

FORM APPROVED COUNTY COUNSEL  
 BY: GREGORY P. PRAMOS  
 DATE: 4/22/15

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

904B



**FROM:** General Manager-Chief Engineer

**SUBMITTAL DATE:**  
 May 19, 2015

**SUBJECT:** Approve In-Lieu Fee Program Agreement (Agreement) between the Riverside-Corona Resource Conservation District (RCRCD) and the District Regarding Mitigation for the University Wash Channel, Stage 3 Project, Project No. 1-0-00120-03, District 1 [\$146,625] District Funds 100%, CEQA – Nothing Further Required

**RECOMMENDED MOTION:** That the Board of Supervisors:  
 1. Approve the Agreement between RCRCD and District; and  
 2. Authorize the Chairman to execute the Agreement documents on behalf of the District.

**BACKGROUND:**

**Summary**

The Agreement sets forth terms and conditions for the District to purchase from RCRCD 0.75 Rehabilitation Credits for the creation or restoration of 0.72 acre of riparian habitat as a result of impacts to jurisdictional waters related to the construction of University Wash Channel, Stage 3.

Continued on Page 2.

TMR:mcv  
 P8\169273

**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	\$ 146,625	\$ N/A	\$ 146,625	\$ N/A	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET DISTRICT COST	\$ 146,625	\$ N/A	\$ 146,625	\$ N/A	
<b>SOURCE OF FUNDS:</b> 523220 25110 947400 Zone 1 Licenses and Permits				<b>Budget Adjustment:</b> No	
				<b>For Fiscal Year:</b> 14/15	

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

APPROVE  
 BY:   
 Steven C. Horn

County Executive Office Signature

**MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

On motion of Supervisor Ashley, seconded by Supervisor Washington and duly carried, IT WAS ORDERED that the above matter is approved as modified to add the condition that the execution of the agreement between the District and Riverside-Corona Resource Conservation District is subject to the appropriate conflicts waiver that will be brought to the Board June 2, 2015.

Ayes: Jeffries, Washington, Benoit and Ashley  
 Nays: None  
 Absent: Tavaglione  
 Date: May 19, 2015  
 xc: Flood

Kecia Harper-Ihem  
 Clerk of the Board  
 By:   
 Deputy

Prev. Agn. Ref.:

District: 1<sup>st</sup>

Agenda Number:

11-1

FISCAL PROCEDURES APPROVED  
 JEANINE J. REY, FINANCE DIRECTOR  
 5/5/15

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

Departmental Concurrence

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

**FORM 11:** Approve In-Lieu Fee Program Agreement (Agreement) between the Riverside-Corona Resource Conservation District (RCRCD) and the District Regarding Mitigation for the University Wash Channel, Stage 3 Project, Project No. 1-0-00120-03, District 1, [\$146,625] District Funds 100%

**DATE:** May 19, 2015

**PAGE:** Page 2 of 2

**BACKGROUND:**

**Summary (continued)**

Under the Agreement, District is seeking the assistance of RCRCD to satisfy certain offsite mitigation requirements imposed by the United States Army Corps of Engineers ("USACE"), the California Regional Water Quality Control Board, Region 8 ("RWQCB"), and the California Department of Fish and Wildlife ("CDFW") associated with the District's University Wash Channel, Stage 3 Project.

RCRCD has an In-Lieu Fee Program (the "ILF Program") formally approved by the USACE and other regulatory agency members of the "Interagency Review Team" (the "IRT") on July 26, 2012 and such program is currently in good standing with the IRT. RCRCD has received approval from the IRT to sell Credits from the Program to offset impacts to jurisdictional waters caused by projects such as University Wash Channel, Stage 3.

Under Special Condition 1 of the Project's USACE Clean Water Act Section 404 Nationwide Permit Verification Letter dated November 4, 2014 (SPL-2014-00261-JEM), the District is required to purchase 0.75 Rehabilitation Credits from the ILF Program. The Project is also subject to a RWQCB Clean Water Act Section 401 Water Quality Certification (Certification No. 332014-05 dated September 11, 2014) that requires the District to provide compensatory mitigation in the form of "0.75 acre of mitigation credits". The Project is also subject to a CDFW Operation of Law letter dated August 11, 2014, which requires the District to provide sufficient funds to the RCRCD for the creation or restoration of "0.72 acre of riparian habitat".

Subject to the terms and conditions in the Agreement, RCRCD agrees to sell to the District and the District agrees to purchase from RCRCD 0.75 Rehabilitation Credits from the ILF Program for the purchase price of \$146,625.

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

All provisions of the California Environmental Quality Act and the District Rules to Implement the California Environmental Quality Act were previously met on July 1, 2014 when the Board of Supervisors approved the Project and the Mitigated Negative Declaration and authorized the District to proceed with the Project.

**Impact on Residents and Businesses**

Costs incurred under this Agreement will be funded by ad-valorem property tax revenue and entails no new fees, taxes or bonded indebtedness to residents and businesses.

**SUPPLEMENTAL:**

**Additional Fiscal Information**

Sufficient funding is available in the District's budget for Fiscal Year 2014-2015.

