ENGINEERING AND OPERATIONS COMMITTEE

AGENDA FOR

MARCH 25, 2010

Gary Arant – Chair
Richard Smith, Vice Chair
Jim Barrett
Jim Bowersox
Betty Ferguson
Mike Hogan
Jeremy Jungreis

Bill Knutson
Ralph McIntosh
Ron Morrison
Vincent Mudd
Bud Pocklington
Javier Saunders
Tom Wornham


2. Additions to agenda (Government Code Section 54954.2(b)).

3. Public comment – opportunities for members of the public to address the Committee on matters within the Committee’s jurisdiction.

4. Chair’s report.
    4-A Announcement of 2010 Engineering and Operations Tour.
    4-B Directors’ comments.

I. CONSENT CALENDAR

1. Notice of Completion for the Bulkhead Installation on Pipeline 3 at Miramar Hill and San Diego 5 Turnout.
   Staff recommendation: Authorize the General Manager to accept the Bulkhead Installation on Pipeline 3 at Miramar Hill and San Diego 5 Turnout project as complete, record the Notice of Completion, and release funds held in retention to Kaveh Engineering and Construction, Inc., following expiration of the Notice of Completion period. (Action)
2. **Approve settlement agreement with Olivenhain Municipal Water District and City of San Diego relating to Lake Hodges and Olivenhain Reservoir.**

   **Staff recommendation:** Authorize the General Manager and General Counsel to execute and implement the settlement agreement. Direct the General Manager to establish the OMWD Settlement Project within the Capital Improvement Budget, and execute a budget transfer of $13,500,000 from the San Vicente Dam Raise Project to the OMWD Settlement Project. (Action)

## II. ACTION/DISCUSSION

1. **San Vicente Dam Raise projects.**

   1-A. Construction update.

   1-B **Change Orders to Barnard Construction Company, Inc. for the Package 2 San Vicente Foundation Preparatory Work project.**

   **Staff recommendation:** Accept change orders 1 through 5 for $434,626; authorize the General Manager to execute change orders for up to $2,324,000 to revise unit price bid items to address field conditions encountered at the foundation excavations increasing the construction contract amount to $26,508,126. (Action)

## III. INFORMATION

## IV. CLOSED SESSION

1. **CLOSED SESSION:**

   Conference with Legal Counsel - Potential Litigation

   Government Code §54956.9(b)(1) – significant exposure to litigation

   OMWD – Lake Hodges Water Quality Allegations
V. ADJOURNMENT

NOTE: This meeting is called as an Engineering & Operations Committee meeting. Because a quorum of the Board may be present, the meeting is also noticed as a Board meeting. Members of the Board who are not members of the Committee may participate in the meeting pursuant to Section 2.00.060(g) of the Authority Administrative Code (Recodified). All items on the agenda, including information items, may be deliberated and become subject to action. All public documents provided to the committee or Board for this meeting including materials related to an item on this agenda and submitted to the Board of Directors within 72 hours prior to this meeting may be reviewed at the San Diego County Water Authority headquarters located at 4677 Overland Avenue, San Diego, CA 92123 at the reception desk during normal business hours.

Doria F. Lore
Clerk of the Board
March 17, 2010

Attention: Engineering and Operations Committee

Notice of Completion for the Bulkhead Installation on Pipeline 3 at Miramar Hill and San Diego 5 Turnout. (Action)

Staff recommendation
Authorize the General Manager to accept the Bulkhead Installation on Pipeline 3 at Miramar Hill and San Diego 5 Turnout project as complete, record the Notice of Completion and release funds held in retention to Kaveh Engineering & Construction, Inc., following the expiration of the Notice of Completion period.

Alternatives
Do not authorize the General Manager to accept the project as complete and provide direction to staff relative to issues requiring resolution.

Fiscal impact
There are sufficient funds in the project budget and the fiscal years 2010 and 2011 Capital Improvement Program appropriation. This project is one segment of the Relining and Pipe Replacement program. The rate category for this project is transportation.

Background
The Aqueduct Protection Program identified two locations along Pipeline 3 on Miramar Hill and adjacent to the San Diego 5 Turnout near the Miramar Water Treatment Plant where a short length of pressurized “dead ends” had been created due to past piping changes. This construction contract installed two bulkheads to reduce the risk of a Pipeline 3 failure by removing the un-used portions of prestressed concrete cylinder pipe from aqueduct pressure, thereby reducing the amount of fiber optic cable monitoring system that needs to be installed in Pipeline 3 and providing associated capital and operational savings.

Previous Board Actions: In December 2009, the Board awarded a construction contract to Kaveh Engineering & Construction, Inc., for $74,528, for the Bulkhead Installation on Pipeline 3 at Miramar Hill and San Diego 5 Turnout.

Discussion
This construction contract is now complete and included placing a bulkhead and appurtenant work in Pipeline 3 on the south side of Miramar Hill and a second bulkhead just north of the San Diego 5 Turnout during the January 24 to February 2, 2010 untreated water shutdown. The Miramar Hill bulkhead adds a physical barrier and creates a new out-of-service gap to upgrade the separation between the treated and untreated sections of Pipeline 3. The bulkhead installation near the San Diego 5 Turnout eliminates a section of dead-end pipe that had standing water. Both locations could have provided a prime environment for Quagga Mussel growth and a potential water quality concern. A general vicinity map is attached as Figure 1.
We processed one change order for a total of $2,589 to add safety siphon personnel to protect construction workers in the pipeline during the shutdown. As a result, the final construction contract for the Bulkhead Installation on Pipeline 3 at Miramar Hill and San Diego 5 Turnout project is $77,117, or an increase of about 3.5 percent.

During construction $7,711 or 10 percent of the total contract amount was retained in accordance with the contract’s terms. We will release retained funds after General Manager’s acceptance, expiration of the 60-day period following recording of the Notice of Completion, and receipt of a signed Conditional Waiver and Release of Liens and Claims from the contractor. Kaveh Engineering & Construction, Inc. provided Bonds for Faithful Performance at the time of bidding, which will remain in full force and effect for the contract’s two-year post construction warranty period.

Kaveh Engineering and Construction, Inc. is a SCOOP-certified small business.

Prepared by: Joe Bride, Engineer, (P.E.)
Reviewed by: Michael T. Stift, Director of Engineering
Approved by: Frank Belock, Jr., Deputy General Manager

Attachment:
   Figure 1 - Vicinity Map
March 17, 2010

Attention: Engineering and Operations Committee

Approve settlement agreement with Olivenhain Municipal Water District and City of San Diego relating to Lake Hodges and Olivenhain Reservoir (Action)

Purpose
This action will approve the settlement agreement resolving disputes relating to claims alleged by the Olivenhain Municipal Water District against the Water Authority and San Diego relating to joint operation of Lake Hodges and Olivenhain Reservoir. The lease of the Elfin Forest Reserve by the Water Authority to OMWD is an exhibit to the settlement agreement. Approval of the settlement agreement also approves the lease.

Staff recommendation
Authorize the General Manager and General Counsel to execute and implement the settlement agreement. Direct the General Manager to establish the OMWD Settlement Project within the Capital Improvement Budget, and execute a budget transfer of $13,500,000 from the San Vicente Dam Raise Project to the OMWD Settlement Project.

Alternative
A closed session has been noticed for this meeting if necessary for discussion and deliberation of additional or different terms of the settlement agreement, or the Elfin Forest Reserve lease.

Fiscal Impact
Pursuant to the settlement agreement, the Water Authority will pay OMWD $13,500,000. The Water Authority’s recent debt issue included amounts sufficient to cover this cost. The rate category for this action is Storage. Also, the Water Authority will bear 75% of the operating costs for the Elfin Forest Reserve for a period for 25 years. The budget for the Reserve will be determined jointly by a committee made up of Water Authority and OMWD staff, and will not be allowed to fluctuate as in past years. The total budget in 2010 for the Reserve was $530,000 of which the Water Authority paid 85%. Additionally, the Water Authority will assume OMWD’s prior contribution for the dam’s maintenance which was $68,000 in 2010.

