



STAFF REPORT

DATE: NOVEMBER 20, 2012
TO: HONORABLE MAYOR AND CITY COUNCIL
COLTON UTILITY AUTHORITY BOARD, CUA
FROM: ROD FOSTER, CITY MANAGER & EXECUTIVE DIRECTOR *R.F.*
PREPARED BY: AMER JAKHER, P.E., PUBLIC WORKS DIRECTOR *AJ*
SUBJECT: INSTITUTIONAL CONTROLS GROUNDWATER MANAGEMENT
PROGRAM AGREEMENT (REVISED)

RECOMMENDED ACTION

It is recommended that the City Council approve the attached revised Institutional Controls Groundwater Management Program Agreement (ICGMPA), dated as of January 1, 2012, with any non-substantive revisions approved by the City Manager and City Attorney.

It is recommended that the Colton Utility Authority Board review, ratify and to the extent necessary direct that the City Council take the above action(s).

GOAL STATEMENT

The proposed action will support the City's goal of managing its water supply in an efficient and effective manner, partly through the cooperative efforts of other regional entities.

BACKGROUND/ANALYSIS

On August 3, 2010, the City Council approved an ICGMPA, dated as of June 30, 2010. The 2010 Staff Report and ICGMPA are attached for your reference, so staff will not repeat much of the background and analysis discussed therein. It is notable, however, that the ICGMPA impacts the Bunker Hills Basin area, and that the City owns and operates wells 13, 16, 21, 26, 27 and 28 in the Bunker Hill Basin and those wells produce about 6,500 acre feet of water per year (or about 58.44 % of the City's water supply).

As discussed in the 2010 Staff Report, the ICGMPA was subject to later Environmental Protection Agency ("EPA") and Department of Toxics Substance Control ("DTSC") approval, since they oversee the remedy. The attached revised ICGMPA, dated as of January 1, 2012, is the result of EPA and DTSC required revisions.

Fundamentally, it seems that the changes they negotiated boiled down to two issues: (1) DTSC and EPA did not want to be bound by, nor have their regulatory authority impaired by, certain state court judgments to which some of the ICGMPA parties are signatories; and (2) DTSC and

EPA thought the dispute resolution procedure was too cumbersome. Thus, the parties removed the references to the state court judgments. However, they also now require the City of San Bernardino to pursue the dispute resolution process under the 2005 City of San Bernardino Consent Decree, at the requesting party's expense, if either the EPA or DTSC require work not already contemplated within such consent decree or deny any projects that the ICGMPA parties wish to pursue on the basis that such work violates those state court judgments listed in the ICGMPA (See Sections 4(d) and 13 of the ICGMPA). Finally, the parties better clarified how the dispute resolution process would work (described in paragraphs 13 and 14).

Thus, the City is being asked to review and approve this updated ICGMPA. Also attached is a redline version of the ICGMPA, which shows the substantive revisions between the 2010 and 2012 versions. These changes have very little impact on Colton and are deemed ministerial in nature. As such, they are consistent with the 2010 Council action.

FISCAL IMPACTS

No fiscal impact is anticipated to occur from the adoption of the ICGMPA, unless the City decides to engage in a new project that would increase the amount of pumping and or recharge in the area.

ALTERNATIVES

1. Reject the proposed revised ICGMPA, which would leave the City vulnerable to the City of San Bernardino ordinance and potentially prevent the City from access to the groundwater model developed as part of the ICSEA Group efforts.
2. Provide alternative direction to staff.

ATTACHMENTS

1. Exhibit A Staff Report (08-03-10) and ICGMPA, dated as of June 30, 2010
2. Exhibit B ICGMPA, dated as of January 1, 2012
3. Exhibit C Redline Changes Between 6-30-10 ICGMPA & 1-1-12 ICGMPA

Exhibit A

Staff Report dated 08-30-10 and ICGMPA dated 06-30-2010



STAFF REPORT

DATE: AUGUST 3, 2010
 TO: HONORABLE MAYOR AND CITY COUNCIL
 FROM: ROD FOSTER, CITY MANAGER
 PREPARED BY: DEAN DERLETH, CITY ATTORNEY
 PIERO DALLARDA, DEPUTY CITY ATTORNEY

SUBJECT: INSTITUTIONAL CONTROLS GROUNDWATER MANAGEMENT PROGRAM AGREEMENT (ICGMPA)

RECOMMENDED ACTION

It is recommended that the City Council approve the Institutional Controls Groundwater Management Program Agreement (ICGMPA), and as part of that approval consent to the extension of the interim Agreement to Develop and Adopt an Institutional Controls Groundwater Management Program until the effective date of the ICGMPA.

GOAL STATEMENT

The proposed action will support the City's goal of managing its water supply in an efficient and effective manner, partly through the cooperative efforts of other regional entities.

DISCUSSION

The following is some background information regarding the proposed ICGMPA.

In or about 2003, the City of San Bernardino and the California Department of Toxic Substances Control filed two separate lawsuits in federal court against the United States. The lawsuits involved two plumes (Muscoy and Newmark) that carried TCE (trichloroethylene) and PCE (tetrachlorethylene), and contaminated the water supply in the Bunker Hill Basin (the "Basin"). Although the source of contamination has not been conclusively identified, there is strong evidence that the plumes were the result of activities by the U.S. Army during WWII.

Many public and private entities rely on the Bunker Hill Basin as a source of water supply, including the City of Colton ("City"), which operates wells in the area. The Basin is also used for recharge/storage by a series of public entities.

The Basin has been the subject of water rights adjudication cases in state court, and the City has certain water rights pursuant to a judgment in one of the cases. The judgment is typically

referred to as the Lytle Creek Judgment, and the City's wells have been operated under this judgment.

In 2005, the City of San Bernardino and the U.S. reached a settlement in the two federal cases. The settlement was memorialized in a consent decree, which became an order and judgment by the federal court. The consent decree contemplated the transfer of several millions of dollars to the City of San Bernardino in order to build and operate a remedy to catch and treat the water in the plumes. The consent decree also required the City of San Bernardino to institute groundwater controls within its jurisdiction to ensure that the "remedy" was not affected by other activities in the Basin, such as pumping and recharge. Part of the groundwater controls required by the consent decree and order mandated the City of San Bernardino to enact an ordinance, which attempted to have an effect within City boundaries to regulate pumping and recharge activities.

Prior to entering into the consent decree and order, the City of San Bernardino had not consulted with any of the other pumpers/rechargers. When the consent decree was published for public review, many public entities, most of whom are now parties to the ICGMPA, threatened the City of San Bernardino with (a) intervention in the federal claim; and (b) a separate lawsuit, including CEQA claims. In fact, the City of Riverside filed (and later withdrew) one in San Bernardino Superior Court.

As a result of this general response by the other public entities engaged in activities in the basin, there were several meetings among all these entities, which eventually resulted in the formation of the Institutional Control Settlement Agreement ("ICSA") Group.

The work of the ICSA Group has resulted in the proposed ICGMPA, as well as the interim Agreement to Develop and Adopt an Institutional Controls Groundwater Management Program, which was originally approved in 2005. The principal purpose of the interim agreement has been to ensure that the City of San Bernardino did not attempt to enforce its ordinance, as well as to have interim controls in place to protect the remedy discussed above. It does not appear as though the City formally consented to the last extension of that interim agreement, from December of 2009 through June 30, 2010, but the City has honored that agreement as being in place. The ICGMPA specifically provides that the interim agreement is to be extended until the effective date of the ICGMPA.

The ICSA Group concluded that a groundwater model had to be developed to analyze any projects and determine how they would affect the remedy, as well as other pumpers and rechargers, in order to develop a final agreement. Several experts were asked to work on the model, building initially from a model the City of San Bernardino was beginning to develop.

The process of developing a model took about two years and cost more than \$1million. During those two years, the ICSA agreement was renewed twice. In addition, quarterly reports from the plumes were submitted to EPA and members of the ICSA Group by the City of San Bernardino.

Most of these ICSA Group meetings were attended by staff from the members of the ICSA Group. The City was primarily represented in those meetings by Eric Fraser.

Once a model was agreed upon, the ICGMPA attached hereto was developed. The ICMGPA agreement does not contain terms much different from the interim agreement, except that the ICMGPA includes the new model and a process to follow in order to start new projects and/or increase pumping and recharge in the area. The more notable areas for the City are Exhibits A-1, A-2, B-1, B-1e, which are the exhibits that set forth the City Pre-approved area, and the portion of Exhibit B which sets forth the amount of pumping by the City that will continue undisturbed.

In summary, the ICGMPA agreement provides that the parties like the City can pump up to the amount set forth as a pre-approved activity, which equals the amount the City has been pumping from those wells historically. However, any new projects or increase in pumping or recharge by the City would have to be unanimously approved by the ICGMPA agreement parties following the results of running the new project through the model and a determination that the new project will not affect the remedy. If the model determines that there is an adverse effect on the remedy, the entity asking for approval of a new project can propose mitigation measures that would reduce the perceived adverse effect. The entity requesting approval for a new project must pay the expense of running the model.

The ICGMPA agreement of course will still be subject to EPA and DTSC approval, since they oversee the remedy. Therefore, they may have some veto power, but that was true before as well. That veto power may extend not only to the agreement, but to new projects as well. Replacement wells are not subject to this process, and neither are the existing wells recognized as pre-approved activities. The ICGMPA also imposes some meeting requirements, deadlines to present new projects for approval (a six months deadline for notice of replacement wells), alternative dispute resolution methods and procedures for new parties to join.

FISCAL IMPACTS

No fiscal impact is anticipated to occur from the adoption of the ICMGPA, unless the City decides to engage in a new project that would increase the amount of pumping and or recharge in the area.

ALTERNATIVES

1. Reject the proposed draft ICGMPA, which would leave the City vulnerable to the City of San Bernardino ordinance and potentially prevent the City from access to the groundwater model developed as part of the ICSA Group efforts.
2. Provide alternative direction to staff.

ATTACHMENTS

Institutional Controls Groundwater Management Program Agreement (ICGMPA)

**Institutional Controls Groundwater Management Program Agreement
As of June 30, 2010**

This Institutional Controls Groundwater Management Program (ICGMP) Agreement (“**ICGMP Agreement**”) is entered into and effective as of this 30th day of June, 2010, by and among the following parties (collectively the “**Signatory Parties**”): the City of San Bernardino and the City of San Bernardino Municipal Water Department (collectively, the “City”); San Bernardino Valley Municipal Water District (Valley District); West Valley Water District (WVWD); East Valley Water District (EVWD); Riverside Highland Water Company (RHWC); the City of Riverside (“Riverside”); the City of Colton (“Colton”) and Western Municipal Water District (WMWD).

Recitals

I. Parties

A. The City of San Bernardino (“City”) is a party to a consent decree approved by the United States District Court, Central District of California, Western Division (Court), on March 23, 2005 (Consent Decree). The Consent Decree settles litigation entitled *City of San Bernardino v. United States of America*, Case No. CV96-8867 and *State of California Department of Toxic Substances Control v. United States of America*, Case No. CV 96-5205 (consolidated), which sought to address responsibility and funding for the remedy of the Newmark Groundwater Contamination Superfund Site in San Bernardino, alleged by San Bernardino and the State of California to arise from waste disposal activities by the United States Army during and after World War II in San Bernardino.

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B. The Consent Decree obligates the City, among other things, to operate and maintain a system of wells and treatment plants known collectively for this Agreement as the “Newmark Facilities,” which include, in part, construction and implementation of two operable units: the Newmark Operable Unit (Newmark OU) and the Muscoy Operable Unit (Muscoy OU). The Newmark Facilities are intended to function as a groundwater treatment system to clean up contaminants in a portion of the Bunker Hill Basin. The primary contaminants of concern in that plume are tetrachlorethylene (PCE) and trichloroethylene (TCE).

C. Pursuant to the terms of the Consent Decree, the “Work” to be done by the City is defined in the Consent Decree, and includes the operation and maintenance of the Newmark Facilities. The Work is subject to the oversight of both the United States Environmental Protection Agency (USEPA) and the State of California Department of Toxic Substances Control (DTSC), with the lead and support oversight roles divided between the two agencies, depending on the task. City compliance with Consent Decree terms is demonstrated through monitoring of contaminant concentrations as well as a separate compliance measure based on month-to-month water level data, particle tracking and potentiometric surface mapping, as described more fully in Section III.F.2.b) of the Statement of Work (SOW). This month-to-month water level compliance measure is distinct from, and calculated very differently than the long-term measurements of particle movement used in the Groundwater Model discussed below.

D. As a condition of the Consent Decree, the City is also obligated to institute a groundwater management and permit program (GMPP) to “ensure the effectiveness and integrity” of the Newmark Site that includes: (i) taking appropriate actions to prevent or mitigate the potential

harmful effects of new or increased extraction from areas within the Management Zone described herein and referred to as the "Permit Zone" in the Consent Decree, which zone is within the San Bernardino city limits, and (ii) taking appropriate actions to prevent or mitigate the potential harmful effects of increased artificial recharge within the Management Zone. The City has determined, based on a technical appraisal, and USEPA has approved, the Management Zone within the city limits, in which projects which may involve new or increased extraction resulting from the reconstruction of wells or artificial recharge will undergo scrutiny for their potential effects on the operation and maintenance of the Facilities. The Management Zone boundaries for extraction and spreading are designated on **Exhibit A** to this Agreement.

E. The Consent Decree expressly provides that the Court retains jurisdiction over any challenge to the groundwater management and permit program (GMPP) to be implemented by the City.

F. Unless capitalized terms are expressly defined in this Agreement, they shall have the meaning ascribed to them in the Consent Decree and the Statement of Work (SOW) attached to that Consent Decree.

G. Valley District is a municipal water district having a broad range of powers and obligations to provide water and water-related services. Valley District's service area includes areas overlying the Bunker Hill Basin. Included in its broad range of powers and obligations are the following specific obligations: under *Orange County Water District v. City of Chino et al.*, Orange County Superior Court Case No. 117628 (the Orange County Judgment), Valley District has certain obligations to guarantee delivery of water downstream; under *Western Municipal Water District et al. v.*

East San Bernardino County Water District et al., Riverside County Superior Court Case No. 78426 (the Western Judgment), Valley District has certain obligations to replenish the San Bernardino Basin Area, which includes the Bunker Hill Basin.

H. WMWD is a municipal water district having a broad range of powers and obligations to provide water and water-related services. WMWD is a party to both the Orange County and Western Judgments and has certain rights and obligations arising thereunder and claims rights to water pumped from the Bunker Hill Basin.

I. Riverside, a California charter city and municipal corporation, operates wells, treatment facilities and transmission systems in the Bunker Hill Basin. Riverside is a party and a successor to a party to *City of San Bernardino v. City of Riverside*, San Bernardino Superior Court Case No. 13754 (the Riverside Judgment), as amended, and has certain rights and obligations thereunder. Riverside is additionally a plaintiff party and a successor to a plaintiff party to the Western Judgment, which specifies the amount of water that Riverside may export from the San Bernardino Basin Area (which includes the Bunker Hill Basin).

J. WVWD is a county water district having a broad range of powers to provide water and water-related services. WVWD is a party, through predecessor parties-in-interest, to *Lytle Creek Water and Improvement Co. v. Grapeland Irrigation Dist. et al.*, Los Angeles Superior Court Case No. 20790 (commonly known as the "McKinley Judgment") and *City of San Bernardino v. Fontana Water Co. et al.*, San Bernardino Superior Court Case No. 17030 (the "Lytle Creek" Judgment). The McKinley Judgment apportioned surface water rights to Lytle Creek among the various parties; the Lytle Creek Judgment apportioned surface water rights and also granted certain groundwater

extraction rights within the Lytle Creek region to various parties. The Lytle Creek Region is within the San Bernardino Basin Area as defined in the Western Judgment.

K. EVWD is a county water district having a broad range of powers to provide water and water-related services. EVWD operates wells and transmission systems in the Bunker Hill Basin.

L. Colton, a municipal corporation, operates wells and transmission systems in the Bunker Hill Basin. Colton, through its predecessor parties-in-interest, was granted certain groundwater extraction rights in the Lytle Creek region through the Lytle Creek Judgment.

M. The City holds groundwater extraction rights in the Lytle Creek region through the Lytle Creek Judgment. Additionally, the City is a party to the Riverside Judgment, which specifies the areas in which it may extract groundwater and the amounts of groundwater extracted in those areas.

N. RHWC is a mutual water company and a plaintiff in the Western Judgment. Under such Judgment, RHWC has the right to extract and export certain quantities of water from the Bunker Hill Basin.

II. The Consent Decree and Predecessor Agreement.

A. On March 23, 2005, the Consent Decree was approved by the Court, with the support of the Parties to this Agreement, pursuant to a predecessor agreement, known as the AGREEMENT TO DEVELOP AND ADOPT AN INSTITUTIONAL CONTROLS GROUNDWATER MANAGEMENT PROGRAM ("Predecessor Agreement").

B. As part of the Consent Decree, the City has agreed to undertake a number of actions in connection with the remediation of the Newmark Site. One of the key obligations of the

City is the adoption of the GMPP, which obligation is generally described in paragraphs 27-29 of the Consent Decree. The GMPP requires the City, *inter alia*, to monitor and take appropriate actions to maintain the effectiveness and integrity of the Interim Remedial Actions as defined in the Consent Decree and to take appropriate actions to “prevent or mitigate” the potential harmful effects of new or increased extractions or increased artificial recharge from areas within the Management Zone.

C. The Consent Decree contemplates that the City will develop, adopt and implement the GMPP described in paragraphs 27-29 pursuant to its authority under California law. The Consent Decree further contemplates that the GMPP will be based on the City’s best professional judgment, in consultation with USEPA and DTSC, and subject to approval by USEPA. The Consent Decree provides that the City will institute its legislative process to approve and adopt the GMPP. The City did so in a Municipal Ordinance duly adopted March 20, 2006, Ordinance No. MC-1221, entitled “Spreading or Extraction within the Management Zone,” adding Chapter 13.25 to the San Bernardino Municipal Code.

D. The Public Water Purveyors had previously expressed concerns that the proposed GMPP might: (i) interfere with the Public Water Purveyors’ rights and obligations under a series of state court judgments; (ii) interfere with other efforts to manage the Bunker Hill Basin to maintain the safe yield of that Basin, to control high groundwater problems, and for the conjunctive use of groundwater and surface water; (iii) violate California state water policy and California law; and (iv) interfere with the exercise of certain existing water rights.

E. The Public Water Purveyors and the City agreed that a mutually acceptable GMPP that would satisfy the requirements of the Consent Decree without interfering with certain state

court judgments, basin replenishment, control of high groundwater, the conjunctive use of groundwater and surface water, and the exercise of certain existing water rights was their mutual objective and entered the Predecessor Agreement in order to negotiate an orderly and satisfactory resolution of those mutual concerns while avoiding delay in the implementation of the Work provided in the Consent Decree. The Predecessor Agreement has been extended by means of five amendments and will terminate by its terms on June 30, 2010.

F. From 2005 until now, the Parties have worked diligently to improve the existing groundwater models of the San Bernardino Basin Area in order to be able to develop the ICGMP based on the best available technical information. In particular, the City reports that it has spent more than \$1,000,000 in this effort to build, refine and validate the Groundwater Model as defined in the Consent Decree in order to assure that this Groundwater Model is usable for other predictive purposes throughout the Bunker Hill Groundwater Basin. The other Parties to this Agreement have been regularly briefed on the development and refinement of these models, and have participated to the extent they have deemed appropriate in various workshops and other opportunities for technical input concerning these modeling efforts. The USEPA, DTSC, and the United States Geological Survey (USGS) have done so pursuant to the processes provided in the Consent Decree.

G. The Signatory Parties believe that the Groundwater Model has now been developed into a sufficiently accurate predictive tool to serve its intended purpose. Specifically, the Signatory Parties believe that the Groundwater Model will allow the Parties to reach sound decisions about the location and installation of new or reconstructed wells and the location and construction of new spreading basins within the Bunker Hill Basin in a manner consistent with sound water

resource management, including:

(1) Management of extraction and artificial recharge to ensure the effectiveness and integrity of the remedial systems for the Newmark Groundwater Contamination Superfund Site and the avoidance of "Adverse Effects" on those remedial systems;

(2) Maintenance of water levels throughout the Bunker Hill Basin to optimize water extractions;

(3) Maintenance of water levels in the artesian or pressure zone to prevent high groundwater conditions and potential liquefaction during earthquakes;

(4) Coordination of the Work as such Consent Decree activities may affect other contaminant plumes in the Bunker Hill Basin; and

(5) Optimizing conditions in the Bunker Hill Basin for conjunctive use.

H. The Signatory Parties are prepared to execute this agreement now and to submit it to EPA and DTSC for their review and approval, reserving the right to update the Groundwater Model as may be suggested by the peer review of that model and other information suggesting prudent upgrades or improvements to the model. The Signatory Parties expect to periodically review and agree to appropriate changes to the Groundwater Model in order to improve its forecasting accuracy.

I. With the completion of the Groundwater Model, the Signatory Parties now desire to memorialize their agreement as the Institutional Controls Groundwater Management Program (ICGMP) Agreement in order to protect the Facilities operated and maintained by the City under

the Consent Decree, while furthering the Parties' common objective of sound water resource management in the Bunker Hill Basin.

Now, therefore, in consideration of the foregoing recitals and definitions that are incorporated herein and mutual covenants and terms below, the Parties hereby agree to the following:

**INSTITUTIONAL CONTROLS GROUNDWATER MANAGEMENT
PROGRAM AGREEMENT**

1. This Agreement will commence upon the later of its approval by DTSC as lead oversight agency, and concurrence by EPA as support oversight agency, which Agreement shall be published by the City, with annual updates, and cross-referenced by an amendment to the Ordinance to be adopted within a reasonable time after DTSC's approval. Pending such approval, the Predecessor Agreement, currently set to expire on June 30, 2010, shall be extended for such period, if any, as may be required for DTSC to consider the request to approve this agreement as a part of the Institutional Controls Groundwater Management Program required to be implemented by the City under the Consent Decree. This Agreement shall expire when EPA shall have issued Certificates of Completion for both the Newmark and Muscoy Operable Units addressed in the Consent Decree, although the Signatory Parties may extend this Agreement at that time by mutual consent for a term to be determined at that time. Within six months of the effective date of this Agreement, the City agrees that it will amend the current Ordinance to reflect termination of the Ordinance provisions upon receipt of the later of EPA's Certificates of Completion.

