

**MUNI/WESTERN EXHIBIT 2-5**  
**APRIL 18, 2007 AGENDA and**  
**AGENDA ITEM 4-2**



WESTERN MUNICIPAL WATER DISTRICT  
450 Alessandro Blvd., Riverside, CA 92508

REGULAR BOARD MEETING

-AGENDA-

9:30 a.m., Wednesday, April 18, 2007

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CALL TO ORDER/PLEDGE OF ALLEGIANCE

1. ORAL COMMUNICATIONS

*Any person may address the Board upon any subject within Western's jurisdiction, which is not on the agenda, at this time. However, any non-agenda matter that requires action will be referred to staff for a report and action at a subsequent Board meeting. Any person may also address the Board on any agenda matter at the time that matter is discussed, prior to Board Action.*

2. CONSENT CALENDAR

*Consent Calendar items are expected to be routine and non-controversial and are to be acted upon by the Board at one time without discussion. If any Board member, staff member, or interested person requests that an item be removed from the Consent Calendar, it will be moved to the first item on the Action Agenda.*

**ADMINISTRATION**

- 2-1 Approve Director's and MWD Representative's Request for Compensation
- 2-2 Approve Minutes - Special Board Meeting - March 21, 2007
- 2-3 Approve Minutes - Special Board Meeting - March 28, 2007
- 2-4 Approve Resolution 2476 - Resolution of Intention to Amend CalPERS Contract
- 2-5 Approve Amendment No. 5 to the 1975 Joint Powers Authority Agreement Creating SAWPA

**ENGINEERING AND OPERATIONS**

- 2-6 Adopt Resolution 2474 Adopting 2007 Revisions to the Local Guidelines for implementing "The California Environmental Quality Act" - CEQA

- 2-7 Approve Reimbursement Agreement Between Western and City of Murrieta for Jefferson Avenue Street Improvement Project
- 2-8 Adopt Resolutions 2472 and 2473 Regarding Sphere of Influence Amendment and Boundary Reorganization for the Audie Murphy Ranch Project

**EXTERNAL AFFAIRS**

- 2-9 Approve Contract Renewal with KP Advocates Providing Strategic Support Services in California

**3. ITEMS TO BE ADDED TO THE AGENDA**

*(If any) In accordance with Section 54954.2 of the Government Code, upon determination by a two-thirds vote of the legislative body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take action, and the need to take action arose after the agenda was posted.*

**4. ACTION AGENDA**

*The following items on the Action Agenda call for discussion and action by the Board. All items are placed on the Agenda so that the Board may discuss and take action on the item if the Board is so inclined.*

- 4-1 Consider Resolution 2478 Regarding the Acquisition of Rights of Access for the Exercise of Appropriate Water Rights
- 4-2 Consider Agreement for Funding a Seven Oaks Dam Water Conservation Feasibility Report
- 4-3 Consider Resolution 2477 Appointing a Representative to the Board of Directors of the Metropolitan Water District of Southern California

**5. REPORTS**

*The following agenda items are reports. They are placed on the Agenda to provide information to the Board and the public. There is no action called for in these items.*

- 5-1 Report of SAWPA Commissioners
- 5-2 Report of General Counsel
- 5-3 Report of MWD Representative
- 5-4 General Manager's Reports
- 5-5 Directors' Reports

6. INFORMATION ITEMS

- 6-1 Statistical Reports
- 6-2 Monthly Financial Reports
- 6-3 Newspaper Clippings of Interest to WMWD
- 6-4 Invitations/Important Dates
- 6-5 Correspondence/Information

7. CLOSED SESSION

- 7-1 Conference with Labor Negotiator Pursuant to Government Code Section 54957.6 (a):  
Agency Designated Representative: John Rossi, General Manager  
Employee Organization: Western Municipal Water District Employees Association  
Unrepresented Employees: Non-Classified Employee Positions
- 7-2 Conference with Legal Counsel - Existing Litigation Pursuant to Government Code Section 54956.9(a) - State Water Resources Control Board Application Numbers 31165 and 31370 of San Bernardino Valley Municipal Water District and Western Municipal Water District and Application 31371 of the San Bernardino Valley Municipal Water District

8. TOUR OF METROPOLITAN WATER DISTRICT'S HENRY J. MILLS FILTRATION PLANT

9. ADJOURNMENT

*Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities, as required by Section 202 of the Americans with Disabilities Act of 1990. Any person with a disability who requires a modification or accommodation in order to participate in a meeting should direct such request to Shirley Greene at (951) 789-5042 at least 48 hours before the meeting, if possible.*

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# Agenda

## Item 4-2





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April 18, 2007

TO THE BOARD OF DIRECTORS:

Donald D. Galleano, President  
S. R. Al Lopez, Vice President  
Tom Evans, Secretary-Treasurer  
Charles D. Field  
Brenda Dennstedt

FROM: John V. Rossi, General Manager

**APPROVE AGREEMENT FOR FUNDING A SEVEN OAKS DAM WATER  
CONSERVATION FEASIBILITY REPORT**

**RECOMMENDATION:**

Staff recommends that the Board authorize the General Manager to sign the attached agreement to fund additional studies for Western's Santa Ana River Water Rights Application, direct staff to amend the Special Studies section of the FY 2006-07 Operating Budget to reflect the increase in funding of \$1,122,000, and to allow the General Manager and Legal Counsel to make minor edits to the agreement, if required.

**BUDGET IMPACT:**

The proposed action will commit Western to fund 28.05% of the study costs. The US Army Corps of Engineers (Corps) current estimate of the cost to prepare the study is up to \$4 million. Up to \$2 million of the study could be federally funded if the current federal budget now before Congress is approved. Western's share of the study costs would be up to \$1,122,000, if federal matching monies are not approved.