Background
In 1998, the Water Authority and OMWD executed an agreement for the Emergency Storage Project. Concurrently, the Water Authority executed other Emergency Storage Project agreements with the City of San Diego. These agreements called for the construction of the Olivenhain Reservoir, the joint operation of Olivenhain Reservoir and Lake Hodges, and other Emergency Storage Project components. The Emergency Storage Project was later revised to
include a pump storage/hydro electric component between Lake Hodges and Olivenhain Reservoir. This component is currently under construction and is scheduled for completion later this year. In July 2008, OMWD gave notice of its intent to sue the Water Authority and San Diego relating to the transfer of water from Lake Hodges to Olivenhain Reservoir. In November 2008, the Water Authority, OMWD and San Diego agreed to mediate the dispute. Chair Lewis appointed Directors Richard Smith and Jim Bowersox to serve on the Water Authority’s mediation team. The mediation was successful. On September 24, 2009 the Water Authority board approved the terms of settlement and authorized the execution of a memorandum of understanding setting forth the results of the mediation. The memorandum of understanding was executed on December 31, 2009. The memorandum of understanding established the primary terms for final settlement of threatened litigation and disputed claims of OMWD against the Water Authority and City of San Diego relating to the operation of the Olivenhain Reservoir / Lake Hodges component of the Water Authority’s Emergency Storage Project and pump storage project. The formal settlement agreement incorporates those settlement terms and includes other legal terms as necessary or convenient to the full implementation of the memorandum.

**Discussion**

The primary terms of the settlement are as follows:

- **Payment:** The Water Authority will pay OMWD $13,500,000. OMWD will use this money solely for capital improvements that can be financed by tax exempt bonds.

- **By-pass Pipeline:** OMWD will build a by-pass pipeline, at its sole cost, from Water Authority Pipeline 5 to OMWD’s David McCollom Water Treatment Plant. The pipeline may be constructed in rights of way jointly owned by OMWD and the Water Authority.

- **Olivenhain Reservoir and Emergency Storage Project Agreement:** The Emergency Storage Agreement between the Water Authority and OMWD is replaced by the terms of the settlement agreement. The Water Authority will have sole responsibility for the Olivenhain Dam and Reservoir, subject to the following:

  - **Storage:** OMWD assigns its storage rights in Olivenhain Reservoir to the Water Authority and the Water Authority assumes financial responsibilities associated with those storage rights. The Water Authority provides OMWD “deemed” storage in the Water Authority system for a period of 17 years.

  - **Property Conveyances:** OMWD will transfer property interests to the Water Authority as provided in the mediation memorandum of understanding.

  - **Elfin Forest Reserve:** The Water Authority will lease the Elfin Forest Reserve to OMWD for 25 years. A copy of the lease agreement is attached as Exhibit A to the settlement agreement. During the lease, OMWD is solely responsible for the operation and maintenance of the reserve in compliance with the existing park master plan. The Water Authority and OMWD will establish a four-person committee comprised of two staff members of each agency, which will have responsibility for determining the minimum operation and maintenance requirement.
for the preserve and the initial operation and maintenance budget. Annual costs will be split between the Water Authority (75%) and OMWD (25%). If OMWD chooses to operate and maintain the reserve in a manner that results in costs in excess of the minimum requirements set by the committee, those excess costs will be borne by OMWD. At the end of the lease term, the Water Authority, at its option, may purchase the staging area from OMWD at a price that is 25% of the “as is” fair market value.

Treated Water Deliveries: For a period of two years following the execution of the settlement agreement, the Water Authority will deliver treated water at raw water prices if deliveries from Olivenhain Reservoir exceed the water quality standards established in the Reservoir Regulating Manual adopted by the Water Authority in 2008.

Other terms: The settlement agreement will resolve the disputes relating to operation of the Emergency Storage Project and Lake Hodges water quality. Each party bears its own attorneys’ fees and costs.

The settlement agreement and lease were approved by the OMWD board of directors on March 10, 2010. The City of San Diego has also approved the settlement agreement.

Prepared by: Daniel S. Hentschke, General Counsel
Approved by: Frank Belock, Jr., Deputy General Manager

Attachments: Settlement Agreement
SETTLEMENT AGREEMENT
BETWEEN
OLIVENHAIN MUNICIPAL WATER DISTRICT
AND
SAN DIEGO COUNTY WATER AUTHORITY
AND
THE CITY OF SAN DIEGO
RELATING TO LAKE HODGES AND OLIVENHAIN RESERVOIR

This settlement agreement between Olivenhain Municipal Water District (OMWD) and the San Diego County Water Authority (Water Authority) and the City of San Diego (San Diego) relating to Lake Hodges and Olivenhain Reservoir (Settlement Agreement) is made and entered into as of ______________, 2010 (Effective Date). This Settlement Agreement is binding on the parties as of the Execution Date.

BACKGROUND

A. By letter dated July 9, 2008, OMWD gave notice of its intent to file a citizen suit against the Water Authority and the City of San Diego for violating the Resource Conservation and Recovery Act (RCRA).

B. On or about November 12, 2008 OMWD and SDCWA executed a mediation agreement, which San Diego executed on or about November 17, 2008. Pursuant to that agreement OMWD, the Water Authority, and San Diego engaged in mediation. Hon. Charles A. Legge (Ret.) served as a mediator. The mediation resulted in execution on or about December 31, 2009, by OMWD, the Water Authority, and San Diego of a Memorandum of Understanding Regarding Settlement Terms and Conditions of resolution of all disputes between OMWD, on one hand, and the Water Authority and San Diego, on the other, pertaining to the transfer of water from Lake Hodges to the Olivenhain Dam and the impacts of this transfer on the regional water system and OMWD’s water treatment plant, including, without limitation, claims for violation of CERCLA, RCRA, the Clean Water Act ("CWA"), trespass, nuisance, inverse condemnation, or breach of contract, as well as claims of violation of the California Environmental Quality Act (CEQA) arising from the Water Authority’s board of directors adoption of the following motion: “Find that the Reservoir Regulating Manual complies with the requirements of Section 9.2 of the agreement between the San Diego County Water Authority and the City of San Diego for the Emergency Storage Project (Joint use of Lake Hodges Dam and Reservoir) on April 24, 2008.” (Mediation MOU.)

C. The Mediation MOU is intended to establish the primary terms for final settlement of threatened litigation and disputed claims of OMWD against the Water Authority and City of San Diego relating to the operation of the Olivenhain Reservoir / Lake Hodges component of the Water Authority’s Emergency Storage Project and pump storage project. The memorandum provides that the parties will prepare a formal settlement agreement incorporating the settlement terms set forth therein and such ancillary legal terms as necessary or convenient to the full implementation of the memorandum.
D. This settlement agreement incorporates the settlement terms and conditions established in the Mediation MOU. Pursuant to the Mediation MOU, final settlement is dependent upon approval of this formal settlement agreement by the legislative bodies of the Water Authority and OMWD.

E. OMWD’s board of directors considered and approved an engineer’s report documenting that no changes need to be made to assessments and payments on the outstanding OMWD Limited Obligation Refunding Improvement Bonds on October 28, 2009 (hereinafter the “Bonds”) due to any of the terms of the Mediation MOU or this Settlement Agreement. The 60 day period to challenge this resolution contained in Code of Civil Procedure §860 has run without any challenges to the engineers report or the determination of no change to assessments or payments on the Bonds.

TERMS

In full settlement of the disputes described herein, OMWD, SDCWA and San Diego agree as follows:

1. Payment:

   a. The Water Authority will pay the sum of $13,500,000 to OMWD within 30 days after the operative date of this settlement agreement.

   b. OMWD shall not use any of the $13,500,000 for any purpose that cannot be funded by proceeds of tax exempt bonds issued by the Water Authority or OMWD without loss of tax exempt status.

   c. OMWD acknowledges that its covenant regarding the use of the $13,500,000 is a material term relied upon by the Water Authority to enable the Water Authority to utilize tax-exempt bonds to make the payment. OMWD will defend, indemnify, and hold harmless the Water Authority from and against any investigation, proceeding, suit, damage, or penalty arising from an allegation that OMWD failed to use the $13,500,000 as provided in paragraph 1.b. OMWD will cooperate and provide the Water Authority with information and assistance to enable the Water Authority to confirm that OMWD has used the $13,500,000 as provided in paragraph 1.b.

