

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

8/16



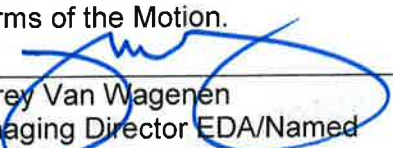
FROM: Economic Development Agency (EDA)

SUBMITTAL DATE:
August 6, 2015

SUBJECT: Approve the Agreement For Transfer of Water System Among Elsinore Valley Municipal Water District, Eastern Municipal Water District, and the County of Riverside, Acting in Its Capacity as Receiver for County Water Company for the transfer of private assets owned by County Water Company and possessed by the County, as the Court-Appointed Receiver. [District 1/1]. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Authorize the County, as the Court-Appointed Receiver in Riverside Superior Court Case No. RIC1410060, In the Matter Re: County Water Company, by and through Jeffrey Van Wagenen, the Managing Director of EDA and the named Receiver on Behalf of the County, to sign the attached Agreement For Transfer of Water System Among Elsinore Valley Municipal Water District, Eastern Municipal Water District, and the County of Riverside, Acting in Its Capacity as Receiver for County Water Company and supporting documents and to authorize the named Receiver to sign any amendments or alterations that do not change the substantive terms of the agreement.
2. Authorize the County to file the attached Motion of the Receiver For an Order Approving the Proposed Transfer of County Water Company Assets and to authorize the named Receiver to sign any amendments that do not change the substantive terms of the Motion.


 Jeffrey Van Wagenen
 Managing Director EDA/Named Receiver

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	
SOURCE OF FUNDS: n/a				Budget Adjustment: No	
				For Fiscal Year: 14/15, 15/16	

C.E.O. RECOMMENDATION:

APPROVE

BY: 
Alex Gann

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

FORM APPROVED COUNTY COUNSEL

BY:  MARSHAL VICTOR DATE: 8/6/15

Departmental Concurrence

- A-30
- 4/5 Vote
- Positions Added
- Change Order

Prev. Agn. Ref.:

District: 1/1

Agenda Number:

3-24

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

Economic Development Agency

FORM 11: Approve the Agreement For Transfer of Water System Among Elsinore Valley Municipal Water District, Eastern Municipal Water District, and the County of Riverside, Acting in Its Capacity as Receiver for County Water Company for the transfer of private assets owned by County Water Company and possessed by the County, as the Court-Appointed Receiver. [District 1/1]. [\$0]

DATE: August 6, 2015

PAGE: 2 of 3

BACKGROUND:

Summary

On November 7, 2014, the Riverside Superior Court appointed the County of Riverside ("County"), by and through Jeffrey Van Wagenen, the Managing Director of EDA, as receiver over County Water Company ("CWC"), a small private water system in the Bundy Canyon area of Riverside County. The ultimate purpose of appointing the County as Receiver was to enable Elsinore Valley Municipal Water District ("EVMWD") and Eastern Municipal Water District ("EMWD") to construct water lines that would supply the residents previously served by CWC with potable water on a permanent basis. The County, as Receiver, is managing the provision of water on a temporary basis, through a temporary water supply line from EVMWD's system, under the supervision of the Court.

CWC's well was pumping non-potable water that exceeded both federal and state recommended limits for nitrates. Further, in the summer months, when water usage was at its highest, the well often ran dry as the water table was depleted. As a result, when there was water to pump, the County residents served by CWC were unable to consume the water due to contamination. Additionally, CWC's financial situation worsened to the point that CWC was not only unable to correct the above supply deficiencies, but CWC had no money to pay for electricity to run the well pump. The only option was for the County to seek the involvement of EVMWD and EMWD to construct permanent supply lines into CWC's system, bypassing the contaminated well.

As receiver, the County took possession and control of various assets owned by CWC. As part of the agreement to construct the permanent lines, the County, as receiver, has tentatively agreed with EVMWD and EMWD to transfer certain assets owned by CWC, and controlled by the County as receiver, to EVMWD and EMWD. Although the transfer agreement will be signed as soon as legally allowed, the transfer will not take place until the permanent lines are ready to provide water service. Specifically, the County must transfer:

1. All pipelines, equipment, facilities and other infrastructure which pertain to the CWC's water system ("Infrastructure");
2. All easements, licenses and other real property rights associated with the Infrastructure;
3. All books and records maintained and kept by the County with respect to the location, operation and repair and maintenance of CWC's water system;
4. Other property associated with the CWC's water system.

The County, as receiver, did not take possession of, has no duty over and will not transfer two parcels of real property owned by CWC and/or any of the physical assets located on the parcels of land. This includes APN 362-070-022, APN 361-204-023, CWC's well, CWC's pump, CWC's storage tank and any pipes connecting the pump/well and the storage tank. Those items of real and personal property remain under the ownership and control of CWC.

(Continued on Next Page)

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

Economic Development Agency

FORM 11: Approve the Agreement For Transfer of Water System Among Elsinore Valley Municipal Water District, Eastern Municipal Water District, and the County of Riverside, Acting in Its Capacity as Receiver for County Water Company for the transfer of private assets owned by County Water Company and possessed by the County, as the Court-Appointed Receiver. [District 1/1]. [\$0]

DATE: August 6, 2015

PAGE: 3 of 3

Authorization for Mr. Van Wagenen to sign the attached Agreement and supporting documents on behalf of the County, as receiver, will transfer all of County's and CWC's rights to the pipelines to either EVMWD or EMWD on an "as-is" basis upon the completion of the permanent supply lines by the water districts. As a receiver is an agent of the Court, upon the Board's authorization to sign the attached Agreement, approval of the Court is also required. Therefore, authorization to file the attached Notice and Motion is also being requested.

As of the present date, there are no known liabilities on the property that could attach to the County as a result of the County's actions either on its own behalf or as Receiver.

Impact on Citizens and Businesses

In collaboration with EVMWD and EMWD, the County of Riverside will provide approximately 140 families with potable water services essential for daily living on a permanent basis.

SUPPLEMENTAL:

Additional Fiscal Information

None.

**AGREEMENT FOR TRANSFER OF WATER SYSTEM AMONG ELSINORE VALLEY
MUNICIPAL WATER DISTRICT, EASTERN MUNICIPAL WATER DISTRICT, AND
THE COUNTY OF RIVERSIDE ACTING IN ITS CAPACITY AS RECEIVER FOR
COUNTY WATER COMPANY**

This agreement for the transfer of water system (“Agreement”) by and among ELSINORE VALLEY MUNICIPAL WATER DISTRICT (“EVMWD”), EASTERN MUNICIPAL WATER DISTRICT (“EMWD”), and COUNTY OF RIVERSIDE acting in its capacity as receiver for County Water Company (“County”), is made and entered into as of _____, 2015, (“Effective Date”). EVMWD, EMWD, and County are sometimes individually referred to as “Party” and collectively as “Parties.”

1. Recitals

1.1 Rafael Spears and Lori Spears, doing business as COUNTY WATER COMPANY, a California corporation (Entity No. C0254232), COUNTY WATER CO. OF RIVERSIDE, INC., a California corporation (Entity No. C0743439), and TELESIS DIVERSIFIED, INC., a California corporation (Entity No. C2816675) (collectively “CWC”) operated a small private water system (“Water System”) in the Bundy Canyon area of Riverside County on the border of the cities of Wildomar and Menifee (the “Affected Area”).

1.2 The Water System includes: (a) All pipelines, equipment, appurtenances, facilities, and other infrastructure; (b) All easements, licenses, or other real property rights associated with the Infrastructure; (c) Any books and records maintained or kept by the County with respect to the location, operation, repair, and maintenance of the Water System; (d) Tank Site – The property on which CWC kept and operated its 50,000 gallon tank, identified in the County Assessor’s records as APN 362-070-022; (e) Well Site – the real property on which Water Company Parties kept and operated its well, identified in the County Assessor’s records as APN 361-204-023; and (f) All other property belonging to CWC.

1.3 It is alleged that the Water System was not constructed or maintained to contemporary standards, therefore requiring upgrades. In addition, it is alleged that the Water System, under CWC’s control, was not capable of providing a consistent and reliable supply of drinking water to residents in the Affected Area and that the water produced was not compliant with state or federal primary drinking water standards.

1.4 The County, through its Department of Environmental Health, took action to place the Water System into County receivership. On November 7, 2014, Judge Sykes granted the County’s application and the County was appointed as the receiver with the power to take full and complete control of the Water System, excluding the Tank Site and Well Site. A copy of Judge Sykes’ order granting the receivership is included as Exhibit “A”, attached hereto and incorporated herein by reference. On or about October 27, 2014, the Parties executed a Water Sale and Operations Agreement to permit EVMWD and EMWD to take over operation of the system on an interim basis.

