

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



FROM: Supervisor Kevin Jeffries, First District

SUBMITTAL DATE:
May 29, 2014

SUBJECT: Emergency Water Service to Area Formerly Served by County Water Company

RECOMMENDED MOTION: That the Board of Supervisors:

1. Authorize EDA/Energy Division to use the General Fund pay to Southern California Edison for providing prior and continued electrical service to water pump/County Water Company facilities, for a period ending December 31, 2014;
2. Approve the Emergency Water Service Agreement with Farm Mutual Water Company and authorize the Chairman of the Board to execute the Agreement; and
3. Direct County staff to provide recommendations to the Board within 60 days with a strategy plan for funding the activities of the Receiver, previously authorized by the Board, and--to seek reimbursement from State emergency grant funds from Proposition 84 Safe Water Drinking Bond funds.

(Recommended Motions continued on Page 2)

Kevin Jeffries
Supervisor, First District

FINANCIAL DATA	Current Fiscal Year	Next Fiscal Year	Total Cost	Ongoing Cost	POLICY/CONSENT (per Exec. Office)
COST	\$ 5,600	\$ 16,800	\$ 22,400	\$	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET COUNTY COST	\$ 5,600	\$ 16,800	\$ 22,400	\$	

SOURCE OF FUNDS: General Fund-FM-Energy Management	Budget Adjustment: No
	For Fiscal Year: 2013-14, 14-15

C.E.O. RECOMMENDATION:

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Benoit, seconded by Supervisor Ashley and duly carried, IT WAS ORDERED that the above matter is approved as recommended with direction to staff to report back within 60 days.

Ayes: Jeffries, Stone, Benoit and Ashley
 Nays: None
 Absent: Tavaglione
 Date: June 3, 2014
 xc: Supvr. Jeffries, EDA, COB

Kecia Harper-Ihem
 Clerk of the Board
 By:
 Deputy

Prev. Agn. Ref.: **District:** 1/1 **Agenda Number:**

3-87

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

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

FORM 11: Authorize County Counsel to File a Receivership Action to Place County Water

Company Property and Facilities Under Receivership

DATE: May 29, 2014

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4. Upon the Court's granting of Receivership to the County, direct the establishment of a fiduciary fund within which to conduct the business of billing for and receipt of water payments from County Water Company customers and for tracking all expenses associated with Receivership

BACKGROUND:

Summary

County Water Company ("CWC"), has been operating a private small water system in the Bundy Canyon area of Riverside County on the border of the cities of Wildomar and Menifee (the "Affected Area"), which is not capable of providing a reliable supply of drinking water to residents in the Affected Area in compliance with State law. Further, there are serious concerns that complete failure of the system is possible. CWC and its operator, Rafael Spears, notified the County through their attorney that CWC would no longer be providing water service to the estimated 140 families and customers of CWC in the Affected Area. CWC is no longer a corporation in good standing and Mr. Spears alleges that they are without the financial capacity to continue to operate the CWC water system. Southern California Edison has continued to supply electrical power to the water pump of the CWC water system without payment for the past several months, incurring a debt of \$2,869.42 as of May 20, 2014.

Eastern Municipal Water District installed an emergency water tank to provide potable water to the residents in the Affected Area. Additionally, Elsinore Valley Municipal Water District obtained approval from the Local Agency Formation Commission to provide emergency water service to the Affected Area. Both Elsinore Valley Municipal Water District and Eastern Municipal Water District have received grant funding from the state totaling \$6,250,000 to install the necessary infrastructure to provide permanent reliable water service as well as to provide emergency water service to the Affected Area while the necessary infrastructure is constructed. Elsinore Valley Municipal Water District and Eastern Municipal Water District, however, will not provide emergency water service to the Affected Area before proposed pending legislation is passed to indemnify them from liability for CWC's past actions. The Districts are forecasting that the proposed legislation (SB 1130) will be passed by the mid-summer to late fall of this year.

