

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

807B



**FROM:** General Manager-Chief Engineer

**SUBMITTAL DATE:**  
May 15, 2012

**SUBJECT:** San Jacinto River Recharge Ponds  
Cooperative Agreement  
District Three/District Three

**RECOMMENDED MOTION:**

1. Approve the Cooperative Agreement between the District, the Eastern Municipal Water District, (EMWD), the Lake Hemet Municipal Water District (LHMWD), and the Western Riverside County Regional Conservation Authority (RCA); and
2. Authorize the Chairman to execute the Cooperative Agreement documents on behalf of the District.

Continued on Page 2

**WARREN D. WILLIAMS**  
General Manager-Chief Engineer

<b>FINANCIAL DATA</b>	Current F.Y. District Cost:	N/A	In Current Year Budget:	N/A
	Current F.Y. County Cost:	N/A	Budget Adjustment:	N/A
	Annual Net District Cost:	N/A	For Fiscal Year:	N/A

<b>SOURCE OF FUNDS:</b> N/A	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

APPROVE

BY:   
Michael R. Shetler

County Executive Office Signature

Consent  Policy  
 Consent  Policy

Dep't Recomm.:  
 Per Exec. Ofc.:

FORM APPROVED BY COUNTY COUNSEL  
 BY: DATE: 5/15/12  
 NEAL R. KIPNIS

Departmental Concurrence

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

**SUBJECT:** San Jacinto River Recharge Ponds  
Cooperative Agreement  
District Three/District Three

**SUBMITTAL DATE:** May 15, 2012

**Page 2**

**BACKGROUND:**

The District and EMWD previously entered into a License Agreement executed on October 21, 2008 (Agenda Item No. 11.2) which set forth the terms and conditions under which the District will allow EMWD to utilize a specific area within District's existing San Jacinto River Levee System's right-of-way to construct a series of recharge ponds and its associated appurtenances for groundwater recharge purposes. Subsequent to the execution of the License Agreement, EMWD collaborated with the U.S. Fish and Wildlife Service to change the location of the recharge ponds to further minimize potential effects to the federally listed San Bernardino Kangaroo Rat (SBKR). Consequently, EMWD is required to protect certain real property located within the Cities of Hemet and San Jacinto by a conservation easement.

This Cooperative Agreement sets forth the terms and conditions under which the District will allow EMWD and LHMWD to encumber District easements with conservation easements in favor of the RCA. This Agreement is also necessary to set forth the terms and conditions under which the District will allow RCA to access District owned land and to perform baseline management for the SBKR in accordance with the relevant biological permits issued to EMWD and the Western Riverside County Multiple Species Habitat Conservation Plan requirements.

County Counsel has approved the Agreement as to legal form. EMWD, LHMWD and RCA are executing this Agreement in counterpart.

**FINANCIAL:**

EMWD is funding all mitigation implementation costs. Future maintenance costs and mitigation monitoring costs will accrue to EMWD.

CLC:bjj

**COOPERATIVE AGREEMENT BY, BETWEEN AND AMONG  
EASTERN MUNICIPAL WATER DISTRICT, LAKE HEMET  
MUNICIPAL WATER DISTRICT, RIVERSIDE COUNTY FLOOD  
CONTROL AND WATER CONSERVATION DISTRICT AND THE  
WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION  
AUTHORITY FOR SAN JACINTO RIVER RECHARGE PONDS**

**THIS COOPERATIVE AGREEMENT** ("Agreement") is entered into on \_\_\_\_\_, 2012, by, between and among the Eastern Municipal Water District, a municipal water district created pursuant to the provisions of the California Water Code sections 71000 et seq. ("EMWD"), Lake Hemet Municipal Water District, a municipal water district created pursuant to the provisions of the California Water Code sections 71000 et seq. ("LHMWD"), Riverside County Flood Control and Water Conservation District, a public agency created pursuant to the provisions of the California Water Appendix, Chapter 48-1 ("Flood Control") and the Western Riverside County Regional Conservation Authority, a public agency and a joint powers authority created pursuant to the provisions of the California Government Code sections 6500 et seq. ("RCA"). EMWD, LHMWD, Flood Control and RCA are sometimes referred to in this Agreement individually as a "Party," or collectively as the "Parties."

