

# *Attachment 1*

## Authorization and Eligibility Requirements





# San Diego Region Implementation Grant Proposal

## ATTACHMENT 1: Authorization and Eligibility Requirements

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## AUTHORIZATION AND ELIGIBILITY REQUIREMENTS

This Round 2 Step 2 Proposition 50 Integrated Regional Water Management (IRWM) Implementation Grant Application is being submitted by the San Diego County Water Authority (Water Authority).

### AUTHORIZING DOCUMENTATION

Resolution 2008-01 was adopted by the Water Authority on January 24, 2008, and is included as Appendix 1. This resolution provides formal acceptance of the final San Diego Region IRWM Plan. Resolution 2007-25, adopted by the Water Authority on October 25, 2007, authorizes the Water Authority to submit this Step 2 application and execute an agreement with the State of California for an IRWM Implementation Grant (provided in Appendix 1).

### ELIGIBLE APPLICANT DOCUMENTATION

The Water Authority is applying for this grant on behalf of the participating entities in the San Diego Region Implementation Grant Proposal including the following cities, agencies, and non-governmental organizations:

- Water Authority
- City of San Diego
- County of San Diego
- City of Encinitas
- Fallbrook Public Utility District
- Helix Water District
- Mission Resource Conservation District
- Olivenhain Municipal Water District
- Padre Dam Municipal Water District
- San Diego Coastkeeper
- San Diego River Park Foundation
- San Dieguito River Valley Conservancy
- Sweetwater Authority
- Zoological Society of San Diego

The Water Authority is an eligible applicant as described below:

1. The Water Authority is a public agency of the State of California and as such is an eligible grant recipient under Section III of the Guidelines.
2. The Water Authority is a county water district organized and existing under Division 12, commencing with Section 30000, of the California Water Code. The Water Authority was organized under the County Water Authority Act of 1943 to serve as the San Diego Region's water wholesaler. The Water Authority has legal authority to enter into a grant agreement with the State.
3. The Water Authority has legal authority to enter into a grant agreement with the State of California, Department of Water Resources and the State Water Resources Control Board. The Resolution adopted by the Water Authority and included in Appendix 1 authorizes the General Manager of the Water Authority to execute an agreement with the State of California for an IRWM Implementation Grant.
4. The Water Authority, the City of San Diego and the County of San Diego, jointly developed and adopted a Memorandum of Understanding (MOU) for Development of the Integrated Regional Water Management Grant Program in 2005 (provided in Appendix 1). This MOU was developed for the Water Authority, the County of San Diego and the City of San Diego to form the Regional Water Management Group for the San Diego IRWM Program. Section 3e of the MOU states that

the “Water Authority [Water Authority] shall have overall responsibility for administering the Program grants to the San Diego Region unless other mutually agreeable arrangements are made with the granting agencies. This includes contracting with the State, contracting the submitting reports required by the grant agency and responding to any audit requests from the granting agencies.” Section 3 of the MOU further establishes the commitments and defines the roles and responsibilities of each entity participating in this regional effort and designates Water Authority as the lead agency.

### CONSISTENCY WITH ADOPTED PLAN

The projects included within this proposal are consistent with the 2007 San Diego IRWM Plan (IRWM Plan). The IRWM Plan established multiple objectives relating to water supply, infrastructure, water quality, habitat preservation/restoration, open space, scientific and technical knowledge, stakeholder participation, and recreational needs. These objectives are summarized in **Table A**.

**Table A: San Diego Region Goals and Objectives**

GOALS	OBJECTIVES	
Optimize water supply reliability	<b>D</b>	Develop and maintain a diverse mix of water resources
	<b>E</b>	Construct, operate, and maintain a reliable infrastructure system
Protect and enhance water quality	<b>F</b>	Reduce the negative effects on waterways and watershed health caused by hydromodification and flooding
	<b>G</b>	Effectively reduce sources of pollutants and environmental stressors
Provide stewardship of our natural resources	<b>H</b>	Protect, restore and maintain habitat and open space
Coordinate and integrate water resource management	<b>I</b>	Optimize water-based recreational opportunities
	<b>A</b>	Maximize stakeholder / community involvement and stewardship
	<b>B</b>	Effectively obtain, manage and assess water resources data and information
	<b>C</b>	Further the scientific and technical foundation of water management

As shown in **Table B**, each of the projects included within this proposal meets one or more of the water management objectives established for the San Diego region. In addition, each project included was identified as a Tier 1, high priority project, in Section F of the IRWM Plan (refer to Table F-2, beginning on page F-11).

**Table B: Consistency of Projects with IRWM Plan Objectives**

Proposal Projects	IRWM Plan Objectives Addressed								
	A	B	C	D	E	F	G	H	I
<b>Program: Conservation</b>									
Implementation of Integrated Landscape and Agricultural Efficiency Program	✓	✓	✓	✓					
Irrigation Hardware Giveaway and Dry Weather Runoff Reduction Demonstration	✓	✓	✓	✓					
Over-Irrigation/Bacteria Reduction	✓	✓	✓	✓			✓		
<b>Program: Water Recycling</b>									
Santee Water Reclamation Facility Expansion Project	✓		✓	✓	✓				✓
Recycled Water Retrofit Assistance Program	✓		✓	✓					
City of San Diego Recycled Water Distribution System Expansion, Parklands Retrofit, and Indirect Potable Reuse/Reservoir Augmentation Project	✓		✓	✓	✓		✓		✓
<b>Program: Local Supply Protection and Development</b>									
San Vicente Reservoir Source Water Protection through Watershed Property Acquisition and Restoration				✓	✓	✓	✓	✓	✓
El Capitan Reservoir Watershed Acquisition and Restoration Program				✓		✓	✓	✓	✓
Northern San Diego County Invasive Non-Native Species Control Program		✓		✓		✓		✓	
Santa Margarita Conjunctive Use Project				✓					
Carlsbad Desalination Project Local Conveyance	✓		✓	✓	✓			✓	✓
San Diego Region Four Reservoir Intertie Project Conceptual Design	✓		✓	✓	✓				✓
South San Diego County Water Supply Strategy	✓	✓	✓	✓					
El Monte Valley Groundwater Recharge and River Restoration Project, Phases 1 and 2	✓		✓	✓	✓	✓	✓	✓	✓
<b>Program: Education and Outreach</b>									
San Diego Regional Pollution Prevention	✓	✓	✓				✓		✓
Educational Demonstration Wetland	✓		✓			✓	✓		✓
San Dieguito Watershed Management Plan Implementation	✓		✓				✓	✓	✓
San Diego River Watershed Management Plan Implementation	✓		✓				✓	✓	✓
City of San Diego Green Mall Porous Paving and Infiltration, Phase 1	✓	✓	✓			✓	✓		✓
County of San Diego Chollas Creek Runoff Reduction and Groundwater Recharge		✓	✓			✓	✓		✓

## CONSISTENCY WITH COASTAL PROJECTS EXCEPTION TO MAXIMUM GRANT AMOUNT

Not applicable. While the 2007 San Diego IRWM Plan was developed in coordination with the La Jolla Integrated Coastal Water Management Plan, this proposal does not request an amount of funding over the maximum grant amount.

## URBAN WATER MANAGEMENT PLANS

All applicants and participating entities that are urban water suppliers and that have projects that could receive funding from the grant must submit and have their 2005 Urban Water Management Plan (UWMP) deemed complete by the Department of Water Resources (DWR) prior to receiving grant funding.

- The Water Authority is an urban water supplier. In compliance with the Urban Water Management Act, Water Authority submitted a 2005 UWMP to DWR on Dec. 15, 2005. The Water Authority's UWMP was deemed complete as of May 21, 2007.
- The City of San Diego Water Department is an urban water supplier. In compliance with the Urban Water Management Act, the City of San Diego Water Department submitted a 2005 UWMP to DWR on Oct. 23, 2006. Based on recent communications with DWR, the City of San Diego's UWMP review was recently completed and the City is currently making the requested modifications.
- Fallbrook Public Utilities District (PUD) is an urban water supplier. In compliance with the Urban Water Management Act, Fallbrook PUD submitted a 2005 UWMP to DWR on Dec. 27, 2005. Based on recent communications with DWR, the Fallbrook PUD UWMP review is scheduled to be completed by mid-February, 2008.
- Helix Water District is an urban water supplier. In compliance with the Urban Water Management Act, Helix Water District submitted a 2005 UWMP to DWR on Dec. 30, 2005. Helix Water District's UWMP was deemed complete as of Jan. 12, 2007.
- Olivenhain Municipal Water District (MWD) is an urban water supplier. In compliance with the Urban Water Management Act, Olivenhain MWD submitted a 2005 UWMP to DWR on Jan. 3, 2006. Olivenhain MWD's UWMP was deemed incomplete as of May 29, 2006. Olivenhain MWD has revised and re-adopted the updated UWMP, and will be resubmitting the updated UWMP to DWR in February of 2008.
- Padre Dam Municipal Water District is an urban water supplier. In compliance with the Urban Water Management Act, Padre Dam MWD submitted a 2005 UWMP to DWR on Dec. 29, 2005. Based on recent communications with DWR, the Padre Dam MWD UWMP review is scheduled to be completed by mid-February, 2008.
- Sweetwater Authority is an urban water supplier. In compliance with the Urban Water Management Act, Sweetwater Authority submitted a 2005 UWMP to DWR on Dec. 16, 2005. Based on recent communications with DWR, the Sweetwater UWMP review is scheduled to be completed at the end of January, 2008.

## GWMP COMPLIANCE

The IRWM Program Guidelines require projects potentially impacting a groundwater basin to comply with the following requirements (from page 10 of the IRWM Program Guidelines):

Groundwater Management Plan (GWMP) Compliance – For groundwater management and recharge projects and for projects with potential groundwater impacts, the applicant or the participating agency responsible for such projects must demonstrate that either:

- They have prepared and implemented a GWMP in compliance with CWC § 10753.7;
- They participate or consent to be subject to a GWMP, basin-wide management plan, or other IRWM program or plan that meets the requirements of CWC §10753.7(a);
- The Proposal includes development of a GWMP that meets the requirements of CWC § 10753.7 which will be completed within 1-year of the grant application submittal date (for the purposes of these Guidelines, the Step 2 application submittal date); or
- They conform to the requirements of an adjudication of water rights in the subject groundwater basin.

The following projects may potentially affect local groundwater basins. They will comply with the above groundwater management plan (GWMP) requirement as described below.

- Project: Santa Margarita Conjunctive Use Project  
Implementing Agency: Fallbrook Public Utility District  
GWMP Compliance Approach and Status: This project will take place in the Santa Margarita Valley groundwater basin, which has been adjudicated since 1966. All elements of this project conform to the requirements of the adjudication. In addition, an adaptive groundwater management plan will be developed and implemented as part of this project. The adjudication can be found in Appendix 1 of this document.
- Project: El Monte Valley Groundwater Recharge and River Restoration Project, Phases 1 and 2  
Implementing Agency: Helix Water District  
GWMP Compliance Approach and Status: This project will affect the El Monte Groundwater Basin. As part of the work currently being performed in support of this project, a Groundwater Management Plan is being prepared for the El Monte Basin. This Groundwater Management Plan will reflect the results of the additional groundwater modeling and pilot testing work currently being performed and will be complete by June 2008.

# Resolution to Adopt the 2007 San Diego IRWM Plan and Authorization to Submit this Step 2 Application

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**Resolution 2008-01:** Resolution of the Board of Directors of the San Diego County Water Authority Adopting the Amended 2007 San Diego Integrated Regional Water Management Plan (dated January 24, 2008)

**Resolution 2007-25:** Resolution of the Board of Directors of the San Diego County Water Authority Authorizing General Manager to Submit a Round Two, Step Two, Proposition 50, Chapter 8 Grant Application (dated October 25, 2007)



RESOLUTION No. 2008-01

**RESOLUTION OF THE BOARD OF  
DIRECTORS OF THE SAN DIEGO COUNTY  
WATER AUTHORITY ADOPTING THE AMENDED 2007  
SAN DIEGO INTEGRATED REGIONAL WATER  
MANAGEMENT PLAN**

WHEREAS, the San Diego Regional Water Management Group (RWMG), in close cooperation with the Regional Advisory Committee (RAC), has drafted the first San Diego Integrated Regional Water Management (IRWM) Plan to optimize water supply reliability, protect and enhance of water quality, provide stewardship of natural resources and coordinate and integrate water resource management in the region; and

WHEREAS, the 2007 San Diego IRWM Plan defines the San Diego Region as the 11 parallel and similar hydrologic units with the county that discharge to coastal water; and

WHEREAS, the San Diego IRWM Plan establishes the plan's mission, vision, goals, objectives and regional priorities; and

WHEREAS, the San Diego IRWM Plan will form the foundation of long-term IRWM planning in the region, fostering coordination, collaboration and communication among governmental and non-governmental water stakeholders; and

WHEREAS, achieving IRWM grant funding will help to achieve the regional water supply goals established in the Water Authority's 2005 Urban Water Management Plan; and

WHEREAS, having an IRWM Plan in place will position the San Diego Region to compete for funding opportunities; and

WHEREAS, the Water Authority Board of Directors is the decision-making body for the Water Authority; and

WHEREAS, adoption of the San Diego IRWM Plan by the San Diego County Water Authority Board of Directors is a required element of the San Diego Region's application for Proposition 50, Chapter 8 funding; and

WHEREAS, on September 19, 2007, the RAC recommended that the Water Authority Board adopt the San Diego IRWM Plan; and

WHEREAS, the Water Authority Board of Directors adopted the San Diego IRWM Plan at its October 25, 2007 meeting; and

WHEREAS, subsequent to October 25, 2007, the San Diego IRWM Plan has been amended; and

WHEREAS, the Board of Directors has considered the reports submitted by Water Authority staff on IRWM planning dated February 14, 2007; May 16, 2007; July 18, 2007; September 19, 2007; October 25, 2007; and January 24, 2008.

NOW, THEREFORE, the Board of Directors of the San Diego County Water Authority resolves the following:

1. The foregoing facts are true and correct.
2. The Board of Directors adopts the 2007 San Diego Integrated Regional Water Management Plan, as amended, dated January 24, 2008, and on file with the clerk of the board.

PASSED, APPROVED AND ADOPTED, this 24<sup>th</sup> day of January, 2008, by the following vote:

AYES: Unless otherwise noted, all Directors present voted aye.

NOES:

ABSTAIN:

ABSENT: Arant (p), Bowersox, Brammell, Craver, Ferguson, and Ken Williams

  
\_\_\_\_\_  
Fern M. Steiner  
Chair

ATTEST:

  
\_\_\_\_\_  
Mark W. Watton  
Secretary

I, Doria F. Lore, Clerk of the Board of the San Diego County Water Authority, certify that the vote shown above is correct and this Resolution No. 2008-01 was duly adopted at the meeting of the Board of Directors on the date stated above.

  
\_\_\_\_\_  
Doria F. Lore  
Clerk of the Board

RESOLUTION No. 2007-25

**RESOLUTION OF THE BOARD OF  
DIRECTORS OF THE SAN DIEGO COUNTY  
WATER AUTHORITY AUTHORIZING  
THE GENERAL MANAGER TO SUBMIT A  
ROUND TWO, STEP TWO, PROPOSITION 50,  
CHAPTER 8 GRANT APPLICATION**

WHEREAS, Proposition 50, the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Water Code section 79560 et seq.), authorized the California Legislature to appropriate approximately \$370 million to encourage integrated regional water management planning in California; and

WHEREAS, the IRWM Grant Program provides funding through competitive grants for integrated regional water management; and

WHEREAS, the IRWM Grant Program is administered jointly by the Department of Water Resources (DWR) and the State Water Resources Control Board (SWRCB); and

WHEREAS, grant application procedures established by DWR and the SWRCB require applicants to provide a copy of a resolution adopted by the applicant's governing body designating an authorized representative to file an application for an IRWM implementation grant; and

WHEREAS, achieving IRWM grant funding will help to achieve the regional water supply goals established in the Water Authority's 2005 Urban Water Management Plan; and

WHEREAS, the San Diego Regional Water Management Group (RWMG), in close cooperation with the Regional Advisory Committee (RAC), is preparing an application for a round two, step two, Proposition 50, Chapter 8 grant to further water supply reliability, water quality enhancement, natural resources stewardship, and water resource management in the region; and

WHEREAS, on September 19, 2007, the RAC recommended that the Water Authority Board authorize submittal of the San Diego Region's application for a round two, step two, Proposition 50, Chapter 8 grant; and

WHEREAS, the Water Authority Board of Directors is the decision-making body for the Water Authority; and

WHEREAS, the Board of Directors has considered the reports submitted by Water Authority staff on IRWM planning dated February 14, 2007; May 16, 2007; July 18, 2007; and September 19, 2007.

NOW, THEREFORE, the Board of Directors of the San Diego County Water Authority resolves the following:

1. The foregoing facts are true and correct.
2. The General Manager is authorized to prepare the necessary data, conduct investigations, and submit a round two, step two, Proposition 50, Chapter 8 grant application.
3. The General Manager is authorized to enter into an agreement to receive a round two, step two, Proposition 50, Chapter 8 grant from the California Department of Water Resources or the State Water Resources Control Board.

PASSED, APPROVED AND ADOPTED, this 25<sup>th</sup> day of October, 2007, by the following vote:

AYES: Unless noted below all Directors voted aye.