**DETAIL:**

This matter was scheduled to be considered by the Board of Directors on November 1, 2006 (Board package attached). Due to concerns raised by the City of Riverside regarding the potential impacts of water conservation on the City's water supplies and the potential cost of water conservation, the District agreed to defer consideration of this agreement until we could address those concerns. Last month, the District, San Bernardino Valley Municipal Water District (SBVMWD), and the City of Riverside entered

into an agreement that will avoid or mitigate impacts of the Seven Oaks project on the City's water supplies. The District, SBVMWD are currently cooperating on a joint economic study that will analyze the costs of the Seven Oaks project in more detail. That study should be completed by the middle of the summer.

One key issue at the upcoming water right hearing on the Seven Oaks project is whether the District and SBVMWD can demonstrate to the State Water Board that we have access to the property we will need to construct that project. (See the accompanying Board letter for more details on this issue.) Much of the land to which we need access is owned by the three flood control agencies (from Riverside, Orange and San Bernardino Counties) that operate Seven Oaks Dam. Those three agencies have indicated that they are concerned that Western has not adopted the funding agreement and have indicated that they will be more willing to support (or at least not oppose) our water right applications if Western signs the funding agreement. For that reason, approval of the funding agreement is now important to avoid controversy on this issue at the water right hearing.

Staff has discussed the funding agreement with the City of Riverside Public Utilities Board and staff during the past six months. During those discussions, Board members and City staff have expressed concerns regarding the costs of the Seven Oaks project, including the cost of this agreement. In response to those concerns, during a Public Utilities Board meeting on February 2, 2007, staff indicated that the District would be willing to defer approval of the agreement until the completion of the joint economic study.

As noted above, staff now believes that delaying approval of the funding agreement could create unnecessary controversy at the water right hearing. In order to respect the City's concerns while still moving forward on the funding agreement, staff recommends: (i) the Board approve the funding agreement and (ii) the Board direct staff to inform the City that the costs of the funding agreement will not be charged to the City of Riverside without affirmative action by the City agreeing to absorb these costs. In this way, the District can achieve its goals in the context of the water right hearing while respecting the City's concerns regarding the costs of the project.



JOHN V. ROSSI  
General Manager

JVR:JSS:bj

Board of Directors  
April 18, 2007  
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Attachments:

1. November 1, 2006 Board Letter
2. Agreement Among the Santa Ana River Mainstem Project Local Sponsors and San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County for Funding A Seven Oaks Dam Water Conservation Feasibility Report.
3. Seven Oaks Dam Water Conservation Study Review of the 1997 Report and Proposed Tasks for Continuation of the 1997 Study.





November 1, 2006

TO THE BOARD OF DIRECTORS:

Kevin D. Jeffries, President  
Elizabeth L. Cunnison, Vice President  
Donald D. Galleano  
S. R. Al Lopez

FROM: John V. Rossi, General Manager

**APPROVE AGREEMENT FOR FUNDING A SEVEN OAKS DAM WATER CONSERVATION FEASIBILITY REPORT**

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Staff recommends that the Board authorize the General Manager to sign the attached agreement to fund additional studies for Western's Santa Ana River Water Rights Application, direct staff to amend the Special Studies section of the FY 2006-07 Operating Budget to reflect the increase in funding of \$1,122,000, and to allow the General Manager and Legal Counsel to make minor edits to the agreement, if required.

**BUDGET IMPACT:**

The proposed action will commit Western to fund 28.05% of the study costs. The US Army Corps of Engineers (Corps) current estimate of the cost to prepare the study is up to \$4 million. Up to \$2 million of the study could be federally funded if the current federal budget now before Congress is approved. Western's share of the study costs would be up to \$1,122,000, if federal matching monies are not approved.

**DETAIL:**

In July 2004, a settlement agreement (Seven Oaks Accord) was reached between San Bernardino Valley and Western (Muni/Western), and a number of water users related to the diversion of water from the Santa Ana River. The agreement calls for Muni/Western to develop and manage a groundwater spreading program that is intended to maintain groundwater levels at a number of specified monitoring wells. This integrated water resources management program will be adopted within five years of SWRCB approval of the Muni/Western applications.

In October 2004, Muni/Western circulated a Draft EIR to evaluate the potential effects of using water conserved behind Seven Oaks Dam. One of the technical studies used in


preparation of the Draft EIR was the 1997 water conservation study prepared by the Corps. However, the Santa Ana River flood event in 2005 and the operational needs for the Seven Oaks Dam have brought many of the 1997 report assumptions into question. The Corps will update the 1997 water conservation study to address the following items:

1. Update the hydrology data from 1990 to present to show new water volumes available at Seven Oaks Dam.
2. Update the hydraulics data to see if the releases made from various gates at Seven Oaks Dam are valid or need to be adjusted for the study.
3. Review flood control and water conservation operations at the Seven Oaks Dam, from 1999 to present to determine if there is a more suitable gate operations for flood control and water conservation that may resolve some of the concerns mentioned in item 2 above.
4. Update the geotechnical data to see if storing flood waters at elevation 2392 feet level, during 2005, has any effect on the 1997 proposed alternative of water storage at elevation 2300 feet for water conservation.
5. Review the project design shown in the 1997 report, which was for fortifying the intake tower and see if any additional modifications need to be done. Also provide new cost adjustment as needed.
6. The economics data needs to be updated should the above data in items 1 to 5 show a significant variation.
7. The real estate issues would need to be reviewed and get consensus from the US Forest Service, the owner of majority of the land behind the Seven Oaks Dam.
8. If all of the above items indicate insignificant changes to the 1997 selected plan, that is water conservation operations in off flood season at elevation 2300, the most significant revision of the 1997 report would be to prepare a new Environmental Impact Statement report that would need to include the newly listed endangered species downstream of the Seven Oaks Dam. This task would include the report as well as Section 7 consultation.
9. Study management includes attend meetings, prepare meeting notes, provide field review for study team and coordinate with other agencies.
10. Report preparation includes preparing the draft and final reports for the study. This will also include the cost of reproducing the report.