1.5 EVMWD and EMWD are public water agencies that provide, among other services, potable water service to the territory immediately adjacent to the Affected Area.

1.6 EVMWD and EMWD have agreed to jointly provide permanent service to the Affected Area in accordance with grant funding agreements with the California Department of Health Services (CDPH) for all capital and other costs associated with improvements necessary to provide permanent water service to the Affected Area, and various other terms and conditions as set forth herein.

1.7 The Parties now desire to move forward with the transfer of portions of the Water System in accordance with the terms and conditions of this Agreement.

2. Terms of the Agreement

2.1 Incorporation of Recitals. The Parties hereby affirm the facts set forth in the Recitals above. Said Recitals are incorporated into this Agreement by this reference.

2.2 Term of Agreement. This Agreement shall commence on the Effective Date and continue in effect until all obligations of the Parties have been fulfilled, unless earlier terminated pursuant to Section 3 of this Agreement. The obligations of the Parties, which by their nature or description, continue beyond the term of this Agreement, such as indemnification provisions, will survive the termination of this Agreement. This Agreement shall terminate automatically on December 31, 2018, unless the Date of Service Transfer for both EVMWD and EMWD, as defined herein, has occurred earlier. Upon termination, the County may pursue any and all remedies available to it.

2.3 Cooperation. Upon the Effective Date, the Parties shall cooperate in good faith, as appropriate, to complete the following actions which shall be elaborated upon further in other sections of this Agreement:

2.3.1 EMWD and EVMWD shall complete planning, design and CEQA analysis to support the construction of permanent water facilities needed to provide water service to the Affected Area consistent with contemporary design standards and all applicable regulations.

2.3.2 EMWD and EVMWD shall prepare, submit and process through the Local Agency Formation Commission (LAFCO) an application for annexation of the Affected Area into EMWD's and EVMWD's service areas, as appropriate.

2.3.3 EMWD shall prepare, submit and process through the Metropolitan Water District of Southern California (MWD) an application for annexation of certain territories into MWD's service area.

2.3.4 EMWD and EVMWD shall bid, award, and construct new permanent water facilities to serve the Affected Area.

2.3.5 EVMWD and EMWD shall notify County in writing upon the completion of the construction and acceptance of permanent facilities by EVMWD and EMWD and the effective date of the annexations processed through LAFCO and MWD contemplated herein.

2.4 Transfer of Portions of the Water System.

2.4.1 Once notified in writing by EMWD, subject to approval by the Riverside Superior Court, County, as receiver, shall transfer, convey, and deliver to EMWD all of CWC's right, title, and interest in and to the portion of the Water System east of Sunset Avenue as shown on Exhibit D, including but not limited to the following assets (a) through (d), free and clear of any liens, liabilities, or encumbrances which arose while the County of Riverside was in control of the Water System:

(a) All pipelines, equipment, appurtenances, facilities and other infrastructure necessary to supply water to the customers (collectively "Infrastructure");

(b) All easements, licenses, or other real property rights associated with the Infrastructure (collectively "Easements");

(c) Any books and records maintained or kept by CWC with respect to the location, operation, repair, and maintenance of the Water System (collectively "Records"); and

(d) All other property belonging to CWC, excluding the property listed below in section 2.4.4 (collectively "Other Property").

(e) However, the portions of the Water System described in paragraph 2.4.4 below shall not be transferred.

2.4.2 Once notified in writing by EVMWD, subject to approval by the Riverside Superior Court, County, as receiver, shall transfer, convey, and deliver to EVMWD all of CWC's right, title, and interest in and to the portion of the Water System west of and along Sunset Avenue as shown on Exhibit D, including but not limited to the following assets, free and clear of any liens, liabilities, or encumbrances, which arose while the County of Riverside was in control of the Water System:

(a) All pipelines, equipment, appurtenances, facilities and other infrastructure necessary to supply water to the customers (collectively "Infrastructure");

(b) All easements, licenses, or other real property rights associated with the Infrastructure (collectively "Easements");

(c) Any books and records maintained or kept by CWC with respect to the location, operation, repair, and maintenance of the Water System (collectively "Records"); and

(d) All other property belonging to CWC, excluding the property listed below in section 2.4.4 (collectively "Other Property").

(e) However, the portions of the Water System described in paragraph 2.4.4 below shall not be transferred.

2.4.3 Where EMWD is concerned, the “Date of Service Transfer” refers to the date on which the County transfers CWC’s assets to EMWD in accordance with Section 2.4.1. Where EVMWD is concerned, the “Date of Service Transfer” refers to the date on which the County transfers CWC’s assets to EMWD in accordance with Section 2.4.2.

2.4.4 The following properties, which are part of the Water System, were not included in the receivership and shall not be transferred by the County, as receiver, to EVMWD or EMWD under this Agreement:

(a) Tank Site. The property on which CWC kept and operated its 50,000 gallon tank, identified in the County Assessor’s records as APN 362-070-022.

(b) Well Site. The real property on which CWC kept and operated its well, identified in the County Assessor’s records as APN 361-204-023.

(c) Any and all physical equipment and facilities related to the Tank Site, the Well Site, or traversing between the Tank Site and the Well Site, including, but not limited to, the physical well, the well casing, the pump located on the well site, the pipes connecting the well and the tank, the tank, and all devices attached to the tank (“Well and Tank Structures”).

2.4.5 The transfer of the Infrastructure, Easements, and any of the Other Property which may be transferred by deed will be performed through the County’s execution of two quitclaim deeds, one each to EVMWD and EMWD. The quitclaim deeds shall be substantially in the same form as those attached to this Agreement as Exhibit “B.” Any transfer by quitclaim deed shall be approved by the Court prior to the transfer. Should the Court determine that transfer be performed by other means, then the Court’s ruling shall take precedence over this subsection.

2.4.6 On the Date of Service Transfer, the applicable water district (EVMWD or EMWD) shall assume all operations and water service to their portion of the Affected Area, and County shall no longer have any authority for operation or any ownership interests in the Water System or the ability to serve customers in that portion of the Affected Area. The sole exception to this provision is that the County shall retain the ability to bill, and collect payment from, the Affected Residents for water service provided up to the Date of Service Transfer.

2.5 Interim Facilities. Following the Date of Service Transfer for EVMWD, EVMWD shall be responsible for the removal of all facilities used for the interim service of water to the Affected Area which are unnecessary for permanent operations. EVMWD shall coordinate such actions with the County and EMWD as needed.

2.6 Permanent Facilities.

2.6.1 EMWD in coordination with EVMWD shall complete planning, design (plans, specifications and estimates), and CEQA analysis to support the construction of permanent water facilities to provide water service to the Affected Area as generally described in Exhibit “C”, attached hereto and incorporated herein by reference.

(a) The completion of planning, design, and CEQA analysis is contingent upon the execution of a funding agreement and the receipt by EMWD and EVMWD of grant funding in full from the California Department of Public Health (CDPH).

2.6.2 EMWD and EVMWD shall bid, award and construct permanent water facilities as generally described in Exhibit "C". The award of construction by EMWD and EVMWD shall be contingent upon:

(a) Executed funding agreements between EMWD, EVMWD and the California Department of Public Health (CDPH) for the complete cost of the construction of such facilities.

(b) The receipt of a quit claim deed, or other method of transfer, as noted in Section 2.4.5, above, for Easements previously owned by CWC associated with the pipeline distribution system and appurtenant facility assets of the Water System (excluding the Tank Site, Well Site, and Well and Tank Structures per Section 2.4.4), requested by EVMWD and EMWD.

(c) Agreement by County to transfer all physical assets and facilities, excluding the Tank Site, Well Site and Well and Tank Structures per Section 2.4.4, as requested by EVMWD and EMWD to each such public entity.

(d) A reasonably necessary temporary construction easement from County for the construction and integration of the permanent water facilities, to the extent that the construction is within the County's jurisdiction.

2.7 Local Agency Formation Commission Actions and Annexations.

2.7.1 EMWD and EVMWD shall prepare, submit, and process through the Local Agency Formation Commission (LAFCO) applications for the annexation of the Affected Area into EMWD's and EVMWD's service areas and respective spheres of influence, as shown on Exhibit "D", attached hereto and incorporated herein by reference.

(a) Certain parcels within the portion of the Affected Area west of Sunset Avenue shall be annexed into EVMWD as more fully depicted in Exhibit "D" attached hereto.

(b) Certain parcels within the portion of the Affected Area east of Sunset Avenue shall be annexed into EMWD as more fully depicted in Exhibit "D" attached hereto.

2.7.2 EMWD shall prepare, submit and process through Metropolitan Water District of Southern California (MWD) an application for annexation into MWD's service area certain parcels within the area generally shown on Exhibit "D."

