



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

MEETING NOTICE AND AGENDA *RECYCLED WATER COMMITTEE*

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

| | |
|------------------|--|
| DATE: | Tuesday, November 9, 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. REVIEW OPERATION AND MAINTENANCE (O&M) AGREEMENT WITH MCWRA FOR THE SALINAS RIVER DIVERSION FACILITY (SRDF)**
(see attachment)
- 2. UPDATE ON OPERATION AND MAINTENANCE (O&M) COST-SAVING MEASURES FOR SALINAS VALLEY RECLAMATION PROJECT (SVRP), CASTROVILLE SEAWATER INTRUSION PROJECT (CSIP), AND SALINAS RIVER DIVERSION FACILITY (SRDF)**
(see attachment)
- 3. UPDATE ON CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC) REVIEW OF THE REGIONAL WATER PROJECT**
(see attachment)
- 4. REVIEW LEGAL OPINIONS ON ABILITY OF MRWPCA TO DISTRIBUTE RECYCLED WATER AND COSTS FOR LOBBYING EFFORTS ON BEHALF OF RECYCLED WATER PROJECTS**
(see attachment)

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.

RECYCLED WATER COMMITTEE

November 9, 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, November 5, 2010

By: */s/ Betty Nebb*
Executive Assistant



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MEMORANDUM

TO: RECYCLED WATER COMMITTEE

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

DATE: NOVEMBER 4, 2010

SUBJECT: REVIEW THE OPERATION AND MAINTENANCE (O&M)
AGREEMENT WITH MCWRA FOR THE SALINAS RIVER
DIVERSION FACILITY (SRDF)

Background:

In September 2008, the Monterey County Water Resources Agency (WRA) and the Monterey Regional Water Pollution Control Agency (PCA) entered in to 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 WRA 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 WRA Board initially approved the O&M agreement in April 2010 subject to concurrence by the County Risk Management Office and the PCA Board. On May 12, 2010, WRA staff transmitted the draft agreement to PCA staff for our comment. PCA staff reviewed and commented on the agreement and transmitted it back to WRA on June 28. For several months WRA staff attempted to get County Risk Management Office concurrence on the proposed indemnification language. PCA and WRA staff have been operating the Salinas River Diversion Facilities in accordance with the terms and conditions of the draft

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MEMORANDUM

Recycled Water Committee
O&M Agreement for SRDF
November 4, 2010
Page 2 of 2

agreement. However, the Operations and Maintenance Agreement has yet to be formally considered by the PCA Board.

In an effort to move the process along, on October 10, 2010, PCA staff presented the June 25, 2010 draft Agreement to the Recycle Water Committee for their consideration and input. The Committee recommended that the full Board adopt the Agreement at the October 25 Board meeting. WRA staff did not concur with the June 25 draft and requested additional time to revise the Agreement. Based on progress being made on updating the draft Agreement, the Board recommended at the October Board meeting that the Agreement come back to the Recycle Water Committee on November 9, 2010, for further review and recommendations.

WRA and PCA staff have met a number of times over the past few weeks to develop a revised draft O&M Agreement. As of this writing, PCA legal counsel has not had an opportunity to review the revised draft Agreement of November 3 (attached); however, we do anticipate that any changes suggested by our Legal Counsel can be addressed at the Committee meeting.

RECOMMENDATION:

That the Committee recommends the full Board consider and approve the draft agreement subject to Legal Counsel approval.

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**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 FACILITY**

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 Facility is 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 Facility 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 Facility is 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 Facility 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

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 Facility and connection to the 80 acre-foot pond at the Salinas Valley Reclamation Plant, and authorized the General Manager to execute the MOU.

- I. On January 29, 2008, the Monterey County Board of Supervisors approved water service charges to cover operations and maintenance costs for the Salinas River Diversion Facility.
- J. Salinas River Diversion Facility may be utilized for its intended purpose as of January 15, 2010, the date of construction Substantial Completion.
- K. Final completion of Salinas River Diversion Facility construction was certified by the Monterey County Water Resources Agency Board of Directors on September 27, 2010.

