

FORM APPROVED COUNTY COUNSEL 3/24/16
 BY: GREGORY P. PRIAMOS DATE

3013



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

FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
April 12, 2016

SUBJECT: Approve License Agreement for Lake Elsinore Outlet Channel, Wasson Canyon Channel, Project Nos. 3-0-00040 and 3-0-00180; District 1; [\$N/A]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the License Agreement between the District and Eastern Municipal Water District (EMWD); and
2. Authorize the Chairman to execute the Agreement documents on behalf of the District; and
3. Authorize the General Manager-Chief Engineer to terminate the Agreement at his sole discretion.

BACKGROUND:

Summary

This Agreement sets forth the terms and conditions by which the District will grant a revocable license to EMWD to continue to convey EMWD waters to Temescal Creek through the District's Lake Elsinore Outlet Channel and Wasson Canyon Channel.

Continued on Page 2

[Signature]
 WARREN D. WILLIAMS
 General Manager-Chief Engineer

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET DISTRICT COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	

SOURCE OF FUNDS:	Budget Adjustment: No
	For Fiscal Year: N/A

C.E.O. RECOMMENDATION:

APPROVE
 BY: *[Signature]*
 Steven C. Horn

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

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

Prev. Agn. Ref.: | District: 1st | Agenda Number:

11-1

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

FORM 11: Approve License Agreement for Lake Elsinore Outlet Channel, Wasson Canyon Channel,
Project Nos. 3-0-00040 and 3-0-00180; District 1; [\$N/A]

DATE: April 12, 2016

PAGE: Page 2 of 2

BACKGROUND:

Summary (continued)

This Agreement also sets forth the terms and conditions by which the District will allow EMWD to continue to operate and maintain its inflatable rubber dam located within District right of way. EMWD utilizes the constructed inflatable dam to prevent EMWD's waters, when being discharged into Wasson Channel, from entering Lake Elsinore.

EMWD has previously obtained encroachment permits from the District for the discharge of recycled waters and the installation, operation and maintenance of the rubber dam. This Agreement supplements the previous encroachment permits and ongoing operation and maintenance activities required of EMWD. EMWD's operation and maintenance of the rubber dam and the discharge of recycled waters within the District's existing facilities will not be in conflict with the facilities' primary flood control function or the District's continuing operation and maintenance of the facilities.

All operation and maintenance costs associated with the release of recycled waters, inflatable rubber dam and associated appurtenances have been and will continue to be borne by EMWD.

County Counsel has approved the Agreement as to legal form and EMWD has executed the Agreement.

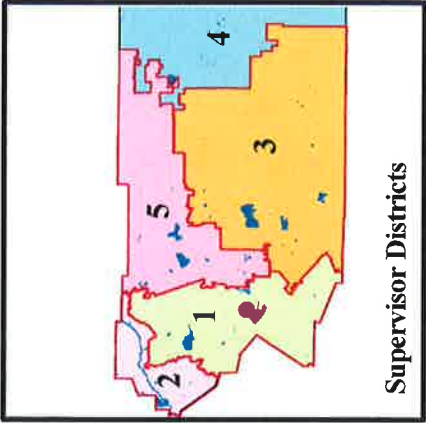
Impact on Residents and Businesses

This license establishes procedures and operations to reduce the risk of flooding from Lake Elsinore. Residents and businesses will benefit from the reduced risk of flooding from Lake Elsinore.

ATTACHMENTS:

1. Vicinity Map
2. License Agreement

LMD:bad
P8/203132



Supervisor Districts

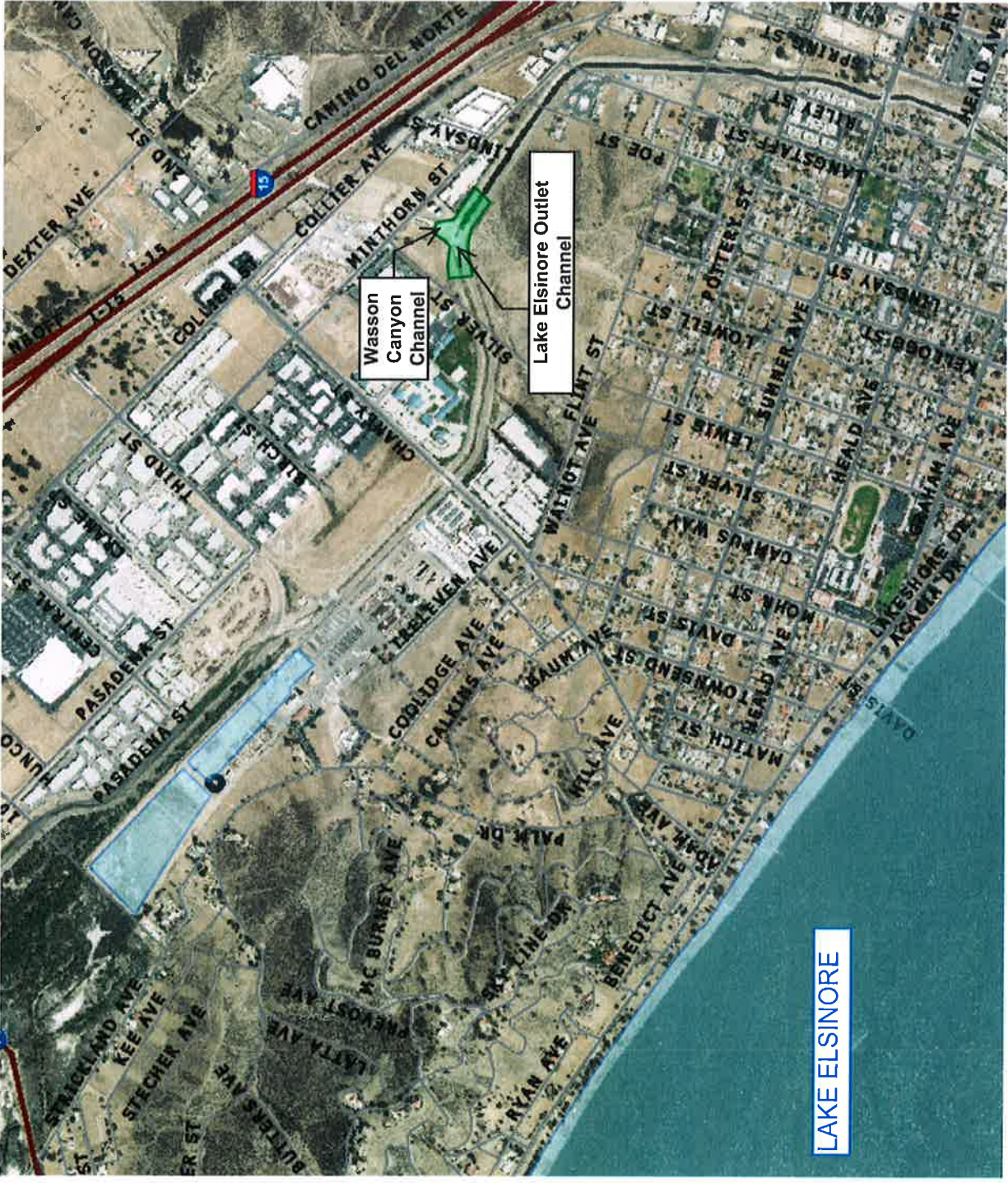
LEGEND:



Project Vicinity

DESCRIPTION:

License Agreement between the Riverside County Flood Control and Water Conservation District (District) and Eastern Municipal Water District (EMWD), relating to the discharge of EMWD waters to Temescal Creek through District's Lake Elsinore Outlet Channel and Wasson Canyon Channel.



LAKE ELSINORE

LICENSE AGREEMENT
Lake Elsinore Outlet Channel
Wasson Canyon Channel
(Project Nos. 3-0-00040 and 3-0-00180)

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", and the EASTERN MUNICIPAL WATER DISTRICT, hereinafter called "EMWD", hereby agree as follows:

RECITALS

A. DISTRICT owns, operates and maintains the Lake Elsinore Outlet Channel (Project No. 3-0-00040) and the Wasson Canyon Channel (Project No. 3-0-00180), hereinafter called "OUTLET CHANNEL" and "WASSON CHANNEL" respectively, principally located in the city of Lake Elsinore; and

B. Together, OUTLET CHANNEL and WASSON CHANNEL are hereinafter called "CHANNEL SYSTEM"; and

C. CHANNEL SYSTEM is an essential and integral part of DISTRICT'S regional system of stormwater management infrastructure that provides critical flood control and drainage within the area; and

