

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

602B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
May 17, 2011

SUBJECT: Cooperative Agreement
Arlington Basin Hydro-Geologic Investigation Study

RECOMMENDED MOTION:

1. Approve the Agreement between the District and Western Municipal Water District;
2. Authorize the Chairman to execute the Agreement documents on behalf of the District; and
3. Authorize the District's General Manager-Chief Engineer to extend the Agreement for an additional one-year term.

BACKGROUND:

Under the Agreement, Western Municipal Water District (Western) will assume the lead role in administering a contract with a consultant for completion of the Study. The District and Western will each contribute 50% toward the cost of completing the Study, with the total District contribution not to exceed \$225,000. County Counsel has approved the Agreement as to legal form, and Western has executed the Agreement.

(Continued on Page 2)

TT:bjj

Steve Thomas

STEPHEN C. THOMAS
Assistant Chief Engineer

| | | | | |
|-----------------------|------------------------------------|-----------|--------------------------------|-------|
| FINANCIAL DATA | Current F.Y. District Cost: | \$225,000 | In Current Year Budget: | Yes |
| | Current F.Y. County Cost: | N/A | Budget Adjustment: | No |
| | Annual Net District Cost: | N/A | For Fiscal Year: | 11-12 |

SOURCE OF FUNDS:

- 25110 947400 524820 - Zone 1 Water Conservation Projects (50%)
- 25120 947420 524820 - Zone 2 Water Conservation Projects (50%)

| | |
|---|--------------------------|
| Positions To Be Deleted Per A-30 | <input type="checkbox"/> |
| Requires 4/5 Vote | <input type="checkbox"/> |

C.E.O. RECOMMENDATION:

APPROVE

BY: *Michael R. Shetler*
Michael R. Shetler

County Executive Office Signature

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

On motion of Supervisor Buster, seconded by Supervisor Ashley and duly carried IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Benoit and Ashley
Nays: None
Absent: Stone and Tavaglione

Date: May 17, 2011
xc: Flood

Kecia Harper-Ihem
Clerk of the Board
By: *[Signature]*
Deputy

Prev. Agn. Ref.: ATTACHMENTS FILED **District:** 1st **Agenda Number:**

11.1

FORM APPROVED COUNTY COUNSEL
DATE 2/16/11
BY: NEAL R. KIPNIS
Departmental Concurrence

FISCAL PROCEDURES APPROVED
MAN M. CHIANG, FINANCIAL DIRECTOR
2/14/11

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

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

SUBJECT: Cooperative Agreement
Arlington Basin Hydro-Geologic Investigation Study

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Page 2

BACKGROUND:

FINANCIAL:

This Agreement may be extended for an additional one-year term, at District discretion, to allow for completion of the Study. District's total cost shall not exceed \$225,000. Sufficient funds are included in the District's FY 11-12 budget. Sufficient funds necessary to complete this Study will also be included in District's future budget requests as appropriate.

TT:blj

1 COOPERATIVE AGREEMENT

2 Arlington Basin Hydro-Geologic Investigation Study

3 The RIVERSIDE COUNTY FLOOD CONTROL AND WATER
4 CONSERVATION DISTRICT (DISTRICT) and the WESTERN MUNICIPAL WATER
5 DISTRICT (WESTERN), hereby agree as follows:

6 RECITALS

7 A. The 1983 Project Agreement No. 9 and the July 6, 1988 Joint Participation
8 Agreement between the ORANGE COUNTY WATER DISTRICT, the SANTA ANA
9 WATERSHED PROJECT AUTHORITY, and WESTERN called for the Development and
10 Utilization of Desalted Water from the Arlington Desalter. In 2005, the Arlington Desalter was
11 transferred to WESTERN pursuant to that certain Facilities Acquisition Agreement; and

12 B. WESTERN is contemplating various alternatives to expand the Arlington
13 Desalter from 6.3 million gallons per day ("mgd") to 8.6 mgd, or possibly up to 10 mgd. As
14 part of that analysis, WESTERN has investigated the feasibility of producing additional
15 groundwater and it has been concluded that increasing the production rates of Arlington
16 Desalter wells beyond current production is not feasible without artificial recharge. As a result,
17 three (3) potential recharge sites have been identified in the Riverside-Arlington Basin, as
18 shown in Attachment "A", attached hereto and made a part hereof, which may be suitable for the
19 purpose of artificial recharge whereby the source of the recharge water would be stormwater,
20 dry-weather, or recycled water; and

21 C. WESTERN desires to have a hydro-geologic investigation and report
22 conducted for the three (3) proposed recharge sites ("REPORT"). The objectives of the
23 REPORT would be to evaluate the subsurface conditions of the proposed sites for artificial
24 recharge for the Arlington Basin and to determine if the sites or surrounding areas have been
25 exposed to contamination that would impact the ability to recharge water; and

1 D. Due to the mutual interests in the potential for using artificial recharge,
2 WESTERN and DISTRICT desire to enter into this Agreement in order to share in the cost of
3 the REPORT.