2. By-Pass Pipeline:

   a. OMWD will design and construct a raw water by-pass pipeline from Water Authority Pipeline 5 to OMWD’s David McCollom Water Treatment Plant (“WTP”) at its sole cost. The by-pass pipeline will be owned, operated, and maintained by OMWD, with the sole exception of the connection facility to the Water Authority aqueduct, that will be owned, operated, and maintained by the
Water Authority pursuant to current policies for aqueduct connections. The cost of the connection is part of the by-pass pipeline project paid for by OMWD.

b. The by-pass pipeline may be constructed by OMWD in the current raw and potable water pipeline easement jointly owned by OMWD and Water Authority, or in other rights-of-way or easements available to or acquired by OMWD at OMWD’s sole election.

c. The Water Authority will provide design review services for the by-pass pipeline connection to the Water Authority aqueduct at no cost to OMWD.

3. Terms Relating to Olivenhain Reservoir and ESP Agreement:

a. OMWD hereby assigns all rights to storage of water in Olivenhain Reservoir to the Water Authority under the 1998 Agreement between San Diego County Water Authority and Olivenhain Municipal Water District for the Emergency Storage Project (as amended) ("ESP Agreement"). Water Authority hereby assumes all duties of OMWD under the ESP Agreement with respect to the assigned storage rights, including, without limitation, the OMWD share of annual maintenance and operating costs. From and after the operative date of this settlement agreement, OMWD’s financial obligations arising from ownership of storage rights under the ESP Agreement will be extinguished. Responsibility for the Elfin Forest Reserve will be as provided in paragraph 3. e. Responsibility for easement, road, and bridge maintenance will continue pursuant to current agreements, except to the extent a property interest is conveyed entirely to one party or the other, and shared financial responsibility is extinguished by the conveyance.

b. For a period of 17 years, commencing on the operative date of this agreement, the Water Authority will provide to OMWD storage rights up to 3,449 acre-feet of water in the Water Authority system. The storage right shall be in the form of a first priority of delivery of water from the Water Authority upon demand by OMWD up to the amount of OMWD water deemed in storage in the Water Authority system. Upon the operative date of this agreement OMWD will be deemed to have 1,190 acre-feet of water in storage in the Water Authority system, subject to withdrawals by OMWD and storage losses/yield from July 23, 2009 to the operative date of the formal settlement agreement. This amount is referred to as Storage Pool A. OMWD shall pay for water from Storage Pool A according to the Water Authority rate structure at the time that water is delivered to OWMD. Water in Storage Pool A will be subject to evaporation and seepage losses, and run-off and precipitation yield (storage losses/yield) according to the calculation of storage losses/yield in the ESP Agreement. OWMD may place other water up to a maximum quantity of 3,449 acre-feet into storage in the Water Authority system at any time upon written notice to the Water Authority and payment to the Water Authority for that water according to the Water Authority rate structure in effect at the time the water is ordered into storage if the water being placed in storage is being purchased from the Water Authority, or payment of the appropriate wheeling and other charges if the water is being purchased from
others. All water deemed stored by the Water Authority other than water in Storage Pool A is referred to as water in Storage Pool B. Water in Storage Pool B will be delivered upon demand at no additional charge to OMWD. Water in Storage Pool B will be subject to evaporation losses according to the calculation of storage losses in the ESP Agreement at the Olivenhain Dam and Reservoir. Upon termination of the 17th year, the Water Authority will deliver to OWMD any water remaining in either Storage Pool A or Storage Pool B.

c. OMWD and the Water Authority will implement the property conveyances as described in paragraph 3.c. of the Mediation MOU.

d. Upon the operative date of this settlement agreement, the ESP Agreement will be deemed satisfied by both parties and mutually terminated. Thereafter, the Water Authority will have sole responsibility and liability for the operation and maintenance of the Olivenhain Dam and Reservoir and for all other aspects of the ESP Agreement except the Elfin Forest Reserve which will be handled in accordance with paragraph 3.e.

e. Water Authority will lease to OMWD and OMWD will lease from the Water Authority the Elfin Forest Reserve for a term of 25 years. Rent shall be $1 per year. The lease term will commence upon the operative date of this settlement agreement. The lease will be in substantially the form set forth in Exhibit A. Upon expiration of the 25 year lease, the Water Authority shall assume sole and exclusive responsibility for operation of the Elfin Forest Reserve and for paying all fees and costs of whatever type or nature associated with operation, maintenance, or management of the Elfin Forest Reserve. During the term of the lease, OMWD will be responsible for compliance with the Bureau of Land Management (BLM) requirements for the Elfin Forest Reserve as specified in the approved park plan that is referred to in the ESP Agreement. The Water Authority and OMWD will establish a 4 person committee comprised of 2 staff members of each agency appointed by the respective General Manager of each agency. The purpose of the committee will be to determine the minimum operation and maintenance requirements for the reserve consistent with the Bureau of Land Management (BLM) requirements under the ESP Agreement, and to determine the annual or bi-annual budget for expenditures. The budget shall be based on the cost of minimum operation and maintenance requirements as determined by the committee. Existing operation and maintenance shall not be considered precedent for the committee's determination. The determination of the committee on the initial budget (2010-2011) and future CPI increases shall be final and binding on the parties and not subject to challenge in any forum or proceeding. After the committee determines the budget for the first fiscal year after execution of the formal settlement agreement, future budget increases will be capped based upon the yearly increase in the consumer price index for all urban consumers, all items, in San Diego County, except for extraordinary costs for repairs or improvements approved by the legislative bodies of both OMWD and the Water Authority. The committee will use good faith efforts to determine the minimum requirements and budget for fiscal year 2010-2011 no later than April
1, 2010. If the committee is not able to reach agreement, i.e. the minimum requirements and budget are not approved by three members of the committee, the committee shall prepare two reports detailing the alternative views of the minimum requirements and budget. The reports, including all backup and supplemental information, shall be submitted to the Honorable Charles A. Legge (Ret.) who shall select one of the two reports. The selection shall be binding on the parties. If Judge Legge is unable to serve, the matter shall be submitted to a neutral arbitrator selected by JAMS in San Diego County. So long as OMWD meets the minimum requirements of the BLM for operation of the Elfin Forest Reserve, it may operate, manage, and maintain the Elfin Forest Reserve as it deems appropriate during the term of the lease; provided, however, that any costs in excess of the amount determined by the committee established pursuant to this paragraph shall be OMWD’s sole responsibility. During the term of the lease, the cost of operation of the Elfin Forest Reserve as determined by the committee will be shared by the Water Authority and OMWD with 75% of the cost borne by the Water Authority and 25% of the cost borne by OMWD. The Water Authority will have an exclusive option, at its discretion, to acquire the staging area as shown on Exhibit B to this Settlement Agreement from OMWD at the conclusion of the lease, at a price that is 25% of its fair market value in its then current “as is” condition and not its highest and best use, as determined by a mutually selected appraiser. The Water Authority shall have sixty (60) consecutive days from the later of (1) receipt of the written notice from Olivenhain that it is terminating the lease, or (2) the written appraisal, to exercise the option by written notice to Olivenhain. If the Water Authority does not exercise the option within this sixty (60) consecutive day period by written notice to OMWD, its option rights shall lapse and be of no further force or effect.

f. For the first 17 years, water deemed in storage under paragraph 3. b. will be treated in the same manner as if the water had been stored in Olivenhain Reservoir for purposes of administration of the Water Authority’s Emergency Storage Project. After 17 years, OMWD will receive water from the Emergency Storage Project in the same manner as any other as any other member of the Water Authority, without credit for the storage. The physical connection between OMWD facilities and Olivenhain Reservoir will remain, but the connection will be used solely to deliver water to Olivenhain during an ESP emergency pool allocation.

g. OMWD may retain the storage on its books and records as a tangible asset for the same value currently stated in OMWD’s accounting records.

h. For a period of 2 years following the operative date of the formal settlement agreement, the Water Authority will deliver to OMWD treated water at raw water prices at any time that the deliveries from the Water Authority to OMWD from the Olivenhain Reservoir exceed the water quality standards established by the Reservoir Regulating Manual adopted by the Water Authority in April 2008 (Manual 2008-1).
4. Terms Relating to the Agreement for Purchase of Treated Water

a. The Agreement between OMWD and the Water Authority for Purchase of Water Treatment Services and to Establish the Appurtenant Facilities dated December 4, 2002 ("Purchase Water Agreement") shall remain unaffected by this Settlement and any issues about the Purchase Water Agreement remain to be resolved separately between the parties thereto.

