



AGENDA STAFF REPORT

ASR Control 07-000121

10A7

MEETING DATE: 02/27/07

LEGAL ENTITY TAKING ACTION: Orange County Flood Control District

BOARD OF SUPERVISORS DISTRICT(S): All Districts

SUBMITTING AGENCY/DEPARTMENT: Resources and Development Management Department (Approved)

DEPARTMENT CONTACT PERSON(S): Nadeem Majaj (714) 834-3719
Lance Natsuhara (714) 834-5398

07 FEB -8 PM 5:02
RECEIVED
COUNTY BOARD OF SUPERVISORS

SUBJECT: Prado Dam Water Conservation Operations Agreement

CEO CONCUR Concur	COUNTY COUNSEL REVIEW Approved Agreement to Form	CLERK OF THE BOARD Consent Calendar 3 Votes Board Majority
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Budgeted: N/A Current Year Cost: N/A Annual Cost: N/A

Staffing Impact: No # of Positions: Sole Source: N/A

Current Fiscal Year Revenue: N/A

Funding Source: N/A

Prior Board Action: Local Cooperation Agreement between the U.S. Department of the Army and the Orange County Flood Control District dated 12/14/89 and Supplements thereto.

RECOMMENDED ACTION(S)

Acting as the Board of Supervisors for the Orange County Flood Control District:

Approve and execute the Prado Dam Water Conservation Operations Agreement - Agreement No. D07-006.

SUMMARY:

The Prado Dam Water Conservation Operations Agreement is a cooperative agreement between the Orange County Flood Control District (OCFCD) and the Orange County Water District (OCWD). It obligates OCWD to reimburse OCFCD for its increased operations and maintenance costs attributable to OCWD's water conservation activities at Prado Dam.

BACKGROUND INFORMATION:

The December 1989 Local Cooperation Agreement with the U.S. Army Corps of Engineers (Corps) for the Santa Ana River Mainstem Project (a previous Board action) designates the OCFCD, the San Bernardino County Flood Control District and the Riverside County Flood Control and Water Conservation District as Local Sponsors of the project and owners. In February 2003 the Corps and

OCFCD entered into a Project Cooperation Agreement for the construction of Prado Dam as a separable element of the Santa Ana River Mainstem Project.

On completion of individual features of the Santa Ana River Mainstem Project, OCFCD will be responsible for the operation and maintenance of the new Prado Dam features and other Santa Ana River Mainstem features within Orange County. For federally operated features like Prado Dam, OCFCD and the Corps will share the cost of operation and maintenance for the Prado Dam embankment and outlet works. OCWD has acknowledged that its water conservation activities at Prado Dam will result in increased operation and maintenance costs for the dam and improvements located downstream.

In September 1999 OCWD petitioned the State Water Resources Control Board to modify the Declaration of Fully Appropriated Stream Status. In July 2002 the Local Sponsors, including OCFCD, submitted a protest to OCWD's application which proposed the execution of an operation agreement to resolve the protest.

To resolve the protest and to resolve concerns regarding reimbursement of expenses incurred by OCFCD due to implementation of water conservation activities at Prado Dam, OCWD and OCFCD have prepared the attached Agreement No. D07-006 for approval by your Board. Agreement No. D07-006, approved by OCWD's Board of Directors on January 18, 2007, obligates OCWD to reimburse OCFCD for incremental increases in its operation and maintenance costs for Prado Dam and the Lower Santa Ana River. OCFCD, with the consent of the other Local Sponsors for the Santa Ana River Mainstem Project, agrees to dismiss its protest to OCWD's water rights application.

Fiscal Impact:

None. The Agreement obligates OCWD to reimburse OCFCD for the incremental increase in operation and maintenance costs attributable to water conservation activities at Prado Dam.

