# COOPERATIVE AGREEMENT TO PROTECT WATER QUALITY AND ENCOURAGE THE CONJUNCTIVE USES OF IMPORTED WATER IN THE SANTA ANA RIVER BASIN

This Cooperative Agreement to Protect Water Quality and Encourage the Conjunctive Uses of Imported Water in the Santa Ana River Basin ("**Agreement**") is entered into and effective this 18 day of January, ~~2007~~ 2008 by and among the California Regional Water Quality Control Board, Santa Ana Region (the "**Regional Board**") and the entities listed in paragraph 11(n) below. The Regional Board and each of the entities listed in paragraph 11(n) below are individually referred to as a "**Party**" and are collectively referred to as the "**Parties.**"

## Recitals

A. Water imported to the Santa Ana River Region, as defined in Water Code section 13200(e) (the "**Region**"), from the State Water Project, the Colorado River and other sources, and to groundwater basins within the Region from other groundwater basins within the Region, is vital to meet present and future demands for water within the Region. Such water is directly used; injected or percolated within groundwater basins; stored in a groundwater basin for later use; may be combined with or used in addition to the native groundwater supplies in a basin; may be exported/imported from one basin to another; and after consumptive use may form a portion of the wastewater that is treated, recharged and reused within the Region. Such conjunctive uses of surface water and groundwater within the Region have been contemplated by the State of California at least since the issuance of the original California Water Plan in 1957 and the adoption by the State Water Quality Control Board of Resolution No. 64-1.

B. The Regional Board is charged by statute with adopting such water quality objectives as may be required to protect the beneficial uses of water within the Region. In particular, the long-term conjunctive use of groundwater in the Region requires that the quality of water in groundwater basins in the Region be managed to meet the water quality objectives for nitrogen and total dissolved solids (collectively, the "**Salinity Objectives**") adopted by the Regional Board in the 1995 Water Quality Control Plan for the Santa Ana River Basin, as amended in 2004 by R8 2004-0001 (the "**Basin Plan**").

C. The Salinity Objectives presently included in the Basin Plan are the result of a multi-year, multi-million dollar cooperative effort among many of the Parties. The Salinity Objectives are a product of the best scientific and technical information available.

D. The Legislature has declared that the facilitation of voluntary transfers of water and water rights is the established policy of the State. The Legislature has further declared that voluntary water transfers between water users can result in a more efficient use of water and can allow more intensive use of developed water resources so as to conserve all available water resources. The Legislature has directed the Regional Board to encourage voluntary transfers of water and water rights.

E. The Parties disagree whether the Regional Board may regulate the conjunctive uses of imported water in the Region by means of general waste discharge requirements. Some of the Parties believe the Regional Board lacks authority to regulate the conjunctive uses of water in the Region because, they contend, such water does not constitute "waste" as defined in Water Code section 13050(d); the Regional Board and other Parties believe the Regional Board has such authority.

F. To avoid costly and time-consuming litigation brought to resolve the scope of the Regional Board's authority to regulate imported water and without prejudice to the Parties' competing views on this question, the Parties wish to act cooperatively with the goal of achieving compliance with the Salinity Objectives without the necessity of general waste discharge requirements.

G. The Parties wish to memorialize the terms of their cooperative effort by means of this Agreement.

## Agreements

1. *Purpose of Agreement*

This Agreement is intended to allow the Parties to monitor and improve water quality within the Santa Ana River Region in a manner that is consistent both with adopted water quality objectives and with the needs of the inhabitants of the Region for a reliable supply of water. This Agreement is limited in scope to compliance with and implementation of the Salinity Objectives.

2. *Parties*

The Regional Board or any public agency or non-profit mutual water company that imports water to the Region, exports/imports water between basins within the Region, recharges such imported water within the Region, delivers such imported water for potable use within the Region, or treats and/or recharges wastewater within the Region that includes imported water may become a Party to this Agreement.

3. *Term of Agreement*

This Agreement will have an initial term of 10 years and shall automatically renew for subsequent 10-year periods, *provided* that any Party may withdraw at any time by providing one year's written notice of withdrawal to all other Parties.