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DEFINITIONS

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

- A. The terms "project," "Project," "the Salinas River Diversion Facility," and "SRDF," as used in this Agreement, all refer to the Salinas River Diversion Facility, which includes the chlorination system as a component, and are all hereinafter referred to simply as the "SRDF." See 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 pursuant the *MOU between WRA and WPCA for design and construction of a river water chlorination system for the Salinas River Diversion Facility and connection to the 80 acre-foot pond at the Salinas Valley Reclamation Plant*, dated September 29, 2008. The chlorination system is a physical component of 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.
- G. "River Water Contaminant Response Plan" as used in this Agreement refers to the most recent plan approved by the Water Quality & Operations Committee.
- H. "Water Quality and Operations Committee" is that committee 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*.

ARTICLES

I. OPERATION AND MAINTENANCE OF THE SRDF

1.01 Project facility ownership on WPCA property and WRA access.

This Agreement does not address ownership of or easements for Project facilities located on WPCA property. Ownership of and/or easements for Project facilities located on WPCA property will be addressed by separate documentation within one year of execution of this Agreement. Until such time that ownership and/or easements are determined, WPCA grants WRA access to the Project located on WPCA property for WRA activities pursuant to Sections 1.06, 1.12, 3.03 and 1.10(c) of this Agreement.

1.02 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 term of this Agreement shall be as set forth in Article X.

1.03 Operation and maintenance (O&M), in general.

WPCA will operate and maintain the SRDF as described in Sections 1.10 and 1.11 and will keep the SRDF in good condition and repair for the term of this Agreement. WRA shall 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.

1.04 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.

1.05 Warranties.

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

1.06 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.

1.07 Daily Operation.

The SRDF will be in operation and will supply water to WRA on a daily basis as described in Sections 1.10 and 1.11 except for temporary periods of shut-down authorized by the Agreement or made necessary by circumstances beyond the control of WPCA.

1.08 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.

1.09 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 as provided for in Monterey County policies for surplus equipment, 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.

1.10 Operation and maintenance of the SRDF

- (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 (including the chlorination system): Perform repairs and maintenance services as required due to wear and tear or failure of equipment. These will be performed as prescribed in the Operations & Maintenance Manual prepared for the SRDF by WRA's design engineer, as well as equipment manufacturers' manuals furnished in accordance with Project construction contract documents, including chlorination system equipment manufacturer's manuals, and as described, but not limited to, below:
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.
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. WPCA 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.
34. Implement the River Water Contaminant Response Plan as required by Plan criteria.

In addition to those services listed above, WPCA shall operate and maintain the SRDF river water chlorination system to conform to the following parameters:

35. The chlorination system shall be capable of operation whenever the SRDF is operational, 24 hours per day, 7 days per week.
36. The chlorination 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.
37. A two-phase river water disinfection process including contact with free chlorine and contact with combined chlorine via mixing with recycled water.
38. River water contact with free chlorine for a minimum of ten (10) minutes prior to mixing with recycled water at 36 cfs flow.
39. A free chlorine dosage capability up to 15 ppm.
40. Promote river water and recycled water mixing prior to distribution.
41. Prevent backflow of chlorinated water into the SRDF pipeline.
42. Minimize effects of hydraulic surge pressures on the SRDF pipeline and pump station.
43. Provide and maintain outlet for SRDF screen filter station backflush discharge water.

- 44. Oversee modifications to the system by registered professional engineers according to accepted engineering standards and applicable building codes and regulations.
 - 45. Incorporate all appropriate safety features.
 - 46. River water sampling and testing features and locations.
 - 47. 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.
- (c) Performance audit. WRA may, at its sole discretion, and at any time, perform an audit of WPCA performance of any and all aspects of operation and/or maintenance required under this agreement for the SRDF, including the chlorination system. Such an audit may include, but is not limited to, review of processes and procedures as to adequacy, efficiency and cost effectiveness. Expenses for such audit will be paid for by WRA.
- (d) 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.

1.11 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.

1.13 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.

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).

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 distribution system physical limitations prevent water from the 80 acre-ft storage pond from providing total service area demand.