**ATTACHMENTS:**

1. In-Lieu Fee Program Agreement

**AGREEMENT BETWEEN THE RIVERSIDE-CORONA  
RESOURCE CONSERVATION DISTRICT AND THE RIVERSIDE  
COUNTY FLOOD CONTROL AND WATER CONSERVATION  
DISTRICT REGARDING MITIGATION FOR THE UNIVERSITY  
WASH CHANNEL STAGE 3 PROJECT**

This Agreement is entered into this 19<sup>th</sup> day of May 2015, by and between Riverside-Corona Resource Conservation District (“RCRCD”), and the Riverside County Flood Control and Water Conservation District (“District”) (collectively the “Parties”), as follows:

**RECITALS**

A. The District is seeking the assistance of RCRCD to satisfy certain offsite mitigation requirements imposed by the United States Army Corps of Engineers (“USACE”), the California Regional Water Quality Control Board, Region 8 (“RWQCB”), and the California Department of Fish and Wildlife (“CDFW”) associated with the District’s University Wash Channel, Stage 3 Project (the “Project”), which is located in an area bound by Spruce Street to the north, Chicago Avenue to the east, Massachusetts Avenue and Durahart Street to the south, and Kansas Avenue to the west, in the City of Riverside, Riverside County, California (“Impact Location”).

B. RCRCD has an In-Lieu Fee Program (the “ILF Program”) formally approved by the USACE and other regulatory agency members of the “Interagency Review Team” (the “IRT”) on July 26, 2012 and such program is currently in good standing with the IRT. RCRCD has received approval from the IRT to sell Credits from the Program to offset impacts caused by projects such as the University Wash Channel, Stage 3 project.

C. Under Special Condition 1 of the Project’s USACE Clean Water Act Section 404 Nationwide Permit Verification Letter dated November 4, 2014 (SPL-2014-00261-JEM) (“404 Permit”), the District is required to purchase 0.75 Rehabilitation Credits from the ILF Program. The Section 404 Permit is attached hereto as Exhibit “A”.

D. The Project is also subject to a separate RWQCB section 401 Clean Water Act water quality certification (Certification No. 332014-05) dated September 11, 2014 (“401 Certification”). The 401 Certification is attached hereto as Exhibit “B.” Under the 401 Certification, the District is required to provide compensatory mitigation in the form of “0.75 acres of mitigation credits.”

E. In addition, the Project is also subject to an August 11, 2014 CDFW “Operation of Law” letter (“CDFW OpLaw Letter”), which also requires the District to provide “sufficient funds to the RCRCD for the creation or restoration of 0.72 acres of riparian habitat.” (See CDFW OpLaw Letter attached hereto as Exhibit “C”).

F. District desires to purchase from RCRC and RCRC desires to sell and convey to District, 0.75 Rehabilitation Credits from the ILF Program.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Subject to the terms and conditions herein, RCRC agrees to sell to District and District agrees to purchase from RCRC 0.75 Rehabilitation Credits from the Program ("Credits") for the purchase price of ONE HUNDRED FORTY SIX THOUSAND SIX HUNDRED TWENTY FIVE AND NO/100'S DOLLARS (\$146,625.00) (the "Purchase Price"). The Purchase Price for said Credits shall be paid by the District Check or Warrant made payable to the RIVERSIDE-CORONA RESOURCE CONSERVATION DISTRICT. The Parties shall mutually agree to a "Closing Date" by which the transaction will be completed, which shall be no later than 30 days following the execution of this Agreement. On the Closing Date, RCRC shall transfer to District evidence that the Credits have been paid by way of the Bill of Sale attached as Exhibit "D".

2. In the event District has not delivered the Purchase Price to RCRC on or before the Closing Date, this Agreement shall automatically terminate without need for any further action by RCRC, and RCRC shall have no further obligations to District under this Agreement.

3. The sale and transfer herein is not intended as a sale or transfer to District of a security, license, lease, easement, or possessory or non-possessory interest in real property, nor the granting of any interest of the foregoing.

4. District shall have no obligation whatsoever by reason of the purchase of the Credits to support, pay, fix, monitor, report on, sustain, continue in perpetuity, or otherwise be obligated or liable for the success or continued expense or maintenance in perpetuity of the mitigation property associated with Credits sold or the ILF Program. RCRC shall indemnify and hold harmless the District, its respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees") from any liability whatsoever based or asserted upon the purchase of the Credits or RCRC's obligation to achieve success criteria or for long-term maintenance of the mitigation property associated with the Credits sold or the ILF Program, arising out of or any relating to this Agreement, and also including but not limited to, property damage, bodily injury, or death, or any other element of any kind or nature whatsoever arising from the performance under this Agreement of RCRC, its officers, employees, subcontractors, agents or representatives for a period of five (5) years following the execution of this Agreement; provided, however, that RCRC shall not be responsible to provide any additional mitigation services or Credits beyond those outlined in Section 1, above, even if CDFW, the RWQCB and/or USACE later modify their respective mitigation requirements. RCRC shall defend at its sole expense, all costs and fees including, but not limited to, attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees, in

any claim or action based upon the purchase of Credits or RCRC D's obligation for the success, continued expense or maintenance in perpetuity of the mitigation property associated with the Credits sold or the ILF Program.

5. The Credits herein sold to District shall be non-transferable and non-assignable, and shall be used as compensatory mitigation only in connection with the Project. Any excess Credits beyond those needed for the Project shall not be utilized for the benefit of any other project, nor shall they be traded or otherwise retained by RCRC D for future use by the District or any other person or entity.

6. All representations, warranties, and covenants embodied in this Agreement shall survive the transfer of the Credits hereunder.

7. RCRC D shall cooperate and assist District by providing documentation required by the IRT, CDFW and RWQCB to establish that the Credits are being used to compensate for the Project's impacts described above. RCRC D shall provide USACE with a Statement of Sale of Credit in the form of the attached Exhibit E no later than 30 days after the Closing Date of a successful sale.

