boundaries and conveyed to a Metropolitan member agency.
- f. *Cost of Surplus SWP Water.* Metropolitan will pay Valley District for its surplus SWP water that Metropolitan purchases from Valley District as set forth in the following table:



Final SWP Allocation	Water Cost (\$/AF)
0 - 20%	\$450
21 - 40%	\$350
41 - 60%	\$250
61 - 100%	\$125

Metropolitan will pay the Water Cost per AF in the table plus the actual SWP energy cost for that year, as determined by DWR. Metropolitan's payments for each calendar year are due and payable each February 1, for the prior year, but the energy costs are subject to reconciliation by DWR. For surplus water temporarily stored in Valley District's service area, the Water Cost paid by Metropolitan is \$125/AF, regardless of the Final SWP Allocation for that year. The Parties agree to re-evaluate these costs every five years.

3. *Mutual Aid.* The Parties agree to provide mutual aid as follows:

- a. *Use of Facilities.* Metropolitan and Valley District shall coordinate their facilities in a manner consistent with the principles of the Omnibus Mutual Assistance Agreement as implemented by the state-wide Water Agency Response Network in coordination with the State Office of Emergency Services. Specifically, Metropolitan and Valley District will conduct a test of the ability to move water to each other's systems within the first five (5) years of this agreement. The goal of the test will be to identify any facility deficiencies and develop procedures for delivering to each other's systems in advance of a possible emergency where such deliveries are required.
- b. *System Reliability and Back-Up.* The coordinated use of Metropolitan's Inland Feeder Santa Ana River Crossing Pipeline in conjunction with the Foothill Pipeline and Inland Feeder provides Valley District and Metropolitan with greater system reliability and back-up during emergencies and facility outages. With existing system interconnections, Metropolitan may convey Valley District's water through Metropolitan's Inland Feeder Santa Ana River Crossing pipeline at no cost to Valley District when requested and when capacity is available provided it does not interfere with Metropolitan's deliveries during the term of this Agreement. Valley District may convey Metropolitan's water through Valley District's Foothill Pipeline at no cost to Metropolitan when requested and when capacity is available provided it does not interfere with Valley District's deliveries during the term of this Agreement. Metropolitan and Valley District will ensure, at their own expense, that the water conveyed, at a minimum, meets all federal and state standards applicable to the California Aqueduct as established by the State Water Resources Control Board, DWR, or other permitting authority.



4. *Local Stormwater Supplies.* Valley District and Metropolitan agree to work cooperatively on exploring supplemental stormwater programs that would provide mutual benefits to their respective service areas.
5. *Term.* This Agreement is effective as of the date set forth above and continues in force until December 31, 2035, unless the State Water Contracts between the Parties and the State of California are extended past 2035, in which case this Agreement will have the same termination date. However, either Party may terminate this Agreement at any time, with or without cause, upon one year's written notice of termination.
6. *DWR Approvals.* The transfer of Valley District Surplus SWP to Metropolitan shall not become operative until DWR approvals are obtained for all provisions requiring such approval. Valley District and Metropolitan shall jointly pursue obtaining such approvals.
7. *Rights and Obligations Under the 1969 Judgments.* This Agreement is not intended and shall not be construed to interfere with rights or obligations under the 1969 Judgments (*Orange County Water District v. City of Chino*, et al., Orange County Superior Court Action No. 117628 (“*Orange County Judgment*”), and *Western Municipal Water District of Riverside County, et al. v. East San Bernardino County Water District*, et al., Riverside Superior Court Action No. 78426 (“*Western Judgment*”)).
8. *Books and Records.* Each Party shall have access to and the right to examine any of the other Party's pertinent books, documents, papers or other records (including, without limitation, records contained on electronic media) relating to the performance of that Party's obligations pursuant to this Agreement. Each Party shall retain all such books, documents, papers or other records to facilitate such review in accordance with that Party's record retention policy. Access to each Party's books and records shall be during normal business hours only. Nothing in this paragraph shall be construed to operate as a waiver of any applicable privileges.
9. *Authority.* Each signatory of this Agreement represents that s/he is authorized to execute this Agreement on behalf of the Party for which s/he signs. Each Party represents that it has legal authority to enter into this Agreement and to perform all obligations under this Agreement.
10. *Informal Mediation.* In the event of a dispute between the Parties regarding this Agreement, the Parties may attempt to resolve the dispute by using the services of a mutually acceptable mediator. If the Parties decide use a mediator, they will equally share the mediator's fees and expenses.
11. *Amendment.* This Agreement may be amended or modified only by a written instrument executed by each of the Parties to this Agreement.
12. *Jurisdiction and Venue.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

13. *Headings.* The paragraph headings used in this Agreement are intended for convenience only and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the Parties to this Agreement.
14. *Construction and Interpretation.* This Agreement has been arrived at through negotiations and each Party has had a full and fair opportunity to revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in the construction or interpretation of this Agreement.
15. *Entire Agreement.* This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and, save as expressly provided in this Agreement, supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this Agreement.
16. *Partial Invalidity.* If, after the date of execution of this Agreement, any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable. However, in lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
17. *Successors and Assigns.* This Agreement shall be binding on and inure to the benefit of the successors and assigns of the respective Parties to this Agreement. No Party may assign its interests in or obligations under this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld or delayed.
18. *Waivers.* Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement and forbearance to enforce one or more of the rights or remedies provided in this Agreement shall not be deemed to be a waiver of that right or remedy.
19. *Necessary Actions.* Each Party agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out the purposes of this Agreement.
20. *No Third-Party Beneficiaries.* This Agreement shall not create any right or interest in any non-party or in any member of the public as a third-party beneficiary.
21. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
22. *Notices.* All notices, requests, and demands hereunder (Notices) shall be in writing, including electronic communications, and shall be deemed to have been duly given when delivered (or, if mailed, postage prepaid, on the third business day after mailing, if that

date is earlier than actual delivery). Notices shall be sent to a Party at the address of that Party set forth below or, if such Party has furnished notice of a change of that address as herein provided, to the address of that Party most recently so furnished.

Metropolitan Water District of Southern California  
Attention: General Manager  
P.O. Box 54153  
Los Angeles, CA 90054-0153

San Bernardino Valley Water District  
Attention: General Manager  
380 E. Vanderbilt Way  
San Bernardino, CA 92408

In WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the following duly authorized representatives.

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

DocuSigned by:  
By: Jeff Kightlinger  
76A77418F92841C  
Jeffrey Kightlinger  
General Manager

6/15/2021  
Dated

APPROVED AS TO FORM:

DocuSigned by:  
By: Marcia Scully  
9D1F00E7D578408  
Marcia L. Scully  
General Counsel

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

DocuSigned by:  
By: Heather Dyer  
D2EEB8E7D0873FE  
Heather Dyer  
General Manager

6/14/2021  
Dated

APPROVED AS TO FORM:

DocuSigned by:  
By: Brendan Brandt  
0CADEF46C77734FD  
Brendan Brandt  
General Counsel

## **Exhibit 3**

November 9, 2021

### **Exhibit 3**

**Agreement Among The Metropolitan Water District of Southern California,  
Eastern Municipal Water District, Inland Empire Utilities Agency,  
Municipal Water District of Orange County, Western Municipal Water District, and  
Orange County Water District**

**Regarding the Santa Ana River Conservation and Conjunctive Use Program**

This Agreement among The Metropolitan Water District of Southern California (Metropolitan), Eastern Municipal Water District (Eastern MWD), Inland Empire Utilities Agency (IEUA), Municipal Water District of Orange County (MWDOC), Western Municipal Water District (Western MWD), and the Orange County Water District (OCWD) regarding the Santa Ana River Conservation and Conjunctive Use Program (Agreement) is hereby entered into as of November 9, 2021. Metropolitan, Eastern MWD, IEUA, MWDOC, Western MWD, and OCWD are collectively referred to as “Parties” and individually as a “Party.”

#### **RECITALS**

A. Metropolitan is a metropolitan water district organized under the Metropolitan Water District Act, codified at section 109-1, et seq. of West’s Appendix to the California Water Code, and is engaged in developing, storing, and distributing water in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura. Metropolitan has a long-term contract with the California Department of Water Resources (DWR) which sets forth the terms and conditions of Metropolitan’s participation in the State Water Project (SWP).

B. Eastern MWD is a California municipal water district formed and existing under the California Municipal Water District Act of 1911, Sections 71000 et seq. of the California Water Code, for the purpose of providing water services and certain other services. Eastern MWD’s powers and purposes include the acquisition within or without the district’s boundaries

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in the State of California of all necessary property or rights in property necessary or proper for the production, storage, transmission and distribution of water for irrigation, domestic, industrial and municipal purposes and the power to contract with one or more public agencies in carrying out any of its powers. Eastern MWD is a member agency of Metropolitan.

C. IEUA is a California municipal water district formed and existing under the California Municipal Water District Act of 1911, Sections 71000 et seq. of the California Water Code, for the purpose of supplying supplemental water to the Chino Basin and certain other services. IEUA's powers and purposes include the acquisition within or without the agency's boundaries in the State of California of all necessary property or rights in property necessary or proper for the production, storage, transmission and distribution of water for irrigation, domestic, industrial and municipal purposes and the power to contract with one or more public agencies in carrying out any of its powers. IEUA is a member agency of Metropolitan.

D. MWDOC is a municipal water district formed and existing under the California Municipal Water District Act of 1911, Sections 71000 et seq. of the California Water Code, for purposes that include providing its 28 member agencies in Orange County, with reliable, high quality supplies from Metropolitan and other sources to meet present and future needs, at an equitable and economic cost, and to promote water use efficiency for all of Orange County. MWDOC is a member agency of Metropolitan.

E. One of MWDOC's member agencies, OCWD, undertakes the responsibilities associated with actively managing the OCWD groundwater basin. OCWD was formed by an act of the California State Legislature in 1933 for the purpose of protecting and managing the Orange County groundwater basin.

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F. Western MWD is a California municipal water district formed and existing under the California Municipal Water District Act of 1911, Sections 71000 et seq. of the California Water Code, for the purpose of providing water services and certain other services. Western MWD's powers and purposes include the acquisition within or without the district's boundaries in the State of California of all necessary property or rights in property necessary or proper for the production, storage, transmission and distribution of water for irrigation, domestic, industrial and municipal purposes and the power to contract with one or more public agencies in carrying out any of its powers. Western MWD is a member agency of Metropolitan.

G. In 2014, Eastern MWD, IEUA, OCWD, Western MWD, and the San Bernardino Valley Municipal Water District (Valley District) entered into a Memorandum of Understanding (2014 MOU). Valley District is engaged in developing, transporting, storing, treating, and wholesale delivery of water in portions of the counties of San Bernardino and Riverside. Like Metropolitan, Valley District has a long-term contract with DWR which set forth the terms and conditions of its participation in the SWP. Valley District recharges SWP water into the San Bernardino Basin Area (SBBA) for the benefit of its member agencies. The purpose of the 2014 MOU is to collaborate in the exploration, analysis and implementation of a large-scale, regional water supply reliability project, known as the Santa Ana River Conservation and Conjunctive Use Program (SARCCUP). The SARCCUP is a multi-agency, watershed-wide groundwater storage and recovery project involving multiple basins in the Santa Ana Watershed. The goal is to store available water during wet years in local groundwater basins throughout the watershed and extract the stored water during dry years to reduce the impacts from multi-year droughts. Eastern MWD, IEUA, MWDOC, and Western MWD are collectively referred to as the



November 9, 2021

“SARCCUP Metropolitan Member Agencies” and individually as a “SARCCUP Metropolitan Member Agency.”

H. The SARCCUP currently includes four water banking sites. Three of the sites are located within Metropolitan’s service area. More specifically, they are located in the service areas of Eastern MWD, Western MWD, and MWDOC. The facilities within MWDOC’s service area are located within, owned, and operated, by OCWD. The fourth site is the SBBA, which is located outside of Metropolitan’s service area and within Valley District’s service area. The owners of the four water banking sites are responsible for all operating decisions for those water banking facilities including the quantity of water that they store and extract within the water banks under the SARCCUP.

I. Valley District and Metropolitan entered into a Coordinated Operating and Surplus Water Agreement, dated June 15, 2021 whereby Valley District may offer to sell to Metropolitan, and Metropolitan may purchase from Valley District, surplus water.

J. Under this Agreement, Metropolitan will offer to sell to the SARCCUP Metropolitan Member Agencies an amount of water equivalent to 50% of the amount of water Metropolitan purchases from Valley District for storage within the SARCCUP water banking sites and use within Metropolitan’s service area. Such water shall not count against a SARCCUP Metropolitan Member Agency’s annual Tier 1 limit or incurring Metropolitan’s capacity charge. Some of the water Metropolitan sells to the SARCCUP Metropolitan Member Agencies under this Agreement may be temporarily stored in the SBBA. An amount of water equivalent to up to half of the water that Metropolitan purchases from Valley District may qualify as Extraordinary Supply under Metropolitan’s Water Supply Allocation Plan.

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## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the representations, warranties, covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree to the following terms and conditions of this Agreement.

### **1. Consultation between Metropolitan and the SARCCUP Metropolitan Member Agencies and OCWD**

A. By July 1<sup>st</sup> of each calendar year subsequent to the execution of this Agreement, Metropolitan will inform the SARCCUP Metropolitan Member Agencies and OCWD of the amount of water, if any, that Metropolitan will purchase from Valley District and, of that amount, how much water, if any, Metropolitan is willing to deliver to the SARCCUP Metropolitan Member Agencies at Valley District's connection to the SWP and/or Metropolitan's service connections to the SARCCUP Metropolitan Member Agencies. Metropolitan has discretion whether to purchase any or all of the water Valley District offers to Metropolitan within a calendar year. No SARCCUP Metropolitan Member Agency or OCWD may purchase water from Valley District.

B. Metropolitan will equally offer to Western MWD, Eastern MWD, and MWDOC for purchase an amount equivalent to 50% of the amount that Metropolitan purchases from Valley District during a calendar year for delivery to the SARCCUP water banking facilities. MWDOC will be purchasing water offered by Metropolitan on behalf of OCWD for the SARCCUP water banking program. As the owners and operators of the SARCCUP water banking facilities, Western MWD, Eastern MWD, and OCWD may, by unanimous written agreement, modify the delivery amounts. Modified amounts may include deliveries to IEUA or

November 9, 2021

MWDOC for their behalf. Western MWD, Eastern MWD, and OCWD will provide a copy of any such agreement to Metropolitan. OCWD will inform MWDOC of the amount to be delivered at the Valley District's service connection to the SWP and/or Metropolitan's service connections to MWDOC. Each SARCCUP Metropolitan Member Agency will inform Metropolitan of the amount that the SARCCUP Metropolitan Member Agency will purchase and accept for delivery at Valley District's connection to the SWP and/or Metropolitan's service connections to the SARCCUP Metropolitan Member Agencies. The SARCCUP Metropolitan Member Agencies will notify Metropolitan by August 15<sup>th</sup> of each year of these amounts.

**2. Delivery to SARCCUP Member Agencies at Valley District's Connection to the SWP**

Metropolitan will deliver to the SARCCUP Metropolitan Member Agencies at Valley District's connection to the SWP during a calendar year the amount that the SARCCUP Metropolitan Member Agencies previously notified Metropolitan they would accept under Section 1(B). Such deliveries will be scheduled and delivered at times and rates acceptable to Metropolitan, Valley District, and the relevant SARCCUP Metropolitan Member Agencies. Water that Metropolitan delivers to Valley District's connection to the SWP may be stored temporarily within Valley District's service area but must be used in Metropolitan's service area during the term of this Agreement.

**3. Billing and Payment**

Metropolitan will bill each SARCCUP Metropolitan Member Agency individually and each SARCCUP Metropolitan Member Agency will pay Metropolitan's full service untreated water or full service treated water at the time of the sale. Water purchased by a SARCCUP Metropolitan Member Agency will be counted as water delivered for purposes of meeting that

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SARCCUP Metropolitan Member Agency's purchase order commitment. Upon Metropolitan's approval of a SARCCUP Metropolitan Member Agency certification of each monthly delivery, the following exceptions will apply: (a) such purchases will not count against a SARCCUP Metropolitan Member Agency's annual Tier 1 limit; and (b) Metropolitan's capacity charge will not apply to such purchases. The sale of water under this Agreement will be included in the calculation of the Ten-Year Rolling Sales Average for purposes of Metropolitan's Readiness-to-Serve Charge at the time water is sold to the SARCCUP Metropolitan Member Agencies. Metropolitan's invoices will separately identify the quantities of water subject to this Agreement.

**4. Extraordinary Supply Benefit**

Water made available under Section 1(B), if stored within the Santa Ana River Watershed during the same calendar year in accordance with Appendix G of Metropolitan's Water Supply Allocation Plan (or as any successor to such plan), will qualify as Extraordinary Supply. The amount of Extraordinary Supply available to each SARCCUP Member Agency under this Agreement may not exceed the allocation provided under Section 1(B).

**5. Extraordinary Supply Benefit Regarding OCWD**

Metropolitan will assign any Extraordinary Supply benefit that would accrue to MWDOC as result of actions taken by OCWD, in accordance with a separate written agreement among Metropolitan, MWDOC, OCWD, and the Cities of Anaheim, Fullerton, and Santa Ana.

**6. Record Keeping**

SARCCUP Metropolitan Member Agencies, OCWD, and Metropolitan will keep records of water purchased, delivered, and stored pursuant to this Agreement. The records of each Party relevant to this Agreement will be open to inspection by the other Parties upon reasonable notice.

November 9, 2021

The Parties will cooperate to develop coordinated administrative procedures for the tracking required under this Agreement.

**7. Metropolitan's Administrative Code**

Unless otherwise specifically provided for in this Agreement, Metropolitan's Administrative Code will continue to apply to the relationship between Metropolitan and the SARCCUP Metropolitan Member Agencies.

**8. Termination**

This Agreement will terminate on December 31, 2035 unless the State Water Contract between Metropolitan and the State of California is extended past 2035, in which case, this Agreement will have the same termination date.

**9. Late Arising Claims**

If a claim arising under or with respect to one or more terms of this Agreement has not been resolved when such term terminates, or if such a claim is brought after this Agreement has terminated, but within the period of time for bringing such a claim under California law (Late Arising Claim), the provisions of this Agreement shall continue in full force and effect for such additional period of time as is necessary to resolve such claims and to satisfy the rights and obligations of the Parties hereto with respect thereto.

**10. Indemnity Clause**

Liability and indemnification shall be determined pursuant to section 4502 of Metropolitan's Administrative Code. OCWD agrees that for the purposes of this Agreement, section 4502 of Metropolitan's Administrative Code applies to OCWD in the same manner as that section applies to Metropolitan's member agencies. Metropolitan provides no warranty or guarantee regarding the quality or content of its untreated water or the suitability of its use for

November 9, 2021

storage in groundwater basins. SARCCUP Member Agencies and OCWD acknowledge that they accept untreated water “as is.”

**11. Informal Mediation**

In the event of a dispute between the Parties regarding this Agreement, the Parties may attempt to resolve the dispute by using the services of a mutually acceptable mediator. If the Parties decide to use a mediator, they will equally share the mediator’s fees and expenses.

**12. Successors and Assigns**

This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties; provided, however, no Party shall assign any of its rights or obligations under this Agreement without the prior written consent of the other Parties. Nothing in this Agreement is intended to confer any right or remedy under this Agreement on any person other than the Parties to this Agreement and their respective successors and permitted assigns, or to relieve or discharge any obligation or liability of any person to any Party to this Agreement, or to give any person any right of subrogation or action over or against any Party to this Agreement.

**13. Waiver/Cure of Defaults**

The failure of any Party to enforce against another Party a provision of this Agreement shall not constitute a waiver of that Party’s right to enforce such a provision at a later time. No Party shall be deemed to be in default of any provision of this Agreement unless the other Party has given written notice specifically stating the alleged default and the Party in default fails to cure the default within sixty (60) days of receipt of such written notice.

**14. Construction of Agreement**

The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the Parties, and Section 1654



November 9, 2021

of the Civil Code has no application to interpretation of this Agreement. The recitals and all exhibits and schedules to this Agreement are part of this Agreement and are incorporated herein by this reference.

**15. Entire Agreement**

This Agreement constitutes the final, complete and exclusive statement of the terms of the agreement among the Parties pertaining to the matters provided herein during the term and supersedes all prior and contemporaneous understandings or agreements of the Parties related thereto. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty outside those expressly set forth in this Agreement.

**16. Severability**

In the event that a court of competent jurisdiction determines that a provision included in this Agreement is legally invalid or unenforceable and such decision becomes final, the Parties to this Agreement shall use their best efforts to (i) within thirty (30) days of the date of such final decision, identify by mutual agreement the provisions of this Agreement which must be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the Parties. Pending the completion of the actions designated above, to the extent it is reasonably practical and can be done without violating any applicable provisions of law, the provisions of this Agreement, which were not found to be legally invalid or unenforceable in the final decision, shall continue in effect. If the Parties cannot agree on appropriate revisions, this Agreement shall be terminated, and the Parties will return any water owed to each other.