Compliance with CEQA:

The subject activity is not a project as defined by CEQA pursuant to Section 15378(b)(4) of the CEQA Guidelines.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A - Agreement D07-006 (two originals at Clerk of the Board)

ORANGE COUNTY BOARD OF SUPERVISORS
ACTING AS THE ORANGE COUNTY FLOOD CONTROL DISTRICT
MINUTE ORDER
February 27, 2007

Submitting Agency/Department: RESOURCES AND DEVELOPMENT MANAGEMENT DEPARTMENT

Approve agreement D07-006 with Orange County Water District for reimbursement of increased operations and maintenance costs of Prado Dam - All Districts

The following is action taken by the Board of Supervisors:

APPROVED AS RECOMMENDED OTHER

Unanimous (1) VACANT: (2) MOORLACH: Y (3) CAMPBELL: Y (4) NORBY: Y (5) BATES: Y

Vote Key: Y=Yes; N=No; A=Abstain; X=Excused; B.O.=Board Order

Documents accompanying this matter:

- Resolution(s)
- Ordinances(s)
- Contract(s) 1 ORIG

Item No. 39

Special Notes:

Copies sent to:

CEO
RDMD: Nadeem Majaj
RDMD/Accounting: Linda Schorer

3-1-07



I certify that the foregoing is a true and correct copy of the Minute Order adopted by the Board of Supervisors, Acting as the Orange County Flood Control District, Orange County, State of California.
DARLENE J. BLOOM, Clerk of the Board

By: 
Deputy

**OPERATIONS AGREEMENT BETWEEN
ORANGE COUNTY WATER DISTRICT AND
ORANGE COUNTY FLOOD CONTROL DISTRICT**

THIS AGREEMENT, dated the 27th day of FEBRUARY, 2007, is by and between ORANGE COUNTY WATER DISTRICT ("OCWD") and ORANGE COUNTY FLOOD CONTROL DISTRICT ("OCFCD") (collectively, the "Parties").

EXPLANATORY RECITALS

- A. The OCFCD was created to provide for the control and conservation of flood and storm waters of the County of Orange, California (the "County") and of streams flowing into the County (such as the Santa Ana River ("SAR"));
- B. As one of its flood control activities, OCFCD is working in conjunction with the United States Army Corps of Engineers ("US ACE") on the SAR Mainstem Project. The SAR Mainstem Project is designed to increase levels of flood protection within the growing urban communities in Orange, Riverside and San Bernardino Counties. The proposed improvements to the system cover 75 miles, from the headwater of Santa Ana River east of the city of San Bernardino to the mouth of the river at the Pacific Ocean between the cities of Newport Beach and Huntington Beach. The project includes seven independent features: Seven Oaks Dam, Mill Creek Levee, San Timoteo Creek, Oak Street Drain, Prado Dam, Santiago Creek and Lower Santa Ana River.
- C. On December 14, 1989, the US ACE entered into a Local-Cooperation Agreement with the Flood Control Districts of Orange, Riverside and San Bernardino Counties (collectively, the "Local Sponsors"), which defines the responsibilities and cost-sharing of each party for each feature of the Mainstem Project. The Local Sponsors are to acquire all lands, easements, rights-of-way and perform relocations required for construction of the Mainstem Project. The US ACE will construct the improvements.
- D. On January 28, 2003, the US ACE and the Local Sponsors executed the Second Modification to the Local Cooperation Agreement deleting the Prado Dam Feature from the Local Cooperation Agreement (Prado Dam Feature).
- E. On February 11, 2003, the US ACE entered into a Project Cooperation Agreement with the OCFCD for the construction of the Prado Dam Feature which defines the responsibilities and cost sharing of the US ACE and OCFCD for the Prado Dam Separable Element of the Santa Ana River Project.
- F. On completion of individual features of the Santa Ana River Mainstem Project, the OCFCD will be responsible for the operation and maintenance of new Prado Dam Feature construction and SAR Mainstem Project features within Orange County. In addition, OCFCD and US ACE will share the cost of operation and maintenance costs of the Prado Dam Feature embankment and outlet works and the Local Sponsors will be jointly responsible for the operation and maintenance of Seven Oaks Dam. OCWD will

be responsible for the separable operation and maintenance costs attributed to water conservation activities at the Prado Dam Feature.

