SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
380 E. Vanderbilt Way, San Bernardino, CA 92408

BOARD OF DIRECTORS WORKSHOP

AGENDA

3:00 PM Tuesday, October 10, 2017

CALL TO ORDER

1. INTRODUCTIONS

2. PUBLIC COMMENT - Any person may address the Board on matters within its jurisdiction.

3. SUMMARY OF PREVIOUS MEETING

   3.1. Summary of September 12, 2017, Meeting (Page 3)
       Summary Notes BOD Workshop 091217

4. DISCUSSION ITEMS

   4.1. General Manager and District Goals Update (Page 5)
       Staff Memo 2017 Goals 101017
       GM Goals 101017
       Short-Term Multi-Year Goals 101017

   4.2. Consider Special Counsel Services for Upper Santa Ana River Habitat Conservation Plan (Page 10)
       Staff Memo HCP Special Counsel 101017
       RFQ Special Counsel HCP
       Cox Castle Nicholson SOQ

   4.3. Consider Cost Sharing Letter Agreement for Santa Ana River Integrated Model (Page 59)
       Staff Memo Cost Sharing Agreement Integrated Model 101017
       Integrated Model Cost Sharing Letter Agreement

   4.4. Consider Resolution Authorizing Application for a Grant Under the 2017 Sustainable Groundwater Planning Grant Program (Page 70)
       Staff Memo Yucaipa GSP Grant 101017
5. **ADJOURNMENT**

PLEASE NOTE:
Materials related to an item on this Agenda submitted to the Board after distribution of the agenda packet are available for public inspection in the District’s office located at 380 E. Vanderbilt Way, San Bernardino, during normal business hours. Also, such documents are available on the District’s website at [www.sbvmwd.com](http://www.sbvmwd.com) subject to staff’s ability to post the documents before the meeting. The District recognizes its obligation to provide equal access to those individuals with disabilities. Please contact Lillian Hernandez at (909) 387-9214 two working days prior to the meeting with any special requests for reasonable accommodation.
DATE: October 10, 2017
TO: Board of Directors’ Workshop
FROM: Douglas Headrick, General Manager
SUBJECT: Board Workshop of September 12, 2017

The Board of Directors met for a Workshop on September 12, 2017. President Longville chaired the meeting and Directors Navarro, Hayes, and Copelan participated. Staff members in attendance included Douglas Headrick, Cindy Saks, and Bob Tincher. The summary notes from the August 8, 2017 Workshop were reviewed and no additional comments were made.

First, Douglas Headrick presented the third in the series of California WaterFix presentations. The first two covered the project infrastructure and operations, respectively. For this Workshop, the topics of cost allocations and affordability were presented. Mr. Headrick discussed the allocation of costs between the Central Valley Project and the State Water Project along with the allocation among the 24 State Water Project Contractors that are beneficiaries of the Project. Results of a basic affordability analysis were provided in terms of a per household cost per month and the cost per acre-foot of water produced by the Project. Staff also recommended that the Board consider stating its intent to pay for the California WaterFix construction and mitigation costs using cash proceeds derived from the dissolution of redevelopment agencies. After a series of questions from the Board members present, Staff was directed to place a Resolution on an upcoming Board meeting agenda stating support for the California WaterFix and the intent to pay cash for the Project.

Next, Charley Wilson, Executive Director of the Southern California Water Committee, presented a request for a $30,000 contribution to a California WaterFix Education & Outreach Program – Phase II. Mr. Wilson presented the results of a survey performed to determine what messages resonated with the Southern California public in regards to the California WaterFix.
The Boardmembers asked Mr. Wilson a series of questions regarding Valley District’s proposed involvement in the education and outreach program. Mr. Wilson committed to providing the Board the results of the program when available. At the conclusion of the discussion, Staff was directed to place a request for $30,000 in support of the Southern California Water Committee’s Education and Outreach Program for California WaterFix on an upcoming Board agenda for consideration. The report to the Board will include two funding alternatives; 1) utilize $30,000 of the budgets funds for iEfficient, or 2) amend the general fund budget by $30,000.

**Staff Recommendation:**

Receive and file.
DATE: October 10, 2017
TO: Board of Directors' Workshop
FROM: Douglas Headrick, General Manager
SUBJECT: 2017 General Manager and District Goals

Background
During the General Manager evaluation process conducted earlier this year, the Valley District Board of Directors discussed two sets of goals, General Manager and District, for the next year. At a Workshop on June 13, 2017, the Board approved the goals lists developed during the evaluation process. Subsequently, Staff provided the approved list with status updates for each item to the full Board on July 18. Further, Staff was directed to provide quarterly updates on the status of the goals to the Board.

The attached updated goals lists will also be included in the General Manager’s Report for the Board Meeting on October 17, 2017.

Fiscal Impact
The costs associated with all of these goals is, or will be, included in General Fund or State Water Project Budgets as appropriate.

Recommendation
Provide input on the General Manager and District Goals for 2017, October Status Update.

Attachment
2017 Goals Lists, October Status Update
## San Bernardino Valley Municipal Water District

### General Manager 2017-18 Goals

<table>
<thead>
<tr>
<th>Goal</th>
<th>Status (October 2017)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. <strong>RETAIN KEY STAFF</strong> – Continue to promote a work environment that encourages existing and new Staff to remain employed at the District. Where possible, provide functional redundancy in responsibilities at the District to minimize the effects of retirements or other staffing changes.</td>
<td>Key staffing areas have been identified. A proposal for a reorganization of the management team and District Departments has been developed and will be presented to the Board at the Workshop today.</td>
</tr>
<tr>
<td>2. <strong>SARCCUP</strong> (Santa Ana River Conservation and Conjunctive Use Project) – Maintain leadership role for development of project.</td>
<td>Process of refining the project components is ongoing. The Phase II modeling is completed and was presented to the partners. One more round of refinements is expected before final recommendations for facility sizes and locations are developed.</td>
</tr>
<tr>
<td>3. <strong>PROJECTS RELATIONSHIPS</strong> - Develop document that explains the relationship and timing of current and planned projects to help explain the District’s activities to Directors. Include additional concepts for long-range projects.</td>
<td>A project relationship diagram was developed and presented to the Board on August 10, 2017. This document will be incorporated into the Valley District annual report to be published just after the first of the year.</td>
</tr>
<tr>
<td>4. <strong>DIRECTOR’S HANDBOOK</strong> – Update inserts to include project relationships, identification of existing facilities, and customers.</td>
<td>The Board Handbook was approved by the Board on August 15, 2017.</td>
</tr>
<tr>
<td>5. <strong>BOARD/STAFF INTERACTION EVENTS</strong> – Coordinate and host 2 events where Boardmembers and staff can interact. These events may revolve around a tour, site visit, or grand opening of a facility.</td>
<td>Staff is scheduling a grand opening celebration for the Board for the East Branch Extension Phase II Project. This will likely involve the Department of Water Resources and the San Gorgonio Pass Water Agency and should take place in November or December 2017.</td>
</tr>
<tr>
<td>6. <strong>RECYCLED WATER ORDINANCE</strong> – Provide leadership in the development of an Ordinance that identifies targets and provides policy direction on implementation strategies for recycled water projects within Valley District service area.</td>
<td>Staff presented a proposed approach to develop a recycled water ordinance at a Workshop on September 14. Those Boardmembers in attendance supported the proposal and staff is working on incorporating parts of the approach into the RFP for the Strategic Plan along with a separate proposal for a Local Resources Program that will be brought back to the Board in December or January.</td>
</tr>
<tr>
<td>7. <strong>WRITTEN MONTHLY REPORTS</strong> - Provide a comprehensive monthly report of all activities appropriate for public disclosure in the Board Packet on the first Tuesday of each month.</td>
<td>These reports began in June and will continue each month.</td>
</tr>
<tr>
<td>8. <strong>ANNUAL REPORT</strong> - Provide the leadership necessary for the District to publish an Annual Report for the public at the conclusion of each calendar year.</td>
<td>This goal will be met shortly after the end of the calendar year.</td>
</tr>
<tr>
<td>9.</td>
<td><strong>EMPLOYEE AWARD</strong> – Develop and implement an employee award/recognition for special effort or outcome.</td>
</tr>
<tr>
<td>10.</td>
<td><strong>WATER USE EFFICIENCY DIVISION</strong> – Implement a new division to manage the District’s Water Use Efficiency programs.</td>
</tr>
<tr>
<td>11.</td>
<td><strong>GROUNDWATER SUSTAINABILITY COUNCIL</strong> – Continue to lead the development of a sustainability structure for the San Bernardino Basin Area and Rialto Colton Basin. Support the GSA formation in Yucaipa as a facilitator.</td>
</tr>
<tr>
<td>12.</td>
<td><strong>FONTANA WATER COMPANY LITIGATION</strong> – Lead the completion of a settlement agreement to resolve long-standing litigation associated with unauthorized groundwater extractions by Fontana Water Company et. al.</td>
</tr>
<tr>
<td>13.</td>
<td><strong>HYDRO-ELECTRIC PLANTS</strong> – Complete construction of two and continue development of a third hydro-electric plant along the District’s SWP pipelines.</td>
</tr>
<tr>
<td>14.</td>
<td><strong>CYANOTOXIN/MUSSELS IN SWP</strong> – Develop and implement a program to treat our facilities for infestations of algae and invasive mussels.</td>
</tr>
<tr>
<td>15.</td>
<td><strong>EMPLOYEE HANDBOOK</strong> – Complete development of Employee Handbook and update to employment rules and procedures.</td>
</tr>
<tr>
<td>16.</td>
<td><strong>STRATEGIC PLAN</strong> – Lead the District through a thorough review of past planning efforts and develop an updated strategic plan for the District.</td>
</tr>
<tr>
<td>17.</td>
<td><strong>SURPLUS WATER AND WATER SALES AGREEMENTS</strong> – Complete process of declaring a surplus and negotiate water sales agreements.</td>
</tr>
</tbody>
</table>
## Short-Term District Goals

<table>
<thead>
<tr>
<th>Short-Term District Goals</th>
<th>Status (October 2017)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. WATER USE EFFICIENCY</strong> - Continue to develop programs that encourage and incentivize water use efficiency progress throughout our service area. With leadership from the new Water Use Efficiency Division, Valley District will maintain and enhance its role in this important area by evaluating and implementing new, innovative programs. Working with our retail agencies, Valley District will establish metrics to ensure compliance with State water use efficiency regulations on a regional basis.</td>
<td>See GM Goal #10. Continuous involvement, accelerating after the Water Use Efficiency Project Manager is hired, will ensure compliance with this goal.</td>
</tr>
<tr>
<td><strong>2. STRATEGIC PLAN</strong> - Develop a Scope of Work for the Board’s consideration before the approval of the Fiscal Year 2017-2018 Budget for an outside party to objectively examine the expected outcomes of all the District’s currently operating and planned facilities and programs and identify additional investments for the District to consider that would provide cost-effective beneficial outcomes to the communities we serve. This analysis will include an evaluation of the District’s current water rate structure and suggestions for modifications.</td>
<td>See GM Goal #16.</td>
</tr>
<tr>
<td><strong>3. EXTERNAL AFFAIRS</strong> - Building upon the Work Plans being developed by the External Affairs and Water Use Efficiency Committees as well as the needs of District staff, develop a job description for an experienced full-time External Affairs Manager for the Board’s consideration before the approval of the fiscal year 2018-2019 budget.</td>
<td>This job description will be developed and presented to the Board before the approval of the 2018-2019 Budget.</td>
</tr>
<tr>
<td><strong>4. WATER REUSE</strong> - Building upon the Regional Recycled Water Concept Study, identify the resources that are needed now and will be over coming years to reach the goal of 40,000 AFY of recycled water by 2040 for the Board’s consideration before the approval of the Fiscal Year 2018-2019 budget.</td>
<td>See GM Goal #6. This goal will be met in time to prepare a proposal for the Board’s consideration. This should be ready for consideration before the end of the year. If approved by the Board, this could be initiated in the current Fiscal Year.</td>
</tr>
</tbody>
</table>
### Multi-Year District Goals

<table>
<thead>
<tr>
<th></th>
<th><strong>Multi-Year District Goals</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>WATER USE EFFICIENCY</strong> - Establish a multi-year program to make water conservation a way of life within the District.</td>
<td>Goal attainment will be determined based on the intermediate results of the ongoing and new Water Use Efficiency programs implemented by the District.</td>
</tr>
<tr>
<td>2</td>
<td><strong>STRATEGIC PLAN</strong> - Building upon the short term goal examining investments the District needs, develop a 25-year Strategic Plan for the District to meet the challenges we face.</td>
<td>Results of the current effort to update and enhance the District’s Strategic Plans, will determine the scope for this longer range goal.</td>
</tr>
<tr>
<td>3</td>
<td><strong>RENEWABLE ENERGY</strong> - Building upon the District’s currently operating and planned renewable energy projects, collaborate with local parties that participate in the District’s Integrated Regional Water Management Plan (IRWMP) to provide the leadership necessary to undertake a Regional Renewable Energy Concept Study to meet the challenges we face.</td>
<td>This goal is already partially being accomplished with our cooperative hydro-electric projects. Additional opportunities will continue to be evaluated and brought to the Board for consideration.</td>
</tr>
<tr>
<td>4</td>
<td><strong>CLIMATE ADAPTATION</strong> - Building upon the District’s collaboration with local parties that participate in the District’s Integrated Regional Water Management Plan (IRWMP), provide the leadership necessary to undertake a Regional Climate Adaptation Concept Study to meet the challenges we face.</td>
<td>The process for attaining this goal has not been initiated yet.</td>
</tr>
</tbody>
</table>
DATE: October 10, 2017

TO: Board of Directors’ Workshop

FROM: Heather Dyer, Water Resources Project Manager

SUBJECT: Consider Special Counsel for Upper Santa Ana River Habitat Conservation Plan

---

**Summary**

Staff is requesting consideration of Special Counsel in support of the Upper Santa Ana River Habitat Conservation Plan (HCP). The special counsel would represent the HCP group in our negotiations with the U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW) regarding the incidental take permits that will be obtained for federally and state listed species. Scott Heil of Varner Brandt guided the review and selection process and a HCP partner-based committee selected the law firm Cox, Castle & Nicholson to recommend to the Board as special counsel to the HCP.

