

SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

622B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE: March 1, 2011

SUBJECT: Authorization to Purchase Real Property Santa Ana River Mainstem Project - Assessor Parcel No.101-140-005

RECOMMENDED MOTION:

That the Board of Supervisors:

- 1) Approve Resolution No. F2011-05, Authorization to Purchase Real Property, for the purpose of the construction of the Santa Ana Mainstem Project. Said property being Assessor's Parcel No. 101-140-005, located in Corona, California.
2) Authorize the Chairman to execute the agreement.
3) Authorize the Clerk of the Board to certify acceptance of any documents running in favor of the District as part of this transaction.
4) Authorize the General Manager-Chief Engineer or his designee to execute any other related documents and administer all actions necessary to complete this transaction.

(Continued on Page 2) GSW:rlp

WARREN D. WILLIAMS General Manager-Chief Engineer

Table with 2 columns: FINANCIAL DATA and values. Includes Current F.Y. District Cost (\$465,000), Current F.Y. County Cost (N/A), Annual Net District Cost (N/A), In Current Year Budget (Yes), Budget Adjustment (No), For Fiscal Year (2010-2011).

Table with 2 columns: SOURCE OF FUNDS and Positions To Be Deleted Per A-30. Includes Santa Ana Mainstem Project, 540040 25120 947420 - Land, and Requires 4/5 Vote (checked).

C.E.O. RECOMMENDATION:

APPROVE BY: Michael R. Shetler Michael R. Shetler

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL BY: Cynthia M. Gunzel 2-17-11 DATE: 2/17/11

FORM APPROVED COUNTY COUNSEL BY: Cynthia M. Gunzel 2-17-11 DATE: 2/17/11

Dept't Recomm.: [] Consent [] Policy Per Exec. Ofc.: [] Consent [] Policy

Prev. Agn. Ref.: District: 2nd Agenda Number: 11.1

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

SUBJECT: Authorization to Purchase Real Property
Santa Ana Mainstem Project– Assessor's Parcel No. 101-140-005

SUBMITTAL DATE: March 1, 2011

Page 2

BACKGROUND:

In 1938, the Santa Ana River broke free from its banks and flooded thousands of acres. As a result of this catastrophe, the construction of the Prado Dam was initiated. Completed in 1941, the Prado Dam increased protection from devastating floods to property downstream. In 1964, the Santa Ana River Mainstem Project (SARM) was proposed and construction began in 1989.

The SARM Project is designed to provide flood protection for residences and businesses in the Southern California communities of Orange, Riverside and San Bernardino counties. The proposed improvements to the system cover 75 miles, from the headwater of Santa Ana River east of the city of San Bernardino to the mouth of the river at the Pacific Ocean between the cities of Newport Beach and Huntington Beach.

The Reach 9, Phase 2A Embankment Project is one of the portions of the SARM project. This portion of the project is necessary to protect the lives and properties of individuals residing in the Green River Housing Estates, and the 91 Freeway. This project would provide approximately 4,500 feet of bank stabilization.

A Purchase Agreement has been negotiated with the property owner, the County of Riverside, at the appraised value of \$455,000 plus an additional \$10,000 for title and escrow fees.

The Purchase Agreement covers the fee title to Assessor's Parcel No. 101-140-005, Corona, California. The property contains approximately 25.86 acres or 1,126,462 sq. ft. and is unimproved/vacant land, situated in the bottom of the Santa Ana River.

This action is necessary to construct flood control improvements for the Santa Ana River Mainstem Project between Highway 71 and the Green River Golf Course, Corona, California.

FINANCIAL:

Sufficient funds were budgeted and are available in the Zone 2 fund for FY 2010-2011.

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

BOARD OF SUPERVISORS

RESOLUTION NO. F2011-05

AUTHORIZATION TO PURCHASE REAL PROPERTY

BE IT RESOLVED, DETERMINED AND ORDERED by vote of the Board of Supervisors of the Riverside County Flood Control and Water Conservation District in regular session assembled on March 1, 2011, and NOTICE IS HEREBY GIVEN, that this Board authorized the purchase at or after 1:30 p.m. of that certain real property in the County of Riverside, State of California, consisting of Assessor's Parcel Number 101-140-005, in fee, more particularly described on Exhibit "A" attached hereto, for a purchase price of \$455,000, plus an additional \$10,000 for title insurance and escrow fees, from the owner, County of Riverside.