In the event that there is a complete failure of the CWC water system and Elsinore Valley Municipal Water District is unavailable to repair or provide water service to the Affected Area, approximately 140 families will be left without water except for the Eastern Municipal Water District portable emergency water tank. The Board has already authorized County Counsel to petition the Superior Court to have the County appointed as a receiver over the CWC property and water system. Once the receiver is in place, Farm Mutual Water Company has agreed in principle to provide water service to the Affected Area under an emergency agreement with the County, in order to minimize any loss of service to the Affected Area. The agreement attached hereto is nearing final approval by the parties and counsel, and the Board is asked to approve the agreement in substantially the form attached, in order to minimize delays associated with Board dark days. This agreement is expected to last until such time as Elsinore Valley Municipal Water District is willing and able to provide temporary service under protection of SB 1130.

EDA will be the County agency acting as the receiver, and as such will need Board authorization to seek out funding options and alternatives in order to minimize the cost to the County. It is believed that previously approved Proposition 84 (2006) Safe Water Drinking bond funds may be obtainable to offset any costs to the County.

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EDA will additionally need authorization to establish a fiduciary fund within which to conduct the business of billing for and receipt of water payments from the residents of the Affected Area. As receiver, EDA will provide water services to the residents of the Affected Area until such time as transfer of such water services can be made to Elsinore Valley Municipal Water District and Eastern Municipal Water District.

Impact on Citizens and Businesses

Board approval will allow the County as receiver to provide potable water service to approximately 140 families who would otherwise have no water except for the Eastern Municipal Water District portable emergency tank.

SUPPLEMENTAL:

Additional Fiscal Information

The cost of providing water service to the Affected Area is estimated to be \$4,500.00 monthly for water and electrical, exclusive of repairs, maintenance, operation and infrastructure costs. As receiver, County should be authorized to pass these costs through to CWC customers as the cost of providing the water service. Additionally, the California Department of Public Health represented that the \$250,000 emergency grant as well as possible other smaller grants may be made available to offset the costs to the County of providing emergency water services to the Affected Area.

Contract History and Price Reasonableness

Other than Elsinore Valley Municipal Water District, Eastern Municipal Water District and Farm Mutual Water Company, there are no other sources available to provide water service to the Affected Area. Eastern Municipal Water District currently does not have Local Agency Formation Commission approval to provide water service beyond its jurisdictional boundary. If Elsinore Valley Municipal Water District is unwilling to provide water service to the Affected Area until such time as their proposed legislation is passed, the only alternative if there is a complete failure of the CWC water system is for Farm Mutual Water Company to provide such water service on an emergency and interim basis, until such time as the proposed legislation passes or the Districts annex the Affected Area into their respective jurisdictions. Public Utilities Code section 2705(d) limits the charge for such water service to the cost incurred by the mutual water company.

**AGREEMENT TO PROVIDE WATER SERVICE ON AN
EMERGENCY BASIS TO THE TERRITORY FORMERLY
SERVED BY COUNTY WATER COMPANY OF RIVERSIDE**

This AGREEMENT ("Agreement") by and between COUNTY OF RIVERSIDE ("County") and FARM MUTUAL WATER COMPANY, a mutual water company ("FMWC") is made and entered into as of the 3rd day of June, 2014. County and FMWC are sometimes individually referred to as "Party" and collectively as "Parties."

