

**WESTERN REPLENISHMENT AND
EXTRACTION AGREEMENT FOR 6000
ACRE-FEET FOR CALENDAR YEAR 2004**

Agreement made this 18th day of August, 2004, between San Bernardino Valley Municipal Water District ("Valley District") and Western Municipal Water District of Riverside County ("Western").

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

WHEREAS, that Judgment adjudicates certain water rights in the San Bernardino Basin Area ("Basin Area"), sometimes referred to as the Bunker Hill Basin, and confers certain rights and obligations upon Valley District and Western; and

WHEREAS, the Judgment is administered and enforced by a Watermaster, consisting of a committee of two persons, one representative nominated by Valley District, and one by Western; and

WHEREAS, in accordance with the Judgment, the Watermaster makes annual reports to the Court, including an accounting for all pumping, the replenishment required, and credits in the Basin Area; and

Exhibit A-1

WHEREAS, the Judgment specifically reserves the rights of Valley District, Western, and any other party to exercise such rights as they may have or obtain under law to spread, store underground, and recapture imported water; and

WHEREAS, Section VI(b)6 of the Judgment provides that Valley District and Western may agree to additional extractions from the Basin Area, subject to the availability of imported water for replenishment; and

WHEREAS, Valley District holds a contract with the State of California for the delivery of imported water from the State Water Project, and such deliveries are used in part to replenish the Basin Area; and

WHEREAS, Valley District and The Metropolitan Water District of Southern California (“Metropolitan”) have entered into a Coordinated Operating Agreement dated July 10, 2000, and Attachment 2 thereto dated May 14, 2001; called and referred to herein as the “Coordinated Use Agreement”; and

WHEREAS, pursuant to such Agreements between Metropolitan and Valley District, and all attachments thereto, Metropolitan can take delivery through Valley District facilities of water imported from the State Water Project under its own contract, and has the right and obligation to purchase certain quantities of imported water from Valley District for delivery to its service area, including delivery to Western through the Riverside Corona Feeder; and

Exhibit A-2

WHEREAS, Section 9.2 of the Coordinated Use Agreement provides that Valley District, using excess capacity in its Foothill Pipeline, shall convey both its own and Metropolitan's water purchased from the State Water Project at the Devil Canyon Power Plant afterbay to mutually agreed upon locations, including locations along the Foothill Pipeline; and

WHEREAS, water delivered pursuant to Section 9.2 may be purchased from Metropolitan by Western at the regular price per acre-foot for replenishment service provided for in Metropolitan's Administrative Code; and

WHEREAS, Section 9.4 of the Coordinated Use Agreement provides that Metropolitan, in accord with its Water Surplus and Drought Management Plan, shall make available to Western, Inland Empire Utilities Agency, and the Orange County Water District up to 15,000 acre-feet per year of replenishment water through the Foothill Pipeline, at the cost of Metropolitan's purchase of State Water Project water from Valley District, plus five percent; and

WHEREAS, Western is a member agency of Metropolitan and has purchased 6000 acre-feet of replenishment water from Metropolitan, pursuant to Section 9.2 of the Coordinated Use Agreement and the terms of Metropolitan's July 15, 2004 letter; and

Exhibit A-3

WHEREAS, Valley District has agreed with Metropolitan upon the timing and delivery of the replenishment water, and that the Watermaster in the Western Case has also agreed to such delivery arrangements;

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

1. Western Purchase of Replenishment Water. Western has notified Valley District that it has purchased 6000 acre-feet of imported replenishment water from Metropolitan pursuant to Section 9.2 of the Coordinated Use Agreement. Valley District shall cause such imported water to be used for replenishment of the Basin Area, consistent with any overall management plan adopted for the Basin Area. The timing of such replenishment shall be at the discretion of Valley District.

2. Replenishment Locations. Valley District shall have the option to cause Western's purchase of imported water from Metropolitan to be used for replenishment at any location it may choose, including, but not limited to:

- (a) Foothill Pipeline
 - Sweetwater Turnout
 - Badger Turnout
 - Waterman Turnout
 - Patton Turnout
 - City Creek Turnout

Exhibit A-4

- Santa Ana Low Turnout
- (b) Devil Canyon – Azusa Pipeline
- Lower Lytle Creek Basins Turnout
- (c) Santa Ana River Crossing Pipeline
- Seven Oaks Dam Borrow Site Turnout
- (d) Greenspot Pipeline
- Mill Creek Spreading Turnout

Such replenishment may also be accomplished through in lieu measures.