NOES:

ABSTAIN: Barrett and Pocklington

ABSENT: Brammell, Craver, Croucher, Lewinger, Martin (p), Muir, Petty, and Price



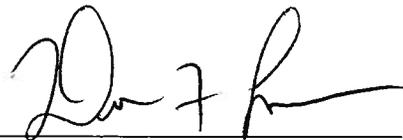
Fern M. Steiner  
Chair

ATTEST:



Mark W. Watton  
Secretary

I, Doria F. Lore, Clerk of the Board of the San Diego County Water Authority, certify that the vote shown above is correct and this Resolution No. 2007- 25 was duly adopted at the meeting of the Board of Directors on the date stated above.



Doria F. Lore  
Clerk of the Board

## San Diego Integrated Regional Water Management Plan Proposed Project List

<b>Project title</b>	<b>Primary proponent</b>	<b>Total project cost</b>	<b>Recommended funding amount</b>
Carlsbad Desalination Project Local Conveyance	Olivenhain Municipal Water District	\$80,000,000	\$2,000,000
City of San Diego Green Mall Porous Paving and Infiltration – Phase 1	City of San Diego	\$500,000	\$250,000
City of San Diego Municipal Rooftop Rain Harvesting – Phase 1	City of San Diego	\$150,000	\$50,000
City of San Diego Parklands Recycled Water Retrofit and Distribution System	City of San Diego	\$7,000,000	\$1,000,000
Conservation in the Campo Valley	Back County Land Trust of San Diego County	\$5,600,000	\$650,000
County of San Diego Chollas Creek Runoff Reduction and Groundwater Recharge Project	County of San Diego	\$1,600,000	\$600,000
Educational Demonstration Wetland Project	Zoological Society of San Diego	\$830,000	\$700,000
El Capitan Reservoir Watershed Acquisition Program	San Diego River Park Foundation	\$1,217,000	\$900,000
El Monte Valley Groundwater Recharge and River Restoration Project – Phase 1 and 2	Helix Water District	\$62,500,000	\$2,500,000
Green – San Dieguito	County of San Diego	\$1,200,000	\$450,000
Implementation of Agricultural Efficiency Program	San Diego County Water Authority	\$520,000	\$390,000
Implementation of Integrated Landscape Program	San Diego County Water Authority	\$8,450,000	\$1,631,508
Integrated Commercial/Industrial/Institutional and Residential Indoor Conservation Program	City of San Diego	\$1,432,440	\$1,088,492
North City Recycled Water Distribution System Expansion – Phase 2	City of San Diego	\$8,000,000	\$2,325,000
Northern San Diego County Invasive Non-Native Species Control Program	Mission Resource Conservation District	\$9,640,000	\$1,000,000
Over-irrigation Runoff/Bacteria Reduction Project	City of Encinitas	\$522,250	\$225,000
Recycled Water Retrofit Assistance Program	San Diego County Water Authority	\$1,600,000	\$800,000
San Diego Regional Water Quality Assessment and Outreach Project	San Diego Coastkeeper	\$824,500	\$700,000
San Diego Region Four-Reservoir Intertie Project Feasibility Study	Sweetwater Authority	\$3,000,000	\$750,000
San Diego River Watershed Coordinator	San Diego River Parkway Foundation	\$115,000	\$100,000
San Dieguito Watershed Council Staffing	San Dieguito River Valley Conservancy	\$100,000	\$90,000
Santa Margarita Conjunctive Use Project	Fallbrook PUD	\$60,000,000	\$2,500,000
Santee Water Reclamation Facility Expansion Project	Padre Dam Municipal Water District	\$23,000,000	\$3,000,000
San Vicente Reservoir Source Water Protection Program	City of San Diego	\$1,250,000	\$1,000,000
South San Diego County Water Supply Strategy	Sweetwater Authority	\$1,350,000	\$300,000



# Regional Water Management Group Memorandum of Understanding (with Amendment 1)

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San Diego Region Implementation Grant Application

**MEMORANDUM OF UNDERSTANDING  
BETWEEN CITY OF SAN DIEGO WATER DEPARTMENT  
COUNTY OF SAN DIEGO And SAN DIEGO COUNTY WATER AUTHORITY  
FOR FYS 2005-2009 for the  
INTEGRATED REGIONAL WATER MANAGEMENT GRANT PROGRAM**

This Memorandum of Understanding (MOU) between the San Diego County Water Authority (WATER AUTHORITY), organized and existing under the County Water Authority Act of the State of California, Chapter 45, Water Code – Appendix and Amendments thereto, the City of San Diego (CITY) and the County of San Diego (COUNTY) sets forth the respective roles of the WATER AUTHORITY, CITY and COUNTY in regard to the INTEGRATED REGIONAL WATER MANAGEMENT (IRWM) GRANT PROGRAM. WATER AUTHORITY, CITY AND COUNTY are sometimes referred to in this MOU collectively as the "PARTIES" and severally as a "PARTY."

**RECITALS:**

WHEREAS in November 2002, the People of California passed Proposition 50, the Water Security, Clean Drinking Water, Coastal and Beach Protection Act (PROP 50) to amend the California Water Code to add Sections 79560 - 79565, authorizing the Legislature to appropriate funding for competitive grants for IRWM projects;

WHEREAS, the California Legislature enacted SB 1672 (Costa, Chapter 767, Statutes of 2002), The Integrated Regional Water Management Planning Act of 2002, to provide that a regional water management group may prepare and adopt an integrated regional water management plan;

WHEREAS, the intent of the IRWM Grant Program (PROGRAM) established in accordance with PROP 50 and SB 1672 is to encourage integrated regional strategies for management of water resources and to provide funding, through competitive grants, for projects that protect communities from drought, protect and improve water quality, and improve local water security by reducing dependence on imported water;

WHEREAS, the PROGRAM Guidelines (GUIDELINES) provide that in order for implementation grants to be considered, at least three agencies must participate, two of which must have statutory authority over water management that may include water supply, water quality, flood control, or storm water management;

WHEREAS, the PARTIES desire by this MOU to qualify as a regional water management group in order to apply for PROGRAM funding and to develop and implement a PLAN;

WHEREAS, the regional water management group consists of the WATER AUTHORITY and CITY, both of which have statutory authority over water management, and COUNTY, which has statutory authority over water quality;

WHEREAS, this MOU consists of three major components: IRWM Implementation Grant application, development of the IRWM Plan, and the solicitation, selection and administration of projects included in the IRWM Implementation Grant package;

WHEREAS, the PARTIES intend to concurrently apply for Implementation Grant funding and develop an IRWM Plan;

WHEREAS, the PARTIES desire to set forth their respective roles, terms of payment and payment processes and the duration of this MOU as described herein;

NOW, THEREFORE, IN CONSIDERATION OF THE RECITALS AND MUTUAL OBLIGATIONS OF THE PARTIES HEREIN EXPRESSED, WATER AUTHORITY, CITY AND COUNTY AGREE AS FOLLOWS:

**1 INTEGRATED REGIONAL WATER MANAGEMENT IMPLEMENTATION GRANT APPLICATION**

- a. WATER AUTHORITY shall have primary responsibility for developing and submitting the IRWM implementation grant application (APPLICATION) and shall submit the APPLICATION to the State on behalf of all PARTIES.
- b. WATER AUTHORITY shall issue an RFP for consultant services to develop the Application and shall contract with and have management responsibility for the consultant.
- c. WATER AUTHORITY shall provide funding for the consultant and for development of the Application in order to expedite the APPLICATION process. The cost of the consultant and Application shall be credited toward the WATER AUTHORITY's share of expenses in this MOU. Cost for the consultant and development of the APPLICATION is estimated to be \$50,000.
- d. CITY and COUNTY shall be active participants in the APPLICATION development process and shall provide timely input in accordance to the schedule mutually agreed upon by all PARTIES.
- e. The APPLICATION shall be developed in accordance with the GUIDELINES and schedule established pursuant to Chapter 8, Proposition 50.
- f. All PARTIES shall have necessary reviews and approvals completed by their respective organizations prior to submittal.

**2. INTEGRATED REGIONAL WATER MANAGEMENT PLAN DEVELOPMENT**

- a. WATER AUTHORITY shall have primary responsibility for developing the IRWM plan (PLAN), including publishing a notice of intent to prepare the plan and holding a public hearing as required by SB 1672. WATER AUTHORITY shall have primary responsibility for submitting the PLAN to the State when required.
- b. WATER AUTHORITY shall issue an RFP for consultant services to develop the PLAN and shall contract with and have management responsibility for the consultant.
- c. WATER AUTHORITY, upon mutual agreement of all PARTIES, may issue a sole source contract for the PLAN to the consultant developing the APPLICATION.

- d. WATER AUTHORITY shall provide up-front funding for the consultant for development of the PLAN. The cost of developing the PLAN is estimated to be \$250,000. Costs will be reimbursed to WATER AUTHORITY per Section 4. Funding.
- e. CITY and COUNTY shall be active participants in the PLAN development process and shall provide timely input in accordance to the schedule mutually agreed upon by all PARTIES.
- f. The PLAN shall be developed in accordance with the GUIDELINES and schedule established pursuant to Chapter 8, Proposition 50 and adopted by all PARTIES by January 1, 2007.
- g. All PARTIES shall have necessary reviews and approvals completed by their respective organizations prior to submittal.

### 3. INTEGRATED REGIONAL WATER MANAGEMENT GRANT PROJECTS

- a. The GUIDELINES established in accordance with Proposition 50, Chapter 8 provide for two cycles of funding for implementation grants, \$148 million and \$220 million in Cycles 1 and 2, respectively. The PARTIES intend to apply for funding during both cycles. Each PARTY shall be responsible for developing proposals for projects for both funding cycles that meet the requirements of Proposition 50.
  - WATER AUTHORITY shall be responsible for developing project lists and managing funding for member agency projects (other than CITY).
  - CITY shall be responsible for developing project lists and managing funding for projects that fall within CITY's jurisdictional boundaries, are located on CITY-owned property, or are projects in which CITY is involved as a partner.
  - COUNTY shall be responsible for developing project lists and managing funding for regional non-governmental organizations, storm water and watershed projects or projects not otherwise explicitly within the responsibilities of the WATER AUTHORITY or CITY.
  - As mutually agreeable to all PARTIES, responsibilities for developing project lists and managing individual project funding may be divided differently than described above.
- b. The PARTIES shall develop their project proposals to meet the stated program preferences of Proposition 50 for projects that:
  - Include integrated projects with multiple benefits;
  - Support/improve local and regional water supply reliability;
  - Contribute to water quality standards;
  - Eliminate or reduce pollution in impaired water and sensitive habitat areas; and
  - Projects that serve disadvantaged communities.
- c. The PARTIES shall form a team that shall develop selection criteria and priorities for choosing projects for inclusion in the APPLICATION that will result in the greatest opportunity for the San Diego region to receive grant project funding. The PARTIES shall develop selection guidelines based upon the evaluation criteria provided in Proposition 50 and the Proposal Solicitation Package. This may include the selection of an independent advisory panel such as a Project Clean Water Technical Advisory

Committee, or other, to evaluate the integrated regional water benefits of proposed projects.

- d. Projects will first be selected based upon a mix of the stated program preferences and overall quality of projects. As much as practical, consideration will also be given to promoting an equitable distribution of project funding among the respective areas of oversight of each PARTY.
- e. The WATER AUTHORITY shall have overall responsibility for administering the PROGRAM grants in the San Diego region unless other mutually agreeable arrangements are made with the granting agencies. This includes contracting with the State, coordinating and submitting reports required by the grant agency and responding to any audit requests from the granting agencies.
- f. Each PARTY shall notify their respective project managers of the results of the evaluation process by the regional selection committee and of the State selection committee. Each PARTY shall obtain all necessary governing body approvals prior to accepting any grant funding. The PARTIES shall require each non-PARTY to demonstrate its ability to effectively proceed with and complete the non-PARTY's project before grant funding will be accepted.
- g. Each PARTY shall be responsible for managing grant projects as set forth in Section 3 and for requiring adherence to the contractual requirements of the funding agency.
- h. A PARTY whose project is awarded PROGRAM funding, or who is managing the project of a non-PARTY that has been awarded PROGRAM funding, shall be responsible for providing sufficient project funding to operate the project until State funding shall be received.
- i. A PARTY whose project is awarded PROGRAM funding, or who is managing the project of a non-PARTY that has been awarded PROGRAM funding, shall invoice the WATER AUTHORITY who shall in turn invoice the State. A PARTY managing the grant project of a non-PARTY shall require the non-PARTY to invoice the managing PARTY. Upon receipt of State funds by the WATER AUTHORITY, the funds shall promptly be issued to the managing PARTY who shall issue the funds to the non-PARTY, if applicable..
- j. In the event the State agrees to contract directly with a non-PARTY grantee or a PARTY other than the WATER AUTHORITY, the PARTY or non-PARTY grantee may invoice the State in accordance with their agreement. Unless otherwise agreed by the PARTIES, the WATER AUTHORITY shall retain oversight responsibility over projects awarded grants under this MOU.
- k. In the event the State funds the PROGRAM grant APPLICATION package at a level less than the requested dollar amount and does not provide direction on which projects to fund, then the PARTIES shall reevaluate all projects based on the above stated process and fund as determined by that reevaluation of projects and their integration into regional priorities and benefits.

#### 4. FUNDING

Funding under this agreement shall not exceed \$300,000 with each PARTY providing an equal share in a maximum amount of \$100,000. If costs to implement the MOU shall exceed \$100,000 each, then the PARTIES by written amendment to the MOU, may contribute

equally to a mutually agreed upon increase. The increased funding shall be invoiced and paid in the same manner as the original funding. The costs of the MOU shall not include expenditures to implement PROGRAM grants.

WATER AUTHORITY shall invoice CITY and COUNTY on a quarterly basis along with supporting documentation of expenses. CITY and COUNTY shall remit payment within 60 days of receipt of invoice.

PARTIES shall not assign, sublet or transfer this MOU or any rights under or interest in this MOU without written consent of all other PARTIES, which may be withheld for any reason.

5. CEQA

All PARTIES shall be mutually responsible for assuring that the PLAN complies with the requirements of the California Environmental Quality Act (CEQA) and that all necessary documents are filed. Each PARTY shall be individually responsible for CEQA compliance on its projects, or non-PARTY projects that it manages, that are awarded PROGRAM grants.

6. DEFENSE AND INDEMNITY

a. **Claims Arising From Sole Acts or Omissions of WATER AUTHORITY**

WATER AUTHORITY hereby agrees to defend and indemnify COUNTY, its respective agents, officers and employees (collectively referred to in this paragraph as "COUNTY"), from any claim, action or proceeding against COUNTY, arising solely out of the acts or omissions of WATER AUTHORITY in the performance of this MOU. At its sole discretion, COUNTY may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve WATER AUTHORITY of any obligation imposed by this MOU. COUNTY shall notify WATER AUTHORITY promptly of any claim, action or proceeding and cooperate fully in the defense. WATER AUTHORITY further agrees to defend and indemnify CITY, its respective agents, officers and employees (collectively referred to in this paragraph as "CITY"), from any claim, action or proceeding against CITY, arising solely out of the acts or omissions of WATER AUTHORITY in the performance of this MOU. At its sole discretion, CITY may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve WATER AUTHORITY of any obligation imposed by this MOU. CITY shall notify WATER AUTHORITY promptly of any claim, action or proceeding and cooperate fully in the defense.

b. **Claims Arising From Sole Acts or Omissions of CITY**

CITY hereby agrees to defend and indemnify WATER AUTHORITY, its respective agents, officers and employees (collectively referred to in this paragraph as "WATER AUTHORITY"), from any claim, action or proceeding against WATER AUTHORITY, arising solely out of the acts or omissions of CITY in the performance of this MOU. At its sole discretion, WATER AUTHORITY may participate at its own expense in the defense of any claim, action or proceeding, but such participation

shall not relieve CITY of any obligation imposed by this MOU. WATER AUTHORITY shall notify CITY promptly of any claim, action or proceeding and cooperate fully in the defense. CITY further agrees to defend and indemnify COUNTY, its respective agents, officers and employees (collectively referred to in this paragraph as "COUNTY"), from any claim, action or proceeding against COUNTY, arising solely out of the acts or omissions of CITY in the performance of this MOU. At its sole discretion, COUNTY may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve CITY of any obligation imposed by this MOU. COUNTY shall notify CITY promptly of any claim, action or proceeding and cooperate fully in the defense.

**c. Claims Arising From Sole Acts or Omissions of COUNTY**

COUNTY hereby agrees to defend and indemnify WATER AUTHORITY, its respective agents, officers and employees (collectively referred to in this paragraph as "WATER AUTHORITY"), from any claim, action or proceeding against WATER AUTHORITY, arising solely out of the acts or omissions of COUNTY in the performance of this MOU. At its sole discretion, WATER AUTHORITY may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve COUNTY of any obligation imposed by this MOU. WATER AUTHORITY shall notify COUNTY promptly of any claim, action or proceeding and cooperate fully in the defense. COUNTY further agrees to defend and indemnify CITY, its respective agents, officers and employees (collectively referred to in this paragraph as "CITY"), from any claim, action or proceeding against CITY, arising solely out of the acts or omissions of COUNTY in the performance of this MOU. At its sole discretion, CITY may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve COUNTY of any obligation imposed by this MOU. CITY shall notify COUNTY promptly of any claim, action or proceeding and cooperate fully in the defense.

**d. Claims Arising From Concurrent Acts or Omissions**

WATER AUTHORITY hereby agrees to defend itself, CITY hereby agrees to defend itself, and COUNTY hereby agrees to defend itself, from any claim, action or proceeding arising out of the concurrent acts or omissions of WATER AUTHORITY, CITY and COUNTY. In such cases, WATER AUTHORITY, CITY and COUNTY agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in paragraph f below. In the case of a claim that arises from the concurrent acts or omissions of only two of the PARTIES, those two shall defend and indemnify the third PARTY equally.

