



Monterey Regional Water Pollution Control Agency

*"Dedicated to meeting the wastewater and reclamation needs
of our member agencies, while protecting the environment."*

Administration Office:
5 Harris Court, Bldg. D, Monterey, CA 93940-5756
(831) 372-3367 or 422-1001, FAX: (831) 372-6178
Website: www.mrwpc.org

MEETING NOTICE AND AGENDA ***RECYCLED WATER COMMITTEE***

Ralph Rubio, Chair
Libby Downey, Ron Stefani, Kenneth Nishi, and Dennis Allion
[Alternate Lou Calcagno]

DATE:	Thursday, October 14, 2010
TIME:	3:00 p.m.
LOCATION:	Admin Conference Room 5 Harris Court, Building D Monterey, CA

PUBLIC COMMENTS

Anyone wishing to address the Committee on matters not appearing on the Agenda may do so now. Comments on any other matter listed on the Agenda are welcome at the time the matter is being considered by the Committee.

- 1. UPDATE ON REGIONAL PROJECT TEST WELLS** (see attachment)
- 2. REVIEW STATUS OF SALINAS RIVER DIVERSION FACILITIES O&M AGREEMENT WITH MCWRA** (see attachment)
- 3. UPDATE ON RECYCLED WATER PROJECTS** (see attachment)

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RECYCLED WATER COMMITTEE

October 14, 2010

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This Committee Meeting Notice and Agenda was hereby posted at:

MRWPCA
5 Harris Court, Building D,
Monterey, California 93940

POSTED: Friday, October 8, 2010

By: */s/ Betty Nebb*
Executive Assistant



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MEMORANDUM

TO: RECYCLED WATER COMMITTEE

FROM: BOB HOLEN, PRINCIPAL ENGINEER
(via Keith Israel, General Manager)

DATE: OCTOBER 8, 2010

SUBJECT: UPDATE ON REGIONAL PROJECT TEST WELLS

RMC Water and Environment (RMC) is currently designing two test wells that will withdraw water from the 180-foot aquifer to send to the Regional Desal Plant. One well will be a slant well and be built on the MCWD treatment plant site at the end of Reservation Road. The water pumped from that test well will be discharged into a diffuser box on the beach away from the well. The second well will be a vertical well just outside the CEMEX sand plant that is located just off Lapis Road north of Marina. After the CPUC approves the project, the construction of the wells will be put out to bid. After digging, the wells need to be pumped at full flow (4 MGD) for three months while monitoring the wells' water quality as well as the quality of sample wells around the test well. Pumping could start as early as May or June 2011. RMC approached MRWPCA to see about connecting the discharge from the vertical test well into the agency Outfall pipeline which is less than 200 feet from the proposed well location. Once well testing is complete the intent is to get permission to retain the wells as permanent extraction wells.

MRWPCA has provided RMC with a design we prepared several years ago for hot tapping into the outfall line in this same general area. MRWPCA staff discussed with the Regional Board discharging the well water into the outfall. The

Joint Powers Authority Member Entities:

Boronda County Sanitation District, Castroville Community Services Water District, County of Monterey, Del Rey Oaks, Fort Ord, Marina Coast Water District, Monterey, Moss Landing County Sanitation District, Pacific Grove, Salinas, Sand City, and Seaside.

MEMORANDUM

Recycled Water Committee

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regional board recommended that we use their general low-threat discharge permit to allow the water to enter our Outfall pipeline and flow into the ocean. MRWPCA has asked CH2M Hill, our outfall consultant, to determine the flow characteristics at the location of the Outfall pipeline hot tap under various conditions. Staff will continue to work with MCWD, their consultants and the Regional Board to find the most efficient and cost-effective method for disposal of the test well water.

➤ **This is an informational item – no action is requested.**



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MEMORANDUM

TO: RECYCLED WATER COMMITTEE

FROM: BRAD HAGEMANN, ASSISTANT GENERAL MANAGER
(via Keith Israel, General Manager)

DATE: OCTOBER 8, 2010

SUBJECT: REVIEW STATUS OF SALINAS RIVER DIVERSION
FACILITIES (SRDF) O&M AGREEMENT WITH MCWRA

Background:

In September 2008, the Monterey County Water Resources Agency (MCWRA) and the Monterey Regional Water Pollution Control Agency (MRWPCA) entered into a Memorandum of Understanding for the design and construction of the Salinas River Diversion Facility Chlorination Structure. Design and construction of the structure was funded by MCWRA and constructed in coordination with the Salinas River Diversion Facility inflatable dam and water pumping facilities. The purpose of the SRDF is to augment waste supply for the farmers utilizing the recycled wastewater and distribution system, thereby lessening the amount of ground water pumped from the Salinas ground water basin.

The MCWRA Board initially approved the O&M agreement in April 2010, subject to concurrence by the County Risk Management Office and the MRWPCA Board. On May 12, 2010, MCWRA staff transmitted the draft agreement to MRWPCA staff for our comment. MRWPCA staff reviewed and commented on the agreement and transmitted it back to MCWRA on June 28. Since that time, MCWRA staff has been attempting to get County Risk Management Office concurrence on the proposed indemnification language. MRWPCA and MCWRA staff have been operating the Salinas River Diversion Facilities in accordance with the terms and conditions of the draft agreement. However, the Operations

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and Maintenance Agreement has yet to be formally considered by the MRWPCA Board. For that reason, there is some legal risk for continuing to operate the facilities without the agreement. We have asked legal counsel to update the Committee on this topic.

Attached for your review and comment is the June 25, 2010 draft SRDF Operations and Maintenance Agreement.

Recommendation/Options:

- A. Continue to wait for comments from County Risk Management Office
- B. Recommend that the full Board consider and approve the draft agreement and then bring back to the Board if the County Risk Management Office has significant comments of the draft indemnification language.
- C. Other??

**AGREEMENT BETWEEN
THE MONTEREY COUNTY WATER RESOURCES AGENCY
AND
THE MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY
FOR OPERATION AND MAINTENANCE OF THE
SALINAS RIVER DIVERSION FACILITIES**

This Agreement is between the Monterey County Water Resources Agency, hereinafter referred to as "WRA" and the Monterey Regional Water Pollution Control Agency, hereinafter referred to as "WPCA", dated _____. WRA and WPCA are sometimes individually referred to as "party" and collectively as "parties" in this Agreement.

RECITALS

- A. On June 4, 2002, the Monterey County Water Resources Agency Board of Supervisors approved the Salinas Valley Water Project, of which the Salinas River Diversion Facilities are a component, certified the Final EIR/EIS, adopted Findings, Statement of Overriding Considerations and Mitigation Monitoring Program, and filed a Notice of Determination.
- B. A ballot measure pursuant California Proposition 218 was validated April 8, 2003, which approved funding for the Salinas Valley Water Project, which included construction of the Salinas River Diversion Facility.
- C. On March 22, 2004, the Monterey County Water Resources Agency Board of Directors approved a design engineering contract for the Salinas River Diversion Facility.
- D. Between 2004 and 2009, permits for the Salinas River Diversion Facilities were acquired from the California Regional Water Quality Control Board, California Department of Fish and Game, U.S. Army Corps of Engineers, National Marine Fisheries Service, U.S. Fish and Wildlife Service, California Department of Water Resources Division of Safety of Dams, California State Water Resources Control Board Division of Water Rights, and Monterey County.
- E. On July 31, 2007, the Monterey County Water Resources Agency Board of Supervisors adopted an addendum to the Final Salinas Valley Water Project EIR and additional Findings, approved modifications to the Salinas Valley Water Project, of which the Salinas River Diversion Facilities are a component, approved an amendment to the Mitigation and Monitoring Program, and filed a Notice of Determination.
- F. On December 17, 2007, the Monterey County Board of Directors approved the financing plan for the Salinas Valley Water Project and a Resolution establishing a public process for the development of short-term and long-term financing strategies for the Salinas Valley Water Project.
- G. On March 31, 2008, the Monterey County Water Resources Agency Board of Directors authorized the General Manager to negotiate and award a contract agreement to the lowest responsible construction bidder for the Salinas River Diversion Facilities Project and authorized the General Manager to execute the agreement pending County Counsel review and successful completion of Salinas Valley Water Project financing.
- H. On September 22, 2008, the Monterey County Water Resources Agency Board of

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Directors approved a Memorandum of Understanding (MOU) with Monterey Regional Water Pollution Control Agency for payment of design and construction costs of a river water chlorination system for the Salinas River Diversion Facilities and connection to the 80 acre-foot pond at the Salinas Valley Reclamation Plant, and authorized the General Manager to execute the MOU.