- G. On September 3, 1999, OCWD petitioned the State Water Resources Control Board (“SWRCB”) to modify the Declaration of Fully Appropriated Stream Status to allow the SWRCB to accept a water right application, later numbered Application 31174, that had been submitted previously by OCWD to the SWRCB (the “OCWD Application”). After a two-day evidentiary hearing, on September 21, 2000 the SWRCB issued Order WR 2000-12, *In the Matter of the Petitions to Revise Declaration of Fully Appropriated Streams to Allow Processing of Specified Applications to Appropriate Water From the Santa Ana River*. That Order amended the Declaration of Fully Appropriated Streams, as adopted by SWRCB Order WR 98-08, to allow for processing of the OCWD Application and other applications. On January 11, 2002, the SWRCB publicly noticed the OCWD Application.
- H. On July 17, 2002, the Local Sponsors, including OCFCD, submitted a protest to OCWD’s Application, which proposed the execution of an “operation agreement” between OCWD and OCFCD as a means to resolve the Local Sponsors’ protest. On or about July 30, 2002, the SWRCB accepted the Local Sponsors’ protest and on October 18, 2002 OCWD responded to it.
- I. The Parties intend by this Agreement to resolve the Local Sponsors’ protest to the OCWD Application.

AGREEMENTS

NOW THEREFORE the Parties agree as follows:

- 1. Flood Control is Primary Purpose of Prado Dam and Basin.

The Parties agree that flood control is the preeminent purpose of the Prado Dam and Basin, and that water conservation is subordinate to flood control at Prado Dam and Basin. To the extent water conserved at Prado Dam is released for flood control purposes, OCFCD shall have no obligation to reimburse OCWD for losses of such water.

- 2. OCWD Shall Pay the Costs for Implementation of Water Conservation Measures for its Benefit at Prado Dam and Basin.

OCWD agrees to pay all “Separable Costs” associated with water conservation at Prado Dam, which are defined as those costs attributable to the implementation and ongoing operation of water conservation measures at Prado Dam that are conducted for the benefit of OCWD and involve flood control facilities for which the OCFCD and/or US ACE have responsibility (singular or joint) for construction, operation, maintenance, repair, replacement, and rehabilitation activities. OCWD shall pay all Separable Costs incurred for:

- a. Environmental mitigation and enhancement programs directly required for implementation and operation of water conservation measures undertaken for the benefit of OCWD;

- b. The incremental increased costs of operation, maintenance, repair, replacement, and rehabilitation (“OMRR&R”) of Prado Dam and its reservoir basin attributable to water conservation measures;
- c. Any additional environmental mitigation and/or enhancement requirements of the OCFCD and/or US ACE to construct, operate, maintain, repair, replace or rehabilitate their respective flood control facilities due to, or associated with, revised operation in order to accommodate OCWD’s water conservation activities; and
- d. Any limitation to, or expense associated with, OCFCD’s or County of Orange’s use of its private property behind or downstream of Prado Dam, to the extent and in the amount that such limitations or expenses are due to water conservation operations undertaken for the benefit of OCWD, including future uses after completion of construction of the Prado Dam portion of the SAR Mainstem Project and the associated revised operation of flood control facilities.