BE IT FURTHER RESOLVED that the General Manager-Chief Engineer or his designee is authorized to execute any other documents and administer all actions necessary to complete the purchase of the land.

GSW:rlp

FORM APPROVED COUNTY COUNSEL
BY: *Synthia M. Gunzel* 2-9-11
SYNTHIA M. GUNZEL DATE

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Exhibit "A"

**Santa Ana River Below Prado Dam
Parcel 2105-9**

All of the real property in Director's Deed granted to the County of Riverside as described in Instrument No. 147126, recorded November 3, 1972 in Official Records of Riverside County, California located in Rancho La Sierra Yorba.

APN: 101-140-005
Project: Santa Ana River Mainstem
Project No: 2-0-00105
RCFC Parcel No. 2105-9

AGREEMENT FOR SALE AND PURCHASE OF REAL PROPERTY

THIS AGREEMENT is entered into this ____ day of _____, _____, by and between the RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT (hereinafter called "DISTRICT" or "BUYER") and COUNTY OF RIVERSIDE, (hereinafter called "SELLER") for acquisition by BUYER from SELLER of certain real property hereinafter set forth.

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. AGREEMENT TO SELL AND PURCHASE. SELLER agrees to sell to BUYER and BUYER agrees to purchase from SELLER, upon the terms and for the consideration set forth in this Agreement, all that certain real property (hereinafter called "SELLER Property") situated in the city of Corona, County of Riverside, State of California, and legally described as follows:

SEE EXHIBIT "A" ATTACHED HERETO
AND BY THIS REFERENCE MADE A PART HEREOF

2. PURCHASE PRICE. The total purchase price to be paid by BUYER, payable in cash through this Agreement, shall be the sum of:

FOUR HUNDRED FIFTY-FIVE THOUSAND DOLLARS
(\$455,000.00)

3. CONVEYANCE OF TITLE. SELLER agrees to convey by Grant Deed to BUYER fee simple interest in the parcels described in said Exhibit "A". The SELLER Property shall be free and clear of all recorded liens, encumbrances, assessments, easements, leases and taxes EXCEPT:

- A. Taxes: Current fiscal year, including personal property tax, if any, and any further assessment thereto under Chapter 3.5 of Revenue and Taxation Code of the State of California.
- B. Quasi-public utility, public alley, public street easements and rights of way of record.
- C. Any items on the Preliminary Title Report ("PTR") not objected to by BUYER as set forth herein within 10 (ten) days after receipt of the PTR.
- D. Taxes: All other taxes owed whether current or delinquent are to be CURRENT.

4. TITLE INSURANCE POLICY. Within twenty (20) days after the signing of this Agreement SELLER will provide a PTR from Lawyers Title Company of California, together with a legible copy of all exceptions to the title shown in the PTR. If either BUYER or SELLER objects to any of the exceptions, they must notify the other of such

objection in writing within 10 (ten) days after receipt of the PTR. If there are no written objections within the 10 (ten) days, the PTR will be deemed approved.

Following the recording of the Grant Deed to BUYER, BUYER shall be provided with a CLTA Standard Coverage Policy of Title Insurance in the amount of \$455,000.00 as issued by Lawyers Title Company of California showing the title to the SELLER Property vested in BUYER, subject only to the exceptions set forth in Paragraph 3 and the printed exceptions and stipulations in said policy. BUYER agrees to pay the premium charged therefor.

