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

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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 \_\_\_\_ day of \_\_\_\_\_, 2007 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.**”

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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.

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

52  
53 F. To avoid costly and time-consuming litigation brought to resolve the scope of the  
54 Regional Board’s authority to regulate imported water and without prejudice to the Parties’  
55 competing views on this question, the Parties wish to act cooperatively with the goal of  
56 achieving compliance with the Salinity Objectives without the necessity of general waste  
57 discharge requirements.

58  
59 G. The Parties wish to memorialize the terms of their cooperative effort by means of  
60 this Agreement.

### 61 Agreements

#### 62 1. *Purpose of Agreement*

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

#### 71 2. *Parties*

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

#### 77 3. *Term of Agreement*

78  
79 This Agreement will have an initial term of 10 years and shall automatically renew for  
80 subsequent 10-year periods, *provided* that any Party may withdraw at any time by providing one  
81 year’s written notice of withdrawal to all other Parties.

#### 82 4. *Preparation of Triennial Water Quality Report*

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

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

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

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

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

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

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

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

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

119 5. *CEQA Review of Proposed Projects*

120 Each Recharging Party agrees that, when it serves as a lead agency under the California  
121 Environmental Quality Act (“CEQA”) for a proposed project involving the recharge of imported  
122 water within the Region, it will analyze that project as follows:  
123

- 124 a. The environmental document will include the water quality data compiled in the  
125 most recent triennial report to the Regional Board (see paragraph 4 above) in the  
126 analysis of the potential impacts of the proposed project.
- 127 b. The environmental document will incorporate professionally acceptable modeling  
128 techniques. The Parties agree that the following models meet this standard:
- 129 (1) The Wildermuth models used to establish maximum benefit objectives.
- 130 (2) The Orange County Basin Groundwater Model.
- 131 (3) The USGS/Geoscience/Secor model of the Bunker Hill Groundwater  
132 Basin.
- 133 (4) The Chino Basin Watermaster/Inland Empire Utilities Agency model.
- 134 (5) The Beaumont-Cherry Valley model for the Beaumont management zone
- 135 (6) Eastern Municipal Water District's San Jacinto Groundwater Model.
- 136 (7) Elsinore Valley Municipal Water District's Elsinore Basin Groundwater  
137 Model.
- 138 (8) The USGS model of the Beaumont Basin (with MT3D package or  
139 equivalent added).
- 140 Updates/refinements of these models are presumed to be professionally  
141 acceptable.
- 142 c. A Recharging Party may base its environmental analysis on a model other than  
143 those described above if that model has been presented to the Regional Board at  
144 least 180 days prior to the release of the draft environmental document and there  
145 has been a determination by the Regional Board or its staff that the alternative  
146 model is acceptable.
- 147 (1) The Regional Board agrees that an alternative model is acceptable for  
148 purposes of this Agreement if the proponent of that model can  
149 demonstrate with reasonable certainty that the relative error of the model's  
150 calibration for the groundwater management zones in question for a  
151 reasonable base period is  $\pm 10\%$  or less when compared with existing  
152 groundwater data.
- 153 (2) The provisions of the immediately preceding paragraph are not to be  
154 construed to preclude other means or methodologies for an alternative  
155 model's proponent to demonstrate to the Regional Board that an  
156 alternative model is acceptable for purposes of this Agreement.

- 157 (3) If an alternative model has not been deemed acceptable by the Regional  
158 Board or its staff and a lead agency wishes to include results from that  
159 model in the environmental document, the lead agency shall include  
160 results from both the alternative model and one of the pre-approved  
161 models in the environmental document.
- 162 d. The environmental document will include the following analyses:
- 163 (1) A summary of the condition of the groundwater management zones, as  
164 reflected in the most recent triennial report to the Regional Board, that  
165 might be affected by the project.
- 166 (2) A 20-year projection of water quality in the groundwater management  
167 zone with the proposed project and a comparison of that water quality with  
168 conditions expected without the project.
- 169 (3) A comparison of the 20-year water quality projection for conditions with  
170 the proposed project with the Salinity Objectives for the groundwater  
171 management zone.
- 172 (4) A description and evaluation of any measures proposed to mitigate the  
173 potential effects of the proposed project.
- 174 e. The draft environmental document will be circulated to all Parties.
- 175 f. Each Recharging Party agrees to adopt the operative guidelines contained in this  
176 paragraph 5 as part of its CEQA implementing procedures pursuant to section  
177 15022 of the CEQA Guidelines.
- 178 g. The environmental document shall include, if required under CEQA, an effective  
179 mitigation monitoring and reporting plan that enables the lead agency to  
180 demonstrate compliance with applicable regulatory standards and any  
181 performance standards adopted in the environmental document.