- I. The MOU provides upon completion of construction, the chlorination system will be fully integrated with the Salinas Valley Water Project, of which the Salinas River Diversion Facilities are an element, and with the Castroville Seawater Intrusion Project distribution system.
- J. SRDF Operations 218 O&M funding approval [✓ what does this mean?]
- K. Salinas River Diversion Facilities may be utilized for its intended purpose as of January 15, 2010, the date of construction Substantial Completion.

TABLE OF CONTENTS

To be inserted

DEFINITIONS

For purposes of this Agreement, the following definitions are provided:

- A. The terms "project," "Project," "the Salinas River Diversion Facilities," and "SRDF," as used in this Agreement, all refer to the Salinas River Diversion Facilities including the integration of the chlorination system and chlorination facilities as set forth and defined herein and as shown on the diagram attached hereto as Exhibit A..
- B. The terms "Castroville Irrigation System," "Castroville Seawater Intrusion Project," and "CSIP," as used in this Agreement, all refer to the distribution system and are all hereinafter referred to simply as the "CSIP."
- C. The terms "Salinas Valley Reclamation Plant" and "recycled water plant" as used in this agreement refer to the treatment plant that produces recycled water pursuant Title 22 suitable for irrigation of crops eaten raw, and are all hereinafter referred to simply as the "SVRP."
- D. The terms "service area," "CSIP service area," and "Zone 2B" as used in this Agreement refer to the area to which SRDF produced water shall be delivered, and are all hereinafter referred to simply as "service area."
- E. The terms "Chlorination System" and "chlorination facilities" as used in this Agreement refer to the system and facilities designed and constructed to disinfect, by chlorinating for food safety reasons, the river water and the connection from the 80 acre-foot (AF) recycled water storage pond at the SVRP to the SRDF.
- F. The term Crisis Management Plan as used in this Agreement refers to the most recent plan approved by the Water Quality & Operations Committee and distributed to the grower liaisons, distribution system operators, WRA and WPCA staff and Crisis Management Team.

ARTICLES

I. OPERATION AND MAINTENANCE OF THE SRDF

1.01 Agreement applicability

Reference to WPCA's responsibilities and commitments to operate and maintain the SRDF, as described in this Article I and elsewhere in this Agreement, apply only during such times as WPCA has been designated by WRA to be the operating and maintenance entity for the SRDF. The initial term of this Agreement shall be as set forth in Section 10.01. In the event WPCA should not be selected to operate the SRDF in any year (see Section 10.04), WPCA shall continue to operate and maintain the chlorination facilities, the cost for which will be paid by WRA in accordance with the terms of a separate agreement.

1.02 Operation and maintenance (O&M), in general

WPCA will operate and maintain the SRDF as described in Sections 1.08, 1.09 and 1.11 and will keep the SRDF in good condition and repair for the term of this Agreement. WRA shall

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pay WPCA for such direct and indirect costs and expenses of operation and maintenance of the SRDF as described in Article V of this Agreement.

1.02 Safety and loss prevention program.

WPCA will develop, maintain, and implement a safety and loss prevention program for the SRDF, and will provide appropriate training for its employees working on the SRDF. This program will conform to all requirements set forth in CAL OSHA's Process Safety Management Program and US EPA's Risk Management Program, and will be revised and updated as new regulations are promulgated. All costs associated with the program will be included in the annual budget process to be reimbursed by WRA.

1.03 Warranties.

WPCA warrants that all water produced by the Project shall be chlorinated and distributed in conformity with the terms of this Agreement.

1.04 Right to inspect and to direct.

WRA shall have the right to inspect the Project at any time during the term of this Agreement. Such inspections may take place at any time during the day or night. WRA will endeavor to provide WPCA with reasonable advance notice of inspection, but is not obligated to do so. WRA's right to inspect is for the purpose of observation and not for the purpose of supervision of the work observed. Any comments WRA might wish to make as a result of such inspection shall be made to WPCA's contract administrator or other designated personnel. WRA shall have the right to direct the WPCA to alter or change operational methods that in the opinion of the WRA jeopardize the usefulness or performance of equipment assets or water quality.

1.05 Daily Operation.

The SRDF will be in operation and will supply water to WRA on a daily basis as described in Sections 1.08, 1.09 and 1.11, except for temporary periods of shut-down authorized by the Agreement or made necessary by circumstances beyond the control of WPCA.

1.06 Notice of temporary cessation of SRDF water deliveries

WPCA will give immediate notice to WRA, by telephone to WRA's General Manager, or to the person designated by the General Manager to receive such notices, with a prompt follow-up notice in writing, as soon as WPCA becomes aware of the need for cessation of SRDF water deliveries to the CSIP, whatever may be the reason for such interruption in service. WPCA shall also give immediate notice to Water Quality Committee grower liaisons of such interruption of SRDF water deliveries. Whenever an unforeseen cessation of SRDF water deliveries occurs without prior notice to WRA, WPCA shall immediately give notice to WRA and Water Quality Committee grower liaisons as provided above. In addition, whenever a cessation of deliveries occurs, WPCA shall use every reasonable effort to restore

service as soon as possible. WPCA shall notify WRA and Water Quality Committee grower liaisons when SRDF water deliveries are restored.

1.07 Non-interference with WRA's financing obligations.

In order to avoid taking actions with respect to the project that would have a material adverse affect on the WRA's ability to perform certain obligations with respect to the project that WRA has or will undertake in connection with the financing of the project, the WPCA will comply with the following limitations:

- (a) WPCA shall not sell, hypothecate, lease or otherwise transfer property or equipment purchased or paid for by the project, except that which has become worn out and is of no material use to the SRDF project. Such sale, lease or transfer shall be in accordance with Monterey County policies for surplus equipment. All proceeds from any such sale, lease or transfer, less WPCA's expenses, shall be paid to WRA.
- (b) WPCA shall not use funds received from WRA for the project in any way that would adversely affect the tax treatment applicable to the financing of the project under Internal Revenue Code Sec. 141(b), 141(c) and 1459(b), and under provision of the Internal Revenue Code allowing for the exclusion of bond interest from gross income; and WPCA shall not act with respect to the project in any way that would have such adverse tax consequences.

1.08 Ownership, operation and maintenance of the SRDF Inflatable Dam.

WRA will own and WPCA shall operate and maintain the SRDF inflatable dam to conform to the following parameters:

- (a) Seasonal operation. The SRDF is a seasonally operated facility. WRA shall notify WPCA when SRDF seasonal operations are to begin and cease. As governed by project permits, raising the inflatable dam and pumping and chlorinating of river water may occur no sooner than April 1 of each year. Cessation of pumping and chlorinating river water shall occur no later than October 31 of each year. At the end of each operational season, the river water impoundment shall be filled to capacity and allowed to drain at 2 cfs through November 29 of each year unless directed otherwise by WRA. Depending on service area water demand, river water availability, quality, or other circumstances, raising of the inflatable dam and pumping of river water may begin after April 1, and cessation of pumping river water may occur before October 31.
- (b) Services to perform. The WPCA agrees to perform the following services to ensure the proper operation of the SRDF: Perform repairs and major maintenance services as required due to wear and tear or failure of equipment. These will be performed as prescribed in the System Operations & Maintenance Manual prepared for the SRDF by WRA's design engineer, as well as the SRDF equipment manufacturers' manuals furnished in accordance with the SRDF construction contract documents, including:

SRDF inflatable dam operation and maintenance.

