

Settlement Agreement
Among
San Bernardino Valley Water Conservation District,
San Bernardino Valley Municipal Water District and
Western Municipal Water District of Riverside County

This Settlement Agreement Among San Bernardino Valley Water Conservation District, San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County ("**Agreement**") is entered into and effective this ___ day of August, 2005. Each of the parties to this Agreement is referred to as "**Party**" and collectively the parties to this Agreement are referred to as the "**Parties.**"

Recitals

- A. San Bernardino Valley Municipal Water District ("**Valley District**") and Western Municipal Water District of Riverside County ("**Western**") have filed Water Right Application Nos. 31165 and 31370 with the State Water Resources Control Board (the "**State Board**"), which applications seek to divert for beneficial use the waters of the Santa Ana River.
- B. San Bernardino Valley Water Conservation District ("**Conservation District**") has filed Water Right Application No. 31371 with the State Board, which application also seeks to divert for beneficial use the waters of the Santa Ana River.
- C. Valley District and Western have filed a protest with the State Board against the Conservation District's application and the Conservation District has filed a protest with the State Board against Valley District and Western's applications.
- D. The Parties now wish to resolve their respective protests on mutually agreeable terms and to memorialize those terms in this Agreement.

Agreements

The Parties agree as follows:

1. *Agreement to Exhibit A.* The Parties agree to implement the terms and conditions set forth in Exhibit A, which is attached hereto and incorporated herein by reference.
2. *Amendment to Seven Oaks Accord.* The Parties will seek to amend the Seven Oaks Accord to include the Conservation District as a party and to include the following provisions, as well as the provisions of paragraph 1 above, in an amended Seven Oaks Accord:
 - a. Bear Valley *et al.* would not object to diversions made under the Conservation District's two licenses, and

- b. Bear Valley *et al.* would support changing the period of diversion of the Conservation District's licenses so as to permit diversions under those licenses on a year-round basis.

3. *Indemnification.*

- a. *Indemnification by Conservation District.* The Conservation District shall indemnify, defend and hold harmless Valley District and Western, their directors, officers, employees and agents from and against all damages, liabilities, claims, actions, demands, costs and expenses (including, but not limited to, costs of investigations, lawsuits and any other proceedings whether in law or in equity, settlement costs, attorneys' fees and costs), and penalties or violations of any kind, which arise out of, result from, or are related to the diversion and/or spreading of water by Conservation District from either the Santa Ana River or Mill Creek. In particular, and without limiting the scope of the foregoing indemnification, the Conservation District shall indemnify, defend and hold harmless Valley District and Western, their directors, officers, employees and agents from and against all damages, liabilities, claims, actions, demands, costs and expenses (including, but not limited to, costs of investigations, lawsuits and any other proceedings whether in law or in equity, settlement costs, attorneys' fees and costs), and penalties or violations of any kind, which arise out of, result from, or are related to any spreading of water in a manner that is not consistent with the requirements of the annual groundwater management plan described in Exhibit A.
- b. *Indemnification by Valley District and Western.* Valley District and Western shall indemnify, defend and hold harmless the Conservation District, its directors, officers, employees and agents from and against all damages, liabilities, claims, actions, demands, costs and expenses (including, but not limited to, costs of investigations, lawsuits and any other proceedings whether in law or in equity, settlement costs, attorneys' fees and costs), and penalties or violations of any kind, which arise out of, result from, or are related to the diversion and/or spreading of water by Valley District and Western from the Santa Ana River. In particular, and without limiting the scope of the foregoing indemnification, Valley District and Western shall indemnify, defend and hold harmless the Conservation District, its directors, officers, employees and agents from and against all damages, liabilities, claims, actions, demands, costs and expenses (including, but not limited to, costs of investigations, lawsuits and any other proceedings whether in law or in equity, settlement costs, attorneys' fees and costs), and penalties or violations of any kind, which arise out of, result from, or are related to any spreading of water in a manner that is not consistent with the requirements of the annual groundwater management plan described in Exhibit A.
- c. *Indemnification Procedures.* Any Party that is an indemnified party (the "**Indemnified Party**") that has a claim for indemnification against another Party