3. Payment for Separable Costs.

OCWD agrees to pay Separable Costs as follows:

- a. Because Separable Costs are difficult to quantify, OCWD agrees to pay OCFCD a minimum fee of \$30,000 per fiscal year for the Separable Costs incurred by OCFCD that are defined in Paragraph 2a, 2c and 2d.
- b. The Parties agree to ask the US ACE to deduct its incremental Separable Costs for water conservation activities that are defined in Paragraph 2.b undertaken for the benefit of OCWD from its estimated total annual OMRR&R cost requirement/budget prior to determining OCFCD’s annual OMRR&R cost contribution. If the US ACE agrees to this approach, OCWD shall pay directly to US ACE the incremental Separable Costs incurred by the US ACE for Prado Dam water conservation activities undertaken for OCWD. If the US ACE does not agree to this approach, then OCWD shall directly reimburse OCFCD for any such incremental Separable Cost payment OCFCD makes to the US ACE within 45 days of OCFCD’s request for payment, based on the corresponding payment request from the US ACE.
- c. Commencing in July 2007 the minimum Separable Cost payment specified in Subparagraph 3a above shall be subject to automatic annual adjustments in proportion to changes in the Los Angeles – Orange – Riverside County Consumer Price Index, promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor.

The automatic adjustment shall be effective as of July 1, 2007 and each July 1 of subsequent years during the term of this Agreement and shall be calculated by means of the following formula:

$$A = \$30,000 \times (B/C)$$

A = Adjusted Minimum Separable Cost Payment

B = Monthly index for the month prior to the month in which the Adjusted Minimum Separable Cost Payment is to become effective

C = Monthly index for July 2006

Notwithstanding the foregoing, in no event shall the minimum Separable Cost payment be reduced by reason of any such adjustment. In the event that this Consumer Price Index is not issued or published for the period for which such rent is to be adjusted and computed hereunder, or in the event that the Bureau of Labor Statistics of the U.S. Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the U.S. Government shall be used and if none is so published, then another index generally recognized and authoritative shall be substituted by the Parties.

- d. If OCFCD's Separable Costs exceed the annual figure developed under Subparagraph 3c, OCFCD will provide a report itemizing its Separable Costs, with a request for payment of the excess amount. Each report shall be signed and certified by a duly authorized officer of OCFCD. Payments shall be due from OCWD within 45 days after receipt of each such report.
- e. Should either party wish to dispute any accounting or Separable Cost payment due under this Agreement, it shall notify the other in writing, and both parties shall meet and attempt to resolve the dispute in good faith. If the parties are unable to resolve such dispute, the Parties agree to submit such dispute to the Technical Operating Committee described in Paragraph 4 below, for final resolution.

4. Water Conservation Releases are to be Non-Damaging.

In order that water conservation releases from Prado Dam/Basin do not pose a potential risk to the Santa Ana River Interceptor ("SARI") pipeline, until such time as permanent protection or relocation measures for the SARI pipeline have been completed, the Parties agree that water conservation releases from Prado are to be made at a rate which the US ACE considers to be "non-damaging." Such determination shall be made, prior to each flood season (which season is to be determined by the US ACE), by a Technical Operating Committee comprised of a representative from each of OCWD, OCFCD, US ACE and the Orange County Sanitation District. The Technical Operating Committee shall determine the maximum allowable water conservation release rates from Prado Dam applicable to a given flood season. The maximum allowable water conservation release rates determined by the Technical Operating Committee do not apply to the flood control release rates for operating Prado Dam for flood control purposes.

5. Water Retained in SAR Watershed.

The Parties agree that water conserved at Prado Dam should be retained within the Santa Ana River Watershed.

