

California Regional Water Quality Control Board
San Diego Region
David Gibson, Executive Officer



Executive Officer's Report
February 9, 2011

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Part A – San Diego Region Staff Activities

1. Personnel Report

Staff Contact: DiAnne Broussard

The Organizational Chart of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) can be viewed at

http://www.waterboards.ca.gov/sandiego/about_us/org_charts/orgchart.pdf

Promotion

Lori Costa has accepted the Staff Services Analyst position in the Business Support Services Unit. This is a bit of déjà vu for Lori as she held a similar position in the early '90s. She began her State career at the State Water Board Office in Sacramento in 1984. She worked in the Affirmative Action office first as an Office Assistant then as an Office Technician. In April 1990 she was promoted to Staff Services Analyst in the Personnel and Training Office. She was promoted again to Associate Personnel Analyst in August 1993. In the summer of 1996 Lori moved to San Diego with her husband and children. She came to work as the Executive Assistant for Region 9 in January 1997. In her new role she will be responsible for personnel, contracting and purchasing. We are excited about the knowledge and experience she brings to the Business Support Services Unit.

Recruitment

The San Diego Water Board is currently recruiting for a Senior Environmental Scientist to lead the Monitoring Assessment and Research Unit. Vacant positions for the State and Regional Boards are posted on the State Board web page at

http://www.waterboards.ca.gov/about_us/employment/

Part B – Significant Regional Water Quality Issues

1. Sanitary Sewer Overflows (SSOs) November - December 2010 (Attachment B-1)

Staff Contact: Christopher Means

The following is a summary of the sewage spills occurring during November and December 2010 and reported and certified by December 31, 2010. Year end Summaries of 2010 public and private spills are attached, as are spill summaries for November and December 2010. Sewage

Collection Agencies report Sanitary Sewer Overflows (SSOs) on-line at the State Water Board's CIWQS database pursuant to the requirements of State Water Board Order No. 2006-0003-DWQ (*General Statewide Waste Discharge Requirements for Sewage Collection Agencies*). Reports on sewage spills are available on a real-time basis to the public from the State Water Board's webpage at: <https://ciwqs.waterboards.ca.gov/>

Public Spills

During November 2010, there were 11 SSOs from public systems in the San Diego Region reported in the on-line State Water Board CIWQS database. These SSOs included 3 spills of 1,000 gallons or more and 4 spills reaching surface waters, including storm drains. The combined total volume of reported sewage spilled from all publicly-owned collection systems for the month of November 2010 was 5,860 gallons.

During December 2010, there were 34 SSOs from public systems in the San Diego Region reported in the on-line State Water Board's CIWQS database. These SSOs included 23 spills of 1,000 gallons or more and 29 spills that reached surface waters, including storm drains. The combined total volume of sewage spills, reported from all publicly-owned collection systems for the month of December 2010, was 8,195,291 gallons. An overwhelming majority of the volume of sewage spilled in December 2010 was a result of the storms that occurred in the week of December 21-28, 2010. These storms led to spills from high levels of infiltration/inflow and localized infrastructure/pipe failure. In accordance with the State Water Board's Water Quality Enforcement Policy, each of the major spills are currently under investigation for enforcement prioritization by our Compliance Oversight Group.

Reported Private Spills

Twenty eight discharges of untreated sewage from private laterals were reported during November and December 2010 by the collection agencies pursuant to San Diego Water Board Order No. R9-2007-0005 (*Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region*). These private lateral spills included no spills of 1,000 gallons or more and 11 spills that reached surface waters, including storm drains. The combined total volume of reported sewage discharges from private lateral systems for the months of November and December 2010 was 5,495 gallons.

November / December 2009 and 2010 Comparison:

Month	Rainfall Total (In.)	Public SSOs	Private SSOs
November 2009	0.12	18	20
November 2010	0.88	11	13
December 2009	2.28	13	26
December 2010	5.0	34	15

Attached are five tables titled:

- “November 2010 - Summary of Public Sanitary Sewer Overflows in Region 9”
- “December 2010 - Summary of Public Sanitary Sewer Overflows in Region 9”
- “Nov - Dec 2010 -Summary of Private Lateral Sewage Discharges in Region 9”
- “2010 Summary of Public Sanitary Sewer Overflows in Region 9”
- “2010 Summary of Private Lateral Sewage Discharges in Region 9”

Additional information about the San Diego Water Board SSO regulatory program is available at: <http://www.waterboards.ca.gov/sandiego/programs/sso.html>.