**Background**

The HCP is being collaboratively developed by staffs from Valley District and other agencies in Southern California with projects needing endangered and threatened species permit coverage. On April 15, 2014, the Board of Directors authorized Valley District’s participation and role as lead agency for the development of the HCP. The HCP currently has twelve funding partners (Partners): Valley District, City of Rialto, East Valley Water District, West Valley Water District, Inland Empire Utilities Agency, Riverside Public Utilities, Western Municipal Water District, San Bernardino Valley Water Conservation District, the City of San Bernardino Municipal Water District, the
San Bernardino County Department of Public Works, Orange County Water District, and the Metropolitan Water District of Southern California.

The HCP is a valuable tool because it provides a mechanism that allows Partners, Wildlife Agencies, and other stakeholders to address endangered species issues on a large regional scale, collaboratively, and over the long term. Together, we can anticipate, prevent, and resolve controversies and potential conflicts during the HCP planning process. This includes issues associated with endangered species impacts resulting from both projects and potential conservation measures such as translocation of the species. In order to successfully develop an HCP of this size and complexity it is crucial to have a high level of engagement between the Wildlife Agencies’ local staff and regional management, the HCP Partners’ staff, and our team of consultants. The importance of early buy in from the Wildlife Agencies, stakeholders, and our own Partners cannot be overstated. In addition, because of the programmatic nature of our planning efforts, where multiple components are interrelated and interdependent, (i.e. HCP, compensatory mitigation bank, advanced mitigation projects, etc.) particular attention should be paid to the development of partnership agreements and the legal framework through which we will implement the HCP.

Because we know that our HCP will be very complex, primarily due to the nature of an aquatic HCP but also due to the complicated partnerships within our HCP group, it is important that we bring in specialized legal advice from attorneys with expertise in the field of integrated natural resource planning. Specifically, our purposes require a legal team with experience working through complicated issues related to the Plan itself, its corresponding EIR/EIS, the Implementing Agreement (the agreement between the HCP team and the USFWS), and the internal agreement(s) amongst the Partners such as a Memorandum of Understanding or Joint Powers Authority. Clear understanding amongst parties will be necessary in order to carry out the commitments made in the HCP planning process.

In June 2017, with the assistance of general counsel, Varner & Brandt, staff released a Request for Qualifications to legal firms known for their expertise in HCP planning and
implementation projects throughout the United States. The proposed scope of work anticipated by the HCP team was presented as follows:

- Serve as HCP permittee liaison with the USFWS solicitor and CDFW attorneys during permit negotiation and plan finalization process.
- Coordinate the internal legal review process with attorneys representing the 13 permittee agencies for our HCP document and the corresponding EIR/EIS.
- Advise the permittees on permit structure and implementation governance.
- Develop an HCP Permittees MOU/MOA to support completing the HCP, facilitate early implementation of HCP conservation actions, and describe cost sharing and other arrangements to implement the HCP.
- Assist in the creation of a JPA (or other entity) to implement the HCP, including drafting JPA formation documents.

We received Statement of Qualifications (SOQs) from seven qualified firms which the selection committee reviewed. Members of the selection committee included:

- Ash Dhingra, East Valley
- Heather Dyer, Valley District
- Stacey Aldstadt, SB Municipal Water District
- Anthony Beaumon, Riverside Public Utilities
- Greg Woodside, Orange County Water District
- Jean Cihigoyenetche, Inland Empire Utilities Agency
- Daniel Cozad, SB Valley Water Conservation District

The committee selected four firms that seemed to best meet the extensive needs of the HCP team for telephone interviews by the selection committee. Through the interviews the committee was able to narrow the selection to two highly qualified firms with distinct benefits to offer. References were obtained by two selection committee members for both final candidates. The Partner agencies were sent a summary of the process and qualifications of each firm with a request for feedback and one final discussion took place in order to finalize a recommendation to the Board.
Cox, Castle & Nicholson was selected by a majority of the selection committee for several reasons. Cox Castle is a large full service land resources law firm with 130 attorneys, including 25 lawyers in the Land Use and Natural Resource Law group who specifically work in the field of state and federal natural resources regulation. Cox Castle has performed work related to endangered species issues for both federal and state Endangered Species Acts and specifically on several large multi-agency Habitat Conservation Plans that have integrated wetlands and waters regulation under sections 404 and 401 of the Clean Water Act, which is a potential component of our HCP. Cox Castle works extensively with public agencies such as counties, cities, and the Zone 7 Water Agency. They also have experience working with water agencies such as the Santa Clara Valley Water District, Imperial Irrigation District, and the Natomas Mutual Water Company, all of which have undertaken innovative and complex Habitat Conservation Plans in recent years. Cox Castle has also led negotiations between multiple water users with regards to water allocation specifically for fish habitat in a way that resulted in a fair and equitable deal for all parties.

The principals at Cox Castle are highly experienced in the California HCP community and are on the forefront of maximizing the value of HCPs through integration with other permitting needs. Clark Morrison specializes in working on HCPs and aquatic resource permitting in addition to water rights, water transfers, and water management agreements. This firm has served as counsel for several HCPs in California that have, or are in the process of, integrating additional permitting requirements for impacts aquatic resources, waters of the state and/or US, (i.e. Corps 404, 401, CDFW 1600 permits) as well as developing an advanced mitigation credit system for those permits in the form of either mitigation banks or in-lieu-fee (ILF) programs. In addition, Cox Castle has provided legal support for mitigation/conservation bank development, permitting, easements, and implementing agreements for integration of HCPs with aquatic resource permitting. Mike Zischke is a specialist in CEQA/NEPA and offers counsel on preparation of the EIR/EIS document, integration of this document with the HCP, and litigation expertise, should it be necessary.
Finally, Cox Castle has been involved in the negotiation and integration of multi-party HCP instruments including HCP MOUs or JPAs. Cox Castle has worked on several of the large Californian HCPs such as the East Contra Costa County HCP which includes wetlands (Corps and CDFW) permitting and an advanced mitigation program, the Natomas Basin HCP which included a provision for conservation staying ahead of covered activities, and the Placer County Conservation Plan which includes more than 25 parties included in the plan and an ILF program with a programmatic wetlands permitting program.

Cox Castle has an hourly fee of $685 per hour for the partners Clark Morrison (HCPs/Wetlands Permitting/Mitigation Banks) and Mike Zischke (CEQA/NEPA). Associate rates range from $400 to $550 per hour. Based on the known needs of our HCP at this time, we have estimated the cost to be approximately $410,000. This assumes a blended rate (partner and associate time) of $620/hour. The partners are based in San Francisco, but the firm would not charge for travel time or air fare. The Professional Services Agreement will contain a not-to-exceed amount of $450,000 to allow for contingencies.

Based on their diversity of expertise and ability to handle all the separate agreements and negotiations required for the HCP to reach finalization and implementation, the selection committee recommends Cox, Castle & Nicholson to the Board. As with all HCP activities, the costs are distributed amongst the Partners based on the weighted share of proposed project impacts. Agencies with higher levels of impacts to habitat have a higher share of HCP costs and proposed impacts are weighted, Hydrology = 85%, Permanent terrestrial = 10%, and Temporary terrestrial = 5%. Based on these impact shares the cost distribution for this item would be as follows:
Valley District would administer the agreement and bill the HCP Partners based on the above listed percentages. Valley District’s estimated cost is for the HCP special counsel services is $179,399. This item was included in the 2017/2018 fiscal year budget.

**Fiscal Impact**

The fiscal impact is estimated to be approximately $179,399 and is included in the 2017-2018 General Fund budget.

**Staff Recommendation**

Staff recommends the Board direct staff to place an item on the next Board meeting agenda that considers approving an agreement with Cox, Castle & Nicholson for legal services in support of the Upper Santa Ana River Habitat Conservation Plan, not to exceed $450,000.

**Attachments**

1. Request for Qualifications
2. Cox, Castle & Nicholson Statement of Qualifications
Request for Qualifications

Environmental Attorney/Endangered Species Act Expert

In support of the Upper Santa Ana River Habitat Conservation Plan and State and Federal ESA Permitting

San Bernardino Valley Municipal Water District

The Filing Deadline is:
July 28, 2017, 5:00PM
BACKGROUND

The Santa Ana River (SAR) watershed is the largest coastal stream system in Southern California, and is home to dozens of water districts, local jurisdictions, and other stakeholders with a vested interest in the sustainable stewardship (water quality and biological resource protection) and management (storage, conveyance, treatment, flood protection, and recreation) of the watershed. Many of these entities have participated in integrated regional watershed management coordination efforts in the Upper SAR since the 1960s.

Development of the Upper Santa Ana River Habitat Conservation Plan (HCP) was initiated in 2013 under the leadership of the San Bernardino Valley Municipal Water District (Valley District) to seek incidental take coverage under the federal and state endangered species acts for 23 species, including the federally threatened Santa Ana sucker. The HCP participants include the 13 public agencies (Permittees), USFWS, and CDFW (referred to as the Wildlife Agencies) and various environmental organizations. The Permittees are listed in alphabetical order below:

- City of Rialto Public Works (Rialto)
- East Valley Water District (East Valley)
- Inland Empire Utilities Agency (IEUA)
- Metropolitan Water District of Southern California (Metropolitan)
- Orange County Water District (OCWD)
- Riverside Public Utilities (RPU)
- San Bernardino County Flood Control District (Flood Control)
- San Bernardino Municipal Water Department (Water Department)
- San Bernardino Valley Municipal Water District (Valley District)
- San Bernardino Valley Water Conservation District (Conservation District)
- Southern California Edison (SCE)
- West Valley Water District (West Valley)
- Western Municipal Water District of Riverside County (Western)

When public agencies jointly prepare and implement a programmatic HCP, they typically use a co-permittee structure. In this approach, all permittees are named on one permit issued to all agencies jointly. The Upper SAR HCP permit structure will likely follow this co-permittee approach. Both the Plan document and a Memorandum of Understanding
amongst the permittees will delineate the responsibilities of each of the water agencies for HCP implementation, including funding. This approach provides the greatest flexibility in implementation and ensures that all permittees share equally in the obligations and risks associated with the HCP. The group is also tentatively pursuing development of a Joint Powers Authority (JPA) to implement the HCP.

Valley District, on behalf of the HCP permittees, is requesting statements of qualifications from experienced environmental attorneys to provide services in support of the completion, permitting, and implementation of the HCP. Extensive information on the Upper SAR HCP can be found at www.uppersarhcp.com.

DESCRIPTION OF REQUESTED SERVICES

Valley District requests the preparation of Qualifications Package to be submitted as described below. The Qualifications Package should include specific project examples and supporting information related to the following key tasks.

- Serve as HCP permittee liaison with the USFWS solicitor and CDFW attorneys during permit negotiation and plan finalization process.
- Coordinate the internal legal review process with attorneys representing the 13 permittee agencies for our HCP document and the corresponding EIR/EIS.
- Advise the permittees on permit structure and implementation governance.
- Develop an HCP Permittees MOU/MOA to support completing the HCP, facilitate early implementation of HCP conservation actions, and describe cost sharing and other arrangements to implement the HCP.
- Assist in the creation of a JPA to implement the HCP, including drafting JPA formation documents.

RFQ SUBMITTAL SCHEDULE

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>7/10/17</td>
<td>Release of Request for Qualifications</td>
</tr>
<tr>
<td>7/28/17 by 5:00pm</td>
<td>Deadline for Valley District Receipt of Qualifications</td>
</tr>
<tr>
<td>8/11/2017</td>
<td>Notice of Interviews (optional)</td>
</tr>
<tr>
<td>8/21/2017</td>
<td>Interviews (optional)</td>
</tr>
<tr>
<td>9/19/2017</td>
<td>Board of Directors Approval/Award Contract</td>
</tr>
</tbody>
</table>
SUBMITTAL OF QUALIFICATIONS REQUIREMENTS

1) PROPOSAL CONTENTS

a) Table of Contents

b) Body (may not exceed 8 pages in length with a minimum font size of 12 point)
   i) Understanding of Scope of Services. A clear statement of the scope of services to be provided.
   ii) Qualifications and Related Experience. The proposal should identify the Lead Counsel primarily responsible for providing legal services to the HCP permittees and other attorney and staff that would be assigned to the HCP legal matters. Please include multiple examples of related projects and the specific roles of the individual(s) included in this RFQ.
   iii) Client Reference List. Provide the name and contact information for three (3) professional references on projects included in the Related Experience, above.
   iv) Conflicts of Interest(s). This section should disclose any potential conflicts of interest that individual(s) may have in performing these services on behalf of the HCP Permittees.
   v) Any other information that may assist Valley District in making its determination in the selection process. Please include this section if further pertinent data and information is found necessary by the proposer to help Valley District make its selection and is not included elsewhere in the RFQ.
   vi) Fee schedule. Please state the hourly rate(s), together with cost reimbursement(s), you propose for rendering legal services to Valley District, including rates for Lead Counsel and all other attorneys and staff. Fee schedule shall be organized to follow the general tasks in the Description of Services.

c) Appendix. Resumes and Qualifications of Key Personnel. Please include the qualifications, training, certification of Lead Counsel and all other attorneys and staff who will perform the services outlined in this document. Please limit individual experience to similar projects.