6. OCWD Holds OCFCD and County of Orange Harmless.

- a. OCWD agrees to hold OCFCD and Orange County harmless from any liability for acts or omissions caused solely by water conservation activities undertaken for OCWD's benefit. For such acts and omissions, OCWD shall defend, indemnify, and hold OCFCD and Orange County and their respective elected and appointed officials, officers, directors, employees, consultants, independent contractors, and agents, jointly and individually, (collectively referred to as Indemnitees) free and harmless from any liability whatsoever for property damage, monetary loss, bodily injury, or death (including death of OCFCD's employees,) or any other element or claim of damage or injury, including without limitation, attorney fees, expert fees and investigation expense. OCWD shall defend with counsel approved by OCFCD and Orange County. This indemnity obligation shall not apply to any liability of OCFCD or Orange County arising from the negligence or willful misconduct of OCFCD or Orange County related to the implementation of this Agreement. The obligation to indemnify, defend and hold the Indemnitees free and harmless herein shall survive the termination of this Agreement.
- b. OCWD shall have no liability to indemnify or hold harmless OCFCD or Orange County for any liability for acts or omissions caused solely by flood control operations.
- c. To the extent that OCFCD and Orange County incur liability for acts or omissions that relate to both water conservation and floor control activities, the Parties shall meet and confer in a good faith attempt to resolve indemnity claims.

7. Dismissal of Protest to Water Right Application.

As reflected in their letters attached hereto as Exhibits A and B, the other Local Sponsors, Riverside County Flood Control and Water Conservation District and San Bernardino County Flood Control District, have consented to the dismissal of the Local Sponsors' protest to OCWD's application to appropriate. Within 14 days of the date of this Agreement, and as an express condition to the continuing effectiveness of this Agreement, OCFCD will send to the SWRCB the letter attached as Exhibit C, requesting the dismissal of the protest filed by the Local Sponsors against OCWD's water right application; provided that, OCWD shall not object to OCFCD appearing in any water right proceeding before the SWRCB for the purposes of protecting and defending OCFCD's interests created by or recognized in this Agreement. This protest dismissal shall not in any way affect the protests of OCFCD or the Local Sponsors to applications to appropriate filed by entities other than OCWD.

8. Specific Enforcement.

The Parties agree that violation of the provisions of this Agreement cannot be adequately compensated in damages, and that the Parties lack an adequate remedy at law, and therefore agree that in any action to enforce this Agreement, this Agreement may be specifically enforced by any court of competent jurisdiction and any violation or threatened violation thereof may be enjoined.

The undersigned covenant and represent that they are duly and properly authorized to execute this Agreement and thereby bind the Party for whom they sign.

ORANGE COUNTY WATER DISTRICT

ORANGE COUNTY FLOOD CONTROL DISTRICT

By: Virginia Subbion
General Manager

By: Chris Morby

Date: 1-18-2007

Date: 2-27-07

By: _____

By: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM

[Signature]
General Counsel, Orange County Water District

[Signature]
County Counsel, Orange County Flood Control District

BY: Philip L. Anthony
President

DATE: 17 Jan 2007



SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD PER G.C. SEC. 25103, RESO 79-1535

ATTEST: [Signature]
DARLENE J. BLOOM
CLERK OF THE BOARD OF SUPERVISORS
ORANGE COUNTY, CALIFORNIA

EXHIBIT A

WARREN D. WILLIAMS
General Manager-Chief Engineer



1995 MARKET STREET
RIVERSIDE, CA 92501
951.955.1200
951.788.9965 FAX
www.floodcontrol.co.riverside.ca.us

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

January 3, 2007

RECEIVED

JAN 5 2007

PUBLIC WORKS
DIRECTOR

Mr. Herb Nakasone
General Manager
Orange County Flood Control District
Public Facilities and Resources Department
Program Development Division
County of Orange
Post Office Box 4048
Santa Ana, CA 92702

Dear Mr. Nakasone:

Re: Water Rights Application
Prado Dam – LSAR
Project No. 2-8-0105

The Orange County Flood Control District (OCFCD), the Riverside County Flood Control and Water Conservation District (District) and the San Bernardino County Flood Control District (SBCFCD) as the Local Sponsors of the Santa Ana River Mainstem Project, jointly filed a protest on July 17, 2002 to Water Rights Application No. 31174 of the Orange County Water District (OCWD) to require OCWD to enter into an Operations Agreement (OA) with OCFCD.