**e. Joint Defense**

Notwithstanding paragraph d above, in cases where the PARTIES agree in writing to a joint defense, the PARTIES may appoint joint defense counsel to defend the claim, action or proceeding arising out of the concurrent acts or omissions of the PARTIES. Joint defense counsel shall be selected by mutual agreement of the PARTIES. The PARTIES agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in paragraph f below. The PARTIES further agree

that no PARTY may bind another to a settlement agreement without the written consent of the PARTY to be bound.

**f. Reimbursement and/or Reallocation**

Where a trial verdict or arbitration award allocates or determines the comparative fault of the PARTIES, each PARTY may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

**7. DOCUMENT REVIEW**

WATER AUTHORITY, CITY and COUNTY each shall make available for inspection to the other PARTIES, upon reasonable advance notice, all records, books and other documents relating to the PLAN and the GRANT PROGRAM, unless privileged.

**8. TERM**

The term of this MOU shall be from the date of execution by all PARTIES through June 30, 2009. All PARTIES agree to continue participating in the planning, development and coordination of the PLAN and Grants to the maximum extent possible for the duration of the agreement. However, the term is contingent upon funding by WATER AUTHORITY, CITY and COUNTY. In the event that future budget appropriations are not approved by one or more of the PARTIES, this MOU shall terminate at the beginning of the fiscal year for which such appropriations are not made. The PARTIES shall notify each other of this event. Also, if appropriations are different than anticipated, MOU and GRANT PROGRAM funding shall be adjusted based on available funding.

This MOU may be extended upon mutual written agreement of all PARTIES.

**9. NOTICE**

Any notice, payment, credit or instrument required or permitted to be given hereunder will be deemed received upon personal delivery or 24 hours after deposit in any United States mail depository, first class postage prepaid, and addressed to the PARTY for whom intended as follows:

If to the WATER AUTHORITY:

San Diego County Water Authority  
4677 Overland Avenue  
San Diego, CA 92123  
Attn: Vickie V. Driver

If to CITY:

City of San Diego Water Department  
2797 Caminito Chollas  
San Diego, CA 92105  
Attn: Robert J. Collins

If to COUNTY

County of San Diego  
9325 Hazard Way  
San Diego, CA 92123  
Attn: Jon Van Rhyn

Any PARTY may change such address or contact by notice given to the other PARTIES as provided herein.

10. AMENDMENTS

The MOU may be amended as circumstances necessitate by written agreement executed by all PARTIES.

11. SEVERABILITY

The partial or total invalidity of one or more parts of this MOU will not affect the intent or validity of this MOU.

12. GOVERNING LAW

This MOU shall be deemed a contract under the laws of the State of California and for all purposes shall be interpreted in accordance with such laws. WATER AUTHORITY, CITY and COUNTY hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that the venue of any action brought hereunder shall be in San Diego County, California.

13. OBLIGATIONS

Nothing in this agreement shall create additional obligations with respect to the Plan implemented.

14. TERMINATION OF MOU

This MOU may be terminated by any PARTY hereto for any reason 30 days after notice in writing to the other PARTIES.

**15. SIGNATURES**

The individuals executing this MOU represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the PARTIES have executed this MOU as of the date above.

San Diego County  
Water Authority

City of San Diego

By:   
Ken Weinberg  
Director of Water Resources

By:   
Frank Belock, Jr.  
Water Department Director

County of San Diego

By:   
Winston F. McColl, Director  
Department of Purchasing and Contracting

**APPROVED AS TO FORM:**

San Diego County  
Water Authority

City of San Diego

By:   
General Counsel  
San Diego County Water Authority

By:   
Deputy City Attorney

By:   
Senior Deputy County Counsel

15. SIGNATURES

The individuals executing this MOU represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the PARTIES have executed this MOU as of the date above.

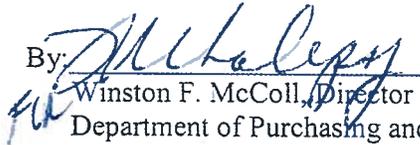
San Diego County  
Water Authority

City of San Diego

By: \_\_\_\_\_  
Ken Weinberg  
Director of Water Resources

By: \_\_\_\_\_  
Frank Belock, Jr.  
Water Department Director

County of San Diego

By:  \_\_\_\_\_  
Winston F. McColl, Director  
Department of Purchasing and Contracting

APPROVED AS TO FORM:

San Diego County  
Water Authority

City of San Diego

By: \_\_\_\_\_  
General Counsel  
San Diego County Water Authority

By: \_\_\_\_\_  
Deputy City Attorney

By:  \_\_\_\_\_  
Senior Deputy County Counsel

13. OBLIGATIONS

Nothing in this agreement shall create additional obligations with respect to the Plan implemented.

14. TERMINATION OF MOU

This MOU may be terminated by any PARTY hereto for any reason 30 days after notice in writing to the other PARTIES.

15. SIGNATURES

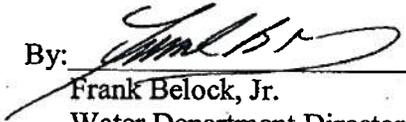
The individuals executing this MOU represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the PARTIES have executed this MOU as of this  
\_\_\_\_\_ day of JUN 13, 2005.

San Diego County  
Water Authority

City of San Diego

By: \_\_\_\_\_  
Ken Weinberg  
Director of Water Resources

By:   
Frank Belock, Jr.  
Water Department Director

County of San Diego

By: \_\_\_\_\_  
Winston F. McColl, Director  
Department of Purchasing and Contracting

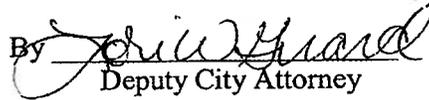
[SIGNATURES CONTINUE ON NEXT PAGE]

APPROVED AS TO FORM

San Diego County  
Water Authority

City of San Diego  
MICHAEL J. AGUIRRE, City  
Attorney

By: \_\_\_\_\_  
General Counsel  
San Diego County Water Authority

By:   
Deputy City Attorney

County of San Diego

By: \_\_\_\_\_  
Senior Deputy County Counsel

FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF  
SAN DIEGO, COUNTY OF SAN DIEGO AND SAN DIEGO COUNTY WATER  
AUTHORITY FOR FISCAL YEARS 2005-2009 FOR THE INTEGRATED REGIONAL  
WATER MANAGEMENT GRANT PROGRAM

RECITALS

WHEREAS, on June 13, 2005, the City of San Diego [CITY], the County of San Diego [COUNTY] and the San Diego County Water Authority [WATER AUTHORITY] (collectively, the "PARTIES") entered into a Memorandum of Understanding [MOU] for the purposes of forming a Regional Water Management Group (RWMG), developing an Integrated Regional Water Management (IRWM) Plan and applying for Chapter 8, Proposition 50 grant funding. Acting as the RWMG, the PARTIES applied for grant funding under the first cycle of Proposition 50, but were not awarded grant funding. The RWMG is now focusing on completing the IRWM Plan and preparing for additional funding cycles.

WHEREAS, the PARTIES are currently in the process of preparing an IRWM Plan, which is scheduled to be completed by January 2008 and will be presented to the PARTIES' governing bodies for approval. The MOU did not address or provide funding for implementation of the IRWM Plan if adopted. In order to efficiently implement the IRWM Plan, the PARTIES believe it would be desirable to create a separate institutional structure, which will include the active participation of the stakeholders whose projects have been incorporated into the IRWM Plan.

WHEREAS, Proposition 84, approved by the voters in November of 2006, will allocate an additional \$91 million dollars in grant funding for projects developed under IRWM Plans for the San Diego Hydrologic region.

WHEREAS, the MOU did not anticipate provide funding to prepare Proposition 50, Chapter 8, grant applications beyond the first cycle or potential grant applications under Proposition 84.

WHEREAS, it is estimated that it will cost approximately \$600,000 to apply for additional IRWM Plan grant funding, conduct public/stakeholder outreach activities, and establish an agreement between all stakeholders for the creation of an institutional structure that will carry out the implementation of the IRWM Plan.

WHEREAS, the PARTIES understand that only through a collaborative effort with the many stakeholders involved in water management planning can the IRWM Plan process be successful in the San Diego region.

WHEREAS, as part of the public outreach and stakeholder involvement effort, the PARTIES have formed a Regional Advisory Committee (RAC). The RAC is currently comprised of 25 representatives appointed by the PARTIES from the water management areas of water supply, water quality and natural resources/watersheds management, and representatives of businesses, academia, and other interested members of the public. The purpose of the RAC is to make recommendations to the PARTIES on key issues related to IRWM Plan preparation and Proposition 50 Chapter 8 grant application.

NOW THEREFORE, IN CONSIDERATION OF THE RECITALS AND MUTUAL OBLIGATIONS OF THE PARTIES HEREIN EXPRESSED, WATER AUTHORITY, CITY, AND COUNTY AGREE TO AMEND THE MOU AS FOLLOWS:

1. Upon execution of this First Amendment to the MOU, in lieu of the process set forth in Section 1, Integrated Regional Water Management Implementation Grant Application, the PARTIES agree to apply for IRWM Plan grant funding under Proposition 50, Chapter 8, as follows:
  - a. WATER AUTHORITY will have lead responsibility for developing and submitting the IRWM Plan implementation grant application(s) (APPLICATION) and will submit the APPLICATION to the State on behalf of the PARTIES.
  - b. WATER AUTHORITY will enter into an agreement for contractor services to develop the APPLICATION and associated tasks, and will manage the contractor agreement.
  - c. WATER AUTHORITY will provide funding for the contractor in order to expedite the APPLICATION process. The contractor expenses incurred will be equally shared and paid between the WATER AUTHORITY, CITY and COUNTY, subject to the funding procedures described in Section 4, Funding.
  - d. CITY and COUNTY will be active participants in the APPLICATION development process and shall provide timely input, review, and approvals.
  - e. The APPLICATION will be developed in accordance with the State's grant funding guidelines and schedule established pursuant to Proposition 50 and Proposition 84 standards.
  - f. The PARTIES will have the necessary reviews and approvals completed by their respective organizations prior to approval.
2. The PARTIES agree to administer any grant funding projects under the terms of Section 3 of the MOU.
3. In accordance with Section 4 of the MOU, Funding, the PARTIES agree to provide up to an additional \$600,000 in funding to be equally shared among the PARTIES (up to \$200,000 each) for the following purposes:
  - a. Prepare and submit APPLICATION;
  - b. Conduct public and stakeholder outreach activities to complete the IRWM Plan, gain support for the IRWM Plan, and obtain input on APPLICATION; including jointly planning and conducting an IRWM Plan public outreach program to interested governmental agencies, non-governmental organizations and members of the public, informational meetings held at various locations in San Diego County, preparation of public information materials, maintenance of a project website, and other generally accepted means.
  - c. Create a new institutional structure that will carry out the implementation of the IRWM Plan, if adopted.
4. The PARTIES are committed to a cooperative relationship with the RAC. The RAC's consensus recommendation will be incorporated into draft documents prepared for presentation to the PARTIES' governing bodies. The RAC shall be considered the project advisory committee. The PARTIES' governing bodies will give primary

consideration to the recommendations of the RAC as part of any decision related to the following:

- a. Adoption of the final IRWM Plan for the San Diego region;
- b. Criteria for prioritizing projects for funding under Proposition 50 or Proposition 84;
- c. Approval and submission of IRWM Plan grant APPLICATION ;
- d. Transition responsibility for implementation of the IRWM Plan to a new institutional structure.

5.If the IRWM Plan is adopted, the PARTIES agree to continue to work with the RAC to establish the new institutional structure and to transition responsibility for implementation of the IRWM Plan, and the administration of any grant funding obtained through APPLICATION submitted under this MOU to the new institutional structure, if approved by the PARTIES' governing bodies.

6. Section 2 of the MOU, Intergrated Regional Water Management Plan Development, is amended by changing the date for proposed adoption of the PLAN set forth in Subsection (g) to January 1, 2008.

7. Section 9 of the MOU, Notice, is amended by changing CITY's point of contact to  
City of San Diego Water Department  
600 B Street, Suite 600  
San Diego, CA 92021  
Attn: Jeffery Pasek

8. This First Amendment to the MOU may be signed in counterpart by the PARTIES.

County of San Diego

San Diego County Water Authority

By: \_\_\_\_\_  
Winston F. McColl, Director  
Department of Purchasing and Contracting

By: \_\_\_\_\_  
Ken Weinberg, Director  
Water Resources Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

City of San Diego

By: \_\_\_\_\_  
J. M. Barrett  
Water Department Director

I hereby approve the form and legality of the foregoing First Amendment this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

General Counsel, San Diego County Water Authority

By: \_\_\_\_\_

Deputy General Counsel

I hereby approve the form and legality of the foregoing First Amendment this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

JOHN SANSONE, COUNTY COUNSEL

By: \_\_\_\_\_

Senior Deputy County Counsel

I hereby approve the form and legality of the foregoing First Amendment this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

MICHAEL J. AGUIRRE, City Attorney

By: \_\_\_\_\_

Deputy City Attorney

**CLERK'S FILE COPY**

(R-2007-1225)

103

6/26

MEET

RESOLUTION NUMBER R- 302766

DATE OF FINAL PASSAGE JUN 29 2007

A RESOLUTION AUTHORIZING EXECUTION OF FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING; EXPENDITURE OF FUNDS; AND TAKING RELATED ACTIONS.

WHEREAS, in November of 2002, California voters passed Proposition 50, the Water Security, Clean Drinking Water, Coastal and Beach Protection Act [Prop 50], which, among other things, authorized the California Legislature to appropriate funding for competitive grants for Integrated Regional Water Management [IRWM] projects; and

WHEREAS, the IRWM Grant Program established in accordance with Prop 50 [Program] encourages integrated regional strategies for management of water resources and provides competitive funding for projects that protect from drought, protect and improve water quality, and improve local water security by reducing dependence on imported water; and

WHEREAS, on June 13, 2005 the City of San Diego, the County of San Diego and the San Diego County Water Authority entered into a Memorandum of Understanding [MOU] to participate in the Program, to further Program guidelines and administer Program grant applications and awards; and

WHEREAS, the parties to the MOU have mutually determined and agreed that a First Amendment to the MOU is necessary to complete the Program and provide additional funding to implement Program functions; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the Mayor or his designee is hereby authorized to execute a First Amendment to the MOU between the City of San Diego, the County of San Diego, and the San Diego County Water Authority for the Integrated Regional Water Management Grant Program, on file in the Office of the City Clerk as Document No. RR- 302766.

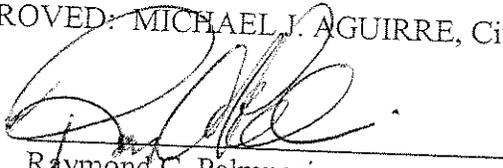
2. That the expenditure of an amount not to exceed \$200,000.00 from Water Fund 41500, Organization 860, Job Order 055102, is authorized solely and exclusively for the purpose of providing funds for consulting services and related costs to implement the First Amendment to the MOU, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are, or will be, on deposit with the City Treasurer.

3. That the City Auditor and Comptroller is authorized, upon advice from the administering department, to transfer excess budgeted funds, if any, to appropriate reserves.

4. That the City Council finds that this activity is not a project and is therefore not subject to the California Environmental Quality Act [CEQA] per CEQA Guidelines Section 15060 (c)(2) and that individual projects that receive grant funding will be subject to further CEQA review and approval.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

  
Raymond C. Palmucci  
Deputy City Attorney

RCP:js  
06/12/2007  
Or.Dept: Water  
Aud. Cert.: 2700816  
2007-1225

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 26 2007.

ELIZABETH S. MALAND

City Clerk

By: *Mary Zumbado*  
Deputy City Clerk

Approved: 6-29-07

(date)

*JSL*  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_

(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

REQUEST FOR COUNCIL ACTION  
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER  
(FOR AUDITOR'S USE ONLY)

27 00816

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):  
Water Department-Water Policy & Strategic Planning

3. DATE:  
May 24, 2007

4. SUBJECT:  
Amendment to Memorandum of Understanding for the Integrated Regional Water Management Program

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)

M. Steirer (619)-533-4112 MS906

6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)

Jeffery Pasek (619)-533-7599 MS906

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED



8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	41500	9. ADDITIONAL INFORMATION / ESTIMATED COST:	
DEPT.	760	Engineering : \$ 200,000	
ORGANIZATION	860		
OBJECT ACCOUNT	4222		
JOB ORDER	55102		
C.I.P. NUMBER			
AMOUNT	200,000		

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	DEPARTMENT DIRECTOR	<i>[Signature]</i>	5/29	8	DEPUTY CHIEF	<i>[Signature]</i>	6-11-07
2	EAS	<i>[Signature]</i>	5/24/07	9	COO	<i>[Signature]</i>	
3	EOC	<i>[Signature]</i>	6/1/07	10	CITY ATTORNEY	<i>[Signature]</i>	6/12/07
4	LIAISON OFFICE	<i>[Signature]</i>	6/6/07	11	ORIG. DEPT	<i>[Signature]</i>	6/12/07
5	CIP/FM	<i>[Signature]</i>	6/7/07	DOCKET COORD: <i>[Signature]</i> COUNCIL LIAISON <i>[Signature]</i>			
6	AUDITORS	<i>[Signature]</i>	6/8/07	COUNCIL PRESIDENT <i>[Signature]</i> <input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION			
7				<input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 6/26/07			

11. PREPARATION OF:  RESOLUTIONS  ORDINANCE(S)  AGREEMENT(S)  DEED(S)

1. Authorizing the Mayor to execute the First Amendment to the Memorandum of Understanding among the City of San Diego, the County of San Diego, and the San Diego County Water Authority for the Integrated Regional Water Management Program; and

(Please see other side)

11A. STAFF RECOMMENDATIONS:

Approve the agreement.