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

5 1. WESTERN has entered into, or intends to enter into, an agreement with a
6 consultant ("CONSULTANT") for preparation of the REPORT at a cost not to exceed the sum
7 of Four Hundred and Fifty Thousand Dollars (\$450,000). The selection of the CONSULTANT,
8 and the development and execution of the ultimate agreement between WESTERN and
9 CONSULTANT ("CONSULTANT AGREEMENT") will be conducted by WESTERN
10 pursuant to a request for proposals and consultant selection procedures as determined by
11 WESTERN in its discretion and in accordance with applicable legal requirements.

12 2. WESTERN and DISTRICT shall each be responsible for payment of the
13 periodic and final payment requests ("PROGRESS PAYMENT(s)") submitted under the
14 CONSULTANT AGREEMENT as follows:

15 (a) WESTERN and DISTRICT shall each be responsible for payment of
16 fifty percent (50%) of any amounts due and owing under each PROGRESS PAYMENT from
17 CONSULTANT not to exceed the sum of Two Hundred Twenty-Five Thousand Dollars
18 (\$225,000) per party.

19 (b) WESTERN shall provide a copy of the PROGRESS PAYMENT to
20 DISTRICT along with a cover letter setting forth the calculation of the fifty percent (50%)
21 amount due and owing by DISTRICT.

22 (c) As CONSULTANT'S work on the REPORT progresses, DISTRICT
23 shall reimburse WESTERN for costs incurred in accordance with the provisions of this Section.
24 Upon receipt of WESTERN's cover letter and PROGRESS PAYMENT copy, as set forth
25 herein, DISTRICT shall have ten (10) working days to review said PROGRESS PAYMENT
26 and provide any comments to WESTERN concerning the general completeness and adequacy
27 thereof. Within ten (10) working days after receipt of WESTERN's cover letter and copy of the
28

1 PROGRESS PAYMENT, DISTRICT shall either provide notice to WESTERN concerning a
2 PROGRESS PAYMENT'S deficiencies or authorize payment to WESTERN for DISTRICT'S
3 share of the itemized cost set forth in WESTERN'S cover letter. When a PROGRESS
4 PAYMENT is found to be generally satisfactory, DISTRICT shall make payment to WESTERN
5 within thirty (30) days of DISTRICT'S receipt thereof. In the event that DISTRICT finds a
6 PROGRESS PAYMENT to be unsatisfactory, DISTRICT shall withhold payment pending
7 resubmission of the PROGRESS PAYMENT and/or satisfactory resolution of DISTRICT'S
8 comments.

9 Upon DISTRICT'S final approval of a PROGRESS PAYMENT, DISTRICT
10 shall make payment to WESTERN of DISTRICT'S share of the itemized cost as set forth in
11 WESTERN'S cover letter. Said payment shall be made within thirty (30) days of DISTRICT'S
12 final approval and such final approval shall not be unreasonably withheld.

13 It is anticipated that CONSULTANT'S work on the REPORT will be completed
14 on or before August 31, 2011 ("COMPLETION DATE"). In the event WESTERN determines
15 that the REPORT will not be completed on or before the COMPLETION DATE, WESTERN
16 will provide DISTRICT with information as to the new COMPLETION DATE, and any other
17 information in regard thereto, in the applicable cover letter and PROGRESS PAYMENT.

18 3. This Agreement shall be effective upon the date of full execution of this
19 Agreement by both WESTERN and DISTRICT ("EFFECTIVE DATE").

20 4. The term of this Agreement shall be for one year from the EFFECTIVE
21 DATE. By mutual written consent of DISTRICT and WESTERN, this Agreement may be
22 amended for an additional one-year to allow for completion of the performance of services
23 under the CONSULTANT AGREEMENT and completion of the payment obligations as set
24 forth herein. This Agreement shall remain in effect during the term unless earlier terminated
25 under the following procedures:

26 (a) If either party to this Agreement believes that the other party has
27 failed to perform any obligation of that party in accordance with the terms of this Agreement,

1 hereinafter called "DEFAULT", the party alleging the Default shall provide written notice,
2 hereinafter called "DEFAULT NOTICE", to the other party, setting forth the nature of the
3 alleged DEFAULT. Unless otherwise provided by a specific term of this Agreement, the party
4 claimed to be in DEFAULT shall have: (i) with respect to a DEFAULT involving the payment
5 of money, ten (10) working days after its receipt of the DEFAULT NOTICE to completely cure
6 such DEFAULT, and (ii) with respect to any other type of DEFAULT, thirty (30) days from its
7 receipt of the DEFAULT NOTICE to completely cure such DEFAULT or, if such DEFAULT
8 cannot reasonably be cured within such thirty (30) day period, to commence the cure of such
9 DEFAULT within the thirty (30) day period and diligently prosecute the cure to completion
10 thereafter. If the party claimed to be in DEFAULT does not cure such DEFAULT with the time
11 periods and procedures as set forth herein, the party alleging the DEFAULT may then terminate
12 this Agreement.