D. DISTRICT, EMWD, Elsinore Valley Municipal Water District ("EVMWD") and the City of Lake Elsinore previously entered into an Agreement on January 20, 1998, hereinafter referred to as "PREVIOUS AGREEMENT"; and

E. Pursuant to PREVIOUS AGREEMENT, DISTRICT issued Encroachment Permit No. 3-0-0180-2341, hereinafter called "PREVIOUS EP", to EMWD on July 9, 1999 that authorizes discharges of waters into WASSON CHANNEL; and

1 F. On December 5, 2005, DISTRICT issued a new Encroachment Permit No.
2 3-0-0040-2921, hereinafter called "EP NO. 2921", to EMWD and PREVIOUS EP was rescinded;
3 and

4 G. Pursuant to the provisions of EP NO. 2921, EMWD installed, operates and
5 maintains an inflatable rubber dam located at Station 67+83.74 of OUTLET CHANNEL,
6 approximately 65 feet southeasterly of the confluence with WASSON CHANNEL, as shown in
7 concept in red on Exhibit A attached hereto and made a part hereof; and

8 H. EMWD utilizes the constructed inflatable rubber dam to prevent EMWD'S
9 waters, when being discharged into WASSON CHANNEL, from entering into Lake Elsinore via
10 OUTLET CHANNEL; and

11 I. EMWD has automated its Recycled Water System and reduced the
12 response time in which it can start and stop discharge of waters into WASSON CHANNEL.
13 Additionally, EMWD'S operations staff has the ability to monitor the status of discharge and any
14 flows in CHANNEL SYSTEM in real time via live camera feed at the Reach 4 Dissipation
15 Facility discharge point connection, hereinafter called "DISCHARGE POINT CONNECTION";
16 and
17

18 J. EMWD has requested a revision to the conditions for discharge of waters
19 into CHANNEL SYSTEM; and
20

21 K. CHANNEL SYSTEM'S flood control function is sporadic in nature and
22 thus, appropriate discharges of waters may be accommodated within CHANNEL SYSTEM to
23 the extent that such uses do not unreasonably interfere with (i) CHANNEL SYSTEM'S principal
24 function as flood control conveyance facilities; or (ii) DISTRICT'S ability to operate and
25 maintain CHANNEL SYSTEM; and
26
27
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1 L. DISTRICT is the Principal Permittee to the National Pollutant Discharge
2 Elimination System Permit and Waste Discharge Requirements (Order No. R8-2010-0033),
3 hereinafter called "NPDES Permit", issued by the California Regional Water Quality Control
4 Board – Santa Ana Region on January 29, 2010. The NPDES Permit is hereby incorporated by
5 reference in its entirety; and
6

7 M. DISTRICT is willing to revise the conditions for discharge of EMWD'S
8 waters into CHANNEL SYSTEM provided EMWD strictly complies with the provisions of this
9 License Agreement; and

10 N. It is in the public interest to proceed with this License Agreement.

11 NOW, THEREFORE, the parties hereto mutually agree as follows:

12 SECTION I

13 DISTRICT shall:

14
15 1. Grant to EMWD a revocable license to continue to convey EMWD'S
16 waters to Temescal Creek through CHANNEL SYSTEM, provided that EMWD'S activities do
17 not, in any way whatsoever, impair CHANNEL SYSTEM'S primary flood control purpose and
18 function or otherwise interfere with DISTRICT'S ability to operate and maintain CHANNEL
19 SYSTEM or any of its appurtenant works. The permission may be revoked by DISTRICT in the
20 event that said uses unduly interfere with DISTRICT'S ability to operate and maintain
21 CHANNEL SYSTEM.
22

23 2. Grant permission to EMWD to continue to operate and maintain EMWD
24 constructed DISCHARGE POINT CONNECTION in WASSON CHANNEL.

25 3. Grant permission to EMWD to continue to operate and maintain EMWD
26 constructed inflatable rubber dam in OUTLET CHANNEL.
27
28

1 4. Observe and make periodic inspections of CHANNELS to verify EMWD'S
2 compliance with the terms of this Agreement.

3 5. Notify EMWD in writing of (i) any non-compatible use or condition that is
4 not in conformity with the provisions of this License Agreement, and (ii) any condition which,
5 in the sole opinion of the DISTRICT'S General Manager-Chief Engineer, could impair
6 in the sole opinion of the DISTRICT'S General Manager-Chief Engineer, could impair
7 CHANNEL SYSTEM'S flood control function or adversely affect DISTRICT'S ability to operate
8 and maintain CHANNEL SYSTEM. DISTRICT shall grant EMWD thirty (30) days from and
9 after such notice to correct any such nonconforming use or condition.