November 9, 2021

**17. Force Majeure**

All obligations of the Parties other than monetary or payment obligations shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, by earthquakes, fires, tornadoes, facility failures, floods, strikes, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, or other events or causes beyond the control of the Parties. In no event shall any liability accrue against a Party, to its officers, agents or employees, for any damage arising out of or connected with a suspension of performance pursuant to this section. All time limits to perform and the term of the Agreement shall be extended by a period of time equivalent to the length of suspension.

**18. Notices**

All notices, requests, and demands hereunder (Notices) shall be in writing, including electronic communications, and shall be deemed to have been duly given when delivered (or, if mailed, postage prepaid, on the third business day after mailing, if that date is earlier than actual delivery). Notices shall be sent to a Party at the address of that Party set forth below or, if such Party has furnished notice of a change of that address as herein provided, to the address of that Party most recently so furnished.

Metropolitan Water District of Southern California  
Attention: General Manager  
P.O. Box 54153  
Los Angeles, CA 90054-0153

Eastern Municipal Water District  
Attention: General Manager  
P.O. Box 8300  
Perris, CA 92572-8300

November 9, 2021

Inland Empire Utilities Agency  
Attention: General Manager  
6075 Kimball Ave.  
Chino, CA 91708

Municipal Water District of Orange County  
Attention: General Manager  
P.O. Box 20895  
Fountain Valley, CA 92708

Western Municipal Water District  
Attention General Manager  
14205 Meridian Pkwy  
Riverside, CA 92518

Orange County Water District  
Attention: General Manager  
18700 Ward St  
Fountain Valley, CA 92708

**19. Further Assurances**

Each Party hereto, upon the request of the other, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this instrument.

**20. Governing Law**

The validity, construction, and enforceability of this Agreement shall be governed in all respects by the laws of the State of California.

**21. Counterparts**

This Agreement may be executed in two or more counterparts, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

November 9, 2021

In WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the following duly authorized representatives.

**THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**

By: DocuSigned by:  
*Brad Coffey*  
FAAA3695962347A  
\_\_\_\_\_  
Adel Hagekhalil  
General Manager

11/20/2021  
\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

By: DocuSigned by:  
*Marcia Scully*  
9D1F0CE7D578409  
\_\_\_\_\_  
Marcia L. Scully  
General Counsel

**EASTERN MUNICIPAL WATER DISTRICT**

By: DocuSigned by:  
*Joe Mouawad*  
9400752DE9E341E  
\_\_\_\_\_  
Joe Mouawad  
General Manager

11/9/2021  
\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

Olivarez, Madruga, Lemieux & O’Neill

By: DocuSigned by:  
*Steven O’Neill*  
73F5513FD25E409  
\_\_\_\_\_  
Steven O’Neill

**INLAND EMPIRE UTILITIES AGENCY**

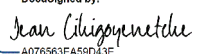
By: DocuSigned by:  
*Shivaji Deshmukh*  
EAD800E4F0B34DA  
\_\_\_\_\_  
Shivaji Deshmukh  
General Manager

11/12/2021  
\_\_\_\_\_  
Dated

November 9, 2021

APPROVED AS TO FORM:

JC Law Firm

By:  \_\_\_\_\_  
Jean Cihigoyenetché

**MUNICIPAL WATER DISTRICT OF ORANGE COUNTY**


By:  \_\_\_\_\_  
Robert Hunter  
General Manager

11/15/2021

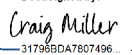
\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

Best, Best & Krieger

By:  \_\_\_\_\_  
Joseph Byrne

**WESTERN MUNICIPAL WATER DISTRICT**

By:  \_\_\_\_\_  
Craig Miller  
General Manager

11/15/2021

\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

Best Best & Krieger LLP

By:  \_\_\_\_\_  
Jeffrey F. Ferre

**ORANGE COUNTY WATER DISTRICT**

By:  \_\_\_\_\_  
Mike Markus  
General Manager

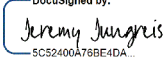
11/17/2021

\_\_\_\_\_  
Dated

November 9, 2021

APPROVED AS TO FORM:

Rutan & Tucker LLP

By:  \_\_\_\_\_  
Jeremy Jungreis



# Exhibit 4

**Exhibit 4**  
**AGREEMENT AMONG**  
**EASTERN MUNICIPAL WATER DISTRICT, WESTERN MUNICIPAL WATER DISTRICT, INLAND**  
**EMPIRE UTILITIES AGENCY, ORANGE COUNTY WATER DISTRICT AND THE MUNICIPAL**  
**WATER DISTRICT OF ORANGE COUNTY, REGARDING SANTA ANA RIVER CONSERVATION**  
**AND CONJUNCTIVE USE PROGRAM (SARCCUP) EXCESS WATER SALES AND PURCHASE**  
**AGREEMENT**

This Agreement among Eastern Municipal Water District (“EMWD”), Western Municipal Water District (“WMWD”), Inland Empire Utilities Agency (“IEUA”), Orange County Water District (“OCWD”) and The Municipal Water District of Orange County (“MWDOC”) regarding Santa Ana River Conservation and Conjunctive Use Program (SARCCUP) Excess Water Sales and Purchase Agreement (“Agreement”) is hereby entered into this 9th day of December 2021. EMWD, WMWD, IEUA, OCWD and MWDOC are collectively referred to as “Parties” and individually as “Party.”

**RECITALS**

1. The SARCCUP is a multi-benefit program for the Santa Ana River Watershed, as depicted in Exhibit A, developed by the five member agencies of the Santa Ana Watershed Project Authority: Eastern Municipal Water District (EMWD), Inland Empire Utilities Agency (IEUA), Orange County Water District (OCWD), Western Municipal Water District (WMWD), and San Bernardino Valley Municipal Water District (Valley District) to advance habitat restoration, water use efficiency and groundwater banking.
2. The groundwater banking component of the program currently includes four groundwater banking storage facilities, three of which are located within the Metropolitan Water District of Southern California’s (“MWD”) service area.
3. The three banking facilities in MWD’s service area are owned and operated by EMWD, WMWD and OCWD.
4. The fourth storage site is located in Valley District’s service area (“SBBA banking site”) and provides available storage capacity for EMWD, WMWD and OCWD.
5. IEUA does not currently have water banking facilities in its service area but is a partner in the program and anticipates participating in the groundwater banking component of the program in the future.
6. Valley District is a State Water Project (SWP) Contractor and has negotiated an agreement with MWD for the sale of Valley District’s surplus SWP supplies under certain conditions pursuant to the: “Coordinated Operating and Surplus Water Agreement between the Metropolitan Water District of Southern California and San Bernardino Valley Municipal Water District” dated June 15, 2021 (“MWD-Valley District Agreement”).

7. MWD and Valley District have agreed that when Valley District's SWP water is made available to MWD and MWD acquires that water, MWD will make available to the MWD member agency Parties for the SARCCUP program a minimum amount of its Full Service supply equivalent to fifty-percent (50%), or more, of the water it acquires from Valley District ("Allocated Water").
8. The Allocated Water purchased from MWD and stored in the SARCCUP water banking facilities may qualify as Extraordinary Supply under MWD's Water Supply Allocation Plan provided that all program requirements are met.
9. The terms and conditions of MWD's agreement to provide a portion of its Allocated Water for the SARCCUP program, the designation of Extraordinary Supply, and certain other provisions are included in an agreement among MWD, EMWD, IEUA, WMWD, MWDOC and OCWD, entitled: "Agreement Among the Metropolitan Water District of Southern California, Eastern Municipal Water District, Inland Empire Utilities Agency, Municipal Water District of Orange County, Western Municipal Water District and Orange County Water District Regarding the Santa Ana River Conservation and Conjunctive Use Program" and dated November 9, 2021 ("MWD SARCCUP Member Agency Agreement").
10. MWDOC's south Orange County retail agencies that are not OCWD groundwater producers may require supplemental dry-year water supplies for the future. EMWD, IEUA, WMWD and OCWD intend to jointly pursue additional supply options for the SARCCUP program and, in coordination with MWDOC, shall identify supplies for potential purchase by MWDOC to help mitigate shortage conditions in MWDOC's south Orange County service area.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals and the representations, warranties, covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree to the following terms and conditions of this Agreement.

#### 1. MWD Agreement and Purchase of Allocated Water

Attached to this Agreement as Exhibit B, and incorporated by reference, is the MWD SARCCUP Member Agency Agreement under which EMWD, IEUA, WMWD, OCWD and MWDOC are referred to as the "SARCCUP Member Agencies." EMWD, WMWD, IEUA and MWDOC are member agencies of MWD and are authorized to purchase Allocated Water from MWD under the MWD SARCCUP Member Agency Agreement. EMWD, WMWD and OCWD are owners and operators of the SARCCUP water banking facilities and are responsible for determining the amount of Allocated Water to be purchased for storage in those facilities. OCWD is not a MWD member agency and purchases of Allocated Water from MWD for storage in OCWD's SARCCUP water banking facilities must be made by MWDOC. For purposes of determining the allocation of water to the SARCCUP

Member Agencies under Section 1.B. of the MWD SARCCUP Member Agency Agreement, the following shall apply:

- a. As owners and operators of the SARCCUP water banking facilities, WMWD, EMWD and OCWD shall determine the amount of the Allocated Water for purchase from MWD and delivery to each of the SARCCUP water banking facilities, and shall provide written notification thereof to MWDOC and IEUA no later than July 15 of each calendar year that MWD makes Allocated Water available.
- b. Any portion of the Allocated Water not designated for delivery to the SARCCUP water banking facilities by WMWD, EMWD or OCWD shall first be made available for delivery to IEUA, with any remaining amount (“Excess Allocated Water”) made available for delivery to MWDOC.
- c. Based upon the notification by WMWD, EMWD and OCWD, and determinations by IEUA and MWDOC of their delivery amounts, each SARCCUP Member Agency in accordance with Section 1.B of the MWD SARCCUP Member Agency Agreement will inform MWD, no later than August 15 of each calendar year, of the amount, if any, of the Allocated Water the SARCCUP Member Agency will purchase.
- d. MWDOC will purchase the Excess Allocated Water from MWD at the same Full Service untreated water or Full-Service treated water rate in effect at the time of the purchase of all Allocated Water from MWD in accordance with Section 3 or the MWD SARCCUP Member Agency Agreement.

2. MWDOC Storage and Use of Excess Allocated Water

MWDOC acknowledges that it will be fully responsible for separately arranging the storage and recovery of the Excess Allocated Water it purchases and for the use, if any, of SARCCUP facilities. EMWD, WMWD, IEUA and OCWD have no obligation under this Agreement to provide MWDOC storage, recovery, or facility use for the Excess Allocated Water it purchases. MWDOC agrees and acknowledges that any Excess Allocated Water it purchases must be physically stored within the Santa Ana River Watershed or exchanged with or loaned to MWD under separate agreement between MWDOC and MWD. MWDOC may choose to apply eligible MWD Extraordinary Supply credits associated with the Excess Allocated Water it purchases throughout its service area.

3. Priority to Excess Allocated Water

EMWD, WMWD, and OCWD, as the water banking facility owners, and IEUA, agree not to enter into any other agreements that will supersede the priority for MWDOC’s potential purchase of Excess Allocated Water under this Agreement.

4. MWD Extraordinary Supply Program

MWD in its sole discretion may establish a program with its portion of Valley District’s SWP supply whereby non-SARCCUP MWD member agencies would have the option to

purchase Full Service untreated or treated water from MWD for storage and potential designation as Extraordinary Supply (“Member Agency Extraordinary Supply Program”). If in any year when MWD notifies the SARCCUP MWD member agencies of the availability of water under Section 1.B of the MWD SARCCUP Member Agency Agreement, MWD operates a Member Agency Extraordinary Supply Program, the following shall apply:

- a. MWDOC will not be eligible to purchase Excess Allocated Water under Section 2 of this agreement and will only be eligible to participate in MWD’s Member Agency Extraordinary Supply Program on behalf of its south Orange County water agencies.
- b. Any Excess Allocated Water as determined by WMWD, EMWD and OCWD, and subsequently IEUA, under Section 2b, above, would revert to MWD for inclusion in its Member Agency Extraordinary Supply Program.

5. Potential Future Supply Acquisition by the Parties

WMWD, EMWD, OCWD and IEUA may consider seeking opportunities to acquire additional sources of water from outside the MWD service area for potential purchase and storage in the SARCCUP facilities. In pursuing such additional supply options, WMWD, EMWD, IEUA and OCWD will jointly work to identify additional supplies excess to the SARCCUP program for potential purchase by MWDOC to help mitigate shortage conditions in MWDOC’s south Orange County service area.

6. Termination

This Agreement shall terminate concurrently and in accordance with the termination provisions in Section 10 of the MWD SARCCUP Member Agency Agreement, attached hereto as Exhibit B.

7. Indemnity

Each Party agrees that they shall be responsible for their own actions, and the actions of their officers, employees and agents, in performing their duties and obligations under this Agreement. Each Party agrees to indemnify and hold the other Parties and their officers and agents harmless, and agree to defend the other Parties against any claim or asserted liability arising out of their actions, either willful or negligent, or the actions of their officers, employees and agents, in performing duties and obligations pursuant to this Agreement. Such indemnity includes any losses relating to any claims made, whether or not a court action is filed, and attorney fees and administrative and overhead costs related to or arising out of such claim or asserted liability.

8. Informal Mediation

In the event of a dispute between the Parties regarding this Agreement, the Parties may attempt to resolve the dispute by using the services of a mutually acceptable mediator. If the Parties decide to use a mediator, they will equally share the mediator’s fees and expenses.

9. Successors and Assigns

This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties; provided, however, no Party shall assign any of its rights or obligations under this Agreement without the prior written consent of the other Parties. Nothing in this Agreement is intended to confer any right or remedy under this Agreement on any person other than the Parties to this Agreement and their respective successors and permitted assigns, or to relieve or discharge any obligation or liability of any person to any Party to this Agreement, or to give any person any right of subrogation or action over or against any Party to this Agreement.

10. Waiver/Cure of Defaults

The failure of any Party to enforce against another Party a provision of this Agreement shall not constitute a waiver of that Party's right to enforce such a provision at a later time. No Party shall be deemed to be in default of any provision of this Agreement unless the other Party has given written notice specifically stating the alleged default and the Party in default fails to cure the default within sixty (60) days of receipt of such written notice.

11. Construction of Agreement

The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the Parties, and Section 1654 of the Civil Code has no application to interpretation of this Agreement. The recitals and all exhibits and schedules to this Agreement are part of this Agreement and are incorporated herein by this reference.

12. Entire Agreement

This Agreement constitutes the final, complete and exclusive statement of the terms of the agreement among the Parties pertaining to the matters provided herein during the term and supersedes all prior and contemporaneous understandings or agreements of the Parties related thereto. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty outside those expressly set forth in this Agreement.

13. Severability

In the event that a court of competent jurisdiction determines that a provision included in this Agreement is legally invalid or unenforceable and such decision becomes final, the Parties to this Agreement shall use their best efforts to (i) within thirty (30) days of the date of such final decision, identify by mutual agreement the provisions of this Agreement which must be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the Parties. Pending the completion of the actions designated above, to the extent it is reasonably practical and can be done without violating any applicable



provisions of law, the provisions of this Agreement, which were not found to be legally invalid or unenforceable in the final decision, shall continue in effect. If the Parties cannot agree on appropriate revisions, this Agreement shall be terminated, and the Parties will return any water owed to each other.

14. Force Majeure

All obligations of the Parties other than monetary or payment obligations shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, by earthquakes, fires, tornadoes, facility failures, floods, strikes, pandemics, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, or other events or causes beyond the control of the Parties. In no event shall any liability accrue against a Party, to its officers, agents or employees, for any damage arising out of or connected with a suspension of performance pursuant to this section. All time limits to perform and the term of the Agreement shall be extended by a period of time equivalent to the length of suspension.

15. Notices

All notices, requests, and demands hereunder (Notices) shall be in writing, including electronic communications, and shall be deemed to have been duly given when delivered (or, if mailed, postage prepaid, on the third business day after mailing, if that date is earlier than actual delivery). Notices shall be sent to a Party at the address of that Party set forth below or, if such Party has furnished notice of a change of that address as herein provided, to the address of that Party most recently so furnished.

Eastern Municipal Water District  
Attention: General Manager  
P.O. Box 8300  
Perris, CA 92572-8300

Inland Empire Utilities Agency  
Attention: General Manager  
6075 Kimball Ave.  
Chino, CA 91708

Municipal Water District of Orange County  
Attention: General Manager  
P.O. Box 20895  
Fountain Valley, CA 92708

Western Municipal Water District  
Attention General Manager  
14205 Meridian Pkwy  
Riverside, CA 92518

Orange County Water District  
Attention: General Manager  
18700 Ward St  
Fountain Valley, CA 92708

16. Further Assurances

Each Party hereto, upon the request of the other, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this instrument.

17. Governing Law

The validity, construction, and enforceability of this Agreement shall be governed in all respects by the laws of the State of California.

18. Counterparts

This Agreement may be executed in two or more counterparts, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

In WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the following duly authorized representatives.

EASTERN MUNICIPAL WATER DISTRICT

DocuSigned by:  
*Joe Mouawad*  
By: \_\_\_\_\_  
9400752DE9E341E...  
Joe Mouawad  
General Manager

12/13/2021 | 8:44 AM PST

\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

Olivarez, Madrugá, Lemieux & O’Neill

DocuSigned by:  
*Martin Koczanowicz*  
By: \_\_\_\_\_  
Martin Koczanowicz

INLAND EMPIRE UTILITIES AGENCY

DocuSigned by:  
*Shivaji Deshmukh*  
By: EAD800E4F0B34DA...  
Shivaji Deshmukh  
General Manager

12/9/2021 | 9:35 AM PST  
Dated

APPROVED AS TO FORM:

JC Law Firm  
DocuSigned by:  
*Jean Ciligoynetche*  
By: A070568CA50043E  
Jean Ciligoynetche

MUNICIPAL WATER DISTRICT OF ORANGE COUNTY

DocuSigned by:  
*Robert J. Hunter*  
By: \_\_\_\_\_  
E3285F9B8EC949Z  
Robert Hunter  
General Manager

12/9/2021 | 9:48 AM PST

\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

Best, Best & Krieger  
DocuSigned by:  
*Joe Byrne*  
By: \_\_\_\_\_  
800D7933C7204EC...  
Joseph Byrne

WESTERN MUNICIPAL WATER DISTRICT

DocuSigned by:  
*Craig Miller*  
4016332AABFC41E...  
By: \_\_\_\_\_  
Craig Miller  
General Manager

12/13/2021 | 10:49 AM PST

\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

Best Best & Krieger LLP  
DocuSigned by:  
*Jeff Ballinger*  
9656A1483C6E407...  
By: \_\_\_\_\_  
Jeff Ballinger

ORANGE COUNTY WATER DISTRICT

DocuSigned by:  
*Mike Markus*  
By: 1564C4B7FE2B42D...  
Mike Markus  
General Manager