8. Any notice or other written communication given pursuant to this Agreement shall be delivered to the other Party by first class U.S. mail, certified or registered U.S. mail or facsimile mail with mailed copy as follows:

District: Kris Flanigan  
Engineering Project Manager  
Riverside County Flood Control and  
Water Conservation District  
1995 Market Street  
Riverside, California 92501  
Telephone: 951-955-8581

RCRC D: Shelli Lamb, District Manager  
4500 Glenwood Dr, Bldg A  
Riverside, CA 92501-3042  
Telephone: (951) 683-7691

9. It is agreed that all understandings and agreements heretofore had between the Parties respecting the transactions contemplated by this Agreement are merged in this Agreement, which fully and completely expresses the agreement of the Parties. There are no representations, warranties, or agreements except as specified and expressly set forth herein, in the exhibits annexed hereto, or to be set forth in the instruments or other documents delivered or to be delivered hereunder.

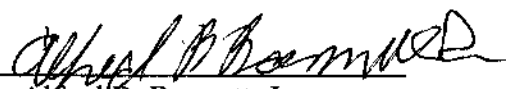
10. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.


11. This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written,

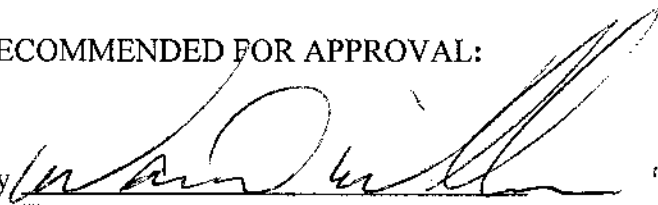
RCRCD:

Riverside County Flood Control and  
Water Conservation District

By:   
Alfred B. Bonnett, Jr.  
President, Board of Directors

By:   
Marion Ashley, Chairman  
Board of Directors

RECOMMENDED FOR APPROVAL:


By:   
WARREN D. WILLIAMS  
General Manager-Chief Engineer

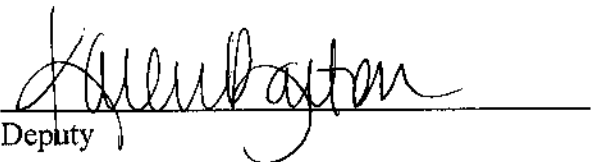
APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS  
County Counsel

KECIA HARPER-IHEM  
Clerk of the Board

By:   
KARIN WATTS-BAZAN  
Principal Deputy County Counsel

By:   
Deputy

(SEAL)

**Exhibit A**

(404 Nationwide Permit Verification Letter dated Nov. 4, 2014 (SPL-2014-00261-JEM))



DEPARTMENT OF THE ARMY  
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
1451 RESEARCH PARK DRIVE, SUITE 100  
RIVERSIDE, CALIFORNIA 92507-2154

November 4, 2014

Riverside County Flood Control  
and Water Conservation District  
Attn: Kris Flanigan  
1995 Market Street  
Riverside, California 92501

### DEPARTMENT OF THE ARMY NATIONWIDE PERMIT VERIFICATION

Dear Mr. Flanigan:

I am responding to your request (SPL-2014-00261-JEM), on behalf of Riverside County Flood Control and Water Conservation District (RCFCWCD), for a Department of the Army permit for their proposed University Wash Channel Stage 3 project. The proposed project would consist of the construction and maintenance of approximately 2,500 linear feet of underground 90-inch diameter reinforced concrete storm drain pipe, catch basins, associated access manholes, street repaving, and grading of approximately two acres, including 0.25 acre of non-wetland waters of the United States. The proposed project site is bound by Spruce Street to the north, Chicago Avenue to the east, Massachusetts Avenue and Durahart Street to the south, and Kansas Avenue to the west, in the City of Riverside, Riverside County, California.

Because this project would result in a discharge of dredged and/or fill material into waters of the United States a Department of the Army permit is required pursuant to Section 404 of the Clean Water Act (33 USC 1344; 33 CFR parts 323 and 330).

I have determined construction of RCFCWCD's proposed project, if constructed as described in their application, would comply with Nationwide Permit (NWP) No. 43 Stormwater Management Facilities. Specifically, and as depicted in their application, RCFCWCD is authorized to conduct the following regulated activities:

1. Discharge permanent fill material into 0.25 acre (approximately 700 linear feet) of non-wetland waters of the United States in association with the construction of the University Wash Stage 3 project.

For this NWP verification letter to be valid, RCFCWCD must comply with all of the terms and conditions in Enclosure 1. Furthermore, RCFCWCD must comply with the non-discretionary Special Conditions listed below:

1. Prior to initiating construction in waters of the U.S., and to mitigate for impacts to 0.25 acre of non-wetland waters of the U.S., the Permittee shall provide documentation verifying the purchase of 0.75 credits for the rehabilitation of waters of the U.S. from the Riverside-Corona Resource Conservation District In-Lieu Fee Program. The Permittee shall not initiate work in waters of the U.S. prior to receiving written confirmation (by letter or e-



mail) from the Corps Regulatory Division as to compliance with this special condition. The Permittee retains responsibility for providing the compensatory mitigation until the number and resource type of credits described above have been secured from the sponsor and the district engineer has received documentation that confirms that the sponsor has accepted the responsibility for providing the required compensatory mitigation. This documentation may consist of a letter or form signed by the sponsor, with the permit number and a statement indicating the number and resource type of credits that have been secured from the sponsor.