- (c) Each year WRA shall, for the term of this Agreement, provide WPCA a schedule of estimated river water deliveries for the following fiscal year, by month. The purpose of this schedule is for use in operational planning and budgeting for the coming fiscal year. Such schedule shall be provided to WPCA coincident with the demand schedule provided by WRA for the CSIP pursuant to Article IV of *Amendment 3 to the Agreement between WRA and WPCA for Construction and Operation of a Tertiary Treatment System*, dated May 28, 2002.

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. Water quality criteria for notification and action are specified in the Standard Operating Procedures section of the latest Water Quality and Operations Committee approved Operator and Crisis Team Member Supplement to the Crisis Management Plan.
- (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 Standard Operating Procedures section of the latest Water Quality and Operations Committee approved Operator and Crisis Team Member Supplement to 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 at the SRDF impoundment and the quality of water produced by the SRDF, in accordance with 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 required and approved by the Water Quality and Operations Committee 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 Standard Operating Procedures section of 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 and Operations Committee.

WRA and WPCA shall keep 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.

IV. PERMITS AND EASEMENTS

4.01 SRDF Permits. As it pertains to the execution of duties described in Sections 1.10 and 1.11, 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 1.10 or 1.11. 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.

- 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.

- (a) The consideration paid by WRA shall be the dollar amount that equals 100% of the WRA Board of Directors approved budgeted costs incurred in connection with the operation of the SRDF (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 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, the following line items: WPCA employee labor, training, contracted services, accounting, insurance, chemicals, utilities, equipment maintenance, equipment repairs, vehicle costs, planned capital outlays, reserves and contingencies necessary for SRDF operation and maintenance described in Section 1.10 and 1.11. WPCA will make all reasonable efforts to stay within each line item budget, but upon WRA approval, will have the latitude to meet variances between individual line items, so long as the WRA Board of Directors approved total budget amount is 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. 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 and interest shall be transferred by WPCA to WRA quarterly.

5.06 SRDF Payment schedule.

- (a) 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 one-quarter of the 2010 - 2011 budget. WPCA shall invoice WRA quarterly and shall be paid within 60 days following the receipt of the invoice.
- (b) SRDF operation in years beyond Fiscal Year 2010-2011: WRA will fund the WPCA SRDF draw account through a seed-money advance representing one-quarter of the WRA Board of Directors approved fiscal year budget. WPCA shall invoice WRA quarterly and shall be paid within 60 days following the receipt of the invoice.

5.07 Payment procedures.

- (a) All invoices submitted by WPCA to WRA shall be paid within 60 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 1.10, "Operation and maintenance of the SRDF" and Section 1.11 "Control room hours of operation."

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. The accounting system shall properly allocate costs to the SRDF 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. 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 Sections 1.10 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 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 as adjudicated in a court of law, arbitration board, or administrative agency of competent jurisdiction, to arise out of the active negligence, sole negligence or willful misconduct of the WRA.

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 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 Inflatable Dam Failure Insurance Coverage.

WPCA shall obtain and provide WRA with quotes for the cost of Inflatable Dam Failure insurance covering the minimum limits shown below, with WPCA being the insured party and WRA being named additional insured. WRA shall submit a quote to the WRA Board of Directors for approval. The cost of any WRA Board of Directors approved inflatable dam failure insurance shall be paid by WRA, and included in the Project budget as a separate line item.

\$ 750,000 per Occurrence for Inflatable Dam Failure;

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

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

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 and/or 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 additional insured coverage to apply to the County and/or WRA.

X TERM OF AGREEMENT

10.01 Initial term.

As it pertains to operation and maintenance of the SRDF, this agreement shall remain in effect for an initial term beginning on July 1, 2010 and ending on June 30, 2015. The term of the agreement may be extended as hereinafter provided.

10.02 WRA option to extend.

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. Notice of such term extension will be provided in writing by WRA to WPCA nine (9) months prior to expiration of the term.

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 nine (9) 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 nine (9) 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 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, WPCA shall have the continuing duty to provide to WRA 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.