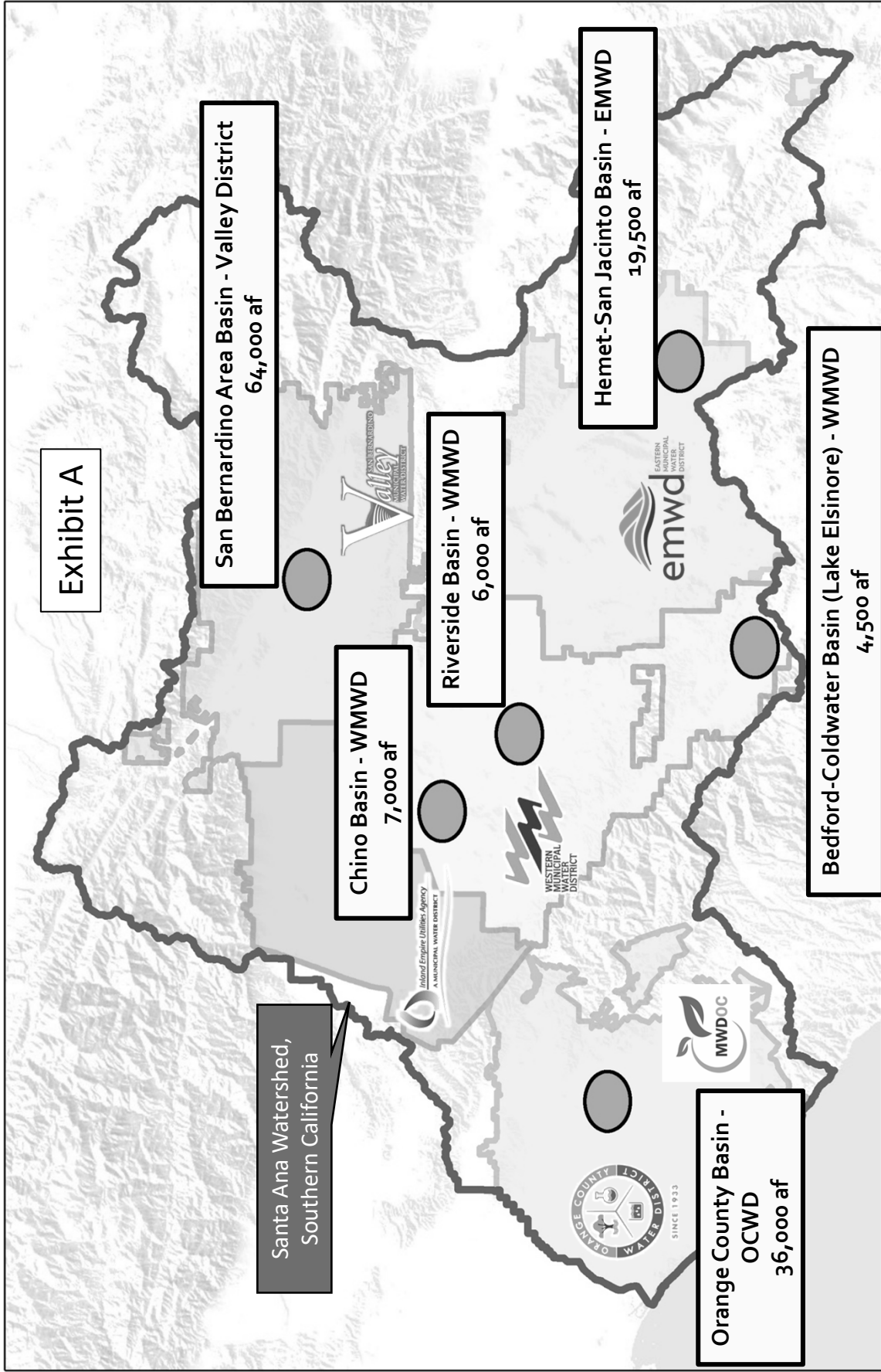
12/15/2021 | 11:08 AM PST

\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

Rutan & Tucker LLP  
DocuSigned by:  
*Jeremy Jungreis*  
By: 5C52400A76BE4DA...  
Jeremy Jungreis

# Santa Ana River Conservation and Conjunctive Use Program – Water Banking Facilities







THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

*Office of the General Manager*

November 9, 2021

Mr. Joe Mouawad  
[MouawadJ@emwd.org](mailto:MouawadJ@emwd.org)  
General Manager  
Eastern Municipal Water District  
2270 Trumble Road  
Perris, CA 92570

Mr. Shivaji Deshmukh  
[SDeshmukh@ieua.org](mailto:SDeshmukh@ieua.org)  
General Manager  
Inland Empire Utilities Agency  
6075 Kimball Ave  
Chino, CA 91708

Mr. Robert Hunter  
[RHunter@mwdoc.com](mailto:RHunter@mwdoc.com)  
General Manager  
Municipal Water District of Orange County  
18700 Ward Street  
Fountain Valley, CA 92708

Mr. Craig Miller  
[CMiller@wmwd.com](mailto:CMiller@wmwd.com)  
General Manager  
Western Municipal Water District  
14205 Meridian Parkway  
Riverside, CA 92518

Mr. Michael Markus  
[MMarkus@ocwd.com](mailto:MMarkus@ocwd.com)  
General Manager  
Orange County Water District  
18700 Ward Street  
Fountain Valley, CA 92708

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Mr. Joe Mouawad  
Mr. Shivaji Deshmukh  
Mr. Robert Hunter  
Mr. Craig Miller  
Mr. Michael Markus  
Page 2  
November 9, 2021

Dear Mr. Mouawad, Mr. Deshmukh, Mr. Hunter, Mr. Miller, and Mr. Markus:

Agreement for the Santa Ana River Conservation  
and Conjunctive Use Program with EMWD, IEUA, MWDOC, WMWD, and OCWD

Enclosed for your signature is the subject agreement between The Metropolitan Water District of Southern California, Eastern Municipal Water District, Inland Empire Utility Agency, Municipal Water District of Orange County, Western Municipal Water District, and Orange County Water District.

If the terms are acceptable, please DocuSign the enclosed original. Upon completion, a fully executed original agreement will be automatically generated for your records.

If you have any questions, please contact Ms. Nadia Hardjadinata at (213) 217-6445 or via email at [NHardjadinata@mw dh2o.com](mailto:NHardjadinata@mw dh2o.com).

Very truly yours,



Brad Coffey  
Manager, Water Resource Management

November 9, 2021

**Agreement Among The Metropolitan Water District of Southern California,  
Eastern Municipal Water District, Inland Empire Utilities Agency,  
Municipal Water District of Orange County, Western Municipal Water District, and  
Orange County Water District**

**Regarding the Santa Ana River Conservation and Conjunctive Use Program**

This Agreement among The Metropolitan Water District of Southern California (Metropolitan), Eastern Municipal Water District (Eastern MWD), Inland Empire Utilities Agency (IEUA), Municipal Water District of Orange County (MWDOC), Western Municipal Water District (Western MWD), and the Orange County Water District (OCWD) regarding the Santa Ana River Conservation and Conjunctive Use Program (Agreement) is hereby entered into as of November 9, 2021. Metropolitan, Eastern MWD, IEUA, MWDOC, Western MWD, and OCWD are collectively referred to as “Parties” and individually as a “Party.”

**RECITALS**

A. Metropolitan is a metropolitan water district organized under the Metropolitan Water District Act, codified at section 109-1, et seq. of West’s Appendix to the California Water Code, and is engaged in developing, storing, and distributing water in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura. Metropolitan has a long-term contract with the California Department of Water Resources (DWR) which sets forth the terms and conditions of Metropolitan’s participation in the State Water Project (SWP).

B. Eastern MWD is a California municipal water district formed and existing under the California Municipal Water District Act of 1911, Sections 71000 et seq. of the California Water Code, for the purpose of providing water services and certain other services. Eastern MWD’s powers and purposes include the acquisition within or without the district’s boundaries

November 9, 2021

in the State of California of all necessary property or rights in property necessary or proper for the production, storage, transmission and distribution of water for irrigation, domestic, industrial and municipal purposes and the power to contract with one or more public agencies in carrying out any of its powers. Eastern MWD is a member agency of Metropolitan.

C. IEUA is a California municipal water district formed and existing under the California Municipal Water District Act of 1911, Sections 71000 et seq. of the California Water Code, for the purpose of supplying supplemental water to the Chino Basin and certain other services. IEUA's powers and purposes include the acquisition within or without the agency's boundaries in the State of California of all necessary property or rights in property necessary or proper for the production, storage, transmission and distribution of water for irrigation, domestic, industrial and municipal purposes and the power to contract with one or more public agencies in carrying out any of its powers. IEUA is a member agency of Metropolitan.

D. MWDOC is a municipal water district formed and existing under the California Municipal Water District Act of 1911, Sections 71000 et seq. of the California Water Code, for purposes that include providing its 28 member agencies in Orange County, with reliable, high quality supplies from Metropolitan and other sources to meet present and future needs, at an equitable and economic cost, and to promote water use efficiency for all of Orange County. MWDOC is a member agency of Metropolitan.

E. One of MWDOC's member agencies, OCWD, undertakes the responsibilities associated with actively managing the OCWD groundwater basin. OCWD was formed by an act of the California State Legislature in 1933 for the purpose of protecting and managing the Orange County groundwater basin.

November 9, 2021

F. Western MWD is a California municipal water district formed and existing under the California Municipal Water District Act of 1911, Sections 71000 et seq. of the California Water Code, for the purpose of providing water services and certain other services. Western MWD's powers and purposes include the acquisition within or without the district's boundaries in the State of California of all necessary property or rights in property necessary or proper for the production, storage, transmission and distribution of water for irrigation, domestic, industrial and municipal purposes and the power to contract with one or more public agencies in carrying out any of its powers. Western MWD is a member agency of Metropolitan.

G. In 2014, Eastern MWD, IEUA, OCWD, Western MWD, and the San Bernardino Valley Municipal Water District (Valley District) entered into a Memorandum of Understanding (2014 MOU). Valley District is engaged in developing, transporting, storing, treating, and wholesale delivery of water in portions of the counties of San Bernardino and Riverside. Like Metropolitan, Valley District has a long-term contract with DWR which set forth the terms and conditions of its participation in the SWP. Valley District recharges SWP water into the San Bernardino Basin Area (SBBA) for the benefit of its member agencies. The purpose of the 2014 MOU is to collaborate in the exploration, analysis and implementation of a large-scale, regional water supply reliability project, known as the Santa Ana River Conservation and Conjunctive Use Program (SARCCUP). The SARCCUP is a multi-agency, watershed-wide groundwater storage and recovery project involving multiple basins in the Santa Ana Watershed. The goal is to store available water during wet years in local groundwater basins throughout the watershed and extract the stored water during dry years to reduce the impacts from multi-year droughts. Eastern MWD, IEUA, MWDOC, and Western MWD are collectively referred to as the

November 9, 2021

“SARCCUP Metropolitan Member Agencies” and individually as a “SARCCUP Metropolitan Member Agency.”

H. The SARCCUP currently includes four water banking sites. Three of the sites are located within Metropolitan’s service area. More specifically, they are located in the service areas of Eastern MWD, Western MWD, and MWDOC. The facilities within MWDOC’s service area are located within, owned, and operated, by OCWD. The fourth site is the SBBA, which is located outside of Metropolitan’s service area and within Valley District’s service area. The owners of the four water banking sites are responsible for all operating decisions for those water banking facilities including the quantity of water that they store and extract within the water banks under the SARCCUP.

I. Valley District and Metropolitan entered into a Coordinated Operating and Surplus Water Agreement, dated June 15, 2021 whereby Valley District may offer to sell to Metropolitan, and Metropolitan may purchase from Valley District, surplus water.

J. Under this Agreement, Metropolitan will offer to sell to the SARCCUP Metropolitan Member Agencies an amount of water equivalent to 50% of the amount of water Metropolitan purchases from Valley District for storage within the SARCCUP water banking sites and use within Metropolitan’s service area. Such water shall not count against a SARCCUP Metropolitan Member Agency’s annual Tier 1 limit or incurring Metropolitan’s capacity charge. Some of the water Metropolitan sells to the SARCCUP Metropolitan Member Agencies under this Agreement may be temporarily stored in the SBBA. An amount of water equivalent to up to half of the water that Metropolitan purchases from Valley District may qualify as Extraordinary Supply under Metropolitan’s Water Supply Allocation Plan.

November 9, 2021

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the representations, warranties, covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree to the following terms and conditions of this Agreement.

### **1. Consultation between Metropolitan and the SARCCUP Metropolitan Member Agencies and OCWD**

A. By July 1<sup>st</sup> of each calendar year subsequent to the execution of this Agreement, Metropolitan will inform the SARCCUP Metropolitan Member Agencies and OCWD of the amount of water, if any, that Metropolitan will purchase from Valley District and, of that amount, how much water, if any, Metropolitan is willing to deliver to the SARCCUP Metropolitan Member Agencies at Valley District's connection to the SWP and/or Metropolitan's service connections to the SARCCUP Metropolitan Member Agencies. Metropolitan has discretion whether to purchase any or all of the water Valley District offers to Metropolitan within a calendar year. No SARCCUP Metropolitan Member Agency or OCWD may purchase water from Valley District.

B. Metropolitan will equally offer to Western MWD, Eastern MWD, and MWDOC for purchase an amount equivalent to 50% of the amount that Metropolitan purchases from Valley District during a calendar year for delivery to the SARCCUP water banking facilities. MWDOC will be purchasing water offered by Metropolitan on behalf of OCWD for the SARCCUP water banking program. As the owners and operators of the SARCCUP water banking facilities, Western MWD, Eastern MWD, and OCWD may, by unanimous written agreement, modify the delivery amounts. Modified amounts may include deliveries to IEUA or



November 9, 2021

MWDOC for their behalf. Western MWD, Eastern MWD, and OCWD will provide a copy of any such agreement to Metropolitan. OCWD will inform MWDOC of the amount to be delivered at the Valley District's service connection to the SWP and/or Metropolitan's service connections to MWDOC. Each SARCCUP Metropolitan Member Agency will inform Metropolitan of the amount that the SARCCUP Metropolitan Member Agency will purchase and accept for delivery at Valley District's connection to the SWP and/or Metropolitan's service connections to the SARCCUP Metropolitan Member Agencies. The SARCCUP Metropolitan Member Agencies will notify Metropolitan by August 15<sup>th</sup> of each year of these amounts.

**2. Delivery to SARCCUP Member Agencies at Valley District's Connection to the SWP**

Metropolitan will deliver to the SARCCUP Metropolitan Member Agencies at Valley District's connection to the SWP during a calendar year the amount that the SARCCUP Metropolitan Member Agencies previously notified Metropolitan they would accept under Section 1(B). Such deliveries will be scheduled and delivered at times and rates acceptable to Metropolitan, Valley District, and the relevant SARCCUP Metropolitan Member Agencies. Water that Metropolitan delivers to Valley District's connection to the SWP may be stored temporarily within Valley District's service area but must be used in Metropolitan's service area during the term of this Agreement.

**3. Billing and Payment**

Metropolitan will bill each SARCCUP Metropolitan Member Agency individually and each SARCCUP Metropolitan Member Agency will pay Metropolitan's full service untreated water or full service treated water at the time of the sale. Water purchased by a SARCCUP Metropolitan Member Agency will be counted as water delivered for purposes of meeting that

November 9, 2021

SARCCUP Metropolitan Member Agency's purchase order commitment. Upon Metropolitan's approval of a SARCCUP Metropolitan Member Agency certification of each monthly delivery, the following exceptions will apply: (a) such purchases will not count against a SARCCUP Metropolitan Member Agency's annual Tier 1 limit; and (b) Metropolitan's capacity charge will not apply to such purchases. The sale of water under this Agreement will be included in the calculation of the Ten-Year Rolling Sales Average for purposes of Metropolitan's Readiness-to-Serve Charge at the time water is sold to the SARCCUP Metropolitan Member Agencies. Metropolitan's invoices will separately identify the quantities of water subject to this Agreement.

**4. Extraordinary Supply Benefit**

Water made available under Section 1(B), if stored within the Santa Ana River Watershed during the same calendar year in accordance with Appendix G of Metropolitan's Water Supply Allocation Plan (or as any successor to such plan), will qualify as Extraordinary Supply. The amount of Extraordinary Supply available to each SARCCUP Member Agency under this Agreement may not exceed the allocation provided under Section 1(B).

**5. Extraordinary Supply Benefit Regarding OCWD**

Metropolitan will assign any Extraordinary Supply benefit that would accrue to MWDOC as result of actions taken by OCWD, in accordance with a separate written agreement among Metropolitan, MWDOC, OCWD, and the Cities of Anaheim, Fullerton, and Santa Ana.

**6. Record Keeping**

SARCCUP Metropolitan Member Agencies, OCWD, and Metropolitan will keep records of water purchased, delivered, and stored pursuant to this Agreement. The records of each Party relevant to this Agreement will be open to inspection by the other Parties upon reasonable notice.

November 9, 2021

The Parties will cooperate to develop coordinated administrative procedures for the tracking required under this Agreement.

**7. Metropolitan's Administrative Code**

Unless otherwise specifically provided for in this Agreement, Metropolitan's Administrative Code will continue to apply to the relationship between Metropolitan and the SARCCUP Metropolitan Member Agencies.

**8. Termination**

This Agreement will terminate on December 31, 2035 unless the State Water Contract between Metropolitan and the State of California is extended past 2035, in which case, this Agreement will have the same termination date.

**9. Late Arising Claims**

If a claim arising under or with respect to one or more terms of this Agreement has not been resolved when such term terminates, or if such a claim is brought after this Agreement has terminated, but within the period of time for bringing such a claim under California law (Late Arising Claim), the provisions of this Agreement shall continue in full force and effect for such additional period of time as is necessary to resolve such claims and to satisfy the rights and obligations of the Parties hereto with respect thereto.

**10. Indemnity Clause**

Liability and indemnification shall be determined pursuant to section 4502 of Metropolitan's Administrative Code. OCWD agrees that for the purposes of this Agreement, section 4502 of Metropolitan's Administrative Code applies to OCWD in the same manner as that section applies to Metropolitan's member agencies. Metropolitan provides no warranty or guarantee regarding the quality or content of its untreated water or the suitability of its use for

November 9, 2021

storage in groundwater basins. SARCCUP Member Agencies and OCWD acknowledge that they accept untreated water “as is.”

**11. Informal Mediation**

In the event of a dispute between the Parties regarding this Agreement, the Parties may attempt to resolve the dispute by using the services of a mutually acceptable mediator. If the Parties decide to use a mediator, they will equally share the mediator’s fees and expenses.

**12. Successors and Assigns**

This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties; provided, however, no Party shall assign any of its rights or obligations under this Agreement without the prior written consent of the other Parties. Nothing in this Agreement is intended to confer any right or remedy under this Agreement on any person other than the Parties to this Agreement and their respective successors and permitted assigns, or to relieve or discharge any obligation or liability of any person to any Party to this Agreement, or to give any person any right of subrogation or action over or against any Party to this Agreement.

**13. Waiver/Cure of Defaults**

The failure of any Party to enforce against another Party a provision of this Agreement shall not constitute a waiver of that Party’s right to enforce such a provision at a later time. No Party shall be deemed to be in default of any provision of this Agreement unless the other Party has given written notice specifically stating the alleged default and the Party in default fails to cure the default within sixty (60) days of receipt of such written notice.

**14. Construction of Agreement**

The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the Parties, and Section 1654

November 9, 2021

of the Civil Code has no application to interpretation of this Agreement. The recitals and all exhibits and schedules to this Agreement are part of this Agreement and are incorporated herein by this reference.

**15. Entire Agreement**

This Agreement constitutes the final, complete and exclusive statement of the terms of the agreement among the Parties pertaining to the matters provided herein during the term and supersedes all prior and contemporaneous understandings or agreements of the Parties related thereto. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty outside those expressly set forth in this Agreement.

**16. Severability**

In the event that a court of competent jurisdiction determines that a provision included in this Agreement is legally invalid or unenforceable and such decision becomes final, the Parties to this Agreement shall use their best efforts to (i) within thirty (30) days of the date of such final decision, identify by mutual agreement the provisions of this Agreement which must be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the Parties. Pending the completion of the actions designated above, to the extent it is reasonably practical and can be done without violating any applicable provisions of law, the provisions of this Agreement, which were not found to be legally invalid or unenforceable in the final decision, shall continue in effect. If the Parties cannot agree on appropriate revisions, this Agreement shall be terminated, and the Parties will return any water owed to each other.

November 9, 2021

**17. Force Majeure**

All obligations of the Parties other than monetary or payment obligations shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, by earthquakes, fires, tornadoes, facility failures, floods, strikes, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, or other events or causes beyond the control of the Parties. In no event shall any liability accrue against a Party, to its officers, agents or employees, for any damage arising out of or connected with a suspension of performance pursuant to this section. All time limits to perform and the term of the Agreement shall be extended by a period of time equivalent to the length of suspension.

**18. Notices**

All notices, requests, and demands hereunder (Notices) shall be in writing, including electronic communications, and shall be deemed to have been duly given when delivered (or, if mailed, postage prepaid, on the third business day after mailing, if that date is earlier than actual delivery). Notices shall be sent to a Party at the address of that Party set forth below or, if such Party has furnished notice of a change of that address as herein provided, to the address of that Party most recently so furnished.

Metropolitan Water District of Southern California  
Attention: General Manager  
P.O. Box 54153  
Los Angeles, CA 90054-0153

Eastern Municipal Water District  
Attention: General Manager  
P.O. Box 8300  
Perris, CA 92572-8300

November 9, 2021

Inland Empire Utilities Agency  
Attention: General Manager  
6075 Kimball Ave.  
Chino, CA 91708

Municipal Water District of Orange County  
Attention: General Manager  
P.O. Box 20895  
Fountain Valley, CA 92708

Western Municipal Water District  
Attention General Manager  
14205 Meridian Pkwy  
Riverside, CA 92518

Orange County Water District  
Attention: General Manager  
18700 Ward St  
Fountain Valley, CA 92708

**19. Further Assurances**

Each Party hereto, upon the request of the other, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this instrument.

**20. Governing Law**

The validity, construction, and enforceability of this Agreement shall be governed in all respects by the laws of the State of California.

**21. Counterparts**

This Agreement may be executed in two or more counterparts, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.



November 9, 2021

In WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the following duly authorized representatives.

**THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**

By: DocuSigned by:  
*Brad Coffey*  
FAAA3695962347A  
\_\_\_\_\_  
Adel Hagekhalil  
General Manager

11/20/2021  
\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

By: DocuSigned by:  
*Marcia Scully*  
9D1F0CE7D578409  
\_\_\_\_\_  
Marcia L. Scully  
General Counsel

**EASTERN MUNICIPAL WATER DISTRICT**

By: DocuSigned by:  
*Joe Mouawad*  
9400752DE9E341E  
\_\_\_\_\_  
Joe Mouawad  
General Manager

11/9/2021  
\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

Olivarez, Madruga, Lemieux & O'Neill

By: DocuSigned by:  
*Steven O'Neill*  
73F5513FD25E409  
\_\_\_\_\_  
Steven O'Neill

**INLAND EMPIRE UTILITIES AGENCY**

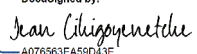
By: DocuSigned by:  
*Shivaji Deshmukh*  
EAD800E4F0B34DA  
\_\_\_\_\_  
Shivaji Deshmukh  
General Manager

11/12/2021  
\_\_\_\_\_  
Dated

November 9, 2021

APPROVED AS TO FORM:

JC Law Firm

By:  \_\_\_\_\_  
Jean Cihigoyenetché

**MUNICIPAL WATER DISTRICT OF ORANGE COUNTY**


By:  \_\_\_\_\_  
Robert Hunter  
General Manager

11/15/2021

\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

Best, Best & Krieger

By:  \_\_\_\_\_  
Joseph Byrne

**WESTERN MUNICIPAL WATER DISTRICT**

By:  \_\_\_\_\_  
Craig Miller  
General Manager

11/15/2021

\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

Best Best & Krieger LLP

By:  \_\_\_\_\_  
Jeffrey F. Ferre

**ORANGE COUNTY WATER DISTRICT**

By:  \_\_\_\_\_  
Mike Markus  
General Manager

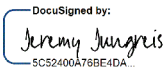
11/17/2021

\_\_\_\_\_  
Dated

November 9, 2021

APPROVED AS TO FORM:

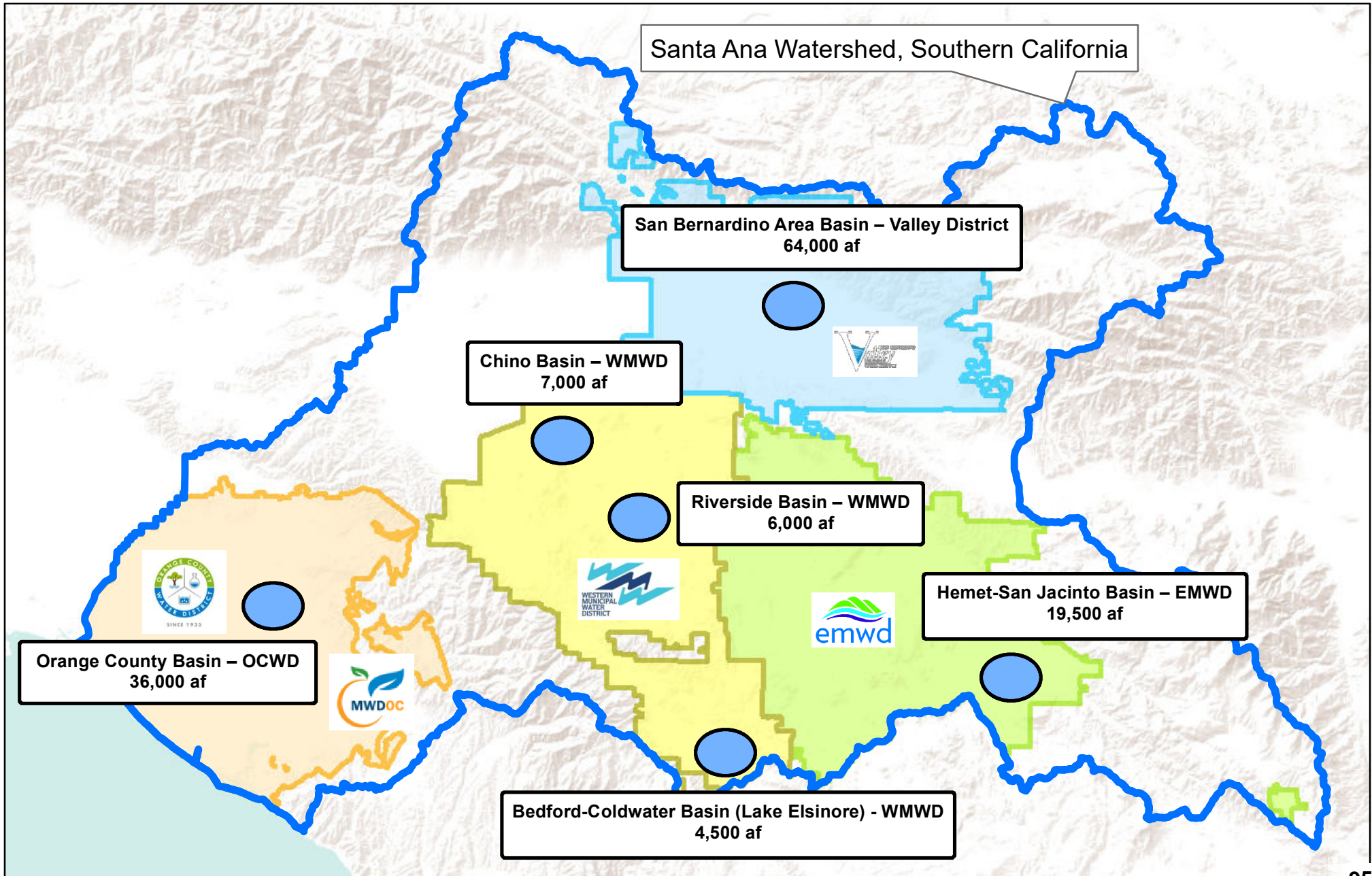
Rutan & Tucker LLP

By:  \_\_\_\_\_  
Jeremy Jungreis

# Exhibit 1

# Exhibit 1

## Santa Ana River Conservation and Conjunctive Use Program – Water Banking



## **Exhibit 2**

## Exhibit 2

### COORDINATED OPERATING AND SURPLUS WATER AGREEMENT BETWEEN THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA AND SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

This Coordinated Operating and Surplus Water Agreement (Agreement) is entered into and effective this 15<sup>th</sup> day of June, 2021 by and between The Metropolitan Water District of Southern California (Metropolitan) and San Bernardino Valley Municipal Water District (Valley District), collectively referred to as “Parties” and individual as a “Party.”

#### Recitals

A. Metropolitan is a metropolitan water district organized under the Metropolitan Water District Act, codified at section 109-1, et seq. of West’s Appendix to the California Water Code, and is engaged in developing, storing, and distributing water in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura.

B. Valley District is a public agency of the State of California engaged in developing, transporting, storing and wholesale delivery of water in portions of the counties of San Bernardino and Riverside.

C. Metropolitan and Valley District each have long-term contracts with the California Department of Water Resources (DWR) which set forth the terms and conditions of their participation in the State Water Project (SWP).

D. Metropolitan and Valley District have existing facilities for conveyance of SWP water located within Valley District. Metropolitan and Valley District have constructed conveyance facilities within Valley District that enable moving SWP water from DWR’s Devil Canyon Powerplant to Metropolitan’s Diamond Valley Lake in Riverside County and the southeastern portion of Valley District’s service area, respectively.

E. In 2000, Metropolitan and Valley District entered into a Coordinated Operating Agreement (COA) that provided for coordinated operation of their respective resources within Valley District to increase reliability of their respective water supplies. Both Metropolitan and Valley District have benefited from the COA including, but not limited to:

- i. The ability for both Parties to coordinate the operation of their distribution systems under emergency situations.
- ii. Metropolitan was able to utilize Valley District’s Foothill Pipeline to convey approximately 610,000 acre-feet (AF) of water to Diamond Valley Reservoir while MWD’s Inland Feeder was under construction.
- iii. Metropolitan purchased 223,500 AF of water from Valley District that benefited the Metropolitan service area.

- iv. Valley District used the proceeds from the water sales to Metropolitan to offset the cost of facilities in Valley District's service area.
- v. Metropolitan enhanced the Valley District delivery system by constructing the Foothill Pump Station, at Metropolitan's expense, in order to fill Diamond Valley Reservoir.
- vi. Metropolitan allowed Valley District to participate in Metropolitan's Kern-Delta water storage program.
- vii. Metropolitan allowed Valley District to use its pipeline fabrication plant and related technical services in an emergency situation.

F. The COA expired in 2016. Metropolitan and Valley District wish to continue their partnership with this new Agreement that continues in the same cooperative spirit of the COA. The overarching goal of this Agreement is to continue to identify opportunities for coordinated operation of the Parties' individual systems to realize mutual benefit and to facilitate the sale of a portion of Valley District's surplus SWP water to Metropolitan.

### Agreement

The Parties hereby agree as follows:

#### 1. *Cooperation Generally*

- a. *Identification of Projects.* Metropolitan and Valley District will continue to work together to identify water-related projects which may be of mutual benefit. Any projects so identified will be further examined regarding their technical and financial feasibility by Metropolitan, Valley District, and/or mutually agreed-to consultants. Such projects may include, but are not limited to:
  - i. Interconnection of conveyance facilities.
  - ii. Coordinated use of SWP water supplies consistent with the existing SWP contract rights of Metropolitan and Valley District, and the water rights of local groundwater and surface water users.
  - iii. Coordinated use of SWP water supplies and facilities in support of the Santa Ana River Conservation and Conjunctive Use Program (SARCCUP).
  - iv. Coordinated use of facilities to maximize the delivery of water diverted from the Santa Ana River under Valley District's and Western Municipal Water District's water rights permits.
  - v. Use of existing and/or new facilities for the production and conveyance of water for conjunctive use operation in the San Bernardino Basin.



- b. *Deliveries Within the Other Party's Service Area Prohibited.* Metropolitan and Valley District will not deliver water from any source, including but not limited to SWP water supplies (except as required or provided for under the Riverside County Superior Court judgment No. 78426 and Orange County Superior Court judgment No 117628) into each other's respective service areas, except as provided herein or as agreed to in writing by the Parties.

2. *Sale of Valley District Surplus SWP Water*

- a. *Declaration of Surplus SWP Water.* No later than June 1 of each year, Valley District will determine, in its sole discretion, the quantity of surplus SWP water that it may have over and above the demands of its customers, per its Ordinance 79, as amended.
- b. *Surplus SWP Water First Made Available to the San Gorgonio Pass Water Agency.* Valley District will first offer 5,000 AF of its surplus SWP water each year for sale to the San Gorgonio Pass Water Agency.
- c. *Remaining Surplus SWP Water Made Available to Metropolitan.* Valley District will offer to Metropolitan, and Metropolitan may purchase, all of Valley District's remaining surplus SWP water, provided that Metropolitan agrees that an amount equivalent to up to half of the water that Metropolitan purchases from Valley District may qualify as Extraordinary Supply under Metropolitan's Water Supply Allocation Plan for Metropolitan's member agencies participating in the SARCCUP, provided that such storage meets all of Metropolitan's requirements.
- d. *Storage of Surplus Water in Valley District's Service Area.* Metropolitan allows Valley's Surplus SWP Water purchased by Metropolitan to be temporarily stored within the boundaries of Valley District provided that it is ultimately used within Metropolitan's service area during the term of this Agreement. Valley District and Metropolitan agree to work cooperatively with DWR on an agreement to effectuate these deliveries.
- e. *Recovery of SARCCUP Water within Valley District's Boundaries.* When a member agency of Metropolitan wishes to recover SARCCUP water stored within Valley District's boundaries, Valley District will coordinate a delivery, by exchange with Metropolitan, or a delivery through local facilities that were constructed by SARCCUP agencies. Valley District will notify Metropolitan when the water is recovered from Valley District's boundaries and conveyed to a Metropolitan member agency.
- f. *Cost of Surplus SWP Water.* Metropolitan will pay Valley District for its surplus SWP water that Metropolitan purchases from Valley District as set forth in the following table:

Final SWP Allocation	Water Cost (\$/AF)
0 - 20%	\$450
21 - 40%	\$350
41 - 60%	\$250
61 - 100%	\$125

Metropolitan will pay the Water Cost per AF in the table plus the actual SWP energy cost for that year, as determined by DWR. Metropolitan's payments for each calendar year are due and payable each February 1, for the prior year, but the energy costs are subject to reconciliation by DWR. For surplus water temporarily stored in Valley District's service area, the Water Cost paid by Metropolitan is \$125/AF, regardless of the Final SWP Allocation for that year. The Parties agree to re-evaluate these costs every five years.

3. *Mutual Aid.* The Parties agree to provide mutual aid as follows:

- a. *Use of Facilities.* Metropolitan and Valley District shall coordinate their facilities in a manner consistent with the principles of the Omnibus Mutual Assistance Agreement as implemented by the state-wide Water Agency Response Network in coordination with the State Office of Emergency Services. Specifically, Metropolitan and Valley District will conduct a test of the ability to move water to each other's systems within the first five (5) years of this agreement. The goal of the test will be to identify any facility deficiencies and develop procedures for delivering to each other's systems in advance of a possible emergency where such deliveries are required.
- b. *System Reliability and Back-Up.* The coordinated use of Metropolitan's Inland Feeder Santa Ana River Crossing Pipeline in conjunction with the Foothill Pipeline and Inland Feeder provides Valley District and Metropolitan with greater system reliability and back-up during emergencies and facility outages. With existing system interconnections, Metropolitan may convey Valley District's water through Metropolitan's Inland Feeder Santa Ana River Crossing pipeline at no cost to Valley District when requested and when capacity is available provided it does not interfere with Metropolitan's deliveries during the term of this Agreement. Valley District may convey Metropolitan's water through Valley District's Foothill Pipeline at no cost to Metropolitan when requested and when capacity is available provided it does not interfere with Valley District's deliveries during the term of this Agreement. Metropolitan and Valley District will ensure, at their own expense, that the water conveyed, at a minimum, meets all federal and state standards applicable to the California Aqueduct as established by the State Water Resources Control Board, DWR, or other permitting authority.

4. *Local Stormwater Supplies.* Valley District and Metropolitan agree to work cooperatively on exploring supplemental stormwater programs that would provide mutual benefits to their respective service areas.
5. *Term.* This Agreement is effective as of the date set forth above and continues in force until December 31, 2035, unless the State Water Contracts between the Parties and the State of California are extended past 2035, in which case this Agreement will have the same termination date. However, either Party may terminate this Agreement at any time, with or without cause, upon one year's written notice of termination.
6. *DWR Approvals.* The transfer of Valley District Surplus SWP to Metropolitan shall not become operative until DWR approvals are obtained for all provisions requiring such approval. Valley District and Metropolitan shall jointly pursue obtaining such approvals.
7. *Rights and Obligations Under the 1969 Judgments.* This Agreement is not intended and shall not be construed to interfere with rights or obligations under the 1969 Judgments (*Orange County Water District v. City of Chino*, et al., Orange County Superior Court Action No. 117628 (“*Orange County Judgment*”), and *Western Municipal Water District of Riverside County, et al. v. East San Bernardino County Water District*, et al., Riverside Superior Court Action No. 78426 (“*Western Judgment*”)).
8. *Books and Records.* Each Party shall have access to and the right to examine any of the other Party's pertinent books, documents, papers or other records (including, without limitation, records contained on electronic media) relating to the performance of that Party's obligations pursuant to this Agreement. Each Party shall retain all such books, documents, papers or other records to facilitate such review in accordance with that Party's record retention policy. Access to each Party's books and records shall be during normal business hours only. Nothing in this paragraph shall be construed to operate as a waiver of any applicable privileges.
9. *Authority.* Each signatory of this Agreement represents that s/he is authorized to execute this Agreement on behalf of the Party for which s/he signs. Each Party represents that it has legal authority to enter into this Agreement and to perform all obligations under this Agreement.
10. *Informal Mediation.* In the event of a dispute between the Parties regarding this Agreement, the Parties may attempt to resolve the dispute by using the services of a mutually acceptable mediator. If the Parties decide use a mediator, they will equally share the mediator's fees and expenses.
11. *Amendment.* This Agreement may be amended or modified only by a written instrument executed by each of the Parties to this Agreement.
12. *Jurisdiction and Venue.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

13. *Headings.* The paragraph headings used in this Agreement are intended for convenience only and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the Parties to this Agreement.
14. *Construction and Interpretation.* This Agreement has been arrived at through negotiations and each Party has had a full and fair opportunity to revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in the construction or interpretation of this Agreement.
15. *Entire Agreement.* This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and, save as expressly provided in this Agreement, supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this Agreement.
16. *Partial Invalidity.* If, after the date of execution of this Agreement, any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable. However, in lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
17. *Successors and Assigns.* This Agreement shall be binding on and inure to the benefit of the successors and assigns of the respective Parties to this Agreement. No Party may assign its interests in or obligations under this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld or delayed.
18. *Waivers.* Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement and forbearance to enforce one or more of the rights or remedies provided in this Agreement shall not be deemed to be a waiver of that right or remedy.
19. *Necessary Actions.* Each Party agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out the purposes of this Agreement.
20. *No Third-Party Beneficiaries.* This Agreement shall not create any right or interest in any non-party or in any member of the public as a third-party beneficiary.
21. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
22. *Notices.* All notices, requests, and demands hereunder (Notices) shall be in writing, including electronic communications, and shall be deemed to have been duly given when delivered (or, if mailed, postage prepaid, on the third business day after mailing, if that

date is earlier than actual delivery). Notices shall be sent to a Party at the address of that Party set forth below or, if such Party has furnished notice of a change of that address as herein provided, to the address of that Party most recently so furnished.

Metropolitan Water District of Southern California  
Attention: General Manager  
P.O. Box 54153  
Los Angeles, CA 90054-0153

San Bernardino Valley Water District  
Attention: General Manager  
380 E. Vanderbilt Way  
San Bernardino, CA 92408

In WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the following duly authorized representatives.

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

DocuSigned by:  
By: Jeff Kightlinger  
76A77418F92841C  
Jeffrey Kightlinger  
General Manager

6/15/2021  
Dated

APPROVED AS TO FORM:

DocuSigned by:  
By: Marcia Scully  
9D1F00E7D578408  
Marcia L. Scully  
General Counsel

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

DocuSigned by:  
By: Heather Dyer  
D2EEB8E7D0873FE  
Heather Dyer  
General Manager

6/14/2021  
Dated

APPROVED AS TO FORM:

DocuSigned by:  
By: Brendan Brandt  
0CADEF46C77734FD  
Brendan Brandt  
General Counsel

## **Exhibit 3**

November 9, 2021

### **Exhibit 3**

**Agreement Among The Metropolitan Water District of Southern California,  
Eastern Municipal Water District, Inland Empire Utilities Agency,  
Municipal Water District of Orange County, Western Municipal Water District, and  
Orange County Water District**

**Regarding the Santa Ana River Conservation and Conjunctive Use Program**

This Agreement among The Metropolitan Water District of Southern California (Metropolitan), Eastern Municipal Water District (Eastern MWD), Inland Empire Utilities Agency (IEUA), Municipal Water District of Orange County (MWDOC), Western Municipal Water District (Western MWD), and the Orange County Water District (OCWD) regarding the Santa Ana River Conservation and Conjunctive Use Program (Agreement) is hereby entered into as of November 9, 2021. Metropolitan, Eastern MWD, IEUA, MWDOC, Western MWD, and OCWD are collectively referred to as “Parties” and individually as a “Party.”

#### **RECITALS**

A. Metropolitan is a metropolitan water district organized under the Metropolitan Water District Act, codified at section 109-1, et seq. of West’s Appendix to the California Water Code, and is engaged in developing, storing, and distributing water in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura. Metropolitan has a long-term contract with the California Department of Water Resources (DWR) which sets forth the terms and conditions of Metropolitan’s participation in the State Water Project (SWP).

B. Eastern MWD is a California municipal water district formed and existing under the California Municipal Water District Act of 1911, Sections 71000 et seq. of the California Water Code, for the purpose of providing water services and certain other services. Eastern MWD’s powers and purposes include the acquisition within or without the district’s boundaries



November 9, 2021

in the State of California of all necessary property or rights in property necessary or proper for the production, storage, transmission and distribution of water for irrigation, domestic, industrial and municipal purposes and the power to contract with one or more public agencies in carrying out any of its powers. Eastern MWD is a member agency of Metropolitan.

C. IEUA is a California municipal water district formed and existing under the California Municipal Water District Act of 1911, Sections 71000 et seq. of the California Water Code, for the purpose of supplying supplemental water to the Chino Basin and certain other services. IEUA's powers and purposes include the acquisition within or without the agency's boundaries in the State of California of all necessary property or rights in property necessary or proper for the production, storage, transmission and distribution of water for irrigation, domestic, industrial and municipal purposes and the power to contract with one or more public agencies in carrying out any of its powers. IEUA is a member agency of Metropolitan.

D. MWDOC is a municipal water district formed and existing under the California Municipal Water District Act of 1911, Sections 71000 et seq. of the California Water Code, for purposes that include providing its 28 member agencies in Orange County, with reliable, high quality supplies from Metropolitan and other sources to meet present and future needs, at an equitable and economic cost, and to promote water use efficiency for all of Orange County. MWDOC is a member agency of Metropolitan.