2.8 California Department of Public Health Funding.

2.8.1 The Parties recognize and acknowledge that this Agreement and EVMWD's and EMWD's service to the Affected Area is contingent upon the execution of funding agreements and the receipt of grant funding from the California Department of Public Health (CDPH) for all costs associated with improvements and entitlement to service necessary to provide both permanent water service facilities.

2.8.2 All funding provided by CDPH shall be directed to the respective applicant (EVMWD and EMWD).

2.8.3 In accordance with grant applications submitted to CDPH, funding is anticipated to be provided to EVMWD and EMWD for all costs associated with the following purposes:

(a) Annexation fees due MWD and EVMWD, and LAFCO processing fees for both EVMWD and EMWD.

(b) Installation of the Interim Facilities. An emergency grant of \$250,000.00 has been awarded by CDPH to EVMWD for this purpose.

(c) Planning, design (plans, specifications and estimates), and CEQA analysis costs for permanent water facilities to be constructed by EVMWD and EMWD. EMWD has been awarded a \$500,000.00 grant by CDPH for this purpose

(d) Permanent water facilities including pipelines, valves, meters, services, and all related appurtenant equipment for both EMWD and EVMWD. EVMWD and EMWD have received a commitment from CDPH of an award of \$3 million to each agency to construct permanent water facilities.

2.9 Service Transition and Future Service.

Upon the Date of Service Transfer, the applicable district (EVMWD or EMWD) shall be obligated to provide water service to the customers and properties located in the Affected Area, and the County's obligation to do so shall terminate. After the Date of Service Transfer, the County shall retain the right to bill for, and collect, water service provided up to the Date of Service Transfer. Any properties requesting new service connections after the Date of Service Transfer shall apply for service with the respective agency (EVMWD or EMWD) and shall be subject to all policies and fees customarily applied to new service connections.

2.10 Indemnification and Release.

2.10.1 To the fullest extent permitted by law, County shall defend, indemnify and hold EVMWD, and EMWD, their directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of County, its officials, officers, employees, subcontractors, consultants or agents in connection with this Agreement and its operation of the Water System (excluding the Tank Site,

Well Site, and Well and Tank Structures per Section 2.4.4) as receiver, from the date of appointment as receiver to the Date of Service Transfer for the applicable district, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses.

2.10.2 EVMWD and EMWD shall release and hold County, its board members, officers, and employees harmless from claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of EVMWD or EMWD, their officials, officers, employees, subcontractors, consultants or agents in connection with this Agreement or EVMWD's and EMWD's ownership and operation of the system following the Date of Service Transfer for the applicable district including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expense.

3. Termination.

3.1 All Parties shall each have the right to terminate the Agreement after the Effective Date but prior to occurrence of both the Date of Service Transfer for both EVMWD and EMWD based upon any of the following conditions:

3.1.1 Failure of the California Department of Public Health (CDPH) to provide grant funding sufficient to fully fund the items identified in previous sections of this Agreement.

3.1.2 Disapproval by LAFCO or a successful protest vote against the annexation of the Affected Area into EVMWD or EMWD.

3.1.3 Disapproval by MWD of the annexation of the Affected Area within EMWD's proposed service area.

3.1.4 Outstanding judgments, regulatory orders, claims, litigation or other material events or items deemed by EVMWD or EMWD, at each agency's sole discretion, to affect the agency's ability to provide service.

4. Miscellaneous Terms.

4.1 Notices, Demands and Communications Between the Parties.

4.1.1 Formal notices, demands and communications between Parties shall be deemed sufficiently given if: (i) by commercial overnight delivery; (ii) by messenger service for immediate personal delivery; or (iii) by electronic transmittal, including electronic mail and/or fax transmissions, subject to written verification of receipt by the receiving party. Such written notices, demands and communications may be sent in the same manner to such other addresses as any Party may from time to time designate by written notice to the other Parties.

4.2 All notices, demands and communications shall be sent, as follows:

TO EVMWD:

Elsinore Valley Municipal Water District
Attn: General Manager
P.O. Box 3000
31315 Chaney St.
Lake Elsinore, CA 92531

Copy to:

Best Best & Krieger LLP
Attn: General Counsel – EVMWD
2855 E. Guasti Road, Suite 400
Ontario, CA 91761

TO COUNTY:

County of Riverside
EDA Managing Director
3403 10th Street, Suite 500
Riverside, CA 92501

Copy to:

Riverside County Office of County Counsel
Attn: County Counsel
3960 Orange Street
Riverside, CA 92501

TO EMWD:

Eastern Municipal Water District
Attn: General Manager
P.O. Box 8300
Perris, CA 92572

Copy to:

Lemieux & O’Neill
Attn: General Counsel – EMWD
4165 E. Thousand Oaks Blvd, Suite 350
Westlake Village, CA 91362

4.2.1 Notices shall be deemed effective upon receipt or with respect to electronic transmission, upon receipt of written verification from the receiving party.

4.3 Amendment. This Agreement may be amended at any time by the mutual consent of the Parties by an instrument in writing signed by all Parties.

4.4 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement.

4.5 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

4.6 Third Party Beneficiaries. This Agreement and the performance of the Parties obligations hereunder are for the sole and exclusive benefit of County, EVMWD, and EMWD. No person or entity who or which is not a signatory to this Agreement shall be deemed to be

benefited or intended to be benefited by any provision hereof, and no such person or entity shall acquire any rights or causes of action against either County, EVMWD, or EMWD hereunder as a result of a Party's performance or non-performance of its obligations under this Agreement.

4.7 Relationship of Parties. The Parties agree and intend that County, EVMWD, and EMWD are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture, or similar business arrangement, relationship or association between them.

4.8 Governing Law. This Agreement shall be governed by the laws of the State of California without regard to conflicts of laws principles. This Agreement shall be deemed to have been made in the County of Riverside, California, regardless of the order of the signatures of the Parties affixed hereto. Any litigation or other legal proceedings which arise under or in connection with this Agreement shall be conducted in a federal or state court located within or for Riverside County, California. The Parties consent to the personal jurisdiction and venue in federal or state court located within or for the County of Riverside, California and hereby waive any defenses or objections thereto including defenses based on the doctrine of forum non conveniens.

4.9 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

4.10 Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Either Parties' consent or approval of any act by the other Party requiring its consent or approval shall not be deemed to waive or render unnecessary its consent to or approval of any subsequent act of the other Party. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

4.11 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party. All warranties and promises to indemnify shall survive the termination, abandonment, or completion of this Agreement.

4.12 Legal Counsel. Each Party acknowledges that: (i) it has read this Agreement; (ii) it has had the opportunity to have this Agreement explained to it by legal counsel of its choice; (iii) it is aware of the content and legal effect of this Agreement; and (iv) it is not relying on any representations made by any other Party or any of the employees, agents, representatives, or attorneys of any other Party, except as expressly set forth in this Agreement.

4.13 Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder.

4.14 Binding Effect. The terms of this Agreement shall inure to the benefit of, and shall be binding upon, each of the Parties and their respective successors and assigns.

4.15 Authorized Representatives. The persons executing this Agreement on behalf of each Party, and on behalf of themselves as individuals, as applicable, warrant and represent that they have the authority to execute this Agreement on behalf of that Party and that individual and that they have the authority to bind that Party and that individual to the performance of its obligations hereunder.

4.16 Entire Agreement. This Agreement constitutes the entire and integrated agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior and contemporaneous oral or written negotiations, representations or agreements.

Signatures on following pages

**SIGNATURE PAGES TO
AGREEMENT FOR TRANSFER OF WATER SYSTEM AMONG ELSINORE VALLEY
MUNICIPAL WATER DISTRICT, EASTERN MUNICIPAL WATER DISTRICT, AND
THE COUNTY OF RIVERSIDE ACTING IN ITS CAPACITY AS RECEIVER FOR
COUNTY WATER COMPANY**

EMWD:

By: _____
Paul D. Jones II, General Manager

Dated: _____

APPROVED AS TO LEGAL FORM:

By: _____
General Counsel

ATTEST:

By: _____
District Secretary

EVMWD:

By: _____
John Vega, General Manager

Dated: _____

APPROVED AS TO LEGAL FORM:

By: _____
General Counsel

ATTEST:

By: _____
District Secretary

COUNTY:

By: _____
Jeffrey Van Wagenen, Jr., Managing Director EDA and named Receiver

Dated: _____

APPROVED AS TO LEGAL FORM:

By: _____
County Counsel

ATTEST:

By: _____
County Clerk

EXHIBIT "A"

COURT ORDER DATED NOVEMBER 7, 2014

[The Court's Order is attached on the following pages]

EXHIBIT "A"

1 GREGORY P. PRIAMOS, County Counsel (SBN 136766)
ERIC L. STOPHER, Deputy County Counsel (SBN 222034)
2 3960 Orange Street, Suite 500
Riverside, CA 92501
3 Telephone: (951) 955-6300
4 Facsimile: (951) 955-6322
Email: EStopher@co.riverside.ca.us