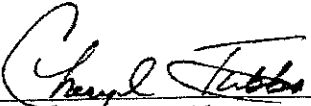
(the "Indemnifying Party") under this Agreement, shall promptly notify the Indemnifying Party in writing, *provided, however*, that no delay on the part of the Indemnified Party in notifying the Indemnifying Party shall relieve the Indemnifying Party from any obligation unless (and then solely to the extent) the Indemnifying Party is prejudiced. Further, the Indemnified Party shall promptly notify the Indemnifying Party of the existence of any claim, demand, or other matter to which the indemnification obligations would apply, and shall give the Indemnifying Party a reasonable opportunity to defend the same at its own expense and with counsel of its own selection, *provided* that the Indemnified Party shall at all times also have the right to fully participate in the disputed matter at its own expense. If the Indemnifying Party, within a reasonable time after notice from the Indemnified Party, fails to defend a claim, demand or other matter to which the indemnification obligations would apply, the Indemnified Party shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle (exercising reasonable business judgment), the claim or other matter, on behalf, or for the account, and at the risk, of the Indemnifying Party. If the claim is one that cannot by its nature be defended solely by the Indemnifying Party, then the Indemnified Party shall make available all information and assistance to the Indemnifying Party that the Indemnifying Party may reasonably request.

4. *Liquidated Damages.* The Parties recognize that it would be extremely difficult and impractical to ascertain the extent of detriment that could result from groundwater spreading in excess of or at times different from that called for in the annual groundwater management plan described in Exhibit A. The Parties have determined and agree that, in the event that a Party spreads water in excess of or at times different from that called for in the annual groundwater management plan, the Party engaged in such excess or untimely spreading shall pay the sum of \$1,000 per acre-foot spread in violation of the annual groundwater management plan into a fund to be established and administered by Valley District for the development and implementation of the annual groundwater management plan under the auspices of the Seven Oaks Accord, including any amendment thereto, or successors thereto, or amendments to any successors thereto, which sum is believed by the Parties to be a reasonable estimate of the costs to water purveyors in the San Bernardino Valley of remedying such violation of the groundwater management plan. Nothing in the foregoing provision shall be construed in any manner to limit the amount of damages obtainable pursuant to an action to enforce the indemnification, defense or hold harmless provisions of paragraph 3 above.

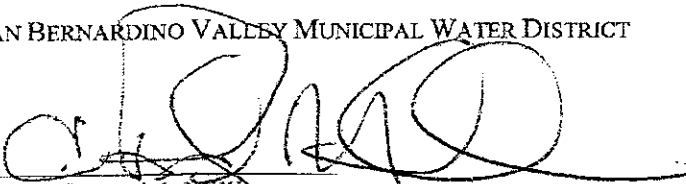
Conservation District Valley District Western

5. *Term.* The terms and/or conditions of this Agreement, including those in Exhibit A hereto, shall continue in full force and effect until terminated by mutual agreement of all Parties hereto.

SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT


By: Cheryl Tubbs
President, Board of Directors

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT


By: C. Patrick Milligan
President, Board of Directors

WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY

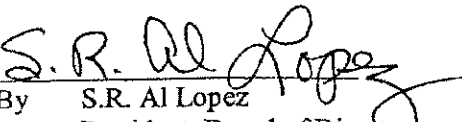

By: S.R. Al Lopez
President, Board of Directors

Exhibit A

1. The Conservation District would:
 - a. withdraw its protest of the Valley District/Western applications and not object to diversions made pursuant to permits issued for those applications;
 - b. in the same way as Bear Valley *et al.* support those applications before the SWRCB and other regulatory agencies;
 - c. grant Valley District/Western an access agreement/easement to use the Conservation District's facilities (including the Cuttle Weir and other intake structures) on a "space-available" basis to divert water pursuant to the Valley District/Western applications;
 - d. not object to the diversion of up to the first 88 cfs of natural flow of the Santa Ana River by Bear Valley *et al.*;
 - e. amend Water Right Application No. 31371 to limit diversions from the Santa Ana River to a maximum of 39,600 afy, which diversions would be in addition to diversions under License Nos. 2831 and 2832;
 - f. agree to limit the spreading of all water diverted from the Santa Ana River and/or Mill Creek (including water diverted under License Nos. 2831 and 2832, Application No. 31371, and any claims of pre-1914 appropriative rights or riparian rights) so as to conform with the requirements of an annual groundwater management plan to be developed by Valley District and Western after consultation with the Conservation District and Bear Valley *et al.* (see below);
 - g. agree that any extraction, sale or transfer of water spread under its water rights or under the water rights of others within the San Bernardino Basin Area would only be undertaken pursuant to the terms of the Cooperative Water Project agreement;
 - h. have no right to extract, sell, or transfer water spread under its water rights outside the San Bernardino Basin Area, save with the prior written approval of Valley District and Western; and
 - i. not waive any claims to riparian or pre-1914 appropriative water rights to divert water from the Santa Ana River or Mill Creek.
2. Valley District and Western would:
 - a. consult with Conservation District (in the same fashion we consult with Bear Valley *et al.*) in the development of an annual groundwater management plan for the SBBA (see below), *provided* that Valley District and/or Western shall have a veto over the groundwater management plan for the purpose of ensuring that the groundwater management plan allows for maintaining the safe yield of the San Bernardino Basin Area and to meet their respective obligations in the Colton,

Riverside North and Riverside South Basins in accordance with the 1969 *Western Judgment*, and *provided further* that until the final groundwater model being developed as part of the San Bernardino Consent Decree process is completed, the Parties shall develop an interim groundwater management plan using existing knowledge and the existing Valley District/Western groundwater model;

- b. attempt in the annual groundwater management plan simultaneously to satisfy several objectives:
 - (1) maximize the quantity of water spread each year at the Santa Ana River spreading grounds,
 - (2) establish and maintain a minimum 50-foot depth to groundwater in the Pressure Zone,
 - (3) maintain groundwater levels in the Forebay Area within 10 feet of the levels that would have occurred in the absence of the project, and
 - (4) otherwise avoid significant impacts on the environment;
- c. subject to the Conservation District's agreement to comply with the annual groundwater management plan:
 - (1) withdraw our protest of the Conservation District's application as revised per paragraph 1(e) above and not object to diversions made pursuant to a permit issued for that application;
 - (2) support that application as revised per paragraph 1(e) above before the SWRCB and other regulatory agencies;
 - (3) not object to diversions made under the Conservation District's License Nos. 2831 and 2832, which diversions would be senior to any diversion of water by Valley District and Western under Water Right Application Nos. 31165 and 31370;
 - (4) support changing the period of diversion of the Conservation District's licenses so as to permit diversions under those licenses on a year-round basis;

x

- 3. All Parties would agree to the goal of coordinating the annual groundwater management plans developed by Valley District and Western under the Accord with the groundwater management program that is being developed by a number of parties (including Valley District and Western) to implement the consent decree in *City of San Bernardino v. United States*.

4. All Parties agree that all spreading will be as described in the groundwater management plan for that year and no spreading would take place without being authorized by the groundwater management plan. If there are opportunities for spreading at the Santa Ana River spreading grounds early in the water year (e.g., October through December) before the Parties can complete the groundwater management plan for that year, the Conservation District could spread the lesser of: (i) the average annual quantity spread during the 1934-35 to 1959-60 Base Period of the *Western* Judgment (4,941 afy) less any new spreading by Bear Valley *et al.* which was not being done during the Base Period or (ii) a quantity less than 4,941 af developed by the Western-San Bernardino Watermaster in its best professional judgment.
5. The priority of use of water would be as follows:
 - a. Conservation District License Nos. 2831 and 2832 would have first priority.
 - b. Valley District/Western Application No. 31165 would have second priority.
 - c. Conservation District Application No. 31371 would have third priority.
 - d. Valley District/Western Application No. 31370 would have fourth priority.
 - e. If the water management plan for that year calls for spreading in the SAR spreading grounds beyond the 10,400 af in Licenses 2831 and 2832, Valley District/Western will step back and allow Conservation District to divert up to 39,600 afy under its new permit for spreading at the SAR spreading grounds in accordance with the water management plan.
 - f. All spreading would be as described in the water management plan for that year and no spreading would take place without being authorized by the water management plan.
6. No Party's participation in the groundwater management plan's development, or agreement to operate under it, can be used by any Party to allege any forfeiture of any claimed water right.