E. One of MWDOC's member agencies, OCWD, undertakes the responsibilities associated with actively managing the OCWD groundwater basin. OCWD was formed by an act of the California State Legislature in 1933 for the purpose of protecting and managing the Orange County groundwater basin.

November 9, 2021

F. Western MWD is a California municipal water district formed and existing under the California Municipal Water District Act of 1911, Sections 71000 et seq. of the California Water Code, for the purpose of providing water services and certain other services. Western MWD's powers and purposes include the acquisition within or without the district's boundaries in the State of California of all necessary property or rights in property necessary or proper for the production, storage, transmission and distribution of water for irrigation, domestic, industrial and municipal purposes and the power to contract with one or more public agencies in carrying out any of its powers. Western MWD is a member agency of Metropolitan.

G. In 2014, Eastern MWD, IEUA, OCWD, Western MWD, and the San Bernardino Valley Municipal Water District (Valley District) entered into a Memorandum of Understanding (2014 MOU). Valley District is engaged in developing, transporting, storing, treating, and wholesale delivery of water in portions of the counties of San Bernardino and Riverside. Like Metropolitan, Valley District has a long-term contract with DWR which set forth the terms and conditions of its participation in the SWP. Valley District recharges SWP water into the San Bernardino Basin Area (SBBA) for the benefit of its member agencies. The purpose of the 2014 MOU is to collaborate in the exploration, analysis and implementation of a large-scale, regional water supply reliability project, known as the Santa Ana River Conservation and Conjunctive Use Program (SARCCUP). The SARCCUP is a multi-agency, watershed-wide groundwater storage and recovery project involving multiple basins in the Santa Ana Watershed. The goal is to store available water during wet years in local groundwater basins throughout the watershed and extract the stored water during dry years to reduce the impacts from multi-year droughts. Eastern MWD, IEUA, MWDOC, and Western MWD are collectively referred to as the

November 9, 2021

“SARCCUP Metropolitan Member Agencies” and individually as a “SARCCUP Metropolitan Member Agency.”

H. The SARCCUP currently includes four water banking sites. Three of the sites are located within Metropolitan’s service area. More specifically, they are located in the service areas of Eastern MWD, Western MWD, and MWDOC. The facilities within MWDOC’s service area are located within, owned, and operated, by OCWD. The fourth site is the SBBA, which is located outside of Metropolitan’s service area and within Valley District’s service area. The owners of the four water banking sites are responsible for all operating decisions for those water banking facilities including the quantity of water that they store and extract within the water banks under the SARCCUP.

I. Valley District and Metropolitan entered into a Coordinated Operating and Surplus Water Agreement, dated June 15, 2021 whereby Valley District may offer to sell to Metropolitan, and Metropolitan may purchase from Valley District, surplus water.

J. Under this Agreement, Metropolitan will offer to sell to the SARCCUP Metropolitan Member Agencies an amount of water equivalent to 50% of the amount of water Metropolitan purchases from Valley District for storage within the SARCCUP water banking sites and use within Metropolitan’s service area. Such water shall not count against a SARCCUP Metropolitan Member Agency’s annual Tier 1 limit or incurring Metropolitan’s capacity charge. Some of the water Metropolitan sells to the SARCCUP Metropolitan Member Agencies under this Agreement may be temporarily stored in the SBBA. An amount of water equivalent to up to half of the water that Metropolitan purchases from Valley District may qualify as Extraordinary Supply under Metropolitan’s Water Supply Allocation Plan.

November 9, 2021

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the representations, warranties, covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree to the following terms and conditions of this Agreement.

### **1. Consultation between Metropolitan and the SARCCUP Metropolitan Member Agencies and OCWD**

A. By July 1<sup>st</sup> of each calendar year subsequent to the execution of this Agreement, Metropolitan will inform the SARCCUP Metropolitan Member Agencies and OCWD of the amount of water, if any, that Metropolitan will purchase from Valley District and, of that amount, how much water, if any, Metropolitan is willing to deliver to the SARCCUP Metropolitan Member Agencies at Valley District's connection to the SWP and/or Metropolitan's service connections to the SARCCUP Metropolitan Member Agencies. Metropolitan has discretion whether to purchase any or all of the water Valley District offers to Metropolitan within a calendar year. No SARCCUP Metropolitan Member Agency or OCWD may purchase water from Valley District.

B. Metropolitan will equally offer to Western MWD, Eastern MWD, and MWDOC for purchase an amount equivalent to 50% of the amount that Metropolitan purchases from Valley District during a calendar year for delivery to the SARCCUP water banking facilities. MWDOC will be purchasing water offered by Metropolitan on behalf of OCWD for the SARCCUP water banking program. As the owners and operators of the SARCCUP water banking facilities, Western MWD, Eastern MWD, and OCWD may, by unanimous written agreement, modify the delivery amounts. Modified amounts may include deliveries to IEUA or

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MWDOC for their behalf. Western MWD, Eastern MWD, and OCWD will provide a copy of any such agreement to Metropolitan. OCWD will inform MWDOC of the amount to be delivered at the Valley District's service connection to the SWP and/or Metropolitan's service connections to MWDOC. Each SARCCUP Metropolitan Member Agency will inform Metropolitan of the amount that the SARCCUP Metropolitan Member Agency will purchase and accept for delivery at Valley District's connection to the SWP and/or Metropolitan's service connections to the SARCCUP Metropolitan Member Agencies. The SARCCUP Metropolitan Member Agencies will notify Metropolitan by August 15<sup>th</sup> of each year of these amounts.

**2. Delivery to SARCCUP Member Agencies at Valley District's Connection to the SWP**

Metropolitan will deliver to the SARCCUP Metropolitan Member Agencies at Valley District's connection to the SWP during a calendar year the amount that the SARCCUP Metropolitan Member Agencies previously notified Metropolitan they would accept under Section 1(B). Such deliveries will be scheduled and delivered at times and rates acceptable to Metropolitan, Valley District, and the relevant SARCCUP Metropolitan Member Agencies. Water that Metropolitan delivers to Valley District's connection to the SWP may be stored temporarily within Valley District's service area but must be used in Metropolitan's service area during the term of this Agreement.

**3. Billing and Payment**

Metropolitan will bill each SARCCUP Metropolitan Member Agency individually and each SARCCUP Metropolitan Member Agency will pay Metropolitan's full service untreated water or full service treated water at the time of the sale. Water purchased by a SARCCUP Metropolitan Member Agency will be counted as water delivered for purposes of meeting that

November 9, 2021

SARCCUP Metropolitan Member Agency's purchase order commitment. Upon Metropolitan's approval of a SARCCUP Metropolitan Member Agency certification of each monthly delivery, the following exceptions will apply: (a) such purchases will not count against a SARCCUP Metropolitan Member Agency's annual Tier 1 limit; and (b) Metropolitan's capacity charge will not apply to such purchases. The sale of water under this Agreement will be included in the calculation of the Ten-Year Rolling Sales Average for purposes of Metropolitan's Readiness-to-Serve Charge at the time water is sold to the SARCCUP Metropolitan Member Agencies. Metropolitan's invoices will separately identify the quantities of water subject to this Agreement.

**4. Extraordinary Supply Benefit**

Water made available under Section 1(B), if stored within the Santa Ana River Watershed during the same calendar year in accordance with Appendix G of Metropolitan's Water Supply Allocation Plan (or as any successor to such plan), will qualify as Extraordinary Supply. The amount of Extraordinary Supply available to each SARCCUP Member Agency under this Agreement may not exceed the allocation provided under Section 1(B).

**5. Extraordinary Supply Benefit Regarding OCWD**

Metropolitan will assign any Extraordinary Supply benefit that would accrue to MWDOC as result of actions taken by OCWD, in accordance with a separate written agreement among Metropolitan, MWDOC, OCWD, and the Cities of Anaheim, Fullerton, and Santa Ana.

**6. Record Keeping**

SARCCUP Metropolitan Member Agencies, OCWD, and Metropolitan will keep records of water purchased, delivered, and stored pursuant to this Agreement. The records of each Party relevant to this Agreement will be open to inspection by the other Parties upon reasonable notice.

November 9, 2021

The Parties will cooperate to develop coordinated administrative procedures for the tracking required under this Agreement.

**7. Metropolitan's Administrative Code**

Unless otherwise specifically provided for in this Agreement, Metropolitan's Administrative Code will continue to apply to the relationship between Metropolitan and the SARCCUP Metropolitan Member Agencies.

**8. Termination**

This Agreement will terminate on December 31, 2035 unless the State Water Contract between Metropolitan and the State of California is extended past 2035, in which case, this Agreement will have the same termination date.

**9. Late Arising Claims**

If a claim arising under or with respect to one or more terms of this Agreement has not been resolved when such term terminates, or if such a claim is brought after this Agreement has terminated, but within the period of time for bringing such a claim under California law (Late Arising Claim), the provisions of this Agreement shall continue in full force and effect for such additional period of time as is necessary to resolve such claims and to satisfy the rights and obligations of the Parties hereto with respect thereto.

**10. Indemnity Clause**

Liability and indemnification shall be determined pursuant to section 4502 of Metropolitan's Administrative Code. OCWD agrees that for the purposes of this Agreement, section 4502 of Metropolitan's Administrative Code applies to OCWD in the same manner as that section applies to Metropolitan's member agencies. Metropolitan provides no warranty or guarantee regarding the quality or content of its untreated water or the suitability of its use for

November 9, 2021

storage in groundwater basins. SARCCUP Member Agencies and OCWD acknowledge that they accept untreated water “as is.”

**11. Informal Mediation**

In the event of a dispute between the Parties regarding this Agreement, the Parties may attempt to resolve the dispute by using the services of a mutually acceptable mediator. If the Parties decide to use a mediator, they will equally share the mediator’s fees and expenses.

**12. Successors and Assigns**

This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties; provided, however, no Party shall assign any of its rights or obligations under this Agreement without the prior written consent of the other Parties. Nothing in this Agreement is intended to confer any right or remedy under this Agreement on any person other than the Parties to this Agreement and their respective successors and permitted assigns, or to relieve or discharge any obligation or liability of any person to any Party to this Agreement, or to give any person any right of subrogation or action over or against any Party to this Agreement.

**13. Waiver/Cure of Defaults**

The failure of any Party to enforce against another Party a provision of this Agreement shall not constitute a waiver of that Party’s right to enforce such a provision at a later time. No Party shall be deemed to be in default of any provision of this Agreement unless the other Party has given written notice specifically stating the alleged default and the Party in default fails to cure the default within sixty (60) days of receipt of such written notice.

**14. Construction of Agreement**

The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the Parties, and Section 1654



November 9, 2021

of the Civil Code has no application to interpretation of this Agreement. The recitals and all exhibits and schedules to this Agreement are part of this Agreement and are incorporated herein by this reference.

**15. Entire Agreement**

This Agreement constitutes the final, complete and exclusive statement of the terms of the agreement among the Parties pertaining to the matters provided herein during the term and supersedes all prior and contemporaneous understandings or agreements of the Parties related thereto. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty outside those expressly set forth in this Agreement.

**16. Severability**

In the event that a court of competent jurisdiction determines that a provision included in this Agreement is legally invalid or unenforceable and such decision becomes final, the Parties to this Agreement shall use their best efforts to (i) within thirty (30) days of the date of such final decision, identify by mutual agreement the provisions of this Agreement which must be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the Parties. Pending the completion of the actions designated above, to the extent it is reasonably practical and can be done without violating any applicable provisions of law, the provisions of this Agreement, which were not found to be legally invalid or unenforceable in the final decision, shall continue in effect. If the Parties cannot agree on appropriate revisions, this Agreement shall be terminated, and the Parties will return any water owed to each other.

November 9, 2021

**17. Force Majeure**

All obligations of the Parties other than monetary or payment obligations shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, by earthquakes, fires, tornadoes, facility failures, floods, strikes, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, or other events or causes beyond the control of the Parties. In no event shall any liability accrue against a Party, to its officers, agents or employees, for any damage arising out of or connected with a suspension of performance pursuant to this section. All time limits to perform and the term of the Agreement shall be extended by a period of time equivalent to the length of suspension.

**18. Notices**

All notices, requests, and demands hereunder (Notices) shall be in writing, including electronic communications, and shall be deemed to have been duly given when delivered (or, if mailed, postage prepaid, on the third business day after mailing, if that date is earlier than actual delivery). Notices shall be sent to a Party at the address of that Party set forth below or, if such Party has furnished notice of a change of that address as herein provided, to the address of that Party most recently so furnished.

Metropolitan Water District of Southern California  
Attention: General Manager  
P.O. Box 54153  
Los Angeles, CA 90054-0153

Eastern Municipal Water District  
Attention: General Manager  
P.O. Box 8300  
Perris, CA 92572-8300

November 9, 2021

Inland Empire Utilities Agency  
Attention: General Manager  
6075 Kimball Ave.  
Chino, CA 91708

Municipal Water District of Orange County  
Attention: General Manager  
P.O. Box 20895  
Fountain Valley, CA 92708

Western Municipal Water District  
Attention General Manager  
14205 Meridian Pkwy  
Riverside, CA 92518

Orange County Water District  
Attention: General Manager  
18700 Ward St  
Fountain Valley, CA 92708

**19. Further Assurances**

Each Party hereto, upon the request of the other, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this instrument.

**20. Governing Law**

The validity, construction, and enforceability of this Agreement shall be governed in all respects by the laws of the State of California.

**21. Counterparts**

This Agreement may be executed in two or more counterparts, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

November 9, 2021

In WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the following duly authorized representatives.

**THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**

By: DocuSigned by:  
*Brad Coffey*  
FAAA3695962347A  
\_\_\_\_\_  
Adel Hagekhalil  
General Manager

11/20/2021  
\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

By: DocuSigned by:  
*Marcia Scully*  
9D1F0CE7D578409  
\_\_\_\_\_  
Marcia L. Scully  
General Counsel

**EASTERN MUNICIPAL WATER DISTRICT**

By: DocuSigned by:  
*Joe Mouawad*  
9400752DE9E341E  
\_\_\_\_\_  
Joe Mouawad  
General Manager

11/9/2021  
\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

Olivarez, Madruga, Lemieux & O'Neill

By: DocuSigned by:  
*Steven O'Neill*  
73F5513FD25E409  
\_\_\_\_\_  
Steven O'Neill

**INLAND EMPIRE UTILITIES AGENCY**

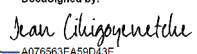
By: DocuSigned by:  
*Shivaji Deshmukh*  
EAD800E4F0B34DA  
\_\_\_\_\_  
Shivaji Deshmukh  
General Manager

11/12/2021  
\_\_\_\_\_  
Dated

November 9, 2021

APPROVED AS TO FORM:

JC Law Firm

By:  \_\_\_\_\_  
Jean Cihigoyenetché

**MUNICIPAL WATER DISTRICT OF ORANGE COUNTY**


By:  \_\_\_\_\_  
Robert Hunter  
General Manager

11/15/2021

\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

Best, Best & Krieger

By:  \_\_\_\_\_  
Joseph Byrne

**WESTERN MUNICIPAL WATER DISTRICT**

By:  \_\_\_\_\_  
Craig Miller  
General Manager

11/15/2021

\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

Best Best & Krieger LLP

By:  \_\_\_\_\_  
Jeffrey F. Ferre

**ORANGE COUNTY WATER DISTRICT**

By:  \_\_\_\_\_  
Mike Markus  
General Manager

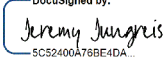
11/17/2021

\_\_\_\_\_  
Dated

November 9, 2021

APPROVED AS TO FORM:

Rutan & Tucker LLP

By:  \_\_\_\_\_  
Jeremy Jungreis

## **Exhibit 4**

**Exhibit 4**  
**AGREEMENT AMONG**  
**EASTERN MUNICIPAL WATER DISTRICT, WESTERN MUNICIPAL WATER DISTRICT, INLAND**  
**EMPIRE UTILITIES AGENCY, ORANGE COUNTY WATER DISTRICT AND THE MUNICIPAL**  
**WATER DISTRICT OF ORANGE COUNTY, REGARDING SANTA ANA RIVER CONSERVATION**  
**AND CONJUNCTIVE USE PROGRAM (SARCCUP) EXCESS WATER SALES AND PURCHASE**  
**AGREEMENT**

This Agreement among Eastern Municipal Water District (“EMWD”), Western Municipal Water District (“WMWD”), Inland Empire Utilities Agency (“IEUA”), Orange County Water District (“OCWD”) and The Municipal Water District of Orange County (“MWDOC”) regarding Santa Ana River Conservation and Conjunctive Use Program (SARCCUP) Excess Water Sales and Purchase Agreement (“Agreement”) is hereby entered into this 9th day of December 2021. EMWD, WMWD, IEUA, OCWD and MWDOC are collectively referred to as “Parties” and individually as “Party.”

**RECITALS**

1. The SARCCUP is a multi-benefit program for the Santa Ana River Watershed, as depicted in Exhibit A, developed by the five member agencies of the Santa Ana Watershed Project Authority: Eastern Municipal Water District (EMWD), Inland Empire Utilities Agency (IEUA), Orange County Water District (OCWD), Western Municipal Water District (WMWD), and San Bernardino Valley Municipal Water District (Valley District) to advance habitat restoration, water use efficiency and groundwater banking.
2. The groundwater banking component of the program currently includes four groundwater banking storage facilities, three of which are located within the Metropolitan Water District of Southern California’s (“MWD”) service area.
3. The three banking facilities in MWD’s service area are owned and operated by EMWD, WMWD and OCWD.
4. The fourth storage site is located in Valley District’s service area (“SBBA banking site”) and provides available storage capacity for EMWD, WMWD and OCWD.
5. IEUA does not currently have water banking facilities in its service area but is a partner in the program and anticipates participating in the groundwater banking component of the program in the future.
6. Valley District is a State Water Project (SWP) Contractor and has negotiated an agreement with MWD for the sale of Valley District’s surplus SWP supplies under certain conditions pursuant to the: “Coordinated Operating and Surplus Water Agreement between the Metropolitan Water District of Southern California and San Bernardino Valley Municipal Water District” dated June 15, 2021 (“MWD-Valley District Agreement”).



7. MWD and Valley District have agreed that when Valley District's SWP water is made available to MWD and MWD acquires that water, MWD will make available to the MWD member agency Parties for the SARCCUP program a minimum amount of its Full Service supply equivalent to fifty-percent (50%), or more, of the water it acquires from Valley District ("Allocated Water").
8. The Allocated Water purchased from MWD and stored in the SARCCUP water banking facilities may qualify as Extraordinary Supply under MWD's Water Supply Allocation Plan provided that all program requirements are met.
9. The terms and conditions of MWD's agreement to provide a portion of its Allocated Water for the SARCCUP program, the designation of Extraordinary Supply, and certain other provisions are included in an agreement among MWD, EMWD, IEUA, WMWD, MWDOC and OCWD, entitled: "Agreement Among the Metropolitan Water District of Southern California, Eastern Municipal Water District, Inland Empire Utilities Agency, Municipal Water District of Orange County, Western Municipal Water District and Orange County Water District Regarding the Santa Ana River Conservation and Conjunctive Use Program" and dated November 9, 2021 ("MWD SARCCUP Member Agency Agreement").
10. MWDOC's south Orange County retail agencies that are not OCWD groundwater producers may require supplemental dry-year water supplies for the future. EMWD, IEUA, WMWD and OCWD intend to jointly pursue additional supply options for the SARCCUP program and, in coordination with MWDOC, shall identify supplies for potential purchase by MWDOC to help mitigate shortage conditions in MWDOC's south Orange County service area.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals and the representations, warranties, covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree to the following terms and conditions of this Agreement.

#### 1. MWD Agreement and Purchase of Allocated Water

Attached to this Agreement as Exhibit B, and incorporated by reference, is the MWD SARCCUP Member Agency Agreement under which EMWD, IEUA, WMWD, OCWD and MWDOC are referred to as the "SARCCUP Member Agencies." EMWD, WMWD, IEUA and MWDOC are member agencies of MWD and are authorized to purchase Allocated Water from MWD under the MWD SARCCUP Member Agency Agreement. EMWD, WMWD and OCWD are owners and operators of the SARCCUP water banking facilities and are responsible for determining the amount of Allocated Water to be purchased for storage in those facilities. OCWD is not a MWD member agency and purchases of Allocated Water from MWD for storage in OCWD's SARCCUP water banking facilities must be made by MWDOC. For purposes of determining the allocation of water to the SARCCUP

Member Agencies under Section 1.B. of the MWD SARCCUP Member Agency Agreement, the following shall apply:

- a. As owners and operators of the SARCCUP water banking facilities, WMWD, EMWD and OCWD shall determine the amount of the Allocated Water for purchase from MWD and delivery to each of the SARCCUP water banking facilities, and shall provide written notification thereof to MWDOC and IEUA no later than July 15 of each calendar year that MWD makes Allocated Water available.
- b. Any portion of the Allocated Water not designated for delivery to the SARCCUP water banking facilities by WMWD, EMWD or OCWD shall first be made available for delivery to IEUA, with any remaining amount (“Excess Allocated Water”) made available for delivery to MWDOC.
- c. Based upon the notification by WMWD, EMWD and OCWD, and determinations by IEUA and MWDOC of their delivery amounts, each SARCCUP Member Agency in accordance with Section 1.B of the MWD SARCCUP Member Agency Agreement will inform MWD, no later than August 15 of each calendar year, of the amount, if any, of the Allocated Water the SARCCUP Member Agency will purchase.
- d. MWDOC will purchase the Excess Allocated Water from MWD at the same Full Service untreated water or Full-Service treated water rate in effect at the time of the purchase of all Allocated Water from MWD in accordance with Section 3 or the MWD SARCCUP Member Agency Agreement.