**RECITALS**

**WHEREAS**, pursuant to a Water Management Plan for the Hemet/San Jacinto Valley, which Plan will benefit EMWD, LHMWD and all other groundwater producers in said Valley, EMWD plans to increase the capacity of its recharge facilities (the "Project") by constructing, operating and maintaining groundwater recharge basins within the San Jacinto River but, as a condition to doing so, is required by certain regulatory permits and requirements ("Permits")<sup>1</sup> to mitigate impacts to species and habitat associated with the construction and subsequent

<sup>1</sup> U.S. Army Corps of Engineers Section 404 Permit No. SPL-2004-01197-DPS dated July 18, 1997, as amended on December 27, 2010 and January 2012; U.S. Fish & Wildlife Service Biological Opinion dated December 23, 2011; California Department of Fish and Game Streambed Alteration Agreement No. 1600-2007-0033-R6 (Revision 2), dated September 26, 2007, as amended on August 30, 2010 and January 2012; California Regional Water Quality Control Board Section 401 Certification as amended on August 24, 2010 and on January 5, 2012 (SARWQCB Project No. 332007-09).

1 operations and maintenance resulting from the Project; and

2       **WHEREAS**, Flood Control and EMWD previously entered into that certain License  
3 Agreement, hereinafter referred to as "PREVIOUS AGREEMENT", executed on October 21,  
4 2008. Said PREVIOUS AGREEMENT set forth the terms and conditions under which Flood  
5 Control will allow EMWD to construct, operate and maintain a series of groundwater recharge  
6 basins within the San Jacinto River. Subsequent to the execution of PREVIOUS  
7 AGREEMENT, EMWD collaborated with the U.S. Fish and Wildlife Service to change the  
8 proposed location of the groundwater recharge basins to further minimize potential adverse  
9 effects to the environment. Accordingly, Flood Control and EMWD intend to amend the  
10 PREVIOUS AGREEMENT, hereinafter referred to as "AMENDED AND RESTATED  
11 LICENSE AGREEMENT", setting forth the particular provisions under which Flood Control  
12 will allow EMWD to construct, operate and maintain the groundwater recharge basins at its  
13 new location within the San Jacinto River; and

14       **WHEREAS**, EMWD is the sole owner in fee simple of certain real property in the  
15 County of Riverside, consisting of approximately 437.33 acres which it is required by the  
16 Permits to subject, and which it wishes to subject, to a permanent Conservation Easement in  
17 favor of the RCA to assure that said property will be managed pursuant to the Permits and to  
18 prevent any use of EMWD property that will adversely impact the conservation values of the  
19 EMWD Conservation Easement; said property is described in Exhibit "A" and depicted on  
20 Exhibit "B" attached hereto and incorporated herein by this reference ("EMWD Property"); and

21       **WHEREAS**, Flood Control is the sole owner in fee simple of certain real property (the  
22 "Flood Control Property") consisting of approximately 59.34 acres, and is also the easement  
23 holder of certain easements granted in favor of Flood Control over EMWD and/or LHMWD  
24 owned properties (the "Flood Control Easements") consisting of approximately 280 acres in the  
25 County of Riverside as more particularly described in Exhibit "C" and depicted in Exhibit "D",  
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1 attached hereto and incorporated herein by this reference; and

2       **WHEREAS**, the Project is located within the existing San Jacinto River (SJR) Levee  
3 system. Flood Control, as a local sponsor for the SJR levee system, is responsible for its  
4 operation and maintenance activities pursuant to the Operation and Maintenance Manual for  
5 San Jacinto River and Bautista Creek Improvements prepared by the Army Corps of Engineers  
6 (dated April 1963) and the Federal Levee Certification Regulations; and

7       **WHEREAS**, LHMWD's property consists of approximately 24.60 acres described in  
8 Exhibit "E" and depicted on Exhibit "F", attached hereto and incorporated herein by reference  
9 ("LHMWD Property"); and