10 6. Assume no responsibility, obligation or liability whatsoever for (i) the
11 design, construction, operation and maintenance of EMWD'S DISCHARGE POINT
12 CONNECTION or inflatable rubber dam improvements, (ii) EMWD'S discharge(s) of waters,
13 (iii) any damages to EMWD'S DISCHARGE POINT CONNECTION or inflatable rubber dam
14 improvements resulting from DISTRICT'S customary operation and maintenance activities
15 performed within CHANNEL SYSTEM'S right of way, or (iv) EMWD'S use of DISTRICT'S
16 rights of way under this License Agreement.
17

18 7. Other than in emergency situations, provide thirty (30) days written notice
19 to EMWD to suspend use of CHANNEL SYSTEM, should DISTRICT determine that it is
20 necessary for the operation, maintenance, repair or re-construction of WASSON CHANNEL or
21 OUTLET CHANNEL.
22

23 SECTION II

24 EMWD shall:

25 1. Pursuant to the California Environmental Quality Act (CEQA), act as the
26 sole Lead Agency. As such, EMWD will have the corresponding responsibility to fulfill the
27 obligations of a CEQA Lead Agency with respect to the project.
28

1 2. Assume sole responsibility for (i) the design, construction, inspection,
2 operation and maintenance of EMWD'S DISCHARGE POINT CONNECTION, (ii) the design,
3 construction, inspection, operation and maintenance of the inflatable rubber dam and any
4 associated improvements, and (iii) EMWD'S use of DISTRICT'S rights of way associated with
5 discharge(s) of waters.
6

7 3. Obtain an encroachment permit from DISTRICT in accordance with its
8 rules and regulations prior to commencing construction of any additional improvements or
9 performing any physical modifications within CHANNEL SYSTEM rights of way by
10 submitting plans and specifications to DISTRICT for review and approval.
11

12 4. Not permit any change to or modification of DISTRICT permitted
13 EMWD'S constructed DISCHARGE POINT CONNECTION, inflatable rubber dam or
14 EMWD'S use of CHANNEL SYSTEM without prior written consent of DISTRICT.

15 5. Furnish DISTRICT with copies of all permits, approvals or agreements and
16 any associated subsequent renewal or amendments thereafter, as may be required by any federal,
17 state or local resource and/or regulatory agency for the construction, operation and maintenance
18 of the DISCHARGE POINT CONNECTION, inflatable rubber dam and any associated
19 improvements and for the discharges of waters. Such documents, hereinafter called
20 "REGULATORY PERMITS", include but are not limited to those issued by the U.S. Army
21 Corps of Engineers, State Water Resources Control Board, California Regional Water Quality
22 Control Board, California State Department of Fish and Wildlife and Western Riverside County
23 Regional Conservation Authority.
24

25 6. Ensure that when the rubber dam is in the deflated position, it shall lay flat
26 on the bottom of the modified portion of the channel and shall not extend above the invert
27 elevation of the existing trapezoidal channel.
28

1 7. Not inflate the rubber dam or discharge any waters (i) during periods of
2 storm flows within WASSON CHANNEL or OUTLET CHANNEL, (ii) when storm flows are
3 imminent based on the weather forecast from the National Oceanic and Atmospheric
4 Administration's National Weather Service, or (iii) upon request by DISTRICT'S General
5 Manager-Chief Engineer or his/her designee allowing EMWD twenty-four (24) hours to
6 respond.
7

8 8. Notify DISTRICT (Attn: Chief of Operations and Maintenance Division)
9 at least seventy-two (72) hours prior to inflating the rubber dam. The rubber dam shall only be
10 inflated during times of EMWD's/EVMWD's active discharge of waters into WASSON
11 CHANNEL.
12

13 9. Monitor the water levels and any flows in CHANNEL SYSTEM along with
14 any discharges of waters from DISCHARGE POINT CONNECTION in real time via live
15 camera feed or other effective means. Should water levels in OUTLET CHANNEL east of the
16 confluence of WASSON CHANNEL and OUTLET CHANNEL rise, EMWD shall immediately
17 (i) suspend all discharges, and (ii) deflate the rubber dam completely.
18