2. In the event that DTSC declines or refuses to endorse or approve this Agreement, or if EPA fails to concur in approving this Agreement, the Predecessor Agreement shall continue in force for another 90 days from the date of such final decision. The Signatory Parties will consult in good faith for that 90 day period about a successor agreement in the event that DTSC refuses to approve this Agreement.

3. During the term of this Agreement, the City and any Public Water Purveyor which is a Signatory Party to this Agreement shall be exempt from the provisions of the Ordinance No. MD-1221, adopted by the City on March 20, 2006, Chapter 13.25 of the San Bernardino Municipal Code Entitled Spreading or Extraction within the Management Zone, or any successor ordinance intended to regulate groundwater extraction and artificial recharge within the Management Zone. Such exemption shall cease on June 30, 2010 for any Public Water Purveyor which refuses to sign this Agreement and for a Public Water Purveyor which later withdraws from this Agreement, shall cease on such later date as written notice of such withdrawal is given. Any Public Water Purveyor which refuses or fails to sign this Agreement by July 31, 2010, or which later withdraws from this Agreement shall be deemed to not be a Signatory Party.

4. a. For each year, 2005 through 2009, the Parties have negotiated, on an annual basis, certain pre-approved or permitted pumping activities up to specific volumes, and set forth a quantified list of such pre-approved or permitted pumping activities as part of **Exhibit B**. All such preapproved pumping activities (*Preapproved Activities*) are hereby approved up to the limits set forth in Exhibit B for the term of this Agreement. Such *Preapproved Activities* are deemed by this Agreement to include permanent replacement of a well or wells by the same or successor owner of

the well, provided (a) the maximum pumping capacity is not increased (except as provided in Exhibit C), (b) the prior well is converted to a monitoring well (if practical) or permanently closed, and (c) the replacement well (or wells) is located within 500 feet and screened at the same interval(s) and depth(s) as the well or wells being replaced (except as provided in Exhibit C). All Preapproved Activities, as identified in Exhibit B and C, shall be exempt from the provisions of the March 20, 2006 Ordinance, including requirements in that ordinance for the purchase of additional insurance.

b. Artificial recharge activities through existing recharge basins within the Management Zone as set forth in Exhibit A will be addressed at least annually (and more frequently as the need arises), subject to the availability of recharge water and the agreement of the Parties. The first such meeting to consider the artificial recharge activities shall take place on or around June 2011, and annually thereafter on or near the anniversary date of the first meeting. Using their best professional judgment, aided by the Groundwater Model, the Signatory Parties will review proposals for artificial recharge, and recommend, on an annual basis or more frequently as the need arises, the upper limit on how much artificial recharge may be safely conducted and at what locations without adversely affecting the remedial systems at the Newmark Groundwater Contamination Superfund Site, will not increase the likelihood that contaminants will migrate past or around the barrier wells that are part of the Newmark Site, and will not otherwise interfere with the performance of the Interim Remedial Actions. The Signatory Parties shall promptly review and unanimously consent to these proposed upper limits on artificial recharge. Provided that a Signatory Party adheres to the geographic and volumetric limits on such artificial recharge, that Signatory Party shall be free to conduct its artificial recharge operations for that year without further review or approval. Each

Signatory Party shall report in writing quarterly to the other Signatory Parties about the volume and location of any such recharge activities in the prior quarter. All such pre-approved artificial recharge operations shall be exempt from the provisions of the March 20, 2006 Ordinance (or any successor ordinance), including requirements in that ordinance for the purchase of additional insurance. The annually approved upper limit on artificial recharge decided by the Signatory Parties shall be provided promptly to EPA, DTSC, and shall be made public by the City at the time it is transmitted to EPA and DTSC.

c. No new well construction or artificial recharge activities contrary to Preapproved Activities shall be undertaken by any Signatory Party except as unanimously agreed to by the Signatory Parties in the annual review of artificial recharge, or for a new well (other than replacements discussed above), unless such new well has been separately approved pursuant to the application process provided for in Section 12 of this Agreement.

d. For the purposes of this Agreement, activities undertaken by the City pursuant to the Statement of Work (SOW) accompanying the Consent Decree, or activities otherwise directed by EPA or DTSC shall be deemed to be preapproved, provided that the changes in such activities after the date of this Agreement do not violate the terms of the other judgments referenced in the recitals above. The SOW does not currently require the drilling of additional wells, nor has either EPA or DTSC ordered the construction of any such new wells as of the date of this Agreement. The City will give notice to the Parties if it is to drill a new well pursuant to DTSC or EPA order, and will convene a meeting of the Parties in advance of well construction for the purpose of providing the technical information about such new well, including modeling results. To the extent feasible, City

agrees to design and operate any such new wells in a manner to minimize negative effects on other Signatory Parties, including but not limited to impacts to water levels, production by other wells, and water quality.

5. Unless ordered by EPA, DTSC, or the Court, no expansion shall be made of the EPA-approved Management Zone, except by unanimous consent of all the Signatory Parties to this Agreement. In the event the EPA-approved Management Zone is expanded, pre-existing wells, as of the date the Management Zone is expanded, in the newly expanded area shall be added to Exhibit B (the Preapproved Activity list), above, and treated according to the same terms and conditions as pre-existing wells in the current Management Zone. The maximum annual pumping volume of such wells in the newly expanded area shall be calculated as the maximum annual pumping volume in any year prior to the expansion of the Management Zone.

6. For the first three years after the effective date of this Agreement, the Signatory Parties shall meet at least quarterly to monitor the implementation of this Agreement and the remedial actions provided for under the Consent Decree, to consider any appropriate update work on the Groundwater Model, and to consult concerning artificial recharge activities and any new wells planned by the Signatory Parties for the upcoming calendar year. At least 30 days prior to the City's submission of any Five-Year Update Report for the Groundwater Model, the Signatory Parties shall meet to review the draft of that Update Report and provide comments, if any, to the City. After the first three years of this Agreement, the parties shall meet at least annually and more often by agreement of the Signatory Parties to discuss the status of implementation of this Agreement and any issues which may have arisen under the Agreement.

7. Provided that decisions for new projects meet the terms of the Consent Decree to protect the remedial systems and downgradient users from the further migration of contaminants, are not affirmatively disapproved by EPA or DTSC as contrary to the Consent Decree, and do not violate the terms of the other judgments referenced in the recitals above, the Parties shall make decisions under this Agreement by unanimous consent of the Signatory Parties. Any amendment to this Agreement must be adopted by unanimous consent of the Signatory Parties.

8. With respect to any project proposed by or to the Signatory Parties pursuant to this Agreement, each Signatory Party will comply with the provisions of the California Environmental Quality Act (CEQA), as and if that Act applies. It is not intended that a Signatory Party shall assume Lead or Responsible Agency status, as those terms are defined in CEQA, solely through participation in this Agreement.

9. No Signatory Party to this Agreement shall use the good-faith denial or limitation of a proposed project under this Agreement or the Consent Decree, or the good faith approval of a project under this Agreement, as a basis for any claim for damages, injunctive relief, or a taking against any other Party to this agreement, DTSC, EPA, or the United States. This undertaking shall survive the termination of this Agreement or withdrawal by any Signatory Party to the Agreement. All Signatory Parties reserve all their rights and defenses under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., corresponding provisions of California statutes governing the remediation of hazardous substance releases, and other applicable laws, except as set forth in this paragraph. Each Signatory Party reserves the right to bring an action to enforce the terms of this Agreement.

10. The Signatory Parties will timely cooperate with each other in sharing of information, including annual production information, water level data, logs from newly installed wells, and groundwater sampling analytical results, needed to update the Groundwater Model referenced in this Agreement and the Consent Decree. No Signatory Party shall be responsible or liable for another Party's use of information or models shared pursuant to this Agreement or any predecessor Agreement.

11. No Signatory Party, by virtue of its participation in this Agreement, shall be required to obtain any additional insurance for an activity authorized through this Agreement other than such insurance that such Signatory Party would customarily and prudently obtain and keep in force in the course of conducting its regular business activities.

12. a. Any Signatory Party seeking to construct a new well or to reconstruct a well in a manner that will increase its capacity above that reported as part of Preapproved Activities under paragraph 4 above, or seeking to construct a new spreading basin for artificial recharge, shall submit its proposal for such construction to the other Signatory Parties, including the City, at least six months before the intended start date of such construction. The issue of replacement of existing wells without increasing capacity is addressed in paragraph 4.

b. The proposal shall contain sufficient detail for the Signatory Parties (including the City) to use the Groundwater Model to conduct Predictive Particle Tracking, or other predictive tools as they may be added (with EPA and DTSC approval) to the Groundwater Model, as defined in the Ordinance and SOW, with the extraction wells in the Newmark and Muscoy Operable Units operating at the Adjusted Target Extraction Rate (as adjusted from time to time by EPA and DTSC)

established in EPA's September 2007 Operational and Functional Determination under the Statement of Work (SOW) attached to the Consent Decree, over a representative hydrologic cycle, including representative wet and dry periods for the Bunker Hill Basin, to determine the percentage of particle capture achieved at all times over the life of the proposed project with the project operating at full permitted capacity for the entire permit term. The modeling shall use the previously approved parameters (e.g. current production, forecast of future demand, contaminants, particle positions) in the modeling effort, as updated from time to time with new information. The City shall be primarily responsible for this review, including the provision of outside consulting services, but all Signatory Parties shall be entitled to participate to the extent they deem reasonable and prudent.

c. As required by the SOW, Section III.I., "[a]ny change to the model parameters by the applicant or the City, beyond adding the proposed artificial recharge and/or pumping considered pursuant to the application, that would influence the structure of the [Groundwater] Model [(e.g. any recalibration, different boundary conditions, different model cell properties, or different step sizes, etc.)) shall undergo the same level of stakeholders' review as outlined in the work plan approved by [EPA], and shall be fully described in the application and/or evaluation and proposed decision by the City, as applicable. The complete application package, including the City's evaluation of the application, will be required for EPA and DTSC review and approval in accordance with the Consent Decree." The list of information that shall, at a minimum, be provided to EPA/DTSC is attached hereto as **Exhibit D**.

d. The applicant shall bear the consultant costs of conducting the required modeling, unless the Signatory Parties determine by unanimous agreement that consultant costs will be shared. The City shall cause its consultant to provide a binding estimate of the costs to the applicant for the required modeling, which estimate shall be prepared using the same rates charged to the City by the consultant for similar work in the same time period, and provide for completion no later than six months after receipt of the applicant's submission. The City agrees that the applicant may use the results of the required modeling as evidence in other proceedings, including compliance with CEQA provided that the applicant shall pay for any additional consultant costs incurred in such later use of the modeling results.

e. Pursuant to Paragraph 28 of the Consent Decree, the applicant must agree in writing to provide EPA, DTSC, and the Signatory Parties (including the City) (collectively or individually, "the Requesting Party"), and their contractors or representatives (1) access at reasonable times to the wells or spreading basins or related areas for purposes of verifying compliance with the approval under this Agreement, and (2) upon reasonable notice, to inspect and copy documents and records of the operations of the well(s) or spreading basin addressed in the application for the purposes of verifying compliance with the terms of any approval under this Agreement.

The rights set forth in sections (1) and (2) above shall be exercised during normal business hours of the applicant. The Requesting Party will advise the applicant at least three (3) business days in advance of the proposed dates and times the Requesting Party desires to exercise the rights set forth above. All entries, inspections or copying will be at Requesting Party's sole cost and expense.

The applicant will have the right to have a representative of applicant accompany the Requesting Party and Requesting Party's representatives, agents or designees (including contractors) while they are on the applicant's real property.

In exercising its rights of access, entry, inspection and copying under this subparagraph, the Requesting Party (other than EPA or DTSC) shall protect, indemnify, defend and hold the applicant's property, applicant and applicant's officers, directors, employees, agents, representatives, contractors, successors and assigns free and harmless from and against any and all claims, damages, liens, stop notices, liabilities, losses, cost and expenses, including reasonable attorney's fees and court costs, resulting from Requesting Party's exercise of such rights of access, entry, inspection and copying set forth herein.

f. No Signatory Party shall approve or recommend approval by EPA or DTSC of a proposed project predicted by the Groundwater Model (as interpreted by the professional judgment of capable groundwater geologists familiar with the model and the Bunker Hill Basin and as reviewed using each Signatory Party's best professional judgment) to have an Adverse Effect on the Newmark or Muscoy Interim Remedial Actions. No Signatory Party to this Agreement shall undertake any such proposed project so predicted to have an Adverse Effect, unless such Adverse Effect shall be predicted by the Groundwater Model to have been resolved by Mitigation Measures, Project Redesign, or a combination of the two, as those terms are defined below.

g. Any proposed project shall be presumed to have an Adverse Effect, if the proposed project is forecast to:

- (1) Reduce particle capture (as measured using Predictive Particle Tracking) below 90% at any time in the proposed future permit term; or
- (2) Require an increase in the frequency of chemical monitoring from monitoring wells beyond the monitoring frequency specified in the SOW; or
- (3) Require additional chemical monitoring from production wells located downgradient from the Newmark or Muscoy extraction wells; or
- (4) Require an increase in pumping above the Adjusted Design Extraction Rate, as set forth in the SOW, or to initiate Non-Routine Maintenance as defined under the Consent Decree (all as described in the pertinent provisions of the SOW or Consent Decree attached hereto as Exhibit "E"); or
- (5) Cause a violation of the City's obligations under the Consent Decree.

h. The applicant may rebut the presumed Adverse Effect by Project Re-Design or Mitigation Measures to restore particle capture percentages, over a hydrologic cycle representative of long-term hydrology and extending for a term at least as long as the proposed permit term, to at least 90% at all times, with the proposed project operating at the full permitted capacity for the life of the proposed project. The selection of a Project Re-Design or Mitigation Measures shall be at the sole discretion of the applicant. If the forecast Adverse Effect is increased chemical monitoring frequency, the initiation of Non-Routine Maintenance, or increased remedial compliance costs by the City or such costs for any other Signatory Party's groundwater remediation efforts, or violation of the Consent Decree, the Adverse Effect may also be rebutted by Project Re-Design or Mitigation Measures reliably forecast to eliminate the Adverse Effect.

i. "Mitigation Measures" mean readily enforceable and verifiable steps taken to reduce or eliminate Adverse Effects forecast for a proposed new or reconstructed well or water spreading (artificial recharge) project by Predictive Particle Tracking or other predictive tools as they may be added to the groundwater model and approved by EPA and DTSC. Mitigation Measures can include, but are not limited to:

(1) Locating an additional well or wells in the contaminant plume to counteract migration of contaminants past the extraction wells at the Newmark or Muscoy Interim Remedial Actions;

(2) Readily enforceable and verifiable pumping restrictions;

(3) Physical reductions in the size of well equipment to limit the well capacity;

(4) In the case of increased compliance costs, financial assurance in the form of performance or surety bonds, letters of credit, or other financial instruments sufficient to address and defray documented incremental City compliance cost increases directly attributable to the proposed project or to address and defray documented incremental compliance cost increases by any other Signatory Party for groundwater remediation efforts;

j. "Project Re-Design" means verifiable and enforceable changes in the physical design, equipment, or location or volume of a proposed water spreading (artificial recharge) or new or reconstructed well project intended to reduce or eliminate Adverse Effects forecast for a project evaluated with Predictive Particle Tracking.

k. Upon approval of a project by the Signatory Parties, the parameters used in the Groundwater Model shall be adjusted to include the approved project for the purpose of future analyses.

13. This Agreement, and any other agreements reached among the Signatory Parties arising out of or relating to the Consent Decree, shall be subject to review by USEPA and DTSC. Likewise, decisions made by the Signatory Parties concerning new or reconstructed wells, or new spreading basins, pursuant to this Consent Decree, remain subject to review and objection by USEPA and DTSC. No Signatory Party shall construct such a project in the event of unresolved objections by USEPA or DTSC. This Agreement does not alter the Dispute Resolution provisions of the Consent Decree as among the City, USEPA, and DTSC. The City agrees that if DTSC or EPA, or both, deny or limit a project proposed and approved under this Agreement, that the City shall invoke the Dispute Resolution provisions of the Consent Decree against the denying or limiting agency, provided that the aggrieved party agrees in writing in advance to pay the City's attorney's and consultant's fees and incidental costs (including any and all costs or penalties ultimately charged by EPA or DTSC to the City pursuant to the Consent Decree as a result of the invocation of Dispute Resolution). The City further agrees to allow active participation in the Dispute Resolution process by the Signatory Party that proposed the project.

14. a. The Signatory Parties agree to use the following dispute resolution process concerning decisions that a Proposed Project has an Adverse Effect which has not been adequately resolved by Project Redesign, Mitigation Measures, or a combination of the two. In the event of an impasse, the affected Signatory Parties shall engage in mediation for a period of up to six months.

The mediation shall be conducted by JAMS (sometimes referred to as the mediation service provider), and shall be administered, to the extent practical in the San Bernardino office, or the JAMS office closest to San Bernardino. In the event, for whatever reason, JAMS is not available or lacks the necessary expertise, the parties shall first attempt to use the services of another judicially oriented service, such as IVAMS, and use the American Arbitration Association only after all other judicially based mediation services have refused to undertake the mediation and arbitration of the dispute. The mediator shall be selected by mutual agreement of all of the affected Signatory Parties, and the cost of the mediator shall be borne on an equal basis by all of the Signatory Parties to this Agreement. In the event the Signatory Parties are unable to agree on a mediator, the mediation service provider shall select a mediator with civil judicial experience. The Signatory Parties shall meet and confer prior to the mediation and provide to the mediator an agreed list of matters to be resolved by the mediation. Unless all of the Signatory Parties to the mediation agree otherwise, the only matters to be discussed at the mediation are those matters submitted to the mediator following the meet and confer meeting of the Signatory Parties. Time shall be of the essence during the process and all Signatory Parties shall cooperate to promptly complete the process.

b. . In the event the Signatory Parties are unsuccessful in resolving any or all of the issues presented to the mediator, the Signatory Party seeking approval of a Project alleged to have an unresolved Adverse Effect may seek judicial review of the Signatory Parties' decision. That review shall be based on the record compiled pursuant to this agreement and the Consent Decree, including the Groundwater Model predictions, together with any USEPA, DTSC, or USGS comments. Such review shall be sought only from the Court pursuant to the Consent Decree's provision for

continuing Court jurisdiction over the decisions of the Institutional Control Program required by the Consent Decree. No Signatory Party to this Agreement shall oppose any removal petition filed by the City in connection with the Consent Decree, and this undertaking shall survive the withdrawal by a Signatory Party to this Agreement and any termination of this Agreement. The Court shall review the Signatory Parties' decision *de novo*, with the burden of proof resting on the applicant to demonstrate, by a preponderance of the evidence, that the proposed Project will not have an Adverse Effect. Such judicial review will not in any way abrogate the review of a Project by EPA or DTSC under this Agreement.

15. Other water purveyors with interests in the Bunker Hill Basin or interests in any of the judgments initially referred to in recitals I.G, I.I and I.J above may become Signatory Parties to this Agreement upon the written consent of all the Signatory Parties. In the event another water purveyor joins this Agreement on terms different than those contained in this Agreement, such modification shall be made with respect to all Signatory Parties. No Signatory Party shall conclude any separate binding agreement with any other water purveyor governing approval under the Consent Decree of spreading basins in the City limits or new wells in the Management Zone.

16. This Agreement shall not operate to validate or invalidate any Signatory Party's water rights. Each Signatory Party to this Agreement reserves any and all claims and causes of action respecting its water rights claims, any and all defenses against any water rights claims made by any other entity, and any claims arising from contamination or water quality degradation. In particular, nothing in this Agreement is intended to validate, invalidate or modify the water rights of the Signatory Parties as they may exist as of the effective date of this Agreement. Further nothing in this

Agreement is intended to modify or affect in any way the Consent Decree terms or the judgments initially referred to in recitals I.G, I.I and I.J above. This Agreement shall not be used as evidence in any water rights claim or cause of action, except to defend against a claim that a Signatory Party has waived any of its water rights or causes of action by signing this Agreement.

17. Defined terms that are used in this Agreement and that are also used in the Consent Decree shall have the meaning set forth in the Consent Decree. In the event that there is any inconsistency between the definition of a term in this Agreement and a definition of the same term in the Consent Decree, the definition of the term in the Consent Decree shall control.

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

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

20. This Agreement has been arrived at through negotiations and each Signatory Party

has had a full and fair opportunity to review the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in the construction or interpretation of this Agreement.

21. This Agreement constitutes the entire agreement of the Signatory Parties with respect to the subject matter of this Agreement and supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this Agreement. Specifically, this Agreement terminates and supersedes the Predecessor Agreement, any extensions of that Agreement, and any prior versions of this Agreement which may have been executed among some of the parties. The parties shall remain bound to the confidentiality provisions for information exchanged pursuant to that Predecessor Agreement and the "Joint Defense and Confidentiality Agreement for the Agreement to Develop and Adopt an Institutional Controls Groundwater Management Program" dated February 23, 2005 attached hereto as **Exhibit F**.

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

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

24. This Agreement shall not create any right or interest in any non-Party or in any member of the public as a third party beneficiary.

25. This Agreement may be executed in one or more counterparts, which may be executed and delivered via facsimile transmission, each of which shall be deemed to be an original,

but all of which together shall constitute but one and the same instrument.