4. *Preparation of Triennial Water Quality Report*

The Parties that intentionally recharge imported water within the Santa Ana Region (the "**Recharging Parties**") agree voluntarily to collect, compile and analyze the N/TDS water quality data necessary to determine whether the intentional recharge of imported water in the Region may have a significant adverse impact on compliance with the Salinity Objectives within

the Region. To that end, the Recharging Parties will collect, compile and analyze such N/TDS water quality data and prepare, within eighteen months from the effective date of this Agreement and every three years thereafter, a report containing the following information:

a. A summary of the then-current ambient water quality in each groundwater management zone and a comparison of that ambient water quality with the Salinity Objectives. The Recharging Parties shall calculate ambient water quality for each groundwater management zone in a manner that allows for a technically valid comparison with the Salinity Objectives.

b. A summary of the amount and quality of imported water recharged in each groundwater management zone during the previous three-year period.

c. The initial report and each report prepared at six-year intervals thereafter will include a projection of ambient water quality in each groundwater management zone for the subsequent 20 years.

(1) The projection of ambient water quality for each groundwater management zone will be based upon professionally accepted modeling techniques, will reasonably account for surface fluxes of salt input, will reflect the effects of all existing and reasonably foreseeable recharge projects for which there is a certified environmental document and will compare baseline ambient water quality with the Salinity Objectives.

(2) The projections for different groundwater management zones may be based on different modeling techniques.

(3) Each report that includes a 20-year projection of ambient water quality will also present a comparison of then-current water quality in each groundwater management zone with the ambient water quality projection made six years earlier, together with an evaluation of the reason(s) for any differences.

The Recharging Parties will agree among themselves regarding the manner in which they will prepare the report and the manner in which they will share the cost of preparing the report. The Recharging Parties will circulate a draft version of each report to all other Parties for review and written comments for at least a 45-day period. The Recharging Parties shall consider written comments received on the draft report in preparing the final report. Upon completion of the final report, the Recharging Parties shall promptly lodge the final report with the Regional Board.

5. *CEQA Review of Proposed Projects*

Each Recharging Party agrees that, when it serves as a lead agency under the California Environmental Quality Act ("**CEQA**") for a proposed project involving the recharge of imported water within the Region, it will analyze that project as follows:

a. The environmental document will include the water quality data compiled in the most recent triennial report to the Regional Board (see paragraph 4 above) in the analysis of the potential impacts of the proposed project.

b. The environmental document will incorporate professionally acceptable modeling techniques. The Parties agree that the following models meet this standard:

(1) The Wildermuth models used to establish maximum benefit objectives.

(2) The Orange County Basin Groundwater Model.

(3) The USGS/Geoscience/Secor model of the Bunker Hill Groundwater Basin.

(4) The Chino Basin Watermaster/Inland Empire Utilities Agency model.

(5) The Beaumont-Cherry Valley model for the Beaumont management zone

(6) Eastern Municipal Water District's San Jacinto Groundwater Model.

(7) Elsinore Valley Municipal Water District's Elsinore Basin Groundwater Model.

(8) The USGS model of the Beaumont Basin (with MT3D package or equivalent added).

Updates/refinements of these models are presumed to be professionally acceptable.

c. A Recharging Party may base its environmental analysis on a model other than those described above if that model has been presented to the Regional Board at least 180 days prior to the release of the draft environmental document and there has been a determination by the Regional Board or its staff that the alternative model is acceptable.

(1) The Regional Board agrees that an alternative model is acceptable for purposes of this Agreement if the proponent of that model can demonstrate with reasonable certainty that the relative error of the model's calibration for the groundwater management zones in question for a reasonable base period is ± 10% or less when compared with existing groundwater data.

(2) The provisions of the immediately preceding paragraph are not to be construed to preclude other means or methodologies for an alternative model's proponent to demonstrate to the Regional Board that an alternative model is acceptable for purposes of this Agreement.