Groundwater Management Plan Process

Paragraph 4 of the Seven Oaks Accord provides as follows:

Groundwater Spreading Program. Applicants, after consultation with Water Users, shall develop and manage a groundwater spreading program that is intended to maintain groundwater levels at the wells specified in Exhibit G at relatively constant levels, in spite of the inevitable fluctuations due to hydrologic variation. The groundwater spreading program shall identify target water level ranges in the specified wells and shall be subject to the requirement that such spreading not worsen the problem of high groundwater levels in the Pressure Zone. The determination of whether a particular action will worsen groundwater levels in the Pressure Zone shall be made using the integrated surface and groundwater models used by Applicants in the environmental impact report for the Applications, as those models may be refined in the future.

The key word in this paragraph is the word "consultation" in the first sentence. Although the Seven Oaks Accord doesn't describe the process of consultation in detail, here's how we intend to consult with the Water Users (and Conservation District if we reach a settlement) in developing the annual management plan. Obviously, this process will change over time as our agencies collectively gain experience in managing the SBBA.

1. We intend to convene one or more meeting(s) of Valley District, Western, the Water Users and Conservation District no later than each October 1 to share information about the status of the SBBA and to develop a shared idea of how much water could be recharged in the event of a dry year, a normal year, or a wet year. These discussions would be like those that led to the interim spreading agreement this past fall.

2. By each October 15, Valley District and Western would develop a preliminary spreading plan for that water year using the SAIC/Geosciences model, as it may be refined over time. The plan would consider dry, normal and wet year scenarios and would attempt to identify spreading strategies for each year type. Valley District and Western would then circulate that preliminary spreading plan to all of the signatories of the revised Seven Oaks Accord for comments and refinements. It is in all of our collective interest to make the plan as effective as possible so Valley District and Western will be looking for any additional information from the Water Users or the Conservation District that can achieve our goals of keeping the SBBA as full as possible without causing high groundwater or other adverse environmental effects.

3. Based on comments from the Water Users and the Conservation District, Valley District and Western would issue a draft management plan by each November 15.

4. The parties to the Seven Oaks Accord would vote on whether or not to adopt the draft management plan by each December 1. The management plan would be adopted if it were approved by a two-thirds vote of a quorum of the parties to the Accord, provided that both Valley District and Western must approve any management plan. In other words, if the Conservation District were to be a party to the Accord, approval of an annual management plan

would require a minimum of four votes (if only five parties were in attendance) or a maximum of six votes (if every party attended).

5. If the parties are not able to adopt the draft management plan by each December 1, they would work cooperatively address any concerns and develop a revised proposal as soon as possible. If the parties cannot develop a proposal that receives support from two-thirds of a quorum by each January 1, the parties would implement any proposal that is approved by a majority vote of a quorum of the parties to the Accord, again provided that both Valley District and Western must approve any management plan. In other words, if the Conservation District were to be a party to the Accord, approval of an annual management plan after each January 1 would require a minimum of three votes (if only five parties were in attendance) or a maximum of five votes (if every party attended).

6. If spreading is possible before the date on which the parties approve an annual groundwater management plan, Valley District and Western would consult with our partners on a real-time basis and use our best professional judgment to direct the spreading of water in a manner that advances the goals of the annual management plan (see paragraph 2(b)). No party would spread water without Valley District and Western's prior consent.