11. Public meeting includes putting together two public meetings , one at the start of the study and second one when the draft report is completed for public comments.
12. Project management includes participation on all the meetings with the water agencies as well as the Santa Ana River sponsors. Also work includes preparation for budgetary data both during the study term as well Congressional funds requests.
13. Independent technical review includes technical review of the study results by an outside Los Angeles District, to make sure the study results are sound and complete.
14. Contingency is a requirement for such a complex study with many water agencies and resource agencies involvement.

The Corps will update the 1997 study and continue activities necessary to complete a Record of Decision, which will be necessary to obtain water rights from the Santa Ana River.

It is recommended that the Board approve the increase in funding for the Santa Ana River Water Rights Application, and direct staff to amend the Special Studies section of the FY 2006-07 Operating Budget to reflect the increase.



JOHN V. ROSSI  
General Manager

JVR:JSS:bj

Attachments:

1. Agreement Among the Santa Ana River Mainstem Project Local Sponsors and San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County for Funding A Seven Oaks Dam Water Conservation Feasibility Report.
2. Seven Oaks Dam Water Conservation Study Review of the 1997 Report and Proposed Tasks for Continuation of the 1997 Study.

## AGREEMENT

AMONG THE SANTA ANA RIVER MAINSTEM PROJECT LOCAL SPONSORS AND  
SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT AND  
WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY  
For  
FUNDING A SEVEN OAKS DAM WATER CONSERVATION FEASIBILITY REPORT

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2006, by and among the Santa Ana River Mainstem Sponsors – San Bernardino County Flood Control District (“**SBCFCD**”), Orange County Flood Control District (“**OCFCD**”), and Riverside County Flood Control and Water Conservation District (“**RCFC&WCD**”), collectively referred to as “**Local Sponsors**”, and San Bernardino Valley Municipal Water District (hereinafter referred to as “**Muni**”) and Western Municipal Water District of Riverside County (hereinafter referred to as “**Western**”) and collectively referred to as “**Water Agencies**”, to provide a funding and approval process for an update of the Feasibility Study Report for water conservation at Seven Oaks Dam (“**SOD**”), originally prepared by the U.S. Army Corps of Engineers (“**Corps**”) in 1997 (“**1997 Feasibility Report**”). Each of the parties to this Agreement is referred to herein as a “**Party**”, and the parties are collectively referred to herein as “**Parties**”.

### RECITALS

WHEREAS, the **Local Sponsors** are the owners and operators of SOD, are responsible for ensuring that any water conservation does not compromise SOD’s primary use as a flood control facility, and are responsible to operate the SOD for water conservation if implemented;

WHEREAS, the **OCFCD** Chief Engineer, in the role of the Chief Engineer for the SOD, is responsible for final decisions regarding analyses, preparation of reports/studies and written comments associated with the Study Update, and is responsible for resolving disputes, if any, as to SOD operation in relation to the Study Update, to the extent that operational disputes are not otherwise resolved through changes to the SOD Operations Manual;

WHEREAS, **SBCFCD**, as the non-Federal sponsor, entered into a Study Agreement with the Corps in 1993 requesting the Corps to study the feasibility of water conservation at SOD;

WHEREAS, pursuant to the Study Agreement, the Corps prepared the 1997 Feasibility Report;

WHEREAS, the **Water Agencies** have requested an update of the 1997 Feasibility Report through further investigation of water conservation options and impacts, and ultimately desire the Corps and Local Sponsors to revise the SOD Operations Manual to include water conservation in addition to flood control purposes (“**Study Update**”);

WHEREAS, in order to conduct the Study Update, a non-Federal local sponsor must enter into an agreement with the Corps and arrange for Study Update funding;

WHEREAS, the Parties have determined that the most efficient and expeditious manner to conduct the Study Update is to amend the 1993 Study Agreement between the Corps and SBCFCD ("Amended Study Agreement");

WHEREAS, SBCFCD has agreed to be the non-Federal local sponsor for the Study Update and to enter into an Amended Study Agreement, subject to approval of this Agreement by all Parties and further subject to approval of the Amended Study Agreement and Project Management Plan as described herein;

WHEREAS, as requested by the Local Sponsors' respective Chief Engineers, the SBCFCD's Chief Engineer submitted letters to the Corps on June 15, 2005 and March 15, 2006, requesting the Corps to prepare a scope of work and cost estimate for the Study Update;

WHEREAS, prior to entering into the Amended Study Agreement, the Local Sponsors and Water Agencies intend to guarantee funding for the Study Update, including all related Local Sponsors expenses (collectively referred to as "Study Costs"), and intend to establish procedures for approving the Amended Study Agreement and the Project Management Plan;

WHEREAS, the Water Agencies are willing to fund one hundred percent (100%) of Study Costs; and

WHEREAS, the Parties desire to describe and formalize procedures for financing and approving the Study Update, including the Amended Study Agreement and the Project Management Plan.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the Parties do hereby agree as follows:

#### AGREEMENT

1. RECITALS INCORPORATED. The foregoing recitals are hereby incorporated into this Agreement as if fully set forth herein.
2. DEFINITIONS. For purposes of this Agreement the following terms are further defined.
  - a. The term "Study Update" shall mean the update to the 1997 Feasibility Report and associated analyses, studies, reports and documents conducted by the Corps, with the support and assistance of the Water Agencies and Local Sponsors, to study the feasibility of water conservation at SOD. The Study Update may include, but is not limited to, updated descriptions, analyses, and cost/benefit determinations on water conservation implementation options, updated impacts analyses, and other such reports, studies or investigations as may be necessary to comply with other laws, including, but not limited to, the federal Endangered Species Act, California Endangered Species Act, the National Environmental Policy Act, and the California Environmental Quality Act.
  - b. The term "Amended Study Agreement" shall mean the "Agreement Between the United States of America and San Bernardino County, California Flood Control District for the Seven Oaks Dam Water Conservation Study, California", entered into on August 23, 1993, as amended by the Corps and SBCFCD to authorize the Corps to conduct and fund the Study Update.
  - c. The term "Project Management Plan" (or "PMP") shall mean the specific tasks, studies, analyses, and deliverables, including cost estimates, for the Study Update. Subject to final

approval by the Corps, the PMP will be incorporated into and made part of the Amended Study Agreement.