2. Enforcement Actions for January 2011

Staff Contact: Jeremy Haas

During the month of January 2011, the San Diego Water Board initiated the following enforcement actions:

January 2011 Enforcement Actions	Number
Administrative Civil Liability Orders	5
Notice of Violation with section 13267 technical report	1
Notices of Noncompliance with Storm Water Enforcement Act of 1998	2
Notice of Violation	1
Staff Enforcement Letters	4
<i>Total</i>	<i>13</i>

A summary of recent regional enforcement actions is provided below. Additional information on violations, enforcement actions, and mandatory minimum penalties is available to the public from the following on-line sources:

State Water Board Office of Enforcement webpage at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/

California Integrated Water Quality System (CIWQS):

http://www.waterboards.ca.gov/water_issues/programs/ciwqs/publicreports.shtml

State Water Board GeoTracker database:

<https://geotracker.waterboards.ca.gov/>

Administrative Civil Liability (ACL) OrdersEastern Municipal Water District, Temecula

ACL Order No. R9-2011-0010 against the Eastern Municipal Water District was adopted on January 12, 2011 in the amount of \$353,200 for violations resulting from a 1.6 million gallon spill of raw, untreated sewage into Murrieta Creek that occurred on December 25, 2009.

Sea World, Inc., San Diego

ACL Order No. R9-2011-0011 against Sea World, Inc. was adopted on January 12, 2011 in the amount of \$6,000 for two violations of Order No. R9-2005-0091. The violations are subject to mandatory minimum penalties pursuant to Water Code section 13385.

Fallbrook Public Utility District, Fallbrook

ACL Order No. R9-2011-0012 against the Fallbrook Public Utility District was adopted on January 12, 2011 in the amount of \$3,000 for one violation of Order No. R9-2006-0002. The violation is subject to a mandatory minimum penalty pursuant to Water Code section 13385.

Russo Tile and Marble, Inc., El Cajon

ACL Order No. R9-2011-0013 against Russo Tile and Marble, Inc. was adopted on January 12, 2011 in the amount of \$1,700 for one mandatory storm water reporting penalty violation of State Water Board Order No. 97-03-DWQ. The violation is subject to a mandatory minimum penalty pursuant to Water Code section 13399.33.

San Diego Truck Body & Equipment, Lemon Grove

ACL Order No. R9-2011-0014 against San Diego Truck Body & Equipment was adopted on January 12, 2011 in the amount of \$4,916 for two reporting violations of State Water Board Order No. 97-03-DWQ and one discretionary penalty for failing to pay annual fees associated with Order No. 97-03-DWQ. The reporting violations are subject to mandatory minimum penalties pursuant to Water Code section 13399.33.

Notice of Violation with Water Code Section 13267 Technical ReportBlack Mountain Ranch, LLC, San Diego

NOV No. R9-2011-0025 was issued to Black Mountain Ranch, LLC on January 25, 2011 for violations of Order No. 2009-009-DWQ, *NPDES No. CAS000002, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* at the Del Sur/Unit 14 construction site in San Diego. Violations cited include failure to prevent sediment-laden discharges, failure to implement best management practices, (BMPs) and failure to implement run-on and runoff controls. On December 22, 2010 San Diego Water Board inspectors observed lack of sediment and erosion controls led to discharges of sediment-laden water into Lusardi Creek, tributary to San Dieguito Creek and Lagoon. Pursuant to Water Code section 13267 Black Mountain Ranch, LLC is required to submit a technical report by February 25, 2011 that describes remedies to the identified deficiencies and other information regarding implementation of construction storm water BMP requirements of Order No. Order No. 2009-009-DWQ. In addition, Black Mountain Ranch, LLC is required to submit results from specific bioassessment, effluent, and receiving

water monitoring activities by June 30, 2011 to determine the extent of the impacts and the effectiveness of BMPs used at the site.

Notice of Violation (NOV)

City of Temecula, Ronald Reagan Sports Park

NOV No. R9-2010-0157 was issued to the City of Temecula on January 13, 2011 for three violations of Clean Water Act section 401 Water Quality Certification No. 07C-113, including unauthorized discharges of turbid water, unauthorized maintenance of desiltation basins, and failure to submit annual reports associated with the Ronald Reagan Sports Park.

Notices of Noncompliance with Storm Water Enforcement Act of 1998

Notice of Requirement to Enroll Under Industrial Storm Water General Permit

Notices of Noncompliance were sent on January 25, 2011 to two facilities (see table below) for failure to enroll in the statewide General Industrial Storm Water Permit Order No. 97-03-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 Waste Discharge Requirements (WDRs) for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities*. The Notices are the first to inform the dischargers that, pursuant to Water Code section 13399.30(a)(2), failure to enroll will subject them to mandatory penalties. A second Notice will be sent after 30 days to any of the dischargers that fail to enroll. If a Notice of Intent to enroll is not submitted within 30 days of the second Notice, the violation will be subject to a mandatory penalty of not less than \$5,000 per year of noncompliance plus staff costs pursuant to Water Code section 13399.33.