19 10. Submit annual (on July 31st of each year) monitoring reports electronically
20 to DISTRICT (Attn: Chief of Operations and Maintenance Division) that contain the following
21 information, at a minimum: (i) the average and maximum daily flow rate and volume of the
22 waters discharged from DISCHARGE POINT CONNECTION, (ii) the dates, frequency and
23 duration of the waters discharged, (iii) EMWD's written confirmation that waters discharged
24 from DISCHARGE POINT CONNECTION are in compliance with the applicable provisions
25 of the DISTRICT'S NPDES Permit, and (iv) a description and photographs of areas in OUTLET
26 CHANNEL near the WASSON CHANNEL confluence and the DISCHARGE POINT
27
28

1 CONNECTION. If no discharges occur during the reporting period, EMWD shall submit a
2 letter to that effect in lieu of the monitoring report to DISTRICT.

3 11. Immediately remove, upon request by DISTRICT, any improvements
4 and/or equipment such as the inflatable rubber dam, DISCHARGE POINT CONNECTION, etc.
5 or suspend use where EMWD has installed any improvements and/or equipment or EMWD has
6 used or allowed use of CHANNEL SYSTEM right of way in a manner which, in the sole opinion
7 of the DISTRICT's General Manager-Chief Engineer, would be detrimental to the operation of
8 CHANNEL SYSTEM. Upon removal of any EMWD constructed improvements and/or
9 equipment, EMWD shall also fully restore CHANNEL SYSTEM to their original conditions.
10 Should EMWD fail to remove any EMWD constructed improvements and/or equipment and
11 perform all necessary restoration works as directed by DISTRICT within the time period
12 prescribed, EMWD shall reimburse DISTRICT for any and all costs incurred by DISTRICT or
13 its contractor(s) to perform said work.
14
15

16 12. Promptly repair, upon request by DISTRICT, any damage to OUTLET
17 CHANNEL or WASSON CHANNEL resulting from EMWD'S use of DISTRICT right of way
18 under the license granted herein. It is further understood and agreed that any such repair shall
19 be performed at no cost to DISTRICT. Should EMWD fail to perform all necessary restoration
20 work as directed by DISTRICT within the time period prescribed, EMWD shall reimburse
21 DISTRICT for any and all costs incurred by DISTRICT or its contractor(s) to perform said
22 work.
23

24 13. Not in any way impair DISTRICT'S ability to access OUTLET CHANNEL
25 and WASSON CHANNEL for the purpose of inspecting, operating and maintaining
26 CHANNEL SYSTEM. It may be necessary for EMWD to provide steel plating or other such
27 means so that DISTRICT equipment may safely pass over the deflated rubber dam to accomplish
28

1 maintenance activities within CHANNEL SYSTEM rights of way. EMWD shall waive any
2 claims against DISTRICT for any damage resulting from DISTRICT'S customary or emergency
3 use of DISTRICT'S rights of way for operation and maintenance of its flood control facilities.

4 14. Indemnify and hold harmless DISTRICT and County of Riverside
5 (including their respective officers, Board of Supervisors, elected and appointed officials,
6 agents, employees, representatives, independent contractors and subcontractors) from any
7 liability, claim, damage, proceeding or action, present or future, based upon, arising out of or in
8 any way relating to EMWD'S (including its officers, employees, agents, representatives,
9 independent contractors and subcontractors) actual or alleged acts or omissions related to this
10 Agreement, performance under this Agreement, or failure to comply with the requirements of
11 this Agreement, including but not limited to (i) property damage, (ii) bodily injury or death, (iii)
12 payment of attorney's fees, or (iv) any other element of any kind or nature whatsoever.
13

14 15. Release and waive any and all present or future claims, liabilities, demands
15 or causes of action EMWD now has or may have in the future against DISTRICT, its officers,
16 agents, employees, representatives and independent contractors related in any way to this
17 Agreement.
18

19 16. Ensure that all work performed pursuant to this Agreement by EMWD, its
20 agents or contractors, including but not limited to waters discharged from DISCHARGE POINT
21 CONNECTION, is done in accordance with all applicable laws and regulations. EMWD shall
22 be solely responsible for all costs associated with compliance with applicable laws and
23 regulations.
24

SECTION III

It is further mutually agreed:

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2
3 1. EMWD's subsequent operation and maintenance of DISCHARGE POINT
4 CONNECTION on behalf of itself and/or EVMWD occurs within an existing flood control
5 facility that is periodically subject to flooding and/or sudden flash flood events. Nothing
6 contained herein shall preclude the DISTRICT from undertaking any measures as may be deemed
7 necessary in the sole judgment of DISTRICT'S General Manager-Chief Engineer for the
8 protection of DISTRICT'S CHANNEL or public health and safety. DISTRICT shall have no
9 obligation to reimburse EMWD for any of its constructed improvements and/or equipment
10 situated within DISTRICT rights of way and DISTRICT assumes no responsibility, obligation
11 or liability for any damages resulting from taking said measures.
12
13

14 2. DISTRICT shall have the right to terminate this Agreement and shall have
15 no obligation to reimburse EMWD for any of its constructed improvements and/or equipment
16 situated within DISTRICT rights of way. DISTRICT may exercise its right to terminate in the
17 event that (i) EMWD breaches any covenant or term of this Agreement, or (ii) if, for any reason
18 whatsoever, DISTRICT determines that EMWD'S use of DISTRICT rights of way is not
19 compatible with CHANNEL SYSTEM'S primary purpose.
20

21 3. In the event of any arbitration, action or suit brought by either EMWD or
22 DISTRICT against the other party by reason of any breach on the part of the other party of any
23 of the covenants and agreements set forth in this Agreement, or any other dispute between
24 DISTRICT and EMWD concerning this Agreement, the prevailing party in any such action or
25 dispute, by a final judgment or arbitration award, shall be entitled to have and recover from the
26 other party all costs and expenses or claims including but not limited to attorneys' fees and expert
27 witness fees.
28

1 4. Upon termination of this Agreement, EMWD shall have no further rights
2 under this Agreement or otherwise in any way related to this Agreement, except Sections II.2.,
3 II.14., II.15. and III.3. shall survive termination.

4 5. Any waiver by DISTRICT or by EMWD of any breach of any one or more
5 of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other
6 breach of the same or of any other term hereof. Failure on the part of DISTRICT or EMWD to
7 require exact, full and complete compliance with any terms of this Agreement shall not be
8 construed as in any manner changing the terms hereof or estopping DISTRICT or EMWD from
9 enforcement hereof.
10

11 6. If any provision in this Agreement is held by a court of competent
12 jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless
13 continue in full force without being impaired or invalidated in any way.
14

15 7. This Agreement is to be construed in accordance with the laws of the State
16 of California.

17 8. Any and all notices sent or required to be sent to the parties of this
18 Agreement will be mailed by first class mail, postage prepaid, to the following addresses:
19

20
21 RIVERSIDE COUNTY FLOOD CONTROL EASTERN MUNICIPAL WATER
22 AND WATER CONSERVATION DISTRICT DISTRICT
23 1995 Market Street 2270 Trumble Road
24 Riverside, CA 92501 Perris, CA 92570
Attn: Chief of Operations & Maintenance Attn: Khos Ghaderi
Division 24-Hour Phone Number: 951.928.3777
Emergency Phone Number: 951.955.1230 Ext. 6265

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9. Any action at law or in equity brought by any of the parties hereto for the purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereto waive all provisions of law providing for a change of venue in such proceedings to any other county.

10. This License Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel. The fact that this Agreement was prepared as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT prepared this Agreement in its final form.

11. This License Agreement is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof. This Agreement may be changed or modified only upon the written consent of the parties hereto.

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1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

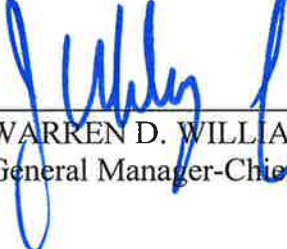
2 _____

3 (to be filled in by Clerk of the Board)

4

5 RECOMMENDED FOR APPROVAL:

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

6
7 By 
8 WARREN D. WILLIAMS
9 General Manager-Chief Engineer

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

10

11 APPROVED AS TO FORM:

ATTEST:

12

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

13

14 By 
15 NEAL R. KIPNIS
Deputy County Counsel

By _____
Deputy

16

(SEAL)

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25 License Agreement
26 Lake Elsinore Outlet Channel
27 Wasson Canyon Channel
28 Project Nos. 3-0-00040 and 3-0-00180
03-11-16
LMD:bad