2. MWDOC Storage and Use of Excess Allocated Water

MWDOC acknowledges that it will be fully responsible for separately arranging the storage and recovery of the Excess Allocated Water it purchases and for the use, if any, of SARCCUP facilities. EMWD, WMWD, IEUA and OCWD have no obligation under this Agreement to provide MWDOC storage, recovery, or facility use for the Excess Allocated Water it purchases. MWDOC agrees and acknowledges that any Excess Allocated Water it purchases must be physically stored within the Santa Ana River Watershed or exchanged with or loaned to MWD under separate agreement between MWDOC and MWD. MWDOC may choose to apply eligible MWD Extraordinary Supply credits associated with the Excess Allocated Water it purchases throughout its service area.

3. Priority to Excess Allocated Water

EMWD, WMWD, and OCWD, as the water banking facility owners, and IEUA, agree not to enter into any other agreements that will supersede the priority for MWDOC’s potential purchase of Excess Allocated Water under this Agreement.

4. MWD Extraordinary Supply Program

MWD in its sole discretion may establish a program with its portion of Valley District’s SWP supply whereby non-SARCCUP MWD member agencies would have the option to

purchase Full Service untreated or treated water from MWD for storage and potential designation as Extraordinary Supply (“Member Agency Extraordinary Supply Program”). If in any year when MWD notifies the SARCCUP MWD member agencies of the availability of water under Section 1.B of the MWD SARCCUP Member Agency Agreement, MWD operates a Member Agency Extraordinary Supply Program, the following shall apply:

- a. MWDOC will not be eligible to purchase Excess Allocated Water under Section 2 of this agreement and will only be eligible to participate in MWD’s Member Agency Extraordinary Supply Program on behalf of its south Orange County water agencies.
- b. Any Excess Allocated Water as determined by WMWD, EMWD and OCWD, and subsequently IEUA, under Section 2b, above, would revert to MWD for inclusion in its Member Agency Extraordinary Supply Program.

5. Potential Future Supply Acquisition by the Parties

WMWD, EMWD, OCWD and IEUA may consider seeking opportunities to acquire additional sources of water from outside the MWD service area for potential purchase and storage in the SARCCUP facilities. In pursuing such additional supply options, WMWD, EMWD, IEUA and OCWD will jointly work to identify additional supplies excess to the SARCCUP program for potential purchase by MWDOC to help mitigate shortage conditions in MWDOC’s south Orange County service area.

6. Termination

This Agreement shall terminate concurrently and in accordance with the termination provisions in Section 10 of the MWD SARCCUP Member Agency Agreement, attached hereto as Exhibit B.

7. Indemnity

Each Party agrees that they shall be responsible for their own actions, and the actions of their officers, employees and agents, in performing their duties and obligations under this Agreement. Each Party agrees to indemnify and hold the other Parties and their officers and agents harmless, and agree to defend the other Parties against any claim or asserted liability arising out of their actions, either willful or negligent, or the actions of their officers, employees and agents, in performing duties and obligations pursuant to this Agreement. Such indemnity includes any losses relating to any claims made, whether or not a court action is filed, and attorney fees and administrative and overhead costs related to or arising out of such claim or asserted liability.

8. Informal Mediation

In the event of a dispute between the Parties regarding this Agreement, the Parties may attempt to resolve the dispute by using the services of a mutually acceptable mediator. If the Parties decide to use a mediator, they will equally share the mediator’s fees and expenses.

9. Successors and Assigns

This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties; provided, however, no Party shall assign any of its rights or obligations under this Agreement without the prior written consent of the other Parties. Nothing in this Agreement is intended to confer any right or remedy under this Agreement on any person other than the Parties to this Agreement and their respective successors and permitted assigns, or to relieve or discharge any obligation or liability of any person to any Party to this Agreement, or to give any person any right of subrogation or action over or against any Party to this Agreement.

10. Waiver/Cure of Defaults

The failure of any Party to enforce against another Party a provision of this Agreement shall not constitute a waiver of that Party's right to enforce such a provision at a later time. No Party shall be deemed to be in default of any provision of this Agreement unless the other Party has given written notice specifically stating the alleged default and the Party in default fails to cure the default within sixty (60) days of receipt of such written notice.

11. Construction of Agreement

The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the Parties, and Section 1654 of the Civil Code has no application to interpretation of this Agreement. The recitals and all exhibits and schedules to this Agreement are part of this Agreement and are incorporated herein by this reference.

12. Entire Agreement

This Agreement constitutes the final, complete and exclusive statement of the terms of the agreement among the Parties pertaining to the matters provided herein during the term and supersedes all prior and contemporaneous understandings or agreements of the Parties related thereto. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty outside those expressly set forth in this Agreement.

13. Severability

In the event that a court of competent jurisdiction determines that a provision included in this Agreement is legally invalid or unenforceable and such decision becomes final, the Parties to this Agreement shall use their best efforts to (i) within thirty (30) days of the date of such final decision, identify by mutual agreement the provisions of this Agreement which must be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the Parties. Pending the completion of the actions designated above, to the extent it is reasonably practical and can be done without violating any applicable

provisions of law, the provisions of this Agreement, which were not found to be legally invalid or unenforceable in the final decision, shall continue in effect. If the Parties cannot agree on appropriate revisions, this Agreement shall be terminated, and the Parties will return any water owed to each other.

14. Force Majeure

All obligations of the Parties other than monetary or payment obligations shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, by earthquakes, fires, tornadoes, facility failures, floods, strikes, pandemics, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, or other events or causes beyond the control of the Parties. In no event shall any liability accrue against a Party, to its officers, agents or employees, for any damage arising out of or connected with a suspension of performance pursuant to this section. All time limits to perform and the term of the Agreement shall be extended by a period of time equivalent to the length of suspension.

15. Notices

All notices, requests, and demands hereunder (Notices) shall be in writing, including electronic communications, and shall be deemed to have been duly given when delivered (or, if mailed, postage prepaid, on the third business day after mailing, if that date is earlier than actual delivery). Notices shall be sent to a Party at the address of that Party set forth below or, if such Party has furnished notice of a change of that address as herein provided, to the address of that Party most recently so furnished.

Eastern Municipal Water District  
Attention: General Manager  
P.O. Box 8300  
Perris, CA 92572-8300

Inland Empire Utilities Agency  
Attention: General Manager  
6075 Kimball Ave.  
Chino, CA 91708

Municipal Water District of Orange County  
Attention: General Manager  
P.O. Box 20895  
Fountain Valley, CA 92708

Western Municipal Water District  
Attention General Manager  
14205 Meridian Pkwy  
Riverside, CA 92518

Orange County Water District  
Attention: General Manager  
18700 Ward St  
Fountain Valley, CA 92708

16. Further Assurances

Each Party hereto, upon the request of the other, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this instrument.

17. Governing Law

The validity, construction, and enforceability of this Agreement shall be governed in all respects by the laws of the State of California.

18. Counterparts

This Agreement may be executed in two or more counterparts, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

In WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the following duly authorized representatives.

EASTERN MUNICIPAL WATER DISTRICT

DocuSigned by:  
*Joe Mouawad*  
By: \_\_\_\_\_  
9400752DE9E341E...  
Joe Mouawad  
General Manager

12/13/2021 | 8:44 AM PST

\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

Olivarez, Madrugá, Lemieux & O’Neill

DocuSigned by:  
*Martin Koczanowicz*  
By: \_\_\_\_\_  
Martin Koczanowicz

INLAND EMPIRE UTILITIES AGENCY

DocuSigned by:  
*Shivaji Deshmukh*  
By: EAD800E4F0B34DA...  
Shivaji Deshmukh  
General Manager

12/9/2021 | 9:35 AM PST

Dated

APPROVED AS TO FORM:

JC Law Firm

DocuSigned by:  
*Jean Ciligoynetche*  
By: A070568CA50043E  
Jean Ciligoynetche

MUNICIPAL WATER DISTRICT OF ORANGE COUNTY

DocuSigned by:  
*Robert J. Hunter*  
By: \_\_\_\_\_  
E3285E9B8EC949Z  
Robert Hunter  
General Manager

12/9/2021 | 9:48 AM PST

\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

Best, Best & Krieger  
DocuSigned by:  
*Joe Byrne*  
By: \_\_\_\_\_  
800D7933C7204EC...  
Joseph Byrne



WESTERN MUNICIPAL WATER DISTRICT

DocuSigned by:  
*Craig Miller*  
4016332AABFC41E...  
By: \_\_\_\_\_  
Craig Miller  
General Manager

12/13/2021 | 10:49 AM PST

\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

Best Best & Krieger LLP  
DocuSigned by:  
*Jeff Ballinger*  
9656A1483C6E407...  
By: \_\_\_\_\_  
Jeff Ballinger

ORANGE COUNTY WATER DISTRICT

DocuSigned by:  
*Mike Markus*  
By: 1564C4B7FE2B42D...  
Mike Markus  
General Manager

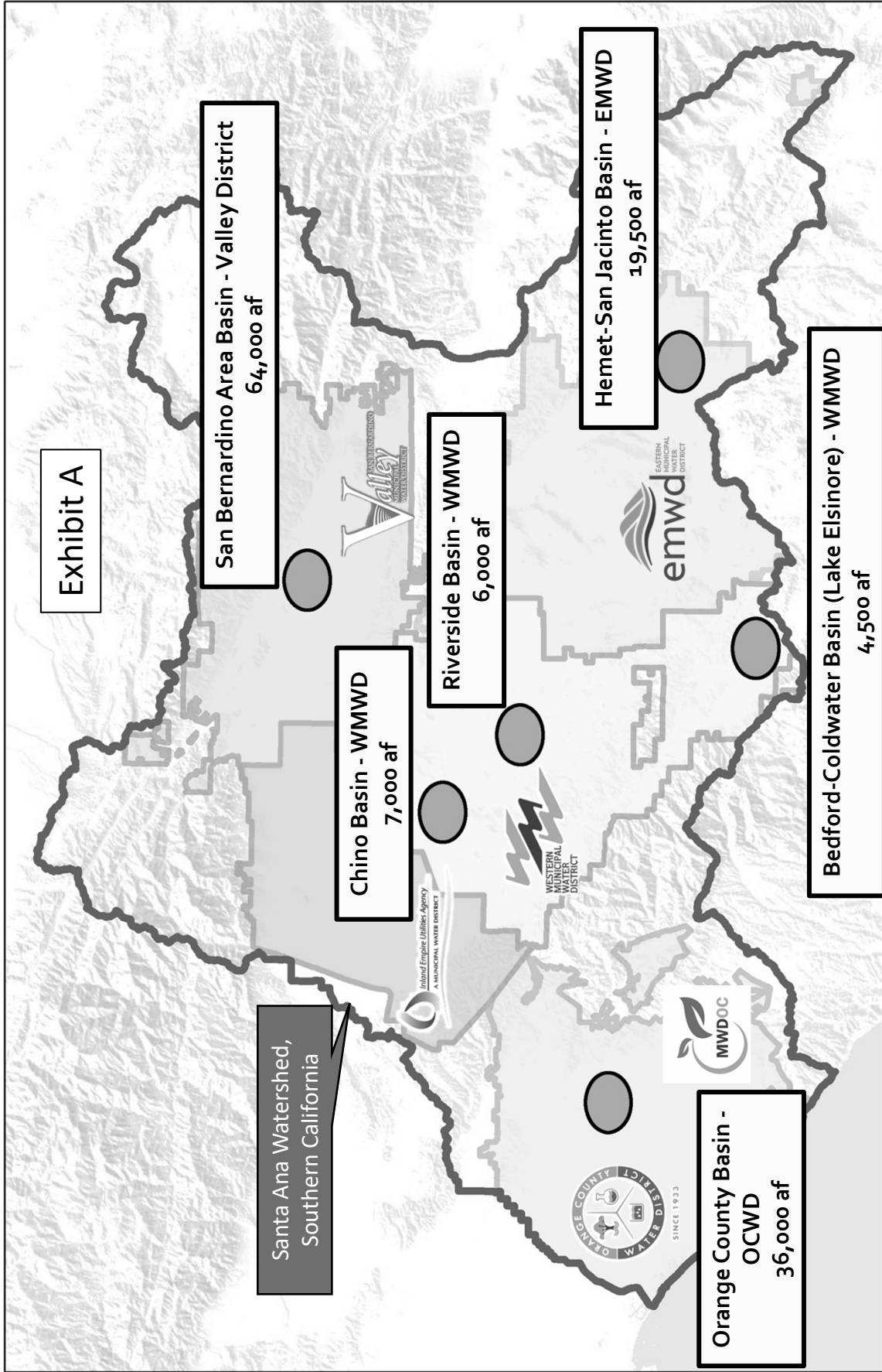
12/15/2021 | 11:08 AM PST

\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

Rutan & Tucker LLP  
DocuSigned by:  
*Jeremy Jungreis*  
By: 5C52400A76BE4DA...  
Jeremy Jungreis

# Santa Ana River Conservation and Conjunctive Use Program – Water Banking Facilities





THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

*Office of the General Manager*

November 9, 2021

Mr. Joe Mouawad  
[MouawadJ@emwd.org](mailto:MouawadJ@emwd.org)  
General Manager  
Eastern Municipal Water District  
2270 Trumble Road  
Perris, CA 92570

Mr. Shivaji Deshmukh  
[SDeshmukh@ieua.org](mailto:SDeshmukh@ieua.org)  
General Manager  
Inland Empire Utilities Agency  
6075 Kimball Ave  
Chino, CA 91708

Mr. Robert Hunter  
[RHunter@mwdoc.com](mailto:RHunter@mwdoc.com)  
General Manager  
Municipal Water District of Orange County  
18700 Ward Street  
Fountain Valley, CA 92708

Mr. Craig Miller  
[CMiller@wmwd.com](mailto:CMiller@wmwd.com)  
General Manager  
Western Municipal Water District  
14205 Meridian Parkway  
Riverside, CA 92518

Mr. Michael Markus  
[MMarkus@ocwd.com](mailto:MMarkus@ocwd.com)  
General Manager  
Orange County Water District  
18700 Ward Street  
Fountain Valley, CA 92708

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Mr. Joe Mouawad  
Mr. Shivaji Deshmukh  
Mr. Robert Hunter  
Mr. Craig Miller  
Mr. Michael Markus  
Page 2  
November 9, 2021

Dear Mr. Mouawad, Mr. Deshmukh, Mr. Hunter, Mr. Miller, and Mr. Markus:

Agreement for the Santa Ana River Conservation  
and Conjunctive Use Program with EMWD, IEUA, MWDOC, WMWD, and OCWD

Enclosed for your signature is the subject agreement between The Metropolitan Water District of Southern California, Eastern Municipal Water District, Inland Empire Utility Agency, Municipal Water District of Orange County, Western Municipal Water District, and Orange County Water District.

If the terms are acceptable, please DocuSign the enclosed original. Upon completion, a fully executed original agreement will be automatically generated for your records.

If you have any questions, please contact Ms. Nadia Hardjadinata at (213) 217-6445 or via email at [NHardjadinata@mw dh2o.com](mailto:NHardjadinata@mw dh2o.com).

Very truly yours,



Brad Coffey  
Manager, Water Resource Management

November 9, 2021

**Agreement Among The Metropolitan Water District of Southern California,  
Eastern Municipal Water District, Inland Empire Utilities Agency,  
Municipal Water District of Orange County, Western Municipal Water District, and  
Orange County Water District**

**Regarding the Santa Ana River Conservation and Conjunctive Use Program**

This Agreement among The Metropolitan Water District of Southern California (Metropolitan), Eastern Municipal Water District (Eastern MWD), Inland Empire Utilities Agency (IEUA), Municipal Water District of Orange County (MWDOC), Western Municipal Water District (Western MWD), and the Orange County Water District (OCWD) regarding the Santa Ana River Conservation and Conjunctive Use Program (Agreement) is hereby entered into as of November 9, 2021. Metropolitan, Eastern MWD, IEUA, MWDOC, Western MWD, and OCWD are collectively referred to as “Parties” and individually as a “Party.”

**RECITALS**

A. Metropolitan is a metropolitan water district organized under the Metropolitan Water District Act, codified at section 109-1, et seq. of West’s Appendix to the California Water Code, and is engaged in developing, storing, and distributing water in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura. Metropolitan has a long-term contract with the California Department of Water Resources (DWR) which sets forth the terms and conditions of Metropolitan’s participation in the State Water Project (SWP).

B. Eastern MWD is a California municipal water district formed and existing under the California Municipal Water District Act of 1911, Sections 71000 et seq. of the California Water Code, for the purpose of providing water services and certain other services. Eastern MWD’s powers and purposes include the acquisition within or without the district’s boundaries

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in the State of California of all necessary property or rights in property necessary or proper for the production, storage, transmission and distribution of water for irrigation, domestic, industrial and municipal purposes and the power to contract with one or more public agencies in carrying out any of its powers. Eastern MWD is a member agency of Metropolitan.

C. IEUA is a California municipal water district formed and existing under the California Municipal Water District Act of 1911, Sections 71000 et seq. of the California Water Code, for the purpose of supplying supplemental water to the Chino Basin and certain other services. IEUA's powers and purposes include the acquisition within or without the agency's boundaries in the State of California of all necessary property or rights in property necessary or proper for the production, storage, transmission and distribution of water for irrigation, domestic, industrial and municipal purposes and the power to contract with one or more public agencies in carrying out any of its powers. IEUA is a member agency of Metropolitan.

D. MWDOC is a municipal water district formed and existing under the California Municipal Water District Act of 1911, Sections 71000 et seq. of the California Water Code, for purposes that include providing its 28 member agencies in Orange County, with reliable, high quality supplies from Metropolitan and other sources to meet present and future needs, at an equitable and economic cost, and to promote water use efficiency for all of Orange County. MWDOC is a member agency of Metropolitan.

E. One of MWDOC's member agencies, OCWD, undertakes the responsibilities associated with actively managing the OCWD groundwater basin. OCWD was formed by an act of the California State Legislature in 1933 for the purpose of protecting and managing the Orange County groundwater basin.

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F. Western MWD is a California municipal water district formed and existing under the California Municipal Water District Act of 1911, Sections 71000 et seq. of the California Water Code, for the purpose of providing water services and certain other services. Western MWD's powers and purposes include the acquisition within or without the district's boundaries in the State of California of all necessary property or rights in property necessary or proper for the production, storage, transmission and distribution of water for irrigation, domestic, industrial and municipal purposes and the power to contract with one or more public agencies in carrying out any of its powers. Western MWD is a member agency of Metropolitan.

G. In 2014, Eastern MWD, IEUA, OCWD, Western MWD, and the San Bernardino Valley Municipal Water District (Valley District) entered into a Memorandum of Understanding (2014 MOU). Valley District is engaged in developing, transporting, storing, treating, and wholesale delivery of water in portions of the counties of San Bernardino and Riverside. Like Metropolitan, Valley District has a long-term contract with DWR which set forth the terms and conditions of its participation in the SWP. Valley District recharges SWP water into the San Bernardino Basin Area (SBBA) for the benefit of its member agencies. The purpose of the 2014 MOU is to collaborate in the exploration, analysis and implementation of a large-scale, regional water supply reliability project, known as the Santa Ana River Conservation and Conjunctive Use Program (SARCCUP). The SARCCUP is a multi-agency, watershed-wide groundwater storage and recovery project involving multiple basins in the Santa Ana Watershed. The goal is to store available water during wet years in local groundwater basins throughout the watershed and extract the stored water during dry years to reduce the impacts from multi-year droughts. Eastern MWD, IEUA, MWDOC, and Western MWD are collectively referred to as the



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“SARCCUP Metropolitan Member Agencies” and individually as a “SARCCUP Metropolitan Member Agency.”

H. The SARCCUP currently includes four water banking sites. Three of the sites are located within Metropolitan’s service area. More specifically, they are located in the service areas of Eastern MWD, Western MWD, and MWDOC. The facilities within MWDOC’s service area are located within, owned, and operated, by OCWD. The fourth site is the SBBA, which is located outside of Metropolitan’s service area and within Valley District’s service area. The owners of the four water banking sites are responsible for all operating decisions for those water banking facilities including the quantity of water that they store and extract within the water banks under the SARCCUP.