3. Replenishment Costs. In view of Valley District's right to select the replenishment location, the timing thereof, and the groundwater level benefits associated therewith, Western shall have responsibility only for the actual net costs associated with the delivery and spreading of the replenishment water purchased from Metropolitan hereunder. Any funds or the value of any benefits received by Valley District from third parties, that reflect benefits to such third parties from the replenishment operations, shall be deducted from the costs paid by Valley District. Western shall reimburse Valley District for any remaining out-of-pocket costs associated with the delivery and spreading of Western's replenishment water.

4. Extraction by Western. Western shall have the right, from time to time at its option, to extract from the Basin Area amounts of water equal to 6000 acre-feet of imported replenishment water purchased from Metropolitan pursuant to Section 1,

Exhibit A-5

without charge except for its pumping costs. Western may extract such water from its own wells or wells owned by others, and from existing or from new wells. The water produced from such wells may be exported for beneficial use outside of the Basin Area.

5. Assignment of Western's Extraction Rights. Western at its option may assign and transfer its right to extract such imported water to any plaintiff in the Western case, and such assigned right shall be in addition to any right that such producer may hold, and shall not be constrained by the injunctive provisions of the Judgment in the Western case.

6. Recordation Act. Western shall make all filings required under the Water Recordation Act, Water Code Section 4999, *et seq.*, or any amendments thereto, whether such imported water is extracted from wells owned by Western or by others, or whether the extraction right has been temporarily assigned to others.

7. Watermaster Reports. The Watermaster shall include in its annual reports to the Court all amounts of imported water replenished directly or by in lieu measures pursuant to this Agreement, all amounts extracted, the wells and owners thereof by which such water is extracted, and the accumulation or reduction of any credits in the Basin Area. The Watermaster shall not include, however, the extractions made pursuant to this Agreement in its determinations of replenishment necessary to offset exports of water to areas not tributary to Riverside Narrows, as required in Section X of the Judgment.

Exhibit A-6

8. Court Approval. This Agreement shall be subject to the approval of the Court in the Western case, pursuant to its continuing jurisdiction thereof.

APPROVED the day and year hereinabove written.

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT

By: 

WESTERN MUNICIPAL WATER
DISTRICT OF RIVERSIDE COUNTY

By: 

Exhibit A-7

COPY

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ARTHUR L. LITTLEWORTH, Bar No. 022041
STEVEN M. ANDERSON, Bar No. 186700
BEST BEST & KRIEGER LLP
3750 University Avenue
P.O. Box 1028
Riverside, California 92502
Telephone: (951) 686-1450
Facsimile: (951) 686-3083

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE SECTION 6013

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

SEP 13 2004

Attorneys for Plaintiff
Western Municipal Water District

BRUCE D. VARNER, Bar No. 033068
Varner Saleson & Brandt LLP
3750 University Avenue, Suite 610
Riverside, CA 92501
Telephone: (951) 274-7777
Facsimile: (951) 274-7770

Attorneys for Defendant
San Bernardino Valley Municipal Water District

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

WESTERN MUNICIPAL WATER
DISTRICT, et al.,

Plaintiffs,

v.

EAST SAN BERNARDINO COUNTY
WATER DISTRICT, et al.,

Defendants.

Case No. CIV 78426
Judge: Gloria Trask

NOTICE OF MOTION FOR ORDER
APPROVING THE REPLENISHMENT AND
EXTRACTION AGREEMENT BETWEEN
SAN BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT AND WESTERN
MUNICIPAL WATER DISTRICT FOR 6,000
ACRE-FEET OF WATER

Hearing:
Date: 10/25/04
Time: 8:30 am
Department 4

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

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TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on 10/25, 2004 at 830 am, in

Department 4, the above-entitled Court, located at 4050 Main Street, Riverside, California, the San Bernardino Valley Municipal Water District ("Valley District") and Western Municipal Water District of Riverside County ("Western") will move this Court, pursuant to its continuing jurisdiction in this case, to issue an order approving the Agreement dated August 18, 2004, entitled "Western Replenishment and Extraction Agreement," executed between the San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County, to authorize the replenishment and extraction of 6,000 acre-feet of water in the San Bernardino Basin Area ("Basin Area") as provided in such agreement, and to require the Watermaster to include in its annual reports to the Court all amounts of imported water replenished directly or by in-lieu measures pursuant to such agreement, all amounts extracted, the wells and owners thereof by which such water is extracted, and the accumulation or reduction of any credits in the Basin Area. A copy of the Western Replenishment and Extraction Agreement is attached hereto as Exhibit A.

This Motion will be based upon the provisions of the Judgment herein, and the desirability of replenishing the Basin Area with imported water from the State Water Project when such water is available, and the extraction thereof at a later time when it is needed.