- d. The term "Study Costs" shall mean all costs identified below.
- (1.) The Corps' expenses, as defined in the Amended Study Agreement, which may include, among other things, the Corps' expenses for preparation of the Amended Study Agreement and the Project Management Plan.
  - (2.) The **Local Sponsors'** expenses, starting after June 15, 2005 and until termination and completion of final accounting for this Agreement as described in Paragraph 4.i., herein ("Final Accounting"), for:
    - (a.) Preparation of agreements and procedures;
    - (b.) Developing and providing information to, and meeting and consulting with, the **Water Agencies** concerning the Amended Study Agreement and Project Management Plan, or portions thereof;
    - (c.) Any other actions or tasks related to the Study Update including, but not limited to, the **Local Sponsors'** analysis, preparation and/or review of documents which are portions of, or that the **Local Sponsors** consider applicable to, the Study Update;
    - (d.) Other costs, as further described in Attachment I of this Agreement;
    - (e.) Any other Local Sponsors expenses defined as Study Costs in the Amended Study Agreement.

### 3. ADMINISTRATION OF AGREEMENT AND AMENDED STUDY AGREEMENT

- a. Role of Local Sponsor Chief Engineers. By approval of this Agreement, the **Local Sponsors'** respective Boards of Supervisors ("Boards") designate their respective Chief Engineers ("Chief Engineers") to represent them regarding development and implementation of this Agreement, and development of the Amended Study Agreement and Project Management Plan. For purposes of this Agreement, the Local Sponsors' Chief Engineers shall mean the **OCFCD** Director of Public Works-Chief Engineer, the **SBCFCD** Chief Engineer, and the **RCFC&WCD** General Manager-Chief Engineer.
- b. Role of SBCFCD Chief Engineer. Upon approval of the Amended Study Agreement by the **SBCFCD** and the Corps, the **SBCFCD** Chief Engineer shall be the primary point of contact between the **Local Sponsors** and the Corps. The **SBCFCD** Chief Engineer shall be responsible to ensure that funding related to the Study Update is accomplished in a timely manner. The **SBCFCD** Chief Engineer shall represent the interests of, and communicate on behalf of, the **Local Sponsors** to the fullest extent practicable in carrying out this Agreement and the Amended Study Agreement.
- c. Coordination of Local Sponsors' Approvals and Actions. Prior to taking or approving any action under this Agreement or Amended Study Agreement, including approval and execution of the Amended Study Agreement, the PMP, and/or any amendments or modifications thereto, the **SBCFCD** Chief Engineer shall consult with the other Chief Engineers and shall obtain written authorization from each of the other Chief Engineers to

take the specific action or to make the specific approval. The Parties understand that the written authorizations required under this paragraph may require approvals from the Local Sponsors' respective Boards.

- d. Management and Coordination of the Amended Study Agreement and PMP; Study Management Team. By approval of this Agreement, the Local Sponsors acknowledge that the overall management and coordination of the Study Update is intended to be generally governed by the Amended Study Agreement, and that, subject to Corps approval, the overall study management: a. shall be the responsibility of an Executive Committee consisting of the Los Angeles District Commander, the Deputy District Engineer for Project Management, the Los Angeles District Chief of Planning Division, and the SBCFCD Chief Engineer; b. The Executive Committee is to appoint representatives to serve on a Study Management Team to coordinate on all matters relating to the Study Update; and c. The SBCFCD Chief Engineer is to appoint a representative of each of the Parties to the Study Management Team. Upon approval of this Agreement, the SBCFCD Chief Engineer shall promptly consult with the Corps, Water Agencies, and the other Chief Engineers to develop a proposed Study Management Team for the Study Update, and to draft proposed procedures for meetings, scheduling, task assignments, task and expense monitoring and reporting, notifications, meeting minutes preparation and distribution, providing copies of other communications, reports and documents, and preparation of periodic progress reports on the Study Update, to be considered for approval by the Executive Committee upon approval of the Amended Study Agreement by the Corps and SBCFCD.
- e. Cooperation. The Parties will work cooperatively with the Corps and the other Parties toward accomplishing the Study Update in a timely manner.

4. WATER AGENCIES' RESPONSIBILITIES.

- a. Muni and Western Cost Share Obligations. Muni shall provide 71.95 percent share of the Study Costs, and Western shall provide 28.05 percent share of Study Costs, according to the procedures set forth in paragraph 5 of this Agreement.
- b. Remaining Funds Distribution. Muni and Western shall be reimbursed any remaining funds available, as applicable upon completion of Final Accounting, at the same pro-rata share as their respective funding.
- c. Failure to Provide Funds; Termination of Agreement. Should the Water Agencies fail to provide the total amount(s) requested pursuant to Paragraph 5., herein, the Local Sponsors/SBCFCD may take any or all of the following measures:
- (1.) Terminate this Agreement;
  - (2.) Cease their participation in the Study Update; and
  - (3.) Terminate the Amended Study Agreement and Study Update.