1. Operate mechanical equipment such as inflatable dam gate and regulating weir, air compressors and compressed air system components; river intake screens, fish ladder regulating gates and associated hydraulic system; vertical turbine water pumps; hydraulic surge control system components; river water pipeline; pipeline standpipe and control valves; filter screen station, valves, backwash pumps and system components.
2. Operate electrical and electronic equipment such as motors, controllers, automatic monitors, automatic samplers, chlorine residual analyzers, and standby power systems.
3. Operate fish bypass system to conform to fishery agency bypass flow requirements. WPCA shall periodically monitor the fish bypass system for flow verification. WPCA shall not be responsible for determining fish bypass flow requirements, but shall be notified by WRA as to fish bypass flow requirements.
4. Calibrate, maintain, service, repair, and replace various mechanical, electrical, and electronic equipment such as chemical metering pumps and supporting chemical feed systems, automatic samplers, electrically and pneumatically operated valves, motors, flow meters, chemical mixers, and chlorine equipment including evaporators and feeders.
5. Prepare project components for operation prior to seasonal start up. This includes, but is not limited to, removing sediment from the river intake head wall area, fish ladder, and regulating weir, installing river intake screens, installing fish ladder grating, installing hand rails and safety equipment at the river head walls, initial operation of inflatable dam and hydraulic regulating gates, preparing hydraulic surge system for operation, opening and monitoring standpipe valve operation, preparing filter station components, preparing chlorination system components for operation, start up of air conditioning/ventilation systems, and installing debris boom.
6. Close down project components after the operational season ends. This includes, but is not limited to, removing river intake screens, installing fish ladder cover plates, removing hand rails at the river head walls, lowering inflatable dam, closing hydraulic regulating gates, draining the river water pipeline, draining and decompressing hydraulic surge system, draining standpipe and closing valves, draining filter station components, draining chlorination system components, shut down of air conditioning/ventilation units, and removal of debris boom.
7. Remove debris and sediment from any project component as needed to maintain adequate operation of project and prevent undue damage to project facilities.
8. Regularly communicate forecast river water irrigation demand with WRA personnel. Such information will be used by WRA to assist determination of water releases from Nacimiento and/or San Antonio Reservoirs.
9. Inspect and maintain painting and coatings to prevent atmospheric corrosion, and monitor and maintain buried facility corrosion protection equipment.
10. Inspect or obtain proper inspection of pressure vessels.
11. Perform testing as needed to determine and optimize chemical dosages and control chemical applications for river water treatment process.

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12. Inventory, order and store chemicals for the SRDF.
 13. Inventory, order and store spare parts and equipment for the SRDF.
 14. Maintain accurate and complete operational records and prepare monthly and any other reports as required by the WRA, or regulatory bodies.
 15. Read meters, gauges, charts.
 16. Utilize computers and SCADA system to assist with the operation of the SRDF.
 17. Maintain and monitor reclaimed water storage reservoir.
 18. Collect samples from throughout the various SRDF processes to ensure and optimize river water production.
 19. Perform laboratory analyses and studies as necessary to ensure compliance with water safety concerns.
 20. Abide by WPCA's safety and loss prevention program policies and maintain a safe working environment.
 21. Perform regular preventive maintenance on the SRDF equipment. Such maintenance may be performed in the off-season if determined to be more cost-effective.
 22. Perform general maintenance, housekeeping and grounds maintenance of all assigned areas.
 23. Assist with, and provide support for, tours of the SRDF for members of the public.
 24. Inspect the pipelines for leaks.
 25. Assist WRA's grower liaison with the operation of the SRDF.
 26. Respond to after-hours problems on an on-call basis.
 27. Receive water orders and schedule water deliveries.
 28. Assess capability of the SRDF to supply water orders at the times and in the quantities requested.
 29. Notify growers as to whether water orders cannot be filled, and coordinate filling of the water orders as necessary.
 30. Monitor water quality within the delivery system and perform laboratory analyses and special studies as necessary to confirm the safety and public acceptance of the water.
 31. As necessary, replace motors, bearings and gaskets; repair valves and electrical or instrumentation equipment; and remove equipment from installed locations, transport to repair facilities and back to the project.
 32. WCPA will be responsible for the care, maintenance, and use of additional equipment to be furnished by WRA for WPCA's use in providing service under this agreement.
 33. Maintain and repair signage at SRDF site as needed. Signage will be supplied and installed by WRA.
- (c) Presentations and publications. All presentations or publications made by WPCA personnel regarding the SRDF or portions thereof shall bear the WRA logo and full name as project owner. The WPCA shall be described in such publications as "contract operator". The WRA reserves the right to review all WPCA presentation concerning the CSIP/SRDF prior to their being made public.

1.09 Ownership, operation and maintenance of the Chlorination System for river water.

WPCA will own, operate and maintain the river water chlorination system to conform to the following parameters:

1. The system shall be capable of operation whenever the SRDF is operational, 24 hours per day, 7 days per week.
2. The system shall be maintained to operate under normal flow capacity ranges from approximately 12 cubic feet per second (cfs) to 36 cfs. Maximum flow capacity is up to 48 cfs. Maximum flow capacity is intended only for short durations of significant water supply loss, such as when the SVRP is out of operation.
3. A two-phase river water disinfection process including contact with free chlorine and contact with combined chlorine via mixing with recycled water.
4. River water contact with free chlorine for a minimum of ten (10) minutes prior to mixing with recycled water at 36 cfs flow.
5. A free chlorine dosage capability up to 15 ppm.
6. Promote river water and recycled water mixing prior to distribution.
7. Prevent backflow of chlorinated water into the SRDF pipeline.
8. Minimize effects of hydraulic surge pressures on the SRDF pipeline and pump station.
9. Provide and maintain outlet for SRDF screen filter station backflush discharge water.
10. Oversee modifications to the system by registered professional engineers according to accepted engineering standards and applicable building codes and regulations.
11. Incorporate all appropriate safety features.
12. River water sampling and testing features and locations.
13. Maintain integrated river water disinfection system instrumentation and control features with the SRDF such that the SRDF operates in conjunction with the SVRP and CSIP under normal operating conditions.

1.10 Outside contracts.

When WPCA deems it more appropriate for someone other than WPCA to make repairs directly, and when cost of such repairs are within the WRA approved project budget, WPCA may solicit bids for time-and-materials, unit price, or lump sum contracts, whichever is deemed most cost effective by WPCA, to perform such work. Such work may include but is not limited to:

- (a) Repair of any rupture to the pipeline.
- (b) Motor rewinds and motor bearing replacement.

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Such contract work proposed by WPCA shall be disclosed to WRA prior to soliciting bids and WRA shall have the right to approve the list of prospective bidders, and/or pre-qualify bidders, except under emergencies described in Section 5.10(b).

1.11 Control Room hours of operation.

- (a) WPCA shall monitor, and when necessary, control SRDF operations from WPCA's existing control room. SRDF Supervisory Control and Data Acquisition (SCADA) system computers shall reside in the WPCA Control Room and shall be monitored by WPCA Control Room operators 24 hours per day, seven days per week, in the same manner as the CSIP system.
- (b) WRA will provide the necessary computers, monitoring equipment and communication to support a remote monitoring and control station at WPCA's Regional Treatment Plant. WPCA will monitor the distribution system for alarms and contact appropriate personnel when conditions warrant. WPCA will have the authority to page out the system on-call person to respond to any alarms. Additionally, critical operating parameters will be trended from this location and archived to establish an operational history.
- (c) The SRDF will be maintained by Distribution System Operator(s) (DSO) working under the guidance of a WPCA Supervisor. WPCA shall provide daily coverage during the SRDF operating season from 7:00 a.m. until 4:00 p.m. during the peak growing seasons, Monday through Friday. On weekends and holidays, one DSO will provide normal daily coverage. WPCA may adjust the shifts and allocation of personnel to meet the needs of the growers. The WPCA Control Room operator or a DSO shall be reachable by telephone by CSIP service area growers and WRA any time a DSO is not on duty.
- (d) In emergency situations WPCA will provide the appropriate personnel and equipment to respond to the emergency, including obtaining outside contract services.
- (e) Due to the seasonal nature of SRDF operation, WPCA charges for personnel costs shall be made only for time directly attributable to operation and maintenance of the project.
- (f) WPCA will prepare, submit, and resolve all questions and issues associated with quarterly water usage billings to growers and landowners.