This Motion will be based upon this Notice, the following Points and Authorities, the Declaration of Donald L. Harriger and Robert L. Reiter, which is attached as Exhibit B, all other matters in the Clerk's files herein, and upon such other and further evidence or grounds as may be presented at the time of the hearing.

Dated: September 8, 2004

BEST BEST & KRIEGER LLP

By: Arthur L. Littleworth
ARTHUR L. LITTLEWORTH
Attorneys for Plaintiff
Western Municipal Water District

1 Dated: September 8, 2004

VARNER SALESON & BRANDT LLP

2
3 By: *Blaine Steyer*

4
5 Attorneys for Defendants
6 San Bernardino Valley Municipal
7 Water District
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POINTS AND AUTHORITIES

1
2 1. In appropriate circumstances, a court may reserve jurisdiction to modify a final
3 judgment. (U.S. Liability Ins. Co. v. Haidinger-Hayes, Inc. (1970) 1 Cal.3d 586, 599; Klinker v.
4 Klinker (1955) 132 Cal.App.2d 687, 694.)

5 2. Water rights adjudications are proper cases for retention of jurisdiction, and the
6 kind of provision reserving jurisdiction in this case have been approved by the California
7 Supreme Court. (Allen v. California Water Co. (1946) 20 Cal.2d 466, 488; City of Los Angeles
8 v. City of Glendale (1943) 23 Cal.2d 68, 81; Pasadena v. Alhambra (1949) 33 Cal.2d 908,
9 936-937.)

10 3. The Judgment herein provides that nothing therein shall preclude the Valley
11 District or Western “from exercising such rights as it may have or obtain under law to spread,
12 store underground and recapture imported water, provided that any such use of the underground
13 storage capacity of the San Bernardino Basin Area by Western or any entity within it shall not
14 interfere with any replenishment program of the Basin Area.” (Section XV(a).)

15 4. A public agency has the right to replenish an underground basin with imported
16 water, and later to extract an equivalent amount. (City of Los Angeles v. City of San Fernando
17 (1975) 14 Cal.3d 199.)

18 5. The Judgment herein provides that nothing in the Judgment shall prevent future
19 agreements between the Valley District and Western under which additional extractions may be
20 made from the Basin Area, subject to the availability of imported water not required by San
21 Bernardino Valley. (Section VI(b)(6).)

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

1 Dated: September 8, 2004

BEST BEST & KRIEGER LLP

2
3 By: Arthur L. Littleworth

4 ARTHUR L. LITTLEWORTH
5 Attorneys for Plaintiff
6 Western Municipal Water District

7 Dated: September 9, 2004

VARNER SALESON & BRANDT LLP

8
9 By: Beverly Blane

10 Attorneys for Defendants
11 San Bernardino Valley Municipal
12 Water District

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WHEREAS, that Judgment adjudicates certain water rights in the San Bernardino Basin Area ("Basin Area"), sometimes referred to as the Bunker Hill Basin, and confers certain rights and obligations upon Valley District and Western; and

WHEREAS, the Judgment is administered and enforced by a Watermaster, consisting of a committee of two persons, one representative nominated by Valley District, and one by Western; and

WHEREAS, in accordance with the Judgment, the Watermaster makes annual reports to the Court, including an accounting for all pumping, the replenishment required, and credits in the Basin Area; and

Exhibit A-1

WHEREAS, the Judgment specifically reserves the rights of Valley District, Western, and any other party to exercise such rights as they may have or obtain under law to spread, store underground, and recapture imported water; and

WHEREAS, Section VI(b)6 of the Judgment provides that Valley District and Western may agree to additional extractions from the Basin Area, subject to the availability of imported water for replenishment; and

WHEREAS, Valley District holds a contract with the State of California for the delivery of imported water from the State Water Project, and such deliveries are used in part to replenish the Basin Area; and

WHEREAS, Valley District and The Metropolitan Water District of Southern California ("Metropolitan") have entered into a Coordinated Operating Agreement dated July 10, 2000, and Attachment 2 thereto dated May 14, 2001; called and referred to herein as the "Coordinated Use Agreement"; and

WHEREAS, pursuant to such Agreements between Metropolitan and Valley District, and all attachments thereto, Metropolitan can take delivery through Valley District facilities of water imported from the State Water Project under its own contract, and has the right and obligation to purchase certain quantities of imported water from Valley District for delivery to its service area, including delivery to Western through the Riverside Corona Feeder; and