10       **WHEREAS**, Parties recognize and acknowledge that Flood Control is mandated by  
11 federal regulations to assume operation and maintenance responsibilities of the existing SJR  
12 Levee system; and

13       **WHEREAS**, approximately 521.27 acres (of the combined EMWD Property, LHMWD  
14 Property and Flood Control Property, hereinafter collectively referred to as the "SBKR  
15 Conservation and Management Areas") possess certain wildlife and habitat values of  
16 importance to RCA and the people of the State of California that are consistent with the habitat  
17 conservation purposes of the Western Riverside County Multiple Species Habitat Conservation  
18 Plan ("MSHCP"); and

19       **WHEREAS**, the RCA is willing to manage the properties described in the preceding  
20 recital as part of the MSHCP pursuant to the provisions set forth herein.

21       **NOW, THEREFORE, BE IT RESOLVED**, found and determined that for the mutual  
22 promises contained herein, the Parties hereto do hereby agree as follows:

23       1.     EMWD agrees to:

24             (a)     Execute and deliver the Conservation Easement over the EMWD Property in the  
25 form and content attached hereto as Exhibit "G".  
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1 (b) Pay to RCA the amounts agreed to in a Deposit Agreement dated November 29,  
2 2010.

3 (c) At such time as is set forth in the Conservation Easement, fund an endowment in  
4 the amount of TWO MILLION TWO THOUSAND NINE HUNDRED SEVENTY FOUR  
5 DOLLARS (\$2,002,974) for Baseline Management for the SBKR Conservation and  
6 Management Areas as set forth in Section 5 herein ("Endowment").

7 (d) Fund the first year management costs of the Conservation and Management  
8 Areas and the Vegetation Control Work Plan in the amount of EIGHTY ONE THOUSAND  
9 FOUR HUNDRED FOUR AND 61/100'S DOLLARS (\$81,404.61) upon the execution of this  
10 Agreement.

11 (e) Install all barriers, initial signage and required fencing as agreed to with RCA  
12 pursuant to the fencing plan in Exhibit "H" and subject to Flood Control's approval.

13 (f) Conduct all initial restoration or enhancement work on the EMWD Property and  
14 obtain approvals from the appropriate regulatory agencies for any success criteria required by  
15 the Permits.

16 (g) Arrange with contractors to perform any regulatory obligations required by the  
17 Permits not included in the Baseline Management.

18 (h) Implement all conservation measures identified in the Biological Opinion dated  
19 December 23, 2011.

20 (i) Be responsible for any and all additional regulatory, mitigation and/or litigation  
21 costs, and/or mitigation measures to Flood Control resulting from this Agreement and/or  
22 Permits.

23 (j) Be responsible for resolving, at its sole cost and expense, any conflicts between  
24 this Agreement, the Permits, the Conservation Easement, the AMENDED AND RESTATED  
25 LICENSE AGREEMENT and Flood Control's existing rights and benefits of owning the Flood  
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1 Control Property and Flood Control Easements in an acceptable manner as solely determined  
2 by Flood Control.

3 2. LHMWD agrees to:

4 (a) Execute and deliver the Conservation Easement over the LHMWD Property in  
5 the form and content attached hereto as Exhibit "G".

6 3. Flood Control agrees to:

7 (a) Issue to RCA an encroachment permit or other appropriate document  
8 authorizing RCA to access the Flood Control Property and to perform the Baseline  
9 Management in accordance with the applicable provisions of this Cooperative Agreement;  
10 provided that (i) Flood Control and EMWD enter into an AMENDED AND RESTATED  
11 LICENSE AGREEMENT and (ii) RCA's activities are consistent with the MSHCP  
12 requirements, and do not, in any way whatsoever, impair the Flood Control Property's and  
13 Flood Control Easements' primary flood control purpose and function or otherwise interfere  
14 with Flood Control's ability to operate and maintain the Flood Control Property and Flood  
15 Control Easements, so long as Flood Control maintenance activities are covered pursuant to an  
16 MOU or agreement with the California Department of Fish and Game as specified in the  
17 MSHCP.  
18

19 (b) Provide RCA an opportunity to review and approve the encroachment permit, or  
20 other appropriate document, before its issuance.