1.12 Operational coordination.

In order to assure the most effective and efficient operation of the SRDF, the staffs of WRA and WPCA shall periodically meet to discuss and coordinate issues. Prior to operation of the SRDF and at least quarterly thereafter, staffs will hold a joint meeting to confirm communication and operational readiness.

II. DELIVERY OF RIVER WATER

2.01 Quantity of chlorinated river water to be delivered by SRDF.

- (a) Water shall be conveyed via the Salinas River to the SRDF from Nacimiento and/or San Antonio Reservoirs by WRA. WPCA is not responsible for conveyance of water to the SRDF. WPCA shall coordinate and communicate with WRA the projected weekly CSIP water demand. WRA will use such projections to assist with determination of water releases from Nacimiento and/or San Antonio Reservoirs for conveyance to the SRDF.
- (b) During the term of this Agreement, WPCA shall deliver chlorinated river water from the SRDF to the recycled water storage pond, where it shall mix with recycled water. The quantity of chlorinated river water so delivered shall be an amount necessary, when combined with recycled water production, to meet total distribution system demand, except under the following circumstances:
 - i. River water is not available at the SRDF impoundment to pump
 - ii. Chlorinated river water does not meet water quality standards described in Article III
 - iii. Circumstances beyond WPCA control temporarily prevent river water delivery or river water chlorination.
 - iv. CSIP design limitations including, but not necessarily limited to: flow restriction under the Salinas River; and problems with booster pump station(s).
- (c) WRA shall provide WPCA prior to the commencement of water delivery a river water demand schedule for the term of the Agreement.

2.02 Priority of Water Production.

WPCA shall provide water production for delivery to the CSIP service area, in cooperation with WRA, as follows: First priority shall be given to production of recycled water from the SVRP. Production of recycled water shall be maximized. Second priority shall be given to production of chlorinated river water from the SRDF. Third priority shall be given to production of water from CSIP supplemental ground water wells. In no way do the above water production priorities relieve WPCA of maintenance of the CSIP supplemental ground water wells, pumps and appurtenant equipment described in *Amendment No. 2 to Agreement Between the Monterey County Water Resources Agency and the Monterey Regional Water Pollution Control Agency for Construction and Operation of a Tertiary Treatment System, dated February 10, 1998.*

2.03 SRDF Water use.

Water produced by the SRDF shall be used for crop irrigation purposes only. Such use includes dust control on field roads or other dirt roads on properties within the service area, and mix water for legally permissible farm chemical applications on properties within the

service area. Whenever water produced by the SVRP, whether mixed with river water or not, is delivered to the service area, all conditions of Central Coast Regional Water Quality Control Board Order No. 97-52, "Recycled Water User Requirements for Monterey County Water Resources Agency, Castroville Seawater Intrusion Project, Monterey County" adopted September 5, 1997.

III. MAINTENANCE OF WATER QUALITY

3.01 Water quality

- (a) General water quality. The SRDF shall produce disinfected river water, via chlorination with free chlorine, intended for mixing with recycled water produced by the SVRP. Chlorinated river water shall be mixed with recycled water at the point of entry to the recycled water storage pond, except as described in paragraph (d) of Section 3.01.
- (b) Food safety critical. At the time this agreement is executed, use of Salinas River water for irrigation is unregulated by federal, state or local authorities. However, food safety is of critical importance to service area water users, and therefore top priority for SRDF water production. Water produced by the SRDF shall meet specified water quality described in this Section 3.01.
- (c) Specified water quality. The goal for Total Coliform Most Probable Number (MPN) per 100 ml criterion is a weekly median of <2.2 MPN per 100 ml at the outlet to the 80 AF recycled water storage pond.
- (d) SRDF stand-alone operation. In the event the SVRP is inoperable during the SRDF operating season, WPCA shall immediately notify WRA, and WPCA shall produce chlorinated river water from the SRDF and supplement SRDF water with CSIP well water as needed to meet service area demand, in compliance with Section 2.02. In such event that chlorinated river water is not mixed with recycled water prior to service area delivery the chlorine residual standards within the Crisis Management Plan shall be met. The costs for providing for such shall be paid by WRA.
- (e) Water quality specifications described in this Section 3.01 constitute the sole and complete definition of the water quality that the SRDF will be expected to produce under this agreement. WPCA makes no representations as to the water quality the SRDF will produce with respect to other quality parameters not specifically set forth in this Section 3.01.
- (f) Water quality records. WPCA shall maintain SRDF water quality records and make such records available to WRA upon request. WPCA shall post SRDF water quality records on the Monterey County Water Recycling Project's website in a similar format and accessibility by water users as recycled water quality records.

3.02 Duty to monitor water quality; cessation in deliveries.

- (a) WPCA will monitor river water quality and the quality of water produced by the SRDF, in accordance with the SRDF Water Quality Monitoring Plan in Exhibit B or the most current Monitoring Plan approved by the Water Quality & Operations Committee to ensure that the water delivered to the CSIP meets the quality standards set forth in Section 3.01. WRA may revise the water quality monitoring plan from time to time in order to meet project objectives or water user needs. If expenses beyond the approved budget are incurred for revised water quality monitoring needs, WRA shall pay such additional costs.
- (b) The parties understand that it may not be possible for the water produced by the SRDF to meet these standards 100% of the time, and that water quality will vary from time to time. During periods when the WPCA determines that water quality does not meet the standards set forth in Section 3.01, WPCA shall follow the procedures described in the Crisis Management Plan. WPCA will provide special attention to minimize any such events to the extent that it has control over them. WPCA will notify WRA promptly whenever it appears that there is, or will soon be, a change in the quality of water produced by the SRDF that may adversely affect the agricultural users of the water.

3.03 Water quality committee.

WRA and WPCA shall keep the Water Quality Committee (also known as the Water Quality and Operations Committee) informed of SRDF operational, maintenance and budget issues as requested by the Committee. The SRDF Water Quality Monitoring Plan shall be presented to the Committee at least once per year, or prior to any significant changes, for Committee review and input. The Water Quality Committee was formed pursuant Section 5.04 of *Amendment No. 2 to the Agreement between the WRA and WPCA for Construction and Operation of a Tertiary Treatment System.*

IV. PERMITS AND EASEMENTS

4.01 SRDF Permits. As it pertains to the execution of duties described in Sections 1.08 and 1.09, WPCA shall operate the SRDF under the regulatory permits and easements listed below. WPCA is not responsible for compliance with regulatory or permit requirements not applicable to duties described in Sections 1.08 or 1.09. WRA shall provide WPCA copies of items listed below and any revision thereto that occurs during the term of this Agreement.

- California Department of Water Resources, Division of Safety of Dams Application No. 1008-3 February 17, 2010.
- California State Water Resources Control Board, Division of Water Rights Order WR 2008-0037-DWR, approving change of place of use, adding point of re-diversion and issuing amended licenses and permit September 5, 2008. Easements with individual property owners for the SRDF pipeline and standpipe facilities and river impoundment area.