5 Attorneys for County of Riverside
6 Department of Environmental Health

FILED **ASW**
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
NOV 07 2014
Dyanell
L. Howell
NOV 10 2014

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF RIVERSIDE

10
11 In Re:)
12)
13 COUNTY WATER COMPANY OF)
RIVERSIDE, INC., a California corporation;)
14 COUNTY WATER COMPANY, a California)
corporation; and TELESIS DIVERSIFIED,)
15 INC. a California corporation)
16)
17)

CASE NO. **RIC 1410060**
[PROPOSED] ORDER FOR APPOINTMENT
OF RECEIVER

18 Pursuant to Health and Safety Code Section 116665, the County of Riverside Health Services
19 Agency Department of Environmental Health (hereinafter the Department of Environmental Health is
20 referred to as "the Department" and Riverside County is referred to as "The County") petitioned the Court
21 for the appointment of a receiver to assume possession, operation, and control of the small private water
22 system in the Bundy Canyon area of Riverside County owned and operated by COUNTY WATER
23 COMPANY, a California corporation (Entity No. C0254232); COUNTY WATER CO. OF RIVERSIDE,
24 INC., a California corporation (Entity No. C0743439); and TELESIS DIVERSIFIED, INC., a California
25 corporation (Entity No. C2816675) (collectively referred to hereafter as "Water Company Parties"). The
26 small private water system operated by Water Company Parties ("Water System") includes: (a) All
27 pipelines, equipment, facilities, and other infrastructure (collectively "Infrastructure"); (b) All easements,
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1 licenses, or other real property rights associated with the Infrastructure (collectively "Easements"); (c)
2 Any books and records maintained or kept by the County with respect to the location, operation, repair,
3 and maintenance of the Water System (collectively "Records"); and (d) All other property belonging to
4 Water Company Parties, excluding the real and personal property listed below. The following properties,
5 which are part of the Water System, are not to be included in the receivership: (a) Tank Site – The
6 property on which Water Company Parties kept and operated its 50,000 gallon tank, identified in the
7 County Assessor's records as APN 362-070-022; (b) Well Site – the real property on which Water
8 Company Parties kept and operated its well, identified in the County Assessor's records as APN 361-204-
9 023; and (c) any and all physical equipment and facilities related to the Tank Site, the Well Site, or
10 traversing between the Tank Site and the Well Site, including, but not limited to, the physical well, the
11 well casing, the pump located on the well site, the pipes connecting the well and the tank, the tank, and all
12 devices attached to the tank (collectively, the "Well and Tank Structures").

13 The Court, having jurisdiction over the subject matter of the Department's request to have a
14 receiver appointed and having considered the evidence submitted in support of the Department's request,
15 finds and orders as follows:

16 **A. FINDINGS OF FACT**

17 1. The Department has determined that Water Company Parties are unable to adequately
18 serve their users. The Department's determination is supported by the evidence contained in the Ex Parte
19 Application for Appointment of Receiver, the Petition for Receivership and the Declarations of Eric
20 Stopher, Jeffrey Johnson, Rafael Spears, Greg Morrison and Paul Jones on file herein.

21 2. The Water Company Parties' principal place of business is in the County of Riverside.

22 3. Health and Safety Code section 116665 and the Court's inherent equitable powers
23 authorize the Court to appoint a receiver to assume possession of and operate the Water System upon such
24 terms and conditions as the Court may prescribe.

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1 4. The Water Company Parties, as well as County of Riverside ("County") (collectively "the
2 Parties") were properly noticed and served with the Department's Petition for Appointment of Receiver
3 and supporting documents. The Parties were provided a reasonable opportunity to be heard in connection
4 with this request to appoint a receiver.

5 5. The County as the Receiver has demonstrated the capacity and expertise to take over
6 possession of and operate the Water System to provide potable water that meets state and federal
7 standards.

8 6. Water Company Parties, as well as necessary third parties Elsinore Valley Municipal
9 Water District ("EVMWD") and Eastern Municipal Water District ("EMWD"), consent to the County
10 being appointed as receiver.

11 **B. APPOINTMENT OF RECEIVER**

12 County, by and through Jeffrey Van Wagenen, is appointed receiver of the Water System and
13 given those powers granted under Code of Civil Procedure section 568 and Health and Safety Code
14 section 116665, this Order and further orders of the Court. Before performing any duties, receiver will
15 execute and file with the Court the receiver's oath. The filing of a bond is waived pursuant to Code of
16 Civil Procedure section 995.220(c).

17 **C. IMMUNITIES**

18 The County and all of its employees in its capacity as receiver, and EVMWD and EMWD as
19 contracting parties, shall be immune from any personal liability to the fullest extent allowed under Code
20 of Civil Procedure section 568 et seq., Health and Safety Code section 116665 and other applicable laws,
21 including, but not limited to, liability for any of the following:

- 22 1. Obligations of Water Company Parties that were incurred prior to receiver's appointment;
- 23 2. Claims, actions, damages, fines, liabilities, costs or expenses relating to the conditions of
24 the Water System, including the presence or release of any Hazardous Substances at the
25 Subject Property. Hazardous Substances include any substance, material or waste that is
26 included within the definition of "hazardous substances," "hazardous materials,"
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1 "hazardous waste" or words of similar import in any federal, state or local law, whether
2 common law, statute, ordinance, rule, regulation or judicial or administrative decision; and

- 3 3. Any good faith, reasonable effort to assume possession of and operate the Water System
4 (excluding the Tank Site, Well Site and Well and Tank Structures) and/or transfer of
5 ownership of the Water System (excluding the Tank Site, Well Site and Well and Tank
6 Structures) to EVMWD and/or EMWD in compliance with this Order.

7 **D. RECEIVER'S SPECIFIC POWERS:**

8 In addition to the plenary powers described in Section B of this Order, receiver is given the
9 following specific powers and duties:

- 10 1. To take full and complete possession and control of the Water System (excluding the Tank
11 Site, Well Site and Well and Tank Structures), including any cash or accounts belonging to
12 the Water Company Parties which pertain to the Water System;
- 13 2. To manage the Water System (excluding the Tank Site, Well Site and Well and Tank
14 Structures) and pay expenses of its operation, including Water District fees, water testing
15 and reporting, taxes, insurance, utilities, general maintenance and debt secured by an
16 interest in the Water System (excluding the Tank Site, Well Site and Well and Tank
17 Structures);
- 18 3. To contract with EVMWD and EMWD to provide, install, construct, operate, maintain,
19 repair or rehabilitate the Water System (excluding the Tank Site, Well Site and Well and
20 Tank Structures) to provide potable water to Affected Residents. EVMWD and EMWD
21 will pay no costs other than those identified in their contracts with the County as receiver;
- 22 4. To collect all water fees, assessments, and income from the Water System (excluding the
23 Tank Site, Well Site and Well and Tank Structures), including from Affected Residents
24 and to use these funds to pay for expenses and to pay for repairs and testing necessary to
25 provide potable water meeting all state and federal standards;

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- 5. To disconnect or refuse to provide water for non-payment of water fees or assessments;
- 6. To disconnect and abandon or dispose of any facilities or property that will not be used to supply water;
- 7. To enter into contracts for goods and services and to employ licensed contractors in connection with the operation, maintenance, rehabilitation and repair of the Water System (excluding the Tank Site, Well Site and Well and Tank Structures), including without limitation, contracts with:
 - a. Any maintenance and repair companies or personnel;
 - b. Any licensed engineer or other professional to inspect and evaluate the condition and rehabilitation potential of the Water System (excluding the Tank Site, Well Site and Well and Tank Structures).
 - c. Any licensed general contractor, subcontractor, supplier or manufacturer to provide labor, services, goods, materials or equipment needed to manage, maintain, operate, repair, rehabilitate, construct or install the Water System (excluding the Tank Site, Well Site and Well and Tank Structures).
 - d. Any construction manager.
 - e. Any state or other governmental grant or funding authority.
 - f. Any bank, lending institution or government finance agency.
 - g. Any title company.
 - h. Any appraiser or accountant.
 - i. Any locksmith or security company to obtain access or maintain security of the subject property.
- 8. To apply for permits or other government approvals necessary to undertake and complete the rehabilitation and Water System work (excluding the Tank Site, Well Site and Well and Tank Structures).