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): ALL

COMMUNITY AREA(S): ALL

CITY CLERK INSTRUCTIONS: Please return a copy of the 1472, Auditor's Certificate, Resolution, and two original signed copies of the Amendment to MOU to Olivya Sardinha, 533-7550, MS 913.

ENVIRONMENTAL IMPACT: This activity is not a "project" and is therefore not subject to CEQA per CEQA Guidelines Section 15060(c)(2). This determination is based on Section 15004 of the Guidelines which provides direction to lead agencies on the appropriate timing for environmental review. Individual projects that receive grant funding will require further review under the provisions of CEQA.

**PRIORITY**

2. Authorizing the appropriation and expenditure of \$200,000 in Water Fund 41500, Organization 860, Job Order 55102 for consulting services and project related costs provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are, or will be, on deposit with the City Treasurer.
3. Authorizing the Auditor and Comptroller, upon advice from the administrating department, to transfer excess budgeted funds, if any, to appropriate reserves.

RECEIVED  
07 JUN 14 PM 2:12  
CITY CLERKS OFFICE  
SAN DIEGO, CA

CITY ATTORNEY  
07 JUN 11 AM 11:34  
CIVIL DIVISION

**ORIGINAL**

## EXECUTIVE SUMMARY SHEET

DATE ISSUED: June 8, 2007 REPORT NO.:  
ATTENTION: Council President and Members of the City Council  
ORIGINATING DEPARTMENT: Water Department  
SUBJECT: Amendment to Memorandum of Understanding for the  
Integrated Regional Water Management Grant Program  
COUNCIL DISTRICT(S): All  
STAFF CONTACT: Marsi Steirer (619) 533-4112  
Jeffery Pasek (619) 533-7599

### REQUESTED ACTION:

Authorize the Mayor to execute Amendment No.1 to the Memorandum of Understanding (MOU) between the City of San Diego, the County of San Diego, and the San Diego County Water Authority for the Integrated Regional Water Management (IRWM) Grant Program; and authorize the expenditure of \$200,000 to cover the City's equal share of the funding to implement the amended MOU.

### STAFF RECOMMENDATION:

Staff recommends adoption of the resolution.

### EXECUTIVE SUMMARY:

IRWM Planning is an effort to coordinate and integrate water supply, water quality, and environmental stewardship across a region to maximize benefits and resolve conflicts. The completed IRWM Plan will provide a mechanism for coordinating, refining, and integrating existing water management planning within a comprehensive, regional context; identify regional priorities for implementation projects; and provide additional stakeholder and funding support for the plans, programs, and projects of water management agencies and stakeholders.

Proposition 50, approved by California voters in 2002, authorizes \$500 million in state funds for IRWM projects. Proposition 84 (2006) authorizes \$1 billion for IRWM planning and projects in California, with \$91 million allocated specifically to the San Diego sub-region. San Diego is also eligible for \$100 million of unallocated statewide Prop 84 IRWM funding.

In June 2005 the City of San Diego (City), the County of San Diego (County) and the San Diego County Water Authority (Water Authority) formed, via an MOU, a Regional Water Management Group (RWMG) to create the first ever IRWM Plan for the San Diego Region and to pursue Prop 50 IRWM grant funding. The Water Department represents the City on the RWMG. The RWMG applied for grant funding under the first round of Proposition 50 IRWM grants, but was not awarded funding primarily because San Diego's IRWM Plan was not complete.

The current action amends the MOU to direct the RWMG to complete the IRWM Plan incorporating both Proposition 50 and Proposition 84 criteria, apply for second round Proposition 50 IRWM grant funding, and pursue Proposition 84 IRWM grant funding.

A draft of San Diego's IRWM Plan will be released for public review in June 2007, with adoption by the RWMG agencies anticipated in late-2007. In June, 2007 the Water Department

R 302766

will bring the draft IRWM Plan to the City Council as an informational item. Under terms of the amended MOU, the Water Authority has contracted for professional services to complete the IRWM Plan and prepare the Proposition 50 Round 2 IRWM grant funding application. The three RWMG agencies share equally in costs for this contract and other services related to pursuing Proposition 84 IRWM grant funding. The City's share is \$200,000.

FISCAL CONSIDERATIONS:

The total not-to-exceed amount of the City's equal share to implement the amended MOU is \$200,000. This action will make \$200,000 available in Water Fund 41500, Organization 861, Job Order 55023.

PREVIOUS COUNCIL/COMMITTEE ACTION:

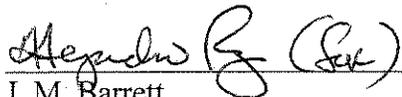
On June 13, 2005, the City Council adopted Resolution R-300517 authorizing the City Manager to execute the initial MOU between the City, the County, and the Water Authority, and authorizing the expenditure of \$100,000 to cover the City's equal share of the funding to implement the initial MOU. On June 4, 2007 the Natural Resources and Culture Committee approved the currently requested action.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The Water Department, as a partner with the County and the Water Authority, has been actively involved in comprehensive public outreach efforts for the IRWM Plan, including three regional workshops and twenty-two presentations to interest groups. IRWM Planning was the focus of the Project Clean Water Summit held in June 2006 and attended by over 250 stakeholders. In late-2006 a Regional Advisory Committee (RAC) consisting of twenty-five experts in water supply, wastewater, stormwater, natural resources, and environmental stewardship assists in developing the IRWM Plan was formed. The RAC has met seven times and will continue to meet approximately monthly. A website ([www.sdirwmp.org](http://www.sdirwmp.org)) disseminates information about the IRWM Plan.

KEY STAKEHOLDERS:

Stakeholders in IRWM Planning are any governmental or non-governmental entity that has a role in or is affected by the management of water in the San Diego Region. Key among these are the agencies and entities represented on the RAC (see Attachment 3)



J. M. Barrett  
Water Department Director



R. F. Haas  
Deputy Chief of Public Works

Attachments

1. Memorandum of Understanding between the City, the County, and the Water (June 13, 2005)
2. Amendment No.1 to the MOU
3. Members of the Regional Advisory Committee (RAC)

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SAN DIEGO, CA

COMMITTEE ACTION SHEET

COUNCIL DOCKET OF June 26, 2007

Supplemental    Adoption    Consent    Unanimous Consent   Rules Committee Consultant Review

R - 2007-1225

O -

Integrated Regional Water Management Grant Program – Amendment to Memorandum of Understanding

Reviewed    Initiated   By NR&C   On 6/04/07   Item No. 1b

RECOMMENDATION TO:

Approve

VOTED YEA: Frye, Hueso, Faulconer

VOTED NAY:

NOT PRESENT: Maienschein

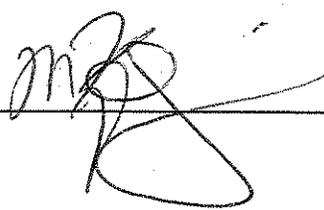
CITY CLERK: Please reference the following reports on the City Council Docket:

REPORT TO THE CITY COUNCIL NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

Executive Summary Sheet dated May 21, 2007

COUNCIL COMMITTEE CONSULTANT 

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CITY CLERKS OFFICE  
SAN DIEGO, CA

**EXECUTIVE SUMMARY SHEET**  
CITY OF SAN DIEGO

DATE ISSUED: May 21, 2007 REPORT NO.: N/A  
 ATTENTION: Natural Resources and Culture Committee  
 Agenda of June 4, 2007  
 ORIGINATING DEPARTMENT: Water Department  
 SUBJECT: Amendment to Memorandum of Understanding for the  
 Integrated Regional Water Management Grant Program  
 COUNCIL DISTRICT(S): All  
 STAFF CONTACT: Marsi Steirer (619) 533-4112  
 Jeffery Pasek (619) 533-7599

REQUESTED ACTION:

Authorize the Mayor to execute Amendment No. 1 to the Memorandum of Understanding (MOU) between the City of San Diego, the County of San Diego, and the San Diego County Water Authority for the Integrated Regional Water Management (IRWM) Grant Program; and authorize the expenditure of \$200,000 to cover the City's equal share of the funding to implement the amended MOU.

STAFF RECOMMENDATION:

Staff recommends adoption of the resolution.

EXECUTIVE SUMMARY:

IRWM Planning is an effort to coordinate and integrate water supply, water quality, and environmental stewardship across a region to maximize benefits and resolve conflicts. The completed IRWM Plan will provide a mechanism for coordinating, refining, and integrating existing water management planning within a comprehensive, regional context; identify regional priorities for implementation projects; and provide additional stakeholder and funding support for the plans, programs, and projects of water management agencies and stakeholders.

Proposition 50, approved by California voters in 2002, authorizes \$500 million in state funds for IRWM projects. Proposition 84 (2006) authorizes \$1 billion for IRWM planning and projects in California, with \$91 million allocated specifically to the San Diego sub-region. San Diego is also eligible for \$100 million of unallocated statewide Prop 84 IRWM funding.

In June 2005 the City of San Diego (City), the County of San Diego (County) and the San Diego County Water Authority (Water Authority) formed, via an MOU, a Regional Water Management Group (RWMG) to create the first ever IRWM Plan for the San Diego Region and to pursue Prop 50 IRWM grant funding. The Water Department represents the City on the RWMG. The RWMG applied for grant funding under the first round of Proposition 50 IRWM grants, but was not awarded funding primarily because San Diego's IRWM Plan was not complete.

The current action amends the MOU to direct the RWMG to complete the IRWM Plan incorporating both Proposition 50 and Proposition 84 criteria, apply for second round Proposition 50 IRWM grant funding, and pursue Proposition 84 IRWM grant funding.

A draft of San Diego's IRWM Plan will be released for public review in June 2007, with adoption by the RWMG agencies anticipated in late-2007. In June, 2007 the Water Department will bring the draft IRWM Plan to the NR&C Committee as an informational item. Under terms of the amended MOU, the Water Authority has contracted for professional services to complete the IRWM Plan and prepare the Proposition 50 Round 2 IRWM grant funding application. The three RWMG agencies share equally in costs for this contract and other services related to pursuing Proposition 84 IRWM grant funding. The City's share is \$200,000.

FISCAL CONSIDERATIONS:

The total not-to-exceed amount of the City's equal share to implement the amended MOU is \$200,000. This action will make \$200,000 available in Water Fund 41500, Misc 4222.

PREVIOUS COUNCIL/COMMITTEE ACTION:

On June 13, 2005, the City Council adopted Resolution R-300517 authorizing the City Manager to execute the initial MOU between the City, the County, and the Water Authority, and authorizing the expenditure of \$100,000 to cover the City's equal share of the funding to implement the initial MOU.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The Water Department, as a partner with the County and the Water Authority, has been actively involved in comprehensive public outreach efforts for the IRWM Plan, including three regional workshops and twenty-two presentations to stakeholders. IRWM Planning was the focus of the Project Clean Water Summit held in June 2006 and attended by over 250 stakeholders. In late-2006 a Regional Advisory Committee (RAC) was formed, consisting of twenty-five experts in water supply, wastewater, stormwater, natural resources, and environmental stewardship, who have assisted in developing the IRWM Plan. The RAC has met six times and will continue to meet monthly. A website ([www.sdirwmp.org](http://www.sdirwmp.org)) disseminates information about the IRWM Plan.

KEY STAKEHOLDERS:

Stakeholders in IRWM Planning are governmental or non-governmental entity that has a role in or is affected by the management of water in the San Diego Region. The RAC membership list is attached.

  
\_\_\_\_\_  
J. M. Barrett  
Water Department Director

  
\_\_\_\_\_  
R. F. Haas  
Deputy Chief of Public Works

Attachment: Regional Advisory Committee (RAC) Membership List

## **Regional Advisory Committee**

---

### **Regional Water Management Group**

Kathleen Flannery, CAO Project Manager, County of San Diego (chair)  
 Ken Weinberg, Director of Water Resources, San Diego County Water Authority  
 Marsi Steirer, Deputy Director of Water Policy and Strategic Planning, City of San Diego

### **Retail Water Entities**

Susan Varty, Director, Olivenhain Municipal Water District  
 Dennis Bostad, General Manager, Sweetwater Authority  
 Mark Weston, General Manager, Helix Water District  
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 Judy Mitchell, District Coordinator, Mission Resource Conservation District  
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 Rob Hutsel, Executive Director, San Diego River Park Foundation  
 Chris Basilevac, Project Director, The Nature Conservancy  
 Megan Johnson, Watershed Coordinator, Southern California Wetlands Recovery Project

### **Water Quality**

#### **Wastewater / Recycled Water**

Neal Brown, Director of Engineering and Planning, Padre Dam Municipal Water District  
 Mike Thornton, General Manager, San Elijo Joint Powers Authority

#### **Stormwater**

Kirk Ammerman, Principal Civil Engineer, City of Chula Vista  
 Meleah Ashford, Consultant to the City of Encinitas

### **Members At Large**

Shelby Tucker, Regional Planner, San Diego Association of Governments (SANDAG)  
 Rich Pyle, San Diego Regional Chamber of Commerce  
 Linda Flournoy, Sustainability Consultant, Planning & Engineering for Sustainability  
 Dr. Richard Wright, Professor Emeritus of Geography, SDSU & Board Member, SD Regional Water Quality Control Board  
 Michael Connolly, Councilman, Campo Kumeyaay Nation  
 Eric Larsen, Executive Director, Farm Bureau of San Diego County  
 Karen Franz, Watershed Monitoring Program Director, San Diego Coastkeeper

### **Agency Representatives**

Meena Westford, Area Planning Officer, Southern California Area Office, U.S. Bureau of Reclamation  
 Dave Gibson, San Diego Regional Water Quality Control Board

## **Regional Water Management Group Staff**

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### **County of San Diego**

Jon Van Rhyn, Water Quality Program Manager, Watershed Protection Program  
 Sheri McPherson, Environmental Health Specialist III, Watershed Protection Program  
 Cecilia Padres, Environmental Health Specialist II, Watershed Protection Program

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Dana Frieauf, Principal Water Resources Specialist  
 Toby Roy, Water Resources Manager  
 Jeff Stephenson, Water Resources Specialist  
 Maria Mariscal, Senior Water Resources Specialist

### **City of San Diego**

Cathy Pieroni, Senior Water Resources Specialist  
 Jeffery Pasek, Watershed Manager

**MEMORANDUM OF UNDERSTANDING  
BETWEEN CITY OF SAN DIEGO WATER DEPARTMENT  
COUNTY OF SAN DIEGO And SAN DIEGO COUNTY WATER AUTHORITY  
FOR FYS 2005-2009 for the  
INTEGRATED REGIONAL WATER MANAGEMENT GRANT PROGRAM**

This Memorandum of Understanding (MOU) between the San Diego County Water Authority (WATER AUTHORITY), organized and existing under the County Water Authority Act of the State of California, Chapter 45, Water Code – Appendix and Amendments thereto, the City of San Diego (CITY) and the County of San Diego (COUNTY) sets forth the respective roles of the WATER AUTHORITY, CITY and COUNTY in regard to the INTEGRATED REGIONAL WATER MANAGEMENT (IRWM) GRANT PROGRAM. WATER AUTHORITY, CITY AND COUNTY are sometimes referred to in this MOU collectively as the "PARTIES" and severally as a "PARTY."

**RECITALS:**

WHEREAS in November 2002, the People of California passed Proposition 50, the Water Security, Clean Drinking Water, Coastal and Beach Protection Act (PROP 50) to amend the California Water Code to add Sections 79560 - 79565, authorizing the Legislature to appropriate funding for competitive grants for IRWM projects;

WHEREAS, the California Legislature enacted SB 1672 (Costa, Chapter 767, Statutes of 2002), The Integrated Regional Water Management Planning Act of 2002, to provide that a regional water management group may prepare and adopt an integrated regional water management plan;

WHEREAS, the intent of the IRWM Grant Program (PROGRAM) established in accordance with PROP 50 and SB 1672 is to encourage integrated regional strategies for management of water resources and to provide funding, through competitive grants, for projects that protect communities from drought, protect and improve water quality, and improve local water security by reducing dependence on imported water;

WHEREAS, the PROGRAM Guidelines (GUIDELINES) provide that in order for implementation grants to be considered, at least three agencies must participate, two of which must have statutory authority over water management that may include water supply, water quality, flood control, or storm water management;

WHEREAS, the PARTIES desire by this MOU to qualify as a regional water management group in order to apply for PROGRAM funding and to develop and implement a PLAN;

WHEREAS, the regional water management group consists of the WATER AUTHORITY and CITY, both of which have statutory authority over water management, and COUNTY, which has statutory authority over water quality;

WHEREAS, this MOU consists of three major components: IRWM Implementation Grant application, development of the IRWM Plan, and the solicitation, selection and administration of projects included in the IRWM Implementation Grant package;

WHEREAS, the PARTIES intend to concurrently apply for Implementation Grant funding and develop an IRWM Plan;

WHEREAS, the PARTIES desire to set forth their respective roles, terms of payment and payment processes and the duration of this MOU as described herein;

NOW, THEREFORE, IN CONSIDERATION OF THE RECITALS AND MUTUAL OBLIGATIONS OF THE PARTIES HEREIN EXPRESSED, WATER AUTHORITY, CITY AND COUNTY AGREE AS FOLLOWS:

1 INTEGRATED REGIONAL WATER MANAGEMENT IMPLEMENTATION GRANT APPLICATION

- a. WATER AUTHORITY shall have primary responsibility for developing and submitting the IRWM implementation grant application (APPLICATION) and shall submit the APPLICATION to the State on behalf of all PARTIES.
- b. WATER AUTHORITY shall issue an RFP for consultant services to develop the Application and shall contract with and have management responsibility for the consultant.
- c. WATER AUTHORITY shall provide funding for the consultant and for development of the Application in order to expedite the APPLICATION process. The cost of the consultant and Application shall be credited toward the WATER AUTHORITY's share of expenses in this MOU. Cost for the consultant and development of the APPLICATION is estimated to be \$50,000.
- d. CITY and COUNTY shall be active participants in the APPLICATION development process and shall provide timely input in accordance to the schedule mutually agreed upon by all PARTIES.
- e. The APPLICATION shall be developed in accordance with the GUIDELINES and schedule established pursuant to Chapter 8, Proposition 50.
- f. All PARTIES shall have necessary reviews and approvals completed by their respective organizations prior to submittal.