5. Terms Relating to Water Quality / Waiver and Release of Claims

a. Except as provided in this paragraph, OMWD will not publish nor support, or authorize any of its consultants or lawyers, to publish articles, materials, press releases or other form of public notice in whatever medium that alleges in any fashion that Lake Hodges water or water in the Olivenhain Reservoir (when mixed with Lake Hodges water) constitutes a violation of any federal or state environmental statute, regulation, or policy. OMWD will not oppose, seek to delay, or take any adverse action regarding the application, issuance, renewal, amendment, or modification of any permit to operate Lake Hodges, the Olivenhain Reservoir, the ESP, or the Lake Hodges/Olivenhain Reservoir Pump Storage Hydroelectric Plant, including, without limitation, any source water permit issued to the Water Authority by the California Department of Public Health for use of Lake Hodges or Olivenhain Reservoir. OMWD shall have the right to provide comments on ESP activities and operations as long as it does not take action to challenge any permit to operate Lake Hodges, the Olivenhain Reservoir, or the ESP with the Lake Hodges/Olivenhain Reservoir Pump Storage Hydro Electric Plant. Notwithstanding the foregoing, nothing contained herein shall prevent OMWD from raising issues, expressing concerns, or challenging any future changes or modifications to the ESP that OMWD reasonably determines will directly affect and materially harm the OMWD water treatment plant or any other OMWD facilities or property rights. Nothing contained herein shall prohibit or prevent OMWD from testifying on Lake Hodges water or the condition of the Lake Hodges basin in favor of HR 1219. OMWD will not oppose Water Authority efforts to seek amendments or modifications of the BLM requirements for the Elfin Forest Reserve or of the approved park plan that is referred to in the ESP Agreement, provided that, (1) the Water Authority does not commence such efforts until after year 19 of the lease, and (2) the amendments or modifications do not take effect until after expiration of the lease. The parties agree that amendments or modifications of the BLM requirements for the Elfin Forest Reserve or the approved park plan shall not become effective until after expiration of the 25 year lease without mutual consent.

b. OMWD, the Water Authority, and San Diego waive, release, and covenant not to sue on any claims or causes of action with respect to all disputes between OMWD, on one hand, and the Water Authority and San Diego, on the other, pertaining to the present or future transfer of water from Lake Hodges to the Olivenhain Dam and the impacts of any such transfer on the regional water system and OMWD’s water treatment plant, the operation of the Lake Hodges
Pump Storage Project, and the operation of the Emergency Storage Project, including, without limitation, claims for violation of CERCLA, RCRA, the Clean Water Act ("CWA"), trespass, nuisance, inverse condemnation, or breach of contract, as well as claims of violation of the California Environmental Quality Act (CEQA) arising from the Water Authority’s board of directors adoption of the following motion: “Find that the Reservoir Regulating Manual complies with the requirements of Section 9.2 of the agreement between the San Diego County Water Authority and the City of San Diego for the Emergency Storage Project (Joint use of Lake Hodges Dam and Reservoir) on April 24, 2008,” except for claims or causes of action for violation of this Settlement Agreement. The waivers, releases, and covenants of this paragraph constitute valuable consideration and a material inducement for each party to enter into this Settlement Agreement. This paragraph shall not be construed as a waiver of claims preserved as specified in Paragraph 5a. Limitations on existing and future challenges are provided in Paragraph 5a.

c. OMWD, the Water Authority, and San Diego each acknowledge that they have been informed by their attorneys of, and that they are familiar with California Civil Code § 1542 which provides: A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor. Accordingly, with respect to the matters within the scope of paragraph 5. b., OMWD, the Water Authority, and San Diego each hereby waive and relinquish all rights and benefits they have, or might have, under §1542, to the full extent that they may lawfully do so, subject only to the limitations and exceptions set forth in this Agreement.

d. OMWD, the Water Authority, and San Diego are each compromising disputed claims, and the execution of this Settlement Agreement is not an admission of the merits of any claim being asserted against each, any, or all of them, and is not an admission by any of them of any liability with respect to such claims, and each expressly denies any liability or wrong-doing with respect to the matters addressed by this Settlement Agreement.

6. Miscellaneous Terms

a. OMWD, the Water Authority, and San Diego will bear their own costs and attorneys’ fees, experts’ fees, consultants’ fees, mediators’ fees, and other expenses incurred with respect to the disputes that are the subject of this Settlement Agreement.

b. In the event of any disputes arising from the settlement agreement, the parties will first try to resolve the dispute informally themselves through the two general managers. The two general managers shall meet and attempt to resolve the dispute themselves no later than fourteen (14) consecutive days after either party provides the other party with written notice of the dispute. In the event the parties are unable to resolve the dispute through their general managers within this
fourteen day time period, either of the parties may enforce the agreement in court. Each party will bear its own costs, attorneys’ fees, experts’ fees, consultants’ fees, and other expenses with respect to any such dispute.

c. OMWD, the Water Authority, and San Diego each represent and warrant that they have been advised that they should be represented by counsel of their own choosing in the preparation and analysis of this Settlement Agreement, that they have been represented by their own independent counsel and that they have read this Settlement Agreement with care and believe that they are fully aware of and understand the contents thereof and its legal effect.

d. Each of the signatories to this Settlement Agreement represents and warrants that he or she has the full right, power, legal capacity and authority to execute this Settlement Agreement and to bind the party for which they are exercising delegated authority.

e. Time is of the essence of this Settlement Agreement, and in all the terms, provisions, covenants and conditions hereof.

f. This Settlement Agreement is governed by the laws of the State of California.

g. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions contained herein and any present or future statute, law, ordinance or regulation, the latter shall prevail; but the provision of this Settlement Agreement which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

h. Each of the parties shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations under this Settlement Agreement.

i. No amendment, change or modification of this Settlement Agreement shall be valid, unless in writing and signed by each party to be charged.

j. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties and their respective legal representatives, successors and assigns.

k. No waiver by any party hereto of a breach of any provision of this Settlement Agreement shall constitute a waiver of any preceding or succeeding breach of the same or any other provision hereof.

l. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one
m. This Settlement Agreement is the result of negotiations between the parties who have each negotiated and reviewed its terms. No party shall be deemed to be the drafter for purposes of interpreting any ambiguity or uncertainty in this Agreement against that party. This Settlement Agreement is an integrated documents that contains all of the terms and conditions of the agreement between the parties.

This Settlement Agreement has been executed on behalf of each party as set forth below.

OMWD

By: ___________________________ Date: ___________________________
    Kim Thorner,
    General Manager

    ___________________________
    Wesley Peltzer,
    General Counsel

SDCWA

By: ___________________________ Date: ___________________________
    Maureen A. Stapleton,
    General Manager

    ___________________________
    Daniel S. Hentschke,
    General Counsel

City of San Diego

By: ___________________________ Date: ___________________________
    Jay Goldstone
    Chief Operating Officer

    ___________________________
    Thomas C. Zeleny,
    Chief Deputy City Attorney
ELFIN FOREST RECREATIONAL RESERVE LEASE

This Elfin Forest Recreational Reserve Lease is entered into by and between the San Diego County Water Authority, a public agency, as the Lessor (hereinafter the “Authority”) and the Olivenhain Municipal Water District, a municipal water district organized and operating pursuant to Water Code §71000 et seq. as the Lessee (hereinafter “Olivenhain”). This lease shall be effective as of _________________, 2010 upon execution by the parties.

R-E-C-I-T-A-L-S

A. Olivenhain has operated and maintained public recreational facilities on the west side of Del Dios Highway in the County of San Diego that includes approximately 11 miles of riding and hiking trails, a staging area for the park, a helicopter pad for emergency transport, shade structures, portable bathrooms, picnic areas and drinking fountains that covers approximately 750 acres of land known as the Elfin Forest Reserve (hereinafter the “Elfin Forest Reserve”).