Eight (8) hardcopies and a PDF version (may be submitted via email) of the proposal must be received by the filing deadline. Valley District accepts no responsibility for costs incurred by any individual or firm submitting a proposal pursuant to this RFQ. The price specified must remain firm and irrevocable for 60 days following the RFQ submission date. All proposals become property of Valley District and will not be returned.
Please submit your Qualification Package to:
Heather Dyer
Water Resources Project Manager
San Bernardino Valley Municipal Water District
380 East Vanderbilt Way
San Bernardino, CA 92408

All questions regarding this RFQ must be submitted in writing via email to the following email address: heatherd@sbvmwd.com. Answers may be sent via email to the entire distribution list for this RFP.

2) INTERVIEW

Interviews may be scheduled with select firms following initial review of the proposals and will take place on the date specified in the introduction. Interview must be attended by the actual team members that will work on the project including any sub-consultants. The interview will consist of an approximately 20-minute presentation by the legal team followed by a 20-minute question and answer period.

3) EVALUATION PROCESS AND CRITERIA

Evaluation of proposals shall be based upon a competitive selection process. Review and evaluation of the submitted proposals will be based upon the following criteria:

a) Project approach (10/

b) Experience on similar projects and/or projects of similar complexity and size (40/

c) Demonstrated ability to perform the tasks outlined in this RFQ (40/

d) Interview (10/

e) Fee (not an overriding consideration)

Valley District reserves the right to issue additional RFQs, to modify or to abandon this project before award of contract, and to reject any or all proposals.

4) CONTRACT

A sample copy of Valley District’s proposed Consulting Services Agreement is attached for your information. The selected consultant is expected to execute the agreement.
CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement ("Agreement") is entered into to be effective as of _________________, 2017 ("Effective Date"), by and between the San Bernardino Valley Municipal Water District, a water district organized and existing under the California Municipal Water District Law of 1911 ("District"), and _________________ ("Consultant"). District and Consultant may be collectively referred to as the “Parties” and individually as a “Party.” Consultant agrees to furnish certain professional legal and consulting services to District, upon the following terms:

JOB NAME:

JOB NUMBER:

1. **Term.** The term ("Term") of this Agreement shall commence on the Effective Date and shall automatically terminate upon earlier of _________________, 20____, or the successful completion of Services, unless earlier terminated.

2. **Consulting Services and Responsibilities.** During the term of this Agreement, Consultant shall provide legal and consulting services to the District, which shall include those services and activities specifically identified in the Consultant’s proposal for the Project, or such other services requested by District, each of which is attached to this Agreement as Exhibit “A” and by this reference incorporated herein ("Services"). All Services provided under this Agreement shall be performed in a manner consistent with current industry standards by individuals who possess the proper skill and knowledge necessary to effectively complete the Services. The performance of all Services and obligations hereunder shall be made in accordance with all federal, state, and local laws, rules, regulations, or ordinances applicable to the Services or obligations.

3. **Additional Services.** In the event additional services, which are not specifically included in Exhibit “A”, are desired or needed, Consultant shall identify and describe such additional services, including costs, schedule for completion and seek the written approval of District (”Task Order”). The compensation paid to Consultant for such Task Order shall be mutually agreed upon in writing by the Parties prior to the performance of the Task Order. Consultant shall be solely responsible for the costs and expenses associated with any Task Order, including Task Order already performed, that have not been specifically agreed upon in writing by Consultant and District. As used in this Agreement, the term “Services” shall include Task Orders.

4. **Qualifications.** Consultant represents and warrants to District that it has the qualifications, experience, licenses, and facilities necessary to properly perform the Services in a competent and professional manner.

5. **Licenses.** Consultant shall, in accordance with applicable laws and ordinances, obtain and maintain at its expense all permits and licenses necessary to accomplish the Services. Failure to maintain a required permit or license may result in immediate termination of this Agreement.

6. **Standard of Care.** Consultant shall perform all Services in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and competence ordinarily exercised by members of the profession currently practicing under similar conditions.
7. **Compensation and Expenses.**

7.1 **Compensation.** As compensation for the Services to be rendered by Consultant, District shall pay Consultant an amount based on the time and materials incurred by Consultant, inclusive of sub-consultants and miscellaneous expenses ("Compensation"), which amount shall not exceed ______________________ ($__________________) ("Maximum Fee"), as set forth on the compensation schedule attached as Exhibit "B" hereto and incorporated herein by this reference. To the extent different payment terms are set forth in a Task Order that conflict with the general payment terms set forth in Exhibit "B", the terms in the Task Order shall control. Consultant acknowledges and agrees that in no event shall Consultant receive or have a claim of any kind for any payment in excess of the Maximum Fee for any work, including Task Orders, performed under this Agreement, unless such amount exceeding the Maximum Fee is specifically approved in writing by District.

7.2 **Invoices.** Each month Services are rendered, Consultant shall deliver an invoice to District, for work actually performed, which shall include, at a minimum: (i) the project name; (ii) District’s job number; (iii) Consultant’s point of contact for billing questions; (iv) basis of billing; (v) total contract value; (vi) total billing to date; (vii) amount remaining in contract; and (viii) estimated percentage of completion at time of billing. Attached to each invoice, Consultant shall also include a monthly summary of work actually performed during the billing period. Provided there is no dispute with the invoice, District shall pay Consultant within thirty (30) days of receiving the invoice. In the event District disputes an invoice, District shall provide a written explanation of the dispute to Consultant within thirty (30) days of receiving the invoice. District and Consultant shall cooperate to resolve any disputed amount. District shall not be penalized for any reasonable dispute and shall not be obligated to pay any amount in dispute until a dispute has been resolved.

7.3 **Expenses.** District shall pre-approve in writing each reasonable and necessary expense that Consultant intends to seek reimbursement for, which expenses are directly related to the performance of the Services. If pre-approved, such expenses for reasonable and necessary travel, lodging, or miscellaneous expenses incurred in the performance of this Agreement will be reimbursed to Consultant in accordance with District’s general reimbursement policy. Consultant shall submit an invoice of all incurred expenses accompanied by adequate supporting documentation or transaction receipts. Invoices that fail to include reasonable supporting documentation or receipts will not be honored and District will have no obligation of any kind to reimburse Consultant for such expenses.

8. **Project Data.** Consultant shall be exclusively responsible for obtaining from the appropriate sources, persons or third parties, all data and information necessary for the proper, timely and complete performance and satisfaction of the Services.

9. **Project Management.**

9.1 **Representative of Consultant.** ______________________________ ("Consultant’s Representative") is hereby designated as the principal and representative of Consultant authorized to act on its behalf with respect to the Services specified herein and to make all decisions in connection herewith. Consultant shall not substitute Consultant’s Representative without first notifying District in writing of Consultant’s intent. District shall have the right to review the qualifications of said substitute. If District determines said substitute Consultant’s Representative is unacceptable, Consultant shall submit alternate candidates until District determines the substitute Consultant Representative is acceptable.
9.2 Representative of District. __________________________ (“District’s Representative”) is hereby designated to represent District and except as otherwise provided herein authorized to act on its behalf with respect to the Services specified herein and to make all decisions in connection therewith. District may substitute District’s Representative at any time upon written notice to Consultant.

10. Work Product; Confidential Information.

10.1 Work Product. Consultant shall provide to District, and such other consultants approved by District, all work product, works in progress or other deliverables developed from or associated with the Services or the Project (collectively, “Work Product”). Upon completion of the Services, Consultant shall provide one reproducible physical copy and one electronic copy of all final work products described in Exhibit “A”, in such forms acceptable to District. Consultant acknowledges that all work performed or prepared for District by Consultant hereunder, including without limitation all data, reports, models, working notes, drawings, designs, improvements, trademarks, patents, copyrights (whether or not registered or patentable) and specifications developed or prepared by Consultant in connection with, or related to such Services shall become the sole and exclusive property of District, unless specifically otherwise agreed upon in writing by District and Consultant. Consultant hereby unconditionally assigns, transfers and conveys to District all rights, interests and claims of any kind related thereto, including copyright. Consultant shall promptly disclose such work product to District and, at the District’s expense, perform all actions reasonably requested by District (whether during or after the Term) to establish and confirm such ownership (including, without limitation, executing any necessary assignments, consents, powers of attorney and other instruments).

10.2 Confidential Information. Consultant acknowledges that during the Term it may receive or have access to certain information, observations, and data (including, but not limited to, trade secrets, designs, ideas, products, research, software, and financial data) concerning the business or affairs of District (“Confidential Information”) which is, and shall remain the property of District. Consultant shall take all reasonably appropriate steps to safeguard Confidential Information and to protect it against disclosure, misuse, espionage, loss and theft. Consultant agrees that it shall not disclose to any unauthorized person or use for its own purposes any Confidential Information without the prior written consent of District, unless and to the extent that the Confidential Information becomes generally known to and available for use by the public other than as a result of Consultant’s acts or omissions. Consultant shall deliver to District at the termination or expiration of the Term, or at any other time District may request, all memoranda, notes, plans, records, reports, computers and computer records, printouts and software and other documents and data (and copies thereof) embodying or relating to the Confidential Information, work product (as discussed in Section 10.1) or the business of District, which Consultant may then possess or have under its control. Neither party shall be liable for disclosure or use of Confidential Information which: (a) was known by the receiving party at the time of disclosure due to circumstances unrelated to this Agreement; (b) is generally available to the public without breach of this Agreement; (c) is disclosed with the prior written approval of the disclosing party; or (d) is required to be released by applicable law or court order (provided that Disclosing Party is given prompt written notice thereof and is allowed to exhaust all reasonable legal remedies to maintain the confidentiality of the information).

11. Records. All records, documents or other instruments evidencing all labor costs, payroll costs or other expenses incurred in connection with Consultant’s performance of the Services shall be kept in a manner consistent with industry standards and practices and made available to District upon written request. Retention of the records contemplated by this Section 11 shall be retained for a period
of no less than four (4) years from the date of final billing or termination of this Agreement, whichever shall first occur.

Consultant further agrees to maintain all design calculations and final work product on file in legible and readily accessible form. A copy of such material shall be available to District, at District’s sole cost and expense, and the originals of such materials and items, including any additions, amendments or modification thereto shall not be destroyed by Consultant unless District fails to object to such destruction upon Consultant providing District with sixty (60) days advance written notice, indicating that such material is scheduled to be destroyed.

12. Independent Contractor.

12.1 Status. The Parties hereby acknowledge that in rendering the Services provided hereunder, Consultant shall be deemed to be an independent contractor and shall not be deemed in any way an agent, partner or joint venturer of the District. Consultant acknowledges and agrees that, as an independent contractor, it is solely responsible for the payment of any and all taxes and/or assessments imposed on account of payment to Consultant or the performance of Services by Consultant pursuant to this Agreement.

12.2 Agency Restrictions. Consultant understands and agrees that Consultant shall not represent itself to third parties to be the agent, employee, partner or joint venturer of the District. Furthermore, Consultant shall not make any statements on behalf of or otherwise purporting to bind the District in any contract or otherwise related agreement. Consultant further agrees and acknowledges that Consultant does not have the authority to and shall not sign any contract on behalf of the District or any of its subsidiaries or affiliates. Consultant shall not obligate the District or any of its subsidiaries or affiliates to do any other act that would bind the District or any of its subsidiaries or affiliates in any manner.

13. Further Assurances. Consultant shall furnish District with any documents or records that the District reasonably believes necessary to properly and timely carry out the Consultant’s Services. District shall first tender written notice to Consultant regarding any documents or records that it reasonably believes necessary to properly carry out Consultant’s Services. Consultant shall then have ten (10) days from the receipt of such notice to provide the District with the requested documents or records.

14. Termination. At any time during the course of this Agreement, District may terminate this Agreement, in whole or in part, with or without cause, upon ten (10) days’ written notice to Consultant. Upon receipt of the termination notice, Consultant shall promptly discontinue Services except to the extent the notice directs otherwise. In the event District renders such written termination notice to Consultant, Consultant shall be entitled to compensation for all Services properly rendered prior to the effective date of the notice and all further Services set forth in the notice. District shall be entitled to reimbursement for any compensation paid in excess of Services properly rendered and shall be entitled to withhold compensation for defective Services or other damages caused by Consultant’s work. Consultant acknowledges District’s right to terminate this Agreement as provided in this section, and hereby waives any and all claims for damages that might arise from District’s termination of this Agreement. Consultant shall deliver to District and transfer title (if necessary) to all completed Work Product, including work in progress, drafts, documents, plans, forms, maps, products, graphics, computer programs, and reports. District shall not be liable for any costs other than the charges or portions thereof
which are specified herein. Consultant shall not be entitled to payment for unperformed Services, and shall not be entitled to damages or compensation for termination of Services.