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- California Regional Water Quality Control Board, Central Coast Region, Water Quality Certification No. 32707WQ03, for the Salinas Valley Water Project, Monterey County July 31, 2007.
- U.S. Department of Commerce, National Marine Fisheries Service Biological Opinion for the Salinas Valley Water Project in Monterey County, California, File No. SWR/2003/2080, dated June 21, 2007.
- U.S. Department of Interior, Fish and Wildlife Service Biological Opinion for construction of a surface water diversion structure in the Salinas River, near the City of Salinas, dated July 24, 2007.
- U.S. Army Corps of Engineers Nationwide Permits for work in navigable waters of the United States as defined in 33 Code of Federal Regulations Part 330. One or more Nationwide Permit (NWP) listed below may allow maintenance or repair work in the river channel at the SRDF site. Conducting work under an NWP may alleviate the need for additional permits for work within the river channel. WRA shall determine prior to conducting work in the river channel if such may occur under an NWP.
 - NWP # 3 – Maintenance
 - NWP # 5 - Scientific Measurement Devices
 - NWP # 12 – Utility Line Backfill & Bedding
 - NWP # 13 – Bank Stabilization
 - NWP # 18 – Minor Discharges
 - NWP # 19 – 25 Cubic Yard Dredging
 - NWP # 23 – Approved Categorical Exclusions
 - NWP # 27 – Wetland Restoration Activities
 - NWP # 33 – Temporary Construction and Access
 - NWP # 35 – Maintenance Dredging of Existing Basins
 - NWP # 38 – Cleanup of Hazardous and Toxic Waste
- California Department of Fish and Game Maintenance Agreement to be obtained by WRA.
- Whenever water produced by the SVRP, whether mixed with river water or not, is delivered to the service area, all conditions of Central Coast Regional Water Quality Control Board Order No. 97-52, “Recycled Water User Requirements for Monterey County Water Resources Agency, Castroville Seawater Intrusion Project, Monterey County” adopted September 5, 1997 continue to apply.

V. PAYMENTS BY WRA TO WPCA

- 5.01 As related to this Agreement, a fiscal year is July 1 through June 30.
- 5.02 Consideration paid by WRA. As consideration for the services provided and other obligations performed by WPCA under this Agreement, WRA shall make payments to WPCA pursuant to this Agreement.
- 5.03 Amount to be paid.

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- (a) The consideration paid by WRA shall be the dollar amount that equals 100% of the WRA Board of Directors approved annual budget incurred in connection with the operation of the SRDF and the Chlorination System (including both direct and indirect expenses) and no more. Except in emergency situations (5.10(b)) WPCA shall notify WRA in advance of potential costs beyond the approved budget. All budgetary savings shall be returned to WRA within 60 days of the approved WPCA annual audit. SRDF and Chlorination System annual costs may include, but are not limited to, the following:
- (b) The approved annual budget for the SRDF shall include, but is not necessarily limited to, WPCA employee labor, training, contracted services, accounting, insurance, chemicals, utilities, equipment maintenance, equipment repairs, vehicle costs, planned capital outlays and contingencies necessary for SRDF and Chlorination System operation and maintenance described in Section 1.08 and 1.09. WPCA will make all reasonable efforts to stay within the total budget amounts for these budgets, but upon WRA approval, will have the latitude to incur variances between individual budget accounts, so long as the total budget amounts are not exceeded.
- (c) Unused funds received from WRA will be placed by WPCA in an interest bearing account. The interest earned on this account will be deducted from the billings by WPCA to WRA. WPCA shall guarantee the principal amount held by WPCA for the project.

5.04 Project Draw account.

WPCA will set up a draw account which WPCA will use to pay the operation, maintenance and reserve expenses of the project on a monthly basis. WRA will fund the account as described in paragraph 5.05. WPCA shall guarantee the principal amount held by WPCA for the project.

5.05 SRDF separate revenue collection and accounting.

WPCA will establish a separate interest bearing revenue account for the SRDF. WPCA will invoice project water users and collect water delivery charges for the SRDF. Such invoicing and collection may be performed in conjunction with collection of CSIP water delivery charges. SRDF water delivery charges shall be as adopted by the WRA Board of Supervisors annually. Revenue collected from SRDF water delivery charges shall be accounted for separate from CSIP revenue. All of SRDF water delivery charge revenue shall be transferred by WPCA to WRA quarterly.

5.06 SRDF Payment schedule.

- (a) Initial SRDF operation, fiscal year 2009-2010: Initial SRDF operation is anticipated to begin April 2010. For the period of April through June 2010, constituting operation for the fiscal year 2009-2010, WRA shall advance to WPCA an amount

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equal to the estimated budget for operation, maintenance and reserve for that period only. Payments from WRA to WPCA after June 2010 shall occur as described in paragraph 4.05(c). Any unused amount after June 2010 shall be applied to WRA payments to WPCA for fiscal year 2010-2011.

- (b) SRDF operation fiscal year 2010-2011: For fiscal year 2010-2011, WRA will fund the WPCA SRDF draw account through a seed-money advance representing the projected July 1 through September 30 SRDF 2010 - 2011 budget. WPCA shall invoice WRA monthly on the 15th of each month for the preceding month and shall be paid within 30 days following the receipt of the invoice.
- (c) SRDF operation in future years beyond Fiscal Year 2010-2011: Should WPCA not be selected to operate the SRDF in Fiscal Year 2011-2012 the WPCA shall return to the WRA all unused funds held under this agreement for the operation and maintenance of the SRDF, including but not limited to any reserves, within 60 days of the approved WPCA audit for Fiscal Year 2010-2011.
- (d) Chlorination System operation in future years beyond Fiscal Year 2010-2011: Should WPCA not be selected to operate the SRDF inflatable dam and facilities in Fiscal Year 2011-12, and for any period during which WPCA is not selected by WRA to operate the SRDF inflatable dam, WRA's payments to WPCA for such periods shall include the annual budget for the costs of operation, maintenance and reserve for the Chlorination System. Should WPCA not be selected to operate the SRDF inflatable dam in Fiscal Year 2011-2012 or in any future year, the operation and maintenance of the chlorination facilities must be addressed in a separate agreement between the WRA and WPCA.

5.07 Payment procedures.

- (a) All invoices submitted by WPCA to WRA shall be paid within 30 days following the receipt of the invoice
- (b) Payment requests for operation, maintenance, reserve and other costs shall contain the following information: Expenditure reports for the SRDF that describe year-to-date (YTD) expenditure, YTD encumbrance and YTD total, for each account along with the YTD total for all accounts, including indirect costs and contingency, and the percentage used YTD of the budgeted amount. Back-up information (original paid invoices, payroll records, time sheets, and vehicle costs) will be maintained by WPCA to support each direct charge, and provided to WRA upon request.
- (c) The WRA shall promptly review all requests for payments and shall approve for payment such requests or portion thereof that are in conformity with this Agreement and shall promptly submit such approved requests to the County Auditor for payment. WRA shall promptly notify WPCA of any disputed payment request. Disputes over payments shall be resolved as provided in Article XI of the Agreement.

5.08 Impact of insufficient funding on SRDF budget.

- (a) In the event WRA's revenues to fund the SRDF budgets fall below budgeted projections, WRA may direct WPCA to revise the operation of the SRDF to incur lower operating costs to stay within the revised revenue projections, and WPCA agrees to respond as directed. This is intended to be an exception to Section 1.04.

5.09 Application of payments to WPCA.

WPCA shall apply to the intended purpose all funds that are received from WRA pursuant to this Agreement for the SRDF. All payments made by WRA to WPCA for SRDF O&M costs that were previously incurred or paid by WPCA shall be deposited in the revenue account or other accounts maintained by the WPCA for the SRDF and shall be used for current or future SRDF O&M costs. Any monies held by WPCA for SRDF project purposes shall be held in an interest bearing account, with interest accrued to the SRDF project and at the termination of this agreement any unused funds remaining in these accounts shall be returned to the WRA within 60 days from the date of the approved WPCA audit for the fiscal year in which the agreement was terminated.

5.10 Unanticipated events.

- (a) Unanticipated events. Circumstances or events may arise which were not anticipated in either the scope of services or the budget for this project. In this case WPCA will submit its plans for addressing such circumstances or events, including justification and estimated amount of expenditures, to the WRA for its review and written approval to incur any additional costs associated therewith.
- (b) Emergency situations. If the event or circumstance of an emergency situation which threatens health and safety, damage to property, or injury to persons, WPCA shall act as promptly and efficiently as possible to mitigate the situation without waiting for approval by WRA. WPCA shall advise WRA as soon thereafter as possible of the mitigating actions taken and of any further action that may be necessary. WPCA shall provide to WRA within 30 days a written after action report subsequent to any emergency action taken.