10.06 Failure to perform.

If WPCA fails to perform work or services under this Agreement, WRA shall perform the work, or obtain the services of others, necessary to meet the requirements of this Agreement, and WPCA shall be liable for all costs incurred by WRA that exceed what WRA would have paid WPCA to perform said work or services. If WPCA fails to perform all or part of the work or services under this Agreement, WRA may perform, or hire others to perform, all or part of the services under 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 and/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, and will operate the SRDF 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.

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 (Definitions A and E)

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 1.10 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

EXHIBIT A

Diagram of the SRDF

...to be prepared.



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

MEMORANDUM

TO: RECYCLED WATER COMMITTEE

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

DATE: NOVEMBER 4, 2010

SUBJECT: UPDATE ON OPERATION AND MAINTENANCE (O&M)
COST-SAVING MEASURES FOR SALINAS VALLEY
RECLAMATION PROJECT (SVRP), CASTROVILLE
SEAWATER INTRUSION PROJECT (CSIP), AND SALINAS
RIVER DIVERSION FACILITY (SRDF)

Monterey County Water Resources Agency (MCWRA) requested that MRWPCA review costs to see if it is possible to reduce expenses below the budgeted amounts for this and future years. Staff has been looking at savings already accomplished, plus areas for potential future savings.

An initial meeting was held on September 30 with MCWRA staff and growers. During that review, it was noted that both SVRP labor hours and cost had declined more than 10% over the last years. Therefore, it was decided to focus on other areas of potential cost savings:

Three areas of cost savings have been considered: chemical usage, monitoring and testing, and electrical power. Staff presented information to the Water Quality & Operations Committee (WQ&Ops) on October 28, and will return to the next meeting, December 8, to recommend any desired cost reduction measures.

Chemical Usage

MRWPCA has been very successful in reducing chemical costs over the years by:

- Testing new coagulants
- Utilizing chemically enhanced primary treatment

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
O&M Costs for MCWRA Projects
November 4, 2010
Page 2 of 2

- Increasing recycled water turbidity
- Reducing chlorine usage through decreasing algae, the influence of birds, and reduction of prechlorination

Some items under consideration for additional savings include:

- Reducing chlorine residual
- Further increasing recycled water turbidity
- Further reducing prechlorination
- Reducing chemically enhanced primary treatment

Testing and Monitoring

Testing and monitoring nearly doubled this fiscal year because of the SRDF coming on line. There are now two waters (recycled and river) to test when there was only one water previously. Also, the growers desired intense testing of the river water during the first year as was done during the first year with recycled water. Testing and monitoring have increased dramatically since the beginning of the project in response to new methods and outside influences. The WQ&Ops requested reports reviewing the past results before deciding on future reductions.

Some of the items under consideration for sampling reduction include:

- Screened River Water
- Monitoring Stations and Turnouts
- Total Organic Carbon
- Soil Salinity Study
- Bacteria DNA
- Agronomic
- Pathogens

Electrical Power

Electrical power cost reduction has been successful over the years. The main reasons are the reduction in chemical usage which allows fewer backwashes (very energy intensive) and fewer backwashes during the higher cost part of the day. Also for Spring 2011, our new solar project will be supplying power at a predetermined rate thereby providing protection against higher future power costs from PG&E.

➤ **INFORMATION ONLY – NO ACTION REQUESTED.**



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MEMORANDUM

TO: RECYCLED WATER COMMITTEE

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

DATE: NOVEMBER 4, 2010

SUBJECT: UPDATE ON CALIFORNIA PUBLIC UTILITIES COMMISSION
(CPUC) REVIEW OF THE REGIONAL WATER PROJECT

There are several upcoming important dates in the CPUC review and approval process of Regional Project.

- November 10, 2010 – Oral arguments at 2pm in San Francisco
- November 17, 2010 – Comments on Preliminary Decision
- November 22, 2010 – Comments on Alternate Preliminary Decision
- December 2, 2010 – CPUC Board Meeting Decision

MRWPCA has supported changes in the schedule proposed by MCWD during the last month, as well as the proposed settlement. MCWD and MCWRA are very busy with the various tasks. Several items will be addressed after the CPUC decision:

- Brine Waste Receiving Structure Predesign
- Regional Project Schedule
- MOU between MCWRA and MRWPCA for the disposal of water from a pilot vertical well into the MRWPCA Outfall.