- 1 9. To file with the Court within thirty (30) calendar days of the effective date of this Order
2 an inventory containing a complete and detailed list of all property of which receiver has
3 taken possession and to promptly file a supplemental inventory of any subsequently
4 obtained property.
- 5 10. To render interim accountings and reports on a quarterly basis to this Court and to render
6 a final accounting to this Court at the conclusion of the receivership.
- 7 11. To exercise the powers granted to receiver under section 568 of the Code of Civil
8 Procedure.
- 9 12. That the receiver, the County, shall be allowed compensation for the costs associated with
10 the administration of the receivership at its Board approved hourly rate (currently \$163
11 for attorney/ \$75 for paralegal) and EDA administrative costs as determined by internal
12 EDA rates. Compensation for these services shall come from funds remaining after the
13 collection of all water fees, assessments, and income from the Water System and after the
14 payment of necessary expenditures, including operational expenses, amounts due for
15 water usage, and repairs of the system
- 16 13. That no bond is required to be posted by the receiver.
- 17 14. To transfer the Water System (excluding the Tank Site, Well Site and Well and Tank
18 Structures), pursuant to Code of Civil Procedure section 568.5, subject to the prior
19 approval and confirmation of this Court, to EVMWD and EMWD for a nominal amount
20 only.
- 21 15. To apply to this Court for further or other instructions or orders and for further powers
22 necessary to enable receiver to perform its duties properly or to address unforeseen
23 circumstances that may arise with respect to this receivership.
- 24 16. To exercise all statutory rights and powers to own and operate a water system, that are
25 currently owned and enjoyed by the Water Company Parties.

1 IT IS FURTHER ORDERED: That respondents, their partners, assignees, successors,
2 representatives, managers, agents, attorneys, employees and all other persons acting under or in concert
3 with respondents, are hereby ordered to:

- 4 1. Immediately relinquish and turn over possession of Water System (excluding the Tank
5 Site, Well Site and Well and Tank Structures) to the receiver;
- 6 2. Immediately turn over to the receiver and direct any other agents or employees to turn over
7 all keys to the Water System (excluding the Tank Site, Well Site and Well and Tank
8 Structures) and any Records with respect to the Water System as requested by receiver;
- 9 3. Immediately advise receiver as to the nature and extent of insurance coverage on the Water
10 System and name receiver as additional insured on any liability insurance policies for so
11 long as receiver remains in possession; and
- 12 4. Forward to receiver all bills which they may receive in connection with Water System
13 excluding bills related to the Tank Site, Well Site and Well and Tank Structures).

14 IT IS FURTHER ORDERED: That respondents, their partners, assignees, successors,
15 representatives, managers, agents, attorneys, employees and all persons acting under or in concert with
16 respondents are hereby enjoined during this receivership from:

- 17 1. Demanding, collecting, receiving or diverting any rents, profits, income, water fees or
18 assessments in connection with the Water System;
- 19 2. Interfering with receiver, directly or indirectly, in the operation of the Water System;
- 20 3. Encumbering, mortgaging, liening, selling or transferring the Water System (excluding the
21 Tank Site, Well Site and Well and Tank Structures); or
- 22 4. Canceling, reducing or modifying any existing insurance coverage with respect to the
23 Water System.

24 IT IS FURTHER ORDERED: That this Order shall be immediately effective on the date of entry
25 as set forth below. In addition, this case shall be continued generally, and the Court shall reserve full

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1 jurisdiction for such other proceedings as may be necessary to effectuate the provisions of this Order and
2 for awarding such other and further relief that is recoverable under Health and Safety Code section et seq.,
3 Code of Civil Procedure section et seq. or any other provisions of law, including but not limited to, the
4 award of attorney's fees and costs to the prevailing party.

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Dated:

11/7/14



Judge of the Superior Court

EXHIBIT "B"
QUIT CLAIM DEEDS

[Form quit claim deeds are attached on the following pages]

EXHIBIT "B"

BILL OF SALE

This Bill of Sale ("Bill of Sale") is dated this _____ day of _____, 20__, and is executed and delivered pursuant to that certain Agreement for transfer of Water System Among Elsinore Municipal Water District, Eastern Municipal Water District, and the County of Riverside Acting in Its Capacity as Receiver for County Water Company ("Agreement") between the County of Riverside, acting in its capacity as court appointed receiver for County Water Company ("County"), and Eastern Municipal Water District ("EMWD"). County and EMWD may collectively be referred to as "parties". This Bill of Sale shall not become effective until the "Effective Date", as defined in the Purchase Agreement.

RECITALS

A. Pursuant to the Agreement, County is conveying to EMWD certain personal property located within the County of Riverside, State of California, referred to as "Personal Property" more particularly as:

1. All pipelines, equipment, facilities and other infrastructure which pertain to the water system previously owned by COUNTY WATER COMPANY, a California corporation (Entity No. C0254232); COUNTY WATER CO. OF RIVERSIDE, INC., a California corporation (Entity No. C0743439); and TELESIS DIVERSIFIED, INC., a California corporation (Entity No. C2816675) (collectively "Water System") located east of Sunset Avenue and north of Bundy Canyon Road in the City of Menifee (collectively "Infrastructure");
2. All easements, licenses, and other real property rights associated with the Infrastructure, east of Sunset Avenue and north of Bundy Canyon Road in the City of Menifee;
3. All books and records maintained and kept by the County with respect to the location, operation, repair and maintenance of the portion of the Water System located east of Sunset Avenue and north of Bundy Canyon Road in the City of Menifee;
4. Other property associated with the Water System located east of Sunset Avenue and north of Bundy Canyon Road in the City of Menifee.

B. County desires to assign to EMWD, and EMWD desires to accept from County, certain rights and interests relating to the Personal Property.

C. County Water Company, a private entity, shall be referred to as CWC.

D. All property that is part of this Bill of Sale is owned by CWC and administered by the County as the court-appointed receiver.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Intangibles.** County grants, sells, sets over, assigns, transfers, conveys and delivers to EMWD, to the extent assignable, all of County's and/or CWC's right, title and interest in and to any and all guarantees, warranties and indemnities relating to the Personal Property, any and all development rights, entitlements, franchises, easements granted and or received and whether known or unknown, and other intangible property pertaining to or inuring to the benefit of County and/or CWC or the Personal Property, including, without limitation, all consents, authorizations, variances or waivers, licenses, registrations, certificates, warranties, permits and approvals from any governmental or quasi-governmental agency, department, board, commission, bureau or other entity or instrumentality in respect of the Personal Property, or any part thereof, and required for the occupancy, maintenance, or operation of the Personal Property, including certificates of occupancy.

2. **Goodwill.** County grants, sells, sets over, assigns, transfers, conveys and delivers to EMWD all of County and/or CWC's right, title and interest, if any, in and to any and all names commonly used in the operation of the Personal Property, together with the goodwill, if any, appurtenant to those names.

3. **Documents.** County grants, sells, sets over, assigns, transfers, conveys and delivers to EMWD all of County and/or CWC's right, title and interest, if any, in and to any and all plans, drawings, renderings, maps and engineering studies used in connection with, or related to the Personal Property.

4. **Acceptance.** EMWD, for itself and its successors and assigns, accepts the foregoing assignments.

5. **Severability.** If any provision of this Bill of Sale is found by any court of competent jurisdiction to be invalid, illegal, or unenforceable, then such portion shall be deemed severed from this Bill of Sale and the parties shall negotiate in good faith to modify this Bill of Sale to fulfill as closely as possible the original intent and purpose of this document.

6. **Counterparts.** This Bill of Sale may be executed in duplicate counterparts, each of which shall be deemed an original, but both of which, together, shall constitute one and the same instrument.

7. **Governing Law.** This Bill of Sale shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of laws principles.

8. **As-Is Sale.** EMWD acknowledges and agrees that to the maximum extent permitted by law, the execution of this Bill of Sale is made on an "AS-IS" condition and basis with all faults, and County has no obligations to make repairs, replacements or improvements

and specifically has no obligation with respect to the Infrastructure, Easements, and appurtenances (if any) upon the transfer of the Personal Property.

IN WITNESS WHEREOF, the parties have executed this Bill of Sale as of the day and year first above written.