5.11 Decision-making authority.

In order to provide for the smooth and efficient operation of the SRDF, WPCA represents it has the full authority to make and implement decisions with regard to activities described in Section 1.08, "Ownership, operation and maintenance of the SRDF Inflatable Dam" and Section 1.09 "Ownership, operation and maintenance of the Chlorination System for river water."

5.12 Financial reports.

By the last day of each month WPCA will provide to WRA a report on expenditures made during the previous month and year-to-date, for each line item in the SRDF budget. These reports will identify any line items which vary appreciably from anticipated budget to-date.

VI. RECORDS AND AUDITS

6.01 Accounting system.

WPCA will maintain an accounting system that is in conformity with general accepted accounting principles (GAAP) and will allow for the segregation of all revenues and direct costs related to the SRDF inflatable dam and the chlorination facilities. The accounting system shall properly allocate costs to the SRDF inflatable dam and the chlorination facilities and to WPCA's other activities that are not subject to payment or reimbursement by WRA under this Agreement. The accounting system shall provide the ability to track revenues and direct costs and adequately identify and allocate indirect costs of the SRDF inflatable dam and to the chlorination facilities. Cost accounting, including any overhead distributions, shall be in accordance with GAAP. WPCA shall make the details of such system available to or known to WRA and/or to WRA's auditor, at WRA's request.

6.02 Direct and indirect costs.

- (a) Direct Labor Costs are the hourly billing rate as shown on the WPCA annual budget submittal, times the number of hours worked by the employee. Direct labor costs shall include the following components:
 - 1. employee wage per hour
 - 2. fringe benefit cost per hour
 - 3. total hourly rate
 - 4. number of hours each employee is proposed to work
- (b) Other Direct Costs are identifiable costs necessarily incurred by WPCA to complete the Scope of Services defined in Section 1.08, 1.09 and 1.11. Other Direct Costs include, but are not limited to, chemicals, training costs, accounting, insurance, equipment rental, fuel, utilities, permit fees, parts, tools, document reproduction costs, and postal costs.
- (c) Indirect costs: Items that make up indirect costs and that are compiled from the indirect cost percentage shall be provided to WRA by WPCA for prior approval. These indirect costs are separate and distinct from overhead costs identified in Section 5.03(a) and (b). Indirect cost shall not exceed 10% of direct costs.
- (d) Direct Labor Costs, Other Direct Costs and Indirect costs shall be accounted for in each invoice by submittal of receipts for such costs and description of their necessity.

6.03 Annual audit.

In connection with WPCA's regular annual audit, WPCA will have the auditors include a schedule or statement to support the charges billed to WRA under this Agreement and shall provide a copy of the audit to WRA promptly upon its completion.

6.04 Right to inspect and audit records.

WRA shall have the right to inspect WPCA's records pertaining to the project, upon reasonable advance notice. WRA shall also have the right to audit WPCA's records pertaining to the project, or to have them audited by an auditor selected by WRA, at WRA's sole cost and expense. Such audit may be performed at any time during regular business hours, upon the giving of reasonable advance notice. If the audit shows that WPCA has overcharged annual costs to WRA, WPCA shall reimburse the WRA for these costs as set forth in Section 6.05.

6.05 Reimbursement for overcharge or undercharge.

If any audit shows that WRA has been overcharged, WRA shall receive a credit against its next payment or payments for the overcharge or WPCA shall otherwise reimburse WRA for the overcharge within ninety (90) days of any demand for such reimbursement. If any audit shows that WRA has been undercharged, WRA will add the amount of the undercharge to its next O&M payment, or WRA shall otherwise reimburse WPCA for the undercharge within 90 days of any demand for such reimbursement. Within the context of this Agreement and this Article VI RECORDS AND AUDITS, it is expressly understood and agreed to by the parties hereto that no discretionary action, judgment, or expenditure made by WPCA, its agents, or employees in the course of performing the services contemplated under this Agreement will be considered to constitute an overcharge subject to reimbursement to WRA. Overcharges, as used in this context, shall be limited solely to charges resulting from accounting errors or accounting irregularities. Undercharges, as used in this context, shall be limited solely to accounting errors or accounting irregularities.

VII. INTERRUPTION OF SERVICE AND APPLICATION OF INSURANCE PROCEEDS

7.01 Interruption of service.

- (a) No work of construction, remodeling, renovation, replacement, repairs, addition, or expansion authorized under this agreement or performed on the SRDF shall, either before, during, or after such work, interfere with, interrupt, or reduce the delivery of chlorinated river water to WRA under this agreement, except that minor interferences, interruptions, or reductions shall be allowed when necessary, unavoidable, or beyond the control of WPCA.
- (b) WPCA shall schedule routine maintenance activities on the SRDF to minimize interruption of the making, processing, and distribution of chlorinated river water. Non-routine work to perform repairs or maintenance will be performed in the manner deemed by WPCA to have the least impact on the making, processing and distribution

of chlorinated river water. In case of any interruption of service, WPCA shall give notice in the same manner as required by paragraph 1.06.

7.02 Duty to apply insurance proceeds.

If either party recovers any insurance proceeds on account of loss or damage to the SRDF, such proceeds shall be applied to repair or replace the damaged portion of the SRDF, and not otherwise. If either party is self-insured and any loss or damage occurs that would have been covered by insurance otherwise required to be maintained by such party under this agreement, then such party shall provide the funds that would have been recovered had the party been insured and shall apply the funds to repair or replace the damaged portion of the SRDF.

VIII INDEMNIFICATION

8.01 Indemnification of WRA.

WPCA shall indemnify, defend, and hold harmless WRA and the County of Monterey (the "County"), their officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever against WRA or the County (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the WPCA's performance of its obligations pursuant to this Agreement caused in whole or in part by any negligent act or omission of WPCA, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of WRA.

8.02 Indemnification of WPCA.

WRA shall indemnify, defend, and hold harmless WPCA, their officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever against WPCA (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the WRA's performance of its obligations pursuant to this Agreement caused in whole or in part by any negligent act or omission of WRA, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of WPCA.

8.03 Procedure for Indemnification

(a) If any legal or administrative proceedings are instituted, or any claim or demand is asserted, by any third party which may give rise to any damage, liability loss or cost or expense with respect to which either party has agreed to indemnify the other party in this contract, then the indemnified party shall give the indemnifying party written notice of the institution of such proceedings, or the assertion of such claim or demand, promptly after the indemnified party first becomes aware thereof. However, any failure by the indemnified party to give such notice on such prompt basis shall not affect any of its rights to indemnification hereunder unless such failure materially and adversely affects the ability of the indemnifying party to defend such proceeding.

(b) The indemnifying party shall have the right, at its option and at its own expense, to utilize counsel of its choice in connection with such proceeding, claim or demand, subject to the approval of the indemnified party. The indemnifying party shall also have the right to defend against, negotiate with respect to, settle or otherwise deal with such proceeding, claim or demand. However, no settlement of such proceeding, claim or demand shall be made without the prior written consent of the indemnified party, which consent shall not be unreasonably withheld or delayed. The indemnified party may participate in any such proceeding with counsel of its choice at its own expense.

(c) In the event, or to the extent, the indemnifying party elects not to, or fails to, defend such proceeding, claim or demand and the indemnified party defends against, settles or otherwise deals with any such proceeding, claim or demand, any settlement thereof may be made without the consent of the indemnifying party if it is given written notice of the material terms and conditions of such settlement at least ten days before a binding agreement with respect to such settlement is executed.

(d) Each of the parties agrees to cooperate fully with each other in connection with the defense, negotiation or settlement or any such proceeding, claim or demand.