1. Recitals

1.1 WHEREAS, Rafael Spears, doing business as the County Water Company of Riverside ("CWC"), has been operating a private small water system in the Bundy Canyon area of Riverside County on the border of the cities of Wildomar and Menifee (the "Affected Area"), which is not capable of providing a reliable supply of drinking water to residents in the Affected Area in compliance with State law and there are serious concerns that complete failure of the system is possible; and

1.2 WHEREAS, the County of Riverside ("County") Department of Environmental Health is the local agency with enforcement jurisdiction over the CWC water system pursuant to authority delegated by the California Department of Public Health ("CDPH"); and

1.3 WHEREAS, the County and CDPH have been involved in the ongoing effort to ensure the residents of the Affected Area have access to clean and safe drinking water; and

1.4 WHEREAS, the Elsinore Valley Water District ("EVWD") and Eastern Municipal Water District ("EVMWD") have received grants totaling over \$6,250,000 from CDPH to provide the necessary infrastructure and emergency water service to the Affected Area; and

1.5 WHEREAS, EVMWD has received approval from the Riverside County Local Agency Formation Commission pursuant to Government Code section 56133 to provide emergency water service outside its jurisdiction to the Affected Area; and

1.6 WHEREAS, EVMWD and EMWD are, at this time, unwilling to provide water directly to the former CWC system without the protections offered by certain pending legislation; and

1.7 WHEREAS, EVMWD has offered to assist County in providing emergency repairs and support for the CWC system and to work with Southern California Edison in ensuring electricity to the well pump in the interim; and

1.8 WHEREAS, all entities involved recognize that an emergency plan is required should the CWC system fail completely prior to the passage of the aforementioned legislation and if assistance from EVMWD is unavailable; and

RECEIVED RIVERSIDE COUNTY
CLERK / BOARD OF SUPERVISORS
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1.9 WHEREAS, FMWC is willing to serve as an intermediary in such a case of emergency and to provide water to the Affected Area; and

1.10 WHEREAS, the Parties desire to enter into this Agreement to set forth their mutual understanding of the terms and conditions under which FMWC will provide water to the Affected Area in the event the CWC system fails and the County is appointed receiver over the CWC system.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants hereinafter contained and for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

2. Terms of Agreement

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

2.2 Term of Agreement. This Agreement shall commence on the Effective Date. The Effective Date shall be the date the Court appoints the County as Receiver and this Agreement is approved by the County Board of Supervisors and the FMWC Board, whichever occurs last. This Agreement shall continue in effect until December 31, 2014, unless earlier terminated in accordance with this Agreement.

2.3 Emergency Water Provision.

2.3.1 Contingency. This Agreement and the obligations thereunder shall be contingent on all of the following three conditions: (1) the County is appointed receiver for the CWC system; (2) CWC system fails; and (3) EVMWD is unwilling to provide service to the Affected Area.

2.3.2 Water Supply. FMWC will supply water from its water system to the County for delivery to properties in the Affected Area subject to all of FMWC's operating rules, regulations, fees and charges for domestic water. The water service rate charge for this water shall be the same as FMWC currently pays EVMWD for its own customers within its service area, which is currently set at \$2.64 per ccf, plus FMWC's costs. FMWC does not guarantee the volume of water that will be available to the Affected Area pursuant to this Agreement. Subject to the rules and regulations governing the supply of domestic water, County or FMWC will have the right to draw water in amounts that are reasonably necessary to meet the collective domestic water demand for the Affected Area. County acknowledges that water availability is subject to reductions based on drought and water shortfall. In accordance with Public Utilities Code Section 2705, FMWC shall sell the water it receives to properties in the Affected Area at cost.

2.3.3 Maintenance and Repairs. FMWC will provide necessary maintenance including installation and repairs to provide emergency water service to the Affected Area. County will reimburse FMWC for all maintenance, installation and repairs approved in writing

by County. Such reimbursement shall not exceed the cost to FMWC. For the purposes of this subdivision, the Director of the County Economic Development Agency or their designee is authorized to approve in writing maintenance, installation and repair costs not to exceed \$50,000.00 in the aggregate.

2.4 Termination. At any time, with or without cause, FMWC or County may terminate this Agreement. FMWC shall provide County with thirty (30) days written notice of the termination.

