

**MEMORANDUM OF UNDERSTANDING TO AFFIRM AND PRESERVE EXISTING
RIGHTS IN THE SANTA ANA RIVER WATERSHED**

THIS MEMORANDUM OF UNDERSTANDING (“Memorandum”) is entered into as of this 16th day of November, 1999, between and among INLAND EMPIRE UTILITIES AGENCY, a municipal water district, (“IEUA”), ORANGE COUNTY WATER DISTRICT (“OCWD”), SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT, a municipal water district, (“SBVMWD”), and WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY, a municipal water district (“WMWD”). IEUA, OCWD, SBVMWD, and WMWD are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

RECITALS

A. Orange County Judgment. On April 17, 1969, the Superior Court for the State of California for the County of Orange entered a stipulated judgment in the matter of *Orange County Water District v. City of Chino, et al.*, Orange County Superior Court No. 117628 (“Judgment”). The Judgment imposes a physical solution for the Santa Ana River under which IEUA, SBVMWD, and WMWD are obligated to ensure that certain minimum amounts of Base Flow are delivered annually at Prado and Riverside Narrows. So long as an average annual supply of 42,000 acre-feet of Base Flow is received at Prado for the benefit of OCWD and the Lower Area, the water users and entities in the Upper Area, including IEUA, SBVMWD, and WMWD, have rights to divert, pump, extract, conserve, store, and use all surface and groundwater supplies originating within the Upper Area, without interference or restraint by Lower Area claimants. The base flow obligation under the Judgment carries certain water quality obligations, and in addition the Judgment provides that OCWD is entitled to all storm flows reaching Prado.

B. Declaration of Rights. In addition to the foregoing provisions, the Judgment establishes the following water rights in the Santa Ana River Watershed:

“It is recognized that the physical solution in said Judgment contemplates that Upper Districts and other upstream entities will have full freedom to engage in any activity for water conservation or storage of storm flows above Prado Reservoir and Lower Districts and other downstream entities will be free to engage in any activity for water conservation or storage of storm flows at or below Prado Reservoir.” (Section 3 of the Stipulation for Judgment.)

“Water users and other entities in Upper Area have rights in the aggregate, as against all Lower Area claimants, to divert, pump, extract, conserve, store and use all surface and ground water supplies originating within Upper Area without interference or restraint by Lower Area claimants, so long as Lower Area receives the water to which it is entitled under this Judgment and there is compliance with all of its provisions.” (Section 4 of the Judgment.)

“Insofar as Lower Area claimants are concerned, Upper Area water users and other entities may engage in unlimited water conservation activities, including spreading, impounding and other methods, in the area above Prado Reservoir, so long as Lower Area receives the water to which it is entitled under the Judgment and there is compliance with all of its provisions. Lower Area water users and other entities may make full conservation use of Prado Dam and reservoir, subject only to flood control use.” (Section 5(a) of the Judgment.)

C. Declaration of Fully Appropriated Stream for the Santa Ana River. On November 16, 1989, the State Water Resources Control Board of the State of California (“State Board”) issued Order WR 89-25 declaring the Santa Ana River Watershed from the Pacific Ocean upstream to be fully appropriated (“Declaration”). The Declaration was based on Decision 1194 which found that no unappropriated water existed in the Santa Ana River Watershed, citing *Orange County Water District v. Riverside*, 188 Cal.App.2d 566 (1961). The State Board has reaffirmed the Declaration in Orders WR 90-2 and WR 91-07. The Declaration precludes the State Board from considering any new appropriative rights applications for the Santa Ana River Watershed, unless the Declaration is modified.