Eastern Municipal Water District

By: _____
Name: _____
Its: _____
Date: _____

**County of Riverside, as Court-appointed receiver
for County Water Company, by and through the
named receiver Jeffrey Van Wagenen**

By: _____
Name: _____
Its: _____
Date: _____

RECORDING REQUESTED BY AND]
 WHEN RECORDED MAIL TO:]
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QUITCLAIM DEED

COUNTY OF RIVERSIDE (“**County**”), a public agency organized under the laws of the State of California, California, in its capacity as the duly appointed receiver of Water Company Parties, pursuant to the Agreement for Transfer of Water System Among Elsinore Valley Municipal Water District, Eastern Municipal Water District, and the County of Riverside Acting in its Capacity as Receiver for County Water Company (“**Agreement**”) dated _____, 2015, and in accordance with Section D.15 of the Order for Appointment of Receiver dated November 7, 2014, does hereby remise, release and quitclaim to:

EASTERN MUNICIPAL WATER DISTRICT, a public agency organized under the laws of the State of California (“**Quitclaimee**”),

The below described personal property and parcel(s) of land, and all right, title or interest in and to a portion of rights of way or easements which pertain to the water system owned by COUNTY WATER COMPANY, a California corporation (Entity No. C0254232); COUNTY WATER CO. OF RIVERSIDE, INC., a California corporation (Entity No. C0743439); and TELESIS DIVERSIFIED, INC., a California corporation (Entity No. C2816675) (collectively “Water System”), located in the Bundy Canyon area of Riverside County on the border of the cities of Wildomar and Menifee, subject to the control of the County pursuant to the Order for Appointment of Receiver dated November 7, 2014 and entered in case no. RIC 1410060 of the Riverside County Superior Court, and recorded on _____, as Instrument No. _____, in Book _____ at Page _____ of the Official Records of Riverside County, State of California:

- 1. All pipelines, equipment, appurtenances, facilities and other infrastructure which pertain to the Water System located east of Sunset Avenue and north of Bundy Canyon Road in the City of Menifee (collectively “Infrastructure”) subject to paragraph 4 herein;
- 2. All easements, licenses and other real property rights associated with the Infrastructure, east of Sunset Avenue and north of Bundy Canyon Road in the City of Menifee (collectively “Easements”);

3. All books and records maintained and kept by the County with respect to the location, operation, repair and maintenance of the portion of the Water System located east of Sunset Avenue and north of Bundy Canyon Road in the City of Menifee (collectively "Records");
4. Other property associated with the Water System located east of Sunset Avenue and north of Bundy Canyon Road in the City of Menifee (collectively "Infrastructure"), excluding the following:
 - (a) Tank Site, identified as APN 362-070-022, recorded on [insert] as Instrument Number [insert] in Book [insert], Pages [insert] inclusive in the Office of the County Recorder of Riverside County, California;
 - (b) Well Site, as APN 361-204-023, recorded on [insert date] as Instrument Number [insert] in Book [insert], Pages [insert] inclusive in the Office of the County Recorder of Riverside County, California; and
 - (c) Any and all physical equipment and facilities, related to the Tank Site (APN 362-070-022), the Well Site (APN 361-204-023), or traversing between the Tank Site and the Well Site, including, but not limited to, the physical well, the well casing, the pump located on the well site, the pipes connecting the well and the tank, the tank, and all devices attached to the tank.

On the Effective date of the aforementioned Agreement, upon Quitclaimee's written notice in accordance with the aforementioned Agreement, upon execution of this Quitclaim Deed by County, and upon approval of the Court of the transfer stated herein, County hereby abandons all of County's and CWC's interest in the Infrastructure, the Easements, the Records, the Other Property and appurtenances described herein in their present location. Quitclaimee acknowledges and agrees that County shall not remove the Infrastructure, Other Property, and/or appurtenances (if any) described herein from the Water System. In the event Quitclaimee or his/her/its/their successors and assigns desire the Infrastructure, Other Property, and/or appurtenances described herein to be removed from the Water System, such person or entities shall remove the Infrastructure, Other Property and appurtenances at his/her/its/their sole cost and expense.

Quitclaimee acknowledges and agrees that to the maximum extent permitted by law, the execution of this Quitclaim Deed is made on an "AS-IS" condition and basis with all faults, and County has no obligations to make repairs, replacements or improvements and specifically has no obligation with respect to the Infrastructure, Easements, Records, Other Property, and appurtenances (if any) upon the transfer of the Water System.

[_____]

DATED: _____

By:
Title:

(SEAL)

EXHIBIT "C"

DESCRIPTION OF PERMANENT FACILITIES

[Description of permanent facilities is attached on the following pages]

EXHIBIT "C"

Exhibit C County Water Company of Riverside Proposed Permanent Facilities

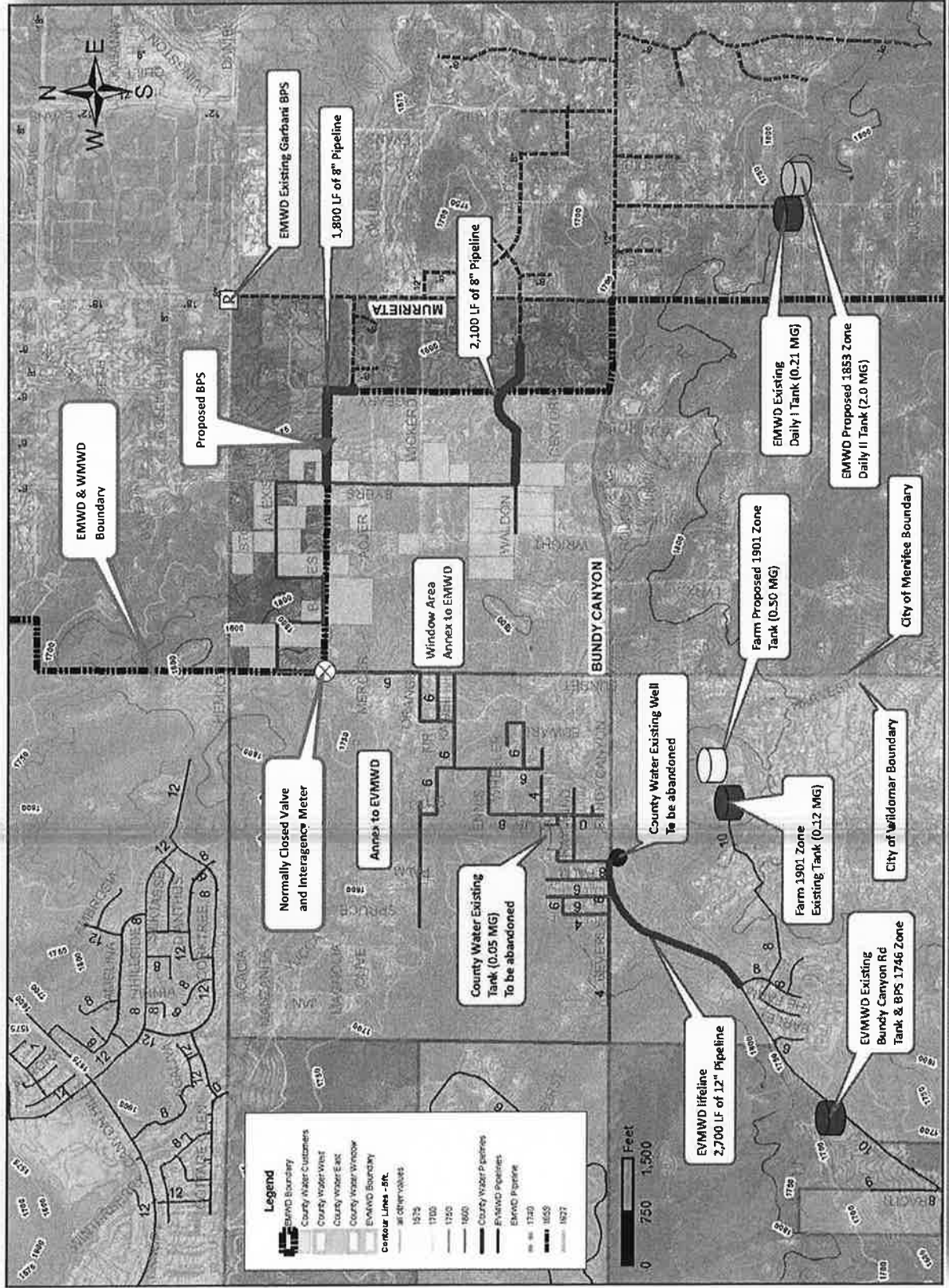


EXHIBIT "D"