2.5 Insurance Requirements. At all times during the performance of this Agreement, County shall maintain, and shall require any of its contractors to maintain, a separate policy or policies of insurance with coverages as follows: (a) commercial general liability insurance with limits of liability of not less than Two Million Dollars (\$2,000,000) general aggregate; and (b) Automobile insurance for owned or hired vehicles with limits for public liability of One Million Dollars (\$1,000,000) per person per accident or occurrence for bodily injury (including wrongful death) and One Million Dollars (\$1,000,000) per accident or occurrence for property damage. Such policies shall name FMWC as an additional insured, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by FMWC and that the insurance of the additional insured shall not be called upon to contribute to any loss. Self-insurance provided by County in lieu of commercial insurance described above shall satisfy this requirement.

2.6 Indemnification.

2.6.1 Scope of Indemnity. To the fullest extent permitted by the law, County shall defend, indemnify and hold FMWC, its 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 the provision of water to the Affected Area or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent County's actions are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of County.

2.6.2 Additional Indemnity Obligations. County shall defend, and at County's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 2.6.1 that may be brought or instituted against FMWC or its directors, officials, officers, employees, volunteers and agents. County shall pay and satisfy any judgment, award or decree that may be rendered against FMWC or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. County shall also reimburse FMWC for the cost of any settlement paid by FMWC or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for FMWC's attorneys'

fees and costs, including expert witness fees. County shall reimburse FMWC and its directors, officials, officers, employees, agents, and volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. County's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by County, its directors, officials, officers, employees, agents, or volunteers.

3. Miscellaneous Terms

3.1 Notices, Demands and Communications Between the Parties.

3.1.1 Formal notices, demands and communications between EVMWD and FMWC 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 either Party may from time to time designate by written notice to the other Party.

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

TO County:

Economic Development Agency
Attn: Director
3403 Tenth Street, Ste. 400
Riverside, CA 92101

TO FMWC:

Farm Mutual Water Company
Attn: President
33383 Mill Pond Drive
Wildomar, CA 92595

Copy to:

County Counsel
Attn: Eric Stopher
3906 Orange Street, Fifth Floor
Riverside, CA 92105

Copy to:

John J. Schatz
Attn: General Counsel – FMWC
P.O. Box 7775
Laguna Niguel, Ca. 92607-7775

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

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

3.3 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.

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

3.5 Third Party Beneficiaries. This Agreement and the performance of the Parties obligations hereunder are for the sole and exclusive benefit of FMWC and the County. 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 FMWC or County hereunder as a result of a Party's performance or non-performance of its obligations under this Agreement.

3.6 Relationship of Parties. The Parties agree and intend that they 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.

3.7 Governing Law. This Agreement shall be governed by the laws of the State of California without regard to conflicts of laws principles. Venue shall be in Riverside County, California.

3.8 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.

3.9 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.

3.10 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 the other Party or any of the employees, agents, representatives, or attorneys of the other Party, except as expressly set forth in this Agreement.

3.11 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.

3.12 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.

3.13 Authorized Representatives. The person or persons executing this Agreement on behalf of County and the FMWC warrants and represents that he/she has the authority to execute this Agreement on behalf of that Party and that he/she has the authority to bind that Party to the performance of its obligations hereunder.

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

[SIGNATURES ON THE FOLLOWING PAGE]

SIGNATURE PAGE

**TO
AGREEMENT REGARDING THE PROVISION OF WATER SERVICE ON AN
EMERGENCY BASIS TO THE TERRITORY FORMERLY SERVED BY COUNTY
WATER COMPANY OF RIVERSIDE**

County

FMWC

By: _____
Jeff Stone, Chairman of the Board

By: _____
George Wasenius, President

Dated: _____

Dated: _____

ATTEST:

By: _____
Clerk of the Board

By: _____
XX, Treasurer

Dated: _____

APPROVED AS TO LEGAL FORM:

APPROVED AS TO LEGAL FORM:

RIVERSIDE COUNTY COUNSEL

JOHN J. SCHATZ

By: _____
Pamela J. Walls, County Counsel

By: _____
General Counsel