Exhibit A-2

WHEREAS, Section 9.2 of the Coordinated Use Agreement provides that Valley District, using excess capacity in its Foothill Pipeline, shall convey both its own and Metropolitan's water purchased from the State Water Project at the Devil Canyon Power Plant afterbay to mutually agreed upon locations, including locations along the Foothill Pipeline; and

WHEREAS, water delivered pursuant to Section 9.2 may be purchased from Metropolitan by Western at the regular price per acre-foot for replenishment service provided for in Metropolitan's Administrative Code; and

WHEREAS, Section 9.4 of the Coordinated Use Agreement provides that Metropolitan, in accord with its Water Surplus and Drought Management Plan, shall make available to Western, Inland Empire Utilities Agency, and the Orange County Water District up to 15,000 acre-feet per year of replenishment water through the Foothill Pipeline, at the cost of Metropolitan's purchase of State Water Project water from Valley District, plus five percent; and

WHEREAS, Western is a member agency of Metropolitan and has purchased 6000 acre-feet of replenishment water from Metropolitan, pursuant to Section 9.2 of the Coordinated Use Agreement and the terms of Metropolitan's July 15, 2004 letter; and

WHEREAS, Valley District has agreed with Metropolitan upon the timing and delivery of the replenishment water, and that the Watermaster in the Western Case has also agreed to such delivery arrangements;

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

1. Western Purchase of Replenishment Water. Western has notified Valley District that it has purchased 6000 acre-feet of imported replenishment water from Metropolitan pursuant to Section 9.2 of the Coordinated Use Agreement. Valley District shall cause such imported water to be used for replenishment of the Basin Area, consistent with any overall management plan adopted for the Basin Area. The timing of such replenishment shall be at the discretion of Valley District.

2. Replenishment Locations. Valley District shall have the option to cause Western's purchase of imported water from Metropolitan to be used for replenishment at any location it may choose, including, but not limited to:

- (a) Foothill Pipeline
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 - Badger Turnout
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Exhibit A-4

- Santa Ana Low Turnout
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 - Seven Oaks Dam Borrow Site Turnout
- (d) Greenspot Pipeline
 - Mill Creek Spreading Turnout

Such replenishment may also be accomplished through in lieu measures.

3. Replenishment Costs. In view of Valley District's right to select the replenishment location, the timing thereof, and the groundwater level benefits associated therewith, Western shall have responsibility only for the actual net costs associated with the delivery and spreading of the replenishment water purchased from Metropolitan hereunder. Any funds or the value of any benefits received by Valley District from third parties, that reflect benefits to such third parties from the replenishment operations, shall be deducted from the costs paid by Valley District. Western shall reimburse Valley District for any remaining out-of-pocket costs associated with the delivery and spreading of Western's replenishment water.

4. Extraction by Western. Western shall have the right, from time to time at its option, to extract from the Basin Area amounts of water equal to 6000 acre-feet of imported replenishment water purchased from Metropolitan pursuant to Section 1,

without charge except for its pumping costs. Western may extract such water from its own wells or wells owned by others, and from existing or from new wells. The water produced from such wells may be exported for beneficial use outside of the Basin Area.

5. Assignment of Western's Extraction Rights. Western at its option may assign and transfer its right to extract such imported water to any plaintiff in the Western case, and such assigned right shall be in addition to any right that such producer may hold, and shall not be constrained by the injunctive provisions of the Judgment in the Western case.

6. Recordation Act. Western shall make all filings required under the Water Recordation Act, Water Code Section 4999, *et seq.*, or any amendments thereto, whether such imported water is extracted from wells owned by Western or by others, or whether the extraction right has been temporarily assigned to others.

7. Watermaster Reports. The Watermaster shall include in its annual reports to the Court all amounts of imported water replenished directly or by in lieu measures pursuant to this Agreement, all amounts extracted, the wells and owners thereof by which such water is extracted, and the accumulation or reduction of any credits in the Basin Area. The Watermaster shall not include, however, the extractions made pursuant to this Agreement in its determinations of replenishment necessary to offset exports of water to areas not tributary to Riverside Narrows, as required in Section X of the Judgment.

Exhibit A-6

8. Court Approval. This Agreement shall be subject to the approval of the Court in the Western case, pursuant to its continuing jurisdiction thereof.

APPROVED the day and year hereinabove written.

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT

By: 

WESTERN MUNICIPAL WATER
DISTRICT OF RIVERSIDE COUNTY

By: 

Exhibit A-7

LAW OFFICES OF
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DECLARATION OF DONALD L. HARRIGER

AND ROBERT L. REITER

DONALD L. HARRIGER and ROBERT L. REITER each declare:

1. Each of the deponents is a registered civil engineer in the State of California specializing in hydrology. Deponents are the two members of the Committee which acts as the Watermaster to enforce the Judgment in this case, representing plaintiff Western Municipal Water District of Riverside County (“Western”) and defendant San Bernardino Valley Municipal Water District (“Valley District”).