13 5. If either party brings suit to enforce or to recover for breach of any term,
14 covenant or condition contained herein, the prevailing party shall be entitled to attorney fees in
15 addition to the amount of any judgment, recovery and costs.

16 6. DISTRICT and WESTERN shall each be responsible for their respective
17 staff costs and expenses including the cost of any additional consultants retained by either
18 agency to assist with the administration of their respective responsibilities or with their review
19 of CONSULTANT's work pursuant to the CONSULTANT AGREEMENT.

20 7. The General Manager-Chief Engineer of DISTRICT or his designee, is
21 authorized to act on behalf of DISTRICT, and approve and make payments to WESTERN for
22 DISTRICT's share of the costs of the REPORT and to otherwise make payments and perform
23 DISTRICT's obligations under this Agreement.

24 8. The General Manager of WESTERN or his designee is authorized to act on
25 behalf of WESTERN and authorize payment to CONSULTANT for its services.

26 9. WESTERN shall indemnify, defend, save and hold harmless DISTRICT
27 and County of Riverside and their respective officers, agents, servants, employees and
28

1 independent contractors free and harmless from any and all claims, demands, debts, suits,
2 actions and causes of action of whatsoever kind, nature or sort, including, but not by way of
3 limitation, wrongful death, the expenses of the defense of said parties and the payment of
4 attorneys' fees in any such action, arising out of or in any manner connected with any act or
5 omission of WESTERN, its officers, agents, servants and employees, done or performed
6 pursuant to this Agreement.

7 10. DISTRICT shall indemnify, defend, save and hold harmless WESTERN
8 and its respective officers, agents, servants, employees and independent contractors free and
9 harmless from any and all claims, demands, debts, suits, actions and causes of action of
10 whatsoever kind, nature or sort, including, but not by way of limitation, wrongful death, the
11 expenses of the defense of said parties and the payment of attorneys' fees in any such action,
12 arising out of or in any manner connected with any act or omission of DISTRICT, its officers,
13 agents, servants and employees, done or performed pursuant to this Agreement.

14 11. All notices and statements required to be sent to the parties of this
15 Agreement will be mailed by first class mail, postage prepaid to the following addresses:

16 RIVERSIDE COUNTY FLOOD CONTROL WESTERN MUNICIPAL
17 AND WATER CONSERVATION DISTRICT WATER DISTRICT
18 Attn: General Manager-Chief Engineer Attn: General Manager
19 1995 Market Street 14205 Meridian Parkway
20 Riverside, CA 92501 Riverside, CA 92518

21 12. Any waiver by DISTRICT or by WESTERN of any breach of any one or
22 more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or
23 other breach of the same or of any other term hereof. Failure on the part of DISTRICT or
24 WESTERN to require exact, full and complete compliance with any terms of this Agreement
25 shall not be construed as in any manner changing the terms hereof, or estopping DISTRICT or
26 WESTERN from enforcement hereof.

27 13. This Agreement is to be construed in accordance with the laws of the State
28 of California. If any provision of this Agreement is held by a court of competent jurisdiction to

1 be invalid, void or unenforceable, the remaining provisions shall be declared severable and shall
2 be given full force and effect to the extent possible.

3 14. Any product and/or reports prepared under this Agreement shall be the joint
4 property of DISTRICT and WESTERN, and may be used by each for its joint or individual
5 purpose.

6 15. This Agreement is intended by the parties hereto as a final expression of
7 their understanding with respect to the subject matter hereof and as a complete and exclusive
8 statement of the terms and conditions thereof and supersedes any and all prior and
9 contemporaneous agreements and understandings, oral or written, in connection therewith. This
10 Agreement may be modified only upon the mutual written agreement of the parties hereto.

11 16. Any action at law or in equity brought by any of the parties hereto for the
12 purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of
13 competent jurisdiction in the County of Riverside, State of California, and the parties hereto
14 waive all provisions of law providing for a change of venue in such proceedings to any other
15 county. Prior to the filing of any legal action, the parties shall be obligated to attend a mediation
16 session with a neutral mediator to try to resolve the dispute.

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

22 18. This Agreement may be executed and delivered in any number of
23 counterparts or copies, hereinafter called "COUNTERPART", by the parties hereto. When each
24 party has signed and delivered at least one COUNTERPART to the other parties hereto, each
25 COUNTERPART shall be deemed an original and, taken together, shall constitute one and the
26 same Agreement, which shall be binding and effective as to the parties hereto.
27

IN WITNESS HEREOF, the parties hereto have executed this Agreement on

MAY 17 2011

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

Steve Thomas
WARREN D. WILLIAMS
General Manager-Chief Engineer

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

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

APPROVED AS TO FORM:

PAMELA J. WALLS
County Counsel
By Pamela J. Walls
NEAL KIPNIS
Deputy County Counsel

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board
By Kecia Harper-Ihem
Deputy

(SEAL)

**WESTERN MUNICIPAL WATER
DISTRICT**

By John V. Rossi
JOHN V. ROSSI
General Manager

TT:blj

ATTACHMENT "A"



Proposed Recharge Basins For Arlington Desalter Expansion