5. NECESSARY INSTRUMENTS. SELLER shall execute and provide Grant Deed, conveying the real property described in said Exhibit "A", to the Escrow Holder before closing. BUYER and SELLER to provide any additional Instruments as may be necessary to complete this transaction. BUYER and SELLER hereby agree to cooperate with the execution of all documents necessary to complete the transfer of the SELLER Property, including, but not limited to, any supplemental instructions required to complete the transaction.
6. ESCROW. Upon execution of this Agreement by all parties, the parties shall open an Escrow (the "Escrow") with Lawyers Title Insurance Company (the "Escrow Holder"), for the purpose of consummating the purchase and sale of the SELLER Property described herein. All escrow costs and expenses shall be borne by BUYER. The parties hereto shall execute and deliver to Escrow Holder such escrow instructions prepared by Escrow Holder as may be required to consummate the transaction contemplated by this Agreement. Any such instructions shall not conflict, amend or supersede any provisions of this Agreement; this Agreement shall control unless the parties expressly agree in writing otherwise. The Escrow Instructions shall include the following terms and conditions of sale:

ESCROW IS AUTHORIZED TO AND SHALL:

- A. Any taxes which have been paid by SELLER, prior to the execution of this Agreement, shall not be prorated between BUYER and SELLER, but SELLER shall have the sole right, after the close of this transaction, to apply to the County Tax Collector of said County for a refund. This refund would apply to the period after BUYER'S acquisition, pursuant to Revenue and Taxation Code Section 5096.7.
- B. Pay and charge SELLER, upon SELLER'S written approval and in an amount in SELLER'S sole discretion, in order to place title in the condition necessary to satisfy Paragraph 3 of this Agreement, excluding any penalty for prepayment to any lien holder in compliance with §1265.240 of the Eminent Domain Law.
- C. Pay and charge BUYER for any fees, charges and costs payable under Paragraph 6 of this Agreement.
- D. Disburse funds and deliver the Grant Deed when conditions of this transaction have been fulfilled by BUYER and SELLER.

The term "close of this transaction", if and where written in these instructions, shall mean the date necessary Instruments of Conveyance are recorded in the Office of the County

Recorder for all affected properties involved in the project. Recordation of Instruments delivered through this transaction is authorized if necessary or proper in the issuance of said policy of title insurance.

All time limits within which any matter herein specified is to be performed may be extended by mutual agreement of the parties hereto. Any amendment of, or supplement to, any instructions must be in writing.

TIME IS OF THE ESSENCE IN THESE INSTRUCTIONS AND THIS TRANSACTION IS TO CLOSE AS SOON AS POSSIBLE, BUT IN NO EVENT LATER THAN 60 (SIXTY) DAYS FROM THE SIGNING OF THIS AGREEMENT.

7. FEES, CHARGES AND COSTS. BUYER agrees to pay all BUYER'S and SELLER'S usual fees, charges and costs that arise in this transaction.

8. PERMISSION TO ENTER ON PREMISE. SELLER hereby grants to the BUYER, or its authorized agents, permission to enter upon the SELLER Property to be conveyed at all reasonable times prior to close of this transaction for the purpose of making necessary or appropriate inspections.

9. COUNTERPARTS. This Agreement may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and all such counterparts together shall constitute one and the same Instrument.

10. POSSESSION OF REAL PROPERTY. It is mutually understood and agreed by and between the parties hereto that the right of possession and use of the SELLER Property by BUYER, including the right to remove and dispose of improvements, shall commence upon the execution of this Agreement by all parties.

11. WARRANTIES, REPRESENTATIONS, AND COVENANTS OF BUYER AND SELLER. SELLER hereby warrants, represents, and/or covenants to BUYER that:

A. To the best of SELLER'S knowledge, there are no actions, suits, material claims, legal proceedings or any other proceedings affecting the SELLER Property or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign.

B. To the best of SELLER'S knowledge, there are no encroachments onto the SELLER Property by improvements on any adjoining property, nor do any buildings or improvements encroach on other properties.

C. Until the closing, SELLER shall maintain the SELLER Property in good condition and state of repair and maintenance, and shall perform all of its obligations under any service contracts or other contracts affecting the property.