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

Signatures Begin on Following Page:

SIGNATURE PAGE

CITY OF SAN BERNARDINO

BY: _____
Toni Callicott, President
Board of Water Commissioners

DATE: _____

APPROVED AS TO FORM: _____

CITY OF SAN BERNARDINO MUNICIPAL WATER DEPARTMENT

BY: _____

DATE: _____

APPROVED AS TO FORM: _____

SIGNATURE PAGE

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

BY: _____

DATE: _____

APPROVED AS TO FORM: _____

SIGNATURE PAGE

WEST VALLEY WATER DISTRICT

BY: _____

DATE: _____

APPROVED AS TO FORM: _____

SIGNATURE PAGE

EAST VALLEY WATER DISTRICT

BY: _____

DATE: _____

APPROVED AS TO FORM: _____

SIGNATURE PAGE

RIVERSIDE HIGHLAND WATER COMPANY

BY: _____

DATE: _____

APPROVED AS TO FORM: _____

SIGNATURE PAGE

CITY OF RIVERSIDE

BY: _____

DATE: _____

APPROVED AS TO FORM: _____

SIGNATURE PAGE

CITY OF COLTON

BY: _____

DATE: _____

APPROVED AS TO FORM: _____

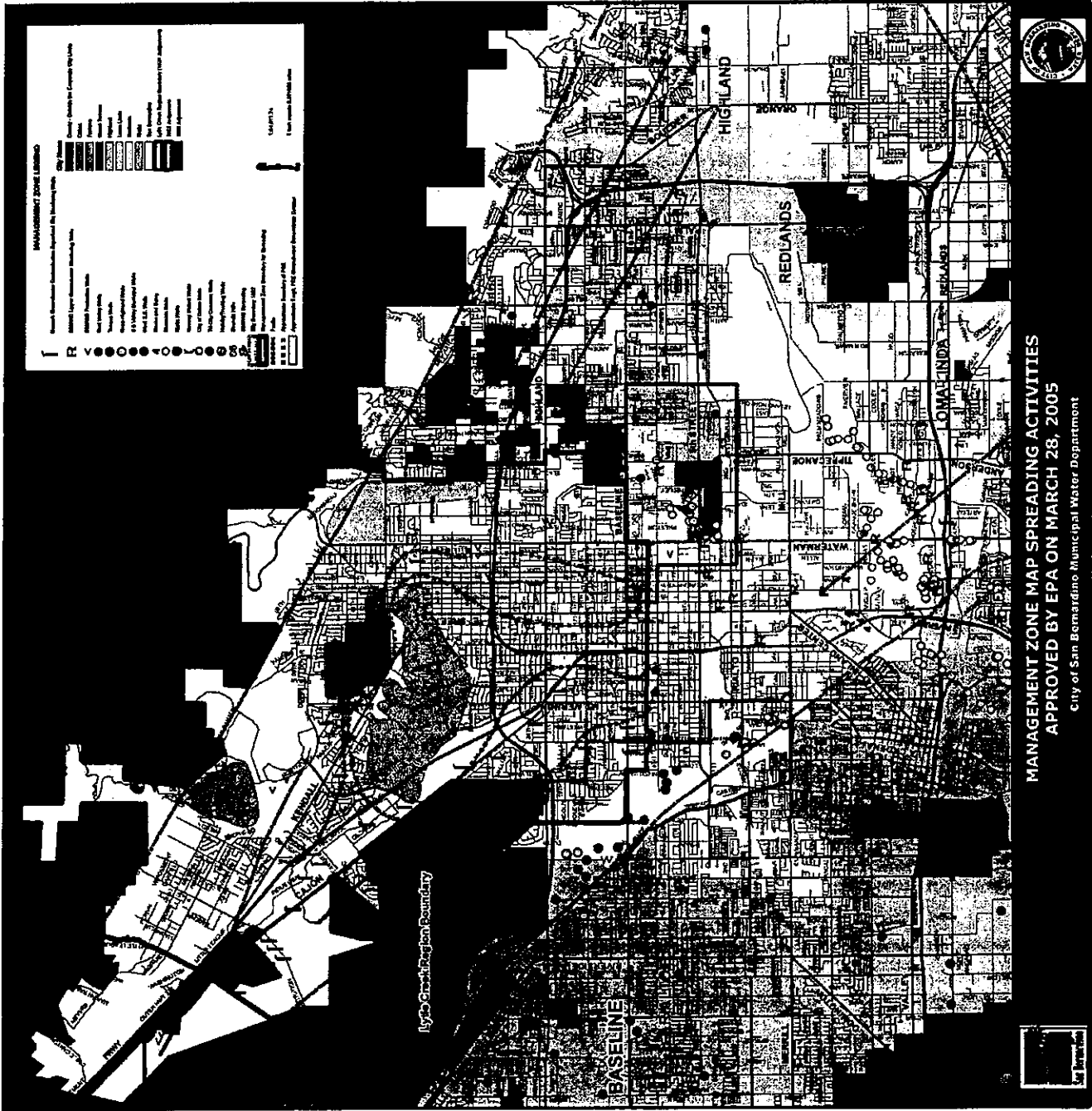
SIGNATURE PAGE

WESTERN MUNICIPAL WATER DISTRICT

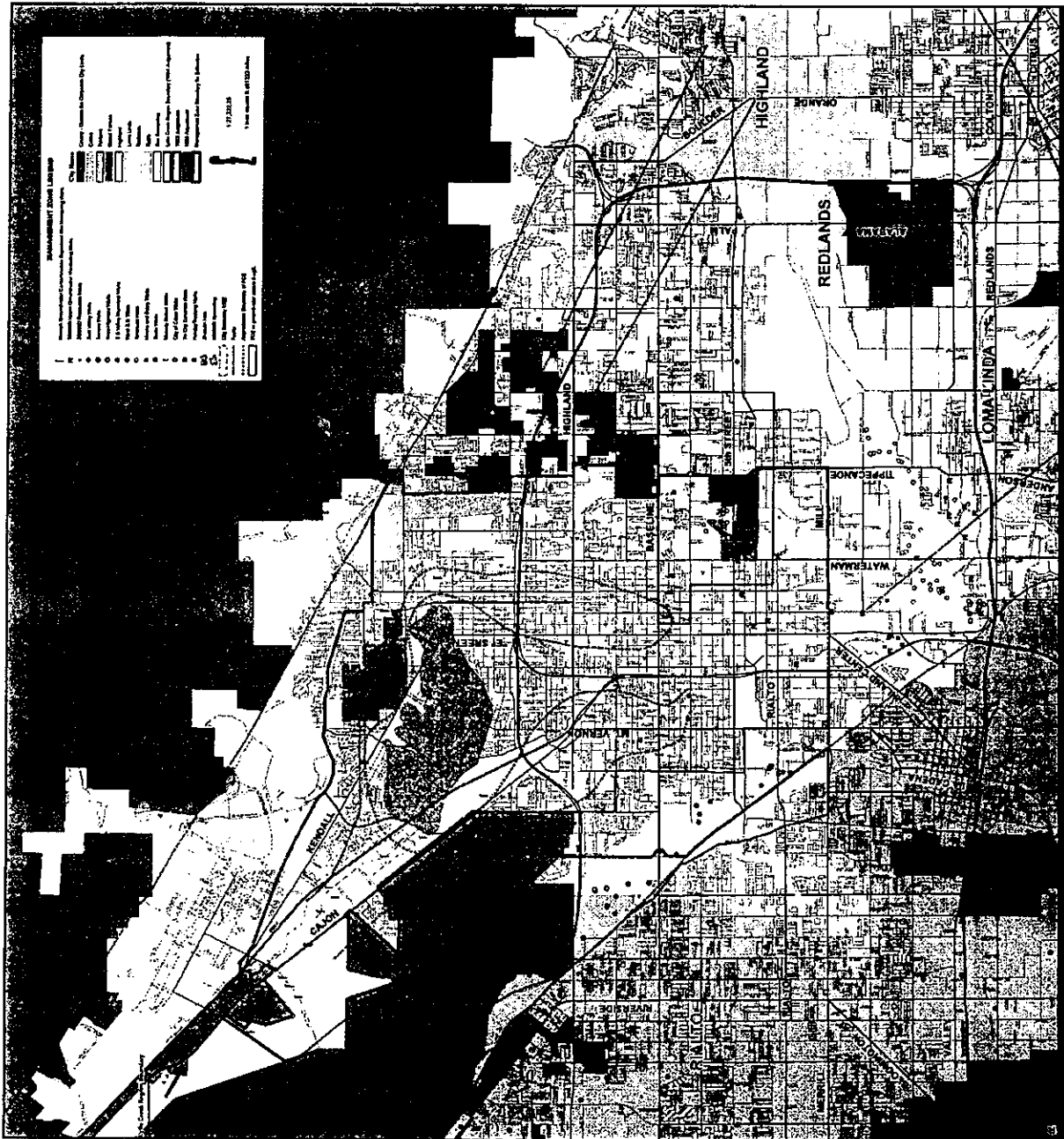
BY: _____

DATE: _____

APPROVED AS TO FORM: _____



MANAGEMENT ZONE MAP SPREADING ACTIVITIES
APPROVED BY EPA ON MARCH 28, 2005
City of San Bernardino Municipal Water Department



MANAGEMENT ZONE MAP FOR EXTRACTION ACTIVITIES
APPROVED BY EPA ON MARCH 28, 2005
 City of San Bernardino Municipal Water Department



Exhibit B1 Index

Preapproved Areas¹ of the Management Zones² of the US EPA 2004 Consent Decree for the Newmark & Muscoy Groundwater Contamination Superfund Site

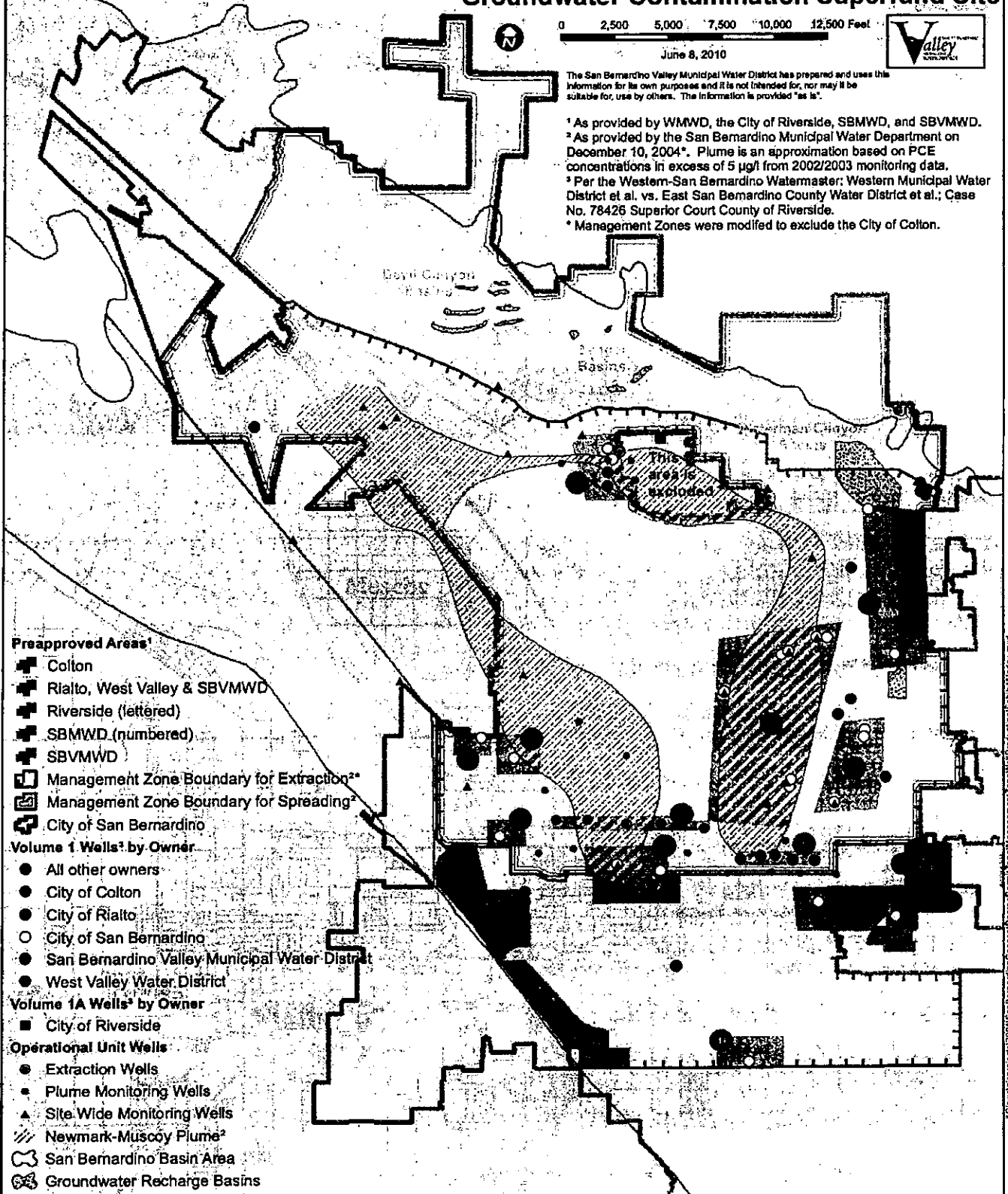


Exhibit B1a

The SAN BERNARDINO Preapproved Area¹ of the Management Zone² of the US EPA 2004 Consent Decree for the Newmark & Muscoy Groundwater Contamination Superfund Site

Preapproved Areas¹

- SBMWD
- ▨ Management Zone Boundary for Extraction^{2*}
- ▩ Management Zone Boundary for Spreading^{2*}
- ⊞ City of San Bernardino

Volume 1 Wells³ by Owner

- All other owners^o
- City of San Bernardino

Operational Unit Wells

- Extraction Wells
- Plume Monitoring Wells
- ▲ Site Wide Monitoring Wells
- ▨ Newmark-Muscoy Plume^{2*}
- ⊞ San Bernardino Basin Area
- ⊞ Groundwater Recharge Basins

0 2,500 5,000 7,500 10,000 Feet

June 8, 2010



The San Bernardino Valley Municipal Water District has prepared and uses this information for its own purposes and it is not intended for, nor may it be suitable for, use by others. The information is provided "as is".

¹ As provided by SBMWD.

² As provided by the San Bernardino Municipal Water Department on December 10, 2004*. Plume is an approximation based on PCE concentrations in excess of 5 µg/l from 2002/2003 monitoring data.

³ Per the Western-San Bernardino Watermaster: Western Municipal Water District et al. vs. East San Bernardino County Water District et al.; Case No. 78426 Superior Court County of Riverside.

* The Mt. Vernon well in Area 6 is now wholly owned by the SBMWD. The wells in Areas 11 and 12 are owned by the EPA and operated by the SBMWD. The wells in Area 12 are not yet operational.

* Management Zones were modified to exclude the City of Colton.

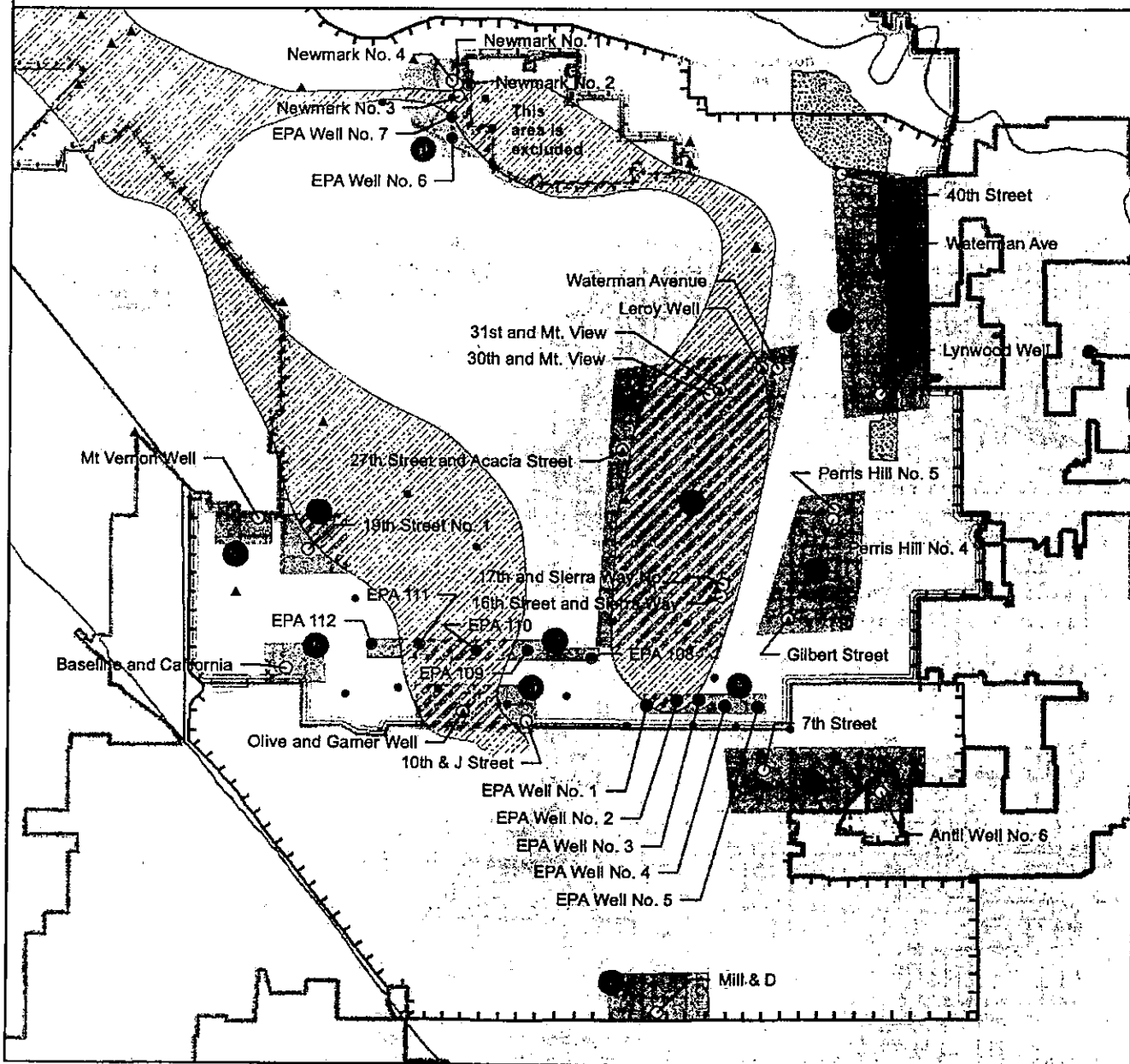


Exhibit B1b

The SBVMWD Preapproved Area¹ of the Management Zone² of the US EPA 2004 Consent Decree for the Newmark & Muscoy Groundwater Contamination Superfund Site

0 500 1,000 1,500 2,000 Feet

June 8, 2010



The San Bernardino Valley Municipal Water District has prepared and uses this information for its own purposes and it is not intended for, nor may it be suitable for, use by others. The information is provided "as is".

Preapproved Areas¹



SBVMWD



Management Zone Boundary for Spreading²

Volume 1 Wells³ by Owner



San Bernardino Valley Municipal Water District



Newmark-Muscoy Plume²

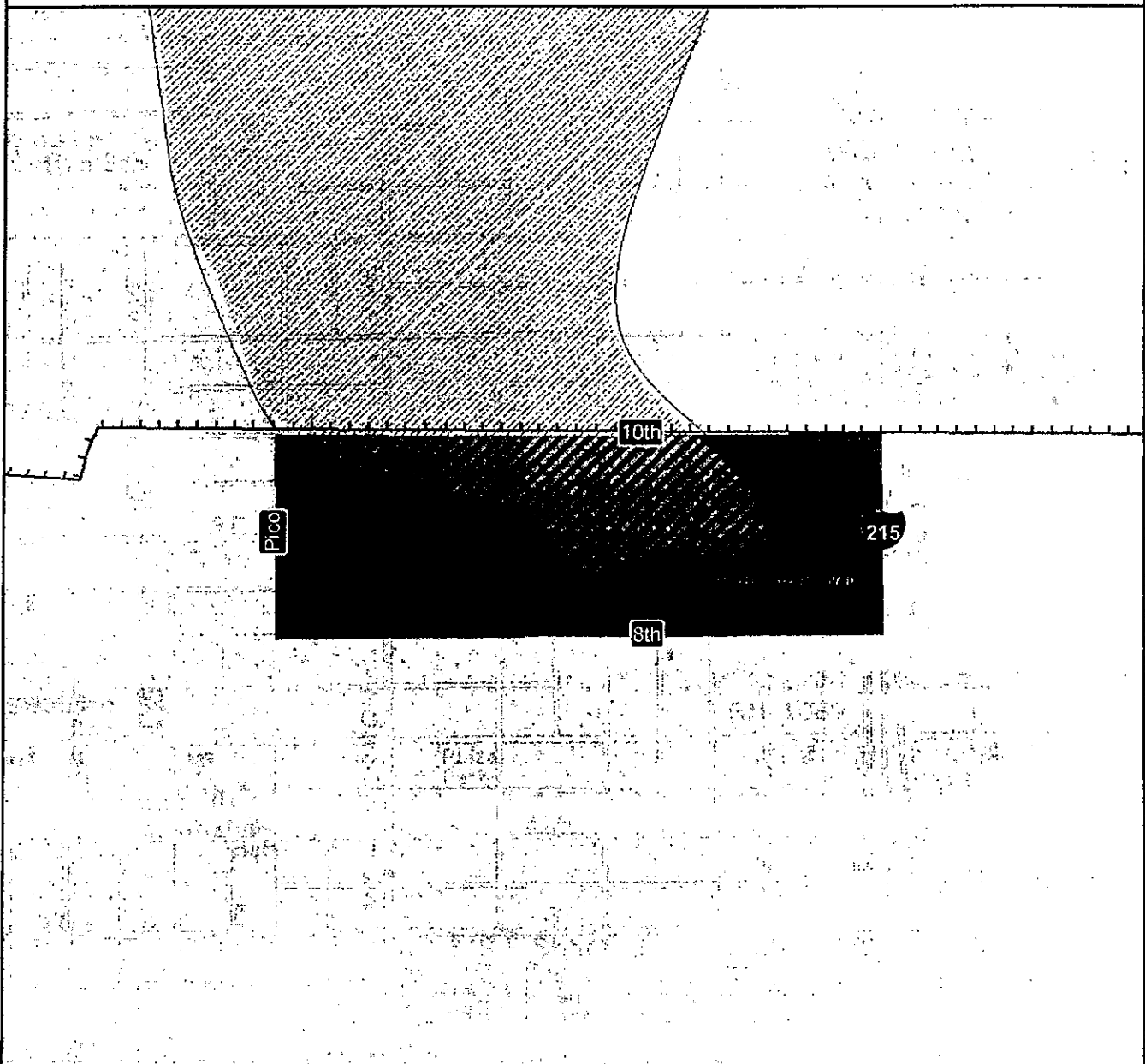


San Bernardino Basin Area

¹ As provided by SBVMWD.