182 6. *Basin Planning Updates*

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

188 7. *Enforcement*

189 If the Recharging Parties fail timely to prepare the triennial report described in paragraph  
190 4 above or if a Recharging Party fails to include the analyses described in paragraph 5 above in  
191 an environmental document prepared in connection with a proposed project involving the  
192 recharge of imported water, then any other Party may enforce the terms of this Agreement as

193 follows.

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

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

205 8. *Books and Records*

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

213 9. *No Admissions*

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

220 10. *Preservation of Rights*

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

223 11. *General Provisions*

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

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

- 230 c. *Jurisdiction and Venue.* This Agreement shall be governed by and construed in  
231 accordance with the laws of the State of California, except for its conflicts of law  
232 rules. Any suit, action, or proceeding brought under the scope of this Agreement  
233 shall be brought and maintained to the extent allowed by law in the County of  
234 Riverside, California.
- 235 d. *Representations and Warranties.* Each representation and warranty contained  
236 herein or made pursuant hereto shall be deemed to be material and to have been  
237 relied upon and shall survive the execution, delivery and termination of this  
238 Agreement.
- 239 e. *Entire Agreement.* This Agreement constitutes the entire agreement of the Parties  
240 with respect to the subject matter of this Agreement and supersedes any prior oral  
241 or written agreement, understanding, or representation relating to the subject  
242 matter of this Agreement.
- 243 f. *Successors and Assigns.* This Agreement shall be binding on and inure to the  
244 benefit of the successors and assigns of the respective Parties to this Agreement.  
245 No Party may assign its interests in or obligations under this Agreement without  
246 the written consent of the other Parties, which consent shall not be unreasonably  
247 withheld or delayed.
- 248 g. *Advice of Counsel; Drafting by Negotiations.* This Agreement has been arrived at  
249 through negotiations and each Party has had a full and fair opportunity to revise  
250 the terms of this Agreement. As a result, the normal rule of construction that any  
251 ambiguities are to be resolved against the drafting Party shall not apply in the  
252 construction or interpretation of this Agreement. Each Party represents that it has  
253 sought and obtained any legal advice it deems necessary from its own separate  
254 counsel before entering into this Agreement.
- 255 h. *Waiver.* No waiver of any violation or breach of this Agreement shall be  
256 considered to be a waiver of any other violation or breach of this Agreement, and  
257 forbearance to enforce one or more of the remedies provided in this Agreement  
258 shall not be deemed to be a waiver of that remedy.
- 259 i. *Severability.* If, after the date of execution of this Agreement, any provision of  
260 this Agreement is held to be illegal, invalid, or unenforceable under present or  
261 future laws effective during the term of this Agreement, such provision shall be  
262 fully severable. However, in lieu thereof, there shall be added a provision as  
263 similar in terms to such illegal, invalid or unenforceable provision as may be  
264 possible and be legal, valid and enforceable.
- 265 j. *Compliance with Laws.* In performing their respective obligations under this  
266 Agreement, the Parties shall comply with and conform to all applicable laws,  
267 rules, regulations and ordinances.