➤ INFORMATION ONLY – NO ACTION REQUESTED

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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.



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Website: www.mrwPCA.org

MEMORANDUM

TO: RECYCLED WATER COMMITTEE

FROM: KEITH ISRAEL, GENERAL MANAGER

DATE: NOVEMBER 5, 2010

SUBJECT: REVIEW LEGAL OPINIONS ON ABILITY OF MRWPCA TO
DISTRIBUTE RECYCLED WATER AND COSTS FOR
LOBBYING EFFORTS ON BEHALF OF RECYCLED WATER
PROJECTS

As a follow up to the October Recycled Water Committee report, staff has reports on two requested topics for further discussion.

A. Legal Review

Legal Counsel has provided the attached initial legal opinion relative to MRWPCA's ability to participate in recycled water activities. You'll note this discussion focuses on MRWPCA's powers and role relative to recycled water, as well as service duplication issues.

Legal Counsel will be providing additional information/guidelines on the Board's discretion on recycled water expenditures. In coordination with that, staff will provide an historical summary of recycled water expenditures so that appropriate policy decisions can be reviewed and updated as necessary.

B. Lobbyist Expenditures

We have contracted a Washington DC lobbyist (ENS Resources) on a continuous basis since March 2007 to procure funding primarily for the Groundwater Replenishment Project. It should be noted that prior to that time, we utilized ENS Resources on a limited basis for a few months in 2003 and in 2005.

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

November 5, 2010

Page 2 of 2

The reason the main effort with ENS Resources started in 2007 was because at that point we had sufficiently defined the Groundwater Replenishment Project. Unfortunately, 2007 coincided with the beginning of more competition for Federal funding as well as the decline in national economic activity and funding availability. Plus, there are general constraints on the maximum amount of the funds any Congressional District. Locally, competition for water project funding is intense. For example, funding for the Watsonville Project, which started a number of years ago, makes it more difficult for new projects, such as ours, to move forward.

In early 2009, Groundwater Replenishment became a Phase II Regional Water Project. At that time we had ENS suspend active efforts on groundwater replenishment and instead support funding for RUWAP (which is a Phase I Regional Project component). As an example, Eric Sapirstein of ENS jointly worked with John Freshman (the MCWD and MCWRA representative) for the Spring 2009 funding trip.

Now that the CPUC is poised to approve the Regional Water Project this December, ENS supported our Washington DC funding trip in September 2010 in order to restart our groundwater replenishment efforts.

Thus far, and for many of the reasons noted above, we have not been able to secure any funds although we have supported the current MCWD request for a RUWAP \$700,000 Stag Grant.

However, based on our September visit, ENS has identified three areas (see attached) that look promising for groundwater replenishment; and based on our current efforts, I'm optimistic that we will be able to achieve our first funding support this next year.

Unfortunately, Federal funding is a long-term effort that requires a presence in Washington. ENS has had excellent success with other clients and I'm confident that we will also benefit soon from this expertise.

At the Committee meeting, I will provide examples of some of the materials and information that Mr. Sapirstein develops for our use as well as answer any questions you might have.

➤ **INFORMATION ONLY – NO ACTION REQUESTED**

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ENS RESOURCES SERVICES

| | |
|----------------|------------|
| 2003 | \$ 10,066 |
| 2005 | \$ 30,149 |
| 2007 | \$ 60,549 |
| 2008 | \$ 72,477 |
| 2009 | \$ 72,968 |
| 2010 (to date) | \$ 61,937 |
| TOTAL | \$ 308,148 |

PROMISING FUNDING OPPORTUNITIES

1. Public Private Partnering

We have meet with GE Water/Energy and they indicate that they would like to have further discussions.