2. INTEGRATED REGIONAL WATER MANAGEMENT PLAN DEVELOPMENT

- a. WATER AUTHORITY shall have primary responsibility for developing the IRWM plan (PLAN), including publishing a notice of intent to prepare the plan and holding a public hearing as required by SB 1672. WATER AUTHORITY shall have primary responsibility for submitting the PLAN to the State when required.
- b. WATER AUTHORITY shall issue an RFP for consultant services to develop the PLAN and shall contract with and have management responsibility for the consultant.
- c. WATER AUTHORITY, upon mutual agreement of all PARTIES, may issue a sole source contract for the PLAN to the consultant developing the APPLICATION.

- d. WATER AUTHORITY shall provide up-front funding for the consultant for development of the PLAN. The cost of developing the PLAN is estimated to be \$250,000. Costs will be reimbursed to WATER AUTHORITY per Section 4. Funding.
- e. CITY and COUNTY shall be active participants in the PLAN development process and shall provide timely input in accordance to the schedule mutually agreed upon by all PARTIES.
- f. The PLAN shall be developed in accordance with the GUIDELINES and schedule established pursuant to Chapter 8, Proposition 50 and adopted by all PARTIES by January 1, 2007.
- g. All PARTIES shall have necessary reviews and approvals completed by their respective organizations prior to submittal.

### 3. INTEGRATED REGIONAL WATER MANAGEMENT GRANT PROJECTS

- a. The GUIDELINES established in accordance with Proposition 50, Chapter 8 provide for two cycles of funding for implementation grants, \$148 million and \$220 million in Cycles 1 and 2, respectively. The PARTIES intend to apply for funding during both cycles. Each PARTY shall be responsible for developing proposals for projects for both funding cycles that meet the requirements of Proposition 50.
  - WATER AUTHORITY shall be responsible for developing project lists and managing funding for member agency projects (other than CITY).
  - CITY shall be responsible for developing project lists and managing funding for projects that fall within CITY's jurisdictional boundaries, are located on CITY-owned property, or are projects in which CITY is involved as a partner.
  - COUNTY shall be responsible for developing project lists and managing funding for regional non-governmental organizations, storm water and watershed projects or projects not otherwise explicitly within the responsibilities of the WATER AUTHORITY or CITY.
  - As mutually agreeable to all PARTIES, responsibilities for developing project lists and managing individual project funding may be divided differently than described above.
- b. The PARTIES shall develop their project proposals to meet the stated program preferences of Proposition 50 for projects that:
  - Include integrated projects with multiple benefits;
  - Support/improve local and regional water supply reliability;
  - Contribute to water quality standards;
  - Eliminate or reduce pollution in impaired water and sensitive habitat areas; and
  - Projects that serve disadvantaged communities.
- c. The PARTIES shall form a team that shall develop selection criteria and priorities for choosing projects for inclusion in the APPLICATION that will result in the greatest opportunity for the San Diego region to receive grant project funding. The PARTIES shall develop selection guidelines based upon the evaluation criteria provided in Proposition 50 and the Proposal Solicitation Package. This may include the selection of an independent advisory panel such as a Project Clean Water Technical Advisory

Committee, or other, to evaluate the integrated regional water benefits of proposed projects.

- d. Projects will first be selected based upon a mix of the stated program preferences and overall quality of projects. As much as practical, consideration will also be given to promoting an equitable distribution of project funding among the respective areas of oversight of each PARTY.
- e. The WATER AUTHORITY shall have overall responsibility for administering the PROGRAM grants in the San Diego region unless other mutually agreeable arrangements are made with the granting agencies. This includes contracting with the State, coordinating and submitting reports required by the grant agency and responding to any audit requests from the granting agencies.
- f. Each PARTY shall notify their respective project managers of the results of the evaluation process by the regional selection committee and of the State selection committee. Each PARTY shall obtain all necessary governing body approvals prior to accepting any grant funding. The PARTIES shall require each non-PARTY to demonstrate its ability to effectively proceed with and complete the non-PARTY's project before grant funding will be accepted.
- g. Each PARTY shall be responsible for managing grant projects as set forth in Section 3 and for requiring adherence to the contractual requirements of the funding agency.
- h. A PARTY whose project is awarded PROGRAM funding, or who is managing the project of a non-PARTY that has been awarded PROGRAM funding, shall be responsible for providing sufficient project funding to operate the project until State funding shall be received.
- i. A PARTY whose project is awarded PROGRAM funding, or who is managing the project of a non-PARTY that has been awarded PROGRAM funding, shall invoice the WATER AUTHORITY who shall in turn invoice the State. A PARTY managing the grant project of a non-PARTY shall require the non-PARTY to invoice the managing PARTY. Upon receipt of State funds by the WATER AUTHORITY, the funds shall promptly be issued to the managing PARTY who shall issue the funds to the non-PARTY, if applicable.
- j. In the event the State agrees to contract directly with a non-PARTY grantee or a PARTY other than the WATER AUTHORITY, the PARTY or non-PARTY grantee may invoice the State in accordance with their agreement. Unless otherwise agreed by the PARTIES, the WATER AUTHORITY shall retain oversight responsibility over projects awarded grants under this MOU.
- k. In the event the State funds the PROGRAM grant APPLICATION package at a level less than the requested dollar amount and does not provide direction on which projects to fund, then the PARTIES shall reevaluate all projects based on the above stated process and fund as determined by that reevaluation of projects and their integration into regional priorities and benefits.

#### 4. FUNDING

Funding under this agreement shall not exceed \$300,000 with each PARTY providing an equal share in a maximum amount of \$100,000. If costs to implement the MOU shall exceed \$100,000 each, then the PARTIES by written amendment to the MOU, may contribute

equally to a mutually agreed upon increase. The increased funding shall be invoiced and paid in the same manner as the original funding. The costs of the MOU shall not include expenditures to implement PROGRAM grants.

WATER AUTHORITY shall invoice CITY and COUNTY on a quarterly basis along with supporting documentation of expenses. CITY and COUNTY shall remit payment within 60 days of receipt of invoice.

PARTIES shall not assign, sublet or transfer this MOU or any rights under or interest in this MOU without written consent of all other PARTIES, which may be withheld for any reason.

5. CEQA

All PARTIES shall be mutually responsible for assuring that the PLAN complies with the requirements of the California Environmental Quality Act (CEQA) and that all necessary documents are filed. Each PARTY shall be individually responsible for CEQA compliance on its projects, or non-PARTY projects that it manages, that are awarded PROGRAM grants.

6. DEFENSE AND INDEMNITY

a. Claims Arising From Sole Acts or Omissions of WATER AUTHORITY

WATER AUTHORITY hereby agrees to defend and indemnify COUNTY, its respective agents, officers and employees (collectively referred to in this paragraph as "COUNTY"), from any claim, action or proceeding against COUNTY, arising solely out of the acts or omissions of WATER AUTHORITY in the performance of this MOU. At its sole discretion, COUNTY may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve WATER AUTHORITY of any obligation imposed by this MOU. COUNTY shall notify WATER AUTHORITY promptly of any claim, action or proceeding and cooperate fully in the defense. WATER AUTHORITY further agrees to defend and indemnify CITY, its respective agents, officers and employees (collectively referred to in this paragraph as "CITY"), from any claim, action or proceeding against CITY, arising solely out of the acts or omissions of WATER AUTHORITY in the performance of this MOU. At its sole discretion, CITY may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve WATER AUTHORITY of any obligation imposed by this MOU. CITY shall notify WATER AUTHORITY promptly of any claim, action or proceeding and cooperate fully in the defense.

b. Claims Arising From Sole Acts or Omissions of CITY

CITY hereby agrees to defend and indemnify WATER AUTHORITY, its respective agents, officers and employees (collectively referred to in this paragraph as "WATER AUTHORITY"), from any claim, action or proceeding against WATER AUTHORITY, arising solely out of the acts or omissions of CITY in the performance of this MOU. At its sole discretion, WATER AUTHORITY may participate at its own expense in the defense of any claim, action or proceeding, but such participation

shall not relieve CITY of any obligation imposed by this MOU. WATER AUTHORITY shall notify CITY promptly of any claim, action or proceeding and cooperate fully in the defense. CITY further agrees to defend and indemnify COUNTY, its respective agents, officers and employees (collectively referred to in this paragraph as "COUNTY"), from any claim, action or proceeding against COUNTY, arising solely out of the acts or omissions of CITY in the performance of this MOU. At its sole discretion, COUNTY may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve CITY of any obligation imposed by this MOU. COUNTY shall notify CITY promptly of any claim, action or proceeding and cooperate fully in the defense.

c. Claims Arising From Sole Acts or Omissions of COUNTY

COUNTY hereby agrees to defend and indemnify WATER AUTHORITY, its respective agents, officers and employees (collectively referred to in this paragraph as "WATER AUTHORITY"), from any claim, action or proceeding against WATER AUTHORITY, arising solely out of the acts or omissions of COUNTY in the performance of this MOU. At its sole discretion, WATER AUTHORITY may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve COUNTY of any obligation imposed by this MOU. WATER AUTHORITY shall notify COUNTY promptly of any claim, action or proceeding and cooperate fully in the defense. COUNTY further agrees to defend and indemnify CITY, its respective agents, officers and employees (collectively referred to in this paragraph as "CITY"), from any claim, action or proceeding against CITY, arising solely out of the acts or omissions of COUNTY in the performance of this MOU. At its sole discretion, CITY may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve COUNTY of any obligation imposed by this MOU. CITY shall notify COUNTY promptly of any claim, action or proceeding and cooperate fully in the defense.

d. Claims Arising From Concurrent Acts or Omissions

WATER AUTHORITY hereby agrees to defend itself, CITY hereby agrees to defend itself, and COUNTY hereby agrees to defend itself, from any claim, action or proceeding arising out of the concurrent acts or omissions of WATER AUTHORITY, CITY and COUNTY. In such cases, WATER AUTHORITY, CITY and COUNTY agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in paragraph f below. In the case of a claim that arises from the concurrent acts or omissions of only two of the PARTIES, those two shall defend and indemnify the third PARTY equally.

e. Joint Defense

Notwithstanding paragraph d above, in cases where the PARTIES agree in writing to a joint defense, the PARTIES may appoint joint defense counsel to defend the claim, action or proceeding arising out of the concurrent acts or omissions of the PARTIES. Joint defense counsel shall be selected by mutual agreement of the PARTIES. The PARTIES agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in paragraph f below. The PARTIES further agree

that no PARTY may bind another to a settlement agreement without the written consent of the PARTY to be bound.

f. **Reimbursement and/or Reallocation**

Where a trial verdict or arbitration award allocates or determines the comparative fault of the PARTIES, each PARTY may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

7. **DOCUMENT REVIEW**

WATER AUTHORITY, CITY and COUNTY each shall make available for inspection to the other PARTIES, upon reasonable advance notice, all records, books and other documents relating to the PLAN and the GRANT PROGRAM, unless privileged.

8. **TERM**

The term of this MOU shall be from the date of execution by all PARTIES through June 30, 2009. All PARTIES agree to continue participating in the planning, development and coordination of the PLAN and Grants to the maximum extent possible for the duration of the agreement. However, the term is contingent upon funding by WATER AUTHORITY, CITY and COUNTY. In the event that future budget appropriations are not approved by one or more of the PARTIES, this MOU shall terminate at the beginning of the fiscal year for which such appropriations are not made. The PARTIES shall notify each other of this event. Also, if appropriations are different than anticipated, MOU and GRANT PROGRAM funding shall be adjusted based on available funding.

This MOU may be extended upon mutual written agreement of all PARTIES.

9. **NOTICE**

Any notice, payment, credit or instrument required or permitted to be given hereunder will be deemed received upon personal delivery or 24 hours after deposit in any United States mail depository, first class postage prepaid, and addressed to the PARTY for whom intended as follows:

If to the WATER AUTHORITY:

San Diego County Water Authority  
4677 Overland Avenue  
San Diego, CA 92123  
Attn: Vickie V. Driver

If to CITY:

City of San Diego Water Department  
2797 Caminito Chollas  
San Diego, CA 92105  
Attn: Robert J. Collins

If to COUNTY

County of San Diego  
9325 Hazard Way  
San Diego, CA 92123  
Attn: Jon Van Rhyn

Any PARTY may change such address or contact by notice given to the other PARTIES as provided herein.

10. AMENDMENTS

The MOU may be amended as circumstances necessitate by written agreement executed by all PARTIES.

11. SEVERABILITY

The partial or total invalidity of one or more parts of this MOU will not affect the intent or validity of this MOU.

12. GOVERNING LAW

This MOU shall be deemed a contract under the laws of the State of California and for all purposes shall be interpreted in accordance with such laws. WATER AUTHORITY, CITY and COUNTY hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that the venue of any action brought hereunder shall be in San Diego County, California.

13. OBLIGATIONS

Nothing in this agreement shall create additional obligations with respect to the Plan implemented.

14. TERMINATION OF MOU

This MOU may be terminated by any PARTY hereto for any reason 30 days after notice in writing to the other PARTIES.

15. SIGNATURES

The individuals executing this MOU represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the PARTIES have executed this MOU as of the date above.

San Diego County  
Water Authority

City of San Diego

By: \_\_\_\_\_  
Ken Weinberg  
Director of Water Resources

By: Tammy Rimes  
Tammy Rimes  
Purchasing & Contracting  
Deputy Director

County of San Diego

By: Winston F. McColl  
Winston F. McColl, Director  
Department of Purchasing and Contracting

APPROVED AS TO FORM:

San Diego County  
Water Authority

City of San Diego

By: \_\_\_\_\_  
General Counsel  
San Diego County Water Authority

By: \_\_\_\_\_  
Deputy City Attorney

By: Don Desik  
Senior Deputy County Counsel

## **Regional Advisory Committee**

---

### **Regional Water Management Group**

Kathleen Flannery, CAO Project Manager, County of San Diego (chair)  
 Ken Weinberg, Director of Water Resources, San Diego County Water Authority  
 Marsi Steirer, Deputy Director of Water Policy and Strategic Planning, City of San Diego

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 Dr. Richard Wright, Professor Emeritus of Geography, SDSU & Board Member, SD Regional Water Quality Control Board  
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 Dave Gibson, San Diego Regional Water Quality Control Board

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### **City of San Diego**

Cathy Pieroni, Senior Water Resources Specialist  
 Jeffery Pasek, Watershed Manager

The City of San Diego  
**CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

**CERTIFICATE OF UNALLOTTED BALANCE**

AC 2700816

ORIGINATING

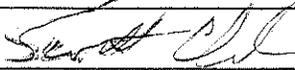
DEPT. NO.:

760

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: \$200,000.00 Fund: 41500

Purpose: Authorize 1st amendment to the MOU among the City of San Diego, County of San Diego, and the SDCWA for Integrated Regional Water Management Program.

Date: June 12, 2007 By: 

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
1	0	41500	760	860	4222	55102				\$200,000.00
TOTAL AMOUNT										\$200,000.00

FUND OVERRIDE

**CERTIFICATION OF UNENCUMBERED BALANCE**

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \_\_\_\_\_

Vendor: \_\_\_\_\_

Purpose: \_\_\_\_\_

Date: \_\_\_\_\_ By: \_\_\_\_\_

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE

AC-361 (REV 2-92)

AC 2700816

R 302766

JUN 26 2007

# CLERK'S FILE COPY

## FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF SAN DIEGO, COUNTY OF SAN DIEGO AND SAN DIEGO COUNTY WATER AUTHORITY FOR FISCAL YEARS 2005-2009 FOR THE INTEGRATED REGIONAL WATER MANAGEMENT GRANT PROGRAM

### RECITALS

WHEREAS, on June 13, 2005, the City of San Diego [CITY], the County of San Diego [COUNTY] and the San Diego County Water Authority [WATER AUTHORITY] (collectively, the "PARTIES") entered into a Memorandum of Understanding [MOU] for the purposes of forming a Regional Water Management Group (RWMG), developing an Integrated Regional Water Management (IRWM) Plan and applying for Chapter 8, Proposition 50 grant funding. Acting as the RWMG, the PARTIES applied for grant funding under the first cycle of Proposition 50, but were not awarded grant funding. The RWMG is now focusing on completing the IRWM Plan and preparing for additional funding cycles.

WHEREAS, the PARTIES and their contactor are currently in the process of preparing an IRWM Plan, which is scheduled to be completed by January 2008 and will be presented to the PARTIES' governing bodies for approval. The MOU did not address or provide funding for implementation of the IRWM Plan if adopted. In order to efficiently implement the IRWM Plan, the PARTIES believe it would be desirable to create a separate institutional structure, which will include the active participation of the stakeholders whose projects have been incorporated into the IRWM Plan.