2. Pursuant to 36 C.F.R. section 800.13, in the event of any discoveries during construction of either human remains, archeological deposits, or any other type of historic property, the Permittee shall notify the Corps' Archeology Staff within 24 hours (John Killeen at 213-452-3861). The Permittee shall immediately suspend all work in any area(s) where potential cultural resources are discovered. The Permittee shall not resume construction in the area surrounding the potential cultural resources until the Corps Regulatory Division re-authorizes project construction, per 36 C.F.R. section 800.13.
3. The Permittee shall implement and abide by the Section 401 Water Quality Certification dated August 18, 2014, as prepared by the Santa Ana Water Quality Control Board.

This verification is valid through March 18, 2017. If on March 18, 2017 you have commenced or are under contract to commence the permitted activity you will have an additional twelve (12) months to complete the activity under the present NWP terms and conditions. However, if I discover noncompliance or unauthorized activities associated with the permitted activity I may request the use of discretionary authority in accordance with procedures in 33 CFR § 330.4(e) and 33 CFR § 330.5(c) or (d) to modify, suspend, or revoke this specific verification at an earlier date. Additionally, at the national level the Chief of Engineers, any time prior to March 18, 2017, may chose to modify, suspend, or revoke the nationwide use of a NWP after following procedures set forth in 33 CFR § 330.5. It is incumbent upon you to comply with all of the terms and conditions of this NWP verification and to remain informed of any change to the NWPs.

A NWP does not grant any property rights or exclusive privileges. Additionally, it does not authorize any injury to the property rights of others, nor does it authorize interference with any existing or proposed Federal project. Furthermore, it does not obviate the need to obtain other Federal, state, or local authorizations required by law.

Thank you for participating in the regulatory program. If you have any questions, please contact James Mace of my staff at 951-276-6624 x263 or via e-mail at [James.E.Mace@usace.army.mil](mailto:James.E.Mace@usace.army.mil). Please help me to evaluate and improve the regulatory

experience for others by completing the customer survey form at  
[http://corpsmapu.usace.army.mil/cm\\_apex/f?p=regulatory\\_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey)

Sincerely,

BRADFORD.TH  
ERESE,O'ROUR  
KE.1368382015

Digitally signed by  
BRADFORD.THERESE.O'ROURKE.13683820  
15  
DN: cn=US, o=U.S. Government, ou=DoD,  
ou=PRC, ou=USA,  
cn=BRADFORD.THERESE O'ROURKE.13683  
82015  
Date: 2014.11.04 16:12:10 -0800

Therese O. Bradford  
Chief, South Coast Branch  
Regulatory Division

Enclosures

LOS ANGELES DISTRICT  
U.S. ARMY CORPS OF ENGINEERS

CERTIFICATE OF COMPLIANCE WITH  
DEPARTMENT OF THE ARMY NATIONWIDE PERMIT

Permit Number: *SPL-2014-00261-JEM*

Name of Permittee: *Riverside County Flood Control & Water Conservation District*  
*POC: Kris Flanigan*

Date of Issuance: *November 4, 2014*

Upon completion of the activity authorized by this permit and the mitigation required by this permit, sign this certificate, and return it by **ONE** of the following methods;

- 1) Email a digital scan of the signed certificate to [James.E.Mace@usace.army.mil](mailto:James.E.Mace@usace.army.mil)
- OR
- 2) Mail the signed certificate to

U.S. Army Corps of Engineers  
ATTN: Regulatory Division SPL-2014-00261  
1451 RESEARCH PARK DRIVE, SUITE 100  
RIVERSIDE, CALIFORNIA 92507-2154

I hereby certify that the authorized work and any required compensatory mitigation has been completed in accordance with the NWP authorization, including all general, regional, or activity-specific conditions. Furthermore, if credits from a mitigation bank or in-lieu fee program were used to satisfy compensatory mitigation requirements I have attached the documentation required by 33 CFR 332.3(1)(3) to confirm that the appropriate number and resource type of credits have been secured.

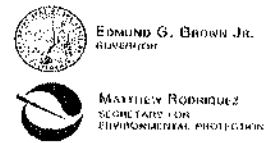
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Signature of Permittee

Date

**Exhibit B**

401 Clean Water Act Water Quality Certification No. 332014-05 dated Sept. 11, 2014



**Santa Ana Regional Water Quality Control Board**

September 11, 2014

Kris Flanigan  
Riverside County Flood Control and  
Water Conservation District  
1995 Market Street  
Riverside, CA 92501

**RECEIVED**  
SEP 12 2014  
RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS  
CERTIFICATION FOR THE UNIVERSITY WASH CHANNEL STAGE 3 PROJECT,  
CITY OF RIVERSIDE, RIVERSIDE COUNTY (U.S. ARMY CORPS OF ENGINEERS  
FILE NO. N/A) (SARWQCB PROJECT NO. 332014-05)**

Dear Mr. Flanigan,

On April 07, 2014, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from the Riverside County Flood Control and Water Conservation District for a project in the City of Riverside, Riverside County, to replace a section of the University Wash flood control channel with approximately 2,500 linear feet of 90-inch diameter reinforced concrete storm drain pipe.

The applicant has submitted a filing fee of \$11,111.00, which satisfies this project's fee requirement for consideration of a 401 Certification. This fee amount was determined using the Dredge and Fill Fee Calculator on the State Water Resources Control Board (SWRCB) web site, which is based on the most current iteration of California Code of Regulations, Division 3, Chapter 9, Article 1, section 2200 (a) (3).