² As provided by the San Bernardino Municipal Water Department on December 10, 2004. Plume is an approximation based on PCE concentrations in excess of 5 µg/l from 2002/2003 monitoring data.

³ Per the Western-San Bernardino Watermaster: Western Municipal Water District et al. vs. East San Bernardino County Water District et al.; Case No. 78426 Superior Court County of Riverside.



\\val\st\chorepact\WDM\SanBernardino\ConsentDecree\Volume1\ManagementZoneWellProductionE\sh\SB10\ManagementZonePreapprovedAreas\SBVMWD\Initial.mxd

Exhibit B1c

The RIVERSIDE Preapproved Area¹ of the Management Zone² of the US EPA 2004 Consent Decree for the Newmark & Muscoy Groundwater Contamination Superfund Site

Preapproved Areas¹

- Riverside
- ▭ Management Zone Boundary for Extraction²
- ▭ Management Zone Boundary for Spreading²
- ▭ City of San Bernardino

Volume 1 Wells³ by Owner

- City of San Bernardino

Volume 1A Wells³ by Owner

- City of Riverside
- ▭ San Bernardino Basin Area

0 500 1,000 1,500 2,000 Feet

June 8, 2010



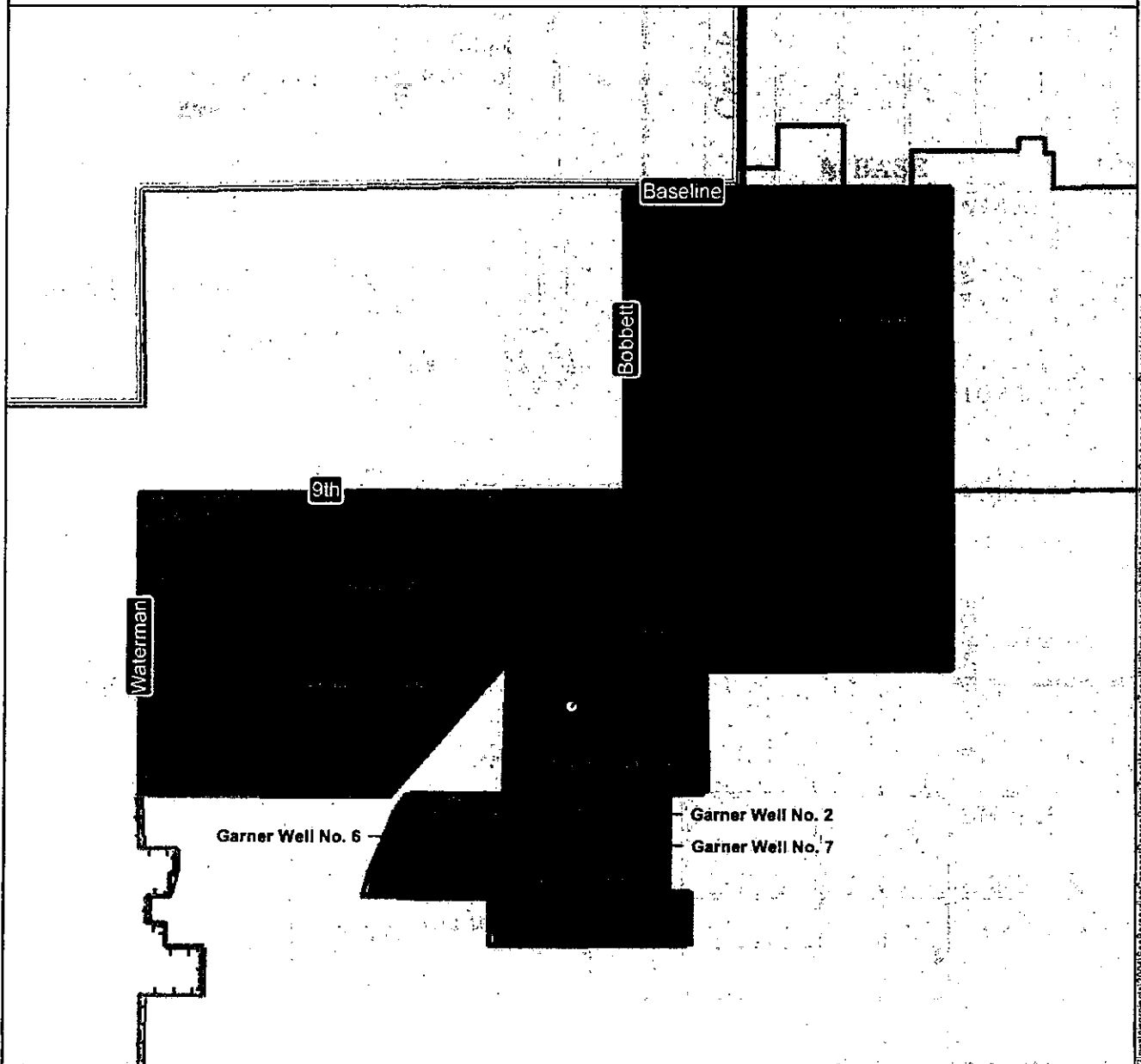
The San Bernardino Valley Municipal Water District has prepared and uses this information for its own purposes and it is not intended for, nor may it be suitable for, use by others. The information is provided "as is".



¹ As provided by the City of Riverside.

² As provided by the San Bernardino Municipal Water Department on December 10, 2004.

³ Per the Western-San Bernardino Watermaster: Western Municipal Water District et al. vs. East San Bernardino County Water District et al.; Case No. 78426 Superior Court County of Riverside.



G:\GIS\approve\at\2004\18 San Bernardino Consent Decree\Farm\ZoneManagement\ExhibitB1c\Map\PreapprovedAreas\PreapprovedAreas.dwg




Exhibit B1e

The COLTON Preapproved Area¹ of the Management Zone² of the US EPA 2004 Consent Decree for the Newmark & Muscoy Groundwater Contamination Superfund Site

Preapproved Areas¹

-  Colton
-  Management Zone Boundary for Extraction**
-  City of San Bernardino

Volume 1 Wells* by Owner

-  All other owners
-  City of Colton
-  San Bernardino Basin Area

0 500 1,000 1,500 2,000 Feet

June 8, 2010



The San Bernardino Valley Municipal Water District has prepared and uses this information for its own purposes and it is not intended for, nor may it be suitable for, use by others. The information is provided "as is".

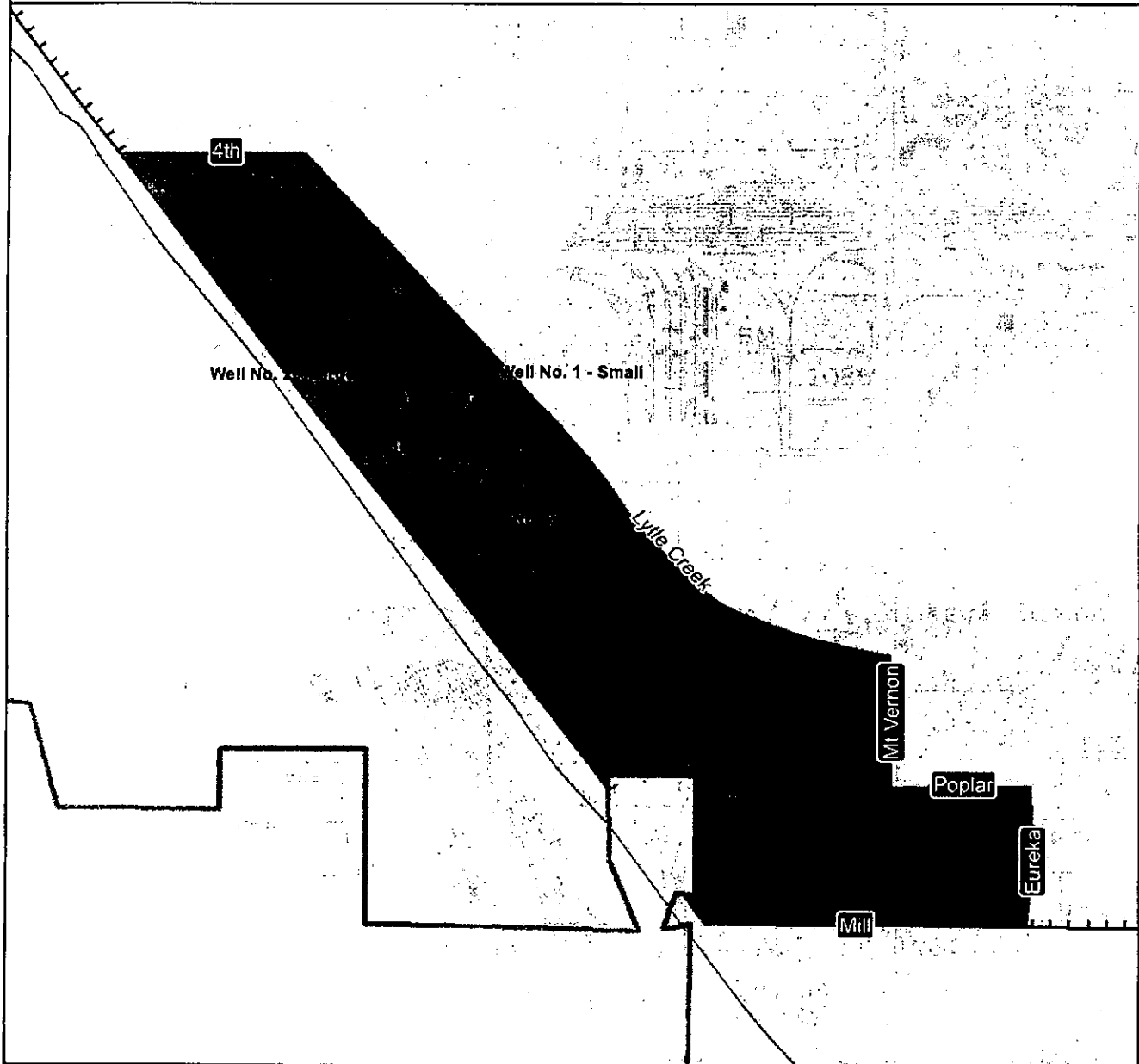


¹ As provided by WMWD.

² As provided by the San Bernardino Municipal Water Department on December 10, 2004*.

³ Per the Western-San Bernardino Watermaster; Western Municipal Water District et al. vs. East San Bernardino County Water District et al.; Case No. 78426 Superior Court County of Riverside.

* Management Zones were modified to exclude the City of Colton.



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Exhibit B

Extraction Data for Owners and Wells

Owner Name (per Watermaster)	Local Name (per SBVWWD WRDDB)	Recorotation Number	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Pre-Approved Pumping Limits**
Arrowhead Country Club	No. 1	3601925	482	531	566	436	487	485	493	415	509	538	531	586
Atchison, Topoka & Santa Fe Railway Co.	4	FC 3600178	0	0	0	0	0	0	0	FC	0	0	0	0
	Well 3	FC 3600179	0	0	0	0	0	0	0	FC	0	0	0	0
	Owner Total:		0	0	0	0	0	0	0	0	0	0	0	0
Balcom	None Provided	0000005	0	0	0	0	0	0	0	FC	0	0	0	0
Batchelor	None Provided	0000009	1	1	1	1	1	1	1	1	1	1	1	1
	None Provided	0000010	1	1	1	1	1	1	1	1	1	1	1	1
	Owner Total:		2	2	2	2	2	2	2	2	2	2	2	2
Call Mt. Company	Canyon Creek #1	3603697	18	138	140	130	140	197	197	196	197	196	196	197
Campana Concrete Co. (C&C)	Paradise 2		0	0	0	0	0	0	0	0	0	7	7	0
Colton, City of	4	FC 3601250	0	0	0	0	0	0	0	FC	0	0	0	0
	5	FC 3601251	267	317	16	0	0	0	0	FC	0	0	0	0
	6	FC 3601252	0	0	0	0	0	0	0	FC	0	0	0	0
	7	3601253	750	1,064	997	783	446	0	0	0	0	0	0	0
	8	3601254	173	287	348	137	365	360	165	0	0	0	0	0
	13	3601257	528	710	728	434	1,095	652	691	773	432	492	804	804
	14	FC 3601258	212	203	203	266	363	0	0	FC	0	0	0	0
	16	3601260	630	382	405	260	727	789	684	862	288	534	449	862
	19	3602405	942	782	822	985	851	139	0	410	783	768	997	768
	26	3603704	0	0	0	1,027	1,895	2,003	1,086	0	708	860	551	1,698
	27	3603914	0	0	0	0	0	1,047	1,787	682	1,407	1,578	1,698	1,698
	28	3603915	0	0	0	0	0	699	868	508	508	789	821	789
	29	3603916	0	0	0	0	0	283	284	201	325	191	0	0
	Bamhi 18	FC 3601262	0	0	0	0	0	0	0	FC	0	0	0	0
	No. 21	3602793	2,204	2,601	1,798	1,940	1,918	1,412	534	2,320	2,263	1,694	1,787	1,787
	No. 6B	FC 3602498	0	0	0	0	0	0	0	FC	0	0	0	0
	Plunge 12	FC 3601256	0	0	0	0	0	0	0	FC	0	0	0	0
	Owner Total:		6,706	6,346	5,339	5,339	7,417	7,384	6,129	6,816	6,721	6,886	6,917	7,417
Del Rosa Mutual Water Company	Golden 1	FC 3601809	0	0	0	0	0	0	0	FC	0	0	0	0
Dongio Dairy	None Provided	0000021	0	0	0	0	0	0	0	FC	0	0	0	0
East Valley Water District	Plant No. 105	FC 3602174	0	0	0	0	0	0	0	FC	0	0	0	0
	Plant No. 11	FC 3601662	0	0	0	0	0	0	0	FC	0	0	0	0
	Plant No. 11A	3602563	2,591	1,898	2,033	2,411	1,756	1,149	1,658	1,135	3,914	3,370	1,546	1,546
	Plant No. 60	FC 3600183	0	0	0	0	0	0	0	FC	0	0	0	0
	Owner Total:		2,591	1,898	2,033	2,411	1,756	1,149	1,658	1,135	3,914	3,370	1,546	1,546
Holmes Ice & Cold Storage Co. Inc.	None Provided	0000045	0	0	0	0	0	0	0	FC	0	0	0	0
	2	FC 3600644	23	0	0	0	0	0	0	FC	0	0	0	0
	None Provided	FC 3600645	0	0	0	0	0	0	0	FC	0	0	0	0
	Owner Total:		23	0	0	0	0	0	0	0	0	0	0	23
King	None Provided	0000073	1	1	1	1	1	1	1	1	1	1	1	1
Krantz Dairy	None Provided	0000075	0	0	0	0	0	0	0	0	0	0	0	0
Mount Vernon Water Company	Mt. Vernon Well		0	0	0	0	0	0	0	FC	0	0	0	0
Mt. View Cemetery of San Bernardino	1	3600742	0	0	0	0	0	0	0	0	0	0	0	0
	2	3600743	130	124	118	135	137	200	200	200	129	79	141	141
	3	360742-	128	87	89	148	149	200	200	123	115	171	104	104
	Owner Total:		258	211	207	283	286	400	400	323	244	260	245	400

Exhibit B

Extraction Data for Owners and Wells

Owner Name (per Watermaster)	Local Name (per SBVWWD WRDB)	Recordation Number	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Pre-Approved Pumping Limits**
Pacific High School Pleasanton Rialto, City of	None Provided	0000096	0	0	0	0	0	0	0	0	0	0	0	0
	None Provided	0000097	0	0	0	0	0	0	0	0	0	0	0	0
	City #4	3603536	873	153	974	1,488	773	1,760	2,736	4,921	3,084	2,365	2,427	0
	City #6	3601929	2	5	1	7	3	3	2	3	4	0	0	0
	City No. 4 / #1	FC 3601085 ?	0	0	0	0	0	0	0	0	0	0	0	0
	Owner Total:		875	158	975	1,493	776	1,763	2,736	4,924	3,088	2,365	2,427	4,924
	Subarea 1: Cooley E	FC 3601220	0	0	0	0	0	0	0	0	0	0	0	0
	Cooley F	FC 3601226	0	0	0	0	0	0	0	0	0	0	0	0
	Gamer 3	FC 3601466	0	0	0	0	0	0	0	0	0	0	0	0
	Gamer Well No. 1	3601464	157	234	552	439	696	336	467	297	108	211	338	0
Gamer Well No. 2	3601465	131	93	266	774	780	5	110	0	0	0	0	0	
Gamer Well No. 4	3601467	0	0	0	0	0	0	0	0	0	0	0	0	
Gamer Well No. 5	3601468	1,139	1,756	1,924	1,071	2,144	1,943	1,161	1,115	1,206	1,322	1,502	1,999	
Gamer Well No. 6	3603254	4,897	4,742	4,558	3,573	4,307	3,467	3,084	2,458	2,470	3,502	2,062	2,062	
Gamer Well No. 7	3302794	3,827	4,652	4,386	3,163	3,658	3,258	3,021	3,317	2,071	2,915	2,600	2,600	
Scheuer Well	3601489	55	69	157	111	137	8	2	0	0	0	0	0	
Scheuer #2 Well														
Totals:		10,068	14,548	11,843	9,131	11,720	9,017	7,845	7,187	6,865	7,950	7,950	11,843	
Subarea 2: Sites Well	3601463	813	563	368	759	467	530	302	903	539	647	728	808	
Owner Total:		10,881	12,109	12,211	9,890	12,187	9,547	8,147	8,100	8,394	8,597	9,228	17,000	
San Bernardino Valley MWD	9th Street Well	3603141	2,243	2,120	2,503	2,713	2,016	1,824	1,990	1,195	0	0	0	
	Perris Street Well	3603174	1,891	2,437	2,795	2,620	2,289	2,020	2,688	0	0	0	0	
Owner Total:		4,134	4,557	5,298	5,333	3,305	3,894	4,192	3,883	0	0	0	0	
San Bernardino, City of	Subarea 1: Newmark No. 1	3600714	642	315	565	761	572	319	563	291	342	432	485	
	Newmark No. 2	3600715	901	137	620	642	672	1,046	685	218	597	736	808	
	Newmark No. 4	3602399	820	630	1,087	1,197	1,071	1,919	1,534	1,052	1,048	1,292	1,554	
Totals:		2,363	1,082	2,272	2,600	2,315	3,284	2,782	2,861	1,961	1,967	2,480	2,857	
Subarea 2: 40th Street	3603472	88	155	93	51	41	55	26	33	48	20	67	67	
Owner Total:		1,748	1,094	1,308	1,989	2,371	1,717	1,717	1,087	901	910	1,292	1,460	
Subarea 3: Gilbert Street	3600729	1,836	1,249	1,491	2,060	2,412	1,772	1,113	1,113	934	968	968	968	
Perris Hill No. 4	3601117	473	5	8	554	1,002	1,753	1,485	1,133	92	1,133	1,325	1,012	
Perris Hill No. 5	3601115	199	0	0	114	105	428	105	105	71	1	1	0	
Totals:		882	5	8	781	1,206	2,644	1,894	1,894	367	1,282	1,337	1,013	
Subarea 4: 7th Street	3602265	1,814	9	36	120	140	701	338	91	129	102	140	140	
Anti Well No. 4	3600734	0	0	0	0	0	0	0	0	0	0	0	0	
Anti Well No. 5	3600731	0	0	0	0	0	0	0	0	0	0	0	0	
Anti Well No. 6	3602422	2,384	2,269	2,553	1,250	1,771	1,407	1,680	2	53	187	187	0	
Totals:		4,178	2,278	2,669	1,370	1,911	2,108	2,018	2,018	93	182	289	140	
Subarea 5: 16th Street and Sierra Way	3600726	1,672	3	3	2	2	9	1	2	2	1	159	282	
17th Street and Sierra Way No. 2	3603208	0	4	2	2	2	1	1	1	2	1	159	282	
27th Street and Acacia Street	3600720	126	2	224	306	340	488	828	272	630	491	512	512	
30th and Mt. View	3600719	397	1,732	1,594	1,365	2,266	2,702	2,522	1,477	1,784	2,073	1,810	1,810	
31st and Mt. View	3602081	28	260	131	63	669	1,033	590	340	340	102	298	298	
Leroy Well	3602401	1,072	371	585	590	1,574	1,969	1,536	681	911	817	822	822	
Waterman Avenue	3600728	1,057	1,590	2,488	1,445	1,837	2,041	1,753	1,874	1,874	1,914	1,293	1,293	
Totals:		4,353	3,962	5,027	3,773	6,890	8,243	6,891	4,528	6,086	7,311	6,661	6,661	
Subarea 6: Mt. Vernon Well	3600319	0	312	786	778	975	1,442	754	754	182	292	283	339	
Subarea 7: Baseline and California	3602400	549	799	480	492	438	416	284	284	182	292	283	339	