2. Federal Agency Support

- United State Bureau of Reclamation Challenge Grant assistance
- Title 16 (criteria developed for submission proposal)

3. Title 16 Project Authorization

- Proposal language ready but must be coordinated with Regional Water Project requests

November 5, 2010

Memo to: Keith Israel, MRWPCA General Manager

From: Rob Wellington, MRWPCA Legal Counsel

Re: **Powers of and Authorization for the MRWPCA to Proceed with Treated Wastewater Reuse Projects**

You have asked that we provide or obtain an update on some of the legal issues relating to the MRWPCA's long-standing and on-going recycled water projects, including the authorization and power of the MRWPCA to recycle or reclaim wastewater, the manner or role in which that power could be exercised, whether there are any limitations on that power by reason of the Service Duplication Law, and finally, how does the MRWPCA Board of Directors determine the extent to which it may wish to proceed and continue with its reclamation projects and what factors might the Board consider in making that determination? Of these four questions or issues, this memo will briefly address the first three, leaving the last issue to be discussed at further length by outside legal counsel that we have retained, as previously discussed with the Recycled Water Committee and the full Board.

Authorization and Power for Reclamation. From its earliest days it was intended that the reclamation of wastewater would be one of the powers and tasks of the MRWPCA, a Joint Powers Agency. The 1979 Joint Powers Agreement creating the present Agency (initially organized as the Monterey Peninsula Water Pollution Agency in 1972) provides that:

1.05 Joint Exercise of Powers. . . . each of the parties hereto . . . have and possess the common power and authorization to acquire, construct, maintain and operate facilities for the collection, transmission, treatment, disposal *and reclamation* of sewage and wastewater for the benefit of lands and inhabitants within their respective boundaries. (Emphasis added.)

The MRWPCA's Regional Treatment Plant was specifically located at a site that was determined to be most advantageous for the providing of reclaimed water to the nearby agricultural fields, and the Agency has been successfully operating the tertiary treatment facilities for the SVRP and CSIP since the early 1990s. In 2002 the MRWPCA

negotiated the Third Amendment with the MCWRA to obtain rights to recycled water for use on the Monterey Peninsula. Since that time the MRWPCA has been involved in discussions and negotiations with the MCWD relative to providing reclaimed water to areas on the former Fort Ord and the Monterey Peninsula, culminating in June 2009 with the parties approving and signing the MOU for the Regional Urban Water Augmentation Project (“RUWAP”). In July 2009 the same two parties, along with the MCWRA, approved the Recycled Water Three-Way MOU. The RUWAP is included as a part of the larger Regional Water Project, the desalination project portion of which has been under consideration in the recent CPUC proceedings.

Similarly, the Agency’s Groundwater Replenishment Project (“GWRP”), is included in the second phase of the Regional Water Project. The GWRP has been discussed and planned for by the MRWPCA Board for a number of years. The Board has included the GWRP as one of its Strategic Planning Goals for several years, and has likewise approved annual budgets for funding the planning of the GWRP. In 2008 the MRWPCA requested and then received \$100,000 in funding support from the Seaside Watermaster for assistance in preparing a GWR project description for inclusion in the local regional water program that was evaluated in the Coastal Water Project Draft EIR.

Exercising the Power of Reclamation. You have indicated that the question has been raised whether the MRWPCA is a “water purveyor” that can distribute and sell water. The answer to that specific question is “No,” however there are other provisions of state law which pertain to *recycled water* and pursuant to which the MRWPCA may produce, transmit and distribute reclaimed wastewater. Under state law MRWPCA certainly qualifies and can be defined as both a “recycled water producer” and a “recycled water wholesaler.” It might also qualify as a “recycled water retailer” but that is an issue that needs some further research and discussion with other recycled water agencies operating in California.

Service Duplication Issue. Apparently another question raised is whether the MRWPCA would be prohibited from transporting and distributing reclaimed water into the service area of Cal-Am Water Company. The Service Duplication Law does not *prohibit* extending water facilities into the service area of a utility with the same type of service, it only provides that since such action may constitute a taking of the property of the utility there may be a need for negotiations and contractual or other financial arrangements arrived at to accomplish that objective. State law encourages retail water suppliers to enter into contracts with recycled water producers and wholesalers to facilitate the service of recycled water, along with potable water, by the retail water supplier.