This letter responds to your request for certification that the proposed project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) (Basin Plan) and subsequent Basin Plan amendments:

**Project Description:** The project consists of the construction and maintenance of approximately 2,500 linear feet of underground 90-inch-diameter reinforced concrete storm drain pipe, catch basins, equipment and material staging, and associated access manholes, street repaving, and grading of approximately 2 acres.

The project is bound by Spruce Street to the north, Chicago Avenue to the east, Massachusetts Avenue and Durahart Street to the south and Kansas Avenue to the west. Existing debris and ruderal and ornamental vegetation will be removed from the project's footprint, followed by excavation for the proposed storm drain piping installation. The proposed depth for the trench excavation will range from less than a few feet to as much as approximately 25 feet. 0.25 acres of the existing vegetated earthen University Wash Channel that are waters of the U.S. will be filled to achieve final design grades.

Once construction is completed, routine maintenance would include removal of debris or sediment as needed from the storm drain and drain inlets, graffiti removal, and repairs to maintain the system's capacity.

The work will take place within Section 24 of Township 2 South, Range 5 West, of the U.S. Geological Survey *Riverside East* 7.5 minute topographic quadrangle map (33.998° N/ -117.353° W).

Receiving water:

University Wash Channel, a tributary of the Santa Ana River. The Santa Ana River has present or potential beneficial uses, including: agricultural supply (AGR), ground water recharge (GWR), municipal and domestic supply (MUN), rare/threatened/endangered species (RARE), water contact recreation (REC1), non-contact water recreation (REC2), spawning reproduction (SPWN), warm freshwater habitat (WARM), and wildlife habitat (WILD).

Fill area:

Permanent Impact to Streambed Habitat	.025 acre	825 linear feet
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Dredge/Fill volume:

14,200 cubic yards of excavated soils and approximately 12,500 cubic yards of backfill

Federal permit:

U.S. Army Corps of Engineers (ACOE) Nationwide Permit No. 43

You have proposed to mitigate water quality impacts as described in your Certification application. The proposed mitigation is summarized below:

Onsite Water Quality Standards Mitigation Proposed:

- Standard water quality related best management practices (BMPs) will be employed during construction activities.

Offsite Water Quality Standards Mitigation Proposed:

- Project impacts to jurisdictional waters will be mitigated through the Riverside-Corona Resource Conservation District (RCRCD) in-lieu fee program, at a location to be determined by RCRCD. An in-lieu fee payment for 0.75 acres of mitigation credits will be made, resulting in a 3:1 mitigation ratio for the 0.25 acre impact to ACOE/RWQCB non-wetland jurisdictional waters.

Should the proposed project impact state- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife will ensure those impacts are mitigated to an acceptable level. Appropriate BMPs will be implemented to reduce construction-related impacts to Waters of the State according to the requirements of Order No. R8-2010-0033 (NPDES Permit No. CAS618033), commonly known as the Riverside County Municipal Storm Water Permit, and subsequent iterations thereof. Order No. R8-2010-0033 requires that you substantially comply with the requirements of State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity.

This Water Quality Certification is subject to the acquisition of all local, regional, state, and federal permits and approvals as required by law. Failure to meet any conditions contained herein, or any conditions contained in any other permit or approval for this project issued by the State of California, or any subdivision thereof, may result in appropriate enforcement action, including imposition of administrative civil liability.

Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a responsible agency, the Regional Board is required to consider an EIR or Negative Declaration prepared by the lead agency in determining whether to approve a project. A responsible agency has responsibility for mitigating and avoiding only the direct and indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve. Further, the responsible agency must make findings as required by Sections 15091 and, if necessary, 15093, for each and every significant impact of the project.

As required by Section 15096, the Regional Board has considered the Mitigated Negative Declaration (MND) prepared for the proposed project and filed by the Riverside County Flood Control and Water Conservation District on July 1, 2014, and information provided subsequently in the applicant's application, in approving this Certification. More specifically, the Regional Board has considered those sections of the MND relating to water quality. Based on the mitigation proposed in the MND, and the conditions set forth in this Certification, impacts to water quality will be reduced to a less than significant level and beneficial uses will be protected. The Regional Board finds that changes or alterations have been required in, or incorporated into the project, which avoid or mitigate impacts to water quality to a less than significant level.

**This 401 Certification is contingent upon the execution of the following conditions:**

- 1) The applicant must comply with the requirements of the applicable Clean Water Act section 404 permit.
- 2) Proposed mitigation shall be timely implemented. Materials documenting the purchase of necessary mitigation credits shall be provided to this office prior to the discharge of fill to, or the dredging or excavation of material from, waters of the state.
- 3) All materials generated from construction activities associated with this project shall be managed appropriately. This shall include identifying all potential pollution sources within the scope of work of this project, and incorporating all necessary pollution prevention BMPs as they relate to each potential pollution source identified.
- 4) The project proponent shall utilize BMPs during project construction to minimize the controllable discharges of sediment and other wastes to drainage systems or other waters of the state and of the United States.
- 5) Substances resulting from project-related activities that could be harmful to aquatic life, including, but not limited to, petroleum lubricants and fuels, cured and uncured cements, epoxies, paints and other protective coating materials, portland cement concrete or asphalt concrete, and washings and cuttings thereof, shall not be discharged to soils or waters of the state. All waste concrete shall be removed.
- 6) Motorized equipment shall not be maintained or parked within or near any stream crossing, channel or lake margin in such a manner that petroleum products or other pollutants from the equipment may enter these areas under any flow conditions. Vehicles shall not be driven or equipment operated in waters of the state on-site, except as necessary to complete the proposed project. No equipment shall be operated in areas of flowing water.