D. Until the closing, SELLER shall not do anything which would impair SELLER'S title to any of the SELLER Property.

- 1 E. To the best of SELLER'S knowledge, neither the execution of this Agreement nor the
2 performance of the obligations herein will conflict with, or breach any of the
3 provisions of any bond, note, evidence of indebtedness, contract, lease or other
4 agreement or instrument to which the SELLER Property may be bound.
- 5 F. Until the closing, SELLER shall, upon learning of any fact or condition which would
6 cause any of the warranties and representations in this Warranties, Representations,
7 and Covenants of SELLER Section not to be true as of closing, immediately give
8 written notice of such fact or condition to BUYER.
- 9 12. HAZARDOUS WASTE. To the best of SELLER'S knowledge, SELLER is not aware of
10 any hazardous waste, toxic substances, or related material as it is defined herein
11 ("Hazardous Material"), to have been used, generated, released, discharged, stored or
12 disposed of any hazardous waste, toxic substances or related materials ("Hazardous
13 Materials") on, under, in or about the SELLER Property or transported any Hazardous
14 Materials to or from the SELLER Property. SELLER shall not cause or permit the
15 presence, use, generation, release, discharge, storage or disposal of any Hazardous
16 Materials on, under, in or about or the transportation of any Hazardous Materials to or
17 from, the SELLER Property. The term "Hazardous Materials" shall mean any substance,
18 material or waste which is or becomes regulated by any local governmental authority, the
19 State of California or the United States Government, including, but not limited to, any
20 material or substance which is (i) defined as a "hazardous waste", "extremely hazardous
21 waste" or "restricted hazardous waste" under Section 25115, 25117 or 25122.7 or listed
22 pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter
23 6.5 (Hazardous Waste Control Law), (ii) defined as "hazardous substance" under Section
24 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-
25 Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material",
26 "hazardous substance" or "hazardous waste" under Section 25501 of the California Health
27 and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans
28 and Inventory), (iv) defined as "hazardous substance" under Section 25281 of the
California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of
Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated biphenyl's, (viii)
listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to
Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix)
designated as a "hazardous substances" pursuant to Section 311 of the Clean Water Act,
(33 U.S.C. §1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the
Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903) or
(xi) defined as a "hazardous substances" pursuant to Section 101 of the Comprehensive
Environmental Response, Compensation, as amended by Liability Act, 42, U.S.C. §9601 et
seq. (42 U.S.C. §9601).
13. COMPLIANCE WITH ENVIRONMENTAL LAWS. To the best of SELLER'S
knowledge and with respect to the property being conveying in this transaction, the
property complies with all applicable laws and governmental regulations including, without
limitation, all applicable Federal, State and local laws pertaining to air and water quality,
hazardous waste, waste disposal and other environmental matters, including, but not
limited to, the Clean Water, Clear Air, Federal Water Pollution Control, Solid Waste
Disposal, Resource Conservation Recovery and Comprehensive Environmental Response
Compensation and Liability Acts and the California Environmental Quality Act, and the

1 rules, regulations and ordinances of the city within which the subject property is located,
2 the California Department of Health Services, the Regional Water Quality Control Board,
3 the State Water Resources Control Board, the Environmental Protection Agency and all
4 applicable federal, state and local agencies and bureaus.

5 14. INDEMNITY. SELLER agrees to indemnify, defend and hold BUYER harmless from and
6 against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine,
7 penalty, punitive damage or expense (including, without limitation, attorneys' fees),
8 resulting from, arising out of or based on any breach of SELLER'S representations in
9 Paragraphs 11, 12 and 13 hereof. BUYER agrees to indemnify, defend and hold SELLER
10 harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability,
11 deficiency, fine, penalty, punitive damage or expense (including, without limitation,
12 attorneys' fees), resulting from, arising out of or based on any breach of BUYER'S
13 representations. This indemnity shall include, without limitation, any damage, liability,
14 fine, penalty, punitive damage, cost or expense arising from or out of any claim, action, suit
15 or proceeding for personal injury (including sickness, disease or death, tangible or
16 intangible property damage, compensation for lost wages, business income, profits or other
17 economic loss, damage to the natural resource or the environmental, nuisance, pollution,
18 contamination, leak, spill, release or other adverse effect on the environment). This
19 indemnity extends only to liability created prior to or up to the date this escrow shall close.
20 Neither BUYER nor SELLER shall be responsible for acts or omissions to act after close of
21 this transaction.

22 15. MISCELLANEOUS.