B. Olivenhain owns fee title to the staging area for the Elfin Forest Reserve consisting of approximately 32 acres on the south side of Harmony Grove Road that includes 28 parking stalls, 3 portable restrooms, a paved overflow parking lot, an Interpretive Center, two drinking fountains, a native garden at the Interpretive Center, a trailhead monument, a bridge over the creek, land line and pay phones, potable water pipelines connecting to the staging area to provide water and a solar panel array at the Interpretive Center (hereinafter collectively the “Staging Area”).

C. Olivenhain operates the Elfin Forest Reserve pursuant to the Mt. Israel Amended Recreation Master Plan dated March 1989 as modified by the Mt. Israel Recreation Plan dated September 1995 (hereinafter collectively the “Recreation Master Plan”). However, on
2010 Olivenhain, the Authority and the City of San Diego executed a written agreement entitled “Settlement Agreement Between Olivenhain Municipal Water District And San Diego County Water Authority And The City of San Diego Relating to Lake Hodges And Olivenhain Reservoir” (hereinafter the “Settlement Agreement”). A true and correct copy of the executed Settlement Agreement is attached hereto as Exhibit “A” and incorporated herein by reference. Under the terms of the Settlement Agreement, the Authority agreed to lease to Olivenhain the Elfin Forest Recreational Reserve area for a term of 25 years. Under the terms of the Settlement Agreement, upon expiration of the 25 year lease, the rights of Olivenhain to manage the Elfin Forest Recreational Reserve will terminate and the Authority will assume sole and exclusive responsibility for operation of the Elfin Forest Reserve. Nothing in this lease shall be construed to amend the Settlement Agreement, and the terms of Section 3e of the Settlement Agreement shall prevail to the extent of any inconsistency.

D. The Settlement Agreement also granted the Authority an exclusive option, at its discretion, to acquire title to the Staging Area from Olivenhain at the conclusion of the Lease at a price that is 25% of its fair market value and its then current “as is” condition and not in its highest and best use, as determined by a mutually selected appraiser. The Settlement Agreement grants the Authority sixty (60) consecutive days from the latter of (1) Receipt of the written notice from Olivenhain that it is terminating the lease, or (2) The written appraisal, to exercise the option by written notice to Olivenhain. If the Authority does not exercise the option within this sixty (60) consecutive day period by written notice to Olivenhain, its option rights shall lapse and be of no further force or effect. If the Authority exercises the option in the time required and pays the amount specified in Paragraph 15 of this lease, the Authority will be granted fee title to the Staging Area.

E. A part of the Elfin Forest Reserve is located on land previously owned by the Bureau of Land Management (“BLM”) acquired by Olivenhain pursuant to a recorded patent conveyed by the BLM to Olivenhain on March 27, 1996 pursuant to San Diego County Recorder No. 1996-0150062. This property was subsequently granted to the Authority per San Diego County Recorder document 2000-0468360. The BLM approved the transfer. The transfer document from Olivenhain to the Authority also contained other Olivenhain lands not acquired from BLM that are contained in the Lease Area.

F. The Elfin Forest Reserve area included in this lease is shown on Exhibit “B”, attached hereto and incorporated herein by reference (hereinafter the “Lease Area”).
C-O-V-E-N-A-N-T-S

1. **Lease Term.** This lease shall commence as of _____________, 2010 and shall expire on _____________, 2035. Upon expiration of this lease, the Authority shall assume sole and exclusive responsibility for operation of the Elfin Forest Reserve.

2. **Lease Area.** The Elfin Forest Reserve area being leased by the Authority to Olivenhain is legally described on Exhibit “B”, attached hereto and incorporated herein by reference (hereinafter the “Lease Area”).

3. **Rent.** The total rent payable by Olivenhain to the Authority during the term of this lease is One Dollar ($1.00) per year. The Authority acknowledges receipt of Twenty Five Dollars ($25.00(5,8),(996,988) from Olivenhain covering the rent for the full term of this lease.

4. **Compliance with BLM Requirements.** During the term of the lease, Olivenhain will use the Lease Area solely for uses permitted by the Recreation Master Plan and will be responsible for compliance with the Bureau of Land Management (“BLM”) requirements for the Elfin Forest Reserve as specified in the approved Recreation Master Plan. Upon the termination of this lease, the Authority will become responsible for complying with BLM requirements for management of the area as specified in the Recreation Master Plan.

5. **Elfin Forest Reserve Budget & Sharing of Costs.** The annual budget for the Elfin Forest Reserve will be determined as specified in Section 3e of the Settlement Agreement. During the term of the lease, the cost of operation of the Elfin Forest Reserve will be based on the annual budget and paid 75% by the Authority and 25% by Olivenhain. The Authority agrees to pay one-twelfth (1/12) of its share of the costs of operation of the Elfin Forest Reserve each month during the term of this lease.

6. **Operation of Elfin Forest Reserve During Lease.** Olivenhain may operate, manage, and maintain the Elfin Forest Reserve and the Staging Area as it deems appropriate during the term of this lease, so long as it meets the minimum requirements of the Recreation Master Plan. However, any costs Olivenhain incurs for the operation, management, and maintenance of the Elfin Forest Reserve or the Staging Area in excess of the amounts determined pursuant to Paragraph 3e of the Settlement Agreement will be Olivenhain’s sole responsibility. OWMD will have sole authority and responsibility for control and maintenance of the Lease Area during the term of this lease. The Authority’s payments under the provisions of the Settlement Agreement shall not be construed to relieve OWMD of its responsibility under this
paragraph.

7. **Reservations by Authority.** During the term of this lease, the Authority reserves the right of access for Authority purposes over the leased area and to conduct activities that are not in conflict with the Recreation Master Plan or that interfere with operation of the Elfin Forest Reserve or the Staging Area provided the activities are coordinated with and approved by Olivenhain, approval of which will not be unreasonably denied. The Authority agrees to repair any damage caused as a result of the exercise of rights under this paragraph by the Authority or by any Authority agent, representative, contractor, subcontractor, or supplier at the Authority’s sole cost and expense.

8. **Olivenhain Right to Maintain, Repair & Replace Park Improvements.** During the term of the lease, Olivenhain may maintain, repair and replace any and all roads, structures or improvements located anywhere within the Elfin Forest Reserve or the Staging Area as it deems appropriate from time to time. However, the sharing of these costs will be limited as specified in Paragraph 5 of this lease. During the term of this lease, Olivenhain may construct or install new structures, improvements, or facilities anywhere within the Elfin Forest Reserve or the Staging Area as it deems appropriate from time to time provided the costs of these new structures, improvements, or facilities are paid for solely by Olivenhain unless these costs are included in the annual budget for the Elfin Forest Reserve.

9. **As Is Nature of Lease.** Olivenhain agrees to accept the Lease Area in its present “as is” and “where is” condition. The Authority makes no representations concerning the character of the Lease Area, its fitness for any purpose, or any other fact concerning the Lease Area.

10. **Insurance.** During the entire time of this lease, Olivenhain agrees to procure and maintain both property damage insurance and liability insurance in an amount of not less than $1,000,000 per occurrence and an umbrella liability and property damage policy of $10,000,000 naming the Authority as an additional named insured. Olivenhain shall have the right to procure this insurance through the insurance carrier or carriers that insure Olivenhain’s other property.

11. **Hazardous Waste.** Olivenhain shall be solely liable and responsible for the clean-up and removal of all hazardous or toxic waste brought or transported to the Elfin Forest Reserve or spilled, or leaked on the Elfin Forest Reserve by Olivenhain or any employee, agent, contractor, subcontractor, sublessee, supplier, invitee, or representative of Olivenhain at any time. The Authority shall be solely liable and responsible for the clean-up and removal of all hazardous or
toxic waste brought to or transported to the Elfin Forest Reserve or spilled, or leaked on any portion of the Elfin Forest Reserve by the Authority or any employee, agent, contractor, subcontractor, supplier, invitee, or representative of the Authority at any time. Both the Authority and Olivenhain shall also be responsible for using, storing and transporting all hazardous and toxic waste used on the Elfin Forest Reserve or transported to the Elfin Forest Reserve in a manner which fully complies with federal, state, and local laws, rules and regulations governing the use, storage or transportation of hazardous and toxic waste. For purposes of this section, the term “hazardous or toxic waste” means any solid, liquid, or gaseous product classified as a toxic or hazardous waste under any federal, state, or local laws, rules, or regulations and all hydrocarbons, petroleum, gasoline, crude oil, or any products of them. Promptly upon the discovery of any hazardous or toxic waste, the party responsible for cleaning up and removing the hazardous or toxic waste as provided in this paragraph shall pay all fees and costs necessary to clean-up the hazardous or toxic waste in accordance with all federal, state, or local laws, rules, or regulations at that party’s sole cost and expense.