15. **Indemnification.** Consultant shall indemnify, defend, and hold harmless District and its directors, officials, officers, employees, representatives, agents, affiliates, subsidiaries, predecessors, successors, and assigns (collectively, “Indemnitees”), from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, judgments, fines, penalties, and deficiencies, including reasonable attorneys’ fees (collectively, “Claims”), arising out of or related to any goods, products, or services made, furnished, or otherwise provided, or alleged to be made, furnished, or otherwise provided, by Consultant or Consultant’s employees, agents, contractors, subcontractors, representatives, successors, suppliers, or anyone acting on behalf of Consultant in connection with the performance of Consultant’s Services; provided, however, that Consultant’s indemnification obligations hereunder shall not apply to any Claims arising solely out of the gross negligence or intentional acts of District. Consultant’s indemnification obligations shall not be affected by any insurance provisions or limitations of liability contained in this Agreement. Consultant’s indemnification obligations shall continue in full force and effect notwithstanding the expiration or other termination of this Agreement.

The indemnification responsibility of Consultant, with respect to the Services shall exist and continue regardless of the extent to which District may have reviewed and approved the Services performed by Consultant, except that Consultant shall not be responsible for claims attributable to the Services in any case in which the claim is attributable to a decision made by District with respect to which Consultant and District have specifically agreed in writing that District shall be the responsible party.

16. **Liability and Insurance.**

16.1 **Liability.** Consultant shall assume responsibility and liability for any damage, loss, or injury of any kind or nature whatsoever to any person or property, to the extent such damage, loss, or injury was caused by or resulting from an error, omission, or negligent or willful act caused by Consultant or its partners, directors, officers, employees, agents, or representatives in connection with the performance of the Services under this Agreement.

16.2 **Policies of Insurance.** Consultant shall provide, pay for, and maintain in force at all times during the performance of the Services hereunder, the policies of insurance set forth below. Consultant shall provide original certificates of insurance and endorsements evidencing coverage on forms reasonably acceptable to District prior to commencing any Services under this Agreement and promptly upon request thereafter. The existence of the required insurance coverage under this Agreement shall not be deemed to satisfy, substitute for, or otherwise limit Consultant’s indemnification obligations under this Agreement. Consultant acknowledges that the insurance coverage and the policy limits set forth in this Agreement constitute the minimum coverage and policy limits required.

16.2.1 Commercial General Liability Insurance covering liabilities for death and personal injury and liabilities for loss of or damage to property with a combined single limit of $1,000,000 per occurrence and $2,000,000 in the aggregate.

16.2.2 Automobile Liability Insurance for bodily injury or death and property damage, including coverage for owned, non-owned, leased, and hired auto, with a minimum $1,000,000 per person and $1,000,000 per occurrence.

16.2.3 Workers’ Compensation Insurance as required by applicable law.
16.2.4 Employers’ Liability Insurance with limits of at least $1,000,000 per occurrence.

16.2.5 Professional Liability Insurance, with policy limits of no less than $1,000,000 (combined single limit per claim and annual aggregate).

16.3 Policy Requirements. All insurance policies required pursuant to this Agreement shall:

16.3.1 For all liability policies, include an additional insured endorsement at least as broad as ISO CG 2010 07 04 and consistent therewith, naming “San Bernardino Valley Municipal Water District and its directors, officials, officers, employees, agents, affiliates, subsidiaries, predecessors, successors, and assigns” as additional insureds.

16.3.2 Be on an “occurrence” basis, not a claims-made basis. The foregoing policies must contain an aggregate limit not less than the occurrence limit. The required limits may be satisfied by a combination of a primary policy and an excess or umbrella policy.

16.3.3 Be primary and non-contributory with any insurance programs carried by or available to District.

16.3.4 Waive all rights of subrogation and contribution against District and its insurers.

16.3.5 Provide that coverage shall not be revised, cancelled or reduced until at least thirty (30) days’ written notice of such revision, cancellation or reduction shall have been given to District. In the event any policies of insurance are revised, cancelled or reduced, Consultant shall prior to the revision, reduction or cancellation date, submit evidence of new insurance to District complying with this Agreement.

16.3.6 Be issued by insurance companies which are qualified to do business in the State of California and which have a current rating of A-VIII or better in Best’s Insurance Report.

16.4 Subconsultant Insurance. In the event Consultant subcontracts any portion of its performance, the agreement between Consultant and the subconsultant shall require the subconsultant to carry the same policies of insurance that Consultant is required to maintain pursuant to this Agreement.

17. Representations and Warranties. Each Party individually represents and warrants the following:

17.1 Each Party is duly organized, validly existing and in good standing under the laws of the state of formation or incorporation and has all requisite power and authority to conduct the business with which it conducts and proposes to conduct;

17.2 All action on the part of each Party necessary for the authorization, execution, delivery, and performance of this Agreement, and the consummation of the transactions contemplated herein, has been properly taken and obtained in compliance with applicable law;
Each Party has not entered into nor will either enter into any agreement (whether written or oral) in conflict with this Agreement or which would prevent a Party from performing its obligations under this Agreement; and

Each Party has the contacts and expertise, and will reasonably allocate its financial and time resources on a reasonable best efforts basis to enable it to perform its obligations hereunder.

18. Miscellaneous.

18.1 Compliance with Applicable Laws. Consultant shall, in the performance of this Agreement, comply with all federal, state and local laws and regulations and orders issued under any applicable law.

18.2 Setoffs and Counterclaims. All claims for moneys due or to become due to Consultant shall be subject to deduction by District for any setoff or counterclaim arising out of this or any other of District’s agreements with Consultant.

18.3 Disputes. If any disputes should arise between the Parties concerning the Services to be performed under this Agreement, the payments to be made, or the manner of accomplishment of the Services, District will have the option to suspend any and all Services being provided at the time the dispute arises, unless and until settlement of said dispute.

18.4 Assignment and Consultants. Consultant shall not assign or subcontract any portion of the Services to be performed under this Agreement or any of the rights or obligations under this Agreement, without the prior written consent of District, which consent may be withheld in District’s sole and absolute discretion. Any attempted assignment in violation of the provisions of this paragraph shall be void. Subject to the foregoing, this Agreement shall be binding upon the heirs, administrators, successors and permitted assigns of District and Consultant. Consultant’s use of approved subconsultants shall not relieve Consultant of its responsibilities and obligations set forth herein.

18.5 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they have related in any way to the subject matter hereof.

18.6 No Third-Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any person or entity other than the Parties and their respective successors and permitted assigns.

18.7 Succession. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns.

18.8 Conflict of Interest. Consultant warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

18.9 Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.
18.10 **Notices.** All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given two (2) business days after it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to District: San Bernardino Valley Municipal Water District  
380 East Vanderbilt Way  
San Bernardino, CA 92408  
Attn: __________________  
Telephone: (909) 387-9256

If to Consultant:  
________________________  
________________________  
Attn: __________________  
Telephone: __________________

18.11 **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the domestic laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of California. Venue for any suit, action or proceeding shall exist exclusively in the courts having jurisdiction over the County of San Bernardino.

18.12 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

18.13 **Waivers.** No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent occurrence.

18.14 **Amendment.** Except as expressly provided otherwise herein, this Agreement may not be amended without the express written consent of both Parties.

18.15 **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

18.16 **Release of Information and Advertising.** Consultant shall not, without the prior written consent of District, make any news release or other public disclosure regarding this Project.

18.17 **Construction.** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all
rules and regulations promulgated thereunder, unless the context requires otherwise. The word “including” shall mean including without limitation.

18.18 **Attorneys’ Fees.** If any legal action is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys’ fees, reasonable expert witness fees, costs, and necessary disbursements in addition to any other relief to which that party may be entitled.

*Signature Page Follows*
IN WITNESS WHEREOF, the Parties hereby execute this Agreement on the date first written above.

DISTRICT:

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT,
a water district organized and existing under the California Municipal Water District Law of 1911

[Exhibit purposes only; not for execution]
By:_________________________________
Name: Douglas Headrick
Its: General Manager

CONSULTANT:

_________________________________,
a ______________________________

[Exhibit purposes only; not for execution]
By:_________________________________
Name: _____________________________
Its: ______________________________
EXHIBIT “A”

SCOPE OF SERVICES
EXHIBIT “B”

COMPENSATION SCHEDULE
July 26, 2017

Via Email

Ms. Heather Dyer
Water Resources Project Manager
San Bernardino Valley Municipal Water District
380 East Vanderbilt Way
San Bernardino, CA 92408
909-387-9256
heatherd@sbvmwd.com

Re: Request for Qualifications – Environmental/Endangered Species Legal Counsel for San Bernardino Valley Municipal Water District

Dear Ms. Dyer,

We are pleased to provide you with the following response to your Request for Qualifications (RFQ) for Environmental/Endangered Species Legal Counsel in connection with the Upper Santa Ana River Habitat Conservation Plan and related state and federal ESA permitting. We are familiar with the Santa Ana plan and the challenges facing the Valley District, and believe we are uniquely qualified to provide the best possible representation.

Table of Contents

A. Introduction ....................................................................................................................1
B. Experience and Qualifications ......................................................................................2
C. Legal Team .....................................................................................................................4
D. Representative Projects .................................................................................................5
E. Conflicts of Interest ........................................................................................................8
F. Client References ..........................................................................................................8
G. Fees and Costs ................................................................................................................8

APPENDIX A ...............................................................................................................................

A. Introduction

Cox, Castle & Nicholson is a 130-attorney law firm specializing in all forms of real property law. Our Land Use and Natural Resource Law team includes 25 lawyers with unparalleled experience in the field of state and federal natural resources regulation. Our work includes wetlands regulation under Sections 404 and 401 of the Clean Water Act; endangered species protection under the California and Federal Endangered Species Acts (ESA) Section 7 consultations, habitat conservation plans (HCPs), natural community conservation plans (NCCPs), CESA Section 2081
We have extensive HCP and NCCP experience throughout California, including the Natomas Basin, East Contra Costa County, Santa Clara Valley, Placer County, South Sacramento, Butte Regional, and Solano County HCPs, as well as the Desert Renewable Energy Conservation Plan (DRECP) and the Bay-Delta Conservation Plan (BDCP). A few examples of our HCP work are identified below. Our work includes the structuring of various types of HCPs (e.g., project-specific, umbrella HCPs, programmatic HCPs, regional HCP/NCCPs); development and negotiation of “principles of participation;” NCCP planning agreements; HCP implementing agreements; CEQA and NEPA review; HCP negotiation and development, intra-Service Section 7 consultations; the legal defense of HCPs; and HCP implementation in its various forms, including conservation easements, endowment structuring, management plans, management and endowment agreements, and due diligence on mitigation properties. We are also experienced in the use of in-lieu fee programs and mitigation banks.

B. Experience and Qualifications

In addition to our extensive HCP/NCCP experience, we offer a unique combination of talents and experience that is difficult to find in any single law firm. These include:

- **Public Agency Engagements.** Public agency representation is a significant part of our practice. Our key partners have represented many public and quasi-public clients including UC Merced, Alameda County, Sutter County, the County of San Bernardino, the City of San Diego, the Town of Mammoth, the City of Sacramento, the Zone 7 Water Agency, Santa Clara Water District, the City of Santa Clarita, the City of Santa Rosa, and the Pacific Lands and Stewardship Council, among others.

- **Water Agency Experience.** Our key partners work regularly in the field of water law and water transactions, representing both private clients and various water districts. Our public and quasi-public clients in this area have included, among others, the Zone 7 Water Agency, the Santa Clara Valley Water District, the City of Santa Clarita, Imperial Irrigation District, and the Natomas Mutual Water Company.

- **CEQA and NEPA.** We boast one of the State’s premier CEQA and NEPA practices. Our key partner in this area, Mike Zischke, is the author of the definitive CEB treatise on CEQA, and regularly appears in front of the California Supreme Court. We are called upon to handle the most
complicated CEQA and NEPA compliance cases and litigation in the State of California. No other law firm offers this same high-level combination of CEQA/NEPA and ESA/HCP experience.

- **Integrated Resource Permitting.** In addition to our HCP practice, we have handled some of the most complex wetlands and endangered species permit matters in the State of California including, for example, UC Merced (90 acres of vernal pools) and Placer Vineyards (100+ acres of seasonal wetlands), two of the largest fill permits ever issued in the State of California. Unlike some law firms specializing in HCPs, we know how to integrate the various aspects of ESA/CESA, 404 permitting, 401 certifications and 1603 permits, all in the context of habitat conservation plans and for the benefit of the permittees.

- **Cutting-Edge Knowledge.** We are on the forefront of developments in California land use, environmental and resource law. In addition to our visible role in CEQA-related developments, we are key players in legislation and other policy efforts related to, for example, CDFW’s efforts to expand its geographic jurisdiction under the Dryland Streams and MESA reports, the recently-proposed SWRCB wetlands permitting program, and other land use and environmental regulatory structures.

- **Mitigation and Conservation Transactional Experience.** We have experience in all aspects of the development, permitting and implementation of mitigation projects, including conservation easements, endowment structuring, management plans, management and endowment agreements, and due diligence on mitigation properties. All of these tools will be critical components in the implementation of the Upper Santa Ana HCP. We are also experienced in the use of in-lieu fee programs and mitigation banks.