Exhibit B

Extraction Data for Owners and Wells

Owner Name (per Watermaster)	Local Name (per SBVMWD WRDB)	Recordation Number	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Pre-Approved Pumping Limits**
Subarea 8: 19th Street No. 1 19th Street No. 2		3600717	961	763	1,218	1,411	1,390	889	1,353	1,480	1,536	1,214	348	
		3600718	1,259	1,067	1,761	1,247	1,631	862	1,500	1,620	1,47	168	269	
Subarea 9: 10th & J Street Olive and Garner Well		Totals:	2,220	1,820	2,979	2,658	3,021	1,751	2,853	1,678	1,493	1,382	637	3,021
		3603207	995	1,816	3,081	2,932	3,149	2,844	2,864	1,442	1,387	2,073	1,820	
Subarea 10: Mill & D Newmark South Inhibitor: EPA Well No. 1 EPA Well No. 2 EPA Well No. 3 EPA Well No. 4 EPA Well No. 5		Totals:	2,680	4,230	4,845	4,504	6,336	4,177	5,453	2,788	3,381	3,488	2,826	5,838
		3600738	488	561	485	415	386	350	387	443	423	487	429	561
Newmark North Inhibitor: EPA Well No. 6 EPA Well No. 7 Newmark No. 3		Totals:	3,100	2,021	1,792	1,732	2,024	1,690	2,061	2,268	2,333	2,178	1,966	16,100
		3603688	3,100	2,206	1,908	2,432	2,210	1,776	2,279	2,132	2,541	2,264	2,165	
Muscoy Inhibitor: EPA Well No. 108 EPA Well No. 109 EPA Well No. 110 EPA Well No. 111 EPA Well No. 112		Totals:	3,400	3,139	3,037	2,788	2,043	2,361	2,371	2,371	2,371	2,120	301	3,412
		3603691	3,200	2,322	2,371	2,665	2,434	1,871	2,232	2,337	2,486	2,185	2,107	
Inactive: 1 17th Street Sw 2-Gilbert/Canyon Road 23rd Street and E. Street Acacia Anita Well No. 1 Anita Well No. 2 Anita Well No. 3 Birch St Cliffords Collins Darby Gardena Hanford No. 1 Hanford No. 2 Macfarland Johnson North E Street Perris HRI No. 2 Perris HRI No. 3 So G St Well No. 1 State		Totals:	16,100	12,034	11,637	11,698	11,647	9,076	11,165	11,532	12,144	9,496	12,049	16,100
		3603692	3,200	2,346	2,429	1,940	2,091	1,695	2,232	2,424	2,664	2,567	2,379	
Totals:		3603693	1,500	1,457	1,220	640	750	480	547	672	1,201	944	529	
		3603694	2,400	1,891	1,457	1,328	1,631	1,563	822	822	2,158	2,214	2,157	2,074
Totals:		3600716	1,123	2,205	950	1,324	1,372	827	1,284	986	1,507	1,542	1,588	5,553
		3603786	6,023	5,653	3,627	3,492	3,763	2,870	2,853	2,853	1,824	2,250	1,776	2,362
Totals:		3603787	0	0	0	0	0	0	0	0	1,592	2,244	1,187	
		3603788	0	0	0	0	0	0	0	0	2,471	2,829	1,863	2,493
Totals:		3603789	0	0	0	0	0	0	0	0	2,520	3,663	3,078	2,284
		3603790	0	0	0	0	0	0	0	0	1,388	1,956	2,489	2,472
Totals:		3602066 ?	0	0	0	0	0	0	0	0	13,012	11,366	11,608	13,012
		3600725	0	0	0	0	0	0	0	0	0	0	0	0
Totals:		3602067	0	0	0	0	0	0	0	0	0	0	0	0
		3602264	0	0	0	0	0	0	0	0	0	0	0	0
Totals:		FC 3600722	0	0	0	0	0	0	0	0	0	0	0	0
		FC 3600733	0	0	0	0	0	0	0	0	0	0	0	0
Totals:		FC 3600732	0	0	0	0	0	0	0	0	0	0	0	0
		FC 3600730	0	0	0	0	0	0	0	0	0	0	0	0
Totals:		FC 3600735	0	0	0	0	0	0	0	0	0	0	0	0
		FC 3601626	0	0	0	0	0	0	0	0	0	0	0	0
Totals:		3601880	0	0	0	0	0	0	0	0	0	0	0	0
		3601878	0	0	0	0	0	0	0	0	0	0	0	0
Totals:		3601879	0	0	0	0	0	0	0	0	0	0	0	0
		FC 3600723	0	0	0	0	0	0	0	0	0	0	0	0
Totals:		FC 3600724	0	0	0	0	0	0	0	0	0	0	0	0
		FC 3600222	0	0	0	0	0	0	0	0	0	0	0	0
Totals:		3600721	0	0	0	0	0	0	0	0	0	0	0	0
		FC 3601114	0	0	0	0	0	0	0	0	0	0	0	0
Totals:		3601116	0	0	0	0	0	0	0	0	0	0	0	0
		FC 3600736	0	0	0	0	0	0	0	0	0	0	0	0
Totals:		3601588	0	0	0	0	0	0	0	0	0	0	0	0
		Owner Total:	40,333	33,573	36,230	33,833	39,316	36,690	37,313	37,526	48,302	43,480	43,708	46,502
Totals:		Subarea 4 + 10 Combined:	4,638	2,839	3,054	1,785	2,297	2,458	2,405	536	605	776	569	4,838
		Subarea 2 + 3 Combined:	2,518	1,254	1,409	2,821	3,618	4,316	3,007	3,007	1,201	2,220	2,295	1,971
Totals:		Subarea 6 + 7 Combined:	560	1,111	1,266	1,270	1,413	1,858	1,038	252	542	720	1,266	1,858
		Subareas 2, 3, 4, 5, 7 & 10 Total:	7,714	5,204	5,729	5,886	7,328	8,632	6,450	2,009	3,307	3,791	3,806	8,632
Totals:		Subarea 1 + 7 + 8 Combined:	2,780	1,931	4,245	3,928	4,434	3,609	3,891	1,927	2,225	2,102	1,903	4,434
		Subareas 1 thru 10 Total:	33,110	19,354	22,740	20,311	26,386	26,688	24,844	25,007	32,651	32,442	30,071	32,651
San Bernardino, County of														
County Hosp														
350 350 200 13 13 13 13 13 13 13 121 119 118														

Exhibit B

Extraction Data for Owners and Wells

Owner Name (per Watermaster)	Local Name (per SBVWMD WRDB)	Recreation Number	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Pre-Approved Pumping Limits**
Smith	None Provided		1	1	1	1	1	1	1	1	1	1	1	1
Southern California Edison Company	Hanford 1	FC3690723	0	0	0	0	0	0	0	FC	0	0	0	0
	Sim Pl 1	FC3601012	0	0	0	0	0	0	0	0	0	0	0	0
	Sim Pl 2	FC3601013	0	0	0	0	0	0	0	0	0	0	0	0
Terrace Water Company	Owner Total:		0	0	0	0	0	0	0	0	0	0	0	0
	Large 1	FC3601684	0	0	0	0	0	0	0	FC	0	0	0	0
	Small 2	FC3601685	0	0	0	0	0	0	0	FC	0	0	0	0
	Well No. 1 - Small	3601684	331	176	382	284	272	304	501	253	321	368	255	255
	Well No. 2 - Large	3601686	377	654	584	676	709	609	327	571	557	514	558	558
	Owner Total:		708	830	946	940	981	913	828	824	878	882	813	813
Tri City Concrete	Plant	FC36013097	0	0	0	0	0	0	0	FC	0	0	0	0
Valley Water	Waterman Ave	00007140	20	20	20	20	20	20	0	20	0	0	0	20
Victoria Guaranty	Waterman Ave	0000389	0	0	0	0	0	0	0	FC	0	0	0	0
West San Bernardino County Water District*	Well No. 12		0	0	0	0	0	0	0	0	0	0	0	0
	Well No. 13	3607003	0	0	0	0	0	0	0	0	0	0	0	0
	Well No. 14		0	0	0	0	0	0	0	FC	0	0	0	0
	Well No. 15	3601848	932	661	752	625	1,597	819	851	32	1	101	764	764
	Well No. 30	3602766	0	1	0	0	0	603	506	150	56	141	930	930
	Owner Total:		932	662	752	625	1,597	1,422	1,457	192	57	242	1,694	1,694
Williams Dairy	None Provided	0000059	0	0	0	0	0	0	0	0	0	0	0	0

** Maximum extraction in any calendar year during the period 1998-2008 (Except City of Riverside and East Valley Water District)

*** The extractions for 1998, 1999 and 2000 were excluded from the determination of maximum extraction due to the terms of the 1995 amendment to Riverside Antil Judgment.

**** Owner Total and Grand Total are not equal to the sum of the subarea maximums because subarea maximums occur in different years.

* currently listed as Burlington Northern and Santa Fe Railway Company

** currently listed as West Valley Water District

3 City of San Bernardino owns all of the Mt. Vernon well are shown as part of the City of San Bernardino extractions.

Exhibit C

CITY OF RIVERSIDE PROPOSED ANNUAL PRODUCTION PER ICSA-B AGREEMENT (AFY) 24-May-10

Well	Year Construction	Age	Original Design gpm	Avg 2007 Pumping gpm	2007 Production AF	Well Depth ft	Casing Diameter in	Proposed Production AFY
Garner 1	1,900	10	700	700	279	210	540	10 1,600
Garner 2	1,900	10	700	700	-	-	544	10 1,600
Garner 4	1,900	10	900	900	-	-	594	10 1,600
Garner 5	1,950	60	1,550	1,550	1,022	1,322	985	16 2,500
Garner 6	1,990	20	3,500	3,500	2,500	3,501	1,230	2,700
Garner 7	1,995	15	3,000	3,000	2,490	2,915	1,240	2,700
Scheuer R	2,008	2	3,000	3,000	3,000	1,737	1,090	20 2,900
Stiles	1,923	87	1,150	1,150	642	647	981	12 1,400
Total			14,500	9,933	10,332			17,000

EXHIBIT "D"
LIST OF SUBMISSIONS FOR APPROVAL OF
NON-PRE-APPROVED PROJECTS

1. Project Description from applicant.
2. Technical Memorandum from SBMWD with recommendation.
3. Concurring Memorandum from ICESA group.
4. Any dissenting memoranda.
5. Project location map superimposed on the map attached to Consent Decree, which shows the Remedial Action facilities.
6. Pertinent historical data.
7. Select hydrographs.
8. Simulated water level contour maps every five (5) years for the proposed project beginning the year of planned project implementation. Final water level contour maps will also be included for the end of the model simulation period.
9. Most recent PCE plume maps showing particle starting locations
10. Tabulated summary of particle tracking capture analysis results for both the baseline model run and the proposed project model run.

Exhibit E

Extraction Rates For Newmark Plume Front and Muscoy Plume Extraction Well Networks

Newmark Plume Front Extraction Well Network	
Design Extraction Rate (DER)	8,800 gpm
Adjusted DER (35days/year maintenance allowance)	7,956 gpm
Target Extraction Rate (per 2007 O&F Determination)	6,900 gpm
Adjusted TER (per maintenance allowance)	6,238 gpm
Current Baseline Model Run Extraction Rates	7,531 gpm
Muscoy Plume Extraction Well Network	
Design Extraction Rate (DER)	8,900 gpm
Adjusted DER (35days/year maintenance allowance)	8,047 gpm
Target Extraction Rate (per 2007 O&F Determination)	8,010 gpm
Adjusted TER (per maintenance allowance)	7,242 gpm
Current Baseline Model Run Extraction Rates	7,626 gpm

Exhibit B

Institutional Controls Groundwater Management Program
Agreement (ICGMPA)

**Institutional Controls Groundwater Management Program Agreement
As of January 1, 2012**

This Institutional Controls Groundwater Management Program (ICGMP) Agreement (“**ICGMP Agreement**”) is entered into and effective as of this 1st day of January, 2012, by and among the following parties (collectively the “**Signatory Parties**”): the City of San Bernardino and the City of San Bernardino Municipal Water Department (collectively, the “**City**”); San Bernardino Valley Municipal Water District (Valley District); West Valley Water District (WVWD); East Valley Water District (EVWD); Riverside Highland Water Company (RHWC); the City of Riverside (“**Riverside**”); the City of Colton (“**Colton**”) and Western Municipal Water District (WMWD).

Recitals

I. Parties

A. The City of San Bernardino (“**City**”) is a party to a consent decree approved by the United States District Court, Central District of California, Western Division (Court), on March 23, 2005 (Consent Decree). The Consent Decree settles litigation entitled *City of San Bernardino v. United States of America*, Case No. CV96-8867 and *State of California Department of Toxic Substances Control v. United States of America*, Case No. CV 96-5205 (consolidated), which sought to address responsibility and funding for the remedy of the Newmark Groundwater Contamination Superfund Site in San Bernardino, alleged by San Bernardino and the State of California to arise from waste disposal activities by the United States Army during and after World War II in San Bernardino.

B. The Consent Decree obligates the City, among other things, to operate and maintain a system of wells and treatment plants known collectively for this Agreement as the “**Newmark Facilities**,” which include, in part, construction and implementation of two operable units: the Newmark Operable Unit (Newmark OU) and the Muscoy Operable Unit (Muscoy OU).

The Newmark Facilities are intended to function as a groundwater treatment system to clean up contaminants in a portion of the Bunker Hill Basin. The primary contaminants of concern in that plume are tetrachlorethylene (PCE) and trichloroethylene (TCE).

C. Pursuant to the terms of the Consent Decree, the “Work” to be done by the City is defined in the Consent Decree, and includes the operation and maintenance of the Newmark Facilities. The Work is subject to the oversight of both the United States Environmental Protection Agency (USEPA) and the State of California Department of Toxic Substances Control (DTSC), with the lead and support oversight roles divided between the two agencies, depending on the task. City compliance with Consent Decree terms is demonstrated through monitoring of contaminant concentrations as well as a separate compliance measure based on month-to-month water level data, particle tracking and potentiometric surface mapping, as described more fully in Section III.F.2.b) of the Statement of Work (SOW). This month-to-month water level compliance measure is distinct from, and calculated very differently than the long-term measurements of particle movement used in the Groundwater Model discussed below.

D. As a condition of the Consent Decree, the City is also obligated to institute a groundwater management and permit program (GMPP) to “ensure the effectiveness and integrity” of the Newmark Site that includes: (i) taking appropriate actions to prevent or mitigate the potential harmful effects of new or increased extraction from areas within the Management Zone described herein and referred to as the “Permit Zone” in the Consent Decree, which zone is within the San Bernardino city limits, and (ii) taking appropriate actions to prevent or mitigate the potential harmful effects of increased artificial recharge within the Management Zone. The City has determined, based on a technical appraisal, and USEPA has approved, the Management Zone within the city limits, in which projects which may involve new or increased extraction resulting from the reconstruction of wells or artificial recharge will undergo scrutiny for their potential effects on the

operation and maintenance of the Newmark Facilities. The Management Zone boundaries for extraction and spreading are designated on **Exhibit A** to this Agreement.

E. The Consent Decree expressly provides that the Court retains jurisdiction over any challenge to the groundwater management and permit program (GMPP) to be implemented by the City.

F. Unless capitalized terms are expressly defined in this Agreement, they shall have the meaning ascribed to them in the Consent Decree and the Statement of Work (SOW) attached to that Consent Decree. The Signatory Parties besides the City are referred to collectively in this Agreement as the "Public Water Purveyors."

G. Valley District is a municipal water district having a broad range of powers and obligations to provide water and water-related services. Valley District's service area includes areas overlying the Bunker Hill Basin. Included in its broad range of powers and obligations are the following specific obligations: under *Orange County Water District v. City of Chino et al.*, Orange County Superior Court Case No. 117628 (the Orange County Judgment), Valley District has certain obligations to guarantee delivery of water downstream; under *Western Municipal Water District et al. v. East San Bernardino County Water District et al.*, Riverside County Superior Court Case No. 78426 (the Western Judgment), Valley District has certain obligations to replenish the San Bernardino Basin Area, which includes the Bunker Hill Basin.

H. WMWD is a municipal water district having a broad range of powers and obligations to provide water and water-related services. WMWD is a party to both the Orange County and Western Judgments and has certain rights and obligations arising thereunder and claims rights to water pumped from the Bunker Hill Basin.

I. Riverside, a California charter city and municipal corporation, operates wells, treatment facilities and transmission systems in the Bunker Hill Basin. Riverside is a party and a

successor to a party to *City of San Bernardino v. City of Riverside*, San Bernardino Superior Court Case No. 13754 (the Riverside Judgment), as amended, and has certain rights and obligations thereunder. Riverside is additionally a plaintiff party and a successor to a plaintiff party to the Western Judgment, which specifies the amount of water that Riverside may export from the San Bernardino Basin Area (which includes the Bunker Hill Basin).

J. WWWD is a county water district having a broad range of powers to provide water and water-related services. WWWD is a party, through predecessor parties-in-interest, to *Lytle Creek Water and Improvement Co. v. Grapeland Irrigation Dist. et al.*, Los Angeles Superior Court Case No. 20790 (commonly known as the “McKinley Judgment”) and *City of San Bernardino v. Fontana Water Co. et al.*, San Bernardino Superior Court Case No. 17030 (the “Lytle Creek” Judgment). The McKinley Judgment apportioned surface water rights to Lytle Creek among the various parties; the Lytle Creek Judgment apportioned surface water rights and also granted certain groundwater extraction rights within the Lytle Creek region to various parties. The Lytle Creek Region is within the San Bernardino Basin Area as defined in the Western Judgment.

K. EVWD is a county water district having a broad range of powers to provide water and water-related services. EVWD operates wells and transmission systems in the Bunker Hill Basin.

L. Colton, a municipal corporation, operates wells and transmission systems in the Bunker Hill Basin. Colton, through its predecessor parties-in-interest, was granted certain groundwater extraction rights in the Lytle Creek region through the Lytle Creek Judgment.

M. The City holds groundwater extraction rights in the Lytle Creek region through the Lytle Creek Judgment. Additionally, the City is a party to the Riverside Judgment, which specifies the areas in which it may extract groundwater and the amounts of groundwater extracted in those areas.

N. RHWC is a mutual water company and a plaintiff in the Western Judgment. Under

such Judgment, RHWC has the right to extract and export certain quantities of water from the Bunker Hill Basin.

II. The Consent Decree and Predecessor Agreement.

A. On March 23, 2005, the Consent Decree was approved by the Court, with the support of the Signatory Parties, pursuant to a predecessor agreement, known as the AGREEMENT TO DEVELOP AND ADOPT AN INSTITUTIONAL CONTROLS GROUNDWATER MANAGEMENT PROGRAM (“Predecessor Agreement”).

B. As part of the Consent Decree, the City has agreed to undertake a number of actions in connection with the remediation of the Newmark Site. One of the key obligations of the City is the adoption of the GMPP, which obligation is generally described in paragraphs 27-29 of the Consent Decree. The GMPP requires the City, *inter alia*, to monitor and take appropriate actions to maintain the effectiveness and integrity of the Interim Remedial Actions as defined in the Consent Decree and to take appropriate actions to “prevent or mitigate” the potential harmful effects of new or increased extractions or increased artificial recharge from areas within the Management Zone.

C. The Consent Decree contemplates that the City will develop, adopt and implement the GMPP described in paragraphs 27-29 pursuant to its authority under California law. The Consent Decree further contemplates that the GMPP will be based on the City’s best professional judgment, in consultation with USEPA and DTSC, and subject to approval by USEPA. The Consent Decree provides that the City will institute its legislative process to approve and adopt the GMPP. The City did so in a Municipal Ordinance duly adopted March 20, 2006, Ordinance No. MC-1221, entitled “Spreading or Extraction within the Management Zone,” adding Chapter 13.25 to the San Bernardino Municipal Code.

D. The Public Water Purveyors had previously expressed concerns that the proposed GMPP might: (i) interfere with the Public Water Purveyors’ rights and obligations under a series of

state court judgments; (ii) interfere with other efforts to manage the Bunker Hill Basin to maintain the safe yield of that Basin, to control high groundwater problems, and for the conjunctive use of groundwater and surface water; (iii) violate California state water policy and California law; and (iv) interfere with the exercise of certain existing water rights.

E. The Public Water Purveyors and the City agreed that a mutually acceptable GMPP that would satisfy the requirements of the Consent Decree without interfering with certain state court judgments, basin replenishment, control of high groundwater, the conjunctive use of groundwater and surface water, and the exercise of certain existing water rights was their mutual objective and entered the Predecessor Agreement in order to negotiate an orderly and satisfactory resolution of those mutual concerns while avoiding delay in the implementation of the Work provided in the Consent Decree. The Predecessor Agreement has been extended by means of five amendments and will terminate by its terms on June 30, 2010.

F. From 2005 until now, the Signatory Parties have worked diligently to improve the existing groundwater models of the San Bernardino Basin Area in order to be able to develop the ICGMP based on the best available technical information. In particular, the City reports that it has spent more than \$1,000,000 in this effort to build, refine and validate the Groundwater Model as defined in the Consent Decree in order to assure that this Groundwater Model is usable for other predictive purposes throughout the Bunker Hill Groundwater Basin. The Public Water Purveyors have been regularly briefed on the development and refinement of these models, and have participated to the extent they have deemed appropriate in various workshops and other opportunities for technical input concerning these modeling efforts. The USEPA, DTSC, and the United States Geological Survey (USGS) have done so pursuant to the processes provided in the Consent Decree.