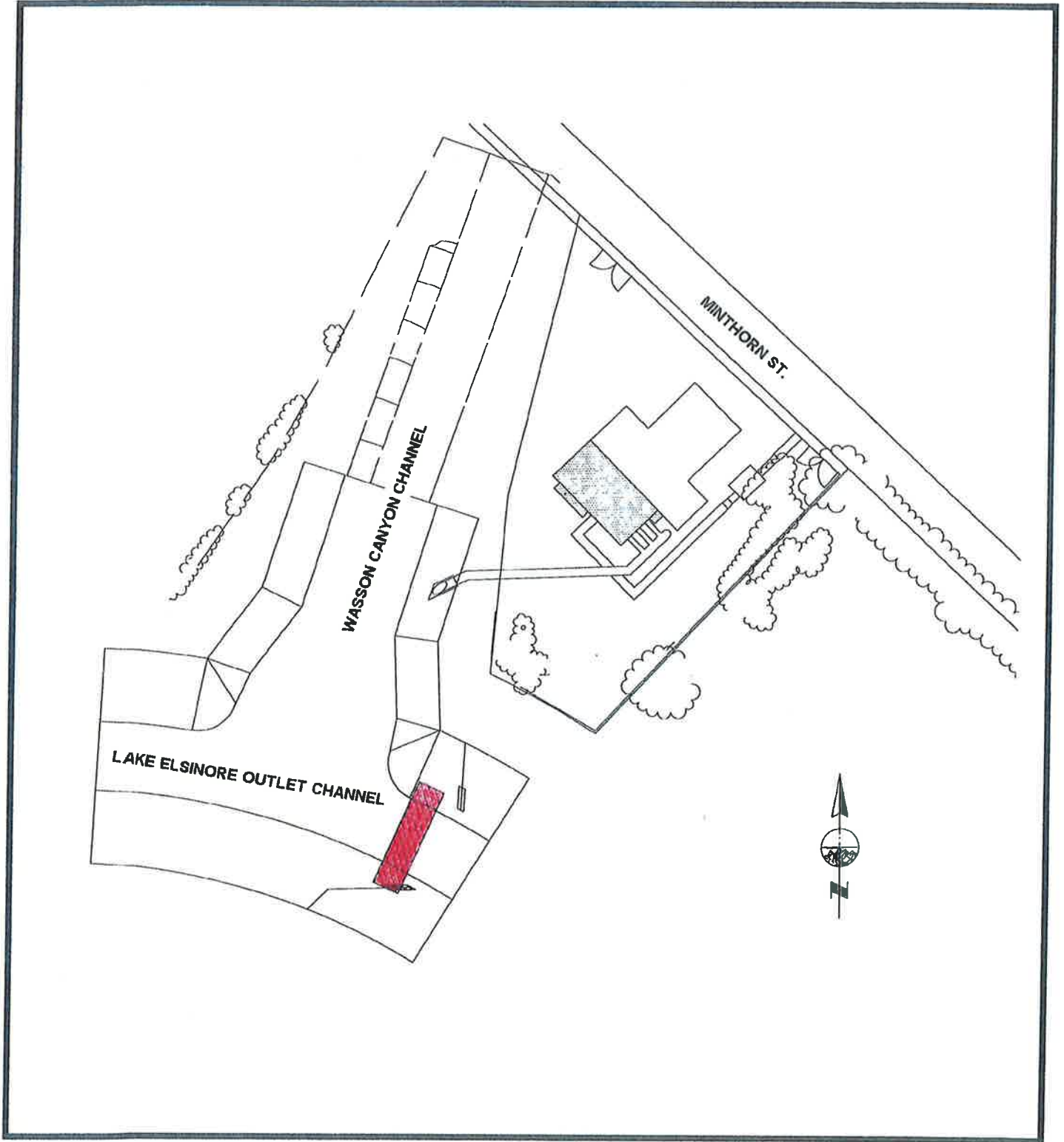
EASTERN MUNICIPAL WATER DISTRICT

By  _____
PAUL D. JONES II, P.E.
General Manager

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License Agreement
Lake Elsinore Outlet Channel
Wasson Canyon Channel
Project Nos. 3-0-00040 and 3-0-00180
03-11-16
LMD:bad

Exhibit A



LICENSE AGREEMENT
Lake Elsinore Outlet Channel
Wason Canyon Channel
Project Nos. 3-0-00040 and 3-0-00180
Page 1 of 1