WHEREAS, Proposition 84, approved by the voters in November of 2006, will allocate an additional \$91 million dollars in grant funding for projects developed under IRWM Plans for the San Diego Hydrologic region. The MOU did not anticipate provide funding to prepare Proposition 50, Chapter 8, grant applications beyond the first cycle or potential grant applications under Proposition 84. It is estimated that it will cost approximately \$600,000 to apply for additional IRWM Plan grant funding, conduct public/stakeholder outreach activities, and establish an agreement between all stakeholders for the creation of an institutional structure that will carry out the implementation of the IRWM Plan.

WHEREAS, the PARTIES understand that only through a collaborative effort with the many stakeholders involved in water management planning can the IRWM Plan process be successful in the San Diego region.

WHEREAS, as part of the public outreach and stakeholder involvement effort, the PARTIES have formed a Regional Advisory Committee (RAC). The RAC is currently comprised of 25 representatives appointed by the PARTIES from the water management areas of water supply, water quality and natural resources/watersheds management, and representatives of businesses, academia, and other interested members of the public. The purpose of the RAC is to make recommendations to the PARTIES on key issues related to IRWM Plan preparation and Proposition 50 Chapter 8 grant application.

FORM OF:

DOCUMENT ID	RR-302766
FILED	JUN 26 2007
OFFICE OF THE CITY CLERK SAN DIEGO, CALIFORNIA	

NOW THEREFORE, IN CONSIDERATION OF THE RECITALS AND MUTUAL OBLIGATIONS OF THE PARTIES HEREIN EXPRESSED, WATER AUTHORITY, CITY, AND COUNTY AGREE TO AMEND THE MOU AS FOLLOWS:

1. Upon execution of this First Amendment to the MOU, in lieu of the process set forth in Section 1, Integrated Regional Water Management Implementation Grant Application, the PARTIES agree to apply for IRWM Plan grant funding under Proposition 50, Chapter 8, as follows:
  - a. WATER AUTHORITY will have lead responsibility for developing and submitting the IRWM Plan implementation grant application(s) (APPLICATION) and will submit the APPLICATION(s) to the State on behalf of the PARTIES.
  - b. WATER AUTHORITY will enter into an agreement for contractor services to develop the APPLICATION(s) and associated tasks, and will manage the contractor agreement.
  - c. WATER AUTHORITY will provide funding for the contractor in order to expedite the APPLICATION process. The contractor expenses incurred will be equally shared and paid between the WATER AUTHORITY, CITY and COUNTY, subject to the funding limitations described in Section 4, Funding.
  - d. CITY and COUNTY will be active participants in the APPLICATION development process and shall provide timely input, review, and approvals.
  - e. The APPLICATION(s) will be developed in accordance with the State's grant funding guidelines and schedule established pursuant to Proposition 50 and Proposition 84 standards.
  - f. The PARTIES will have the necessary reviews and approvals completed by their respective organizations prior to approval.
2. The PARTIES agree to administer any grant funding projects under the terms of Section 3 of the MOU.
3. In accordance with Section 4 of the MOU, Funding, the PARTIES agree to provide up to an additional \$600,000 in funding to be equally shared among the PARTIES (up to \$200,000 each) for the following purposes:
  - a. Prepare and submit APPLICATION(s);
  - b. Conduct public and stakeholder outreach activities to complete the IRWM Plan, gain support for the IRWM Plan, and obtain input on APPLICATION(s); including jointly planning and conducting an IRWM Plan public outreach program to interested governmental agencies, non-governmental organizations and members of the public, informational meetings held at various locations in San Diego County, preparation of public information materials, maintenance of a project website, and other generally accepted means.
  - c. Create a new institutional structure that will carry out the implementation of the IRWM Plan, if adopted.

4. The PARTIES are committed to a cooperative relationship with the RAC and will incorporate the RAC's consensus recommendation in draft documents prepared by the PARTIES. The RAC shall be considered the project advisory committee referred to in Section 3.c of the MOU. RAC recommendations approved by the RAC shall be presented to the governing bodies of the PARTIES. The PARTIES' governing bodies will give primary consideration to the recommendations of the RAC as part of any decision related to the following:
  - a. Adoption of the final IRWM Plan for the San Diego region;
  - b. Criteria for prioritizing projects for funding under Proposition 50 or Proposition 84;
  - c. Approval and submission of IRWM Plan grant application(s);
  - d. Transition responsibility for implementation of the IRWM Plan to a new institutional structure.
5. If the IRWM Plan is adopted, the PARTIES agree to continue to work with the RAC to establish the new institutional structure and to transition responsibility for implementation of the IRWM Plan, and the administration of any grant funding obtained through applications submitted under this MOU to the new institutional structure, if approved by the PARTIES' governing bodies.
6. Section 2 of the MOU, Intergrated Regional Water Management Plan Development, is amended by changing the date for proposed adoption of the PLAN set forth in Subsection (g) to January 1, 2008.
7. Section 9 of the MOU, Notice, is amended by changing CITY's point of contact to  
City of San Diego Water Department  
600 B Street, Suite 600  
San Diego, CA 92021  
Attn: Jeffery Pasek

[signature blocks for City, County, and Water Authority; and for legal counsel of each, per format provided by SD City Attorney]

DOCUMENT NO. 302766  
FILED JUN 26 2007  
OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

FORM OF:



give primary consideration to the recommendations of the RAC as part of any decision related to the following:

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City of San Diego Water Department  
600 B Street, Suite 600  
San Diego, CA 92021  
Attn: Jeffery Pasek
8. This First Amendment to the MOU may be signed in counterpart by the PARTIES.

County of San Diego

San Diego County Water Authority

By:   
John L. Snyder,  
Director, Department of Public Works

By: \_\_\_\_\_  
Ken Weinberg,  
Director of Water Resources

Date: 7/27/2007

Date: \_\_\_\_\_

City of San Diego

By: \_\_\_\_\_  
J. M. Barrett  
Water Department Director

Date: \_\_\_\_\_

FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF  
SAN DIEGO, COUNTY OF SAN DIEGO AND SAN DIEGO COUNTY WATER  
AUTHORITY FOR FISCAL YEARS 2005-2009 FOR THE INTEGRATED REGIONAL  
WATER MANAGEMENT GRANT PROGRAM

RECITALS

WHEREAS, on June 13, 2005, the City of San Diego [CITY], the County of San Diego [COUNTY] and the San Diego County Water Authority [WATER AUTHORITY] (collectively, the "PARTIES") entered into a Memorandum of Understanding [MOU] for the purposes of forming a Regional Water Management Group (RWMG), developing an Integrated Regional Water Management (IRWM) Plan and applying for Chapter 8, Proposition 50 grant funding. Acting as the RWMG, the PARTIES applied for grant funding under the first cycle of Proposition 50, but were not awarded grant funding. The RWMG is now focusing on completing the IRWM Plan and preparing for additional funding cycles.

WHEREAS, the PARTIES are currently in the process of preparing an IRWM Plan, which is scheduled to be completed by January 2008 and will be presented to the PARTIES' governing bodies for approval. The MOU did not address or provide funding for implementation of the IRWM Plan if adopted. In order to efficiently implement the IRWM Plan, the PARTIES believe it would be desirable to create a separate institutional structure, which will include the active participation of the stakeholders whose projects have been incorporated into the IRWM Plan.

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WHEREAS, it is estimated that it will cost approximately \$600,000 to apply for additional IRWM Plan grant funding, conduct public/stakeholder outreach activities, and establish an agreement between all stakeholders for the creation of an institutional structure that will carry out the implementation of the IRWM Plan.

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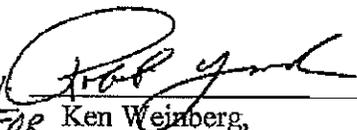
give primary consideration to the recommendations of the RAC as part of any decision related to the following:

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City of San Diego Water Department  
600 B Street, Suite 600  
San Diego, CA 92021  
Attn: Jeffery Pasek
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County of San Diego

San Diego County Water Authority

By: \_\_\_\_\_  
John L. Snyder,  
Director, Department of Public Works

By:   
FOR Ken Weinberg,  
Director of Water Resources

Date: \_\_\_\_\_

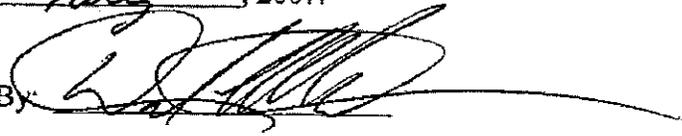
Date: \_\_\_\_\_

City of San Diego

By: \_\_\_\_\_  
J. M. Barrett  
Water Department Director

Date: \_\_\_\_\_

I hereby approve the form and legality of the foregoing First Amendment this 31 day of July, 2007.

By: 

DANIEL HENTSCHE, General Counsel  
San Diego County Water Authority

I hereby approve the form and legality of the foregoing First Amendment this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

JOHN SANSONE, County Counsel

By: \_\_\_\_\_

Senior Deputy County Counsel

I hereby approve the form and legality of the foregoing First Amendment this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

MICHAEL J. AGUIRRE, City Attorney

By: \_\_\_\_\_

Deputy City Attorney

# Adjudication of the Santa Margarita River

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San Diego Region Implementation Grant Application

WFLMD

**FILED LODGED**

MAR 25 1966

APR - 6 1966

CLERK, U. S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CLERK, U.S. DISTRICT COURT BY  
SOUTHERN DISTRICT OF CALIFORNIA  
By *[Signature]* DEPUTY

DEPUTY

**ENTERED**

IN THE UNITED STATES DISTRICT COURT **APR - 6 1966**

SOUTHERN DISTRICT OF CALIFORNIA  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *[Signature]*

SOUTHERN DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 FALLBROOK PUBLIC UTILITY DISTRICT, )  
 a public service corporation of )  
 the State of California, et al., )  
 )  
 Defendants. )

No. 1247-SD-C

MODIFIED  
FINAL JUDGMENT  
AND DECREE

The above-entitled cause came on regularly for trial before the Honorable James M. Carter, United States District Judge, following remand from the United States Circuit Court of Appeals for the Ninth Circuit, which directed that this Court ". . . enter no judgment until the entire suit can be disposed of at the same date."

Because of the complexities of this litigation and the fact that the physical water resources were located throughout the watershed, this Court determined that the said mandate could best be complied with by adjudicating the rights of the parties to the cause in segments of the watershed involving limited areas and numbers of defendants and by entering interlocutory judgments as the trial concerning each such segment was concluded. Proceeding in this manner, this

(3)

1 Court has entered interlocutory judgments as the trial pro-  
2 gressed, each of which concerns a specified area within the  
3 Santa Margarita River watershed, or a limited legal issue  
4 presented by the parties. These interlocutory judgments  
5 expressly provided that they were not final and not operative  
6 until made a part of the final judgment. This Court having  
7 entered orders or interlocutory judgments on all areas within  
8 the watershed and all issues presented for decision, and the  
9 rights to the use of the waters of the Santa Margarita River  
10 stream system having been adjudicated in those interlocutory  
11 judgments, this Court therefore entered its final judgment  
12 and decree on May 8, 1963, whereby the said Interlocutory  
13 Judgments or Orders were listed, and the same, together with  
14 the Findings of Fact and Conclusions of Law attached thereto,  
15 were adopted as the final Findings of Fact, Conclusions of  
16 Law, and Judgment and Decree of the Court. Appeal from said  
17 Final Judgment and Decree was taken to the United States  
18 Court of Appeals. The Court of Appeals, by its decision  
19 dated May 26, 1965, reversed the judgment of this Court as to  
20 the rights of the United States against Vail Company, and re-  
21 manded the cause "with instructions that the final judgment  
22 be appropriately modified to the end that the 1940 state  
23 court decree is reinstated, subject to the rights of Vail  
24 to seek relief from that judgment in accordance with the  
25 views hereinbefore expressed." In all other respects, the  
26 final judgment and decree was affirmed. By its order dated  
27 October 4, 1965, the Court of Appeals denied the United  
States petition for rehearing and clarification.

29 The cause is now before the Court pursuant to the mandate

1 of the Court of Appeals for appropriate modification of the  
2 Final Judgment consistent with that Court's opinion, and pur-  
3 suant to Notice of Hearing for such purpose duly served upon  
4 all parties to the cause except those heretofore determined  
5 to have no interest in the required modification. Upon con-  
6 sideration of the mandate and opinion of the Court of Appeals  
7 and the Final Judgment heretofore entered herein, the Court  
8 hereby makes and enters the following Findings of Fact,  
9 Conclusions of Law, and Modified Final Judgment and Decree:

10 FINDINGS OF FACT

11 I

12 On or about May 5, 1930, the Superior Court of the State  
13 of California in and for the County of San Diego entered  
14 findings of fact, conclusions of law and judgment in Case  
15 No. 42850 in the records of said Court. The parties to said  
16 action were the Rancho Santa Margarita, Vail Company and  
17 various individuals interested in that Company, the Executors  
18 of the Will of Murray Schloss, deceased, and Philip Playtor.  
19 The Rancho Santa Margarita, the Executors of the Will of  
20 Murray Schloss, deceased, and Philip Playtor did not appeal  
21 from said judgment. Vail Company did appeal from certain  
22 portions only of it. Thereafter and on or about July 12,  
23 1938, the Supreme Court of the State of California reversed  
24 certain portions of the judgment. Said Supreme Court remanded  
25 the case with directions that the new trial be limited to  
26 those matters specifically disapproved and affirmed the trial  
27 court's judgment as to all other matters. Said decision of  
28 the Supreme Court is recorded in 11 Cal.2d 501. Thereafter  
29 on or about December 26, 1940, the Superior Court of the

State of California in and for the County of San Diego in said Case No. 42850 entered a final judgment pursuant to the stipulation of the parties. A copy of the 1940 stipulated judgment is attached hereto as Exhibit A.

Vail Company and the Executors of the Will of Murray Schloss, deceased, are parties to the action before this Court and Vail Company's successor in interest, Rancho California, has now voluntarily appeared herein. The United States of America, a party to this action, is in privity with and the successor of the Rancho Santa Margarita, and Max Henderson, party in this action, is in privity with and the successor of Philip Playtor.

## II

By Interlocutory Judgment No. 25 herein, dated April 25, 1961, this Court made certain findings of fact on the basis of which it concluded, inter alia, (1) that the said 1930 findings of fact and judgment and the 1940 stipulated judgment in the said state court action must be considered one judgment, (2) that the said state court judgment was inequitable and should not be enforced as such by a court of equity, and (3) that the said state court judgment was not a contract, but if it were it had been rescinded by Vail Company. Interlocutory Judgment No. 25 then enjoined the United States and the other parties to said state court action from enforcing or attempting to enforce in any manner any "judgment, provision or term, finding of fact or conclusion of law" set forth in the said state court action in either the Supreme Court of California or the Superior Court in and for San Diego County.

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III

In its said opinion of May 26, 1965, the Court of Appeals determined that the 1940 stipulated judgment in the said state court action was not based upon the 1930 findings of fact but "upon agreement between the litigants." The Court of Appeals further stated: "It was upon that agreement that the California court relied and not upon the facts then (or earlier) existing." It was held that the 1940 stipulated judgment constituted a valid agreement between the parties to the stipulation, that the Vail Company had not established that it was entitled to rescind the agreement or that the United States had in any way repudiated it or estopped itself to assert its continuing validity and effectiveness, and that in any relitigation of rights as between the successor in interest of Rancho Santa Margarita and Vail Company, such relitigation "starts from where it last left off, which in this case, as to Vail, would be the 1940 decree."

IV

While holding that the 1940 stipulated state court judgment is valid and enforceable in this litigation as between the parties to that action, the Court of Appeals further noted "that some relief might be proper should Vail be able to show that mistakes of fact have caused it harm of sufficient magnitude to justify reformation." Without prejudging the question, the Court gave two examples of the kinds of circumstances which might, on application and adequate showing, be basis for some relief.

V

It is therefore plain that for this Court to carry out

1 the mandate of the Court of Appeals it is necessary that  
2 Interlocutory Judgment No. 25, and the Conclusions of Law on  
3 which it is based, be withdrawn and that there be included in  
4 the final judgment of this Court a provision that the 1940  
5 stipulated state court judgment is valid and enforceable as  
6 between the parties thereto and their respective successors  
7 in interest, subject to the rights of any of such parties  
8 and their successors in interest to seek some relief from  
9 the provisions thereof on showing that mistakes of fact have  
10 caused the applicant harm of sufficient magnitude to justify  
11 reformation.

12 The question whether the Findings of Fact on which Inter-  
13 locutory Judgment No. 25 is based are of continuing validity  
14 in light of the decision of the Court of Appeals is one about  
15 which there is, or may be, considerable controversy between  
16 the parties. Without prejudging this question as to any of  
17 such findings, the entry of this Modified Final Judgment and  
18 Decree shall be without prejudice to the right of any party  
19 in any future proceeding herein to attack or assert the  
20 validity of any such Findings of Fact.

21 VI

22 There are other provisions of the several Interlocutory  
23 Judgments, as incorporated into the Final Judgment, and the  
24 Findings of Fact and Conclusions of Law on which the same were  
25 based, which are or may be inconsistent with the Court of  
26 Appeals determination respecting the enforceability of the  
27 1940 stipulated state court judgment as between the parties  
28 thereto and their respective successors in interest. However,  
29 in view of the Court's continuing jurisdiction in this matter,

1 the Court perceives no immediate need to modify and correct  
 2 every provision in the constituent parts of the final judg-  
 3 ment as heretofore entered which is not wholly consistent  
 4 with the reinstatement of the 1940 stipulated state court  
 5 judgment. With the understanding that an application or  
 6 applications to modify such possibly inconsistent provisions  
 7 may be considered hereafter, none of the parties has at this  
 8 time requested that the Court take action now to do more than  
 9 the minimum required for compliance with the mandate of the  
 10 Court of Appeals.