- 23 A. SELLER will provide within the time allowed by law a Natural Hazard Disclosure
24 Statement in accordance with California Government Code sections 8589.3-8989.4
25 and 51183.5 and Public Resources Code sections 4136, 2621.9 and 2694.
- 26 B. The terms and conditions, covenants and agreements set forth herein shall apply to
27 and bind the heirs, executors, administrators, assigns and successors of the parties
28 hereto.
- 29 C. ENTIRE AGREEMENT. This Agreement (including all Exhibits attached hereto)
30 constitutes the entire contract between the parties hereto and may not be modified
31 except by an instrument in writing signed by the party to be charged. Neither party
32 relies upon any warranty or representation not contained in this Agreement.
- 33 D. NOTICES. In the event either party desires or is required to give notice to the party
34 in connection with this Agreement, the same shall be in writing and shall be deemed
35 to have been given when delivered in person, by recognized overnight air courier
36 service, by confirmed facsimile transmission, or deposited with the United States
37 Postal Service, certified mail receipt requested address to BUYER or SELLER at the
38 appropriate address as, set forth herein. All notices sent by mail will be deemed
39 received three (3) days after the date of mailing.
- 40 E. PARTIAL INVALIDITY. If any term or provision of this Agreement shall be
41 deemed to be invalid or unenforceable to any extent, the remainder of this Agreement

will not be affected thereby, and each remaining term and provision of this Agreement will be valid and be enforced to the fullest extent permitted by law.

F. NO WAIVERS. No waiver of any breach of any covenant or provision contained herein will be deemed a waiver of any preceding or succeeding breach thereof or of any other covenant or other provision contained herein. No extension of time for performance or any obligation or act will be allowed except those of the waiving party, which will be extended by a period of time equal to the period of the delay.

G. SUCCESSORS AND ASSIGNS. Neither party shall transfer or assign its rights or responsibilities under this Agreement without the express written consent of the other party.

H. GOVERNING LAW. The parties hereto expressly agree that this Agreement will be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California in which the Property is located. Venue for any proceeding related to this Agreement shall be in the County of Riverside.

I. BROKERS. Each party warrants and represents to the other that no brokers have been retained or consulted in connection with this transaction. Each party agrees to defend, indemnify, and hold harmless the other party from any claims, expenses, costs, or liabilities arising in connection with a breach of the foregoing warranty and representation.

J. EXHIBITS. Each exhibit attached hereto is incorporated herein by this reference as if set forth in full in the body of this Agreement.

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1 IN WITNESS WHEREOF, the parties here have executed this Agreement the day and
2 year set forth hereinabove.

3 MAILING ADDRESS OF SELLER

SELLER:

4 4080 Lemon Street
5 Riverside, CA 92501

COUNTY OF RIVERSIDE

6
7 By: _____
8 BOB BUSTER, Chairman,
9 Riverside County Board of Supervisors

10 ATTEST:

11 KECIA HARPER-IHEM
12 Clerk of the Board

13
14 By: _____
15 Deputy

16 Date: _____
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25 APN: 101-140-005
26 Project: Santa Ana River Mainstem
27 Project No: 2-0-00105
28 RCFC Parcel No. 2105-9

MAILING ADDRESS OF BUYER

BUYER:

1995 Market Street
Riverside, CA 92501

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

By: _____

MARION ASHLEY, Chairman,
Riverside County Flood Control and Water
Conservation District Board of Supervisors

RECOMMENDED FOR APPROVAL

By: _____

WARREN D. WILLIAMS
General Manager-Chief Engineer

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By: _____

SYNTHIA M. GUNZEL
Deputy County Counsel

By: _____

Deputy

Date: _____

2-9-11

Date: _____

GSW:rlp
2/7/11

APN: 101-140-005
Project: Santa Ana River Mainstem
Project No: 2-0-00105
RCFC Parcel No. 2105-9

Exhibit "A"

**Santa Ana River Below Prado Dam
Parcel 2105-9**

All of the real property in Director's Deed granted to the County of Riverside as described in Instrument No. 147126, recorded November 3, 1972 in Official Records of Riverside County, California located in Rancho La Sierra Yorba.