In your RFQ, you ask for HCP experience in several specific areas relating to the structuring and management of HCPs. In response to those items, we offer the following:

- **Permittee Liaison Experience.** We have extensive experience working with USFWS and CDFW staff and counsel on behalf of applicant and permittee groups in multiple permit situations. Examples include Natomas Basin HCP (NBHCP), DRECP, Placer County Conservation Plan (PCCP), the City of San Jose (Santa Clara County Conservation Plan), East Contra Costa HCP, and a number of privately-sponsored HCPs for renewable energy developers and homebuilder groups.

- **Coordination of Internal Legal Review.** We are accustomed to working with and managing legal review processes on plans and projects with numerous multiple parties. In addition to the HCPs described above, we
frequently work with multiple permittees (and their counsel) in the preparation of CEQA and NEPA documents covering all types of land and conservation plans. By way of example, we are currently working on one federal permitting effort involving 22 different landowners. We also represent a number of trade associations and associations of government (e.g., CalWEA, SANDAG) involving large numbers of lawyers on complicated legal matters.

- **Advice on Permit Structure and Governance.** We were involved in the seminal federal case on HCP structuring of multiple-party HCPs, which arose out of litigation challenging the approval of the NBHCP. Since that time, we have advised many permittee groups on HCP structuring and compliance, including CalWEA (DRECP), Placer County developers operating under the PCCP, the City of San Jose (Santa Clara HCP), and various parties to the originally-proposed HCP for the Fort Ord Reuse Area. We are familiar with the controlling USFWS guidance on multiple-permittee HCPs. I would note also that our work for the Pacific Forest Watershed Lands Stewardship Council involved many structural and governance issues in addition to the substantive questions arising in that context.

- **HCP MOUs, MOAs and JPAs.** We have been involved in the negotiation of many of these instruments in the HCP efforts described above and those listed in Section D below.

C. **Legal Team**

If we are selected for the Upper Santa Ana HCP, our partners Clark Morrison and Mike Zischke will be the key partners to serve you. Clark will serve as the primary point of contact on HCP and other ESA and resource permitting matters, and Mike will manage the CEQA and NEPA review. Their complete professional biographies are included in Appendix A.

Clark Morrison was recognized recently by Best Lawyers as “Natural Resource Lawyer of the Year” in 2016 for the San Francisco Bay Area. Mr. Morrison is former chair of the firm’s Land Use and Natural Resource Practice Group and has served as lecturer in residence at UC Berkeley Law School (Boalt Hall). His clients include both private developers and public agencies, including water districts, universities, water districts, airports, cities, and counties. Mr. Morrison is one of California’s most experienced attorneys in wetlands and endangered species matters and has worked extensively with the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the California Department of Fish and Game, U.S. EPA, and California’s Regional Water Quality Control Boards. He has extensive experience in the development and implementation of habitat conservation plans around the State of California. Mr. Morrison is also the firm’s primary expert on water rights and related issues. His matters include water rights permitting, water transfers, conjunctive use arrangements, wastewater treatment and reuse, urban water management planning, water supply assessments/demand evaluations under SB 610
and SB 221, infrastructure development and finance, and all other matters associated with the development, use, management, and transfer of water resources.

**Michael Zischke** has practiced land use and environmental law for 34 years, and is recognized for his extensive knowledge in environmental impact reviews, including compliance and litigation under both NEPA and CEQA. He co-authored the two-volume treatise *Practice Under the California Environmental Quality Act*, the CEQA treatise most often cited by California courts. The treatise was first published in 1993 and has been updated every calendar year. It is now in its second edition. He is recognized in numerous publications as one of the leading environmental and land use lawyers in California, and he has been named as one of the top 100 Northern California lawyers for the last eight years. He has represented clients in land use and environmental cases at all levels of the California courts and in federal court. He has defended agency plans and project approvals against challenges under NEPA, CEQA, endangered species statutes, the Planning and Zoning Law, and the initiative and referendum provisions of the Elections Code.

**D. Representative Projects**

The following is a list of specific HCP and other engagements on conservation plans and projects managed specifically by Clark Morrison. We have not undertaken to identify here the exhaustive list of CEQA and NEPA engagements managed by Mike Zischke. Please review Appendix A for further information on Mr. Zischke.

**Desert Renewable Energy Conservation Plan (DRECP)**
We represented the California Wind Energy Association in negotiations surrounding the development of the DRECP, a multi-species habitat conservation plan intended to cover more than millions of acres of California desert. We served both as counsel to CalWEA and as member of the NCCP stakeholder committee. We negotiated terms of participation to address wind-specific needs, including BGEPA and MBTA permitting, fully-protected species, recovery issues related to the California condor, take avoidance measures relative to avian species, and identification of high priority wind resource areas.

**East Contra Costa County Habitat Conservation Plan**
We represented the Contra Costa Council as principle business stakeholder in the development of an HCP and NCCP covering most of Eastern Contra Costa County. In this capacity, we managed all landowner stakeholders, including members of Council, BIA or the Bay Area, Citizens Land Alliance and other landowner permittees; served as primary negotiator with wildlife agencies and environmental groups on protections for local development projects under the HCP; and negotiated terms of participation, implementing agreements, HCP structural issues (including “no surprises” assurances, fee structures, wetlands permitting), in-lieu fee arrangements, and other structural documents.
**Natomas Basin Habitat Conservation Plan (NBHCP)**

NBHCP was the first large-scale “modern era” conservation plan developed in Northern California. Covering more than 60,000 acres, NBHCP serves as the model for current conservation planning, particularly through its innovative “get-ahead-stay-ahead” provisions, strategies to address judicial rulings on assureds funding, and court-tested “no surprises” assurances. In this effort, we represented the City of Sacramento and Sutter County in the initial structuring of the HCP, negotiations with environmental and business stakeholders, HCP development and environmental review, and the successful defense of state and federal court challenges brought by environmental groups under CEQA, the California Endangered Species Act, NEPA, and the federal Endangered Species Act.

**Placer County Conservation Plan**

We are advising the major Placer County landowners in the development of an HCP/NCCP covering all of southwest Placer County. Our clients include three of Placer County’s development projects and more than 25 landowners. On behalf of these clients, we have been heavily involved in HCP structuring. We have, among other things, negotiated landowners terms of participation; initiated development of a comprehensive in-lieu fee program for vernal pool fills in the region; assisted in the development of a County Aquatic Resource Program for Corps of Engineers permitting under the HCP; worked with CDFW on a programmatic LSAA compliance program in southwest Placer County; and assisted with other joint county/landowner efforts to develop and implement the HCP/NCCP.

**Regional Conservation Investment Strategies**

We represented the California Building Industry Association in 2016 legislative negotiations resulting in the establishment of Regional Conservation Investment Strategies (RCIS). RCIS is a new state-level permitting mechanism intended to provide a more streamlined alternative to Natural Communities Conservation Plans. The first RCIS pilot projects are now underway in the Bay Area and other regions.

**Santa Rosa Conservation Strategy**

We represented the City of Santa Rosa in responding to the regional conservation strategy under development for the Santa Rosa Plain to address impacts on vernal pool species and California tiger salamander. We are now developing a strategy for the use of municipal wastewater properties and responding to proposed critical habitat designation.

**Tahoe Regional Plan Update**

We represented the Tahoe Regional Planning Agency in the environmental review and permitting of its bi-state Tahoe Regional Plan Update, a land use and natural resource plan that covers the entire Tahoe Basin. We managed preparation of EIR/EIS and assisted in defense of litigation regarding same.

**Pacific Forest and Watershed Lands Stewardship Council**

We represented the Stewardship Council in the development of a plan for the disposition, to conservation organizations and public agencies for conservation purposes, of over 800,000 acres
of watershed lands owned by PG&E. This series of transactions represents the largest conservation deal in California history.

**Shasta River Safe Harbor Agreement for Steelhead and Salmon**
We are advising The Nature Conservancy (TNC) on the establishment of a large-scale safe harbor program for anadromous fish in the Shasta River watershed, including negotiations with ranchers, state and federal wildlife agencies, and other environmental organizations. We also assisted TNC in developing strategy for and writing comments on DWR regulations to implement SGMA.

**UC Merced Permitting and Merced County Grasslands Project**
We represented the University of California in the expenditure of WCB funds for the conservation of approximately 30,000 acres of rangeland in Eastern Merced County. In this capacity, we led negotiations with state and federal regulatory agencies, concerned environmental groups, and participating ranchers; negotiated template conservation easement followed for all transactions; and assisted in development of management plans and financial structure for conservation transactions.

**Westervelt Environmental and Other Conservation Banking Enterprises**
We serve as principal permitting and real estate counsel to numerous mitigation and conservation banks, including Northern California’s largest mitigation and conservation banking enterprise, Westervelt Environmental. Other bank clients include Muzzy Ranch mitigation bank, Noonan Ranch mitigation bank, and Gallo-Merced mitigation bank. We negotiate conservation easements, bank enabling instruments, and other documents for land conservation efforts. We assist in negotiations with agency personnel and easement holders, as well as CEQA/NEPA compliance.

**Other Regional Habitat Conservation Plans**
We have been heavily involved in almost all significant habitat conservation planning efforts in Northern California, the Central Valley, and California’s desert regions. In addition to the matters described above, we have participated in the development of the following HCPs or NCCPs:

- San Diego County MSCP
- Santa Clara County HCP
- South Sacramento HCP
- Bay Delta Conservation Plan
- Solano County HCP
- Butte Regional Conservation Plan
- East Alameda County Conservation Strategy
E. Conflicts of Interest

We have no conflicts of interest relative to the state and federal resource agencies. We have completed a conflicts check on the permittees identified in your RFQ, and have confirmed that none of those agencies are clients of the firm. Please note, however, that we are currently competing for the following engagements: (i) representation of Metropolitan Water District in connection with WaterFix (which work would appear to be unrelated to the Upper Santa Ana HCP); and (ii) representation of San Bernardino County and the San Bernardino County Flood Control District in connection with certain environmental and natural resource permitting matters (which we do not believe involve the Upper Santa Ana HCP). Please note also that, from time to time, we represent residential, commercial or energy developers in land use matters in San Bernardino County, including a current representation of NRG in connection with the “Coolwater” renewable energy project.

F. Client References

Nancy Rader
Executive Director
California Wind Energy Association
Phone: (510) 845-5077
nrader@calwea.org

David Zippin
ICF
Phone: (415) 677-7179
David.Zippin@icfi.com

Jill Duerig
General Manager
Zone 7 Water Agency
Phone: (925) 454-5016
jduerig@zone7water.com

Bob Shattuck
Shattuck Planning and Management
Phone: (916) 773-5025
bob@shattuckplanning.com

G. Fees and Costs

The Firm will offer billing rates at a discount of approximately fifteen percent (15%) off our standard hourly rates. Under this arrangement, Clark Morrison and Mike Zischke would bill at the rate of $685 per hour during 2017. Associates would be billed at standard hourly rates, ranging from $400 to $550 per hour.
APPENDIX A

QUALIFICATIONS KEY PERSONNEL
Clark Morrison
PARTNER

Practice Areas: Land Use & Natural Resources, Real Estate

50 California Street, Suite 3200, San Francisco, CA, 94111

phone 415.262.5113
fax 415.262.5199
e-mail cmorrison@coxcastle.com

OVERVIEW

Clark Morrison has 30 years of experience in the permitting and development of large and complex development projects. His clients include residential and commercial developers, renewable energy developers, public agencies (universities, water districts, airports, cities, and counties), mining companies, and wineries and other agricultural concerns. Clark's areas of experience include all State and Federal laws affecting the development of real property. He is recognized nationally for his concentration in federal endangered species, wetlands, water law, public lands, and other natural resource laws, and works on the largest habitat conservation planning efforts in the western United States.

Clark speaks and writes regularly on land use and natural resource matters, and has served as adjunct lecturer on these subjects at the U.C. Berkeley School of Law. In 2017, he was named “Natural Resource Lawyer of the Year (San Francisco)” by the nationally-respected publication, Best Lawyers, and is currently writing a definitive treatise on wetlands and endangered species regulation in California.

Land Use And Development

Clark's statewide land use practice is focused on the entitlement, defense, and development of mixed-use master-planned communities. He advises many of the largest developments in California, including several projects with proposed build-outs of between 10,000 and 25,000 dwelling units. He was a pioneer in the evolution of California’s laws requiring evaluation of water supply resources in connection with new development. Clark is skilled in all aspects of land development, from the preparation of specific plans and environmental impact reports and the negotiation of development agreements, to the defense and settlement of complicated multi-party CEQA lawsuits, and ultimately to the implementation of fully permitted projects through the finance, mapping, and construction processes.
Wetlands And Endangered Species

Clark is one of the nation’s leading attorneys in wetlands and endangered species regulation. He advises a broad spectrum of clients in this area, including land developers; alternative energy companies; mining and agricultural interests; and public agencies such as water districts, cities, and counties; and mining and agricultural interests. Clark helps his clients negotiate the approval processes of the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the California Department of Fish and Game, U.S. Environmental Protection Agency and California’s Regional Water Quality Control Boards. His experience includes permitting and litigation under Sections 401 and 404 of the Clean Water Act, Sections 7 and 10 of the Endangered Species Act, the Migratory Bird Treaty Act, the Marine Mammal Protection Act, and Sections 2081 and 1602 of the California Fish and Game Code. He has participated in the development of numerous large-scale habitat conservation plans, natural community conservation plans, and mitigation banks. He is presently handling some of California’s most complex wetlands and endangered species matters. As a result of this work, Clark is a recognized authority on the National Environmental Policy Act (NEPA), having managed the preparation of numerous environmental impact statements and other NEPA documents.