5. SBCFCD CHIEF ENGINEER'S RESPONSIBILITIES FOR FUNDS MANAGEMENT.

Upon execution of this Agreement, the SBCFCD Chief Engineer or his designee is authorized to and shall perform the following tasks:

- a. Establish Escrow Account. Establish an escrow account ("Escrow Account");

- b. Corps Requirements. Request that the Corps identify the specific federal funding requirements for the Study Update;
- c. Local Sponsors' Prior Study Costs. Identify each of the **Local Sponsors'** actual Study Costs incurred since June 15, 2005, based on its, **RCFC&WCD's** and **OCFCD's** respective accounting records and written statements summarizing expenses, and the reasons for expenses, to the date said statements are prepared/received by **SBCFCD**;
- d. Local Sponsors' Estimates of Future Study Costs. Based on the PMP, prepare an estimate of the projected Study Costs for the applicable Federal Fiscal Year ("FFY") for each of the **Local Sponsors**, and if applicable thereafter, on an annual basis prepare/request estimates for subsequent FFY;
- e. Local Sponsors' Actual Future Study Costs. After execution of this Agreement, prepare written statements for the actual Study Costs incurred in each FFY quarter, by each of the **Local Sponsors**, based on the their respective accounting records and written statements summarizing expenses, and the reasons for expenses;
- f. Request and Deposit Funds. Request the **Water Agencies** to provide funds for deposit into the Escrow Account within forty-five (45) calendar days after receipt of written Notice from **SBCFCD**, for Study Costs as calculated in Paragraph 4.e.-c., herein;
- g. Distribution of Funds. Upon receipt of funds requested pursuant to Paragraph 4.f., herein:
  - (1) Promptly deposit funds into the Escrow Account;
  - (2) distribute funds for use by the Corps within forty-five (45) days of request by the Corps (or other time period as may be required and described in the Study Agreement); and
  - (3) Pay **Local Sponsors'** Study Costs based on previously provided, and subsequent quarterly written statements of expenses and reason/purpose of expense, with supporting accounting documents, provided by each Sponsor for their respective expenses, within forty-five (45) days after preparation/receipt of such statements.
- h. Corps Costs. Request that the Corps provide accounting of its Study Costs on a quarterly basis, and upon completion of the Study Update, promptly prepare a final accounting of the Corps' Study Costs and return any unused funds to the **SBCFCD** Chief Engineer for disbursement to the **Water Agencies**;
- i. Quarterly Accounting of Escrow Account. Within forty-five (45) days of the end of each quarter during the term of this Agreement, provide the **Parties** with an accounting and support documentation on Escrow Account deposits, withdrawals/payments, interest earnings, and remaining balance;
- j. Books and Records.
  - (1.) Keep books, records, documents and all other evidences (including records on electronic media) pertaining to deposits, written statements of expenses, and payments/draw downs pursuant to this Agreement;



- (2.) Maintain said documents and make them available for review or audit, within thirty (30) days of Notice by one or more **Party** at any time during the term of this Agreement, and for a period of three (3) years after Agreement termination.

k. Final Accounting.

- (1.) In the event of one or more of the following, initiate a Final Accounting by requesting documentation from the Corps and **Local Sponsors** as applicable:
  - a. The Amended Study Agreement is not executed, or is terminated pursuant to the provisions of the Amended Study Agreement;
  - b. The **Water Agencies** fail to provide adequate funds for Study Costs and/or fail to provide funds within the time frames requested by **SBCFCD**; or
  - c. The Study Update is completed.
- (2.) Within ninety (90) days (or sooner if required by the Corps) after receiving respective final accountings from the Corps, request **RCFC&WCD** and **OCFCD** to provide final accounting reports on their respective Study Costs,
- (3.) Provide a complete accounting report to the Parties on Escrow Account deposits, withdrawals/payments, interest earnings, remaining funds available or remaining funding required.
- (4.) When providing said accounting, either request additional funds from the **Water Agencies** to be provided within forty-five (45) days Notice (or sooner if required by the Corps) of the additional funding requirement, or return any remaining funds in the Escrow Account (which may include reimbursement from the Corps as may be provided for in the Amended Study Agreement) to the **Water Agencies**, and close the Escrow Account.
- (5.) If additional funding/deposit is requested, then within forty-five (45) days after receipt of said funds (or sooner if required by the Corps), make final payments as applicable, close the Escrow Account, and provide a Final Accounting to the Parties.

6. EXTENT OF AGREEMENT

- a. No Warranty of Suitability. Nothing in this Agreement is intended by the Parties or shall be construed to constitute a representation or warranty by the **Local Sponsors** to the **Water Agencies**, or any other individual or entity, as to the suitability of the SOD for water conservation purposes.
- b. Extent of Relationship Among Parties. The purposes of this Agreement are to arrange for funding and administration the Study Update, to confirm the respective roles and responsibilities of the Parties for the purposes of conducting the Study Update, and to establish accounting and other support procedures and assignments to implement this Agreement and the Study Update. Nothing in this Agreement is intended by the Parties or shall be construed to constitute, a joint venture, partnership or any other form of relationship among the Parties as to the operation of the SOD for flood control as described in the SOD Water Control Plan and any modifications thereof, or any agreement as to the potential modification of SOD operations for water conservation. Any potential operational or facility

changes at SOD to allow water conservation will require, among other things, a separate agreement approved by the **Local Sponsors'** respective Boards. The **Parties** understand that entering into this Agreement in no way obligates the **Local Sponsors** to implement water conservation at SOD.