12. **Assignment and Subletting.** Olivenhain shall not assign this lease, or sublet the Lease Area or any portion of it, without the Authority’s prior written consent which consent shall not be unreasonably withheld. During the term of the lease, Olivenhain shall have the right to use the Elfin Forest Reserve or the Staging Area for joint events or special events with other persons or entities at times and places deemed appropriate by Olivenhain without the consent of the Authority.

13. **Covenant of Non-Interference and Quiet Possession.** Except as provided in Paragraph 7, during the term of this lease, the Authority agrees not to interfere with Olivenhain’s operation, management, and maintenance of the Elfin Forest Reserve or the Staging Area. The Authority further expressly agrees not to interfere with Olivenhain’s quiet possession of the Elfin Forest Reserve and the Staging Area and all of their structures, facilities and improvements during the term of this lease.

14. **Notice of Cure & Breach.** In the event the Authority or Olivenhain claims that the other party has breached any term or provision of this lease, each of them shall provide the other party with written notice of the breach and a reasonable period of time to cure the breach. For the purposes of this paragraph, a reasonable time means at least thirty (30) days from the date of notice of the breach. In the event either party commences to cure the breach within this thirty (30) day period and diligently prosecutes it to completion, no breach of this Lease shall occur. Prior to the commencement of any action for any breach of this Lease, the general manager of the Authority and
the general manager of Olivenhain shall meet at least once in an effort to resolve the dispute before filing any lawsuit. Each of the parties agrees to cooperate in both scheduling and holding this meeting.

Upon any breach of this Lease following the notice and cure period specified above and the mandated meeting between the general managers shall be limited to recovery of damages, or specific performance, and shall not include any right to terminate this Lease.

15. **Exclusive Option of Authority To Purchase Staging Area.** The Authority has an exclusive option, at its discretion, to acquire the Staging Area from Olivenhain at the conclusion of the Lease as provided in the Settlement Agreement.

16. **Use And Acquisition of Interpretive Center.** The Authority has been advised and understands that the Interpretive Center which exists on part of the Staging Area is subject to the terms of a Cooperative Joint Use Agreement between Olivenhain and the Escondido Creek Conservancy (hereinafter “TECC”). Under the terms of this joint use agreement, Olivenhain and TECC have committed to provide joint use of the Interpretive Center for twenty-four years until February 14, 2024. In addition, under the terms of the joint use agreement between TECC and Olivenhain, TECC has the express contractual right to lease the Interpretive Center for $1 per year with perpetual renewal options at the discretion of TECC. Olivenhain has the right to assign this agreement to the Authority without the consent of TECC. The Authority has also been advised, and understands that grant funds were provided by the California Department of Parks & Recreation to construct the Interpretive Center and under the terms of a Memorandum of Unrecorded Grant Agreement, the Interpretive Center may not be sold or transferred without the written approval of the State of California, acting by and through the Department of Parks and Recreation or its successors. This Memorandum provides that such approval shall not be unreasonably withheld, as long as the purposes for which the Grant was awarded are maintained. In the event the Authority elects to purchase the Staging Area, it shall be the sole responsibility of the Authority to obtain the written approval and consent of the Department of Parks & Recreation to any transfer of the Interpretive Center as required by the Memorandum of Unrecorded Grant Agreement. Upon timely exercise of the option by the Authority and payment of the appraised value, Olivenhain will support any request for transfer of the Interpretive Center to the Authority subject to all terms of the TECC Agreement. In the event the California Department of Parks and Recreation does not agree to the transfer, the Authority may at its sole option terminate the decision to purchase the Staging Area and Olivenhain will refund any deposits made by the Authority toward the purchase price.
17. **Miscellaneous Provisions.**

17.1 **Jurisdiction and Venue.** The parties acknowledge and agree that the Elfin Forest Recreational Reserve is located within the jurisdiction and venue of the North County Superior Court for the County of San Diego. In the event of any legal or equitable proceeding to enforce or interpret the terms or provisions of this lease, the parties agree that jurisdiction and venue shall lie only in the Superior Court located in the North County Judicial District, County of San Diego, State of California.

17.2 **Modification.** This Agreement may not be altered in whole or in part except by a modification, in writing, executed by Olivenhain and the Authority.

17.3 **Entire Lease.** This Lease, together with all of the exhibits attached to this Lease, contains all representations and the entire understanding between the parties with respect to the subject matter of this Lease. Any prior correspondence, memoranda, or agreements, whether or not such correspondence, memoranda, or agreements are in conflict with this Lease, are intended to be replaced in total by this Lease and its exhibits which constitute a final and integrated lease agreement between the parties.

17.4 **Attorneys' Fees and Costs.** In the event any action or proceeding is commenced to interpret, enforce, or invalidate any of the terms of this lease, the prevailing party shall be entitled to recover the reasonable attorneys’ fees, expert fees and costs, and court costs in addition to any other relief provided by California law.

17.5 **Binding Effect.** This Lease shall inure to the benefit of and be binding upon the parties and their respective purchasers, successors, heirs, and assigns.

17.6 **Unenforceable Provisions.** The terms and provisions of this Lease shall be construed whenever possible as consistent with all applicable laws and regulations. To the extent that any provision of this Lease, as so interpreted, is held to violate any applicable law or regulation, the remaining provisions shall nevertheless be carried into full force and effect and remain enforceable.

17.7 **Representation of Capacity To Contract.** The Authority and Olivenhain each warrant and represent to the other that all approvals and consents necessary to approve this lease have been granted and each of the parties signing this Lease has the express authority to do so and to bind the Authority and Olivenhain to all terms of this Lease.

17.8 **No Waiver.** The failure of either party to enforce any term, covenant, or provision of this Lease and the date it is to be performed or thereafter shall not be construed as a
waiver of that party’s right to enforce this, or any other term, covenant, or provision of this Lease at any later date or as a waiver of any term, covenant or provision of this Lease.

17.9 **Notices.** All letters, statements, or notices required or given pursuant to this Lease by either the Authority or Olivenhain shall be deemed effective upon receipt when personally served, on the date of transmission when transmitted by facsimile or e-mail, or when posted in the United States mail, postage pre-paid as follows:

To: “Authority”
San Diego County Water Authority
Attention: Director of Right-of-Way
Right-of-Way Department
4677 Overland Avenue
San Diego, CA 92123
Telephone: (858) (522-6900)
E-mail: ______________________
Facsimile: (858) (522-6563)

To: “Olivenhain”
Olivenhain Municipal Water District
Attention: General Manager
1966 Olivenhain Road
Encinitas, CA 92024
Telephone: (760) (753-6466)
E-mail: kthorner@olivenhain.com
Facsimile: (760) (753-5640)

It shall be the responsibility of each of the parties to notify the other party of any change in address, e-mail address or facsimile number. Until written notice is provided to either of the party of any change of address, e-mail address, or facsimile number, any writings or notices shall be deemed effective when sent to the above-referenced address, e-mail address or facsimile.

17.9 **Counterparts and Facsimile Signatures.** This Lease may be executed in counterparts and shall be valid with facsimile signatures. Counterpart signatures shall be treated as part of the same lease. Facsimile signatures shall be treated as original signatures for all purposes and shall bind the parties to all terms of this Lease.
Dated March ____, 2010

San Diego County Water Authority

By: _____________________________
    William L. Busch
    Director of Right of Way

Dated March ____, 2010

Olivenhain Municipal Water District

By: _____________________________
    Kimberly Thorner
    General Manager
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

On __________________ before me, __________________ notary public, personally appeared __________________ , who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

________________________________________
Signature of Notary
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

On ________________ before me, __________________ notary public, personally appeared ____________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

______________________________
Signature of Notary

H:\CLIENTS\OMWD\OWSP-LakeHodges\ParkLease.V5.redline.doc
March 17, 2010

Attention: Engineering and Operations Committee

Change Orders to Barnard Construction Company, Inc. for the Package 2 San Vicente Foundation Preparatory Work project. (Action)

Staff Recommendations
Accept Change Orders 1 through 5 for $434,626; authorize the General Manager to execute change orders for up to $2,324,000 to revise unit price bid items to address field conditions encountered at the foundation excavations increasing the construction contract amount to $26,508,126.