California Water

Clark is the firm’s primary resource on water rights and related issues. He regularly advises water districts, cities, counties, other public agencies, developers, industrial concerns, and agricultural interests in all aspects of water law. His matters include water rights permitting, water transfers, conjunctive use arrangements, wastewater treatment and reuse, urban water management planning, water supply/demand evaluations under SB 610 and SB 221, infrastructure development and finance, and all other matters associated with the development, use, management, and transfer of water resources. He is also experienced in handling the myriad state and federal regulatory structures affecting the use of water, including the state and federal Endangered Species Acts, Magnussen-Stevens, the Clean Water Act, the Porter-Cologne Act, and other laws.

PUBLICATIONS & SPEAKING ENGAGEMENTS

Recent Publications

Supreme Court Permits Legal Challenges to Army Corps Jurisdictional Determinations, 6/1/2016

Desert Renewable Energy Plan Released for Public Comment, 9/24/2014

The Good Corps Giveth And Taketh Away: Federal And Government Floats A New Definition Of Wetlands And Other Waters, 3/28/2014

The Army Corps Of Engineers Issues New Procedures For Determining Wetland Fill Permit Mitigation Ratios, CCN Client Alert, 3/1/2012


A Breath Of Fresh Air - Federal Court Rejects Lawsuit Against Wetlands Fill Permit, CCN Client Alert, 6/3/2010

Water Supply Assessments In California: New Court Decision Explores Reach Of SB 610, CCN Client Alert, 6/2/2010

State And Federal Wildlife Agencies Struggle Over California's Listing Of California Tiger Salamander, CCN Client Alert, 5/6/2010


Incidental Take Authorized For Projects Benefiting Species And Their Habitat, CCN Client Alert, 10/14/2009

Court Expands Corps' Jurisdiction Over Some Seaside Activity, CCN Client Alert, 10/13/2009

The State Water Board Adopts Onerous New Rules For Storm Water Discharges From Construction Sites, CCN Client Alert, 9/8/2009


UC Merced Receives Wetlands Permit For Campus And University Community, CCN Client Alert, 5/14/2009


Ninth Circuit Provides Guidance On Triggers For Environmental Impact Statements, CCN Client Alert, 4/30/2009
Court Of Appeal Issues Decision In Sunrise Douglas Litigation, CCN Client Alert, 3/26/2009

Court Highlights Risk Of Violating CEQA With Water Supply Contracts, CCN Client Alert, 2/2/2009

The Services Issue Final Rule Amending Section 7 Consultation Regulations, CCN Client Alert, 12/12/2008

EPA And Army Corps Of Engineers Issue Revised Wetlands Guidance, CCN Client Alert, 12/4/2008

California Supreme Court Upholds Bay-Delta Environmental Impact Report, Including Alternatives Analysis And Programmatic Level Of Impact Review, CCN Client Alert, 6/10/2008

Recent Speaking Engagements


"Conservation Planning and the Law: Key Legal Issues Affecting Development and Implementation of HCP/NCCPs," Habitat Conservation Planning From Tahoe To The Bay Workshop, 11/18/2015

3rd Annual Endangered Species Act Conference, 9/24/2015

California Land Use Law & Planning Update, 1/20/2015


CBIA Fall Governance Meeting, 10/13/2014

"California Water 2014: The Difficult Task of Prioritizing Competing Interests During the Drought and Beyond," California Water Law And Policy Conference, 6/19/2014

California Land Use Law & Policy Conference, 1/9/2014
CalWEA 10th Anniversary & Annual Meeting, 9/29/2010

CLE Land Use Law & Policy Conference, 9/23/2010

Water Supply Impacts, 9/21/2009

Keeping Real Estate Investment From Turning To Dust: The Interaction Of Water Supply Planning And Real Property Development, 5/15/2009

Williamson Act Contract Options And Solutions, 4/17/2009

State Climate Change Initiatives, 3/19/2009

The New Mitigation Rule, 2/26/2009

New Developments, 12/11/2008

4th Annual CEQA Conference, 8/14/2008

AWARDS & AFFILIATIONS

Awards & Recognition

- Best Lawyers, Natural Resources Lawyer of the Year in San Francisco, 2017
- Northern California Super Lawyers, 2004-2016

Professional Affiliations

- Bay Area Council, Board of Directors
- California Building Industry Association, Governmental Affairs Committee
- The Nature Conservancy, California Leadership Council
- California Wind Energy Association
- California Association of Land Trusts
- California Construction and Industrial Materials Association (CalCIMA)
- Association of California Water Agencies
- Co-Author, California Land Use treatise (CEB 2013)
- Advisory Board, California Land Use Law and Policy Reporter
- Adjunct Lecturer, UC Berkeley School of Law (Boalt Hall)
BAR AND COURT ADMISSIONS

State Bar of California

EDUCATION

J.D., University of California, Berkeley School of Law (Boalt Hall), 1987

B.A., University of California, Berkeley, 1984
OVERVIEW

Mike has practiced land use and environmental law for 34 years, and is recognized for his extensive knowledge in California Environmental Quality Act (CEQA) litigation and compliance. He co-authored the two-volume treatise Practice Under the California Environmental Quality Act, the CEQA treatise most often cited by California courts, which was first published in 1993, has been updated every calendar year since, and is now in its second edition. He is recognized in numerous publications as one of the leading environmental and land use lawyers in California, and he has been named as one of the top 100 Northern California lawyers for the last ten years.

Unparalleled Experience In Land Use And Environmental Law

Mike represents businesses and public agencies which are navigating California’s permitting and environmental impact review processes with the goal of obtaining approval of development projects and plans, and associated environmental impact reports. He also represents businesses and agencies in defending project approvals against land use and environmental lawsuits challenging those approval decisions.

Supreme Court, Appellate, And Trial Court Litigation Throughout California

Mike has represented clients in land use and environmental cases at all levels of the California courts and throughout the state. He has defended projects approvals against challenges under CEQA, the Planning and Zoning Law, and the initiative and referendum provisions of the Elections Code. He has litigated projects from the North Coast redwood forests to the Sierras to the Colorado River and desert highlands, in addition to downtown and suburban development.

Mike also has substantial experience in negotiating and settling land use disputes, and has reached favorable settlements in numerous matters, including port developments, aggregate and hard rock mines, planned residential communities, and environmental cleanups. He
regularly represents clients in both mediations and in private settlement negotiations.

**Environmental Impact Compliance And Litigation**

Mike has a particular specialty in environmental impact reviews under CEQA and the National Environmental Policy Act (NEPA) and frequently handles cutting edge CEQA cases. He defended and successfully settled the first CEQA lawsuit over greenhouse gas emissions, the California Attorney General’s challenge to the San Bernardino County general plan. He later worked with the County in formulating the greenhouse gas reduction plan and associated environmental impact report pursuant to that settlement.

**State Agency Expertise**

In addition to handling entitlement and environmental impact issues in numerous local jurisdictions, Mike has a broad range of experience in handling matters before specialized state agencies. Mike has handled matters before the State Lands Commission, the California Energy Commission, the California Public Utilities Commission, regional water boards, the California Building Standards Commission, the Coastal Commission, the California Historical Resources Commission, and the California Native American Heritage Commission.

**Land Use Ballot Measures And Litigation**

Mike also advises clients and litigates in the area of land use ballot measures. This includes both the substantive validity of initiatives and referenda, as well as legal issues relating to ballot arguments and signature-gathering. Mike co-authored the Solano Press 1990 text, *Land Use Initiatives and Referenda in California*.

**REPRESENTATIVE MATTERS**

University Research Campus. For a national research campus, represented university in formulating and defending environmental impact report for 20-year long range development plan. Legal advice on specific development projects. Prevailed in every CEQA challenge filed over 15-year period.

Alternative Energy Projects. Defended several wind and solar projects in the central valley and desert regions against environmental impact challenges in federal and state court. Assisted project developers with completion of EIR and EIS documents under NEPA and CEQA.

Transmission Lines & Pipelines. Represented proponents of new transmission lines and pipelines in permitting and CEQA review, and in subsequent CEQA litigation successfully defending project approval.

Downtown Master Plans & Projects. Represented public agencies and project applicants in permitting and defending urban master planned projects, including substantial downtown retail and mixed-use projects in Northern and Southern California.
Public Agency CEQA Compliance & Litigation. Represented a variety of cities, counties, and special districts in CEQA compliance and litigation regarding general plans, specific plans, and agency-sponsored projects, including trial and appellate litigation. Projects have included airport and port expansions, rail transit projects, master planned residential projects, and downtown development and redevelopment projects.

Mining Projects. Represented mining clients in valley, foothill, Sierra and North Coast regions in permitting and defending hard rock, terrace and instream mining projects. Successfully settled CEQA litigation challenges, and prevailed in trial and appellate decisions on other projects.

Homebuilders. Represented a variety of homebuilders throughout the state in the permitting and CEQA review for residential development projects. Resolved tribal claims relating to implementation of approved projects. Represent homebuilding organizations in CEQA legislation in Sacramento, and amicus advocacy in appellate courts throughout the state.

In-fill Housing Developments. Advised a number of developers regarding in-fill development, including CEQA review, use of CEQA exemptions, and traffic mitigation and related issues.

Transportation Projects. Represented tribal government in completing the approval, environmental review, and construction of a new interchange to serve tribal lands. Represented local rail authority in preparing EIR for new rail line, and defending EIR against legal challenges.

Solid Waste. Represented a variety of landfills and solid waste facilities in local and state permitting for expansions, additional waste streams, and proposed new landfills.

PUBLICATIONS & SPEAKING ENGAGEMENTS

Recent Publications


*The California Supreme Court’s Newhall Ranch CEQA Decision*, 11/30/2015

*APA California Conference*, 10/6/2015

*APA California Conference*, 10/5/2015

*CEB Webinar - “Update on Recent and Pending California Supreme Court Land Use Cases”*, 6/25/2015
Law Seminar International - Land Use Planning In California, 6/24/2015

2015 California Land Use Law & Policy Conference, 3/9/2015

The Decision in Berkeley Hillside: The California Supreme Court Clarifies the Rules for Using Categorical Exemptions Under CEQA, 3/2/2015

California Land Use Law & Planning Update, 1/20/2015

County Counsels' Association - Fall 2014 Land Use Conference, 12/5/2014

CLE International 10th Annual CEQA Conference, 12/4/2014

Desert Renewable Energy Plan Released for Public Comment, 9/24/2014

The Legislature Moves to Expand the California Environmental Quality Act with New Requirements to Evaluate Tribal Cultural Resources, 9/8/2014

California Supreme Court Decides CEQA Environmental Review Not Required For Council or Board Adoption of Voter-Sponsored Ballot Measures, 8/7/2014

Privileges and Waivers and Records, Oh My!, Public Law Journal, Volume 37, Number 2, 4/10/2014

CLE Environmental Law Update, 1/31/2014

California Land Use Law & Policy Conference, 1/9/2014

The Impact of Koontz on Exactions and Environmental Mitigation in California, Public Law Journal, Volume 36, Number 4, 10/23/2013

"In With A Roar, Out with a Meow" - The California Legislature Passes A Few Minor CEQA Changes As The 2013 Session Closes, CCN Client Alert, 9/25/2013

Supreme Court Sets Standards For Using Future Environmental Baselines In Environmental Impact Reports, CCN Client Alert, 8/9/2013

The United States Supreme Court Holds That The Denial Of A Land Use Permit Can Be A Violation Of Constitutional Law When The Denial Is Based On An Invalid Demand For Money, CCN Client Alert, 6/25/2013
Court Upholds Exemption For Residential Projects That Are Consistent With Approved Specific Plans, CCN Client Alert, 4/11/2013

Viewpoint: CEQA Must Be Modernized, The Recorder, 1/4/2013

5th Annual CLE CEQA Conference, 12/13/2012

Court Of Appeal Creates CEQA Uncertainty, The Recorder, 11/20/2012

New Court Decision Creates Uncertainty Over How CEQA Applies To Council Actions On Voter-Circulated Initiative Measures, CCN Client Alert, 11/9/2012

Court Upholds EIR Against Challenges To Fire Services Analysis And Adaptive Mitigation Program, CCN Client Alert, 7/10/2012

California Supreme Court Confirms That Exhaustion Of Administrative Remedies Required Before Challenging CEQA Exemption, CCN Client Alert, 6/14/2012

Second District Court Of Appeal Affirms Agency Discretion To Determine The Baseline For Environmental Impact Review Under CEQA, CCN Client Alert, 6/6/2012

California Environmental Quality Act (CEQA): New Legislative And Regulatory Developments, And Practical Guidance Tips For Navigating The Changes, 4/30/2012

Court Rules CEQA Review Required For New Bay Area Air District Rules, CCN Client Alert, 1/13/2012

Climate Plan Enjoined? Trial Court Issues Proposed Decision Regarding Implementation Of AB 32 Scoping Plan, CCN Client Alert, 2/1/2011

CEQA Update, 1/21/2011

Ninth Circuit Allows Project Applicants To Defend Their Projects Against NEPA Lawsuits, CCN Client Alert, 1/14/2011


Court Of Appeal Confirms That The Scope Of Subsequent CEQA Review Is Limited By The Scope Of The Agency's Subsequent Approval, CCN Client Alert, 10/25/2010
CEQA Case Law - Latest Developments, 9/16/2010