It is our understanding that OCFCD is in the final stages of negotiating this OA with OCWD to ensure that the Water Rights Application and any new water conservation at Prado Dam do not adversely affect the Local Sponsors' Santa Ana River flood control obligations. This OA states that OCWD will be responsible for all costs for the implementation of water conservation measures at Prado Dam and Basin. This includes the cost of operation, maintenance, repair, replacement and rehabilitation of Prado Dam and its reservoir basin, and incremental operation and maintenance expenses and damages to OCFCD facilities downstream of Prado Dam attributed to water conservation measures. The OA also states that OCWD will defend, indemnify and hold OCFCD and Orange County and their respective Indemnities free and harmless from any liability whatsoever, based or asserted upon any act or omission for property damage, monetary loss, bodily injury, or death, or any other element or claim of damage or injury of any kind or nature, relating or in any way connected with or arising or resulting from OCWD implementing water conservation at Prado Dam. OCWD shall defend, with counsel approved by OCFCD and Orange County for each of them and their respective Indemnities including, without limitation, attorney fees, expert fees and investigation expenses.

Mr. Herb Nakasone
Orange County Flood Control District
Re: Water Rights Application
Prado Dam - LSAR
Project No. 2-8-0105

- 2 -

January 3, 2007

Given that upon completion of the Lower Santa Ana River Reach 9 Phase II Flood Protection Project by the U.S. Army Corps of Engineers, the District will also have maintenance responsibilities downstream of Prado Dam, the District requested that OCWD provide the same protection to the District as that given to OCFCD in the above mentioned OA. In the attached letter from OCWD dated December 20, 2006 OCWD agrees to do so.

Therefore, the District hereby authorizes OCFCD to dismiss the protest on behalf of the District following execution of the OA to its satisfaction. Please do not hesitate to contact me or Ms. Zully Smith, Senior Civil Engineer - Special Projects Section, at 951. 955.1299, if you have any questions or need any additional information or assistance.

Very truly yours,



WARREN D. WILLIAMS
General Manager-Chief Engineer

c: Craig Miller (OCWD)
Christopher McNevin (for OCWD)
Patrick Mead (SBCFCD)
Vana Olson (SBCFCD)
Robert Donlan (for Local Sponsors)
Michael Rawson

Attachment

ZS:rlp

Directors

PHILIP L. ANTHONY
WES BANNISTER
KATHRYN L. BARR
DENIS R. BILODEAU
RICHARD CHAVEZ
JAN DEBAY
SHAWN NELSON
STEPHEN R. SHELDON
JOSE SOLORIO
ROGER C. YOH



ORANGE COUNTY WATER DISTRICT

Orange County's Groundwater Authority

Officers

PHILIP L. ANTHONY
President

JAN DEBAY
First Vice President

KATHRYN L. BARR
Second Vice President

—

VIRGINIA GREBBIEN
General Manager

December 20, 2006

Mr. Warren D. "Dusty" Williams
General Manager
Riverside County Flood Control and
Water Conservation District
1995 Market Street
Riverside, CA 92501

RECEIVED
DEC 22 2006

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

Re: Consent to Dismissal of Local Sponsors' Protest to Orange County Water District's Application to Appropriate

Dear Mr. Williams:

This letter reflects recent conversations between our staff and counsel regarding the Local Sponsors' Protest to Orange County Water District's ("OCWD") Application to Appropriate No. 31174. My understanding is that Riverside County Flood Control and Water Conservation District ("RCFCWCD") will consent to release of the Local Sponsors' protest immediately, now that OCWD and RCFCWCD have agreement on the following terms:

1. OCWD will reimburse RCFCWCD for any increased costs of maintenance of its Santa Ana River facilities located downstream of Prado Dam which RCFCWCD incurs as a result of water conservation releases made on behalf of OCWD; and
2. The provisions of paragraphs 6a, b and c of OCWD's pending Operations Agreement between Orange County Water District and Orange County Flood Control District shall also apply as between OCWD and RCFCWCD, as follows:

"6. OCWD Holds RCFCWCD and County of Orange Harmless.