I. Valley District and Metropolitan entered into a Coordinated Operating and Surplus Water Agreement, dated June 15, 2021 whereby Valley District may offer to sell to Metropolitan, and Metropolitan may purchase from Valley District, surplus water.

J. Under this Agreement, Metropolitan will offer to sell to the SARCCUP Metropolitan Member Agencies an amount of water equivalent to 50% of the amount of water Metropolitan purchases from Valley District for storage within the SARCCUP water banking sites and use within Metropolitan’s service area. Such water shall not count against a SARCCUP Metropolitan Member Agency’s annual Tier 1 limit or incurring Metropolitan’s capacity charge. Some of the water Metropolitan sells to the SARCCUP Metropolitan Member Agencies under this Agreement may be temporarily stored in the SBBA. An amount of water equivalent to up to half of the water that Metropolitan purchases from Valley District may qualify as Extraordinary Supply under Metropolitan’s Water Supply Allocation Plan.

November 9, 2021

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the representations, warranties, covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree to the following terms and conditions of this Agreement.

### **1. Consultation between Metropolitan and the SARCCUP Metropolitan Member Agencies and OCWD**

A. By July 1<sup>st</sup> of each calendar year subsequent to the execution of this Agreement, Metropolitan will inform the SARCCUP Metropolitan Member Agencies and OCWD of the amount of water, if any, that Metropolitan will purchase from Valley District and, of that amount, how much water, if any, Metropolitan is willing to deliver to the SARCCUP Metropolitan Member Agencies at Valley District's connection to the SWP and/or Metropolitan's service connections to the SARCCUP Metropolitan Member Agencies. Metropolitan has discretion whether to purchase any or all of the water Valley District offers to Metropolitan within a calendar year. No SARCCUP Metropolitan Member Agency or OCWD may purchase water from Valley District.

B. Metropolitan will equally offer to Western MWD, Eastern MWD, and MWDOC for purchase an amount equivalent to 50% of the amount that Metropolitan purchases from Valley District during a calendar year for delivery to the SARCCUP water banking facilities. MWDOC will be purchasing water offered by Metropolitan on behalf of OCWD for the SARCCUP water banking program. As the owners and operators of the SARCCUP water banking facilities, Western MWD, Eastern MWD, and OCWD may, by unanimous written agreement, modify the delivery amounts. Modified amounts may include deliveries to IEUA or

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MWDOC for their behalf. Western MWD, Eastern MWD, and OCWD will provide a copy of any such agreement to Metropolitan. OCWD will inform MWDOC of the amount to be delivered at the Valley District's service connection to the SWP and/or Metropolitan's service connections to MWDOC. Each SARCCUP Metropolitan Member Agency will inform Metropolitan of the amount that the SARCCUP Metropolitan Member Agency will purchase and accept for delivery at Valley District's connection to the SWP and/or Metropolitan's service connections to the SARCCUP Metropolitan Member Agencies. The SARCCUP Metropolitan Member Agencies will notify Metropolitan by August 15<sup>th</sup> of each year of these amounts.

**2. Delivery to SARCCUP Member Agencies at Valley District's Connection to the SWP**

Metropolitan will deliver to the SARCCUP Metropolitan Member Agencies at Valley District's connection to the SWP during a calendar year the amount that the SARCCUP Metropolitan Member Agencies previously notified Metropolitan they would accept under Section 1(B). Such deliveries will be scheduled and delivered at times and rates acceptable to Metropolitan, Valley District, and the relevant SARCCUP Metropolitan Member Agencies. Water that Metropolitan delivers to Valley District's connection to the SWP may be stored temporarily within Valley District's service area but must be used in Metropolitan's service area during the term of this Agreement.

**3. Billing and Payment**

Metropolitan will bill each SARCCUP Metropolitan Member Agency individually and each SARCCUP Metropolitan Member Agency will pay Metropolitan's full service untreated water or full service treated water at the time of the sale. Water purchased by a SARCCUP Metropolitan Member Agency will be counted as water delivered for purposes of meeting that

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SARCCUP Metropolitan Member Agency's purchase order commitment. Upon Metropolitan's approval of a SARCCUP Metropolitan Member Agency certification of each monthly delivery, the following exceptions will apply: (a) such purchases will not count against a SARCCUP Metropolitan Member Agency's annual Tier 1 limit; and (b) Metropolitan's capacity charge will not apply to such purchases. The sale of water under this Agreement will be included in the calculation of the Ten-Year Rolling Sales Average for purposes of Metropolitan's Readiness-to-Serve Charge at the time water is sold to the SARCCUP Metropolitan Member Agencies. Metropolitan's invoices will separately identify the quantities of water subject to this Agreement.

**4. Extraordinary Supply Benefit**

Water made available under Section 1(B), if stored within the Santa Ana River Watershed during the same calendar year in accordance with Appendix G of Metropolitan's Water Supply Allocation Plan (or as any successor to such plan), will qualify as Extraordinary Supply. The amount of Extraordinary Supply available to each SARCCUP Member Agency under this Agreement may not exceed the allocation provided under Section 1(B).

**5. Extraordinary Supply Benefit Regarding OCWD**

Metropolitan will assign any Extraordinary Supply benefit that would accrue to MWDOC as result of actions taken by OCWD, in accordance with a separate written agreement among Metropolitan, MWDOC, OCWD, and the Cities of Anaheim, Fullerton, and Santa Ana.

**6. Record Keeping**

SARCCUP Metropolitan Member Agencies, OCWD, and Metropolitan will keep records of water purchased, delivered, and stored pursuant to this Agreement. The records of each Party relevant to this Agreement will be open to inspection by the other Parties upon reasonable notice.

November 9, 2021

The Parties will cooperate to develop coordinated administrative procedures for the tracking required under this Agreement.

**7. Metropolitan's Administrative Code**

Unless otherwise specifically provided for in this Agreement, Metropolitan's Administrative Code will continue to apply to the relationship between Metropolitan and the SARCCUP Metropolitan Member Agencies.

**8. Termination**

This Agreement will terminate on December 31, 2035 unless the State Water Contract between Metropolitan and the State of California is extended past 2035, in which case, this Agreement will have the same termination date.

**9. Late Arising Claims**

If a claim arising under or with respect to one or more terms of this Agreement has not been resolved when such term terminates, or if such a claim is brought after this Agreement has terminated, but within the period of time for bringing such a claim under California law (Late Arising Claim), the provisions of this Agreement shall continue in full force and effect for such additional period of time as is necessary to resolve such claims and to satisfy the rights and obligations of the Parties hereto with respect thereto.

**10. Indemnity Clause**

Liability and indemnification shall be determined pursuant to section 4502 of Metropolitan's Administrative Code. OCWD agrees that for the purposes of this Agreement, section 4502 of Metropolitan's Administrative Code applies to OCWD in the same manner as that section applies to Metropolitan's member agencies. Metropolitan provides no warranty or guarantee regarding the quality or content of its untreated water or the suitability of its use for

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storage in groundwater basins. SARCCUP Member Agencies and OCWD acknowledge that they accept untreated water “as is.”

**11. Informal Mediation**

In the event of a dispute between the Parties regarding this Agreement, the Parties may attempt to resolve the dispute by using the services of a mutually acceptable mediator. If the Parties decide to use a mediator, they will equally share the mediator’s fees and expenses.

**12. Successors and Assigns**

This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties; provided, however, no Party shall assign any of its rights or obligations under this Agreement without the prior written consent of the other Parties. Nothing in this Agreement is intended to confer any right or remedy under this Agreement on any person other than the Parties to this Agreement and their respective successors and permitted assigns, or to relieve or discharge any obligation or liability of any person to any Party to this Agreement, or to give any person any right of subrogation or action over or against any Party to this Agreement.

**13. Waiver/Cure of Defaults**

The failure of any Party to enforce against another Party a provision of this Agreement shall not constitute a waiver of that Party’s right to enforce such a provision at a later time. No Party shall be deemed to be in default of any provision of this Agreement unless the other Party has given written notice specifically stating the alleged default and the Party in default fails to cure the default within sixty (60) days of receipt of such written notice.

**14. Construction of Agreement**

The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the Parties, and Section 1654

November 9, 2021

of the Civil Code has no application to interpretation of this Agreement. The recitals and all exhibits and schedules to this Agreement are part of this Agreement and are incorporated herein by this reference.

**15. Entire Agreement**

This Agreement constitutes the final, complete and exclusive statement of the terms of the agreement among the Parties pertaining to the matters provided herein during the term and supersedes all prior and contemporaneous understandings or agreements of the Parties related thereto. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty outside those expressly set forth in this Agreement.

**16. Severability**

In the event that a court of competent jurisdiction determines that a provision included in this Agreement is legally invalid or unenforceable and such decision becomes final, the Parties to this Agreement shall use their best efforts to (i) within thirty (30) days of the date of such final decision, identify by mutual agreement the provisions of this Agreement which must be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the Parties. Pending the completion of the actions designated above, to the extent it is reasonably practical and can be done without violating any applicable provisions of law, the provisions of this Agreement, which were not found to be legally invalid or unenforceable in the final decision, shall continue in effect. If the Parties cannot agree on appropriate revisions, this Agreement shall be terminated, and the Parties will return any water owed to each other.

November 9, 2021

**17. Force Majeure**

All obligations of the Parties other than monetary or payment obligations shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, by earthquakes, fires, tornadoes, facility failures, floods, strikes, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, or other events or causes beyond the control of the Parties. In no event shall any liability accrue against a Party, to its officers, agents or employees, for any damage arising out of or connected with a suspension of performance pursuant to this section. All time limits to perform and the term of the Agreement shall be extended by a period of time equivalent to the length of suspension.

**18. Notices**

All notices, requests, and demands hereunder (Notices) shall be in writing, including electronic communications, and shall be deemed to have been duly given when delivered (or, if mailed, postage prepaid, on the third business day after mailing, if that date is earlier than actual delivery). Notices shall be sent to a Party at the address of that Party set forth below or, if such Party has furnished notice of a change of that address as herein provided, to the address of that Party most recently so furnished.

Metropolitan Water District of Southern California  
Attention: General Manager  
P.O. Box 54153  
Los Angeles, CA 90054-0153

Eastern Municipal Water District  
Attention: General Manager  
P.O. Box 8300  
Perris, CA 92572-8300



November 9, 2021

Inland Empire Utilities Agency  
Attention: General Manager  
6075 Kimball Ave.  
Chino, CA 91708

Municipal Water District of Orange County  
Attention: General Manager  
P.O. Box 20895  
Fountain Valley, CA 92708

Western Municipal Water District  
Attention General Manager  
14205 Meridian Pkwy  
Riverside, CA 92518

Orange County Water District  
Attention: General Manager  
18700 Ward St  
Fountain Valley, CA 92708

**19. Further Assurances**

Each Party hereto, upon the request of the other, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this instrument.

**20. Governing Law**

The validity, construction, and enforceability of this Agreement shall be governed in all respects by the laws of the State of California.

**21. Counterparts**

This Agreement may be executed in two or more counterparts, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

November 9, 2021

In WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the following duly authorized representatives.

**THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**

By: DocuSigned by:  
FAAA3695962347A Brad Coffey  
Adel Hagekhalil  
General Manager

Dated 11/20/2021

APPROVED AS TO FORM:

By: DocuSigned by:  
9D1F0CE7D578409 Marcia Scully  
Marcia L. Scully  
General Counsel

**EASTERN MUNICIPAL WATER DISTRICT**

By: DocuSigned by:  
9400752DE9E341E Joe Mouawad  
Joe Mouawad  
General Manager

Dated 11/9/2021

APPROVED AS TO FORM:

Olivarez, Madruga, Lemieux & O'Neill

By: DocuSigned by:  
73F5513FD25E409 Steven O'Neill  
Steven O'Neill

**INLAND EMPIRE UTILITIES AGENCY**

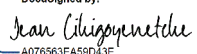
By: DocuSigned by:  
EAD800E4F0B34DA Shivaji Deshmukh  
Shivaji Deshmukh  
General Manager

Dated 11/12/2021

November 9, 2021

APPROVED AS TO FORM:

JC Law Firm

By:  \_\_\_\_\_  
Jean Cihigoyenetché

**MUNICIPAL WATER DISTRICT OF ORANGE COUNTY**


By:  \_\_\_\_\_  
Robert Hunter  
General Manager

11/15/2021

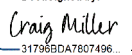
\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

Best, Best & Krieger

By:  \_\_\_\_\_  
Joseph Byrne

**WESTERN MUNICIPAL WATER DISTRICT**

By:  \_\_\_\_\_  
Craig Miller  
General Manager

11/15/2021

\_\_\_\_\_  
Dated

APPROVED AS TO FORM:

Best Best & Krieger LLP

By:  \_\_\_\_\_  
Jeffrey F. Ferre

**ORANGE COUNTY WATER DISTRICT**

By:  \_\_\_\_\_  
Mike Markus  
General Manager

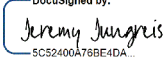
11/17/2021

\_\_\_\_\_  
Dated

November 9, 2021

APPROVED AS TO FORM:

Rutan & Tucker LLP

By:  \_\_\_\_\_  
Jeremy Jungreis

ORDINANCE NO. 79

ORDINANCE OF THE BOARD OF DIRECTORS OF THE SAN  
BERNARDINO VALLEY MUNICIPAL WATER DISTRICT  
PROVIDING PROCEDURES FOR THE DECLARATION AND  
THE SALE OF SURPLUS WATER OF THE DISTRICT

---

WHEREAS, the District has adopted the *Upper Santa Ana River Watershed Integrated Regional Water Management Plan* (Integrated Plan);

WHEREAS, one of the primary water management strategies in the Integrated Plan is the storage of water in wet years for later use in dry years;

WHEREAS, conditions may exist from time to time when the District has more water available than needed;

WHEREAS, Section 31023 of the California Water Code allows for the sale of surplus water outside of the District's service area;

WHEREAS, the District's State Water Contract allows for the sale of its State Water Project (SWP) water to areas outside of the District's service area, upon written consent from the State;

BE IT ORDAINED by the Board of Directors of the San Bernardino Valley Municipal Water District as follows:

ARTICLE I

DECLARING WATER SURPLUS

- 1) The Board must declare water to be surplus, or not needed, for use within the District's service area before it may be sold outside of the District. Such a declaration shall only be valid for the calendar year of the specified SWP Table A allocation.
- 2) The District will use the following information in its determination of whether any water is surplus:
  - a) *Change in Groundwater Storage for the San Bernardino Basin, Rialto-Colton and Yucaipa Basin Areas*, District, latest edition (CIS Report)
  - b) *Regional Water Management Plan*, Basin Technical Advisory Committee (BTAC), latest edition (BTAC Plan)
  - c) *Regional Water Management Plan Monthly Statement*, latest edition (BTAC Monthly Statement)
  - d) *Western Municipal Water District of Riverside County, a municipal water district; City of Riverside, a municipal corporation; the Gage Canal Company, a corporation; Agua Mansa Water Company, a corporation; Meeks & Daley Water Company, a corporation; Riverside Highland Water Company, a corporation, and the Regents of the University of California vs. East San Bernardino County Water District, et al.* (Judgment)
  - e) Pumping restrictions, if any, in the Rialto-Colton Basin based upon the requirements of the Rialto Decree (Rialto Decree)
  - f) Recommendation from the Groundwater Sustainability Council (GSC)
  - g) Recommendation from the BTAC
  - h) Recommendation from the San Bernardino Valley Advisory Commission on Water Policy (Advisory Commission)

- 3) No Surplus Water. The District may declare that there is no surplus based upon the following conditions:
  - a) The cumulative change in groundwater storage in the San Bernardino Basin Area, Rialto-Colton Basin and Yucaipa Basin is within the "No Surplus" area as shown on Exhibits A, B and C.
  - b) There are pumping restrictions in the Rialto-Colton Basin due to the requirements of the Rialto Decree.
  - c) The liquefaction potential is low per the BTAC monthly statement.
  - d) Recharge for the year is less than the BTAC artificial recharge threshold as published on the BTAC monthly statement.
  - e) The District is obligated, under the terms of the Judgment, to recharge water.
  - f) There is available capacity in the District storage program.
- 4) Discretionary Zone. When the above conditions for "No Surplus Water" do not exist, the general manager may develop a recommendation for Board consideration based upon the following:
  - a) *Available water*. The total amount of water potentially available for sale will be the total amount of water available to the District less the total amount of orders from the retail water agencies within the District's service area (including the GSC) and less 15,000 acre-feet of carryover storage to the following year (subject to the storage conditions at San Luis Reservoir).
  - b) *Hydrologic conditions*.
    - i) The possibility that the next three years could be extremely dry
    - ii) Liquefaction potential per the BTAC monthly statement
  - c) *Available storage capacity*. The amount of storage space available:
    - i) Storage capacity in the San Bernardino Basin Area (SBBA).
      - (1) Review of current artificial recharge as compared with the BTAC artificial recharge threshold on the BTAC monthly statement.
      - (2) Review of liquefaction potential on the BTAC monthly statement.
      - (3) Review of the storage level in the CIS Report.
    - ii) Storage capacity in the Rialto-Colton Basin (RCB). Storage capacity is considered available whenever there are pumping restrictions under the terms of the Rialto Decree.
    - iii) Storage capacity in the Yucaipa Basin (YB). Review of the storage level in the CIS Report.
    - iv) Review of any other storage locations under the District storage plan
  - d) *Recharge obligations*. Any recharge obligations under the Judgment
- 5) The general manager shall use the above information, and any other available information, to develop a recommendation for the amount of water, if any, that the Board may want to consider declaring surplus. The general manager will share the recommendation with the Board in a workshop. The final recommendation, if any, would then be presented to BTAC and the Advisory Commission for their input, before formal consideration at a Board meeting.
- 6) The general manager will present the recommended amount of surplus water to the Board for final consideration.
- 7) The Board will declare the amount, if any, of surplus water for the calendar year of the specified Table A allocation.

## ARTICLE II

### DELEGATION OF AUTHORITY

- 1) Pursuant to Water Code Section 71301, authority is hereby delegated to the general manager to sell or otherwise dispose of any surplus water belonging to the District subject to provisions herein provided.
- 2) The general manager may delegate his responsibility for sale or other disposition of surplus

water to other officers, employees, or agents of the District, who, in his own judgment and discretion, will best facilitate or expedite said sale or disposition.

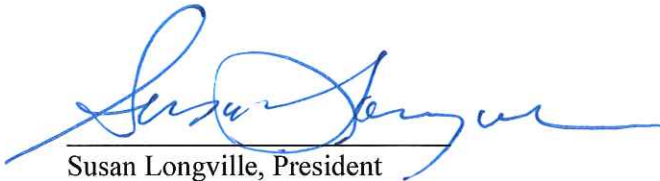
- 3) In the event of sale, the proceeds shall be paid into the District's Basin Management Fund to offset the cost of future imported water purchases.

ARTICLE III

SALE OF SURPLUS WATER

- 1) The general manager will develop agreements for the sale of any surplus water, for the Board's consideration.
- 2) The general manager will have the ultimate authority over the sale of any surplus water per the terms and conditions of water sales agreements that have been approved by the Board.
- 3) The general manager will keep the Board informed about the sale of surplus water.