(3) If an alternative model has not been deemed acceptable by the Regional Board or its staff and a lead agency wishes to include results from that model in the environmental document, the lead agency shall include results from both the alternative model and one of the pre-approved models in the environmental document.

d. The environmental document will include the following analyses:

(1) A summary of the condition of the groundwater management zones, as reflected in the most recent triennial report to the Regional Board, that might be affected by the project.

(2) A 20-year projection of water quality in the groundwater management zone with the proposed project and a comparison of that water quality with conditions expected without the project.

(3) A comparison of the 20-year water quality projection for conditions with the proposed project with the Salinity Objectives for the groundwater management zone.

(4) A description and evaluation of any measures proposed to mitigate the potential effects of the proposed project.

e. The draft environmental document will be circulated to all Parties.

f. Each Recharging Party agrees to adopt the operative guidelines contained in this paragraph 5 as part of its CEQA implementing procedures pursuant to section 15022 of the CEQA Guidelines.

g. The environmental document shall include, if required under CEQA, an effective mitigation monitoring and reporting plan that enables the lead agency to demonstrate compliance with applicable regulatory standards and any performance standards adopted in the environmental document.

6. *Basin Planning Updates*

The Regional Board will review and, if appropriate, revise water quality objectives for the purpose of facilitating the recharge of imported water in groundwater management zones within the Region. The Parties agree to cooperate in such efforts and agree to work cooperatively to develop a program that addresses the use and allocation of assimilative capacity as part of overall Basin planning and management.

7. *Enforcement*

If the Recharging Parties fail timely to prepare the triennial report described in paragraph 4 above or if a Recharging Party fails to include the analyses described in paragraph 5 above in an environmental document prepared in connection with a proposed project involving the recharge of imported water, then any other Party may enforce the terms of this Agreement as

follows.

If the dispute relates to the triennial report on water quality, the Regional Board will hold a hearing asking the Recharging Parties to provide an explanation for the delay or failure to prepare the report. Such a hearing will precede an action for specific performance of the terms of this Agreement by the Regional Board. In the event that the dispute relates to the failure of a Party to provide the appropriate analysis in an environmental document, that dispute will be addressed by the Party(ies) using the remedies available under CEQA.

The Parties recognize that nothing in this Agreement can or is intended to divest the Regional Board of its authority under the Porter-Cologne Water Quality Control Act. Furthermore, nothing in this Agreement shall be construed as a waiver by any Party of any remedies it may have against a non-Party for interference with the implementation of this Agreement.

8. *Books and Records*

Each Party shall have access to and the right to examine any of the other Parties' pertinent books, documents, papers or other records (including, without limitation, records contained on electronic media) relating to the performance of that Party's obligations pursuant to this Agreement. The Parties shall each retain all such books, documents, papers or other records for at least four years after the termination of this Agreement to facilitate such review. Access to each Party's books and records shall be during normal business hours only. Nothing in this paragraph shall be construed to operate as a waiver of any applicable privileges.

9. *No Admissions*

Nothing in this Agreement shall be construed as an admission by any Party regarding any subject matter of this Agreement, including but not limited to the authority of the Regional Board to regulate the importation of water to the Region. The Parties agree that Evidence Code sections 1152 and 1154 render this Agreement inadmissible as evidence against any of the Parties in any adjudicative proceeding, except a proceeding to enforce or interpret the terms or conditions of this Agreement.

10. *Preservation of Rights*

The Parties agree that this Agreement is in settlement of a dispute and preserves all rights of the Parties as they may exist as of the effective date of this Agreement.