As mentioned above, there is some additional research to do and a couple of other

lawyers to talk further with regarding some of the above-discussed issues, to further flesh-out or expand this memo. I already have briefly discussed the above matters with Carl Nelson, the outside legal counsel we retained to assist with this matter after discussion of same with the Recycled Water Committee and the Board.

Continuing Reclamation Efforts; Board Policy and Discretion. As discussed in the first paragraph above, the fourth issue to be addressed in this exercise, the broader question of the MRWPCA Board of Directors determining to continue with its reclamation efforts and projects and the factors to consider in making that determination, will be dealt with at length by the outside lawyer we have retained, Carl Nelson of the Walnut Creek law firm of Bold, Polisner, Maddow, Nelson & Judson. A resume of both the firm and Mr. Nelson is attached. Carl has particularly specialized in representing water and wastewater agencies. He is the current chair of the CASA Attorneys' Committee. Carl is presently involved in an appeal court matter, but intends to have the time to address the MRWPCA's matter over the next few weeks. I know you have already started compiling some documents and information that Carl will need to review in connection with advising the Agency on this issue. We can anticipate that part of the answer will be that the determination here is really a matter of a policy decision by the Board of Directors, to be taken within the broad discretion that Board has in such matters.

If you have any questions or need further information regarding the above, please let me know.

- R.R.W.

cc: Carl Nelson, Esq.

BOLD, POLISNER, MADDOW, NELSON & JUDSON

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FREDERICK BOLD, JR.
(1913-2003)

ROBERT B. MADDOW
CARL P.A. NELSON
CRAIG L. JUDSON

SHARON NAGLE
DOUGLAS E. COTY

FIRM RESUME

Bold, Polisner, Maddow, Nelson & Judson is a professional corporation that primarily represents public agencies and also maintains a general civil and trial practice. The majority of the firm's work is for water agencies, for which both general counsel, special counsel, and litigation services are provided. Public agencies that provide utility services to urban or urbanizing communities make up the largest component of the firm's clientele. The firm has represented a number of private clients, including golf courses, on water and recycled water issues, primarily related to reliability of irrigation water supplies and water quality. Principal areas of the firm's water law concentration include water rights and other aspects of water law, real property with a particular emphasis on eminent domain, legal issues involved in publicly owned utility operation and finance, environmental law, public works and construction contract formation and administration, and extensive experience in general civil litigation. The firm's general civil and trial practice emphasizes real property issues, in a wide variety of matters.

The firm was formed in 1993 at the time of the retirement of the late Frederick Bold, Jr. after a distinguished legal career of over fifty years duration. Bold and Polisner, the firm he and Jeffrey D. Polisner formed in 1970, was then transformed into the current firm. Robert B. Maddow, formerly General Counsel of the East Bay Municipal Utility District, joined the firm in 1993 after approximately twenty-one years of experience in water, wastewater and government/utility law. Carl P.A. Nelson and Craig L. Judson also became partners at that time, after nine and seven years experience, respectively, with Bold and Polisner. In addition, the firm regularly supplements its resources with experienced attorneys hired on a contract basis, and has a full complement of supporting para-professional and support staff. Mr. Polisner has retired from the firm, but occasionally the firm's attorneys consult with him on matters where his experience is relevant to our clients' needs. The firm's sole office is located in Walnut Creek.

REPRESENTATIVE CURRENT CLIENTS

Contra Costa Water District: The firm or its immediate predecessors has provided general and special counsel services to this County Water District since 1936, handling such matters as water rights, water quality, capital improvements, eminent domain, land acquisition and management, finance, general and specialized litigation, and all aspects of public agency governance issues.

North Marin Water District: The firm or its immediate predecessors has provided general and special counsel services to this County Water District continuously since 1951. The District is a drinking water utility and also provides recycled water and wastewater services in portions of Marin County.

Dublin San Ramon Services District: The firm serves as general counsel to this Community Services District with water, wastewater, and recycled water responsibilities in all or portions of its service area in Alameda and Contra Costa Counties.