8.05 Payment of indemnified claims. The indemnifying party shall forthwith pay all of the sums owing to or on behalf of the indemnified party, upon the happening of any of the following events:

(a) Upon the rendition of a final judgment or award with respect to any proceeding described in paragraph 8.04, above, by a court, arbitration board or administrative agency of competent jurisdiction and upon the expiration of the time in which an appeal therefrom may be made; or

(b) Upon the making of a settlement of such proceeding, claim or demand; or

(c) Upon the parties' making of a mutually binding agreement with respect to each separate matter indemnified thereunder.

8.06 Contribution in the event of shared liability.

In the event any proceeding, claim or demand described in paragraph 8.04 is brought, in which allegations of fault are made against both the parties, the extent of indemnification shall be determined in accordance with the agreement of the parties, or, if there is no agreement, then in

accordance with the findings of the court as to the relative contribution by each of the parties to the damage suffered by the party seeking indemnity with respect to such proceedings.

8.07 Exclusion from O&M costs.

Amounts payable by either party as indemnification shall not be included in the O&M costs of the project.

IX INSURANCE

9.01 Evidence of Coverage.

Prior to commencement of this Agreement, WPCA shall provide WRA with documentation verifying that coverage as required herein has been obtained. Upon the request by WRA, WPCA shall provide a certified copy of the policy or policies. WPCA, instead of obtaining the insurance required of it by this agreement, may elect to participate in a self-insurance pool, provided WRA first gives its written consent, which will not be unreasonably withheld or delayed. All insurance expenses or equivalent self-insurance expenses, including all deductibles and any self-insured retention, are SRDF costs. Any failure by WRA to verify the existence of the required insurance, or to object in the event that it becomes aware of any noncompliance, shall not be construed as a waiver of the insurance requirements stated herein.

9.02 Insurance Coverage Requirements.

Without limiting WPCA's duty to defend and indemnify WRA, WPCA shall maintain in effect through the term of this Agreement a policy or policies of insurance covering the SRDF inflatable dam and the chlorination facilities with the following minimum limits of liability:

\$15,750,000 per Occurrence, combined for Bodily Injury, Property Damage, Personal Injury, and/or Public Entity Errors and Omissions;

\$15,750,000 per Occurrence for Employment Related Practices;

\$ 25,000 per Occurrence for Automobile Medical Payments;

and

Excess Liability limits of:

\$10,000,000 per Occurrence, combined for Bodily Injury, Property Damage, Personal Injury, and/or Public Entity Errors and Omissions;

\$20,000,000 Annual Aggregate, combined for Bodily Injury, Property Damage, Personal Injury, and/or Public Entity Errors and Omissions.

9.03 Insurance for Chlorination Facilities.

For any period during which WPCA is not selected by WRA to operate the SRDF inflatable dam, WPCA shall continue to maintain property insurance coverage for the chlorination facilities against loss or damage due to fire and other perils to the extent that such insurance is readily and practically available and within available funds for the Project. The cost of property insurance for the Chlorination System to remain a direct cost incurred in connection with the operation of the SRDF for which WRA must reimburse WPCA under the terms of a separate agreement between WRA and the WPCA providing for the continuing integration of the Chlorination System and the SRDF inflatable dam with the SVRP and the CSIP. The amount of insurance for the Chlorination System shall not be less than the then-current replacement cost of the Chlorination System without depreciation.

9.04 Other Insurance Requirements and Provisions.

All insurance required by this Agreement shall be with a company acceptable to WRA and issued and executed by an admitted insurer authorized to transact insurance business in the State of California.

Each liability policy shall provide that WRA shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof.

To the extent that any insurance obtained by or on behalf of WPCA contains any provision stating that additional insured coverage shall be provided to any party which WPCA or other insured agree in writing to name as an additional insured, then this Agreement hereby requires that WPCA have WRA named as an additional insured on such policy(ies).

The required insurance obtained by or on behalf of WPCA shall contain a provision that it shall be primary and non-contributing to any insurance or self-insurance available to the County of WRA.

The required insurance obtained by or on behalf of WPCA shall not include an insured versus insured exclusion, and the additional insured coverage afforded to WRA shall not require that WPCA, or some other entity, be the subject of any claim or suit in order for the coverage to apply to the County and/or WRA.

X TERM OF AGREEMENT

10.01 Initial and extended terms.

As it pertains to operation and maintenance of the SRDF inflatable dam, this agreement shall remain in effect for an initial term beginning on the date WPCA begins operation and maintenance of the SRDF inflatable dam and ending on June 30, 2011. The term of the agreement shall be extended as hereinafter provided.

10.02 WRA option to extend.

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WRA may, at its sole discretion, extend the term of this Agreement at the expiration of the initial term for an additional one (1) year term, expiring on June 30 of the year of the extended term, subject to Section 10.04.

10.03 Conditions of agreement during extended term.

Revisions to any extended Agreement may be proposed by the parties at such time as Agreement extension is proposed by WRA. Any revisions to the Agreement shall be approved in writing by both parties.

10.04 Option to cancel.

Not less than six (6) months before the expiration of the initial or any extended term, WRA may cancel the agreement by giving written notice of cancellation to WPCA. WPCA shall not cancel this Agreement during the initial term. Not less than six (6) months before the expiration of any extended term, WPCA may cancel the agreement by giving written notice of cancellation to WRA. Upon the giving of such notice, the agreement terminates at the end of the term in which the notice period ends, unless the parties by agreement specify a different date. Should the FY 2011-2012 SRDF Operations and Maintenance Agreement be awarded to another entity, at the election of WRA, the WPCA shall assist in training the new operation entity for a period to be negotiated with WRA, but not less than 60 days. WPCA shall be compensated for an agreed to amount for such period.

10.05 Rights on termination.

- (a) Upon notice of any termination of this Agreement, WRA shall have the continuing right to receive from WPCA the same quantity of chlorinated river water, according to the same delivery schedule, as WRA was or would have been entitled to receive during any term of this Agreement under Article II.
- (b) In the event WRA terminates this Agreement by awarding the operation of the SRDF inflatable dam to another entity, WPCA shall retain the right to operate and maintain the Chlorination System, the cost for which will be paid by WRA in accordance with a separate agreement and, if necessary, in accordance with an amendment to that certain *Agreement Between the Monterey County Water Resources Agency and the Monterey Regional Water Pollution Control Agency for Construction and Operation of a Tertiary Treatment System* entered into between the parties on June 16, 1992, as amended by Amendment No. 1 on May 30, 1995, by Amendment No. 2 on February 10, 1998, and by Amendment No. 3 on May 28, 2002.

10.06 Failure to perform.

If WPCA fails to perform work under this Agreement, WRA shall perform the work, or obtain the services of others, necessary to meet the requirements of this Agreement.

XI DISPUTE RESOLUTION

11.01 Dispute resolution procedure.

If any dispute arises between the parties as to the proper interpretation or application of this Agreement or the proper operation of the facilities, the parties shall first seek to resolve the dispute in accordance with this Agreement, and the parties must proceed through arbitration under this Agreement before filing any court action as set out below.

11.02 Duty to meet and confer.

If any dispute under this Agreement arises, the parties shall first meet and confer, in an attempt to resolve the matter between themselves. Each party shall make all reasonable efforts to provide to the other party all the information that the party has in its possession that is relevant to the dispute, so that both parties will have ample information with which to reach a decision.

11.03 Mediation and Arbitration.

- (a) If the dispute is not resolved by meeting and conferring, the matter may be submitted to mediation. The terms of mediation shall be set by the parties and the mediator. The parties agree that they may elect to convert the mediation into arbitration by or through consensus.
- (b) If the dispute is not resolved by meeting and conferring, and mediation is not chosen or is unsuccessful, the matter shall be submitted to arbitration. The parties shall jointly select a single arbitrator, or, if the parties are unable to agree, they shall each select an arbitrator, and the matter shall be handled by two arbitrators. The two arbitrators may, if they deem it appropriate and warranted by the nature and significance of the dispute and after consultation with the parties, themselves select a third arbitrator. Any person selected as an arbitrator shall be a qualified professional with expertise in the area that is the subject of the dispute, unless the parties otherwise agree. Before commencement of the arbitration, the parties may elect to have the arbitration proceed on an informal basis; however, if the parties are unable so to agree, then the arbitration shall be conducted in accordance with CCP Secs. 1280 et seq., and to the extent that procedural issues are not thereby resolved, in accordance with the rules of the American Arbitration Association. The decision of the arbitrator or arbitrators shall be binding, unless within 30 days after issuance of the arbitrator's written decision, either party files an action in court.