G. The Signatory Parties believe that the Groundwater Model has now been

developed into a sufficiently accurate predictive tool to serve its intended purpose. Specifically, the Signatory Parties believe that the Groundwater Model will allow them to reach sound decisions about the location and installation of new or reconstructed wells and the location and construction of new spreading basins within the Bunker Hill Basin in a manner consistent with sound water resource management, including:

(1) Management of extraction and artificial recharge to ensure the effectiveness and integrity of the remedial systems for the Newmark Groundwater Contamination Superfund Site and the avoidance of "Adverse Effects" on those remedial systems;

(2) Maintenance of water levels throughout the Bunker Hill Basin to optimize water extractions;

(3) Maintenance of water levels in the artesian or pressure zone to prevent high groundwater conditions and potential liquefaction during earthquakes;

(4) Coordination of the Work as such Consent Decree activities may affect other contaminant plumes in the Bunker Hill Basin; and

(5) Optimizing conditions in the Bunker Hill Basin for conjunctive use.

H. The Signatory Parties are prepared to execute this agreement now and to submit it to USEPA and DTSC for their review and approval, reserving the right to update the Groundwater Model as may be suggested by the peer review of that model and other information suggesting prudent upgrades or improvements to the model. The Signatory Parties expect to periodically review and agree to appropriate changes to the Groundwater Model in order to improve its forecasting accuracy.

I. With the completion of the Groundwater Model, and submission for approval to USEPA and DTSC, the Signatory Parties now desire to memorialize their agreement as the Institutional Controls Groundwater Management Program (ICGMP) Agreement in order to protect

the Newmark Facilities operated and maintained by the City under the Consent Decree, while furthering the Signatory Parties' common objective of sound water resource management in the Bunker Hill Basin.

Now, therefore, in consideration of the foregoing recitals and definitions that are incorporated herein and mutual covenants and terms below, the Signatory Parties hereby agree to the following:

**INSTITUTIONAL CONTROLS GROUNDWATER MANAGEMENT
PROGRAM AGREEMENT**

1. This Agreement will commence as of January 1, 2012, now that it has been approved by DTSC as lead oversight agency, in which decision USEPA concurred as support oversight agency, which Agreement shall be published by the City, with annual updates, and cross-referenced by an amendment to the Ordinance to be adopted within a reasonable time after DTSC's approval. While awaiting such approval, the Predecessor Agreement, which had been set to expire on June 30, 2010, was extended by its terms for the period required for DTSC to consider the request to approve this agreement as a part of the Institutional Controls Groundwater Management Program required to be implemented by the City under the Consent Decree. This Agreement shall expire when USEPA shall have issued Certificates of Completion for both the Newmark and Muscoy Operable Units addressed in the Consent Decree, although the Signatory Parties may extend this Agreement at that time by mutual consent for a term to be determined at that time. Within six months of the effective date of this Agreement, the City agrees that it will amend the current Ordinance to reflect termination of the Ordinance provisions upon receipt of the last of USEPA's Certificates of Completion.

2. In the event that DTSC declines or refuses to endorse or approve this Agreement, or if USEPA fails to concur in approving this Agreement, the Predecessor Agreement shall continue

in force for another 90 days from the date of such final decision. The Signatory Parties will consult in good faith for that 90 day period about a successor agreement in the event that DTSC refuses to approve this Agreement.

3. During the term of this Agreement, the City and any Public Water Purveyor which is a Signatory Party to this Agreement shall be exempt from the provisions of the Ordinance No. MD-1221, adopted by the City on March 20, 2006, Chapter 13.25 of the San Bernardino Municipal Code Entitled Spreading or Extraction within the Management Zone, or any successor ordinance intended to regulate groundwater extraction and artificial recharge within the Management Zone. Such exemption shall cease for any Signatory Party which withdraws from this Agreement, effective on the date written notice of such withdrawal is given. Any Public Water Purveyor which withdraws from this Agreement shall be deemed to not be a Signatory Party.

4. a. For each year, 2005 through 2009, the Signatory Parties have negotiated, on an annual basis, certain pre-approved or permitted pumping activities up to specific volumes, and set forth a quantified list of such pre-approved or permitted pumping activities as part of **Exhibit B**. All such preapproved pumping activities (Preapproved Activities) are hereby approved up to the limits set forth in Exhibit B for the term of this Agreement. Such Preapproved Activities are deemed by this Agreement to include permanent replacement of a well or wells by the same or successor owner of the well, provided (a) the maximum pumping capacity is not increased (except as provided in **Exhibit C**), (b) the prior well is converted to a monitoring well (if practical) or permanently closed, and (c) the replacement well (or wells) is located within 500 feet and screened at the same interval(s) and depth(s) as the well or wells being replaced (except as provided in Exhibit C). All Preapproved Activities, as identified in Exhibit B and C, shall be exempt from the provisions of the March 20, 2006 Ordinance, including requirements in that ordinance for the purchase of additional insurance.

b. Artificial recharge activities through existing recharge basins within the Management Zone as set forth in Exhibit A will be addressed at least annually (and more frequently as the need arises), subject to the availability of recharge water and the agreement of the Signatory Parties. The first such meeting to consider the artificial recharge activities shall take place on or around June 2012, and annually thereafter on or near the anniversary date of the first meeting. Using their best professional judgment, aided by the Groundwater Model, the Signatory Parties will review proposals for artificial recharge, and recommend, on an annual basis or more frequently as the need arises, the upper limit on how much artificial recharge may be safely conducted and at what locations without adversely affecting the remedial systems at the Newmark Groundwater Contamination Superfund Site, will not increase the likelihood that contaminants will migrate past or around the barrier wells that are part of the Newmark Site, and will not otherwise interfere with the performance of the Interim Remedial Actions. The Signatory Parties shall promptly review and unanimously consent to these proposed upper limits on artificial recharge. Provided that a Signatory Party adheres to the geographic and volumetric limits on such artificial recharge, that Signatory Party shall be free to conduct its artificial recharge operations for that year without further review or approval. Each Signatory Party shall report in writing quarterly to the other Signatory Parties about the volume and location of any such recharge activities in the prior quarter. All such pre-approved artificial recharge operations shall be exempt from the provisions of the March 20, 2006 Ordinance (or any successor ordinance), including requirements in that ordinance for the purchase of additional insurance. The annually approved upper limit on artificial recharge decided by the Signatory Parties shall be provided promptly to USEPA, DTSC, and shall be made public by the City at the time it is transmitted to USEPA and DTSC.

c. No new well construction or artificial recharge activities contrary to Preapproved Activities shall be undertaken by any Signatory Party except as unanimously agreed to by the

Signatory Parties in the annual review of artificial recharge, or for a new well (other than replacements discussed above), unless such new well has been separately approved pursuant to the application process provided for in Section 12 of this Agreement.

d. For the purposes of this Agreement, activities undertaken by the City pursuant to the Statement of Work (SOW) accompanying the Consent Decree, or activities otherwise directed by USEPA or DTSC shall be deemed to be preapproved. The SOW does not currently require the drilling of additional wells, nor has either USEPA or DTSC directed the construction of any such new wells as of the date of this Agreement. The City will give notice to the Signatory Parties if it is to drill a new well pursuant to DTSC or USEPA direction pursuant to the Consent Decree, and will convene a meeting of the Signatory Parties in advance of well construction for the purpose of providing the technical information about such new well, including modeling results. To the extent feasible, City agrees to design and operate any such new wells in a manner to minimize negative effects on other Signatory Parties, including but not limited to impacts to water levels, production by other wells, and water quality. Except for monitoring work and pumping from existing City wells under the current SOW (including non-routine O&M as defined in the SOW), construction work and physical operations to implement the Consent Decree shall be subject to dispute resolution as contrary to law under the Consent Decree pursuant to paragraph 13 of this Agreement.

5. Unless ordered by USEPA, DTSC, or the Court, no expansion shall be made of the USEPA-approved Management Zone, except by unanimous consent of all the Signatory Parties to this Agreement. In the event the USEPA-approved Management Zone is expanded, pre-existing wells, as of the date the Management Zone is expanded, in the newly expanded area shall be added to Exhibit B (the Preapproved Activity list), above, and treated according to the same terms and conditions as pre-existing wells in the current Management Zone. The maximum annual pumping

volume of such wells in the newly expanded area shall be calculated as the maximum annual pumping volume in any year prior to the expansion of the Management Zone.

6. For the first three years after the effective date of this Agreement, the Signatory Parties shall meet at least quarterly to monitor the implementation of this Agreement and the remedial actions provided for under the Consent Decree, to consider any appropriate update work on the Groundwater Model, and to consult concerning artificial recharge activities and any new wells planned by the Signatory Parties for the upcoming calendar year. At least 30 days prior to the City's submission of any Five-Year Update Report for the Groundwater Model, the Signatory Parties shall meet to review the draft of that Update Report and provide comments, if any, to the City. After the first three years of this Agreement, the parties shall meet at least annually and more often by agreement of the Signatory Parties to discuss the status of implementation of this Agreement and any issues which may have arisen under the Agreement.

7. Provided that decisions for new projects meet the terms of the Consent Decree to protect the remedial systems and downgradient users from the further migration of contaminants, and are not affirmatively disapproved by USEPA or DTSC as contrary to the Consent Decree, the Signatory Parties shall make decisions under this Agreement by unanimous consent of the Signatory Parties. Any amendment to this Agreement must be adopted by unanimous consent of the Signatory Parties.

8. With respect to any project proposed by or to the Signatory Parties pursuant to this Agreement, each Signatory Party will comply with the provisions of the California Environmental Quality Act (CEQA), as and if CEQA applies. It is not intended that a Signatory Party shall assume Lead or Responsible Agency status, as those terms are defined in CEQA, solely through participation in this Agreement.

9. No Signatory Party shall use the good-faith denial or limitation of a proposed project under this Agreement or the Consent Decree, or the good faith approval of a project under this Agreement, as a basis for any claim for damages, injunctive relief, or a taking against any other Signatory Party, DTSC, USEPA, or the United States. This undertaking shall survive the termination of this Agreement or withdrawal by any Signatory Party to the Agreement. All Signatory Parties reserve all their rights and defenses under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., corresponding provisions of California statutes governing the remediation of hazardous substance releases, and other applicable laws, except as set forth in this paragraph. Each Signatory Party reserves the right to bring an action to enforce the terms of this Agreement.

10. The Signatory Parties will timely cooperate with each other in sharing of information, including annual production information, water level data, logs from newly installed wells, and groundwater sampling analytical results, needed to update the Groundwater Model referenced in this Agreement and the Consent Decree. No Signatory Party shall be responsible or liable for another Party's use of information or models shared pursuant to this Agreement or any predecessor Agreement.

11. No Signatory Party, by virtue of its participation in this Agreement, shall be required to obtain any additional insurance for an activity authorized through this Agreement other than such insurance that such Signatory Party would customarily and prudently obtain and keep in force in the course of conducting its regular business activities.

12. a. Any Signatory Party seeking to construct a new well or to reconstruct a well in a manner that will increase its capacity above that reported as part of Preapproved Activities under paragraph 4 above, or seeking to construct a new spreading basin for artificial recharge, shall submit its proposal for such construction to the other Signatory Parties, including the City, at least six

months before the intended start date of such construction. The issue of replacement of existing wells without increasing capacity is addressed in paragraph 4.

b. The proposal shall contain sufficient detail for the Signatory Parties (including the City) to use the Groundwater Model to conduct Predictive Particle Tracking, or other predictive tools as they may be added (as required or approved by USEPA and DTSC) to the Groundwater Model, as defined in the Ordinance and SOW, with the extraction wells in the Newmark and Muscoy Operable Units operating at the Adjusted Target Extraction Rate (as adjusted from time to time by USEPA and DTSC) established in USEPA's September 2007 Operational and Functional Determination under the Statement of Work (SOW) attached to the Consent Decree, over a representative hydrologic cycle, including representative wet and dry periods for the Bunker Hill Basin, to determine the percentage of particle capture achieved at all times over the life of the proposed project with the project operating at full permitted capacity for the entire permit term. The modeling shall use the previously approved parameters (e.g. current production, forecast of future demand, contaminants, particle positions) in the modeling effort, as updated from time to time with new information. The City shall be primarily responsible for this review, including the provision of outside consulting services, but all Signatory Parties shall be entitled to participate to the extent they deem reasonable and prudent.

c. As required by the SOW, Section III.I., "[a]ny change to the model parameters by the applicant or the City, beyond adding the proposed artificial recharge and/or pumping considered pursuant to the application, that would influence the structure of the [Groundwater] Model [(e.g. any recalibration, different boundary conditions, different model cell properties, or different step sizes, etc.)) shall undergo the same level of stakeholders' review as outlined in the work plan approved by [USEPA], and shall be fully described in the application and/or evaluation and proposed decision by the City, as applicable. The complete application package, including the City's evaluation of the

application, will be required for USEPA and DTSC review and approval in accordance with the Consent Decree.” The list of information that shall, at a minimum, be provided to USEPA/DTSC is attached hereto as **Exhibit D**.

d. The applicant shall bear the consultant costs of conducting the required modeling, unless the Signatory Parties determine by unanimous agreement that consultant costs will be shared. The City shall cause its consultant to provide a binding estimate of the costs to the applicant for the required modeling, which estimate shall be prepared using the same rates charged to the City by the consultant for similar work in the same time period, and provide for completion no later than six months after receipt of the applicant’s submission. The City agrees that the applicant may use the results of the required modeling as evidence in other proceedings, including compliance with CEQA provided that the applicant shall pay for any additional consultant costs incurred in such later use of the modeling results.

e. Pursuant to Paragraph 28 of the Consent Decree, the applicant must agree in writing to provide USEPA, DTSC, and the Signatory Parties (including the City) (collectively or individually, “the Requesting Party”), and their contractors or representatives (1) access at reasonable times to the wells or spreading basins or related areas for purposes of verifying compliance with the approval under this Agreement, and (2) upon reasonable notice, to inspect and copy documents and records of the operations of the well(s) or spreading basin addressed in the application for the purposes of verifying compliance with the terms of any approval under this Agreement.

The rights set forth in sections (1) and (2) above shall be exercised during normal business hours of the applicant. The Requesting Party will advise the applicant at least three (3) business days in advance of the proposed dates and times the Requesting Party desires to exercise the rights set forth above. All entries, inspections or copying will be at Requesting Party’s sole cost and expense.

The applicant will have the right to have a representative of applicant accompany the Requesting Party and Requesting Party's representatives, agents or designees (including contractors) while they are on the applicant's real property.

In exercising its rights of access, entry, inspection and copying under this subparagraph, the Requesting Party (other than USEPA or DTSC) shall protect, indemnify, defend and hold the applicant's property, applicant and applicant's officers, directors, employees, agents, representatives, contractors, successors and assigns free and harmless from and against any and all claims, damages, liens, stop notices, liabilities, losses, cost and expenses, including reasonable attorney's fees and court costs, resulting from Requesting Party's exercise of such rights of access, entry, inspection and copying set forth herein.

f. No Signatory Party shall approve or recommend approval by USEPA or DTSC of a proposed project predicted by the Groundwater Model (as interpreted by the professional judgment of capable groundwater geologists familiar with the model and the Bunker Hill Basin and as reviewed using each Signatory Party's best professional judgment) to have an Adverse Effect on the Newmark or Muscoy Interim Remedial Actions. No Signatory Party to this Agreement shall undertake any such proposed project so predicted to have an Adverse Effect, unless such Adverse Effect shall be predicted by the Groundwater Model to have been resolved by Mitigation Measures, Project Redesign, or a combination of the two, as those terms are defined below.

g. Any proposed project shall be presumed to have an Adverse Effect, if the proposed project is forecast to:

(1) Reduce particle capture (as measured using Predictive Particle Tracking) below 90% at any time in the proposed future permit term; or

(2) Require an increase in the frequency of chemical monitoring from monitoring wells beyond the monitoring frequency specified in the SOW; or

(3) Require additional chemical monitoring from production wells located downgradient from the Newmark or Muscoy extraction wells; or

(4) Require an increase in pumping above the Adjusted Design Extraction Rate, as set forth in the SOW, or to initiate Non-Routine Maintenance as defined under the Consent Decree (all as described in the pertinent provisions of the SOW or Consent Decree attached hereto as **Exhibit "E"**); or

(5) Cause a violation of the City's obligations under the Consent Decree.

h. The applicant may rebut the presumed Adverse Effect by Project Re-Design or Mitigation Measures to restore particle capture percentages, over a hydrologic cycle representative of long-term hydrology and extending for a term at least as long as the proposed permit term, to at least 90% at all times, with the proposed project operating at the full permitted capacity for the life of the proposed project. The selection of a Project Re-Design or Mitigation Measures shall be at the sole discretion of the applicant. If the forecast Adverse Effect is increased chemical monitoring frequency, the initiation of Non-Routine Maintenance, or increased remedial compliance costs by the City or such costs for any other Signatory Party's groundwater remediation efforts, or violation of the Consent Decree, the Adverse Effect may also be rebutted by Project Re-Design or Mitigation Measures reliably forecast to eliminate the Adverse Effect.

i. "Mitigation Measures" mean readily enforceable and verifiable steps taken to reduce or eliminate Adverse Effects forecast for a proposed new or reconstructed well or water spreading (artificial recharge) project by Predictive Particle Tracking or other predictive tools as they may be added to the groundwater model and approved by USEPA and DTSC. Mitigation Measures can include, but are not limited to:

(1) Locating an additional well or wells in the contaminant plume to counteract migration of contaminants past the extraction wells at the Newmark or Muscoy Interim Remedial Actions;

(2) Readily enforceable and verifiable pumping restrictions;

(3) Physical reductions in the size of well equipment to limit the well capacity;

(4) In the case of increased compliance costs, financial assurance in the form of performance or surety bonds, letters of credit, or other financial instruments sufficient to address and defray documented incremental City compliance cost increases directly attributable to the proposed project or to address and defray documented incremental compliance cost increases by any other Signatory Party for groundwater remediation efforts;

j. "Project Re-Design" means verifiable and enforceable changes in the physical design, equipment, or location or volume of a proposed water spreading (artificial recharge) or new or reconstructed well project intended to reduce or eliminate Adverse Effects forecast for a project evaluated with Predictive Particle Tracking.

k. Upon approval of a project by the Signatory Parties, and completed review without objection by DTSC and USEPA, the parameters used in the Groundwater Model shall be adjusted to include the approved project for the purpose of future analyses.

13. This Agreement, and any other agreements reached among the Signatory Parties arising out of or relating to the Consent Decree, shall be subject to review by USEPA and DTSC. Likewise, decisions made by the Signatory Parties concerning new or reconstructed wells, or new spreading basins, pursuant to this Consent Decree, remain subject to review and objection by USEPA and DTSC. No Signatory Party shall construct such a project in the event of unresolved objections by USEPA or DTSC. This Agreement does not alter the Dispute Resolution provisions of the Consent Decree as among the City, USEPA, and DTSC. The City agrees that if DTSC or

USEPA, or both, deny or limit a project proposed and approved under this Agreement, or specifically directs the City to drill an additional well or wells or to carry out other steps not currently enumerated in the Statement of Work to which a Signatory Party objects as violation of one of the judgments enumerated in Paragraphs 1.G or H., that the City shall invoke the Dispute Resolution provisions of the Consent Decree against the denying or limiting agency, provided that the aggrieved Signatory Party agrees in writing in advance to pay the City's attorney's and consultant's fees and incidental costs (including any and all costs or penalties ultimately charged by USEPA or DTSC to the City pursuant to the Consent Decree as a result of the invocation of Dispute Resolution). The City further agrees to allow active participation in the Dispute Resolution process by the Signatory Party that proposed the project.

14. a. As among themselves, the Signatory Parties agree to use the following dispute resolution process concerning decisions that a Proposed Project has an Adverse Effect which has not been resolved by Project Redesign, Mitigation Measures, or a combination of the two.

(1) In the event of an impasse, the affected Signatory Parties shall engage in mediation for a period of up to six months. The mediation shall be conducted by JAMS (sometimes referred to as the mediation service provider), and shall be administered, to the extent practical in the San Bernardino office, or the JAMS office closest to San Bernardino. In the event, for whatever reason, JAMS is not available or lacks the necessary expertise, the parties shall first attempt to use the services of another judicially oriented service, such as IVAMS, and use the American Arbitration Association only after all other judicially based mediation services have refused to undertake the mediation and arbitration of the dispute.

(2) The mediator shall be selected by mutual agreement of all of the affected Signatory Parties, and the cost of the mediator shall be borne on an equal basis by all of the Signatory Parties

to this Agreement. In the event the Signatory Parties are unable to agree on a mediator, the mediation service provider shall select a mediator with civil judicial experience.

(3) The Signatory Parties shall meet and confer prior to the mediation and provide to the mediator an agreed list of matters to be resolved by the mediation. Unless all of the Signatory Parties to the mediation agree otherwise, the only matters to be discussed at the mediation are those matters submitted to the mediator following the meet and confer meeting of the Signatory Parties. Time shall be of the essence during the process and all Signatory Parties shall cooperate to promptly complete the process.

(4) The Signatory Parties shall notify USEPA and DTSC of any decision to seek mediation and shall promptly brief USEPA and DTSC about the dispute that triggered the decision to seek mediation. The Signatory Parties shall brief USEPA and DTSC about the dispute at least thirty days prior to the commencement of the mediation in order to allow USEPA and/or DTSC to participate in the mediation if they so choose. Nothing in this paragraph shall obligate either USEPA or DTSC to participate in any such mediation.

b. In the event the Signatory Parties are unsuccessful in resolving any or all of the issues presented to the mediator, the Signatory Party seeking approval of a Project alleged to have an unresolved Adverse Effect may seek judicial review of the Signatory Parties' decision.

(1) That review shall be based on the record compiled pursuant to this agreement and the Consent Decree, including the Groundwater Model predictions, together with any USEPA, DTSC, or USGS comments. Such review shall be sought only from the Court pursuant to the Consent Decree's provision for continuing Court jurisdiction over the decisions of the Institutional Control Program required by the Consent Decree. No Signatory Party to this Agreement shall oppose any removal petition filed by the City in connection with the Consent Decree, and this

undertaking shall survive the withdrawal from this Agreement by a Signatory Party and any termination of this Agreement.