- a. OCWD agrees to hold RCFCWCD harmless from any liability for acts or omissions caused solely by water conservation activities undertaken for OCWD's benefit. For such acts and omissions, OCWD shall defend, indemnify, and hold RCFCWCD and its elected and appointed officials, officers, directors, employees, consultants, independent contractors, and agents, jointly and individually, (collectively referred to as Indemnitees) free and harmless from any liability whatsoever for property damage, monetary loss, bodily injury, or death (including death of RCFCWCD's employees,) or any other element or claim of

Mr. Warren D. "Dusty" Williams

December 20, 2006

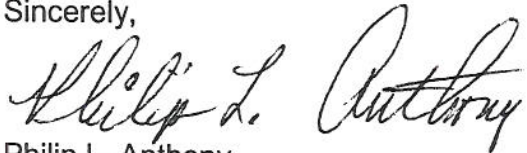
Page 2 of 2

damage or injury, including without limitation, attorney fees, expert fees and investigation expense. OCWD shall defend with counsel approved by RCFCWCD. This indemnity obligation shall not apply to any liability of RCFCWCD arising from the negligence or willful misconduct of RCFCWCD.

- b. OCWD shall have no liability to indemnify or hold harmless RCFCWCD for any liability for acts or omissions caused solely by flood control operations.
- c. To the extent that RCFCWCD incurs liability for acts or omissions that relate to both water conservation and flood control activities, the Parties shall meet and confer in a good faith attempt to resolve indemnity claims.

I hereby confirm that OCWD agrees to these terms, conditioned on parallel agreement by RCFCWCD. Please indicate RCFCWCD's agreement with these terms by countersigning a copy of this letter and returning it to me in the enclosed envelope.

Sincerely,



Philip L. Anthony
President

cc: Ms. Virginia Grebbien, P.E.
Mr. Craig D. Miller, P.E.
Christopher J. McNevin, ESQ.
Peter Kiel, Esq.
Ms. Zully Smith

THE ABOVE TERMS ARE ACCEPTED AND AGREED BY
AND ON BEHALF OF RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT.

By:



Warren D. "Dusty" Williams
General Manager / Chief Engineer

EXHIBIT B

DEPARTMENT OF PUBLIC WORKS

FLOOD CONTROL • SOLID WASTE MGMT • SURVEYOR • TRANSPORTATION

COUNTY OF SAN BERNARDINO
PUBLIC AND SUPPORT
SERVICES GROUP



825 East Third Street • San Bernardino, CA 92415-0835 • (909) 387-8104
Fax (909) 387-8130

PATRICK J. MEAD
Director of Public Works

November 21, 2006

File: 1-103/1.01 C.E.

Herb Nakasone, Manager
Orange County Flood Control District
Public Facilities and Resources Dept.
Program Development Division
County of Orange
P.O. Box 4048
Santa Ana, CA 92702

Dear Herb,

The Orange County Flood Control District ("OCFCD"), Riverside County Flood Control and Water Conservation District ("RCFCWCD") and San Bernardino County Flood Control District ("SBCFCD"), the Local Sponsors of the Santa Ana River Project, jointly filed a protest on July 17, 2002 to the Water Right Application No. 31174 of the Orange County Water District ("OCWD") to require OCWD to enter into an Operations Agreement with OCFCD. I understand that OCFCD is negotiating an Operations Agreement with OCWD to ensure that the water rights application and any new water conservation at Prado Dam do not adversely affect the Local Sponsors' Santa Ana River flood control obligations.

SBCFCD hereby authorizes OCFCD to dismiss the protest on behalf of SBCFCD following execution of the Operations Agreement. Please do not hesitate to contact me or Ms. Vana Olson, Assistant Director, at (909) 387-7918, if you would like additional information or assistance.