XII GENERAL PROVISIONS

12.01 Compliance with laws.

WPCA will comply with all permit and licensing requirements applicable to the SRDF inflatable dam and the Chlorination System, and will operate the SRDF inflatable dam and the Chlorination System in accordance with all requirements of law and governmental regulations. Compliance with water quality requirements will be limited strictly to those set forth in Section 3.01, "Water quality".

12.02 Attorney's fees.

In the event it shall become necessary to commence or defend litigation for purposes of enforcing this Agreement or rights hereunder, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

12.03 Amendment.

No amendment or modification shall be made to this Agreement or to any other agreement referred to herein or incorporated herein by reference, except in writing, duly signed by both parties.

12.04 Contract administrators.

WRA hereby designates its General Manager as its contract administrator for this Agreement. All matters concerning this Agreement which are within the responsibility of WRA shall be under the direction of or shall be submitted to the General Manager or such other WRA employee in the WRA as the General Manager may appoint. WRA may, in its sole discretion, change its designation of the contract administrator and shall promptly give written notice to WPCA of any such change.

WPCA hereby designates its General Manager as its contract administrator for this Agreement. All matters concerning this Agreement which are within the responsibility of WPCA shall be under the direction of or shall be submitted to the General Manager or such other WPCA employee in the WPCA as the General Manager may appoint. WPCA may, in its sole discretion, change its designation of the contract administrator and shall promptly give written notice to WRA of any such change.

12.05 Assignment.

Any assignment of this Agreement shall be void without the written consent of the non-assigning party.

12.06 Negotiated Agreement.

This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of Civil Code Sec. 1654.

12.07 Time is of the essence.

Time is of the essence of this Agreement.

12.08 Headings.

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The article and paragraph headings are for convenience only and shall not be used to limit or interpret the terms of this Agreement.

12.09 Entire Agreement.

This written Agreement, together with all exhibits attached hereto and incorporated by reference, is the complete and exclusive statement of the mutual understanding of the parties, except to the extent that this Agreement expressly refers to or requires the preparation of additional agreements. Any such additional agreement shall be in writing. This Agreement supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of the agreement.

12.10 Notices.

All notices and demands required under this Agreement shall be deemed given by one party when delivered personally to the principal office of the other party; when faxes to the other party, to the fax number provided by the receiving party; or five days after the document is placed in the US mail, first class postage pre-paid, addressed to the other party as follows:

To WPCA:

General Manager
MRWPCA
5 Harris Court, Bldg. D
Monterey, CA 939040
Tel No.: 831-422-1001
Fax No.: 831-372-6178

To WRA:

General Manager
MCWRA
P.O. Box 930
Salinas, CA 93902-0930
Tel No.: 831-755-4860
Fax No.: 831-424-7935

12.11 Exhibits.

The following exhibits are attached to this Agreement:

EXHIBIT A – Diagram of the SRDF Facilities (Definition A.)

EXHIBIT B – SRDF Water Quality Monitoring Plan (3.02(a))

12.12 Severability.

If any provision of this Agreement is declared invalid or unenforceable by any court of competent jurisdiction, then such portion or provision shall be deemed to be severable, to the extent invalid or unenforceable, from this Agreement. Such declaration shall not affect the remainder of this Agreement, which shall remain in full force and effect, as though the invalid portion had never been included.

12.13 Waiver.

No waiver of any right or obligation of any of the parties shall be effective unless in writing, specifying such waiver, executed by the party against whom such waiver is sought to be enforced. A waiver by any of the parties of any of its rights under this Agreement on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at any time.

12.14 Written authorization.

For any action by WPCA which requires written authorization from WRA, the written authorization shall be signed by WRA's General Manager, or the General Manager's written designee.

XIII ADDITIONAL RESPONSIBILITIES OF WRA

13.01 Access to SRDF facilities.

WRA shall provide the necessary access arrangement for WPCA personnel to carry out their work on the SDRF as described in Section 1.08 and elsewhere in this Agreement. WRA shall notify landowners, growers, and others who may be affected by this work in advance that WPCA personnel will be entering onto and performing work on their property. Any disputes arising between WPCA personnel and these affected parties will cause WPCA to discontinue work on the effected facilities until WRA has established necessary access arrangements for work to continue.

13.02 Warranty work.

SRDF items which are covered by the construction contractor's warranty will be reported by WPCA to WRA. WRA shall be responsible for contacting the construction contractor and making appropriate arrangements to have warranty work performed by the contractor. WPCA will not perform work to correct such defects or to alter the system in a way which would invalidate the contractor's warranty, unless it is requested in writing by WRA to do so. If this occurs, WRA will reimburse WPCA of its costs to perform this work, upon receipt of an invoice for these costs, as described in Section 5.07.

13.03 Permits and approvals.

WRA shall be responsible for obtaining and complying with all permits and approvals for the SRDF that are necessary for WPCA to perform its work under this Agreement.

13.04 Third-party damages.

WRA shall resolve and pay for all costs resulting from damages to SRDF facilities caused by third parties and not covered by insurance maintained by either WRA or WPCA. The budget for the SRDF does not include any amounts for making such repairs, and WRA shall fund the cost of such repairs outside of this Agreement.

XIV EXECUTION

In witness whereof, the parties execute this Agreement as follows:

WPCA:

WRA:

Dated: _____

Dated: _____

Chair, Board of Directors

Chair, Board of Directors

Approved as to form:

Dated: _____

Dated: _____

Legal Counsel, WCPA

Deputy County Counsel, WRA



Monterey Regional Water Pollution Control Agency

*"Dedicated to meeting the wastewater and reclamation needs
of our member agencies, while protecting the environment."*

Administration Office:
5 Harris Court, Bldg. D, Monterey, CA 93940-5756
(831) 372-3367 or 422-1001, FAX: (831) 372-6178
Website: www.mrwPCA.org

MEMORANDUM

TO: RECYCLED WATER COMMITTEE

FROM: KEITH ISRAEL, GENERAL MANAGER

DATE: OCTOBER 8, 2010

SUBJECT: UPDATE ON RECYCLED WATER PROJECTS

Discussions at the September Board meeting and with the Recycled Water Committee have included our Strategic Planning Goals and Objectives related to our recycled water and replenishment projects. As part of the discussion, there have been questions regarding the groundwater replenishment project with respect to any potential legal limitations as we pursue development of this project.

Staff suggests that it would be prudent to further investigate some of the issues that have been discussed including our ability to:

1. Have our JPA spend money on a "proposed" groundwater replenishment project, and
2. Supply water within certain boundaries that would include getting water to the Monterey Peninsula.

To best address these issues, it makes sense to expand our initial legal counsel view with an outside legal interpretation that will provide a sound foundation from which to go forward. Additionally, staff will be providing for the Committee timelines related to the RUWAP, Monterey Peninsula recycled water and replenishment projects. As that is developed, a full report will be provided to this Committee and the Board that also includes costs needed to develop and support these additional water projects that are part of the Regional Water Program. We expect to provide the above at our November Committee meeting.

Information only – No action needed.

Z:\BOARD COMMITTEES\RECYCLED WATER COMMITTEE\2010\October\Update on RW Projects 10-8-10.doc

Joint Powers Authority Member Entities:

Boronda County Sanitation District, Castroville Community Services Water District, County of Monterey, Del Rey Oaks, Fort Ord, Marina Coast Water District, Monterey, Moss Landing County Sanitation District, Pacific Grove, Salinas, Sand City, and Seaside.