21 4. RCA agrees to:

22 (a) Concur that the EMWD Hemet-San Jacinto Integrated Recharge and Recovery  
23 Program was deemed to be consistent with the MSHCP pursuant to Joint Project Review 07-  
24 05-22-03.

25 (b) Execute and deliver to EMWD the Certificate of Acceptance portion of the  
26 Conservation Easement in the form and content attached hereto as Exhibit "G".  
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1 (c) Perform Baseline Management, in accordance with the terms of this Cooperative  
2 Agreement, on approximately 521.27 acres of the SBKR Conservation and Management Areas  
3 set forth in Section 5 herein.

4 (d) Accept Flood Control's encroachment permit subject to the limitations in  
5 Section 3.

6 5. Baseline Management

7 (a) The Baseline Management for the SBKR Conservation and Management Areas  
8 (as depicted on Exhibits "A", "B", "C", "D", "E", and "F") will begin upon RCA's receipt of the  
9 Endowment; provided, however, that (i) the Baseline Management for the approximately 29.8  
10 acres EMWD will restore as part of Conservation Measure 4 of the December 23, 2011  
11 Biological Opinion (as depicted on Exhibit "B") will not commence until EMWD receives  
12 notification that the regulatory agencies have approved the success criteria required by the  
13 Permits, and (ii) the Baseline Management for the Flood Control Property will not commence  
14 until Flood Control issues an encroachment permit or other approval document pursuant to  
15 Section 3 herein. The SBKR Conservation and Management Areas shall become part of the  
16 MSHCP Conservation Area and as such, RCA will provide annual habitat management  
17 oversight on the property pursuant to Section 5.2 of the MSHCP and the Conservation  
18 Easement. The RCA shall use reasonable efforts, subject to the pre-existing rights referenced  
19 in Section 3(a) herein, to maintain the biological values on the site, which currently support  
20 Riversidian alluvial fan sage scrub and associated upland habitats. The habitats on the SBKR  
21 Conservation and Management Areas also currently support known populations of San  
22 Bernardino Kangaroo Rat ("SBKR"), which the RCA shall manage in accordance with the  
23 SBKR-specific requirements in MSHCP Table 5-2 (attached as Exhibit "I").

24  
25 (b) The main responsibilities of the RCA for the SBKR Conservation and  
26 Management Areas will be:  
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1 (i) Employ reasonable methods to control unauthorized public access;  
2 (ii) Annual maintenance of habitat notification signs, fencing and gates;  
3 (iii) Annual removal of trash or other man-made debris;  
4 (iv) Manage fuel loads for fire suppression pursuant to Section 6.4 of the  
5 MSHCP.

6 (v) Other standard habitat management measures detailed in Section 5.2 of  
7 the MSHCP and the Conservation Easement (attached as Exhibit "I").

8 (c) RCA will work with the Sheriff's Department along with other conservation  
9 partners in the area such as the U.S. Bureau of Land Management and the California  
10 Department of Fish and Game.

11 6. Vegetation Management

12 (a) RCA will be responsible for implementing Condition #3 of the December 23,  
13 2011 Biological Opinion.

14 (b) Except for the Baseline Management detailed in Section 5 above and the  
15 Vegetation Management in this Section, EMWD is responsible for any and all terms and  
16 conditions of the Permits and the related Section 7 consultation/Biological Opinion.

17 7. Effective Date and Termination

18 (a) This Agreement will become effective on the date of the last signature below.

19 (b) Notwithstanding any other provision of this Agreement, any Party may  
20 terminate this Agreement prior to the execution of either the Conservation Easement (or the  
21 encroachment permit and AMENDED AND RESTATED LICENSE AGREEMENT in the  
22 case of Flood Control) upon written notice pursuant to Section 11 below. If one Party  
23 terminates this Agreement pursuant to this section, then this Agreement shall terminate as to all  
24 Parties.  
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1 (c) If the Agreement is terminated prior to the execution of the Conservation  
2 Easement, the encroachment permit or the AMENDED AND RESTATED LICENSE  
3 AGREEMENT:

4 (i) EMWD will reimburse RCA for those expenses set forth in Section 1(b)  
5 herein performed up to the date of termination; and

6 (ii) RCA will have no continuing management obligations pursuant to  
7 Section 5 of this Agreement.