CEQA Case Law - Latest Developments, 8/19/2010

Water Supply Assessments In California: New Court Decision Explores Reach Of SB 610, CCN Client Alert, 6/2/2010

California's First Published Court Decision On CEQA And Greenhouse Gas Emissions Sets Aside "Cursorily Described" Mitigation Measures, CCN Client Alert, 4/27/2010

California Supreme Court Rejects Attempts To Undermine CEQA’s Statute of Limitations, CCN Client Alert, 4/2/2010

California Supreme Court Rejects The Use Of Permit Limits As The Environmental Baseline For New Projects, CCN Client Alert, 4/2/2010

California Supreme Court Upholds 30-day Statute Of Limitations For CEQA Lawsuits Challenging Subsequent Approval Decisions By Lead Agencies, CCN Client Alert, 2/12/2010

Court Rules City Should Have Prepared EIR Before Enacting A Ban On Plastic Bags At Retail Stores, CCN Client Alert, 1/1/2010


Recent Federal Property Rights Decisions Confirm Viability Of Takings Challenges, CCN Client Alert, 10/8/2009


Judicial And Legislative Update, 9/21/2009


Bay Area Air Quality Management District Proposes Sweeping New CEQA Air Quality Guidelines, CCN Client Alert, 9/18/2009


Spring Quarter 2009 CEQA Case Law Update, Quarterly CEQA Case Law Update, 7/2/2009

CEQA And Climate Change - Where Are We Today And Where Are We Going?, California Real Property Journal, 5/31/2009

Office Of Planning And Research Transmits Draft CEQA Guidelines On Greenhouse Gas Emissions To The Resources Agency For Certification And Adoption, CCN Client Alert, 4/14/2009

Winter Quarter 2009 CEQA Case Law Update, CCN Quarterly CEQA Case Law Update, 4/6/2009

Court Of Appeal Issues Decision In Sunrise Douglas Litigation, CCN Client Alert, 3/26/2009

Court Highlights Risk Of Violating CEQA With Water Supply Contracts, CCN Client Alert, 2/2/2009


Court Of Appeal Clarifies Water Supply Analysis Required For New Development Projects, CCN Client Alert, 11/20/2008

The California Supreme Court Sets New Rules For Determining When Preliminary Agreements For Development Projects Require Environmental Impact Review, CCN Client Alert, 10/31/2008


4th Annual CEQA Conference, 8/14/2008


California Supreme Court Bay-Delta EIR Decision Upholds Limiting Project Alternatives Based On Project Objectives, Upholds General Water Supply Analysis, And Upholds Overall Programmatic Level Of Impact Review, California Land Use Law & Policy Reporter, 7/1/2008
Office Of Planning And Research Issues Its Technical Advisory On CEQA And Climate Change, CCN Client Alert, 6/20/2008

Green Series: Land Use And Climate Change, 6/12/2008

California Supreme Court Upholds Bay-Delta Environmental Impact Report, Including Alternatives Analysis And Programmatic Level Of Impact Review, CCN Client Alert, 6/10/2008

CEQA: The Essentials, 5/3/2008

California Supreme Court Decisions

Tomlinson v. County of Alameda, 54 Cal. 4th 281 (2012)

Communities for a Better Environment v. South Coast Air Quality Management District, 48 Cal. 4th 310 (2010)

Friends of Sierra Madre v. City of Sierra Madre, 25 Cal. 4th 165 (2001)

Court of Appeal Decisions


Recent Speaking Engagements
"Recent and Pending California Supreme Court Land Use Cases," Law Seminars International - Land Use Planning In California, 4/27/2016

"Tribal Cultural Resources and CEQA: Time to Get Ready for AB 52," APA California Conference, 10/5/2015

CEB Webinar - “Update on Recent and Pending California Supreme Court Land Use Cases”, 6/25/2015

Law Seminar International - Land Use Planning In California, 6/24/2015

2015 California Land Use Law & Policy Conference, 3/9/2015

California Land Use Law & Planning Update, 1/20/2015

County Counsels’ Association - Fall 2014 Land Use Conference, 12/5/2014

CLE International 10th Annual CEQA Conference, 12/4/2014

CLE Environmental Law Update, 1/31/2014

California Land Use Law & Policy Conference, 1/9/2014

5th Annual CLE CEQA Conference, 12/13/2012

California Environmental Quality Act (CEQA): New Legislative And Regulatory Developments, And Practical Guidance Tips For Navigating The Changes, 4/30/2012

CEQA Update, 1/21/2011


CEQA Case Law - Latest Developments, 9/16/2010

CEQA Case Law - Latest Developments, 8/19/2010


Judicial And Legislative Update, 9/21/2009

4th Annual CEQA Conference, 8/14/2008

Green Series: Land Use And Climate Change, 6/12/2008

CEQA: The Essentials, 5/3/2008

CEQA Legislation & CEQA Case Law Update, CBIA’s 45th Select Conference On Industry Litigation, 11/16/2013

CBIA's 44th Select Conference On Industry Litigation, 4/21/2013

The California Environmental Quality Act: What’s Happening In The Courts And The Legislature, Lambda Alpha Los Angeles Chapter, 2/27/2013

CEQA Update, UCLA Extension, 27th Annual Land Use Law & Planning Conference, 1/10/2013


CBIA’s 43rd Select Conference On Industry Litigation, 11/17/2012

Conference Co-Chair And CEQA Update, Law Seminars International CEQA Conference, 4/30/2012


The Future Of CEQA At UC Davis Law School CEQA At 40: A Look Back, And Ahead, November 2011

AWARDS & AFFILIATIONS

Awards & Recognition

- Who’s Who Legal: Real Estate 2016
- Legal 500, Land Use/Zoning, 2015
- Best Lawyers, Environmental Law, Land Use and Zoning Law; Litigation-Environmental, Litigation-Land Use & Zoning; & Real Estate Law, 2017; ranked in various categories since 2008
- Chambers USA, one of California’s leading attorneys in both environmental law and real estate/land use, 2003-2015
- San Francisco Environmental Litigator of the Year, 2012
- Northern California Super Lawyers, 2004-2016
Top 100 Northern California Super Lawyers, 2007-2017

Professional Affiliations
- Real Property Advisory Committee, California Continuing Education of the Bar
- Center for Law, Energy & Environment, Berkeley Law, Founding Member of Advisory Board
- Lambda Alpha (honorary land economics society)
- American College of Real Estate Lawyers
- California Building Industry Association, Select Conference on Industry Litigation
- San Francisco Lawyers Club, Board of Directors, 2001-2003
- Environmental Law Section of the State Bar of California, Advisor, 1999-2004; Executive Committee, 1996-1999
- Ecology Law Research Institute, Founding Member & Secretary, 1983-1999
- *Ecology Law Quarterly*, Articles Editor, 1982

Community Affiliations
- Boys & Girls Clubs of Oakland, Board of Advisors, 1997-present; Director, 1986-1996;
- Child Care Law Center, Board of Directors, 1999-2008

BAR AND COURT ADMISSIONS

State Bar of California

U.S. Court of Appeals for the Ninth Circuit

U.S. District Court for the Central, Northern, and Southern Districts of California

EDUCATION

J.D., University of California, Berkeley School of Law (Boalt Hall), 1982

B.A., Dartmouth College, 1977, *magna cum laude*
DATE: October 10, 2017

TO: Board of Directors' Workshop

FROM: Heather Dyer, Water Resources Project Manager

SUBJECT: Consider Cost Sharing Agreement for Santa Ana River Integrated Model

Summary

Staff is requesting the Board consider a cost sharing letter agreement with Western Municipal Water District (WMWD), Orange County Water District (OCWD), and Inland Empire Utilities Agency (IEUA), for development of a Santa Ana River Integrated Model which is hereafter referred to as the Upper Santa Ana River Integrated Model or Integrated SAR Model. On April 18, 2017, the Board approved funding this project and for Valley District to serve as lead agency for administration of the contracts. The total proposed cost for the project is $1,306,495 which is being shared equally between the four funding partners for a total cost to Valley District of approximately $326,624. Staff is recommending the Board direct staff to place an item on the next Board meeting agenda that considers authorizing the execution of the cost sharing letter agreement with WMWD, OCWD, and IEUA for the Santa Ana River Integrated Model Project.

Background

This project was originally envisioned as a response to concerns expressed by multiple agencies and public stakeholders regarding the potential loss or degradation of habitat in the Santa Ana River resulting from decreased surface flows and/or groundwater levels. A desire was expressed to develop a model that could help determine what factors may be contributing to the decline in flows in the Santa Ana River. In addition, this model will also be
useful to the Upper Santa Ana River Habitat Conservation Plan (HCP). Future projects, or “Covered Activities”, included in the HCP include the Enhanced Recharge in Santa Ana River Basins project, the Riverside North Aquifer Storage and Recovery Project, and several recycled water projects along the Santa Ana River. The Integrated SAR Model will also be used to supplement existing analysis of the cumulative projects, providing a solid foundation for the biological effects analysis of HCP Covered Activities as well as for proposed projects that may have cumulative long-term effects on the River. The model could also be used to analyze any future projects not currently in the HCP.

Geoscience was selected by a review committee as the primary firm to develop the integrated model and Balleau Groundwater and the U.S. Geological Survey were contracted to provide independent third party review of the project. The HCP consulting team, ICF International, is also participating in the development process. The scope of work includes the following tasks and deliverables and to date the individual basin models have been updated and are in the process of integration.

<table>
<thead>
<tr>
<th>Task Summary</th>
<th>Outcome/Deliverable</th>
<th>Milestones</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Model Integration</td>
<td>Model Integration Technical Memorandum (TM)</td>
<td>Peer Review Draft TM</td>
</tr>
<tr>
<td>3. Develop and Run Predictive Scenarios</td>
<td>Predictive Scenarios Results TM</td>
<td>Peer Review Draft TM</td>
</tr>
<tr>
<td>5. Project Management</td>
<td>Agendas, Minutes, etc.</td>
<td>Modeling and Project Workshops</td>
</tr>
<tr>
<td>6. Comprehensive Database</td>
<td>Geohydrologic Database</td>
<td></td>
</tr>
</tbody>
</table>
On February 7, 2017, the Valley District submitted a proposal to the California Department of Fish and Wildlife (CDFW), on behalf of the Funding Agencies, requesting approximately $1,000,000 of Section 6 Planning Grant funds from the USFWS to help fund this project. The grant requires a 31% local matching funds. Table 1 below shows the cost share breakdown with and without the Funding Agencies being awarded the grant.

<table>
<thead>
<tr>
<th>Consultants</th>
<th>Actual Costs</th>
<th>Without Grant Funding (25% each)</th>
<th>With Grant Funding (25% each)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Geoscience</td>
<td>$980,011</td>
<td>$245,003</td>
<td>$75,951</td>
</tr>
<tr>
<td>USGS</td>
<td>$73,200</td>
<td>$18,300</td>
<td>$5,673</td>
</tr>
<tr>
<td>BGW</td>
<td>$209,406</td>
<td>$52,352</td>
<td>$16,229</td>
</tr>
<tr>
<td>ICF</td>
<td>$43,878</td>
<td>$10,970</td>
<td>$3,401</td>
</tr>
<tr>
<td>TOTALS</td>
<td>$1,306,495</td>
<td>$326,624</td>
<td>$101,253</td>
</tr>
</tbody>
</table>

If the project is successful in obtaining the Section 6 grant the total cost to Valley District would be $101,253. Notification on grant award status is expected at any time.

The Cost Share Letter Agreement would be effective on the date executed by Valley District as all other partners have approved the agreement. The agreement has been reviewed and approved by Valley District counsel, Varner Brandt.

**Fiscal Impact**
There is no fiscal impact from this item.

**Staff Recommendation**
Staff recommends the Board direct staff to place an item on the next Board meeting agenda that considers approving execution of the cost share letter agreement for the Santa Ana River Integrated Model project.

**Attachment**
Cost Sharing Letter Agreement for an Upper Santa Ana River Integrated Model
Re: Cost Sharing Letter Agreement for an Upper Santa Ana River Integrated Model

The Inland Empire Utilities Agency (IEUA), Orange County Water District (OCWD) San Bernardino Valley Municipal Water District (Valley District) and Western Municipal Water District (Western), or Funding Agencies, have agreed to develop an Upper Santa Ana River Integrated Model (Integrated Model). The Funding Agencies have agreed to equally cost-share in the development of the Integrated Model. Other agencies that are interested in this project are Riverside Public Utilities (RPU), the Chino Basin Watermaster (CBWM), the U.S. Geological Survey (USGS), the California Department of Fish and Wildlife (CDFW), and the U.S. Fish and Wildlife Service (USFWS).

This Cost Sharing Letter Agreement ("Agreement") sets forth the understanding between the Funding Agencies regarding the sharing of costs for the Integrated Model. The Funding Agencies hereby agree to equally share the cost of the Integrated Model according to the provisions set forth below.

1. **Scope of the Project - Professional Services for Model Development and Review**

   (a) **Geoscience Support Services (Geoscience)**
   
   Geoscience will serve as the lead consultant tasked with development of the Integrated Model, which will integrate the existing models in the upper SAR watershed. The final product will be a calibrated surface water and groundwater flow
model that can be used as a regional management tool. The total fee for Geoscience shall not exceed $980,011.

(b) United States Geological Survey (USGS)
The USGS will provide technical input on the development of the Integrated Model. The technical support will include response to inquiries by consultant(s) and other interested parties, attendance of model development meetings, and review of the technical memoranda(s) and final report. The total fee for USGS shall not exceed $73,200.