2. The San Bernardino Groundwater Basin (“Basin Area”) is a sediment-filled trough situated between the San Andreas and San Jacinto Faults in the upper part of the Santa Ana River Basin, near the base of the San Bernardino mountains. The storage capacity of the Basin Area is estimated to be about six million acre-feet. Historically, the amount of groundwater in storage in the Basin Area has varied widely in response to natural hydrologic conditions and amounts of pumping. Between 1945 and 1968 water storage in the Basin Area was reduced by about 750,000 acre-feet. During the period 1968 through 1981, storage is estimated to have increased in the magnitude of 700,000 to 800,000 acre-feet. The estimated average annual recharge of the Basin Area by water from natural local sources is about 165,000 acre-feet per year. Part of this supply is returned to the groundwater basin after use, and is then reused. The Basin Area is also replenished with imported and recycled water. During the period from 1998 to 2002, total extractions in the Basin Area averaged about 256,000 acre-feet per year.

3. Valley District holds a contract with the State of California for the importation of water from the State Water Project and has taken deliveries of such water for replenishment of the Basin Area, for which credit is received in the Reports of the Watermaster pursuant to the Judgment in this case. In 2001 Valley District and The Metropolitan Water District of Southern California (“Metropolitan”) entered into an agreement referred to as the “Coordinated Use

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

Dated: September 3, 2004


DONALD L. HARRIGER

Dated: September 3, 2004


ROBERT L. REITER

EXHIBIT B

1 **PROOF OF SERVICE BY MAIL**

2 I am a citizen of the United States and employed in Riverside County, California. I am
3 over the age of eighteen years and not a party to the within-entitled action. My business address
4 is Best Best & Krieger LLP, 3750 University Avenue, P.O. Box 1028, Riverside, California
5 92502. I am readily familiar with this firm's practice for collection and processing of
6 correspondence for mailing with the United States Postal Service. On September 14, 2004, I
7 placed with this firm at the above address for deposit with the United States Postal Service a true
8 and correct copy of the within document(s):

9 NOTICE OF MOTION FOR ORDER APPROVING THE
10 REPLENISHMENT AND EXTRACTION AGREEMENT
11 BETWEEN SAN BERNARDINO VALLEY MUNICIPAL
12 WATER DISTRICT AND WESTERN MUNICIPAL WATER
13 DISTRICT FOR 6,000 ACRE-FEET OF WATER; POINTS AND
14 AUTHORITIES; EXHIBIT A (WESTERN REPLENISHMENT
15 AND EXTRACTION AGREEMENT FOR 6000 ACRE-FEET
16 FOR CALENDAR YEAR 2004); EXHIBIT B (DECLARATION
17 OF DONALD L. HARRIGER AND ROBERT L. REITER)

18 in a sealed envelope, postage fully paid, addressed as follows:

19 Gregory P. Priamos, Esq.
20 City of Riverside
21 City Attorney's Office
22 3900 Main Street
23 Riverside, CA 92522

24 Thomas P. Evans
25 Public Utilities Director
26 City of Riverside
27 Riverside Public Utilities Department
28 3900 Main Street, 4th Floor
Riverside, CA 92522

Ronald Young
General Manager
Elsinore Valley Municipal Water District
31315 Chaney Street
P.O. Box 3000
Lake Elsinore, CA 92531-3000

John E. Brown, Esq.
General Counsel, Elsinore Valley Municipal Water District
Best Best & Krieger LLP
P.O. Box 1028
Riverside, California 92502

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James E. Holst, Esq.
General Counsel of The Regents
Vice President – Legal Affairs
University of California
1111 Franklin Street, 8th Floor
Oakland, CA 94607-5200

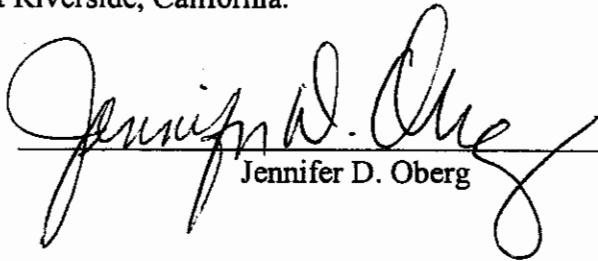
Don Hough
General Manager
Riverside Highland Water Company
1450 East Washington Street
Colton, CA 92324

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

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

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

Executed on September 14, 2004, at Riverside, California.


Jennifer D. Oberg