Sincerely,

PATRICK J. MEAD, P.E.
Director

PJM:VRO:em

cc: Mr. Craig Miller (OCWD)
Mr. Christopher McNevin (for OCWD)
Mr. Dusty Williams (RCFCWCD)
Ms. Zully Smith, RCFWCD
Mr. Robert Donlan (for Local Sponsors)

MARK D. DEER
County Administration Officer

SCHEMATA CANOLD
Assistant County Administrator
Public and Support
Services Group

DEL COSSARIN
PAUL DRANI

JOSE L. ORZALLES

Board of Supervisors
First Deputy
DENISE HAWBERGER
GARY G. OWEN
Cath. District

THOMAS P. ...
Public Works

EXHIBIT C

ELLISON, SCHNEIDER & HARRIS L.L.P.

CHRISTOPHER T. ELLISON
ANNE J. SCHNEIDER
JEFFERY D. HARRIS
DOUGLAS K. KERNER
ROBERT E. DONLAN
ANDREW B. BROWN
MARGARET G. LEAVITT, OF COUNSEL

ATTORNEYS AT LAW
2015 H STREET
SACRAMENTO, CALIFORNIA 95814-3109
TELEPHONE (916) 447-2166 FAX (916) 447-3512

TRENTON M. DIEHL
FRED S. ETHERIDGE
JEDEDIAH J. GIBSON
LYNN M. HAUG
PETER J. KIEL
CHRISTOPHER M. SANDERS
WILLIAM W. WESTERFIELD III
GREGGORY L. WHEATLAND

DRAFT

Insert Date Here

VIA HAND DELIVERY

Ms. Jane Farwell
State Water Resources Control Board
Division of Water Rights
PO Box 2000
Sacramento, CA 95812-2000

Subject: Dismissal of Local Sponsors' Protest to Application No. 31174 of Orange County Water District

Dear Ms. Farwell:

On July 17, 2002, Orange County Flood Control District ("OCFCD"), Riverside County Flood Control and Water Conservation District ("RCFCWCD") and San Bernardino County Flood Control District ("SBCFCD"), collectively the Santa Ana River Local Sponsors responsible for flood control on the Santa Ana River ("Local Sponsors"), submitted a protest to Application No. 31174 of Orange County Water District ("OCWD") to appropriate water from the Santa Ana River. On or about July 30, 2002, the State Water Resources Control Board accepted the Local Sponsors' protest. The protest proposed the execution of an "operations agreement" between OCWD and OCFCD as a means to resolve the Local Sponsors' protest.

RCFCWCD and SBCFCD have authorized OCFCD to withdraw the protest on behalf of the Local Sponsors following execution of an Operations Agreement that ensures that the water rights application and any new water conservation activities at Prado Dam do not adversely affect the Local Sponsors' property interests and Santa Ana River flood control obligations. OCFCD and OCWD have now entered into an Operations Agreement, which is enclosed with this letter. OCFCD hereby dismisses the Local Sponsors' protest and requests that the State Board condition any permit or license granted to OCWD on OCWD's compliance with the Operations Agreement. OCFCD and the Local Sponsors reserve all rights to participate as an interested party in any hearing or administrative proceeding on Application No. 31174 in order to protect and defend its interests, including those interests created by or recognized in the Operations Agreement.

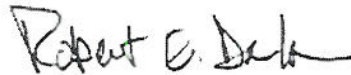
Insert Date Here

Page 2

DRAFT

Please contact me if you have any questions or desire additional information about the Operations Agreement.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Donlan". The signature is written in a cursive style with a large initial 'R'.

Robert E. Donlan

cc: Mr. Daniel Frink (SWRCB)
Mr. Craig Miller (OCWD)
Mr. Christopher McNevin (for OCWD)
Mr. Patrick Mead (SBCFCD)
Ms. Vana Olson (SBCFCD)
Mr. Warren "Dusty" Williams (RCFCWCD)
Ms. Zulema Smith (RCFCWCD)
Mr. Peter Kiel (for Local Sponsors)