8 8. Conflict of Interest

9 No member, official or employee of EMWD, LHMWD, Flood Control or RCA shall  
10 have any personal interest, direct or indirect, in this Agreement nor shall any such member,  
11 official or employee participate in any decision relating to this Agreement which affects his or  
12 her personal interests or the interests of any corporation, partnership or association in which he  
13 or she is directly or indirectly interested.

14 9. No Third Party Beneficiaries

15 This Agreement is made and entered into for the sole protection and benefit of the  
16 Parties, their successors and assigns, hereto. No other person or entity shall have any right of  
17 action based upon the provisions of this Agreement.

18 10. Indemnification

19 (a) RCA shall indemnify and hold EMWD, LHMWD and Flood Control, their  
20 officers, agents and employees free and harmless from liability to any person or entity not a  
21 Party to this Agreement from any damage, loss or injury to person and/or property arises from  
22 the negligence, intentional acts or willful misconduct of the RCA, its officers, agents or  
23 employees in the execution or implementation of this Agreement.

24 (b) EMWD shall indemnify and hold LHMWD, Flood Control, and RCA, their  
25 officers, agents, or employees free and harmless from liability to any person or entity not a  
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1 Party to this Agreement from any damage, loss or injury to person and/or property which arises  
2 from the negligence, intentional acts or willful misconduct of EMWD, its officers, agents or  
3 employee in the execution or implementation of this Agreement.

4 (c) LHMWD shall indemnify and hold EMWD, Flood Control, and RCA, their  
5 officers, agents, or employees free and harmless from liability to any person or entity not a  
6 Party to this Agreement from any damage, loss or injury to person and/or property which arises  
7 from the negligence, intentional acts or willful misconduct of LHMWD, its officers, agents or  
8 employee in the execution or implementation of this Agreement.

9 11. Designated Representatives and Notice

10 The following individuals listed in this section are hereby designated as representatives  
11 of the EMWD, LHMWD, Flood Control and RCA, respectively, to act as liaison between the  
12 Parties. As used in this Agreement, notice includes but is not limited to, the communication of  
13 any notice, request, demand, approval, statement, report, acceptance, termination, consent,  
14 waiver and appointment. All notices must be in writing. Notice is given either (i) when  
15 delivered in person to the person or company intended named below; (ii) when sent first class  
16 by U.S. Mail, certified, with return receipt requested; or (ii) when sent via reputable overnight  
17 courier (such as Federal Express), addressed by name and addressed to the Party or persons  
18 intended, as follows:  
19

20 EMWD  
21 Eastern Municipal Water District  
22 Attn: General Manager  
23 2270 Trumble Road  
24 Post Office Box 8300  
25 Perris, CA 92572-8300

RCA  
Western Riverside County  
Regional Conservation Authority  
Attn: Executive Director  
3403 Tenth Street, Suite 320  
Post Office Box 1667  
Riverside, CA 92502-1667

Best Best & Krieger LLP  
3750 University Avenue, Suite 400  
Post Office Box 1028  
Riverside, CA 92502-1028  
Phone: (951) 686-1450  
Attn: Michelle Ouellette

**LHMWD**

Lake Hemet Municipal Water District  
Attn: General Manager  
26385 Fairview Avenue  
Post Office Box 5039  
Hemet, CA 92544

**Flood Control**

Riverside County Flood Control  
and Water Conservation District  
Attn: General Manager-Chief Engineer  
1995 Market Street  
Riverside, CA 92501

until such time as a Party gives notice of the change of address in accordance with the terms of this section.

12. Amendments, Changes or Modifications

No part of this Agreement may be modified, altered, amended, waived, or changed without the express written consent of all of the Parties hereto.

13. Assignment

None of the Parties shall have the right to assign its rights and obligations under this Agreement.

14. Governing Law

This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California. Venue shall be in Riverside County.