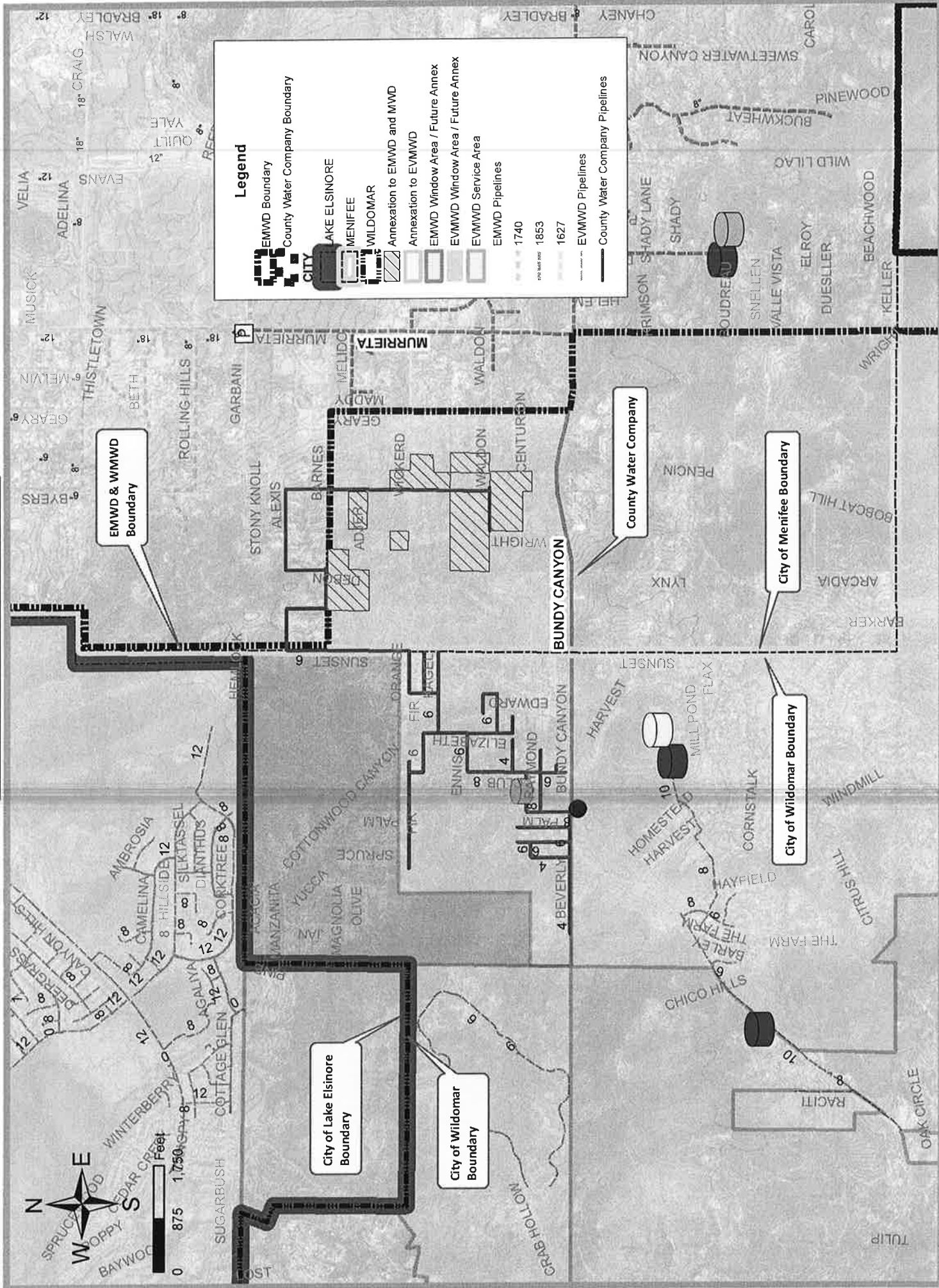
**MAP SHOWING DIVISION OF CWC SERVICE AREA
LAFCO APPLICATION AND MWD ANNEXATION**

[Map attached on following page.]

EXHIBIT "D"

**EXHIBIT D
MAP OF CWC TERRITORY**

Date: 1/30/2014



1 GREGORY P. PRIAMOS (SBN 136766)
County Counsel
2 JAMES E. BROWN (SBN 162579)
ERIC STOPHER (SBN 222034)
3 3960 Orange Street, Suite 500
Riverside, CA 92501
4 Telephone: (951) 955-6300
Facsimile: (951) 955-6322
5 Email: estopher@co.riverside.ca.us

6 Attorneys for County of Riverside, Receiver,
By and Through Jeffrey Van Wagenen, as the
7 Named Receiver

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF RIVERSIDE

11 In Re:)	Case No. RIC1410060
12)	
13 COUNTY WATER COMPANY OF)	NOTICE OF MOTION AND MOTION OF THE
14 RIVERSIDE, INC., a California corporation;)	RECEIVER FOR AN ORDER APPROVING
15 COUNTY WATER COMPANY, a California)	THE PROPOSED TRANSFER OF WATER
16 corporation; and TELESIS DIVERSIFIED,)	COMPANY PARTIES' ASSETS;
17 INC. a California corporation)	MEMORANDUM OF POINTS AND
)	AUTHORITIES; DECLARATION OF
)	JEFFREY VAN WAGENEN; DECLARATION
)	OF RAFAEL SPEARS; EXHIBITS
)	
)	
)	
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20 NOTICE IS HEREBY GIVEN that on _____, 2015 at _____, in Department 6 of the above
21 captioned Court, located at 4050 Main Street, Riverside, California, or as soon thereafter as the matter
22 may be heard, the undersigned will move the Court for an order approving the Receiver's proposed
23 transfer of the assets of the Water System operated by County Water Company of Riverside, Inc., County
24 Water Company, and Telesis Diversified, Inc. (collectively, "Water Company Parties"), including: (a) All
25 pipelines, equipment, facilities, and other infrastructure (collectively "Infrastructure"); (b) All easements,
26 licenses, or other real property rights associated with the Infrastructure (collectively "Easements"); (c)
27 Any books and records maintained or kept by the Water Company Parties with respect to the location,
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1 operation, repair, and maintenance of the Water System (collectively "Records"); and (d) all other
2 property belonging to Water Company Parties, excluding the Tank Site, Well Site, and any and all
3 physical equipment and facilities related thereto or traversing between them (collectively the
4 Infrastructure, Easements, Records, and other property subject to the aforementioned exclusions shall be
5 referred to as "Assets"). Receiver proposes that all Assets be transferred to either Elsinore Valley
6 Municipal Water District ("EVMWD") or Eastern Municipal Water District ("EMWD") in accordance
7 with the terms of the certain Permanent Transfer Agreement, free and clear of all liens and encumbrances.

8 The motion is made pursuant to *Code of Civil Procedure* §568.5 and the terms of the order entered
9 into these proceedings on November 7, 2014, appointing the County of Riverside as Receiver with respect
10 to the Water System (the "Appointment Order") and on the grounds that the transfer of the Assets is
11 reasonable and necessary in order to carry out the Receiver's duties to protect the Receivership estate and
12 to ensure the completion of the ultimate goal of the Receiver – the provision of potable water to the
13 residents. The terms of the proposed transfer are reasonable given the necessity in transferring the
14 property to ensure the installation of permanent water supply lines that would enable the residents to
15 obtain year-round, contaminant-free water.

16 The motion is based upon the attached Memorandum of Points and Authorities, the attached
17 declaration and supporting exhibits, the pleadings on file with the Court in this matter, and upon such
18 evidence as may be presented at the hearing on this matter.
19

20 GREGORY P. PRIAMOS
21 County Counsel

22 Dated: _____

23 By: _____
24 ERIC L. STOPHER, Deputy County Counsel
25 Attorneys for County of Riverside
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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3 **I.**

4 **BACKGROUND FACTS**

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6 On November 7, 2014, the Court appointed the County of Riverside (“County”), by and through
7 Jeffrey Van Wagenen, as receiver over a small private water system in the Bundy Canyon area of
8 Riverside County (“Water System”). The Water System was owned and operated by COUNTY WATER
9 COMPANY, a California corporation (Entity No. C0254232); COUNTY WATER CO. OF RIVERSIDE,
10 INC., a California corporation (Entity No. C0743439); TELESIS DIVERSIFIED, INC., a California
11 corporation (Entity No. C2816675); RAFAEL SPEARS and LORI SPEARS (collectively referred to
12 hereafter as “Water Company Parties”).¹

13 Since the mid-2000s, Water Company Parties pumped and provided contaminated water that
14 exceeded both federal and state recommended limits for nitrates. Further, during the summer months,
15 when water usage in the area is at its highest and the water table is at its lowest, the well periodically ran
16 dry. As a result, when water was available to pump, the residents served by the Water System were
17 unable to consume the water due to the contamination. The situation further became critical when the
18 operation of the Water System became financially unfeasible for the Water Company Parties.

19 To remedy the situation, the County sought the assistance of two local water districts – EVMWD
20 and EMWD (collectively the “Water Districts”) – who agreed to seek funding from the State of California
21 to expand their jurisdictions to cover the residents previously served by the Water Company Parties and to
22 construct permanent water supply lines to bypass the dry/contaminated well. This solution would provide
23 the residents with year-round, pressurized, potable water. After failed negotiations to effect the transfer of
24 the Assets from the Water Company Parties to the Water Districts without court intervention and as the
25 Water Company Parties’ finances became dire, the only feasible option left was for the County to petition
26 to have a receiver appointed over the Water Company Parties to operate the Water System in the interim

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28 ¹ Aside from the legal construct of the County as the court-appointed Receiver over Water Company Parties’ Assets and operations, the private company known as “County Water Company” was, and is, in no way related to the County of Riverside.