(c) Balleau Groundwater (BGW)
BGW will provide third-party review for key phases of model development and for the final Integrated Model. Third-party review increases transparency and stakeholder confidence in the final product. The total fee for BGW shall not exceed $209,406.

(d) ICF Jones & Stokes (ICF)
ICF will integrate the results of the new modeling into the Upper Santa Ana River Habitat Conservation Plan (HCP). ICF will ensure that the HCP Covered Activities\(^1\) are accurately accounted for and are consistent with ICF’s knowledge of how the Covered Activities may alter hydrology. ICF will also incorporate the new modeling work into the HCP documents as the best available data. The total fee for ICF shall not exceed $43,878.

2. Cost Sharing

(a) Cost of Project
Valley District has entered into agreements with the entities listed in the Scope of Project section above for the amounts indicated.

(b) Cost Sharing Between the Undersigned Parties
The Funding Agencies shall each be responsible for reimbursement to Valley District in an amount not to exceed twenty-five percent (25%) of the agreement amounts which shall not exceed $326,623.75 (Table 1).

(i) The Funding Agencies shall be responsible for payment of an equal share of the amount due and owing to be billed quarterly. None of the Funding Agencies shall be responsible for payment of any amounts in excess of its share as set forth herein, without the prior written consent of the Funding Agency being requested to pay such additional amount.

(ii) Valley District shall provide a copy of each invoice to each Funding Agency along with the calculation of the share due and owing by each Funding Agency.

---

\(^1\) HCP Covered Activities are the individual projects proposed by each funding agency that will be permitted for incidental take of state and/or federally listed species through the Upper Santa Ana River Habitat Conservation Plan.
Within thirty (30) days of the date of each invoice, each Funding Agency shall submit payment to Valley District for its share as set forth in this Agreement.

(c) Section 6 Grant Proposal
On February 7, 2017, the Valley District submitted a proposal to the California Department of Fish and Wildlife (CDFW), on behalf of the Funding Agencies, requesting $1,425,000 of Section 6 Planning Grant funds from the USFWS to help fund this project. The grant requires a 31% local matching funds. Table 1 below shows the cost share breakdown with and without the Funding Agencies being awarded the grant.

<table>
<thead>
<tr>
<th>Consultants</th>
<th>Section 6 Grant Proposal</th>
<th>Actual Costs</th>
<th>Grant Share (31%)</th>
<th>Local Share (25%) each</th>
<th>Without Grant Funding</th>
<th>With Grant Funding (25%) each</th>
</tr>
</thead>
<tbody>
<tr>
<td>Geoscience</td>
<td>$1,000,000</td>
<td>$1,425,000</td>
<td>$676,208</td>
<td>$303,803</td>
<td>$245,003</td>
<td>$75,951</td>
</tr>
<tr>
<td>USGS</td>
<td>$100,000</td>
<td>$100,000</td>
<td>$50,508</td>
<td>$22,692</td>
<td>$18,300</td>
<td>$5,673</td>
</tr>
<tr>
<td>BGW</td>
<td>$250,000</td>
<td>$209,406</td>
<td>$144,490</td>
<td>$64,916</td>
<td>$52,352</td>
<td>$16,229</td>
</tr>
<tr>
<td>ICF</td>
<td>$75,000</td>
<td>$43,878</td>
<td>$30,276</td>
<td>$13,602</td>
<td>$10,970</td>
<td>$3,401</td>
</tr>
<tr>
<td>TOTALS</td>
<td>$1,425,000</td>
<td>$1,306,495</td>
<td>$901,482</td>
<td>$405,013</td>
<td>$326,624</td>
<td>$101,253</td>
</tr>
</tbody>
</table>

3. Effective Date and Term
This Agreement shall be effective on the date of full execution of this Agreement by all of the Funding Agencies ("Effective Date"). The term of this Agreement shall be from the Effective Date to the date of completion of performance of the Scope.


(a) Indemnification
Each Party ("Indemnitors") hereby agrees to defend, indemnify and hold free and harmless the other Parties ("Indemnitees") from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, arising from or connected with Indemnitors' activities under this Agreement.

(b) Notices
Correspondence to be given to any Party may be sent by first-class mail, addressed and delivered as set forth below in the signature blocks for each Party.

(c) Representation of Authority
Each Party represents to the other that it has the authority to enter into this Agreement and that the individual signing this Agreement on behalf of their respective Parties has the authority to execute this Agreement and to bind their respective Parties to the terms and conditions of this Agreement.

(d) Counterparts
This Agreement may be executed in several counterparts, all or any of which shall be
regarded for all purposes as one original and shall constitute and be but one and the same instrument.

(e) Governing Law
This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(f) Cooperation
The Parties acknowledge that they are entering into an Agreement in which the cooperation of all Parties will be required, including the execution of necessary further documents. The Parties agree to cooperate in good faith with each other and submit timely documents for the benefit of the SAR Integrated Model.

BY SIGNING BELOW, THE PARTIES AGREE TO BE BOUND BY THE PROVISIONS OF THIS AGREEMENT.
ORANGE COUNTY WATER DISTRICT

By: __________________________
  Denis Bilodeau, President

By: __________________________
  Michael Markus, General Manager

Dated: __________

P.O. Box 8300
FOUNTAIN VALLEY, CA 92728-8300

Approved as to Form:

________________________
District General Counsel
INLAND EMPIRE UTILITY AGENCY

By: ________________________________
    Joseph Grindstaff, General Manager

Dated: ______________________________

P.O Box 9020
Chino Hills, CA 91709
WESTERN MUNICIPAL WATER DISTRICT

By: ____________________________
    John V. Rossi, General Manager

Dated: _________________________

14205 Meridian Parkway
Riverside, CA 92518
DATE: October 10, 2017

TO: Board of Directors' Workshop

FROM: Aaron Jones, Assistant Engineer
Bob Tincher, Manager of Water Resources

SUBJECT: Consider Resolution Authorizing Application for a Grant Under the 2017 Sustainable Groundwater Planning Grant Program

In July of this year, Valley District joined the City of Calimesa, the City of Redlands, San Gorgonio Pass Water Agency, South Mesa Water Company, South Mountain Water Company, Western Heights Water Company, the City of Yucaipa and the Yucaipa Valley Water District to form the Yucaipa Basin Groundwater Sustainability Agency (Yucaipa GSA) under the Sustainable Groundwater Management Act (SGMA). The Yucaipa GSA is required to submit a Groundwater Sustainability Plan (GSP) by January 31, 2022.

Staff is proposing to submit a grant application to the 2017 Sustainable Groundwater Planning Grant Program, on behalf of the Yucaipa GSA, for the costs to prepare the GSP. The first step in the grant process is for the Board to adopt a Resolution authorizing the submittal of the grant application. Staff recommends that the attached Resolution be forwarded to the Board of Directors for consideration.

BACKGROUND

The Sustainable Groundwater Management Act (SGMA) went in effect on January 1, 2015. SGMA implementation began with a process to identify the unmanaged basins, or basins not adjudicated, throughout the State of California. For each of these unmanaged basins, a GSA is required to be established and to prepare a GSP. The only principal basin or sub-basin that is not adjudicated within the Valley District service area is the Yucaipa Sub-basin.

Even before the Yucaipa GSA was formed, Valley District was working collaboratively with the water agencies and San Bernardino County to develop a groundwater management plan, now
referred to as a GSP under SGMA, for the Yucaipa Sub-basin. The following work has been completed, or is currently in progress, that will benefit the GSP:

- Determination of the safe yield and basin capacity (2013)
- Calculation of the change in groundwater storage and identification of potential groundwater recharge sites (2014)
- Preliminary field evaluation of recharge potential using exploratory borings (2014)
- Field recharge testing work plan (2017)
- Field recharge testing (planned for Spring 2018)
- Develop a groundwater flow model for the Yucaipa Sub-basin area (USGS, 2015, ongoing)

The due date for applications under the 2017 Sustainable Groundwater Planning Grant Program is November 10, 2017. Valley District is preparing the grant application using the on-call grant services contract approved by the Board.

The maximum amount of grant funding available for each GSA under this program, is one million dollars ($1,000,000) and requires that 50% of the total project cost be paid by the applicant, the Yucaipa GSA. Staff estimates that the total cost to Valley District, and its partners, as follows:

<table>
<thead>
<tr>
<th>Task</th>
<th>Estimated Total Cost</th>
<th>Grant</th>
<th>Partners</th>
<th>Valley District</th>
</tr>
</thead>
<tbody>
<tr>
<td>GSP</td>
<td>$250,000</td>
<td>$125,000</td>
<td>$118,750</td>
<td>$6,250</td>
</tr>
<tr>
<td>USGS Model</td>
<td>$600,000</td>
<td>$300,000</td>
<td>$300,000</td>
<td></td>
</tr>
<tr>
<td>Field Recharge Testing</td>
<td>$300,000</td>
<td>$150,000</td>
<td>$142,500</td>
<td>$7,500</td>
</tr>
<tr>
<td></td>
<td>$1,150,000</td>
<td>$575,000</td>
<td>$261,250</td>
<td>$313,750</td>
</tr>
</tbody>
</table>

For the USGS groundwater flow model task, Valley District is providing all of the funding as we have done for the groundwater models for the San Bernardino Basin and the Rialto-Colton Basin. Taking this into consideration, Valley District's portion of the matching funds is expected to be about $314,000. The remaining balance, or about $261,000, would be reimbursed to Valley District by the other members of the Yucaipa GSA.
**Fiscal Impact**
The cost to develop the grant application of $18,930 is covered by Valley District’s on-call grant services contract which is included in the approved 2017-2018 General Fund budget. The matching fund requirement for the USGS groundwater flow model portion of the grant can be covered by the line item included in the FY 2017-18 General Fund budget for developing a USGS groundwater flow model for the Yucaipa Sub-basin. Valley District’s portion of the matching funds required to develop the GSP is $6,250 and was not included in the FY 2017-18 budget but can be covered by unspent funds in the same budget category, “Consultants”.

**Staff Recommendation**
Direct staff to forward the Resolution Authorizing Application for a Grant Under the 2017 Sustainable Groundwater Planning Grant Program to an upcoming Board of Directors meeting for consideration.

**Attachment**
Draft Resolution Authorizing Application for a Grant Under the 2017 Sustainable Groundwater Planning Grant Program
RESOLUTION No._______

RESOLUTION OF THE BOARD OF DIRECTORS OF SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT AUTHORIZING APPLICATION FOR A GRANT
UNDER THE 2017 SUSTAINABLE GROUNDWATER PLANNING GRANT PROGRAM

WHEREAS, on September 16, 2014, Governor Jerry Brown signed into law Senate Bills 1168 and 1319, and Assembly Bill 1739, collectively known as the Sustainable Groundwater Management Act (SGMA), which amended the Water Code (Part 2.74 of Division 6 of the Water Code, Sections 10720-10737.8) and provides the framework for sustainable groundwater management planning and implementation; and

WHEREAS, SGMA went into effect on January 1, 2015; and

WHEREAS, SGMA requires local public agencies and Groundwater Sustainability Agencies (GSAs) to develop and implement Groundwater Sustainability Plans (GSPs) or alternatives to GSPs for designated high and medium priority groundwater basins and subbasins; and

WHEREAS, the Yucaipa Sub-Basin (Upper Santa Ana Valley Yucaipa 8-002.07) is designated by the California Department of Water Resources (DWR) as medium-priority and is required to be managed by a GSP or coordinated GSPs by January 31, 2022; and

WHEREAS, a Memorandum of Agreement (MOA) to form a GSA for the Yucaipa Sub-Basin was entered into by and among San Bernardino Valley Municipal Water District, San Gorgonio Pass Water Agency, South Mesa Water Company, South Mountain Water Company, Western Heights Water Company, Yucaipa Valley Water District, the City of Calimesa, the City of Redlands, and the City of Yucaipa; and

WHEREAS, the San Bernardino Valley Municipal Water District, and other parties to the MOA are seeking funding to develop a GSP for the Yucaipa Sub-Basin; and

WHEREAS, The Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1) authorized $100 million to be available for competitive grants for projects that develop and implement GSPs and projects in accordance with groundwater planning requirements established under Division 6 (commencing with Section 10000) (Water Code Section 79775); and

WHEREAS, DWR is administering the Sustainable Groundwater Planning Grant Program, using funds authorized by Proposition 1, to encourage sustainable management of groundwater resources that support SGMA; and

WHEREAS, the San Bernardino Valley Municipal Water District has been selected to submit an application to the Sustainable Groundwater Planning Grant Program on behalf of the Yucaipa Sub-Basin.

NOW THEREFORE, be it resolved by the Board of Directors of the San Bernardino Valley Municipal Water District as follows:

1. That application be made to the California Department of Water Resources to obtain a grant under the 2017 Sustainable Groundwater Planning Grant Program pursuant to the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1) (Water Code Section 79700 et seq.), and to enter into an agreement to receive a grant for the Yucaipa Sub-Basin Groundwater Sustainability Plan.

2. The General Manager, or Designee, of the San Bernardino Valley Municipal Water District is hereby authorized and directed to prepare the necessary data, conduct investigations, file such application, and execute a grant agreement with DWR.
PASSED AND ADOPTED by the governing body of the San Bernardino Valley Municipal Water District this October 17, 2017.

___________________________
Susan Longville, President

ATTEST:

___________________________
Steve Copelan, Secretary