11 CONCLUSIONS OF LAW

12 I

13 The 1940 stipulated judgment in the state court action  
 14 referred to in Finding I above, a copy of which is Exhibit A  
 15 hereto, is a valid and binding obligation of the parties  
 16 thereto and is enforceable in this action as between the  
 17 parties thereto and their successors in interest as such an  
 18 obligation and as a valid judgment of the Court by which the  
 19 same was entered. The said stipulated judgment should there-  
 20 fore be incorporated into and adopted as part of the Final  
 21 Judgment of the Court in this action. Consistent with the  
 22 mandate of the Court of Appeals, it is necessary that in so  
 23 incorporating the said 1940 stipulated judgment into this  
 24 Court's Final Judgment, and in adopting the same as a part  
 25 thereof, there be reserved to the parties thereto and their  
 26 successors in interest, the right to seek relief from any of  
 27 the provisions of said 1940 stipulated judgment with respect  
 28 to which it can be and is shown that mistakes of fact have

caused harm to the applicant of sufficient magnitude to justify reformation.

## II

The list of interlocutory judgments contained in paragraph 1 of this Court's Final Judgment, dated May 8, 1963, should be modified to conform to the provisions hereof with respect to Interlocutory Judgment No. 25.

## III

The right of any affected party to apply for modification of any other provision of the several interlocutory judgments, as incorporated into the Final Judgment, or of the Findings of Fact or Conclusions of Law on which the same are based, upon showing of incompatibility with or inconsistency between such provision and the Court of Appeals determination respecting enforceability of the 1940 stipulated state court judgment and this Court's continuing jurisdiction to consider any such application, should be expressly reserved.

## IV

In all other respects, the Final Judgment of this Court, as entered herein on May 8, 1963, should be continued in force and effect.

### MODIFIED FINAL JUDGMENT

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

#### I

IT IS ORDERED, ADJUDGED, AND DECREED that the 1940 stipulated judgment in the state court action, referred to in Finding I above and attached hereto as Exhibit A, is a valid and binding obligation of the parties thereto, is enforceable

1 in this action as between the parties thereto and their suc-  
2 cessors in interest as such an obligation and as a valid  
3 judgment of the Court by which the same was entered, and is  
4 adopted as a part of and incorporated into this Modified  
5 Final Judgment, provided, that there is expressly reserved  
6 to the parties thereto and their successors in interest, the  
7 right to apply for relief from any of the provisions of said  
8 stipulated judgment with respect to which it can be and is  
9 shown that mistakes of fact have caused the applicant harm  
10 of sufficient magnitude to justify reformation.

11 I-A

12 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Inter-  
13 locutory Judgment No. 25, and the Conclusions of Law on which  
14 the same is based, are hereby withdrawn; provided, that the  
15 entry of this Modified Final Judgment and Decree shall be  
16 without prejudice to the right of any party in any future  
17 proceeding herein to attack or assert the validity of any of  
18 the Findings of Fact in said Interlocutory Judgment No. 25.

19 II

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each of  
21 the following Interlocutory Judgments or Orders and the Find-  
22 ings of Fact and Conclusions of Law attached thereto, includ-  
23 ing amendments, if any, are also adopted by reference as  
24 part of and incorporated into the Final Findings of Fact,  
25 Conclusions of Law, and Modified Final Judgment and Decree  
26 of this Court:

	<u>Number</u>	<u>Date Interlocutory Judgment or Order Entered</u>	<u>Brief Description of Subject Matter</u>
1	1	April 7, 1961	Jack & Cosette Garner (Wilson Creek Area) - now merged into 33A
2	2 thru 21	April 7, 1961	Fallbrook & Area South (non-riparian) - now included in Amended 39A
3		November 21, 1962	Amendment to 2 (Parcels to be included in 42 - Rainbow)
4	22	April 7, 1961	Regarding Water Rights on Lands Originally Conveyed by Mexican Grants
5	23	April 7, 1961 April 4, 1962	Appropriative Rights - FPUD Amendment to 23
6	24	April 13, 1961	Non-Statutory Appropriative Rights of USA in SMR for Lake O'Neill
7	24A	May 7, 1963	Stipulation Respecting Appropriative Rights to Use of Waters of SMR for Lake O'Neill - USA & FPUD
8	25	April 25, 1961	Subject to provisions of paragraph I-A and any other applicable provisions of this Modified Final Judgment and Decree
9	26	April 25, 1961	Oviatt (Parcels in 33 and 34A)
10	27	April 25, 1961	Knox (All parcels included in 40)
11	28	May 24, 1961	Miscellaneous Surface Impoundments
12		December 8, 1961	Amendments to 29A, 31A, 32A, 33A & 34A (Explanation of parcel numbers)
13		February 8, 1962	Amendments to 29A, 31A, 32A, 33A, 34A & 38A (Jurisdiction of surface waters)
14	29A	August 1, 1961	Sandia Creek sub-watershed (All Parcels now included in 39A)

	<u>Number</u>	<u>Date Interlocutory Judgment or Order Entered</u>	<u>Brief Description of Subject Matter</u>
1			
2			
3	30	March 8, 1962	Murrieta-Temecula Ground Water Area (Riverside County subdivisions)
4			
5		July 3, 1962	Amendment to 30 (Storage Units 1, 2, 3, 4 - approximately 418,000 ac.ft.)
6			
7		March 6, 1963	Amendment to 30 - Respecting Stipulation--Settling Rights
8			
9	30A	March 13, 1963	Murrieta-Temecula - Outside Ground Water Area
10	31	January 25, 1963	Santa Gertrudis (Lower Murrieta)
11			
12	31A	July 27, 1961	Tucalota Creek Sub-watershed Amended (Lower Murrieta)
13		March 6, 1963	Amendment to 31A - Respecting Stipulation - Settling Rights
14			
15	32	December 11, 1962	DeLuz Creek Sub-watershed
16		March 6, 1963	Amendment to 32 - Respecting Stipulation - Settling Rights
17	32A	August 4, 1961	DeLuz Creek Sub-watershed
18	33	December 11, 1962	Anza Valley, Wilson Creek & Coahuilla-Down to ground water area
19			
20	33A	August 4, 1961	Wilson & Coahuilla Creeks Sub-watershed
21		March 6, 1963	Amendment to 33A - Respecting Stipulation - Settling Rights
22		April 9, 1963	Amendment to 33A - Interlocutory Judgment 1 merged into 33A
23			
24	34	February 20, 1963	Temecula Creek above Aguanga Ground Water Area
25		March 6, 1963	Amendment to 34 - Respecting Stipulation - Settling Rights
26			
27	34A	December 7, 1961	Temecula Creek Sub-watershed Above Vail Dam
28			
29			
30			

1	<u>Number</u>	<u>Date Interlocutory Judgment or Order Entered</u>	<u>Brief Description of Subject Matter</u>
3		March 6, 1963	Amendment to 34A - Respecting Stipulation - Settling Rights
4	35	June 4, 1962	Vail Company (Temecula Creek Below Vail Dam and to the Gorge)
5			
6	35A	December 11, 1962	Vail Company
7			
8	36	July 3, 1962	Warm Springs & Diamond-Domenigoni (Upper Murrieta)
9	36A	February 20, 1963	Warm Springs (Upper Murrieta)
10		March 6, 1963	Amendment to 36A - Respecting Stipulation - Settling Rights
11	37	April 6, 1962	Military Enclave
12		November 8, 1962	Amendment to 37 (Sewage effluent discharges & Water conservation practices)
13			
14		February 20, 1963	Amendment to 37 (Exclusive jurisdiction)
15	38		(No Judgment #38)
16	38A	January 3, 1962	Temecula Creek Sub-watershed - Below Vail Dam and above Gorge
17			
18		March 6, 1963	Amendment to 38A - Respecting Stipulation - Settling Rights (1/30/62 Order setting aside 38A 2/1/62 Order vacated)
19			
20	39	December 11, 1962	SMR - Below Gorge and above Enclave (Includes Sandia)
21		April 9, 1963	Amendment to 39 - (Includes Fallbrook and Area South)
22			
23	39A	November 8, 1962	SMR - Below Gorge and above Enclave (Includes 29A)
24		March 13, 1963	Amendment to 39A (Includes Fallbrook and Area South) (Also 2 thru 21)
25			
26	40	December 12, 1962	Aguanga Ground Water Area (Temecula & Wilson)
27			
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29			
30			

<u>Number</u>	<u>Date Interlocutory Judgment or Order Entered</u>	<u>Brief Description of Subject Matter</u>
41	November 8, 1962	Indian Reservations
42	October 10, 1962	Rainbow Creek
42A	February 25, 1963	Rainbow Creek
43	February 6, 1963	Cottle & Gibbon
44	May 8, 1963	National Forest Lands
45	December 12, 1962	Order Regarding Water Extractions
	January 27, 1966	Order Superseding No. 45 and Order of September 3, 1964

Provided, that there is hereby expressly reserved the jurisdiction of this Court to consider, and the right of any affected party to make application for, modification of any of the provisions of said Interlocutory Judgments or Orders, or of the Findings of Fact and Conclusions of Law attached thereto, which is incompatible or inconsistent with the provisions of paragraph I of this Modified Final Judgment or with the Court of Appeals' determination respecting enforceability of the said 1940 stipulated state court judgment as between the parties thereto and their respective successors in interest.

### III

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that questions with respect to interpretation and application of the said 1940 stipulated state court judgment which are not hereby specifically decided will be considered and determined upon application of any affected party after notice to other affected parties.

IV

1  
2 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that  
3 the judgment provisions as set forth in the aforesaid  
4 interlocutory judgments and orders and the original  
5 Final Judgment herein are effective as of May 8, 1963,  
6 the date of entry of said Final Judgment (or any later  
7 dates as of which a modification of any thereof may have  
8 been entered), and that the modifications of the said  
9 Final Judgment hereby made are effective as of the date  
10 of entry of this Modified Final Judgment and Decree.

V

11  
12 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that  
13 this Court retains continuing jurisdiction of this  
14 cause as to the use of all surface waters within the  
15 watershed of the Santa Margarita River and all  
16 underground or sub-surface waters within the watershed  
17 of the Santa Margarita River, which are determined in  
18 any of the constituent parts of this Modified Final  
19 Judgment to be a part of the sub-surface flow of any  
20 specific river or creek, or which are determined in any  
21 of the constituent parts of this Modified Final Judgment  
22 to add to, contribute to, or support the Santa Margarita  
23 River stream system.

VI

24  
25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the  
26 STATE OF CALIFORNIA STATE WATER RIGHTS BOARD, or its  
27 successor agencies as may be provided by the laws of the  
28 State of California, shall continue to exercise its  
29 statutory jurisdiction over all present or future

1 appropriate rights to the use of waters of the Santa  
2 Margarita River and its tributaries.

3 VII

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that  
5 this Court shall also continue to exercise jurisdiction  
6 concerning all present or future appropriative rights  
7 insofar as such uses may conflict with or be adverse to  
8 the exercise of any prior vested water right within the  
9 Santa Margarita River watershed, as adjudicated by the  
10 provisions of the Interlocutory Judgments or orders  
11 above set forth and by this Modified Final Judgment.

12 VIII

13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that  
14 this Court reserves the right to amend, nunc pro tunc,  
15 upon its own motion either with or without notice, any  
16 interlocutory judgment or order or exhibit attached  
17 thereto or this Modified Final Judgment, for the purpose  
18 of correcting errors or inaccuracies in names, legal  
19 descriptions or other similar factual data contained in  
20 said interlocutory judgments or orders or exhibits, as  
21 provided in Rule 60A of the Federal Rules of Civil  
22 Procedure.

23 IX

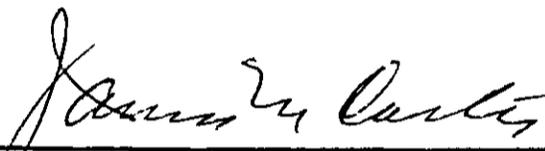
24 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the  
25 continuing jurisdiction reserved by this Court will be  
26 exercised on the Court's own Motion, or upon the motion  
27 of any party to this cause, his heirs, successors, or  
28 assigns, made upon notice and in accordance with the  
29 Rules of this Court.

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X

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that neither this Modified Final Judgment and Decree nor any Interlocutory Judgment or order incorporated herein shall in any manner affect the right of the United States of America to acquire by the exercise of the power of eminent domain property including water rights of any nature as is or may be authorized by the laws of the United States of America; nor shall this Modified Final Judgment and Decree or any Interlocutory Judgment or order incorporated herein prevent any defendant from acquiring property including water rights of any nature by the exercise of the power of eminent domain as is or may be authorized by the laws of the State of California.

DATED: 4/6/66, 1966.

  
\_\_\_\_\_  
JAMES M. CARTER, Judge  
United States District Court

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN and For the County of San Diego

RANCHO SANTA MARGARITA  
a corporation

Plaintiff

vs.

M. R. Vail, Mary Vail Wilkinson,  
Mahlon Vail, Edward N. Vail,  
Margaret Vail Bell, The Vail  
Company, an association of persons  
transacting business under that  
common name, N. R. Vail, Mary Vail  
Wilkinson, Mahlon Vail, Edward N.  
Vail and Margaret Vail Bell, as  
Trustees of said Vail Company,  
Mahlon Vail, Executor of the Estate  
of Margaret R. Vail, Deceased, and  
Laura Perry Vail, Executrix of the  
Estate of William Banning Vail,  
Deceased.

Defendants.

Guy Bogart, Lucy Parkman Bogart  
and Fred Reinhold, Executors of  
the will of Murray Schloss, de-  
ceased, and Philip Playtor,

Intervenors.

-No. 42850

STIPULATED JUDGMENT

This cause came on regularly for trial in the above entitled court and department thereof on Monday, October 18, 1926, at the hour of 10:00 o'clock A. M., before the court, Honorable L. D. Jennings, Judge, presiding; Messrs. Hunsaker, Eritt & Cosgrove appearing as attorneys for the plaintiff, Messrs. Haas & Dunnigan, Messrs. Ward, Ward & Ward, Messrs. Stephens & Stephens, and Messrs. O'Melvery, Milliken & Tuller, appearing as attorneys for defendants, and Walter Gould Lincoln, Esq., appearing as attorney for intervenors. The introduction of evidence, oral and documentary, being completed, arguments, oral and in writing, having been submitted, the court having considered the same and being fully advised in the premises, findings of fact and conclusions of law having been signed by the court and filed with the clerk thereof, and judgment on said findings and conclusions having been signed and entered; defendants and each of them thereon appealed from said judgment and from each part thereof, but said intervenors

did not appeal from said judgment; the Supreme Court of said State of California upon said appeal having reversed said judgment and directed a new trial upon certain issues designated in the opinion of said court reported Rancho Santa Margarita, a corporation, vs. Margaret R. Vail, et al., L. A. No. 15078, 11 Cal. (2nd) 501, and said plaintiff and defendants having stipulated to the entry of the following judgment,

Now, therefore, IT IS ORDERED, ADJUDGED AND DECREED that:

Section First: The plaintiff, Rancho Santa Margarita, a corporation, and defendants, N. R. Vail, Mary Vail Wilkinson, Mahlon Vail, Edward N. Vail, Margaret Vail Bell, the Vail Company, an association of persons transacting business under that common name, N. R. Vail, Mary Vail Wilkinson, Mahlon Vail, Edward N. Vail and Margaret Vail Bell, as Trustees of said Vail Company, Mahlon Vail, Executor of the estate of Margaret R. Vail, Deceased, and Laura Perry Vail, Executrix of the Estate of William Banning Vail, Deceased, and interveners, Guy Bogart, Lucy Parkman Bogart and Fred Reinhold, Executors of the Will of Murray Schloss, Deceased, and Philip Playtor, have and each has rights in and to the waters of the Temecula-Santa Margarita River and its tributaries, and in and to the use of said waters for all beneficial and useful purposes on their respective lands herein more specifically described.

Section Second: The plaintiff is entitled to take and use upon the whole or any part of its lands lying within the Rancho Santa Margarita y Las Flores, San Diego County, California, sixty-six and two-thirds per cent ( $66\frac{2}{3}\%$ ) of the water of said Temecula-Santa Margarita River and all its tributaries which naturally, when not artificially diverted or abstracted, flows and descends in the channel thereof at that certain joint gaging station hereinafter in this judgment designated as Measuring Station No. Six (6).

Section Third: Defendants are entitled to take and use upon the whole or any part of their lands hereinafter mentioned, thirty-three and one-third per cent ( $33\frac{1}{3}\%$ ) of the water of said Temecula-Santa Margarita River and all its tributaries which naturally, when not artificially diverted or abstracted, flows and descends in the channel thereof at that certain joint gaging station hereinafter designated Measuring Station No. Six (6).