1 while the permanent lines were constructed and to provide a mechanism to transfer the Assets to the
2 Water Districts. In this specific instance, due to the lack of income, there was no private receiver
3 available, and the County was the only viable option to be appointed as receiver.
4

5 **II.**

6 **PARTIES**

7 Each of the Water Company Parties has at some time or another been involved in the operation of
8 the Water System. Rafael Spears is the President of the Water Company Parties, and is authorized to act
9 on their behalf.

10 The County is a general law county and a political subdivision of the State of California, and the
11 Court-appointed Receiver. Attached hereto as Exhibit "A" is a true and correct copy of the Order for
12 Appointment of Receiver ("Appointment Order").

13 The Water Districts are public agencies organized and existing under the provisions of Sections
14 71000 et seq. of the California Water Code. In accordance with an operations agreement with the County
15 as Receiver, the Water Districts are currently providing water service to the residents previously served by
16 the Water Company Parties. The Water Districts have each obtained a commitment of approximately
17 \$3,000,000 from the California Department of Public Health in order to provide the necessary
18 infrastructure to provide acceptable permanent water service to residents served by the Water System.
19

20 **III.**

21 **NECESSITY OF ADVANCED APPROVAL**

22 The proposed property transfer agreement and relevant documents are attached hereto as Exhibit
23 "B" (the "Agreement") and consist of a three-party agreement between EVMWD, EMWD and the
24 County. The Agreement divides the Assets at the jurisdictional border between EVWMD and EMWD.
25 As noted in the Agreement, the Assets will not be transferred until the permanent supply lines are
26 constructed and approved for use. The installation is expected to take at least one year. However, in order
27

1 for EVMWD and EMWD to obtain the funding for the construction, the Agreement must first be signed
2 by all parties.

3 The governing bodies of the County, EVMWD and EMWD have approved the Agreement and the
4 supporting documents necessary to transfer the Assets upon the completion of the construction of the
5 permanent lines. Upon the Court's approval of the Agreement, the Agreement will be effective, the
6 documents necessary to obtain the funding can be signed, and the construction on the permanent lines can
7 begin.

8
9 **IV.**

10 **PROPERTY TO BE TRANSFERRED**

11 The Water System service area covers approximately 140 residences across 1,032 acres in the
12 Bundy Canyon area of Riverside County on the border of the cities of Wildomar and Menifee. As noted
13 above, upon appointment as Receiver, the County was granted possession over the Assets of the Water
14 System excluding certain sites and real property.²

15 Pursuant to the moving papers associated with the appointment of the County as Receiver, the
16 purpose of the receivership was to transfer the Assets to EVMWD and EMWD so that the affected
17 residents could obtain year-round, clean, potable water. The only method to accomplish this is to transfer
18 the Assets to governmental agencies that can legally provide the water. The western portion of the Assets
19 will be transferred to EVMWD and the eastern portion of the Assets will be transferred to EMWD. The
20 midpoint for the transfer is located at the jurisdictional boundary between EVMWD and EMWD, which is
21 Sunset Avenue for this area.

22 The specific property to be transferred is a follows:
23

24 ² Specifically, upon appointment, the County was not granted possession of the following CWC assets: (a) Tank Site – The
25 property on which Water Company Parties kept and operated its 50,000 gallon tank, identified in the County Assessor's
26 records as APN 362-070-022; (b) Well Site - the real property on which Water Company Parties kept and operated its well,
27 identified in the County Assessor's records as APN 361-204-023; and (c) any and all physical equipment and facilities related
28 to the Tank Site, the Well Site, or traversing between the Tank Site and the Well Site, including, but not limited to, the physical
well, the well casing, the pump located on the well site, the pipes connecting the well and the tank, the tank, and all devices
attached to the tank. These assets remain in the custody and control of the owners of CWC and are not made a part of any
transfer agreement.

- (1) All pipelines, equipment, facilities and other infrastructure necessary to supply water to the customers (collectively “Infrastructure”);
- (2) All easements, licenses, or other real property rights associated with the Infrastructure (collectively “Easements”);
- (3) Any books and records maintained or kept by CWC with respect to the location, operation, repair, and maintenance of the Water System (collectively “Records”); and
- (4) All other property belonging to CWC, excluding the property listed in Footnote 2, above.

V.

LIENS ON THE PROPERTY

County knows of no liens on the Assets. Pursuant to the concurrently filed Declaration of Jeffrey Van Wagenen, the acting Receiver, there have been no inquiries, payment requests, or bills for service, from any third party regarding any indebtedness of the Assets. Further, pursuant to the concurrently filed Declaration of Rafael Spears, the owner and president of Water Company Parties since the mid-2000s, there is no known indebtedness involving the Assets. Mr. Spears states that Water Company Parties did not use the Assets as collateral while Water Company Parties controlled them, nor was Mr. Spears ever notified that any prior owners of the Water Company Parties had indebted the Assets.

VI.

**THE COURT SHOULD APPROVE THE RECEIVER’S
PROPOSED TRANSFER OF THE PROPERTY.**

It is necessary and proper for the Receiver to transfer the Assets in order to comply with the terms of the Appointment Order and to protect the interests of all parties involved – the affected residents, the County, EVMWD, EMWD and the State of California.

California Code of Civil Procedure §568.5 provides as follows:

A receiver may, pursuant to an order of the court, sell real or personal property in the receiver’s possession upon the notice and in the manner prescribed by Article 6 (commencing with Section 701.510) of Chapter 3 of Division 2 of Title 9. The sale is not final until confirmed by the Court.

1 Notwithstanding the sale procedure specified in Section 568.5, the Court may approve any other
2 method of sale which is reasonable and appropriate. *People v. Riverside University* (1973) 35 Cal.App.3d
3 572.

4 In this case, the Receiver seeks to transfer the listed Assets, for a nominal value, to the only two
5 parties who are capable of ultimately fulfilling the purpose of the Receiver – providing potable water to
6 the affected residents. Specifically, the Appointment Order authorizes the Receiver to “transfer the Water
7 System (excluding the Tank Site, Well Site and Well and Tank Structures), pursuant to Code of Civil
8 Procedure section 568.5, subject to the prior approval and confirmation of this Court, to EVMWD and
9 EMWD for a nominal amount only.”

10 It is reasonable and necessary for the Receiver to transfer the Assets to EVMWD and EMWD
11 pursuant to the Agreement.

12
13 **VII.**

14 **THE PROPOSED TRANSFER IS REASONABLE**

15 As noted above, there are no other uses for the Assets – the Assets predominantly consist of
16 Infrastructure, Easements, and Records for the sole purpose of water provision. While there may be scrap
17 value associated with the pipes, the cost to dig them up would likely be more than the value of the scrap
18 metal. Therefore, the only potential value in the Assets is to use them for water supply. Given the
19 contamination of the well that previously provided water to the affected residents and the fact that the
20 well periodically ran dry, there would be no other potential buyer for the assets who could provide water
21 through the Water System. Any potential buyer would have to be a private company (as the legal
22 jurisdictional right for public companies lies with EVMWD and EMWD) that either has sufficient
23 resources and inclination to dig the existing well deeper to avoid low water table issues and to install
24 equipment that would remove the contaminants in the existing well water or possesses independent water
25 rights which might permissibly be utilized for serving the affected residents. No such private company is
26 known to exist. The estimated costs are over \$1,000,000 just to make the necessary repairs to the system
27 to allow it to operate with its current, contaminated, water supply. Given that there are only 140 properties
28

1 to collect any sort of revenue from, the likelihood that any company could recoup this initial investment is
2 non-existent. Therefore, there is no sense delaying the transfer in the hope that such a company will
3 manifest.

4 The current plan is the only viable alternative. Given that the affected residents lie completely
5 within the jurisdictional boundaries of the Water Districts and given that no other providers who could
6 legally and safely provide water exist, this Asset transfer is the only reasonable option to ensure that the
7 purpose of the receivership is met and the residents obtain clean water.

8
9 **VIII.**
10 **THE COURT SHOULD APPROVE AND CONFIRM THE PROPOSED**
11 **TRANSFER FREE OF ALL LIENS AND ENCUMBRANCES**

12 To complete the proposed sale, it is necessary for the Court to order the Assets be sold free and
13 clear of all liens and encumbrances. As stated above, there are no known liens, encumbrances or
14 indebtedness related to the Assets. Therefore, the County requests that the Court order the Assets be
15 transferred free and clear of all liens, encumbrances or indebtedness.

16 **IX.**
17 **CONCLUSION**

18 Based upon the foregoing discussion, the undersigned as Receiver respectfully requests that the
19 Court enter an order approving the transfer of the Assets to EVMWD and EMWD on the terms set forth
20 in the attached Agreement, free and clear of all liens and encumbrances.

21
22 GREGORY P. PRIAMOS
23 County Counsel

24 Dated: _____

25 By: _____
26 ERIC L. STOPHER, Deputy County Counsel
27 Attorneys for County of Riverside