- 7) This Water Quality Certification is subject to the acquisition of all local, regional, state, and federal permits and approvals as required by law. Failure to meet any conditions contained herein or any the conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in the revocation of this Certification and civil or criminal liability.
- 8) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.
- 9) Construction de-watering discharges, including temporary stream diversions necessary for project construction may be regulated under Regional Board Order No. R8-2009-0003, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimus) Threat to Water Quality. For more information, please review Order No. R8-2009-0003 at [www.waterboards.ca.gov/santaana/](http://www.waterboards.ca.gov/santaana/)
- 10) Applicant shall ensure that all fees associated with this project shall be paid to each respective agency prior to conducting any on-site construction activities.

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

If the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, the Regional Board may require the applicant to submit a report of waste discharge and obtain Waste Discharge Requirements.

Kris Flanigan  
Riverside County Flood Control and  
Water Conservation District  
RWQB #: 332014-05 CIWQS #: 805844

- 6 -

September 11, 2014

In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification. Violations of the conditions of this certification may subject the applicant to civil liability pursuant to Water Code section 13350 and/or 13385.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law.

This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 2003-0017-DWQ is available at: [www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wqo\\_2003-0017.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo_2003-0017.pdf)

Should there be any questions, please contact Marc Brown at (951) 321-4584, or Mark Adelson at (951) 782-3234.

Sincerely,



Kurt V. Berchtold  
Executive Officer  
Santa Ana Regional Water Quality Control Board

cc (via electronic mail):

TRC Solutions, Inc – Mike Farmer – [mfarmer@trcsolutions.com](mailto:mfarmer@trcsolutions.com)  
U. S. Army Corps of Engineers, Los Angeles Office - Jim Mace  
CA Department of Fish and Wildlife – Joanna Gibson  
State Water Resources Control Board, Office of Chief Counsel-David Rice  
State Water Resources Control Board DWQ -Water Quality Certification Unit  
U.S. EPA -Supervisor of the Wetlands Regulatory Office WTR-8

**Exhibit C**

CDFW OPLAW LETTER Notification No. 1600-2014-0081-R6 dated August 11, 2014



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
(Inland Deserts Region)  
3602 Inland Empire Blvd., Suite C-220  
Ontario, CA 91764  
(909) 484-0167  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

EDMUND G. BROWN, Jr., Governor  
CHARLTON H. BONHAM, Director



August 11, 2014

Warren Williams  
Riverside County Flood Control and Water Conservation District  
1995 Market Street  
Riverside, CA 92501

Subject: Notification of Lake or Streambed Alteration No. 1600-2014-0081-R6  
University Wash Channel Stage 3 Project

Dear Mr. Williams:

As the California Department of Fish and Wildlife (Department) had until July 29, 2014 to submit a draft Lake or Streambed Alteration Agreement (Agreement) to you or inform you that an Agreement is not required. The Department did not meet that date. As a result, by law, you may now complete the project described in your notification without an Agreement.

Please note that pursuant to Fish and Game Code section 1602(a)(4)(D), if you proceed with this project, it must be the same as described and conducted in the same manner as specified in the notification and any modifications to that notification received by the Department in writing prior to July 29, 2014. This includes completing the project within the proposed term and seasonal work period and implementing all avoidance and mitigation measures to protect fish and wildlife resources specified in the notification. If the term proposed in your notification has expired, you will need to re-notify the Department before you may begin your project. Beginning or completing a project that differs in any way from the one described in the notification may constitute a violation of Fish and Game Code section 1602.

*Your notification includes, but is not limited to, the following information: Your notification proposes work within the University Wash Channel, located south of the intersection of State Highway 60 and Spruce Street, west of Chicago Avenue, north of Massachusetts Avenue, and east of Kansas Avenue, in the City of Riverside, County of Riverside. Your proposed project consists of the construction and maintenance of approximately 2,500 linear feet of underground 90-inch diameter reinforced concrete storm drain pipe, catch basins, equipment and material staging, and associated access manholes, street repaving, and grading of approximately 2 acres. Project impacts are limited to the replacement of 0.72 acre of University Wash Channel with an underground storm drain pipe. Your project will permanently impact 0.72 acres of vegetated channel. You have proposed the following avoidance and minimization measures during project construction: implement standard construction BMPs and a*

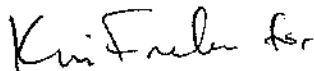
Mr. Warren Williams  
August 11, 2014  
Page 2 of 2

*Storm Water Pollution Prevention Plan, and conduct preconstruction nesting bird surveys prior to project activities. You have proposed to mitigate project impacts by providing sufficient funds to the Riverside Corona Resource Conservation District for the creation or restoration of 0.72 acres of riparian habitat. Your proposed project term is January 1, 2014 through December 31, 2019.*

Also note that while you are entitled to complete the project without an Agreement, you are still responsible for complying with other applicable local, state, and federal laws. These include, but are not limited to, the state and federal Endangered Species Acts and Fish and Game Code sections 5650 (water pollution) and 5901 (fish passage).

Finally, if you decide to proceed with your project without an Agreement, you must have a copy of this letter and your notification with all attachments available at all times at the work site. If you have any questions regarding this matter, please contact Claire Ingel at (909) 484-3979 or [claire.ingel@wildlife.ca.gov](mailto:claire.ingel@wildlife.ca.gov).