Valley of the Moon Water District: The firm serves as general counsel to this County Water District, a drinking water utility located in Sonoma County.

DSRSD-EBMUD Recycled Water Authority: The firm has served as general counsel to this Joint Powers Authority since 1996. DERWA was formed by Dublin San Ramon Services District (DSRSD) and East Bay Municipal Utility District (EBMUD) to develop and implement a recycled water project in portions of Alameda and Contra Costa Counties.

Oakwood Lake Water District: Mr. Coty serves as general counsel to this California Water District, which has water and wastewater responsibilities for a unique community located along the San Joaquin River in San Joaquin County. The firm handles all aspects of the District's operations, including regulatory affairs, water rights, wastewater regulatory issues, and development-related matters.

Coachella Valley Water District: Mr. Maddow is a member of the committee of water law specialists which advises the management and Board of this County Water District on Colorado River water supply matters, and the firm has represented the District before the State Water Resources Control Board.

Imperial Irrigation District: The firm serves as special counsel to this Irrigation District on complex and controversial Proposition 218 and related rates and charges matters.

Jackson Valley Irrigation District: The firm serves as special counsel to this Irrigation District in Amador County on a variety of water supply, water quality, water rights, and water service issues.

Monterey Peninsula Water Management District: The firm served as special counsel to this unique district with regard to complex financing, regulatory, and institutional issues concerning the addition of substantial improvements to an existing recycled water project.

City of Cotati: The firm has served as special counsel with regard to legal issues concerning the City's Urban Water Management Plan and related water supply planning issues.

City of Hercules: The firm serves as special counsel with regard to negotiations with the City of Pinole and West County Wastewater District on wastewater facilities matters.

Mutual Water Companies: The firm provides legal services to two mutual water companies, including advice and representation on water supply and quality, real property, rules and regulations, and customer service issues.

Private Clients: The firm represents a wide variety of individuals and business entities in transactional and civil litigation matters, and consults on water-related matters (e.g, special counsel to a major film company concerning complex water supply issues for a large post-production studio complex; representation of a metals recycling firm on a series of difficult Clean Water Act and CERCLA issues involving both federal and state agencies).

Golf Courses: The firm serves as special water counsel to three prominent golf clubs located in San Francisco and San Mateo Counties regarding a recycled water project, groundwater and stormwater issues, and certain real property matters, and has represented another golf course in water and environmental matters.

CARL P.A. NELSON

Carl Nelson, a partner, received his A.B. from University of California at Berkeley in 1977, and his J.D. from University of California, Hastings College of the Law, in 1984. He was a writer and editor of the Hastings Constitutional Law Quarterly, and won the Roger J. Traynor Writing Competition.

Mr. Nelson was an associate and then a junior partner in Bold and Polisner before becoming a partner when the current firm was created in 1993. His practice is primarily related to representation of water and wastewater agencies, and he has particularly specialized in water rights, water quality, real property, construction matters, and complex contract formation and administration issues. He has participated in regulatory proceedings and litigation concerning Sacramento-San Joaquin Delta water rights and water quality matters since the mid-1980's. He has extensive experience in providing general and special counsel legal advice to public agencies which are responsible for municipal and industrial water supply, recycled water supply, wastewater treatment and disposal, and related services.

Mr. Nelson's areas of concentration have included a diverse variety of real property, contract, and regulatory issues. He also has significant experience in the law of public agency rates and charges, in the rules and regulations under which publicly owned utilities provide services to their customers, in all phases of public agency governance matters, and in environmental and natural resources matters. He also has assisted a number of private clients in their efforts to obtain, confirm, or develop a water supply for use for agricultural or municipal and industrial purposes.

Mr. Nelson is a member of the American, California and Contra Costa Bar Associations. He is admitted to practice in all state courts and in federal trial and appellate courts, including the United States Supreme Court. He has substantial civil litigation experience before courts and administrative agencies, including eminent domain, water rights and water quality, environmental and construction disputes, challenges to rates and charges, and defense of regulatory requirements established by publicly owned water purveyors. He has also done extensive appellate advocacy work, focusing primarily on real property and construction disputes.