- 268 k. *No Third-Party Beneficiaries.* This Agreement shall not create any right or  
 269 interest in any non-Party or in any member of the public as a third party  
 270 beneficiary.
- 271 l. *Necessary Actions.* Each Party agrees to execute and deliver additional  
 272 documents and instruments and to take any additional actions as may be  
 273 reasonably required to carry out the purposes of this Agreement.
- 274 m. *Counterparts.* This Agreement may be executed in one or more counterparts,  
 275 which may be executed and delivered via facsimile transmission, each of which  
 276 shall be deemed to be an original, but all of which together shall constitute but  
 277 one and the same instrument.
- 278 n. *Notices.* All notices, requests, demands or other communications required or  
 279 permitted under this Agreement shall be in writing unless provided otherwise in  
 280 this Agreement and shall be deemed to have been duly given and received on:  
 281 (i) the date of service if served personally or served by facsimile transmission on  
 282 the Party to whom notice is to be given at the address(es) provided below, (ii) on  
 283 the first day after mailing, if mailed by Federal Express, U.S. Express Mail, or  
 284 other similar overnight courier service, postage prepaid, and addressed as  
 285 provided below, or (iii) on the third day after mailing if mailed to the Party to  
 286 whom notice is to be given by first class mail, registered or certified, postage  
 287 prepaid, addressed as follows:

288 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

289 California Regional Water Quality Control Board  
 290 Santa Ana Region  
 291 3737 Main St., Suite 500  
 292 Riverside, CA 92501  
 293 (951) 782-4130 ph  
 294 (951) 781-6288 fax

295 CITY OF CORONA

296 City of Corona  
 297 400 S. Vicentia Avenue  
 298 Corona, CA 92882-2187  
 299 (951) 736-2239 ph  
 300 (951) 736-2231 fax

301 CITY OF RIVERSIDE

302 City of Riverside  
303 5950 Acorn Street  
304 Riverside, CA 92504-1036  
305 (951) 351-6080 ph  
306 (951) 351-6267 fax

307 EASTERN MUNICIPAL WATER DISTRICT

308 Eastern Municipal Water District  
309 2270 Trumble Road  
310 Perris, CA 92570  
311 P.O. Box 8300  
312 Perris, CA 92572-8300  
313 (951) 928-3777 ph  
314 (951) 928-6177 fax

315 ELSINORE VALLEY MUNICIPAL WATER DISTRICT

316 Elsinore Valley Municipal Water District  
317 31315 Chaney Street  
318 Lake Elsinore, CA 92530  
319 P.O. Box 3000  
320 Lake Elsinore, CA 92531-3000

321 ORANGE COUNTY WATER DISTRICT

322 Orange County Water District  
323 10500 Ellis Avenue  
324 Fountain Valley, CA 92708-6921  
325 P.O. Box 8300  
326 Fountain Valley, CA 92728-8300  
327 (714) 378-3200 ph  
328 (714) 378-3371 fax

329 SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

330 San Bernardino Valley Municipal Water District  
331 1350 South "E" Street  
332 San Bernardino, CA 92408-2725  
333 P.O. Box 5906  
334 San Bernardino, CA 92412-5906  
335 (909) 387-9200 ph  
336 (909) 387-9247 fax

337 SAN GORGONIO PASS WATER AGENCY

338 San Gorgonio Pass Water Agency  
339 1210 Beaumont Avenue  
340 Beaumont, CA 92223  
341 (951) 845-2577 ph  
342 (951) 845-0281 fax

343 WESTERN MUNICIPAL WATER DISTRICT

344 Western Municipal Water District  
345 450 E. Alessandro Blvd.  
346 Riverside, CA 92508-2449  
347 P.O. Box 5286  
348 Riverside, CA 92517-5286  
349 (951) 789-5000 ph  
350 (951) 780-3837 fax

CALIFORNIA REGIONAL WATER  
QUALITY CONTROL BOARD

By: \_\_\_\_\_  
Title:

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APPROVED AS TO FORM ONLY:

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CITY OF CORONA

By: \_\_\_\_\_  
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CITY OF RIVERSIDE

By: \_\_\_\_\_  
Title:

APPROVED AS TO FORM ONLY:

By: \_\_\_\_\_

EASTERN MUNICIPAL WATER DISTRICT

By: \_\_\_\_\_  
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APPROVED AS TO FORM ONLY:

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ELSINORE VALLEY MUNICIPAL WATER DISTRICT

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ORANGE COUNTY WATER DISTRICT

By: \_\_\_\_\_  
Title:

SAN BERNARDINO VALLEY  
MUNICIPAL WATER DISTRICT

By: \_\_\_\_\_  
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SAN GORGONIO PASS WATER  
AGENCY

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WESTERN MUNICIPAL WATER  
DISTRICT

By: \_\_\_\_\_  
Title:

APPROVED AS TO FORM ONLY:

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