(2) The Signatory Party seeking judicial review shall notify USEPA and DTSC at least thirty days prior to filing its action with the Court pursuant to the Court's continuing jurisdiction over the decisions of the Institutional Controls Program required by the Consent Decree. The notice to USEPA and DTSC shall identify the chief ways in which the decision by the Signatory Parties fails to comply with applicable law and the relief to be sought. None of the Signatory Parties shall object to the participation of USEPA or DTSC in any such proceeding, but nothing in this paragraph shall obligate either USEPA or DTSC to participate in any such proceeding.

(3) The Court shall review the Signatory Parties' decision *de novo*, with the burden of proof resting on the applicant to demonstrate, by a preponderance of the evidence, that the proposed Project will not have an Adverse Effect. Such judicial review will not in any way abrogate the review of a Project by USEPA or DTSC under this Agreement; any challenge to USEPA or DTSC actions under the Consent Decree must be raised pursuant to the Dispute Resolution provisions of the Consent Decree, as provided further in paragraph 13 of this Agreement.

15. Other water purveyors with interests in the Bunker Hill Basin or interests in any of the judgments initially referred to in recitals I.G, I.I and I.J above may become Signatory Parties to this Agreement upon the written consent of all the Signatory Parties. In the event another water purveyor joins this Agreement on terms different than those contained in this Agreement, such modification shall be made with respect to all Signatory Parties. No Signatory Party shall conclude any separate binding agreement with any other water purveyor governing approval under the Consent Decree of spreading basins in the City limits or new wells in the Management Zone.

16. This Agreement shall not operate to validate or invalidate any Signatory Party's water rights. Each Signatory Party to this Agreement reserves any and all claims and causes of action

respecting its water rights claims, any and all defenses against any water rights claims made by any other entity, and any claims arising from contamination or water quality degradation. In particular, nothing in this Agreement is intended to validate, invalidate or modify the water rights of the Signatory Parties as they may exist as of the effective date of this Agreement. Further nothing in this Agreement is intended to modify or affect in any way the Consent Decree terms or the judgments initially referred to in recitals I.G, I.I and I.J above. This Agreement shall not be used as evidence in any water rights claim or cause of action, except to defend against a claim that a Signatory Party has waived any of its water rights or causes of action by signing this Agreement.

17. Defined terms that are used in this Agreement and that are also used in the Consent Decree shall have the meaning set forth in the Consent Decree. In the event that there is any inconsistency between the definition of a term in this Agreement and a definition of the same term in the Consent Decree, the definition of the term in the Consent Decree shall control.

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

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

20. This Agreement has been arrived at through negotiations and each Signatory Party has had a full and fair opportunity to review the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in the construction or interpretation of this Agreement.

21. This Agreement constitutes the entire agreement of the Signatory Parties with respect to the subject matter of this Agreement and supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this Agreement. Specifically, this Agreement terminates and supersedes the Predecessor Agreement, any extensions of that Agreement, and any prior versions of this Agreement which may have been executed among some of the parties. The parties shall remain bound to the confidentiality provisions for information exchanged pursuant to that Predecessor Agreement and the "Joint Defense and Confidentiality Agreement for the Agreement to Develop and Adopt an Institutional Controls Groundwater Management Program" dated February 23, 2005 attached hereto as **Exhibit F**.

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

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

24. This Agreement shall not create any right or interest in any non-Party or in any member of the public as a third party beneficiary.

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

26. All notices, requests, demands or other communications required or permitted under

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

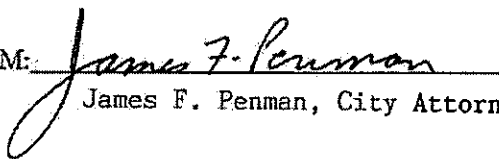
Signatures Begin on Following Page:

SIGNATURE PAGE


CITY OF SAN BERNARDINO

BY: 
Patrick J. Morris, Mayor

DATE: 2/28/12

APPROVED AS TO FORM: 
James F. Penman, City Attorney

CITY OF SAN BERNARDINO MUNICIPAL WATER DEPARTMENT

BY: 
Toni Callicott, President, Board of Water Commissioners

DATE: February 7, 2012

APPROVED AS TO FORM: 
Henry Empaño, Jr., Senior Deputy City Attorney

SIGNATURE PAGE

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

BY: _____

DATE: _____

APPROVED AS TO FORM: _____

SIGNATURE PAGE

WEST VALLEY WATER DISTRICT

BY: _____

DATE: _____

APPROVED AS TO FORM: _____

SIGNATURE PAGE

EAST VALLEY WATER DISTRICT

BY: _____

DATE: _____

APPROVED AS TO FORM: _____

SIGNATURE PAGE

RIVERSIDE HIGHLAND WATER COMPANY

BY: _____

DATE: _____

APPROVED AS TO FORM: _____

=SIGNATURE PAGE

CITY OF RIVERSIDE

BY: _____

DATE: _____

APPROVED AS TO FORM: _____

SIGNATURE PAGE

CITY OF COLTON

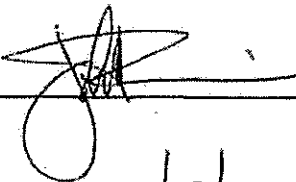
BY: _____

DATE: _____

APPROVED AS TO FORM: _____

SIGNATURE PAGE

WESTERN MUNICIPAL WATER DISTRICT

BY:  _____

DATE: 6/18/12

APPROVED AS TO FORM:  _____

Exhibit C

Redline Changes between 06-30-10 ICGMPA and 01-01-12
ICGMPA

Institutional Controls Groundwater Management Program Agreement
As of ~~June 30~~January 1, 2010~~2012~~

This Institutional Controls Groundwater Management Program (ICGMP) Agreement (“**ICGMP Agreement**”) is entered into and effective as of this ~~30th~~1st day of ~~June~~January, ~~2010~~2012, by and among the following parties (collectively the “**Signatory Parties**”): the City of San Bernardino and the City of San Bernardino Municipal Water Department (collectively, the “**City**”); San Bernardino Valley Municipal Water District (Valley District); West Valley Water District (WVWD); East Valley Water District (EVWD); Riverside Highland Water Company (RHWC); the City of Riverside (“**Riverside**”); the City of Colton (“**Colton**”) and Western Municipal Water District (WMWD).

Recitals

I. Parties

A. The City of San Bernardino (“**City**”) is a party to a consent decree approved by the United States District Court, Central District of California, Western Division (Court), on March 23, 2005 (Consent Decree). The Consent Decree settles litigation entitled *City of San Bernardino v. United States of America*, Case No. CV96-8867 and *State of California Department of Toxic Substances Control v. United States of America*, Case No. CV 96-5205 (consolidated), which sought to address responsibility and funding for the remedy of the Newmark Groundwater Contamination Superfund Site in San Bernardino, alleged by San Bernardino and the State of California to arise from waste disposal activities by the United States Army during and after World War II in San Bernardino.

B. The Consent Decree obligates the City, among other things, to operate and maintain a system of wells and treatment plants known collectively for this Agreement as the “Newmark Facilities,” which include, in part, construction and implementation of two operable units: the Newmark Operable Unit (Newmark OU) and the Muscoy Operable Unit (Muscoy OU). The Newmark Facilities are intended to function as a groundwater treatment system to clean up contaminants in a portion of the Bunker Hill Basin. The primary contaminants of concern in that plume are tetrachlorethylene (PCE) and trichloroethylene (TCE).

C. Pursuant to the terms of the Consent Decree, the “Work” to be done by the City is defined in the Consent Decree, and includes the operation and maintenance of the Newmark Facilities. The Work is subject to the oversight of both the United States Environmental Protection Agency (USEPA) and the State of California Department of Toxic Substances Control (DTSC), with the lead and support oversight roles divided between the two agencies, depending on the task. City compliance with Consent Decree terms is demonstrated through monitoring of contaminant concentrations as well as a separate compliance measure based on month-to-month water level data, particle tracking and potentiometric surface mapping, as described more fully in Section III.F.2.b) of the Statement of Work (SOW). This month-to-month water level compliance measure is distinct from, and calculated very differently than the long-term measurements of particle movement used in the Groundwater Model discussed below.

D. As a condition of the Consent Decree, the City is also obligated to institute a groundwater management and permit program (GMPP) to “ensure the effectiveness and integrity” of the Newmark Site that includes: (i) taking appropriate actions to prevent or mitigate the potential harmful effects of new or increased extraction from areas within the Management Zone described

herein and referred to as the “Permit Zone” in the Consent Decree, which zone is within the San Bernardino city limits, and (ii) taking appropriate actions to prevent or mitigate the potential harmful effects of increased artificial recharge within the Management Zone. The City has determined, based on a technical appraisal, and USEPA has approved, the Management Zone within the city limits, in which projects which may involve new or increased extraction resulting from the reconstruction of wells or artificial recharge will undergo scrutiny for their potential effects on the operation and maintenance of the Newmark Facilities. The Management Zone boundaries for extraction and spreading are designated on **Exhibit A** to this Agreement.

E. The Consent Decree expressly provides that the Court retains jurisdiction over any challenge to the groundwater management and permit program (GMPP) to be implemented by the City.

F. Unless capitalized terms are expressly defined in this Agreement, they shall have the meaning ascribed to them in the Consent Decree and the Statement of Work (SOW) attached to that Consent Decree. The Signatory Parties besides the City are referred to collectively in this Agreement as the “Public Water Purveyors.”

G. Valley District is a municipal water district having a broad range of powers and obligations to provide water and water-related services. Valley District’s service area includes areas overlying the Bunker Hill Basin. Included in its broad range of powers and obligations are the following specific obligations: under *Orange County Water District v. City of Chino et al.*, Orange County Superior Court Case No. 117628 (the Orange County Judgment), Valley District has certain obligations to guarantee delivery of water downstream; under *Western Municipal Water District et al. v. East San Bernardino County Water District et al.*, Riverside County Superior Court Case No. 78426 (the

Western Judgment), Valley District has certain obligations to replenish the San Bernardino Basin Area, which includes the Bunker Hill Basin.

H. WMWD is a municipal water district having a broad range of powers and obligations to provide water and water-related services. WMWD is a party to both the Orange County and Western Judgments and has certain rights and obligations arising thereunder and claims rights to water pumped from the Bunker Hill Basin.

I. Riverside, a California charter city and municipal corporation, operates wells, treatment facilities and transmission systems in the Bunker Hill Basin. Riverside is a party and a successor to a party to *City of San Bernardino v. City of Riverside*, San Bernardino Superior Court Case No. 13754 (the Riverside Judgment), as amended, and has certain rights and obligations thereunder. Riverside is additionally a plaintiff party and a successor to a plaintiff party to the Western Judgment, which specifies the amount of water that Riverside may export from the San Bernardino Basin Area (which includes the Bunker Hill Basin).

J. WVWD is a county water district having a broad range of powers to provide water and water-related services. WVWD is a party, through predecessor parties-in-interest, to *Lytle Creek Water and Improvement Co. v. Grapeland Irrigation Dist. et al.*, Los Angeles Superior Court Case No. 20790 (commonly known as the “McKinley Judgment”) and *City of San Bernardino v. Fontana Water Co. et al.*, San Bernardino Superior Court Case No. 17030 (the “Lytle Creek” Judgment). The McKinley Judgment apportioned surface water rights to Lytle Creek among the various parties; the Lytle Creek Judgment apportioned surface water rights and also granted certain groundwater extraction rights within the Lytle Creek region to various parties. The Lytle Creek Region is within the San Bernardino Basin Area as defined in the Western Judgment.

K. EVWD is a county water district having a broad range of powers to provide water and water-related services. EVWD operates wells and transmission systems in the Bunker Hill Basin.

L. Colton, a municipal corporation, operates wells and transmission systems in the Bunker Hill Basin. Colton, through its predecessor parties-in-interest, was granted certain groundwater extraction rights in the Lytle Creek region through the Lytle Creek Judgment.

M. The City holds groundwater extraction rights in the Lytle Creek region through the Lytle Creek Judgment. Additionally, the City is a party to the Riverside Judgment, which specifies the areas in which it may extract groundwater and the amounts of groundwater extracted in those areas.

N. RHWC is a mutual water company and a plaintiff in the Western Judgment. Under such Judgment, RHWC has the right to extract and export certain quantities of water from the Bunker Hill Basin.

II. The Consent Decree and Predecessor Agreement.

A. On March 23, 2005, the Consent Decree was approved by the Court, with the support of the Signatory Parties ~~to this Agreement~~, pursuant to a predecessor agreement, known as the AGREEMENT TO DEVELOP AND ADOPT AN INSTITUTIONAL CONTROLS GROUNDWATER MANAGEMENT PROGRAM (“Predecessor Agreement”).

B. As part of the Consent Decree, the City has agreed to undertake a number of actions in connection with the remediation of the Newmark Site. One of the key obligations of the City is the adoption of the GMPP, which obligation is generally described in paragraphs 27-29 of the Consent Decree. The GMPP requires the City, *inter alia*, to monitor and take appropriate actions to maintain the effectiveness and integrity of the Interim Remedial Actions as defined in the Consent

Decree and to take appropriate actions to “prevent or mitigate” the potential harmful effects of new or increased extractions or increased artificial recharge from areas within the Management Zone.

C. The Consent Decree contemplates that the City will develop, adopt and implement the GMPP described in paragraphs 27-29 pursuant to its authority under California law. The Consent Decree further contemplates that the GMPP will be based on the City’s best professional judgment, in consultation with USEPA and DTSC, and subject to approval by USEPA. The Consent Decree provides that the City will institute its legislative process to approve and adopt the GMPP. The City did so in a Municipal Ordinance duly adopted March 20, 2006, Ordinance No. MC-1221, entitled “Spreading or Extraction within the Management Zone,” adding Chapter 13.25 to the San Bernardino Municipal Code.

D. The Public Water Purveyors had previously expressed concerns that the proposed GMPP might: (i) interfere with the Public Water Purveyors’ rights and obligations under a series of state court judgments; (ii) interfere with other efforts to manage the Bunker Hill Basin to maintain the safe yield of that Basin, to control high groundwater problems, and for the conjunctive use of groundwater and surface water; (iii) violate California state water policy and California law; and (iv) interfere with the exercise of certain existing water rights.

E. The Public Water Purveyors and the City agreed that a mutually acceptable GMPP that would satisfy the requirements of the Consent Decree without interfering with certain state court judgments, basin replenishment, control of high groundwater, the conjunctive use of groundwater and surface water, and the exercise of certain existing water rights was their mutual objective and entered the Predecessor Agreement in order to negotiate an orderly and satisfactory resolution of those mutual concerns while avoiding delay in the implementation of the Work

provided in the Consent Decree. The Predecessor Agreement has been extended by means of five amendments and will terminate by its terms on June 30, 2010.

F. From 2005 until now, the Signatory Parties have worked diligently to improve the existing groundwater models of the San Bernardino Basin Area in order to be able to develop the ICGMP based on the best available technical information. In particular, the City reports that it has spent more than \$1,000,000 in this effort to build, refine and validate the Groundwater Model as defined in the Consent Decree in order to assure that this Groundwater Model is usable for other predictive purposes throughout the Bunker Hill Groundwater Basin. The ~~other Parties to this Agreement~~ Public Water Purveyors have been regularly briefed on the development and refinement of these models, and have participated to the extent they have deemed appropriate in various workshops and other opportunities for technical input concerning these modeling efforts. The USEPA, DTSC, and the United States Geological Survey (USGS) have done so pursuant to the processes provided in the Consent Decree.

G. The Signatory Parties believe that the Groundwater Model has now been developed into a sufficiently accurate predictive tool to serve its intended purpose. Specifically, the Signatory Parties believe that the Groundwater Model will allow ~~the Parties~~ them to reach sound decisions about the location and installation of new or reconstructed wells and the location and construction of new spreading basins within the Bunker Hill Basin in a manner consistent with sound water resource management, including:

- (1) Management of extraction and artificial recharge to ensure the effectiveness and integrity of the remedial systems for the Newmark Groundwater Contamination Superfund Site and the avoidance of "Adverse Effects" on those remedial systems;

(2) Maintenance of water levels throughout the Bunker Hill Basin to optimize water extractions;

(3) Maintenance of water levels in the artesian or pressure zone to prevent high groundwater conditions and potential liquefaction during earthquakes;

(4) Coordination of the Work as such Consent Decree activities may affect other contaminant plumes in the Bunker Hill Basin; and

(5) Optimizing conditions in the Bunker Hill Basin for conjunctive use.

H. The Signatory Parties are prepared to execute this agreement now and to submit it to ~~EPA~~USEPA and DTSC for their review and approval, reserving the right to update the Groundwater Model as may be suggested by the peer review of that model and other information suggesting prudent upgrades or improvements to the model. The Signatory Parties expect to periodically review and agree to appropriate changes to the Groundwater Model in order to improve its forecasting accuracy.

I. With the completion of the Groundwater Model, and submission for approval to USEPA and DTSC, the Signatory Parties now desire to memorialize their agreement as the Institutional Controls Groundwater Management Program (ICGMP) Agreement in order to protect the Newmark Facilities operated and maintained by the City under the Consent Decree, while furthering the Signatory Parties' common objective of sound water resource management in the Bunker Hill Basin.

Now, therefore, in consideration of the foregoing recitals and definitions that are incorporated herein and mutual covenants and terms below, the Signatory Parties hereby agree to the following:

**INSTITUTIONAL CONTROLS GROUNDWATER MANAGEMENT
PROGRAM AGREEMENT**

1. This Agreement will commence ~~upon the later of its approval~~ as of January 1, 2012, ~~now that it has been approved~~ by DTSC as lead oversight agency, ~~and concurrence by EPA~~ in which decision USEPA concurred as support oversight agency, which Agreement shall be published by the City, with annual updates, and cross-referenced by an amendment to the Ordinance to be adopted within a reasonable time after DTSC's approval. ~~Pending~~ While awaiting such approval, the Predecessor Agreement, ~~currently~~ which had been set to expire on June 30, 2010, ~~shall be~~ was extended by its terms for ~~such~~ the period, ~~if any, as may be~~ required for DTSC to consider the request to approve this agreement as a part of the Institutional Controls Groundwater Management Program required to be implemented by the City under the Consent Decree. This Agreement shall expire when ~~EPA~~ USEPA shall have issued Certificates of Completion for both the Newmark and Muscoy Operable Units addressed in the Consent Decree, although the Signatory Parties may extend this Agreement at that time by mutual consent for a term to be determined at that time. Within six months of the effective date of this Agreement, the City agrees that it will amend the current Ordinance to reflect termination of the Ordinance provisions upon receipt of the ~~later~~ last of ~~EPA's~~ USEPA's Certificates of Completion.

2. In the event that DTSC declines or refuses to endorse or approve this Agreement, or if ~~EPA~~ USEPA fails to concur in approving this Agreement, the Predecessor Agreement shall continue in force for another 90 days from the date of such final decision. The Signatory Parties will

consult in good faith for that 90 day period about a successor agreement in the event that DTSC refuses to approve this Agreement.

3. During the term of this Agreement, the City and any Public Water Purveyor which is a Signatory Party to this Agreement shall be exempt from the provisions of the Ordinance No. MD-1221, adopted by the City on March 20, 2006, Chapter 13.25 of the San Bernardino Municipal Code Entitled Spreading or Extraction within the Management Zone, or any successor ordinance intended to regulate groundwater extraction and artificial recharge within the Management Zone. Such exemption shall cease ~~on June 30, 2010 for any Public Water Purveyor which refuses to sign this Agreement and for a Public Water Purveyor which later~~ for any Signatory Party which withdraws from this Agreement, ~~shall cease effective on such later~~ the date as written notice of such withdrawal is given. Any Public Water Purveyor which ~~refuses or fails to sign this Agreement by July 31, 2010, or which later~~ withdraws from this Agreement shall be deemed to not be a Signatory Party.