ENACTED: May 16, 2017



Susan Longville, President

ATTEST:



Steve Copelan, Secretary

Exhibit A. Cumulative Change in Storage for the San Bernardino Basin Area

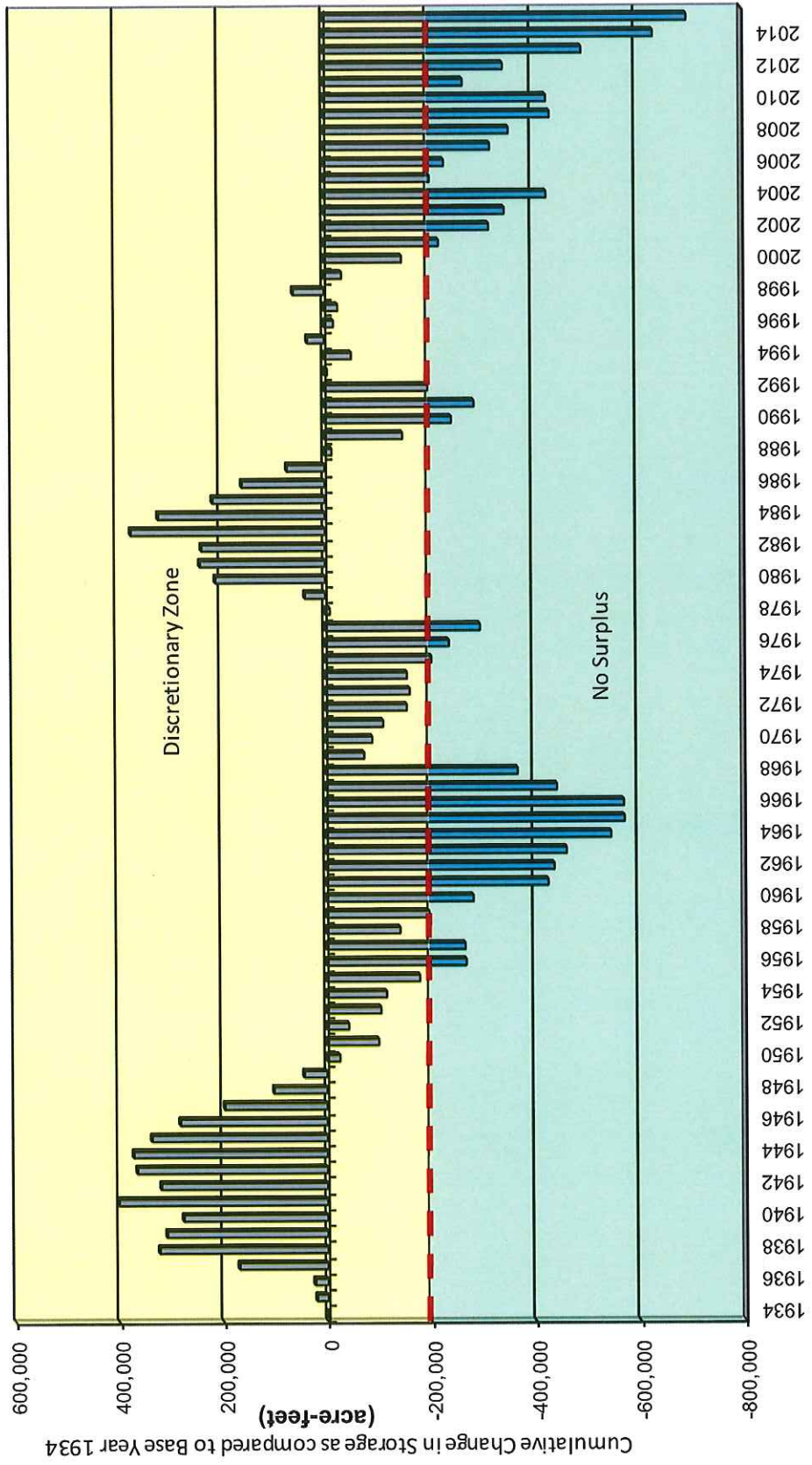
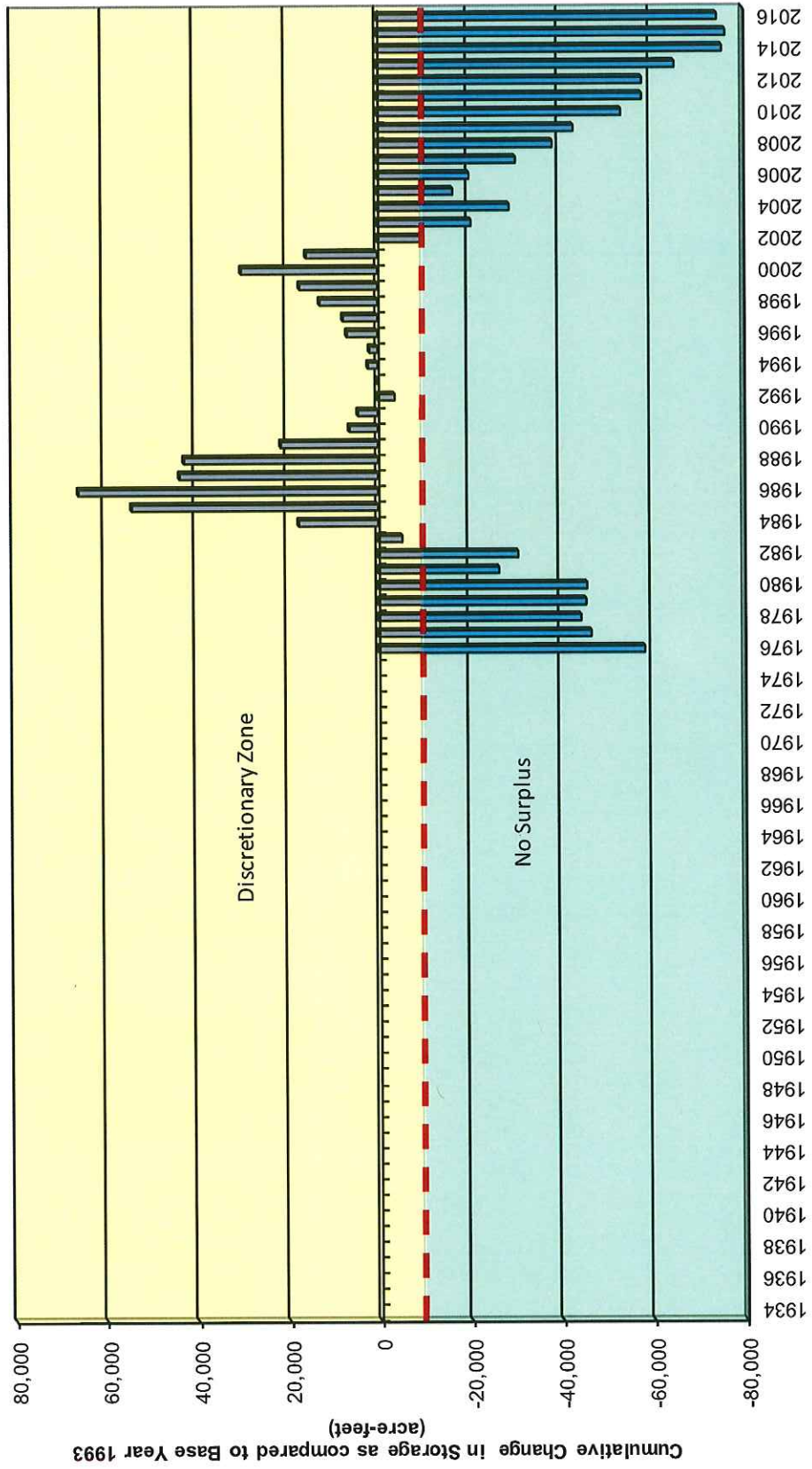
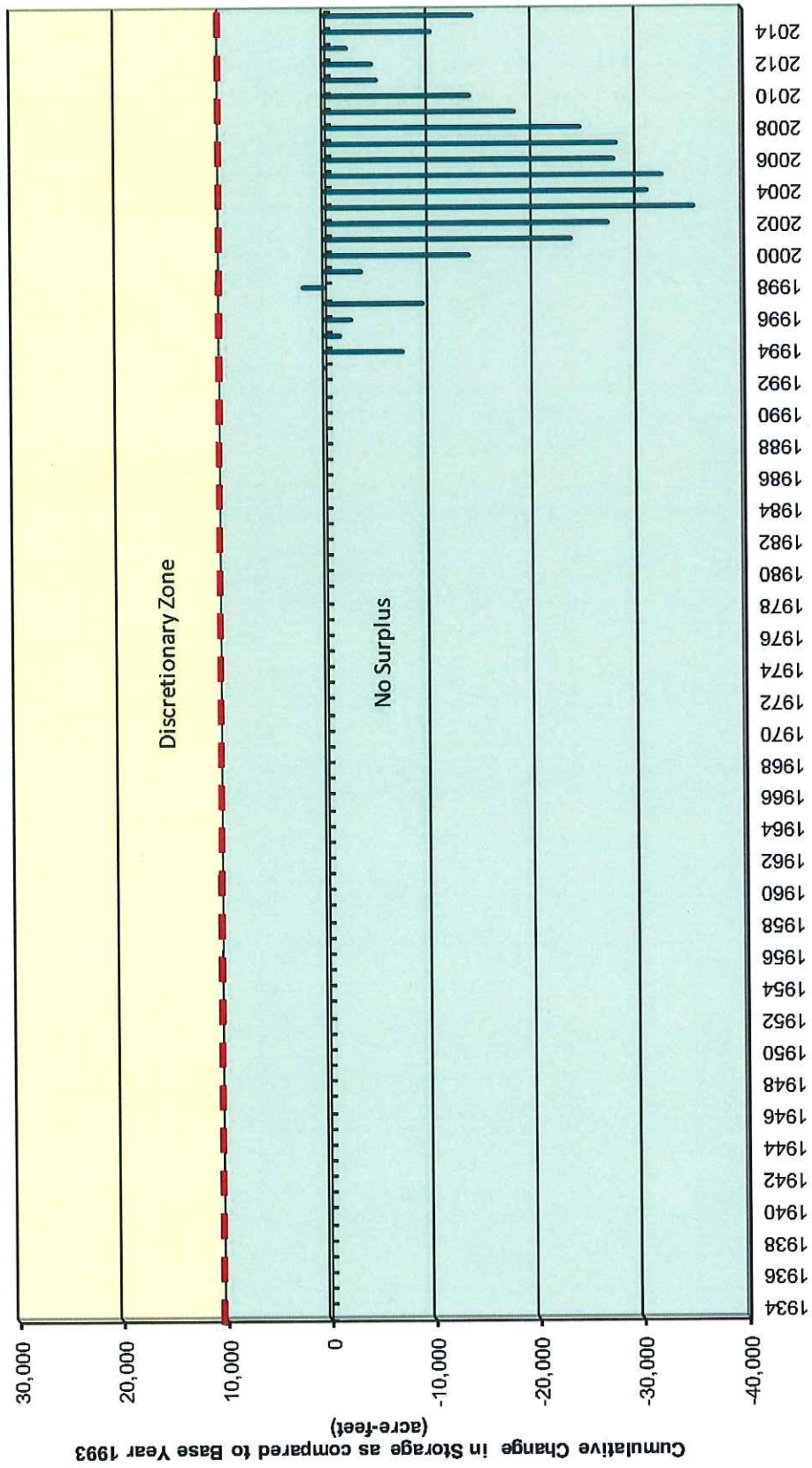




Exhibit B. Cumulative Change in Storage for the Rialto-Colton Basin



**EXHIBIT C. Cumulative Change in Storage for the Yucaipa Basin**





**DATE:** April 11, 2023  
**TO:** Board of Directors' Workshop – Resources/Engineering  
**FROM:** Staff  
**SUBJECT:** Consider Adoption of Resolution No. 1174 in support of Ernesto A. Avila as a candidate for the Association of California Water Agencies' Vice-President

---

**Staff Recommendation**

Adopt Resolution No. 1174 in support of Ernesto A. Avila as a candidate for the Association of California Water Agencies' Vice-President.

**Summary**

The item was brought forward and discussed at the March 21<sup>st</sup>, 2023 Board of Director's Meeting during future business. The Board discussed support of Ernesto A. Avila as candidate for the Association of California Water Agencies' Vice President and approved the nomination move forward to a future Board of Directors meeting for consideration.

**Fiscal Impacts**

None

**Attachments**

- 1) Resolution No. 1174
- 2) Ernesto A. Avila nomination supporting documents.

**RESOLUTION NO. 1174**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT IN SUPPORT OF THE NOMINATION OF CONTRA COSTA WATER DISTRICT PRESIDENT ERNESTO A. AVILA AS A CANDIDATE FOR THE POSITION OF ACWA VICE PRESIDENT**

**WHEREAS**, ACWA has announced a call for nominations of candidates for the election of President and Vice President; and

**WHEREAS**, eligible candidates must be an elected or appointed member of the governing body or commission of a member agency of the Association; and

**WHEREAS**, an official nominating resolution from the Association member agency on whose board the nominee serves must accompany all nominations for the position of President and Vice President; and

**WHEREAS**, each nomination must include a statement of qualifications or resume highlighting the candidate's qualifications for the position, such as active involvement in ACWA task forces, region boards, committees, or the like; and

**WHEREAS**, the Election Committee will present an open ballot with all qualifying candidates to the members for a vote by written ballot; and

**WHEREAS**, the individual who fills an officer position will need to have a working knowledge of water industry issues and concerns, possess strength of character and leadership capabilities, and be experienced in matters related to the performance of the duties of the office; and

**WHEREAS**, this person must be able to provide the dedication of time and energy to effectively serve in this capacity; and

**WHEREAS**, Ernesto A. Avila has served in a leadership role as a member of the Contra Costa Water District (CCWD) Board of Directors since 2016, was selected to serve as President of the CCWD Board in May 2022 and is the CCWD Director appointed to the Los Vaqueros Reservoir Joint Powers Authority; and

**WHEREAS**, Mr. Avila has served as a Professional Civil Engineer, Construction Manager with CH2M Hill, Associate Engineer with East Bay Municipal Water District, Director of Engineering at CCWD, General Manager of Monterey Peninsula Water Management District and is currently Principal /Vice-President of Avila and Associates Consulting Engineers, Inc. He also served as Executive Director for the California Urban Water Agencies and Program Director of the Multi-State Salinity Coalition; and

**WHEREAS**, Mr. Avila current participates on several ACWA Committees, including the Executive, Local Government (Chair) and Federal Affairs Committees. He is also an ACWA Region 5 Board member and actively participates in the following ACWA work groups: Property Tax, Paving Standards, Housing Densification, Foundation Steering and Foundation Fundraising; and

**WHEREAS**, Mr. Avila further serves his community by volunteering for many citizen-based committees/organizations including the East Bay Leadership Council (Board member), Walnut Creek Transportation Commission (Vice-Chair), the Concord Planning Commission and Design Review Board, the John Muir/Mount Diablo Community Health Fund Board of Directors (Treasurer), the Knights of Columbus Scholarship Chair, and the St. Francis of Assis School Board President.

**WHEREAS**, it is the opinion of the San Bernardino Valley Municipal Water District Board of Directors that CCWD President Ernesto A. Avila possesses all of the qualities needed to fulfill the duties of the office of ACWA Vice President.

**NOW, THEREFORE, BE IT RESOLVED**, that the San Bernardino Valley Municipal Water District Board of Directors does hereby nominate and support CCWD President Ernesto A. Avila as a candidate for the office of ACWA Vice President, pledging the District's support of his endeavors in fulfilling the duties of this office if elected.

**PASSED AND ADOPTED** by the San Bernardino Valley Municipal Water District Board of Directors at a meeting of said Board held on the 11<sup>th</sup> day of April, 2023, by the following vote:

Ayes:

Noes:

Abstain:

Absent: .

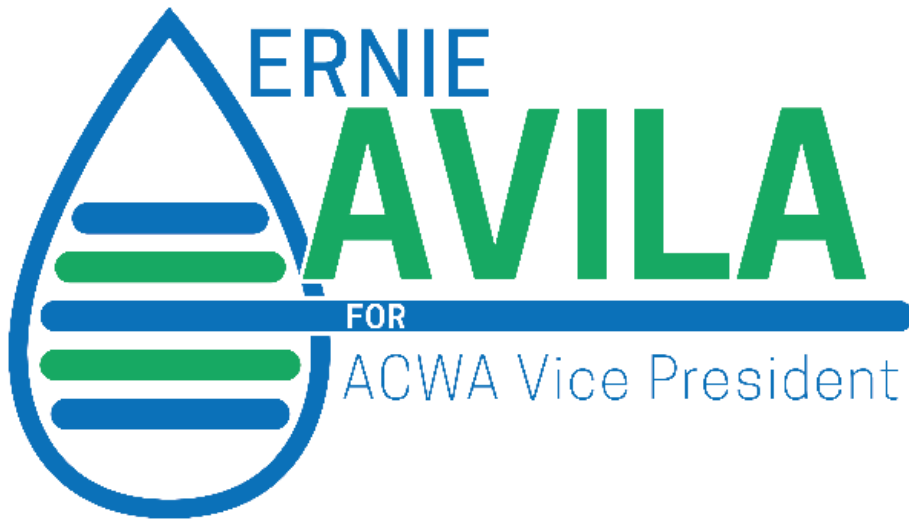
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President

ATTEST:\_\_\_\_

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Secretary



“The Association of California Water Agencies (ACWA) truly represents the nexus of knowledge and leadership in water for California. We are emerging from difficult times on many fronts, notably a multi-year drought and we need to lock into strategies to keep water in the public eye with ACWA and member agencies as the trusted sources of information. With over 40 years of experience in the water world, I am dedicated to continuing ACWA’s leading role on state-wide water issues. United between all water users, we can inform the needed investments state-wide in storage, groundwater recharge, conveyance, desalination, recycling, reuse and conservation to strengthen operations of our water systems for future generations.” – Ernesto (Ernie) Avila

### **ACWA BOARD MEMBER**

- Executive Committee of the ACWA Board of Directors
- ACWA Board of Directors
- ACWA Region 5 Board of Directors
- ACWA Foundation Steering Committee

### **ACWA COMMITTEES**

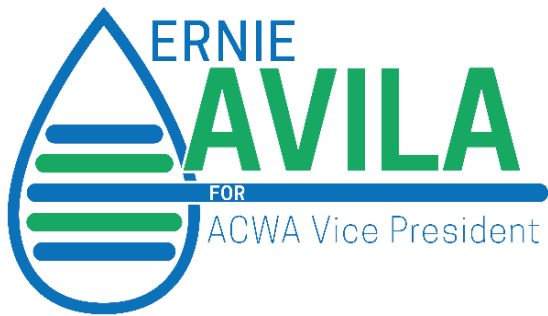
- Local Government Committee (Chair)
  - Property Tax Working Group
  - Housing Densification Working Group
  - Paving Standards Working Group
- Federal Affairs Committee
- Foundation Fundraising Working Group

### **CONTRA COSTA WATER DISTRICT**

- Contra Costa Water District, Board President
- Operations & Engineering Committee Chair
- East Bay Leadership Council, Director
- Los Vaqueros Reservoir Joint Powers Authority, Director

### **PROFESSIONAL EXPERIENCE**

- Vice-President, Avila and Associates Consulting Engineers, Inc.
- Monterey Peninsula Water Management District, General Manager
- Director of Engineering, Contra Costa Water
- Northern California Salinity Coalition, Executive Director
- California Urban Water Agencies, Executive Director



## ERNESTO (ERNIE) AVILA | BIOGRAPHY

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Ernesto (Ernie) A. Avila, P.E., was appointed in March 2016 to represent Division 3 for the Contra Costa Water District, which includes eastern Concord, Clayton, and part of Walnut Creek and Pleasant Hill. He began serving as President in May 2022.

Mr. Avila has over 40 years of professional experience in planning, environmental compliance, regulation, design, and construction of water, wastewater and recycled water works and municipal facilities in excess of \$5 Billion in value. He is currently Vice-President of a private civil and environmental engineering firm.

Mr. Avila has been involved with the Association of California Water Agencies (ACWA) for over twenty years at the regional and state level. His recent ACWA experience has included serving on ACWA's: Executive Committee of the ACWA Board of Directors; Board of Directors; Region 5 Board; Local Government Committee as Chair; Federal Affairs Committee; and the ACWA Foundation Steering Committee.

As part of these efforts, Mr. Avila led ACWA's assessment of potential water industry impacts associated with Sacramento-based housing initiatives including Auxiliary Dwelling Units, Commercial Properties and Transit Center Hubs and led a workshop to consider potential ACWA next steps associated with these new initiatives and their related changes to water agency fees and charges. He also led the ACWA Region 5 session on *Safe Drinking Water Issues Affecting Disadvantaged Communities*, and helped with the development of the *ACWA New Water System Approval Fact Sheet*. Mr. Avila also participated in the ACWA Foundation Steering Committee including several related Ad Hoc committees and contributed to Federal Affairs Committee work groups associated with the Water Infrastructure Finance and Innovation Act (WIFIA).

For the community, Mr. Avila has volunteered for many citizen-based committees/organizations including the Walnut Creek Transportation Commission, the Concord Planning Commission, the John Muir/Mount Diablo Community Health Fund, the Knights of Columbus, the East Bay Leadership Council, and the St. Francis of Assisi School Board. While working full time, he has made volunteering in the community a priority, representing his neighbors and family on important issues that affect their everyday life.



Mr. Avila is passionate about water issues in his professional life, working on a variety of issues statewide during his career. Among several relevant positions, he served as Director of Engineering at Contra Costa Water District before moving on to become General Manager of Monterey Peninsula Water Management District. He also served as Executive Director for the California Urban Water Agencies, Program Director for the Multi-State Salinity Coalition, and is on the Executive Committee of the Association of California Water Agencies Board of Directors. He has experience on water projects of all shapes and sizes, including water treatment plant improvements, dam retrofits, and watershed management and habitat conservation projects. Mr. Avila received the 2023 **“Salt of Earth” Award** by the Multi State Salinity Coalition for his commitment, leadership, vision and dedication to the water industry by promoting advancements in technologies for desalination, reuse, salinity control strategies, water/energy efficiencies, and related public policies that assist communities in meeting water needs.

Mr. Avila lives in Clayton with his family and is a licensed civil engineer with a Bachelor of Science in Civil Engineering from Santa Clara University and a master’s degree in Business Administration from St. Mary’s College of California. He is also a proud member of the California Farm Bureau.