11. *General Provisions*

a. *Authority.* Each signatory of this Agreement represents that s/he is authorized to execute this Agreement on behalf of the Party for which s/he signs. Each Party represents that it has legal authority to enter into this Agreement and to perform all obligations under this Agreement.

b. *Amendments.* This Agreement may only be amended with the approval of all Parties.

c. *Jurisdiction and Venue*. This Agreement shall be governed by and construed in accordance with the laws of the State of California, except for its conflicts of law rules. Any suit, action, or proceeding brought under the scope of this Agreement shall be brought and maintained to the extent allowed by law in the County of Riverside, California.

d. *Representations and Warranties*. Each representation and warranty contained herein or made pursuant hereto shall be deemed to be material and to have been relied upon and shall survive the execution, delivery and termination of this Agreement.

e. *Entire Agreement*. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this Agreement.

f. *Successors and Assigns*. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the respective Parties to this Agreement. No Party may assign its interests in or obligations under this Agreement without the written consent of the other Parties, which consent shall not be unreasonably withheld or delayed.

g. *Advice of Counsel; Drafting by Negotiations*. This Agreement has been arrived at through negotiations and each Party has had a full and fair opportunity to revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in the construction or interpretation of this Agreement. Each Party represents that it has sought and obtained any legal advice it deems necessary from its own separate counsel before entering into this Agreement.

h. *Waiver*. No waiver of any violation or breach of this Agreement shall be considered to be a waiver of any other violation or breach of this Agreement, and forbearance to enforce one or more of the remedies provided in this Agreement shall not be deemed to be a waiver of that remedy.

i. *Severability*. If, after the date of execution of this Agreement, any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable. However, in lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

j. *Compliance with Laws*. In performing their respective obligations under this Agreement, the Parties shall comply with and conform to all applicable laws, rules, regulations and ordinances.

k. *No Third-Party Beneficiaries.* This Agreement shall not create any right or interest in any non-Party or in any member of the public as a third party beneficiary.

l. *Necessary Actions.* Each Party agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out the purposes of this Agreement.

m. *Counterparts.* This Agreement may be executed in one or more counterparts, which may be executed and delivered via facsimile transmission, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

n. *Notices.* All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing unless provided otherwise in this Agreement and shall be deemed to have been duly given and received on: (i) the date of service if served personally or served by facsimile transmission on the Party to whom notice is to be given at the address(es) provided below, (ii) on the first day after mailing, if mailed by Federal Express, U.S. Express Mail, or other similar overnight courier service, postage prepaid, and addressed as provided below, or (iii) on the third day after mailing if mailed to the Party to whom notice is to be given by first class mail, registered or certified, postage prepaid, addressed as follows:

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

California Regional Water Quality Control Board
Santa Ana Region
3737 Main St., Suite 500
Riverside, CA 92501
(951) 782-4130 ph
(951) 781-6288 fax

CITY OF CORONA

City of Corona
400 S. Vicentia Avenue
Corona, CA 92882-2187
(951) 736-2239 ph
(951) 736-2231 fax

CITY OF RIVERSIDE

City of Riverside
5950 Acorn Street
Riverside, CA 92504-1036
(951) 351-6080 ph
(951) 351-6267 fax

EASTERN MUNICIPAL WATER DISTRICT

Eastern Municipal Water District
2270 Trumble Road
Perris, CA 92570
P.O. Box 8300
Perris, CA 92572-8300
(951) 928-3777 ph
(951) 928-6177 fax

ELSINORE VALLEY MUNICIPAL WATER DISTRICT

Elsinore Valley Municipal Water District
31315 Chaney Street
Lake Elsinore, CA 92530
P.O. Box 3000
Lake Elsinore, CA 92531-3000

ORANGE COUNTY WATER DISTRICT

Orange County Water District
10500 Ellis Avenue
Fountain Valley, CA 92708-6921
P.O. Box 8300
Fountain Valley, CA 92728-8300
(714) 378-3200 ph
(714) 378-3371 fax

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

San Bernardino Valley Municipal Water District
1350 South "E" Street
San Bernardino, CA 92408-2725
P.O. Box 5906
San Bernardino, CA 92412-5906
(909) 387-9200 ph
(909) 387-9247 fax

SAN GORGONIO PASS WATER AGENCY

San Gorgonio Pass Water Agency
1210 Beaumont Avenue
Beaumont, CA 92223
(951) 845-2577 ph
(951) 845-0281 fax

WESTERN MUNICIPAL WATER DISTRICT

Western Municipal Water District
450 E. Alessandro Blvd.
Riverside, CA 92508-2449
P.O. Box 5286
Riverside, CA 92517-5286
(951) 789-5000 ph
(951) 780-3837 fax