The lands of the defendants herein referred to consist of those certain lands in Riverside County, California, known as Pauba Grant, Lost A, B, C, and D of Little Temecula Grant, or Rancho as shown on the Wolf partition map of Little Temecula Grant as described in the final decree of partition in the case of William Wold vs. Ramona Wolf, being Case No. 5756 in the Superior Court of San Diego County, State of California, said final decree of partition being recorded in Book 199 of Deeds, page 464, et seq., records of San Diego County, California, the southeasterly approximately one-half of Temecula Grant, excluding therefrom the town site of the unincorporated city of town of Temecula and the various parcels of land owned by persons other than the defendants herein, as shown by map entitled "Triangulation Map of Pauba Ranch and Vicinity, Riverside County" received in evidence in this case and marked "Plaintiff's Exhibit No. U-4", which exhibit has been incorporated into and constitutes a part of the Transcript on Appeal in this action, (reference is hereby made to said Transcript and to said Exhibit No. U-4 and by such reference said exhibit is incorporated into and constitutes a part of this judgment), Santa Rosa Grant, and Vail governments lands, which said Vail government lands, approximately four hundred sixty (460) acres in area, are more particularly described as\* Those certain lands lying within sections twenty-one (21), twenty-seven (27), twenty-eight (28) and twenty-nine (29) of Township Eight (8) south, Range Two (2) west, S. B. B. M., Riverside County, California, and being more particularly identified as Lots Nineteen (19), Twenty (20), Twenty-one (21), Twenty-six (26), Twenty-seven (27), Thirty (30) and Thirty-one (31) of Block Fifteen (15), and those portions of Lots Seventeen (17) and Eighteen (18) of said Block Fifteen (15) lying without but contiguous to the southeasterly boundary of Lot D of said Little Temecula Grant.

Section Fourth: The intervener Philip Playtor is entitled to take and use upon the whole or any part of his lands riparian to said Temecula-Santa Margarita River, as hereinafter delineated and defined, one (1) miner's inch continuous flow of the waters of said Temecula-Santa Margarita River. The lands of said Philip Playtor riparian to said river are described as follows: The northwest one-quarter ( $NW\frac{1}{4}$ ) of the southeast one-quarter ( $SE\frac{1}{4}$ ) and the south one-half ( $S\frac{1}{2}$ ) of the south one-half ( $S\frac{1}{2}$ ) of section thirty-three (33) and the southwest one-quarter ( $SW\frac{1}{4}$ ) of the southwest one-quarter ( $SW\frac{1}{4}$ ) of section thirty-four (34), Township Eight (8) South, Range Three (3) West, S. B. M., Riverside County, California.

Section Fifth: The interveners Guy Bogart, Lucy Parkman Bogart and Fred Reinhold, as executors under the will of Murray Schloss, deceased, own certain real property in San Diego County, California, of which approximately twenty (20) acres are riparian to a certain tributary of said Temecula-Santa Margarita River by the name of Stone Creek and are susceptible of practical and profitable irrigation with the water of said creek, said approximately twenty (20) acres being described as follows: The south one-half ( $S\frac{1}{2}$ ) of the northeast one-quarter ( $NE\frac{1}{4}$ ) of the northeast one-quarter ( $NE\frac{1}{4}$ ) of section four (4) Township Nine (9) South, Range Three (3) west, S. B. M., San Diego County, in said state. Said interveners are entitled to take from the surface and subsurface waters of said Stone Creek and use the same on said twenty (20) acres riparian to said Stone Creek, throughout said dry or irrigation season of each calendar year and from the 1st day of May of each year until the 31st day of October of the same calendar year, the entire flow of the waters of said Stone Creek and all its tributaries which naturally, when not artificially diverted or abstracted, flows or descends in the channel thereof to and upon said twenty (20) acre parcel; and are entitled to take from said Stone-Creek, during the rainy or winter season of each year, for use upon said twenty (20) acres of riparian land for all beneficial purposes, five (5) miner's inches continuous flow.

Section Sixth: The waters of said stream and its tributaries herein apportioned to the interveners shall be deducted from the fractional part of the waters of said stream herein allotted to plaintiff.

Section Seventh: For the purpose of dividing among, and allocating to, the parties of this action, the waters of the Temecula-Santa Margarita River and its tributaries, at the places and in the amounts specified in this judgment, the plaintiff and the defendants immediately shall establish, and thereafter shall maintain jointly (unless established and/or maintained by U. S. Geological Survey, Division of Water Resources State Department of Public Works, or other public body), stream-flow (automatically registering) gaging stations at the following three locations on the Temecula-Santa Margarita River:

Station No. One (1): The upper end of Nigger Canyon at or near the present location of the Nigger Canyon gaging station;

Station No. Three (3): The upper end of Temecula Gorge, immediately downstream from the confluence of Murrieta Creek, at or near the present location of

the Temecula Gorge gaging station;

Station No. Six (6): The Narrows, at or near the present location of the Isidora gaging station.

And plaintiff and defendants shall establish and maintain jointly (unless established and/or maintained by U. S. Geological Survey, Division of Water Resources State Department of Public Works, or other public body), gaging stations for measuring (and automatically registering) the surface flow of said stream, or any of its tributaries, at any point thereon where the plaintiff, the defendants, or the interveners, or any of them, hereafter may construct or maintain appliances for the diversions of the surface flow of said stream, or any of its tributaries. (The cost of establishing and maintaining joint gaging stations as are required hereunder, including the taking of measurements and observations thereof, shall be borne equally by the plaintiff and the defendants.)

Each party shall establish and maintain meters to determine and automatically register the amount of the underground waters abstracted or diverted by such party from the underground waters of Temecula-Santa Margarita River and/or its tributaries by means of wells, either artesian or pumped (except windmill wells and/or domestic use wells of the parties and/or their tenants); such meters shall be of a type which will meet the approval of both plaintiff and defendants or the approval of either party and the engineer in charge of the Los Angeles office of the U. S. Geological Survey, and shall be installed and maintained in such manner and place as to be available for inspection by either plaintiff or defendants at all times.

Section Eighth: Whenever the total normal flow of said Temecula-Santa Margarita River (when not artificially diverted or abstracted) measured at gaging station No. Three (3) exceeds the total normal flow measured at Gaging Station No. Six (6), then and in that instance the flow of said stream at said Gaging Station No. Three (3) shall be considered as the total flow of said stream, and at such time the apportionments and allotments herein provided for shall be predicated upon the flow of said stream at said Gaging Station No. Three (3).

Section Ninth: For the purpose of apportioning to defendants thirty-three and one-third per cent (33-1/3%) of the waters of said stream as in Section Third provided, it shall be deemed that an amount of water equal to one-half (1/2) the surface flow at Station No. Six (6) or Station No. Three (3), wherever the flow is the

greater (as provided in Section Eighth), pumped and/or diverted from the subsurface and/or surface waters of said river at points upstream from said Station No. Three (3), shall constitute thirty-three and one-third per cent (33-1/3%) of the waters of said stream.

It is recognized that the practical operation of the various pumping plants upon the defendants' lands for irrigation makes it difficult, if not impossible, for defendants to abstract and divert each day an amount of water the exact equivalent of the proportion of the stream flow measured at Station No. Six (6) or Station No. Three (3) to which defendants are entitled under this decree. Accordingly, whenever it is observed that defendants are abstracting and diverting, or have abstracted and diverted surface and/or underground waters in amounts in excess of that to which they are entitled hereunder, defendants, upon learning or being informed of such fact, thereupon shall reduce their diversions below the amount to which they are entitled under this decree, and shall continue such reduced diversions for the same period of time as near as is practicable and in an amount equivalent to the amount of water which defendants had diverted in excess of that to which they were entitled under this decree.

Section Tenth: In addition to the thirty-three and one-third per cent (33-1/3%) of the waters of said stream herein in Section Third allotted to defendants, they may also divert or abstract from the underground waters of said Tamecula-Santa Margarita River, but not from the surface waters of said stream, at the places, during the times and upon the conditions hereinafter in this Section specifically set forth, but not otherwise, a specified amount of subsurface water herein in this judgment referred to as "Storage Water". The amount of Storage Water which the defendants may divert or abstract during any irrigation season shall be determined by the elevation of water (When not artificially disturbed) on May 1st of each year in a certain well located on defendants' land known as Windmill Well, in accordance with the following table:

<u>Depth to water below ground surface as shown in casing of Windmill Well on May 1st</u>	<u>Amount of Storage Water defendants may divert and apply to beneficial use during irrigation season</u>
20 feet or less	1,500 acre feet
30 feet	1,125 acre feet
40 feet	750 acre feet
50 feet	375 acre feet
60 feet or more	No acre feet

At depths to water intermediate to those above stated proportionate quantities of water may be taken.

The spreading of flood water which does not involve surface impoundment (either temporary or otherwise) but which may raise the level of water in the underground basin in which said Windmill Well is drilled and upon which said well is located, shall not be considered as an artificial disturbance of the elevation of water in said Windmill Well. Storage water may be directed and used only upon said lands of defendants hereinbefore described and not elsewhere.

For the purpose of indicating the places at which said Storage Water may be pumped, reference is hereby made to "Plaintiff's Exhibit No. 265". Said Exhibit by reference has been incorporated into and constitutes a part of the Transcript on Appeal in this action. Reference is hereby made to said Transcript and to said Exhibit No. 265 and by such reference said Exhibit is incorporated into and constitutes a part of this judgment.

Shown upon said Exhibit No. 265, and extending in a generally northerly and southerly direction, is a certain line of wells (hereafter referred to as the E line of wells) designated on said Exhibit as E-3, E-2 North, E-1 North, E-1 South and E-2 South.

Easterly thereof, shown upon said Exhibit, and extending in a generally north-westerly and southeasterly direction, is a certain line of wells (hereafter referred to as the P. V. line of wells) designated on said Exhibit as P.V.9, P.V.6, and P.V.6X. Immediately adjacent to said P.V. line of wells and parallel thereto, is a certain highway commonly known as Old Warners Ranch Road (now not in common use).

(a) Not more than Thirty per cent (30%) of said Storage Water which defendants are entitled to pump during any irrigation season may be pumped from that portion of defendants' lands lying between a line drawn through said E line of wells and extended across said underground basin, and a line drawn through said P.V. line of wells and extended across said basin.

(b) At least seventy per cent (70) of said Storage Water which defendants are entitled to pump during any irrigation season shall be pumped from that portion of defendants' lands lying easterly of a line drawn through said P. V. line of wells and extended across said underground basin.

The well hereinbefore described as Windmill Well is situated on Pauba Grant South Sixty-seven degrees fifteen minutes (S 67 deg. 15 min) East of B.M.11 a

distance of approximately eleven hundred (1100) feet, and South forty-seven degrees twenty minutes (S 47 deg. 20 min) West of B.M. 12 a distance of approximately fifteen hundred eighty (1580) feet, said bench marks being designated as Nos. 11 and 12 on said Exhibit No. 265.

Should said Windmill Well collapse or otherwise cease to be available or useful for the purpose of determining ground water elevations in the vicinity thereof, then another well shall be drilled by the defendants in the same general location, at approximately the same ground surface elevation above sea level, but not to exceed a distance of one hundred (100) feet from the location of said Windmill Well. Such new well shall be approximately the same depth and diameter of casing as said Windmill Well. In event the parties hereto are unable to agree upon location, depth and diameter of casing of such well, these matters, upon petition of the parties hereto or either of them, shall be determined by order of this court.

For the purpose of determining defendants' total diversions of the waters of the Temecula-Santa Margarita River and its tributaries (meaning thereby to include both the allotment of thirty-three and one third per cent (33-1/3%) of the waters of the river as defined in Section Third, and the additional Storage Water as defined in this Section Tenth hereof), any water abstracted or diverted by defendants from the underground waters of said river (including underground basins of percolating water within the watershed of said river and its tributaries) by use of wells or pumps or other means of diversion, whether now existing or hereafter established, except as hereinafter in this section provided, shall be added to any surface diversions by the defendants from the waters of said river. Such abstractions by the defendants of the underground waters of the Temecula-Santa Margarita River are, and for all purposes of this judgment shall be (except as hereinafter provided) considered as diversions of the waters of said river, and are and shall be chargeable against the fractional part of the surface flow of said stream and the additional amount of Storage Waters herein allotted to defendants.

Water abstracted or diverted from said underground Water of said river which shall not be subject to the provisions of this section are as follows:

1. Windmill wells maintained by defendants for the purpose of supplying water for cattle.
2. Water used by defendants or their tenants for domestic use exclusively (but not including any irrigation use);

3. Waters which defendants may pump directly into the surface flow of said stream pursuant to the requirements of Section Eleventh hereof.

Section Eleventh:

Part 1. During the irrigation season of each year, to wit, May 1 to October 31, inclusive, excepting as otherwise in Part 1 of this Section permitted, defendants shall cause to be maintained at Gaging Station No. Three (3) a constant flow of water of not less than three (3) cubic feet per second (one (1) cubic foot per second being the equivalent of fifty (50) miner's inches.).

The surface flow at said Station No. Three (3) may be permitted to fall below three (3) cubic feet per second during said irrigation season upon the following conditions and not otherwise:

1. Said surface flow shall not be permitted to fall below three (3) cubic feet per second for any continuous period of more than ten (10) days;
2. An interval of at least ten (10) days shall elapse between periods during which said surface flow falls below three (3) cubic feet per second;
3. Defendants shall contribute to the surface flow at Station No. Three (3), by means of pumping from Temecula Alluvial Basin, or otherwise, an amount of water equal to the amount that the actual flow during said period was less than the required flow of three (3) second feet;
4. Such contributions shall be made at the same rate and over the same period (as near as practicable) as the rate at which said surface flow was less than Three (3) second feet;
5. Such contributions shall be made immediately following the period in which said required flow of three (3) second feet was not maintained;
6. Defendants by means of pumping underground waters directly into the surface flow of the stream or otherwise during any period in which said required flow of three (3) second feet was not maintained, shall always maintain a constant surface flow at Station No. Three (3) of not less than two (2) second feet.

Part II: In the event that, during the irrigation season of any year, to wit, May 1 to October 31, inclusive, the irrigation of crops on said lands of defendants reasonably requires more water than they otherwise are entitled to take under this decree, defendants may abstract and divert underground waters only, in amounts in excess of that to which they are otherwise entitled hereunder. Such excessive diversions may be made upon the following conditions and not otherwise:

1. Excessive diversions shall not continue for a period to exceed eight (8) days consecutively;
2. Following any period of excessive diversion, an interval shall elapse before any further period of excessive diversion, which interval shall not be less than the number of days during the period of excessive diversions immediately preceding;
3. Defendants shall reduce their diversions below the amount to which they are otherwise entitled under this decree, such reductions to be in an amount not less than the amount of water which defendants have diverted in excess of that to which they are otherwise entitled under this decree;
4. Such reductions of their diversions shall be made by defendants immediately following the period during which such excessive diversions were made and shall be completed within ten (10) days thereafter;
5. Defendants, at least one (1) day in advance of the commencement of such diversions, shall advise plaintiff in writing of their requirement and of their intention to avail themselves of the privilege of excessive diversions afforded under part II of this Section.

Parts I and II of this Section Eleventh are complementary one of the other and not inconsistent one with the other and hereafter shall be so construed. The purpose of Part I is to require defendants to maintain a constant flow at Station No. Three (3) of not less than three (3) cubic feet per second excepting under the conditions stated when the flow may be permitted to fall below three (3) cubic feet per second but not below two (2) cubic feet per second, and when such diminution of the stream flow occurs the amount of such diminution shall be contributed by the defendants by pumping directly into the surface flow of the stream from the Temecula Alluvial Basin or otherwise. Part II permits defendants under the conditions stated to use for short periods amounts of water in excess of their allotment but requires them to contribute shortly thereafter the amount of such excessive diversions by reducing (in an amount not less than the amount of such excessive diversions) the amount of the diversions to which they are otherwise entitled. No part of such excessive diversions is required to be contributed by defendants through direct pumping from the subsurface waters of the Temecula Alluvial Basin into the surface flow of the stream if, during the period of such excessive diversions, the constant stream flow at Station No. Three (3) equals or exceeds three (3) second feet.

Section Twelfth: Defendants at all times shall be entitled to divert from the Temecula-Santa Margarita River and its tributaries, and to apply to beneficial use upon their said lands, an amount of water equal to one-half the amount which the plaintiff is entitled to divert from said river and its tributaries and apply to beneficial use upon its lands.

For the purpose of determining the amount of water which defendants are entitled to divert and apply to such beneficial use, computations of the amount of water diverted and applied to beneficial use by each of the parties hereto shall be made monthly, based on joint measurements maintained as herein required. In event said measurements disclose that the amount of water which defendants are entitled to divert and apply to beneficial use pursuant to the provisions of this judgment is less than one-half the amount being applied to beneficial use by plaintiff, thereupon defendants shall be entitled to increase their diversions and applications to beneficial use to an amount sufficient to make defendants' diversions and applications to beneficial use equal to one-half the amount diverted and applied by plaintiff; provided, however, that such additional diversions and applications, if and when made, shall be in addition to diversions made under Sections Third and Tenth hereof, and shall be made by defendants during the irrigation season in which such right accrues, or in the first subsequent season, or part in the same season and the remainder in the first subsequent season, and such diversion, if any, shall be made by pumping from the underground basin at points easterly from said P. V. line of wells.

Section Thirteenth: Each of the parties hereto shall have the right to construct dams or reservoirs on its or their respective lands or elsewhere, for the purpose of intercepting or impounding or conveying such party's share of the flood waters of said river and its tributaries; provided, however, in the event any such dam or reservoir is hereafter constructed by defendants for such purpose, the rights of defendants to abstract and divert Storage Water pursuant to Section Tenth hereof shall cease and terminate.

Defendants shall not make, during any irrigation season, any surface diversions of the waters of said river at the Bridge Pumping Plant, The Cantarini Pumping Plant or the Tule Pumping Plant referred to in the findings herein, or at any other point

on said Temecula-Santa Margarita River below the point of Rising Water as shown on said Exhibit No. 265.

Section Fourteenth: The plaintiff, Rancho Santa Margarita, a corporation, shall have and recover of and from the defendants, its costs and disbursements herein taxed at Six Thousand Thirty-six and 62/100 Dollars (\$6,036.62).

Dated at San Diego, California, this 26 day of December, 1940.

Gordon Thompson

Judge

Records indicate that this judgment was recorded in San Diego and Riverside Counties on 26 December 1940.