Alternatives
Do not accept these change orders and provide direction to staff relative to issues requiring resolution.

Fiscal impact
There are sufficient funds in the approved project budgets and in the fiscal years 2010 and 2011 Capital Improvement Program appropriation to support this action. The rate category for this project is storage.

Background
In June 1998, the Board approved adding the Emergency Storage Project to the Capital Improvement Program. The Emergency Storage Project includes raising the existing San Vicente Dam by 54 feet. In April 2008, the Board certified the Carryover Storage Project Environmental Impact Report, allowing the dam to be raised an additional 63 feet. Therefore, the dam will be raised a total of 117 feet, providing an additional 152,000 acre-feet of combined emergency and carryover storage for the region.

The Dam Raise project is being implemented through six construction packages to expedite the construction schedule, as well as to promote opportunities for small and minority-owned businesses. The following is the project’s implementation plan status:

- Package 1 – Test Quarry (Complete)
- Package 2 – Foundation Preparatory Work (In construction)
- Package 2B – Vegetation Cutting and Erosion Control (In construction)
- Package 3 – Roller Compacted Concrete Dams (RCC) and Appurtenant Facilities (Advertising for construction bids)
- Package 4 – Bypass Pipeline (Selecting design consultant)
- Package 5 – Marina Improvements (In design)
- Package 6 – Post Construction Habitat Restoration (In planning)

The Package 2 scope of work includes excavating and preparing the dam foundation for the subsequent Package 3 – Roller Compacted Concrete Dam Raise construction contract. As presented in May 2009 when the Board awarded the Package 2 construction contract to Barnard,
separating the Package 2 foundation excavation work from the Package 3 RCC dam raise construction contract shortened the overall project schedule by several months because the foundation excavation was able to proceed concurrently while the Package 3 design was being completed. This also minimized the risk of RCC installation being delayed and significantly increasing overall project costs should a differing site condition be encountered during foundation excavation.

Package 2 - Foundation Preparatory Work construction is 78 percent complete with a scheduled contract completion date of August 2010. The Package 3 – RCC construction contract received approval from the California Department of Water Resources, Division of Safety of Dams (DSOD), the state regulatory agency that has jurisdiction over the San Vicente Dam, for the Package 3 contract documents. As a result, this contract has been advertised for bid and is scheduled for consideration at the April 2010 Board meeting.

Previous Board Actions: In May 2009, the Board awarded a construction contract to Barnard Construction Company, Inc., in the amount of $23,749,500, for Package 2 – San Vicente Foundation Preparatory Work.

Discussion
We are recommending the Board accept Change Orders 1 through 5 executed by staff under the General Manager’s authority for $434,626. These items are summarized below and include differing site conditions, outside agency requirements, design modifications, field modifications, and administrative contract revisions. A full listing of contract modifications is attached as Table 1.

**Differing site condition**: Staff executed five modifications for $215,985. These were a result of uncovering conditions that were not shown on record drawings. Buried pavement was found in the existing marina area necessitating potholing to determine the extent of buried pavement to verify there were no water quality issues with leaving this material in place. Also, included was the removal of unsuitable dam raise foundation rock excavated adjacent to the City of San Diego reservoir outlet pipelines, and subsequent placement of dam raise foundation shaping concrete to return the foundation to the final grade shown on the plans.

**Outside agency requirement**: Staff executed one modification for $81,895. This addressed contractor costs to perform supplementary cofferdam design calculations required by DSOD after the bid to verify the bolt system that anchors the cofferdam to the existing dam was safe.

**Design modifications**: Staff executed five modifications for $307,961. The Package 3 design was 60 percent complete when the Package 2 construction contract was awarded in May of 2009. Some final Package 3 design requirements modified work more appropriately constructed with Package 2 excavation to avoid expensive foundation and grading preparatory work as part Package 3 and delaying overall completion of the Package 3 construction contract. These items included increasing foundation excavation for the downstream control facility, installing underdrains in the marina as the final drain...
design would have required much deeper trenches if installed in Package 3, and increasing the length of City of San Diego pipelines concrete encasement in Package 2 to meet the DSOD-approved Package 3 contract documents for the final dam raise limits.

Field modifications: Staff executed four modifications for a credit of $171,215 which included deleting painting of the cofferdam, modifications to the material test lab, and some potholing work.

Administrative: Staff executed two no cost modifications to extend the contract completion date by three days due to inclement weather.

We are also requesting that the Board authorize the General Manager to execute a change order for up to $2,324,000 to revise unit price bid items as shown in Table 2 to address designer and DSOD requirements based on actual ground conditions encountered at the dam raise and saddle dam foundation excavations that were different than expected affecting some of the contract’s unit-price quantities.

During the Package 2 design, a geotechnical investigation was conducted to determine the range of ground characteristics for excavating the dam raise and saddle dam foundations. Ground conditions could only be inferred in some locations for the dam raise because some steep areas were inaccessible for drilling equipment to safely take core samples. Because the work quantities were subject to change based on the actual ground conditions encountered, the Package 2 construction contract for both the dam raise and saddle dam was structured such that certain work items are paid on a unit price basis, ensuring that the Water Authority pays only for the work completed, not the contractor’s risk assessment at bid time.

Left and Right Raised Dam Abutments
While the design geotechnical investigation found inactive faults along the steep right and left dam raise abutments, there was limited access for geotechnical drilling equipment such that ground conditions had to be extrapolated by the designer, in consultation with our Board of Senior Consultants and DSOD, in those locations from where borings and other measurements could be taken. However, the actual ground conditions encountered during excavation was softer along both inactive faults than expected for both abutments. The designer, in consultation with DSOD, required additional material be removed until suitable dam foundation material was found, cover the excavation with rock netting for worker safety, and fill the excavation with foundation shaping concrete to return the foundation to the final grade shown on the plans. The contract unit-price quantities impacted include those mentioned, as well as the resultant additional rock crushing and marina fill placement of the crushed rock.

The completed over excavation at the left abutment, which is similar to the right abutment treatment, is shown in Photo 1. Photo 2 shows the foundation shaping concrete plan to fill in the over excavation at the left abutment.
Saddle Dam Foundation
The rock exposed for saddle dam foundation excavation was harder than expected from
the results of the design’s geotechnical investigation, leaving a jagged, uneven rock
surface that was unexpected by the designer, our Board of Senior Consultants, and
DSOD. Because the saddle dam foundation needs to be relatively flat, the designer in
consultation with DSOD, required that the uneven foundation be leveled with dental
concrete for subsequent RCC placement in Package 3. The actual dental concrete
quantity required exceeded the quantity provided in the bid. Photo 3 shows the uneven
conditions at the saddle dam and the placement of the dental concrete.

Estimated unit-price quantities, required to address the actual ground conditions, are summarized
in Table 2. When actual quantities exceed or under-run the bid quantities, the unit price item
may be re-negotiated if an actual quantity for the work differs by 25 percent from the bid
quantity and will be addressed by the construction management team once this work is complete.
At that time, with completion of all excavation, rock netting, placement of foundation shaping
concrete, and dental concrete, and after receiving DSOD’s concurrence that this work is
complete, a final reconciliation and change order will be processed.

Approval of these recommendations will increase Barnard Construction’s contract total by
$2,324,000 to $26,508,126.

On this project, the small business participation is 3 percent. Minority and women owned
business participation for this project is 2 percent. This information is provided for statistical
purposes.