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

By: _____
Title: Executive Officer

APPROVED AS TO FORM ONLY:

By: _____

CITY OF CORONA

By: _____
Title: CITY MANAGER
Beth Groves

APPROVED AS TO FORM ONLY:

By: _____
Best Best & Krieger, LLP
City of Corona Counsel



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SAN GORGONIO PASS WATER AGENCY

San Gorgonio Pass Water Agency
1210 Beaumont Avenue
Beaumont, CA 92223
(951) 845-2577 ph
(951) 845-0281 fax

WESTERN MUNICIPAL WATER DISTRICT

Western Municipal Water District
450 E. Alessandro Blvd.
Riverside, CA 92508-2449
P.O. Box 5286
Riverside, CA 92517-5286
(951) 789-5000 ph
(951) 780-3837 fax

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

By:_____
Title:

APPROVED AS TO FORM ONLY:

By:_____

CITY OF CORONA

By:_____
Title: CITY MANAGER
Beth Groves

APPROVED AS TO FORM ONLY:

By:_____
Best Best & Krieger, LLP
City of Corona Counsel

CITY OF RIVERSIDE

By: _____
Title:

APPROVED AS TO FORM ONLY:

By: Susan Wilson
Deputy City Attorney

Attest: _____
City Clerk

EASTERN MUNICIPAL WATER DISTRICT

By: _____
Title:

APPROVED AS TO FORM ONLY:

By: _____

ELSINORE VALLEY MUNICIPAL WATER DISTRICT

By: _____
Title:

APPROVED AS TO FORM ONLY:

By: _____

CITY OF RIVERSIDE

By:_____
Title:

APPROVED AS TO FORM ONLY:

By:_____

EASTERN MUNICIPAL WATER DISTRICT

By:_____
Title: General Manager

APPROVED AS TO FORM ONLY:

By:_____

ELSINORE VALLEY MUNICIPAL WATER DISTRICT

By:_____
Title:

APPROVED AS TO FORM ONLY:

By:_____

CITY OF RIVERSIDE

By:_____

Title:

APPROVED AS TO FORM ONLY:

By:_____

EASTERN MUNICIPAL WATER DISTRICT

By:_____

Title:

APPROVED AS TO FORM ONLY:

By:_____

ELSINORE VALLEY MUNICIPAL WATER DISTRICT

By:_____

Title: General Manager

APPROVED AS TO FORM ONLY:

By:_____

ORANGE COUNTY WATER DISTRICT

By: _____
Title: President

By: _____
Title: Acting General Manager

APPROVED AS TO FORM ONLY:

By: _____

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT

By: _____
Title:

APPROVED AS TO FORM ONLY:

By: _____

SAN GORGONIO PASS WATER
AGENCY

By: _____
Title:

APPROVED AS TO FORM ONLY:

By: _____

ORANGE COUNTY WATER DISTRICT

By:_____

Title:

APPROVED AS TO FORM ONLY:

By:_____

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

By:_____

Title: President

APPROVED AS TO FORM ONLY:

By:_____

SAN GORGONIO PASS WATER AGENCY

By:_____

Title:

APPROVED AS TO FORM ONLY:

By:_____

ORANGE COUNTY WATER DISTRICT

By:_____
Title:

APPROVED AS TO FORM ONLY:

By:_____

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT

By:_____
Title:

APPROVED AS TO FORM ONLY:

By:_____

SAN GORGONIO PASS WATER
AGENCY

By: Jeffrey W Davis
Title:
General Manager

APPROVED AS TO FORM ONLY:

By:_____

WESTERN MUNICIPAL WATER DISTRICT

By: _____
Donald D. Galleano
President, Board of Directors

APPROVED AS TO FORM ONLY:

By: _____

CITY OF SAN BERNARDINO
MUNICIPAL WATER DEPARTMENT

By: _____
Title: GENERAL MANAGER

APPROVED AS TO FORM ONLY:

By: _____



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