D. OCWD’s Petition and Application. On September 2, 1999, OCWD filed a petition “For an Order Revising the Declaration of Full Appropriation of the Santa Ana River” with the State Board (“OCWD Petition”). The petition requests the State Board to lift the Declaration for the limited purpose of considering OCWD’s Application No. X000206 to appropriate water from the Santa Ana River (“OCWD Application”). The OCWD Petition and Application state that increasing urbanization upstream of Prado has increased the amount of water that reaches Prado, and that OCWD has spent millions of dollars in an effort to impound and conserve these waters for use in the Lower Area. OCWD understands that any action by the State Board on the OCWD Petition and Application cannot, and shall not, establish any right or priority, temporal or otherwise, as against Upper Area water users and entities which is inconsistent with the terms of the Judgment.

E. SBVMWD’s and WMWD’s Joint Petition and Application. On May 31, 1995, SBVMWD and WMWD jointly filed a petition “For an Order Revising the Declaration of Full Appropriation of the Santa Ana River” with the State Board (“Joint Petition”). The petition requests the State Board to lift the Declaration for the limited purpose of considering SBVMWD’s and WMWD’s Application No. X000123 to appropriate water from the Santa Ana River (“Joint Application”). The basis for the Joint Petition and Application is that the newly constructed Seven Oaks Dam on the upper reaches of the Santa Ana River can be used to impound and conserve previously wasted storm flows for use in the Upper Area, and that SBVMWD and WMWD have spent millions of dollars to include construction features in the Dam to facilitate such conservation.

F. Purpose and Form of MOU. Certain questions have arisen as to whether the OCWD Petition and Application or the Joint Petition and Application (collectively the “Petitions and Applications”) may affect the Judgment and the rights and obligations set forth therein. The purpose of this Memorandum is to affirm the Judgment, and the terms and conditions of the agreements

entered into pursuant to the Judgment, and to ensure that the State Board proceedings on the Petitions and Applications, and any outcome thereof, will not adversely impact the rights and obligations set forth in the Judgment. This document is in the form of a memorandum of understanding instead of a contract or stipulation because its purpose is to affirm existing rights under the Judgment and to incorporate the rights in the Petitions and Applications.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and the foregoing recitals incorporated herein, the Parties hereby agree as follows:

TERMS AND CONDITIONS

1. Affirmation of Declared Rights. The Petitions and Applications are not intended to, and shall not, change or affect the Judgment and its declaration of water rights within the Santa Ana River Watershed, or the terms and conditions of the agreements executed prior to the date of entry of the Judgment as a condition to stipulation to the Judgment.

2. State Board Proceedings. This Memorandum shall be filed in the proceedings of the State Board on the Petitions and Applications to ensure that the State Board proceedings fully honor the Judgment, and to ensure that any outcome of the State Board proceedings is consistent with and preserves the terms and intent of the Judgment. OCWD, SBVMWD, and WMWD hereby consent to a permit condition incorporating the terms and conditions of this Memorandum.

3. OCWD Filings. The OCWD Petition and Application only applies to waters in the Santa Ana River Watershed that reach Prado or originate downstream of Prado in the Lower Area. The OCWD Petition and Application is not intended to, and shall not, change or affect the rights of the water users and entities in the Upper Area to store, conserve, or use all water or reclaimed water that originates in the Upper Area, to withdraw and use all treated wastewater or return flows now discharged to the Santa Ana River, and to otherwise exercise all rights declared under the Judgment, provided the obligations of the upstream entities are met as required under the Judgment. Through the OCWD Petition and Application, OCWD shall not obtain any right as against any Upper Area water user or entity inconsistent with the terms of the Judgment, despite any expenditures made by OCWD to capture and use the flows.

4. Capitalized Terms. Any capitalized term not specifically defined in this Memorandum, shall have the meaning and intent set forth in the Judgment.

5. Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Memorandum.