4. a. For each year, 2005 through 2009, the Signatory Parties have negotiated, on an annual basis, certain pre-approved or permitted pumping activities up to specific volumes, and set forth a quantified list of such pre-approved or permitted pumping activities as part of **Exhibit B**. All such preapproved pumping activities (Preapproved Activities) are hereby approved up to the limits set forth in Exhibit B for the term of this Agreement. Such Preapproved Activities are deemed by this Agreement to include permanent replacement of a well or wells by the same or successor owner of the well, provided (a) the maximum pumping capacity is not increased (except as provided in **Exhibit C**), (b) the prior well is converted to a monitoring well (if practical) or permanently closed, and (c) the replacement well (or wells) is located within 500 feet and screened at the same interval(s) and depth(s) as the well or wells being replaced (except as provided in Exhibit

C). All Preapproved Activities, as identified in Exhibit B and C, shall be exempt from the provisions of the March 20, 2006 Ordinance, including requirements in that ordinance for the purchase of additional insurance.

b. Artificial recharge activities through existing recharge basins within the Management Zone as set forth in Exhibit A will be addressed at least annually (and more frequently as the need arises), subject to the availability of recharge water and the agreement of the Signatory Parties. The first such meeting to consider the artificial recharge activities shall take place on or around June ~~2011~~2012, and annually thereafter on or near the anniversary date of the first meeting. Using their best professional judgment, aided by the Groundwater Model, the Signatory Parties will review proposals for artificial recharge, and recommend, on an annual basis or more frequently as the need arises, the upper limit on how much artificial recharge may be safely conducted and at what locations without adversely affecting the remedial systems at the Newmark Groundwater Contamination Superfund Site, will not increase the likelihood that contaminants will migrate past or around the barrier wells that are part of the Newmark Site, and will not otherwise interfere with the performance of the Interim Remedial Actions. The Signatory Parties shall promptly review and unanimously consent to these proposed upper limits on artificial recharge. Provided that a Signatory Party adheres to the geographic and volumetric limits on such artificial recharge, that Signatory Party shall be free to conduct its artificial recharge operations for that year without further review or approval. Each Signatory Party shall report in writing quarterly to the other Signatory Parties about the volume and location of any such recharge activities in the prior quarter. All such pre-approved artificial recharge operations shall be exempt from the provisions of the March 20, 2006 Ordinance (or any successor ordinance), including requirements in that ordinance for the purchase of additional

insurance. The annually approved upper limit on artificial recharge decided by the Signatory Parties shall be provided promptly to EPA/USEPA, DTSC, and shall be made public by the City at the time it is transmitted to EPA/USEPA and DTSC.

c. No new well construction or artificial recharge activities contrary to Preapproved Activities shall be undertaken by any Signatory Party except as unanimously agreed to by the Signatory Parties in the annual review of artificial recharge, or for a new well (other than replacements discussed above), unless such new well has been separately approved pursuant to the application process provided for in Section 12 of this Agreement.

d. For the purposes of this Agreement, activities undertaken by the City pursuant to the Statement of Work (SOW) accompanying the Consent Decree, or activities otherwise directed by EPA/USEPA or DTSC shall be deemed to be preapproved, ~~provided that the changes in such activities after the date of this Agreement do not violate the terms of the other judgments referenced in the recitals above.~~ The SOW does not currently require the drilling of additional wells, nor has either EPA/USEPA or DTSC ~~ordered~~ directed the construction of any such new wells as of the date of this Agreement. The City will give notice to the Signatory Parties if it is to drill a new well pursuant to DTSC or ~~EPA order~~ USEPA direction pursuant to the Consent Decree, and will convene a meeting of the Signatory Parties in advance of well construction for the purpose of providing the technical information about such new well, including modeling results. To the extent feasible, City agrees to design and operate any such new wells in a manner to minimize negative effects on other Signatory Parties, including but not limited to impacts to water levels, production by other wells, and water quality. Except for monitoring work and pumping from existing City wells under the current SOW (including non-routine O&M as defined in the SOW), construction work

and physical operations to implement the Consent Decree shall be subject to dispute resolution as contrary to law under the Consent Decree pursuant to paragraph 13 of this Agreement.

5. Unless ordered by ~~EPA~~USEPA, DTSC, or the Court, no expansion shall be made of the ~~EPA~~USEPA-approved Management Zone, except by unanimous consent of all the Signatory Parties to this Agreement. In the event the ~~EPA~~USEPA-approved Management Zone is expanded, pre-existing wells, as of the date the Management Zone is expanded, in the newly expanded area shall be added to Exhibit B (the Preapproved Activity list), above, and treated according to the same terms and conditions as pre-existing wells in the current Management Zone. The maximum annual pumping volume of such wells in the newly expanded area shall be calculated as the maximum annual pumping volume in any year prior to the expansion of the Management Zone.

6. For the first three years after the effective date of this Agreement, the Signatory Parties shall meet at least quarterly to monitor the implementation of this Agreement and the remedial actions provided for under the Consent Decree, to consider any appropriate update work on the Groundwater Model, and to consult concerning artificial recharge activities and any new wells planned by the Signatory Parties for the upcoming calendar year. At least 30 days prior to the City's submission of any Five-Year Update Report for the Groundwater Model, the Signatory Parties shall meet to review the draft of that Update Report and provide comments, if any, to the City. After the first three years of this Agreement, the parties shall meet at least annually and more often by agreement of the Signatory Parties to discuss the status of implementation of this Agreement and any issues which may have arisen under the Agreement.

7. Provided that decisions for new projects meet the terms of the Consent Decree to protect the remedial systems and downgradient users from the further migration of contaminants,

and are not affirmatively disapproved by ~~EPA~~USEPA or DTSC as contrary to the Consent Decree, ~~and do not violate the terms of the other judgments referenced in the recitals above, the~~the Signatory Parties shall make decisions under this Agreement by unanimous consent of the Signatory Parties. Any amendment to this Agreement must be adopted by unanimous consent of the Signatory Parties.

8. With respect to any project proposed by or to the Signatory Parties pursuant to this Agreement, each Signatory Party will comply with the provisions of the California Environmental Quality Act (CEQA), as and if ~~that Act~~CEQA applies. It is not intended that a Signatory Party shall assume Lead or Responsible Agency status, as those terms are defined in CEQA, solely through participation in this Agreement.

9. No Signatory Party ~~to this Agreement~~ shall use the good-faith denial or limitation of a proposed project under this Agreement or the Consent Decree, or the good faith approval of a project under this Agreement, as a basis for any claim for damages, injunctive relief, or a taking against any other Signatory Party ~~to this agreement~~, DTSC, ~~EPA~~USEPA, or the United States. This undertaking shall survive the termination of this Agreement or withdrawal by any Signatory Party to the Agreement. All Signatory Parties reserve all their rights and defenses under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., corresponding provisions of California statutes governing the remediation of hazardous substance releases, and other applicable laws, except as set forth in this paragraph. Each Signatory Party reserves the right to bring an action to enforce the terms of this Agreement.

10. The Signatory Parties will timely cooperate with each other in sharing of information, including annual production information, water level data, logs from newly installed

wells, and groundwater sampling analytical results, needed to update the Groundwater Model referenced in this Agreement and the Consent Decree. No Signatory Party shall be responsible or liable for another Party's use of information or models shared pursuant to this Agreement or any predecessor Agreement.

11. No Signatory Party, by virtue of its participation in this Agreement, shall be required to obtain any additional insurance for an activity authorized through this Agreement other than such insurance that such Signatory Party would customarily and prudently obtain and keep in force in the course of conducting its regular business activities.

12. a. Any Signatory Party seeking to construct a new well or to reconstruct a well in a manner that will increase its capacity above that reported as part of Preapproved Activities under paragraph 4 above, or seeking to construct a new spreading basin for artificial recharge, shall submit its proposal for such construction to the other Signatory Parties, including the City, at least six months before the intended start date of such construction. The issue of replacement of existing wells without increasing capacity is addressed in paragraph 4.

b. The proposal shall contain sufficient detail for the Signatory Parties (including the City) to use the Groundwater Model to conduct Predictive Particle Tracking, or other predictive tools as they may be added (~~with EPA~~ as required or approved by USEPA and DTSC ~~approval~~) to the Groundwater Model, as defined in the Ordinance and SOW, with the extraction wells in the Newmark and Muscoy Operable Units operating at the Adjusted Target Extraction Rate (as adjusted from time to time by ~~EPA~~ USEPA and DTSC) established in ~~EPA's~~ USEPA's September 2007 Operational and Functional Determination under the Statement of Work (SOW) attached to the Consent Decree, over a representative hydrologic cycle, including representative wet and dry periods

for the Bunker Hill Basin, to determine the percentage of particle capture achieved at all times over the life of the proposed project with the project operating at full permitted capacity for the entire permit term. The modeling shall use the previously approved parameters (e.g. current production, forecast of future demand, contaminants, particle positions) in the modeling effort, as updated from time to time with new information. The City shall be primarily responsible for this review, including the provision of outside consulting services, but all Signatory Parties shall be entitled to participate to the extent they deem reasonable and prudent.

c. As required by the SOW, Section III.I., “[a]ny change to the model parameters by the applicant or the City, beyond adding the proposed artificial recharge and/or pumping considered pursuant to the application, that would influence the structure of the [Groundwater] Model [(e.g. any recalibration, different boundary conditions, different model cell properties, or different step sizes, etc.)] shall undergo the same level of stakeholders’ review as outlined in the work plan approved by [EPA/USEPA](#)], and shall be fully described in the application and/or evaluation and proposed decision by the City, as applicable. The complete application package, including the City’s evaluation of the application, will be required for [EPA/USEPA](#) and DTSC review and approval in accordance with the Consent Decree.” The list of information that shall, at a minimum, be provided to [EPA/USEPA](#)/DTSC is attached hereto as **Exhibit D**.

d. The applicant shall bear the consultant costs of conducting the required modeling, unless the Signatory Parties determine by unanimous agreement that consultant costs will be shared. The City shall cause its consultant to provide a binding estimate of the costs to the applicant for the required modeling, which estimate shall be prepared using the same rates charged to the City by the consultant for similar work in the same time period, and provide for completion no later than six

months after receipt of the applicant's submission. The City agrees that the applicant may use the results of the required modeling as evidence in other proceedings, including compliance with CEQA provided that the applicant shall pay for any additional consultant costs incurred in such later use of the modeling results.

e. Pursuant to Paragraph 28 of the Consent Decree, the applicant must agree in writing to provide EPA/USEPA, DTSC, and the Signatory Parties (including the City) (collectively or individually, "the Requesting Party"), and their contractors or representatives (1) access at reasonable times to the wells or spreading basins or related areas for purposes of verifying compliance with the approval under this Agreement, and (2) upon reasonable notice, to inspect and copy documents and records of the operations of the well(s) or spreading basin addressed in the application for the purposes of verifying compliance with the terms of any approval under this Agreement.

The rights set forth in sections (1) and (2) above shall be exercised during normal business hours of the applicant. The Requesting Party will advise the applicant at least three (3) business days in advance of the proposed dates and times the Requesting Party desires to exercise the rights set forth above. All entries, inspections or copying will be at Requesting Party's sole cost and expense.

The applicant will have the right to have a representative of applicant accompany the Requesting Party and Requesting Party's representatives, agents or designees (including contractors) while they are on the applicant's real property.

In exercising its rights of access, entry, inspection and copying under this subparagraph, the Requesting Party (other than EPA/USEPA or DTSC) shall protect, indemnify, defend and hold the applicant's property, applicant and applicant's officers, directors, employees, agents, representatives,

contractors, successors and assigns free and harmless from and against any and all claims, damages, liens, stop notices, liabilities, losses, cost and expenses, including reasonable attorney's fees and court costs, resulting from Requesting Party's exercise of such rights of access, entry, inspection and copying set forth herein.

f. No Signatory Party shall approve or recommend approval by ~~EPA~~USEPA or DTSC of a proposed project predicted by the Groundwater Model (as interpreted by the professional judgment of capable groundwater geologists familiar with the model and the Bunker Hill Basin and as reviewed using each Signatory Party's best professional judgment) to have an Adverse Effect on the Newmark or Muscoy Interim Remedial Actions. No Signatory Party to this Agreement shall undertake any such proposed project so predicted to have an Adverse Effect, unless such Adverse Effect shall be predicted by the Groundwater Model to have been resolved by Mitigation Measures, Project Redesign, or a combination of the two, as those terms are defined below.

g. Any proposed project shall be presumed to have an Adverse Effect, if the proposed project is forecast to:

(1) Reduce particle capture (as measured using Predictive Particle Tracking) below 90% at any time in the proposed future permit term; or

(2) Require an increase in the frequency of chemical monitoring from monitoring wells beyond the monitoring frequency specified in the SOW; or

(3) Require additional chemical monitoring from production wells located downgradient from the Newmark or Muscoy extraction wells; or

(4) Require an increase in pumping above the Adjusted Design Extraction Rate, as set forth in the SOW, or to initiate Non-Routine Maintenance as defined under the Consent

Decree (all as described in the pertinent provisions of the SOW or Consent Decree attached hereto as **Exhibit “E”**); or

(5) Cause a violation of the City’s obligations under the Consent Decree.

h. The applicant may rebut the presumed Adverse Effect by Project Re-Design or Mitigation Measures to restore particle capture percentages, over a hydrologic cycle representative of long-term hydrology and extending for a term at least as long as the proposed permit term, to at least 90% at all times, with the proposed project operating at the full permitted capacity for the life of the proposed project. The selection of a Project Re-Design or Mitigation Measures shall be at the sole discretion of the applicant. If the forecast Adverse Effect is increased chemical monitoring frequency, the initiation of Non-Routine Maintenance, or increased remedial compliance costs by the City or such costs for any other Signatory Party’s groundwater remediation efforts, or violation of the Consent Decree, the Adverse Effect may also be rebutted by Project Re-Design or Mitigation Measures reliably forecast to eliminate the Adverse Effect.

i. “Mitigation Measures” mean readily enforceable and verifiable steps taken to reduce or eliminate Adverse Effects forecast for a proposed new or reconstructed well or water spreading (artificial recharge) project by Predictive Particle Tracking or other predictive tools as they may be added to the groundwater model and approved by ~~EPA~~USEPA and DTSC. Mitigation Measures can include, but are not limited to:

(1) Locating an additional well or wells in the contaminant plume to counteract migration of contaminants past the extraction wells at the Newmark or Muscoy Interim Remedial Actions;

(2) Readily enforceable and verifiable pumping restrictions;

(3) Physical reductions in the size of well equipment to limit the well capacity;

(4) In the case of increased compliance costs, financial assurance in the form of performance or surety bonds, letters of credit, or other financial instruments sufficient to address and defray documented incremental City compliance cost increases directly attributable to the proposed project or to address and defray documented incremental compliance cost increases by any other Signatory Party for groundwater remediation efforts;

j. “Project Re-Design” means verifiable and enforceable changes in the physical design, equipment, or location or volume of a proposed water spreading (artificial recharge) or new or reconstructed well project intended to reduce or eliminate Adverse Effects forecast for a project evaluated with Predictive Particle Tracking.

k. Upon approval of a project by the Signatory Parties, and completed review without objection by DTSC and USEPA, the parameters used in the Groundwater Model shall be adjusted to include the approved project for the purpose of future analyses.

13. This Agreement, and any other agreements reached among the Signatory Parties arising out of or relating to the Consent Decree, shall be subject to review by USEPA and DTSC. Likewise, decisions made by the Signatory Parties concerning new or reconstructed wells, or new spreading basins, pursuant to this Consent Decree, remain subject to review and objection by USEPA and DTSC. No Signatory Party shall construct such a project in the event of unresolved objections by USEPA or DTSC. This Agreement does not alter the Dispute Resolution provisions of the Consent Decree as among the City, USEPA, and DTSC. The City agrees that if DTSC or ~~EPA~~USEPA, or both, deny or limit a project proposed and approved under this Agreement, or specifically directs the City to drill an additional well or wells or to carry out other steps not currently

enumerated in the Statement of Work to which a Signatory Party objects as violation of one of the judgments enumerated in Paragraphs 1.G or H., that the City shall invoke the Dispute Resolution provisions of the Consent Decree against the denying or limiting agency, provided that the aggrieved Signatory Party agrees in writing in advance to pay the City's attorney's and consultant's fees and incidental costs (including any and all costs or penalties ultimately charged by ~~EPA~~USEPA or DTSC to the City pursuant to the Consent Decree as a result of the invocation of Dispute Resolution). The City further agrees to allow active participation in the Dispute Resolution process by the Signatory Party that proposed the project.

14. a. As among themselves, the Signatory Parties agree to use the following dispute resolution process concerning decisions that a Proposed Project has an Adverse Effect which has not been ~~adequately~~ resolved by Project Redesign, Mitigation Measures, or a combination of the two.

(1) In the event of an impasse, the affected Signatory Parties shall engage in mediation for a period of up to six months. The mediation shall be conducted by JAMS (sometimes referred to as the mediation service provider), and shall be administered, to the extent practical in the San Bernardino office, or the JAMS office closest to San Bernardino. In the event, for whatever reason, JAMS is not available or lacks the necessary expertise, the parties shall first attempt to use the services of another judicially oriented service, such as IVAMS, and use the American Arbitration Association only after all other judicially based mediation services have refused to undertake the mediation and arbitration of the dispute.

(2) The mediator shall be selected by mutual agreement of all of the affected Signatory Parties, and the cost of the mediator shall be borne on an equal basis by all of the Signatory Parties

to this Agreement. In the event the Signatory Parties are unable to agree on a mediator, the mediation service provider shall select a mediator with civil judicial experience.

(3) The Signatory Parties shall meet and confer prior to the mediation and provide to the mediator an agreed list of matters to be resolved by the mediation. Unless all of the Signatory Parties to the mediation agree otherwise, the only matters to be discussed at the mediation are those matters submitted to the mediator following the meet and confer meeting of the Signatory Parties. Time shall be of the essence during the process and all Signatory Parties shall cooperate to promptly complete the process.

(4) The Signatory Parties shall notify USEPA and DTSC of any decision to seek mediation and shall promptly brief USEPA and DTSC about the dispute that triggered the decision to seek mediation. The Signatory Parties shall brief USEPA and DTSC about the dispute at least thirty days prior to the commencement of the mediation in order to allow USEPA and/or DTSC to participate in the mediation if they so choose. Nothing in this paragraph shall obligate either USEPA or DTSC to participate in any such mediation.

b. In the event the Signatory Parties are unsuccessful in resolving any or all of the issues presented to the mediator, the Signatory Party seeking approval of a Project alleged to have an unresolved Adverse Effect may seek judicial review of the Signatory Parties' decision.

(1) That review shall be based on the record compiled pursuant to this agreement and the Consent Decree, including the Groundwater Model predictions, together with any USEPA, DTSC, or USGS comments. Such review shall be sought only from the Court pursuant to the Consent Decree's provision for continuing Court jurisdiction over the decisions of the Institutional Control Program required by the Consent Decree. No Signatory Party to this Agreement shall

oppose any removal petition filed by the City in connection with the Consent Decree, and this undertaking shall survive the withdrawal from this Agreement by a Signatory Party ~~to this Agreement~~ and any termination of this Agreement. ~~The Court shall~~

(2) The Signatory Party seeking judicial review shall notify USEPA and DTSC at least thirty days prior to filing its action with the Court pursuant to the Court's continuing jurisdiction over the decisions of the Institutional Controls Program required by the Consent Decree. The notice to USEPA and DTSC shall identify the chief ways in which the decision by the Signatory Parties fails to comply with applicable law and the relief to be sought. None of the Signatory Parties shall object to the participation of USEPA or DTSC in any such proceeding, but nothing in this paragraph shall obligate either USEPA or DTSC to participate in any such proceeding.

(3) The Court shall review the Signatory Parties' decision *de novo*, with the burden of proof resting on the applicant to demonstrate, by a preponderance of the evidence, that the proposed Project will not have an Adverse Effect. Such judicial review will not in any way abrogate the review of a Project by ~~EPA~~USEPA or DTSC under this Agreement; any challenge to USEPA or DTSC actions under the Consent Decree must be raised pursuant to the Dispute Resolution provisions of the Consent Decree, as provided further in paragraph 13 of this Agreement.

15. Other water purveyors with interests in the Bunker Hill Basin or interests in any of the judgments initially referred to in recitals I.G, I.I and I.J above may become Signatory Parties to this Agreement upon the written consent of all the Signatory Parties. In the event another water purveyor joins this Agreement on terms different than those contained in this Agreement, such modification shall be made with respect to all Signatory Parties. No Signatory Party shall conclude any separate binding agreement with any other water purveyor governing approval under the

Consent Decree of spreading basins in the City limits or new wells in the Management Zone.

16. This Agreement shall not operate to validate or invalidate any Signatory Party's water rights. Each Signatory Party to this Agreement reserves any and all claims and causes of action respecting its water rights claims, any and all defenses against any water rights claims made by any other entity, and any claims arising from contamination or water quality degradation. In particular, nothing in this Agreement is intended to validate, invalidate or modify the water rights of the Signatory Parties as they may exist as of the effective date of this Agreement. Further nothing in this Agreement is intended to modify or affect in any way the Consent Decree terms or the judgments initially referred to in recitals I.G, I.I and I.J above. This Agreement shall not be used as evidence in any water rights claim or cause of action, except to defend against a claim that a Signatory Party has waived any of its water rights or causes of action by signing this Agreement.

17. Defined terms that are used in this Agreement and that are also used in the Consent Decree shall have the meaning set forth in the Consent Decree. In the event that there is any inconsistency between the definition of a term in this Agreement and a definition of the same term in the Consent Decree, the definition of the term in the Consent Decree shall control.

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

waiver of any applicable privileges.

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

20. This Agreement has been arrived at through negotiations and each Signatory Party has had a full and fair opportunity to review the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in the construction or interpretation of this Agreement.

21. This Agreement constitutes the entire agreement of the Signatory Parties with respect to the subject matter of this Agreement and supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this Agreement. Specifically, this Agreement terminates and supersedes the Predecessor Agreement, any extensions of that Agreement, and any prior versions of this Agreement which may have been executed among some of the parties. The parties shall remain bound to the confidentiality provisions for information exchanged pursuant to that Predecessor Agreement and the “Joint Defense and Confidentiality Agreement for the Agreement to Develop and Adopt an Institutional Controls Groundwater Management Program” dated February 23, 2005 attached hereto as **Exhibit F**.

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

23. In performing their respective obligations under this Agreement, the Signatory Parties

shall comply with and conform to all applicable laws, rules, regulations and ordinances.

24. This Agreement shall not create any right or interest in any non-Party or in any member of the public as a third party beneficiary.

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

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

Signatures Begin on Following Page:

SIGNATURE PAGE

CITY OF SAN BERNARDINO AND
CITY OF SAN BERNARDINO MUNICIPAL WATER DEPARTMENT

BY: _____

DATE: _____

APPROVED AS TO FORM: _____

SIGNATURE PAGE

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

BY: _____

DATE: _____

APPROVED AS TO FORM: _____

SIGNATURE PAGE

WEST VALLEY WATER DISTRICT

BY: _____

DATE: _____

APPROVED AS TO FORM: _____

SIGNATURE PAGE

EAST VALLEY WATER DISTRICT

BY: _____

DATE: _____

APPROVED AS TO FORM: _____

SIGNATURE PAGE

RIVERSIDE HIGHLAND WATER COMPANY

BY: _____

DATE: _____

APPROVED AS TO FORM: _____

SIGNATURE PAGE

CITY OF COLTON

BY: _____

DATE: _____

APPROVED AS TO FORM: _____

SIGNATURE PAGE

WESTERN MUNICIPAL WATER DISTRICT

BY: _____

DATE: _____

APPROVED AS TO FORM: _____