- c. Hold Harmless. **Water Agencies** shall defend, indemnify, and hold the **Local Sponsors** and their respective County, 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, based or asserted upon any act or omission, for property damage, monetary loss, bodily injury, or death (including death of **Water Agencies'** employees,) 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 the **Parties** entering into this Agreement, and/or the **SBCFCD** entering into the Amended Study Agreement, and/or the **Parties** participating in any manner whatsoever in the Study Update. The **Water Agencies** shall defend, with Counsel approved by each of the **Local Sponsors** for each of them and their respective **Indemnitees**, or by all of the **Local Sponsors** for all of the **Indemnitees**, including without limitation, attorney fees, expert fees and investigation expense. This indemnity obligation shall not apply to any liability of one or more of the **Local Sponsors** arising from the negligence or willful misconduct of that one or more of the **Local Sponsors** in their respective accounting of Study Costs and/or funds related to the implementation of this Agreement. The obligations to indemnify, defend and hold the **Indemnitees** free and harmless herein shall survive the termination of this Agreement.

## 7. GENERAL PROVISIONS

- a. Authority. Each signatory to this Agreement represents that s/he is authorized to execute this Agreement on behalf of the **Party** for which s/he signs. Each **Party** represents that it has the legal authority to enter into and to perform its respective obligations under this Agreement.
- b. Headings. The paragraph and other headings used in this Agreement are intended for convenience only and shall not be used in interpreting this Agreement or in determining any of the rights and obligations of the **Parties**.
- c. Entire Agreement. This Agreement constitutes the entire agreement of the **Parties** with respect to subject matter of this Agreement and supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this Agreement.
- d. Severability. If any part of this Agreement is held, determined or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.
- e. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective **Parties**. No **Party** may assign its interests or obligations under this Agreement without written consent of the **Parties**, which shall not be unreasonably withheld or delayed.
- f. Necessary Actions. Each **Party** agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out the purposes of this Agreement.

- g. Third Party Beneficiary. This Agreement shall not create any right or interest in any non-party or any member of the public as a third party beneficiary.
- h. Termination. This Agreement is terminated if **Muni** and/or **Western** do not provide funds necessary to implement this Agreement pursuant to Paragraphs 3. and 4., herein, or upon completion of Final Accounting.
- i. Written Notification. Written communication or notification as described in this Agreement shall be addressed as identified in Attachment II to this Agreement, and shall be deemed to have been duly given and received on the fifth day after (excluding holidays and Sundays) the notice document is either: (i) delivered personally to a **Party**, or sent by facsimile transmission or electronic mail to the address identified in Attachment II, and the addressed **Party** acknowledges in writing upon personal delivery, or by return facsimile transmission or electronic mail of receiving the document; (ii) mailed by an overnight mail/courier service, postage pre-paid and addressed to the **Party** as identified in Attachment II; (iii) mailed by first class mail, registered or certified, postage pre-paid, and addressed, as identified in Attachment II ("Notice").
- j. Modification of Address. A **Party** may modify its address identified in Attachment II, and is responsible to ensure that the other **Parties** have received Notice of such change.
- k. Accounting Resolution. In the event that an accounting issue occurs among the **Parties**, the concerned **Party** shall advise **SBCFCD**, and other **Parties** in writing, accompanied with applicable documentation. **SBCFCD** shall address the issue within forty-five (45) days of written notification by one or more of the **Parties**. If in the opinion of a **Party** or **Parties**, the issue is not sufficiently addressed at that time, or thereafter through audit(s) of accounting books and records by one or more **Party** as provided for in Paragraph 4.d., herein, then said **Party/Parties** may request a 'third party' audit conducted by a third party audit firm, previously agreed to as an alternative auditor by the **Parties** at the time of execution of this Agreement. The requesting **Party/Parties** shall initially pay for the third party audit and audit report. If such audit determines an accounting error by a **Party** or **Parties**, then said **Party/Parties** shall correct payment(s) and/or reimbursement(s), as applicable. If the error is due to direct negligence, the responsible **Party** shall reimburse the **Party/Parties** that initially paid for the third party audit, within sixty (60) days after a Notice by the initially paying **Party/Parties**. If more than one **Party** is negligent, the audit cost will be reimbursed by the respective **Parties** based on their respective percent of the total correction required, within sixty (60) days Notice by the initially paying **Party/Parties**.

This Agreement may be executed in counterpart, which upon execution by all **Parties**, shall be considered to be effective as of the day and year of the last **Party's** execution of the Agreement.

Attachment I – Miscellaneous Support Items For Reimbursement

Attachment II – Party Name and Address for Notices

IN WITNESS WHEREOF, each PARTY hereto has executed this AGREEMENT by its  
duly authorized representatives as of the date set forth above.

ORANGE COUNTY FLOOD CONTROL  
DISTRICT,  
a body corporate and politic

BY: \_\_\_\_\_  
Chair of the Board of Supervisors

COUNTY OF ORANGE,

BY: \_\_\_\_\_  
Chair of the Board of Supervisors

DATE: \_\_\_\_\_

SIGNED AND CERTIFIED THAT  
A COPY OF THIS DOCUMENT  
HAS BEEN DELIVERED TO THE  
CHAIR OF THE BOARD

APPROVED AS TO FORM:  
BEN DEMAYO,  
COUNTY COUNSEL

\_\_\_\_\_  
Darlene J. Bloom  
Clerk of the Board of Supervisors of  
The County of Orange, California

BY: \_\_\_\_\_ Date  
Deputy

RIVERSIDE COUNTY FLOOD CONTROL &  
WATER CONSERVATION DISTRICT,  
a body corporate and politic

BY: \_\_\_\_\_  
Chair of the Board of Supervisors

COUNTY OF RIVERSIDE,

BY: \_\_\_\_\_  
Chair of the Board of Supervisors

DATE: \_\_\_\_\_

SIGNED AND CERTIFIED THAT  
A COPY OF THIS DOCUMENT  
HAS BEEN DELIVERED TO THE  
CHAIR OF THE BOARD

APPROVED AS TO FORM:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Clerk of the Board of Supervisors of  
County of Riverside, California