6. Counterparts. This Memorandum may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

[SIGNATURES OF THE PARTIES ON NEXT PAGE]

**INLAND EMPIRE UTILITIES
AGENCY**

By: John L. Anderson
President, IEUA Board
of Directors

ATTEST:

By: Anne Demitko
Secretary, IEUA Board
of Directors

**WESTERN MUNICIPAL WATER
DISTRICT OF RIVERSIDE
COUNTY**

By: _____
President, WMWD Board
of Directors

ATTEST:

By: _____
Secretary, WMWD Board
of Directors

**ORANGE COUNTY WATER
DISTRICT**

By: _____
President, OCWD Board
of Directors

ATTEST:


By: _____
Secretary, OCWD Board of
Directors

**SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT**

By: _____
President, SBVMWD Board
of Directors

ATTEST:


By: _____
Secretary, SBVMWD Board
of Directors

By 
General Counsel for
Orange County Water District

**INLAND EMPIRE UTILITIES
AGENCY**

**ORANGE COUNTY WATER
DISTRICT**

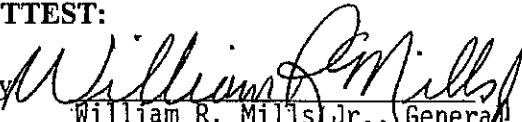
By: _____
[INSERT NAME]
President, IEUA Board
of Directors

By: 
Irv Pickler
President, OCWD Board
of Directors

ATTEST:

ATTEST:

By: _____
[INSERT NAME]
Secretary, IEUA Board
of Directors

By: 
William R. Mills Jr., General
Manager OCWD Board of
Directors

**WESTERN MUNICIPAL WATER
DISTRICT OF RIVERSIDE
COUNTY**

**SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT**

By: _____
[INSERT NAME]
President, WMWD Board
of Directors

By: _____
[INSERT NAME]
President, SBVMWD Board
of Directors

ATTEST:

ATTEST:

By: _____
[INSERT NAME]
Secretary, WMWD Board
of Directors

By: _____
[INSERT NAME]
Secretary, SBVMWD Board
of Directors

**INLAND EMPIRE UTILITIES
AGENCY**

**ORANGE COUNTY WATER
DISTRICT**

By: _____
[INSERT NAME]
President, IEUA Board
of Directors

By: _____
[INSERT NAME]
President, OCWD Board
of Directors

ATTEST:

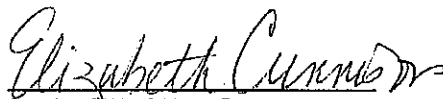
ATTEST:

By: _____
[INSERT NAME]
Secretary, IEUA Board
of Directors

By: _____
[INSERT NAME]
Secretary, OCWD Board of
Directors

**WESTERN MUNICIPAL WATER
DISTRICT OF RIVERSIDE
COUNTY**

**SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT**


By: 

[INSERT NAME] Elizabeth L. Cunnison
President, WMWD Board
of Directors

By: _____
[INSERT NAME]
President, SBVMWD Board
of Directors

ATTEST:

ATTEST:

By: 

[INSERT NAME] Donald L. Harriger
Deputy-Secretary, WMWD Board
of Directors

By: _____
[INSERT NAME]
Secretary, SBVMWD Board
of Directors

**INLAND EMPIRE UTILITIES
AGENCY**

By: _____
[INSERT NAME]
President, IEUA Board
of Directors

ATTEST:

By: _____
[INSERT NAME]
Secretary, IEUA Board
of Directors

**WESTERN MUNICIPAL WATER
DISTRICT OF RIVERSIDE
COUNTY**

By: _____
[INSERT NAME]
President, WMWD Board
of Directors

ATTEST:

By: _____
[INSERT NAME]
Secretary, WMWD Board
of Directors

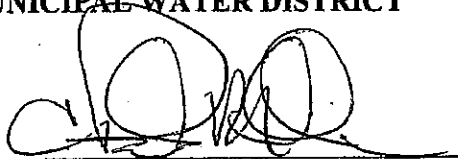
**ORANGE COUNTY WATER
DISTRICT**

By: _____
[INSERT NAME]
President, OCWD Board
of Directors

ATTEST:


By: _____
[INSERT NAME]
Secretary, OCWD Board of
Directors

**SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT**

By: 

[INSERT NAME]
President, SBVMWD Board
of Directors

ATTEST:

By: 

[INSERT NAME]
Secretary, SBVMWD Board
of Directors