Prepared by: J. Wade Griffis, Lead Construction Administrator
Reviewed by: Michael T. Stift, Director of Engineering
Approved by: Frank Belock, Deputy General Manager

Attachments:
- Photo 1 – Left Abutment Fault
- Photo 2 – Left Abutment Foundation Shaping
- Photo 3 – Saddle Dam Dental Concrete Placement
- Figure 1 - San Vicente Project General Location Map
- Table 1 - Summary of Construction Change Orders, Package 2 San Vicente Foundation
Preparatory Work
- Table 2 – Unit Price Bid Item Revisions
Photo 1: Left Abutment Fault – The area outlined in red shows the area that had to be over excavated because of soft rock. Soft rock was also encountered on the right abutment, however the over excavated quantity was less.
Photo 2: Left Abutment Fault Treatment- This is the same location shown on Photo 1. Areas outlined in red represent concrete required to fill the depression in the foundation.
Photo 3: Dental Concrete Placement at Saddle Dam – The hard rock excavated resulted in a very uneven surface that required additional dental concrete.
FIGURE 1

SAN VICENTE DAM RAISE ESP & CARRYOVER STORAGE PROJECT, PACKAGE 2

PROJECT:

CAPITAL IMPROVEMENT PROGRAM

San Diego County Water Authority

NOT TO SCALE

Existing San Vicente Dam, Future Site for San Vicente Dam Raise ESP & Carryover Storage Project

Limits of Work

New Saddle Dam

San Vicente Reservoir

Vigilante Road

Moreno Avenue
## TABLE 1
SUMMARY OF CONSTRUCTION CHANGE ORDERS
SAN VICENTE DAM RAISE PACKAGE 2 CONTRACT
SPECIFICATION 591

<table>
<thead>
<tr>
<th>Change Order</th>
<th>Item No.</th>
<th>Description</th>
<th>Amount</th>
<th>Milestone Time Extension</th>
<th>Contract Time Extension</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>Differing Site Condition-Potholing in marina area.</td>
<td>$7,411</td>
<td>0 days</td>
<td>0 days</td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>Differing Site Condition-Backfill pothole trenches in marina area.</td>
<td>$1,117</td>
<td>0 days</td>
<td>0 days</td>
</tr>
<tr>
<td>2</td>
<td>1</td>
<td>Outside Agency Requirement-Evaluate cofferdam design.</td>
<td>$81,895</td>
<td>14 days M 2 &amp; M 4</td>
<td>14 days</td>
</tr>
<tr>
<td>3</td>
<td>1</td>
<td>Design Modification-Provide an access manway to San Vicente Pipeline 1.</td>
<td>$20,220</td>
<td>0 days</td>
<td>0 days</td>
</tr>
<tr>
<td>3</td>
<td>2</td>
<td>Design Modification-Provide downstream control facility slope excavation modifications.</td>
<td>$80,025</td>
<td>2 days M 2 &amp; M 4</td>
<td>2 days</td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td>Field Modification-Provide potholing at San Vicente Interconnect Pipeline.</td>
<td>$7,785</td>
<td>0 days</td>
<td>0 days</td>
</tr>
<tr>
<td>3</td>
<td>4</td>
<td>Field Modification-Delete cofferdam painting.</td>
<td>($218,000)</td>
<td>0 days</td>
<td>0 days</td>
</tr>
<tr>
<td>3</td>
<td>5</td>
<td>Field Modification-Modifications to material testing lab.</td>
<td>$39,000</td>
<td>0 days</td>
<td>0 days</td>
</tr>
<tr>
<td>4</td>
<td>1</td>
<td>Design Modification-Provide additional marina underdrains.</td>
<td>$13,382</td>
<td>0 days</td>
<td>0 days</td>
</tr>
<tr>
<td>4</td>
<td>2</td>
<td>Administrative Modification - Extend Milestones 1, 2 and 4 for inclement weather.</td>
<td>$0</td>
<td>3 days M 1 9 days M 2 3 days M 4</td>
<td>3 days</td>
</tr>
<tr>
<td>4</td>
<td>3</td>
<td>Differing Site Condition-Extend Milestone for additional excavation quantities.</td>
<td>$0</td>
<td>32 days M 1</td>
<td>0 days</td>
</tr>
<tr>
<td>4</td>
<td>4</td>
<td>Field Modification-Extend hydro-demolition work tied to Milestone 1.</td>
<td>$0</td>
<td>0 days</td>
<td>0 days</td>
</tr>
<tr>
<td>5</td>
<td>1</td>
<td>Design Modification-Increase spillway and foundation excavation.</td>
<td>$149,334</td>
<td>0 days</td>
<td>0 days</td>
</tr>
<tr>
<td>5</td>
<td>2</td>
<td>Differing Site Condition- Demolish San Vicente Pipelines 1 and 2 concrete encasement.</td>
<td>$7,457</td>
<td>0 days</td>
<td>0 days</td>
</tr>
<tr>
<td>5</td>
<td>3</td>
<td>Administrative Modification - Extend Milestone 2 for inclement weather.</td>
<td>$0</td>
<td>10 days M 2</td>
<td>0 days</td>
</tr>
<tr>
<td>5</td>
<td>4</td>
<td>Differing Site Condition – Place Foundation shaping concrete at San Vicente Pipelines 1 and 2</td>
<td>$200,000</td>
<td>0 days</td>
<td>0 days</td>
</tr>
<tr>
<td>5</td>
<td>5</td>
<td>Design Modification – Extend encasement for San Vicente Pipelines 1 and 2</td>
<td>$45,000</td>
<td>0 days</td>
<td>0 days</td>
</tr>
</tbody>
</table>

Total change order amount through Change Order 5: $434,626
Total time extension: 19 days
Original Board authorized contract amount: $23,749,500
New contract amount: $24,184,126

M = Milestone
### TABLE 2
UNIT PRICE BID ITEM REVISIONS
SAN VICENTE DAM RAISE PACKAGE 2 CONTRACT
SPECIFICATION 591

<table>
<thead>
<tr>
<th>Construction Activity (units)</th>
<th>Bid Quantity</th>
<th>Completion Estimate</th>
<th>Additional Quantity</th>
<th>Additional Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excavate Raised Dam Foundation (CY)</td>
<td>57,000</td>
<td>79,700</td>
<td>22,700</td>
<td>$1,246,900</td>
</tr>
<tr>
<td>Excavate Saddle Dam Foundation (CY)</td>
<td>29,000</td>
<td>28,500</td>
<td>(500)</td>
<td>($8,000)</td>
</tr>
<tr>
<td>Marina Fill Placement (CY)</td>
<td>280,000</td>
<td>326,400</td>
<td>46,400</td>
<td>$46,400</td>
</tr>
<tr>
<td>Clean Foundation (SY)</td>
<td>22,000</td>
<td>28,200</td>
<td>6,200</td>
<td>$92,300</td>
</tr>
<tr>
<td>Dental Excavation (CY)</td>
<td>1,000</td>
<td>1,300</td>
<td>300</td>
<td>$22,000</td>
</tr>
<tr>
<td>Dental Concrete Placement (CY)</td>
<td>1,300</td>
<td>1,800</td>
<td>500</td>
<td>$438,200</td>
</tr>
<tr>
<td>Rock Netting (SY)</td>
<td>500</td>
<td>1,400</td>
<td>900</td>
<td>$85,500</td>
</tr>
<tr>
<td>Rock Bolts (LF) (Credit)</td>
<td>6,800</td>
<td>1,500</td>
<td>(5,300)</td>
<td>($149,300)</td>
</tr>
<tr>
<td>(NEW) Foundation Shaping Concrete (CY)</td>
<td>0</td>
<td>1,000</td>
<td>1,000</td>
<td>$550,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$2,324,000</strong></td>
</tr>
</tbody>
</table>
March 17, 2010

Attention: Engineering & Operations Committee

CLOSED SESSION:
Conference with Legal Counsel - Potential Litigation
Government Code §54956.9(b)(1) – significant exposure to litigation
OMWD – Lake Hodges Water Quality Allegations

Purpose
This memorandum is to recommend that the committee by motion hold a closed session, pursuant to Government Code §54956.9(b)(1) to discuss the above-referenced matter at the March 25, 2010, Board meeting. This closed session will be held only if the settlement agreement regarding this matter is not approved on the consent calendar.

A closed session has also been included on the agenda of the formal Board of Directors’ meeting. Unless the Board desires additional discussion, it is not staff’s intention to ask for a closed session with the full Board at that time, but staff may request action to confirm directions given or action recommended by the committee.

Prepared by: Daniel S. Hentschke, General Counsel