BY: \_\_\_\_\_  
Deputy Date

SAN BERNARDINO COUNTY FLOOD  
CONTROL DISTRICT,  
a body corporate and politic

BY: \_\_\_\_\_  
Chair of the Board of Supervisors

COUNTY OF SAN BERNARDINO,

BY: \_\_\_\_\_  
Chair of the Board of Supervisors

DATE: \_\_\_\_\_

SIGNED AND CERTIFIED THAT  
A COPY OF THIS DOCUMENT  
HAS BEEN DELIVERED TO THE  
CHAIR OF THE BOARD

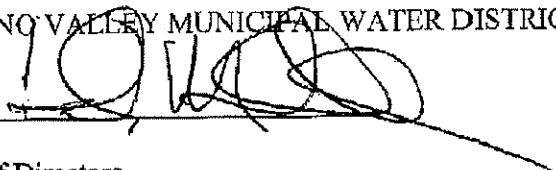
APPROVED AS TO FORM:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Clerk of the Board of Supervisors of  
County of San Bernardino, California

BY: \_\_\_\_\_  
Deputy Date

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

By:   
Patrick Milligan  
President, Board of Directors

WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY

By: \_\_\_\_\_  
~~S. R. "Al" Lopez~~ *Kevin D. Jeffries*  
President, Board of Directors

## ATTACHMENT I

### Reimbursable Expense Categories

The Water Agencies shall reimburse the SBCFCD, OCFCD and RCFC&WCD (collectively Local Sponsors) for the following types or categories of services and expenses, provided by Local Sponsors staff and/or Local Sponsors consultants, associated with the Study Update and related activities involving requirements for potential implementation of water conservation at Seven Oaks Dam:

1. Development, Coordination, and Communication Support
  - a. Prepare, review, and process (for review/approval) agreement(s)/contract(s), memorandum(s) of understanding, 'communications protocol', policies and procedures;
  - b. Travel/attend meetings, field trips;
  - c. Involvement with general coordination and communication;
  - d. Prepare and make presentations, respond to questions.
  
2. Preparation and Review Support
  - a. Conduct, or contribute toward the completion of, Study Update task(s)/assignment(s);
  - b. Review documents, reports;
  - c. Conduct further or separate assessments and evaluations for review and comment purposes;
  - d. Prepare written comments, edit
  
3. Other Support Services
  - a. Accounting and audit services;
  - b. Local Sponsors' respective County Counsel support, and contract attorney services (including expert witness services if necessary);
  - c. General Overhead;
  - d. Clerical services (to extent not covered/included in determination of General Overhead).
  
4. Other Reimbursable Items
  - a. Travel (vehicle and gasoline use charges, bus, train or airplane tickets, hotel/motel rooms, and meals - when out of respective county);
  - b. Communication (direct telephone, facsimile and other communications charges, not included in General Overhead);
  - c. Reproduction/Duplicating Services (direct charges not included in General Overhead).



**Attachment II**

**Names and Addresses of Parties to Agreement**

**SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT**

San Bernardino County Flood Control District  
Department of Public Works  
825 East Third Street  
San Bernardino, CA 92415-0835  
(909) 387-7964  
(909) 387-8043 FAX

**RIVERSIDE COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT**

Riverside County Flood Control District & Water Conservation District  
1995 Market Street  
Riverside, CA 92501  
(951) 955-1200  
(951) 788-9965 FAX  
Attn: Senior Civil Engineer - Special Projects Section

**ORANGE COUNTY FLOOD CONTROL DISTRICT**

Orange County Flood Control District  
Flood Control Division/Santa Ana River Project  
P.O. Box 4048  
Santa Ana, CA 92702-4048  
(714) 834-5618  
(714) 834-4572 FAX  
Attn: Manager, SAR Project

**SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**

San Bernardino Valley Municipal Water District  
P.O. Box 5906  
San Bernardino, CA 92412-5906  
(909) 387-9222  
(909) 387-9247 FAX  
Attn: General Manager

**WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY**

Western Municipal Water District of Riverside County  
450 Alessandro Boulevard  
Riverside, CA 92508  
(909) 789-5000  
(909) 780-3837 FAX  
Attn: General Manager

Seven Oaks Dam Water Conservation Study  
Review of the 1997 report  
And  
Proposed tasks for Continuation of the 1997 study

1. The 1997 report includes a recommendation by the District Engineer that states the Seven Oaks Dam can be operated for water conservation during the off flood season and the amount of additional water saved could be about 4,100 acre feet (present) to about 2,100 acre feet ( future). The report includes the required hydrology computations that shows, if we get to store the water, during off flood season, up to elevation 2300 feet, the benefit to cost ratio of this action is about 1.29. In addition to showing a positive benefit to cost ratio in the 1997 report, the report also includes an Environmental Impact Statement report that concludes the water conservation alternative would not result in any significant additional biological impacts beyond those already analyzed and mitigated for as part of the Santa Ana River Project including construction of Seven Oaks Dam for flood control protection.

The 1997 report has been approved by our Headquarters but we do not have a final Record of Decision document signed for this report.

2. The 2005 flood event and the operational needs for Seven Oaks Dam has brought many of the 1997 report assumptions to question. These include:
  1. The stored water behind the Dam, up to elevation 2392 feet, caused damages to the Southern California Edison access roads. The duration of the stored water made it hard for SCE to have the chance to repair the roads or the diversion intakes in the upper canyon area.
  2. The stored water showed signs of water quality problems and when it was released , it was not as good as before the 2005 flood season.
  3. The 2005 flood operations at Seven Oaks Dam was unique and its effects on the water quality or the SCE road maintenance was also unique.

But due to this unique 2005 reservoir operation at Seven Oaks Dam , we all learned about the effects of storing water behind the Seven Oaks Dam and now we need to reevaluate parts or all of the 1997 report.