Sincerely,



Jeff Brandt  
Senior Environmental Scientist

**Exhibit D**

**BILL OF SALE**

Contract No. \_\_\_\_\_

In consideration of the payment of ONE HUNDRED FORTY SIX THOUSAND SIX HUNDRED TWENTY FIVE AND NO/100'S DOLLARS (\$146,625.00), receipt of which is hereby acknowledged, RCRCDD does hereby recognize that the Riverside County Flood Control and Water Conservation District has acquired 0.75 Rehabilitation Credits from the RCRCDD In-Lieu Fee Program (the "Program").

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
District Manager

bcc: Steve Anderson, General Counsel, General Counsel, RCRCD, Best Best & Krieger LLP

**Exhibit E**

RCRCD letterhead

[date]

U.S. Army Corps of Engineers  
Los Angeles District – Regulatory Division  
915 Wilshire Blvd.  
Los Angeles, CA 90017

Subject: Statement of Sale for 0.75 Rehabilitation Credits from the RCRCD In-Lieu Fee Program to Riverside County Flood Control and Water Conservation District for the University Wash Channel Stage 3 Project

The Riverside-Corona Resource Conservation District has an agreement with the U.S. Army Corps of Engineers – Los Angeles District to operate an In-Lieu-Fee Program. This letter confirms the sale of 0.75 Rehabilitation Credits to the Riverside County Flood Control and Water Conservation District for the University Wash Channel Stage 3 Project. These Credits are being used as compensatory mitigation for permanent impacts to non-wetland waters of the U.S. as authorized by USACE 404 Nationwide Permit Verification Letter dated November 4, 2014 (SPL-2014-00261-JEM), and a separate RWQCB 401 Clean Water Act water quality certification (Certification No. 332014-05) dated September 11, 2014. By selling credits to the above permittee, RCRCD is the party responsible for fulfilling the mitigation aspect of Special Condition No. 1 of the USACE 404 Nationwide Permit Verification Letter dated November 4, 2014, and the “Offsite Water Quality Standards Mitigation Proposed” on page three (first bullet) of the RWQCB 401 Clean Water Act water quality certification dated September 11, 2014.

Signed

cc: John Markham, Senior Ecologist & Project Manager, Regulatory Division  
US Army Corps of Engineers, Ventura Field Office  
James Mace, Senior Project Manager, Regulatory Division, U.S. Army  
Corps of Engineers, Los Angeles District  
Mark Adelson, Regional Planning Programs, Regional Water Quality  
Control Board-Santa Ana Region.  
Sarvy Mahdavi, Environmental Protection Specialist, Wetlands Regulatory  
Office, U.S. EPA, Region 9



FORM APPROVED COUNTY COUNSEL  
 BY: GREGORY P. PRIAMOS  
 DATE: 5/19/15

Departmental Concurrence

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

106B



**FROM:** General Manager-Chief Engineer

**SUBMITTAL DATE:**  
 June 2, 2015

**SUBJECT:** Consent to the Waiver of Conflict of Interest for the Law Firm of Best Best & Krieger, LLP to Represent the Riverside-Corona Resource Conservation District (RCRCD) with Respect to In-Lieu Fee Agreements and Mitigation Requirements in Connection with Various District Projects; [\$0 - All Districts]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Consent to the Waiver of Conflict of Interest and authorize County Counsel to sign the letter of consent for the law firm of Best Best & Krieger, LLP to represent RCRCD with respect to in-lieu fee program agreements or mitigation requirements in connection with various District projects.

**BACKGROUND:**

**Summary**  
 See Page 2.

SEM:mcv:bjp  
 P8168980

*[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	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET DISTRICT COST	\$ 0	\$ 0	\$ 0	\$ 0	
SOURCE OF FUNDS: N/A				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 FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

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

Ayes: Jeffries, Washington, Benoit and Ashley  
 Nays: None  
 Absent: Tavaglione  
 Date: June 2, 2015  
 xc: Flood

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

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

Prev. Agn. Ref.: | District: All | Agenda Number:

11-6

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

**FORM 11:** Consent to the Waiver of Conflict of Interest for the Law Firm of Best Best & Krieger, LLP to Represent the Riverside-Corona Resource Conservation District (RCRCD) with Respect to In-Lieu Fee Agreements and Mitigation Requirements in Connection with Various District Projects; [\$0 – All Districts]

**DATE:** June 2, 2015

**PAGE:** Page 2 of 2

**BACKGROUND:**

**Summary (continued)**

Currently, the District retains the law firm of Best Best & Krieger, LLP (BBK) as Special Counsel with regard to litigation related to the Santa Ana sucker and public financing matters. BBK is also general counsel for RCRCD.

The District has asked RCRCD to enter into an agreement for in-lieu fee credits to offset environmental impacts from the University Wash Channel project in the city of Riverside. More recently, the District has asked RCRCD to help implement mitigation requirements associated with Temescal Creek - Foster Road Storm Drain project. The District may purchase additional mitigation credits or work with RCRCD on other projects as well.

In regards to the University Wash Channel project, BBK would represent RCRCD and assist in drafting and negotiating the in-lieu fee agreement and with other matters related to the Project. BBK would continue representing the District on the other matters set forth above. The request for a Conflict of Interest Waiver by BBK is prompted by Rule 3-310 of the California Rules of Professional Conduct, which provides, in pertinent part, the following:

- "(C) A member [of the Bar] shall not, without the informed written consent of each client:
- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
  - (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
  - (3) Represent a client in a matter and at the same time in separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter."