15. Effect of Waiver

No waiver of a breach, failure of condition, or any right or remedy contained in or granted by the provisions of this Agreement is effective unless it is in writing and signed by the Party waiving the breach, failure, right, or remedy. No waiver of a breach, failure or condition, or right or remedy is or may be deemed a waiver of any other breach, failure, right or remedy, whether similar or not. In addition, no waiver will constitute a continuing waiver unless the writing so specifies.

16. Attorneys' Fees

If any legal action, or any arbitration or other proceeding is initiated for the enforcement of this Agreement or because of any alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Party

1 shall be entitled to recover reasonable attorneys' fees, witness fees and other costs incurred in  
2 that action or proceeding, in addition to any other relief to which it may be entitled.

3 17. Severability

4 If any term or provision of this Agreement shall, to any extent, be held invalid or  
5 unenforceable, the remainder of this Agreement shall not be affected.

6 18. Entire Agreement

7 This Agreement (including the exhibits attached to this Agreement) constitutes the final,  
8 complete, and exclusive statement of the terms of the agreement by, between and among the  
9 Parties and supersedes all prior and contemporaneous understandings or agreements of the  
10 Parties. None of the Parties have been induced to enter into this Agreement by, nor are any of  
11 the Parties relying upon any representation or warranty outside those expressly set forth in this  
12 Agreement.

13 19. Further Acts

14 The Parties agree, upon the request of any other Party, to perform such further acts and  
15 to execute and deliver such other documents as are reasonably necessary to carry out the  
16 provisions of this Agreement.

17 20. Authority of Parties

18 The Parties warrant that the persons executing this Agreement on their behalf are  
19 authorized to do so, and on execution of this Agreement, the terms of this Agreement shall be  
20 valid and enforceable against the Parties in accordance with this Agreement.

21 21. Counterparts

22 This Agreement may be executed in counterparts, which, when combined, shall  
23 constitute a fully executed Agreement.  
24

25 [SIGNATURE PAGE TO FOLLOW]  
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**SIGNATURE PAGE FOR THE COOPERATIVE AGREEMENT BY, BETWEEN AND AMONG THE EASTERN MUNICIPAL WATER DISTRICT, LAKE HEMET MUNICIPAL WATER DISTRICT, RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AND WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY FOR SAN JACINTO RIVER RECHARGE PONDS**

**IN WITNESS WHEREOF**, the Parties have executed this Cooperative Agreement as of the last date set forth below.

**EASTERN MUNICIPAL WATER DISTRICT**

**WESTERN RIVERSIDE COUNTY CONSERVATION AUTHORITY**

BY: \_\_\_\_\_  
Paul D. Jones II, General Manager

BY: \_\_\_\_\_  
Charles V. Landry, Executive Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to Form

Approved as to Form

\_\_\_\_\_  
General Counsel for EMWD

\_\_\_\_\_  
General Counsel for RCA

**LAKE HEMET MUNICIPAL WATER DISTRICT**

BY: \_\_\_\_\_  
Thomas Wagoner, General Manager

\_\_\_\_\_  
Date

Approved as to Form

\_\_\_\_\_  
General Counsel for LHMWD

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

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RECOMMENDED FOR APPROVAL:

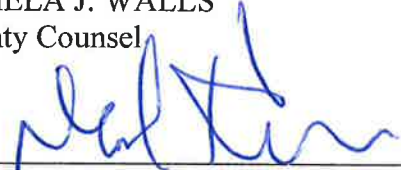
By:   
WARREN D. WILLIAMS  
General Manager-Chief Engineer

By: \_\_\_\_\_  
MARION ASHLEY, Chairman  
Riverside County Flood Control and Water  
Conservation District Board of Supervisors

\_\_\_\_\_  
Date (to be filled in by Clerk of the Board)

APPROVED AS TO FORM:

PAMELA J. WALLS  
County Counsel

By:   
NEAL R. KIPNIS  
Deputy County Counsel

ATTEST:

KECIA HARPER-IHEM  
Clerk of the Board

By: \_\_\_\_\_  
Deputy

(SEAL)