The 1997 recommended plan includes storing water behind the SOD that can be released to the water agencies downstream of the Dam for water spreading operations. The 1997 report states this operation of storing water behind the dam is to be carried out during non flood seasons as to not interfere with any of the flood control operations. The 1997 recommended plan limits the elevation of the water storage to elevation 2300 feet. This is the maximum elevation under our flood control operations for debris pool. All waters above this level and its operations are considered flood control releases. What this means, is that, under the existing conditions, there is about 17,000 acre feet of space between elevation 2100 ft. to elevation 2300 feet, that is operated for flood control today,

and yet, inherent with this approved flood control operations, when water levels are not above 2300 feet, the Dam operations are making releases that is useful to the water Agencies downstream of the SOD.

The flood control operation of SOD includes periodic release of water to meet the environmental mitigation requirements of endangered species. As such, this mitigation operation has a higher priority than operations for water conservation, that would be proposed at the end of this study.

3. The revised 1997 report would need to concentrate on following tasks:

1. Update the hydrology data from 1990 to present to show new water volumes available at Seven Oaks Dam. Est. \$ 100,000

2. Update the Hydraulics data to see if the releases made from various gates at Seven Oaks Dam are valid or need to be adjusted for the study. Est. \$50,000

3. Review flood control and water conservation operations at the Seven Oaks Dam, from 1999 to present to determine if there is a more suitable gate operations for flood control and water conservation that may resolve some of the concerns mentioned in item 2 above. This activity shall be carried out by our Reservoir Regulation Section. Est. \$140,000

4. Update the Geotechnical data to see if storing flood waters at elevation 2392 feet level, during 2005, has any effect on the 1997 proposed alternative of water storage at elevation 2300 feet for water conservation. Est. \$100,000

5. Review the project design shown in the 1997 report, which was for fortifying the intake tower and see if any additional modifications need to be done. Also provide new cost adjustment as needed. Est. \$150,000

6. The economics data needs to be updated should the above data in items 1 to 5 show a significant variation. If the cost of the selected project shows that there is no positive benefit to cost ratio, that would be of major concern to the study team members. Est. \$110,000

7. The real estate issues would need to be reviewed and get consensus from the US Forest Service, the owner of majority of the land behind the Seven Oaks Dam. Est. \$50,000

8. Should all of the above items indicate insignificant changes to the 1997 selected plan, that is water conservation operations in off flood season at elevation 2300, the most significant redo of the 1997 report would be to prepare a new Environmental Impact Statement report that would need to include the newly listed endangered species downstream of the Seven Oaks Dam. This task would include the report as well as Section 7 consultation.

Est. \$1,000,000

9. Study management includes attend meetings, prepare meeting notes, provide field review for study team and coordinate with other agencies. Est. \$500,000

10. Report preparation includes preparing the draft and final reports for the Study. This will also include the cost of reproducing the report  
Est. 800,000

11. Public Meeting includes putting together two public meetings, one at the start of the study and second one when the draft report is completed for public comments. Est. \$100,000

12. Project Management includes participation on all the meetings with the water agencies as well as the Santa Ana River sponsors. Also work includes preparation for budgetary data both during the study term as well Congressional funds requests. Est. 200,000

13. Independent Technical Review includes technical review of the study results by an outside Los Angeles District, to make sure the study results are sound and complete. Est. 100,000

14. Contingency is a requirement for such a complex study with many water agencies and resource agencies involvement. Est. \$600,000

4. Therefore, the total cost of revising and preparing a new Water Conservation Report for Seven Oaks Dam could have a cost estimate of about \$ 4,000,000. This figure is very preliminary and is subject to change, depending on the actual scope of work that results from our meetings and study direction by the executive board members.

The Study Time line and  
Study Funds Needed  
Will be as Follows:

	DATES	Cumulative Funds needed in \$1000	
		Fed	NonFed
Amend the existing Agreement	Aug. 06		
Receive advanced funds from sponsor	Sept. 06		
Initiate Study	Sept. 06		
Prepare a separate report to supplement The existing 1997 Water Con report. It Will include review of the 1997 alternatives, review of the Env. Impact. Issues to the 1997 alternatives, as well as consideration for new alternatives including imported water.	9/06- 6/07	800	800
Prepare final array of alternatives, including Benefit/ cost data, Eng. Design data, and Env. Impact issues.	6/07- 12/07	1000	1,000
Present the final plans and costs to the Executive committee for plan selection	12/07- 03/ 08	1,150	1,150
Public Presentation of the Draft report	03/08- 5/ 08	1,300	1,300
Revise the report per comments received	5/08 -08/ 08	1,500	1,500
Final report and final public presentation	08/08 -09/ 08	1,700	1,700
Study Total \$3,400,000		1,700	1,700
Contingency		300	300
Grand Total \$4,000,000		2,000	2,000

Study Costs and Federal and Non Federal cost distribution  
(All funds are in \$1000)

	TOTAL	Federal	Non-Federal
Update the hydrology data	100	50	50
Hydraulics analyses	50	25	25
Review of reservoir operations As it relates to effects on water purveyors, plus flood control requirements	140	70	70
Update geotechnical data to include any requirements from the seismic concerns, under water operations	100	50	50
Review project designs to include required project modifications, plus project costs.	150	75	75
Review economics data and prepare new B/C ratios for 1997 alternatives plus imported water alternative.	110	55	55
Real estate review and determine any new requirements for upstream or downstream projects.	50	25	25
Prepare the most needed Envirnt. Impact statement to accompany the recommended plan.	1000	500	500
Study Management	500	250	250
Report Preparation	800	400	400
Public Meeting	100	50	50
Project Management	200	100	100
Independent Technical Review	100	50	50
Contingency	600	300	300
<b>GRAND TOTAL</b>	<b>4,000</b>	<b>2,000</b>	<b>2,000</b>