County Counsel has reviewed the attached Waiver of Conflict of Interest letter and does not believe that the District's interests would be adversely affected or that a conflict of interest would arise with BBK's representation of RCRCD in connection with in-lieu fee program agreements or mitigation requirements regarding various District projects while concurrently advising the District on the Santa Ana sucker litigation or other public financing matters. In the event a conflict arises, BBK would need to withdraw from representing either one or both parties.

**Impact on Residents and Businesses**

The Board's consent to the Waiver of Conflict of Interest does not have a direct impact on residents or businesses because it simply allows BBK to represent another public agency for a transactional legal matter.

**ATTACHMENTS:**

1. Conflict of Interest Waiver Request Letter



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

INDIAN WELLS  
(760) 566-2611

IRVINE  
(949) 263-2600

LOS ANGELES  
(213) 617-6100

ONTARIO  
(909) 989-6584

3390 UNIVERSITY AVENUE, 5TH FLOOR, P.O. BOX 1028, RIVERSIDE, CA 92502  
PHONE: (951) 686-1450 | FAX: (951) 686-3083 | WWW.BBKLLAW.COM

SACRAMENTO  
(916) 325-4000

SAN DIEGO  
(619) 525-1300

WALNUT CREEK  
(925) 977-3300

WASHINGTON, DC  
(202) 785-0800

Kimberly A. Byrens  
(951) 686-1450  
Kim.byrens@bbkllaw.com

January 30, 2015

Warren D. "Dusty" Williams,  
General Manager-Chief Engineer  
Riverside County Flood Control and  
Water Conservation District  
1995 Market Street  
Riverside, Ca 92501

Re: Informed Consent – Riverside-Corona Resource Conservation District

Dear Mr. Williams:

Best Best & Krieger LLP ("BBK") is general counsel to the Riverside-Corona Resource Conservation District ("RCRCD"). Recently RCRCD informed us that the Riverside County Flood Control and Water Conservation District ("Flood Control District") asked RCRCD to enter into an agreement to purchase in-lieu fee credits to offset impacts associated with a Flood Control District project to replace a section of the University Wash Flood Control Channel located in the City of Riverside, commonly referred to as the University Wash Channel Stage 3 Project. The Flood Control District may purchase additional mitigation credits for or work with RCRCD on other future projects as well. More recently, the Flood Control District approached RCRCD to help implement mitigation associated with, among other projects, the Temescal Creek – Foster Road Storm Drain Project located within the unincorporated El Cerrito area of Riverside County.

BBK also serves as special counsel to the Flood Control District on public financing matters. Therefore, it is necessary to obtain consent from both RCRCD and the Flood Control District regarding BBK's involvement in this matter. We must inform you about our concurrent representation of RCRCD and the Flood Control District, discuss with you the potential impact of our representation and obtain your informed written consent.

**RULES OF PROFESSIONAL CONDUCT**

Rule 3-310 of the California Rules of Professional Conduct provides in pertinent part:

- (C) A member [of the Bar] shall not, without the informed written consent of each client:
  - (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

- (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
  - (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.
- (D) A member who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients without the informed written consent of each client.

**OUR REPRESENTATION**

We will continue to represent RCRCDC as general counsel. As such, we plan to assist RCRCDC in drafting and negotiating the relevant agreements and other documents associated with these matters. We will not represent the Flood Control District in this matter, but plan to continue working with the Flood Control District in other, unrelated matters.

**ADVERSE CONSEQUENCES**

We are obliged to inform you of any actual or reasonably foreseeable adverse effects of this representation. It is possible that conflicts between the Flood Control District and RCRCDC could develop into contentious disputes and result in litigation. This scenario could have potentially problematic results in regard to our representation of you. In particular,

- We may be tempted to favor the interests of one client over the other.
- We may not be able to present the appropriate position, claims or defenses for a client in order to avoid taking adverse positions to the other client.
- We may be restricted from forcefully advocating a client's position for fear of alienating the other client.
- We may be forced to withdraw from representing either or both clients because of disputes or further conflicts of interest which could increase either or both clients' attorney's fees and costs.

**YOUR CONSENT**

By signing this letter now, you will be agreeing that we may represent RCRCDC in the matters discussed above as well as any future matter in which the Flood Control District desires to work with RCRCDC on matters such as mitigation or the purchase of credits or otherwise, despite the potential conflict that could occur with the Flood Control District. We have also

**BBK**  
**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

asked RCRC D sign a similar waiver and consent. We do not believe that any of these matters will be controversial.

I believe that you are familiar with the factual background in this matter, and I have given you a sufficiently-detailed description for obtaining informed written consent. However, if you believe that there is any other information that you or I need to have before such consent can be granted, please let me know immediately.

In the event that circumstances change or we become aware of new information that requires a new consent from the parties, you will be notified of that fact immediately, and continued representation will be subject to the informed written consent of involved parties.

I should emphasize that you are entitled to and should consider obtaining an independent legal opinion regarding the advisability of signing this consent form.

Your execution of this consent form will constitute an acknowledgment of full disclosure in compliance with the requirements of Section 3-310 of the California Rules of Professional Conduct previously quoted in this letter.

A copy of this letter is enclosed for your files. If you have any questions, please do not hesitate to call.

Sincerely,



Kimberly A. Byrens  
of BEST BEST & KRIEGER LLP

AGREED AND ACCEPTED:

By: \_\_\_\_\_  
Riverside County Flood Control and  
Water Conservation District

Dated: \_\_\_\_\_