Facility Name	Address	City
Quality Iron Products	2500 Sweetwater Springs, Blvd	Spring Valley
Bart's Iron Design Structural Steel	25825 Las Vegas Ave	Capistrano Beach

Staff Enforcement Letters (SEL)

El Guero Tire Shop and Repair, San Diego

An SEL was issued to Mr. and Mrs. Ramiro Montoya for violations of Investigative Order No. R9-2008-0011. The Investigative Order was issued on March 20, 2008 in response to a leak of gasoline from underground storage tanks at the El Guero Tire Shop and Repair facility at 2401 Imperial Avenue, San Diego. The Order required an investigation to determine the nature and extent of soil and groundwater contamination. The SEL was issued because neither the investigation's work plan nor results have been submitted.

South Orange County Wastewater Authority, Multiple Facilities

An SEL was issued to the South Orange County Wastewater Authority on January 4, 2011 for numerous violations of Order No. 97-52 (*Waste Discharge and Water Recycling Requirements*

for the Production and Purveyance of Recycled Water by Member Agencies of the South Orange County Reclamation Authority, Orange County) at two of its member agencies' facilities that occurred in November 2010.

The Moulten Niguel Water District Regional Plant was cited for one violation of the 12-month average discharge specification and one violation of the daily maximum discharge specification for manganese.

The South Coast Water District Coastal Treatment Plant was cited for one violation of the daily maximum discharge specification for manganese and one violation of the 12-month average discharge specification for manganese.

Fallbrook Public Utility District, Treatment Plant No. 1

An SEL was issued to the Fallbrook Public Utility District on January 20, 2011 for one violation at the Treatment Plant No. 1 Facility of the 30-day average fluoride discharge specification in Order No. 91-39 that occurred in September 2010.

California Department of Forestry and Fire Protection, Puerta la Cruz Conservation Camp

An SEL was issued to the California Department of Forestry and Fire Protection on January 6, 2011 for three violations at the Puerta la Cruz Conservation Camp identified in the 2010 Annual Monitoring Report for Order No. 93-012. Cited violations include failure to include groundwater monitoring results for total dissolved solids (TDS) and chloride, failure to include supply water analyses for TDS, and failure to submit information regarding sewage sludge disposal.

3. Grants

Staff Contact: Laurie Walsh

Clean Water Act (CWA) 319(h) Nonpoint Source (NPS) 2011 Grant Program Guidelines

The California NPS Program is making approximately \$4.5 million of CWA Section 319 grant funds available to support the restoration of waters impaired by NPS pollution. The State Water Board, Division of Financial Assistance (DFA) received 47 Concept Proposal (CP) Applications for the 2011 CWA 319(h) NPS Grant Program. Of these, 10 planning and 11 implementation CPs were selected to submit full proposals. Full proposals are due to the State Water Board in February 2011. Grant award amounts are between \$75,000-\$125,000 for planning/assessment projects and \$250,000-\$750,000 for implementation projects.

For more information on 319(h) NPS Grant Program visit:

http://www.swrcb.ca.gov/water_issues/programs/grants_loans/319h/index.shtml

Integrated Regional Water Management (IRWM) Planning

The Department of Water Resources (DWR) has posted their *draft* funding recommendations for the Proposition 84 IRWM Planning Grants. The San Diego IRWM Region has been recommended for \$1 million dollars in funding and the South Orange County IRWM Group about \$0.5 million. This grant funding will allow the San Diego IRWM Region and South

Orange County IRWM Group to update their existing IRWM Plans, including regional priorities and metrics, as well as provide for ongoing stakeholder involvement. The San Diego IRWM Region funding will also be used to support new components of the IRWM Plan including collaboration with the San Diego Water Board, salinity and nutrient planning, and integrated flood management. The Upper Santa Margarita IRWM Group was not recommended for funding during this round.

DWR's Planning Grant website contains the drop-down list of recommendations and scores at: http://www.water.ca.gov/irwm/integregio_planning.cfm

Integrated Regional Water Management (IRWM) Implementation

The DWR received 28 Implementation Grant applications for a total grant request of approximately \$270M and a total project cost of \$1.16B. IRWM Implementation Grants are currently under review and recommendations for funding will go before DWR in June 2011.

DWR's Implementation Grant website contains a list of applications submitted for consideration at: http://www.water.ca.gov/irwm/integregio_implementation.cfm

The following websites can be accessed for additional information and for direction on how to make a project submittal:

San Diego IRWM Region - www.sdirwmp.org.

South Orange County IRWM Group - http://www.ocwatersheds.com/wma_IRWM.aspx

Upper Santa Margarita IRWM Group - <https://www.ranchowater.com/irwmp.aspx>

IRWM Background Information

The Integrated Regional Water Management Planning Act of 2002 (Act) amended the California Water Code (CWC), commencing with CWC Section 10530, to encourage local water management agencies in California to work cooperatively to manage local and imported water supplies to improve the quality, quantity and reliability of those supplies. To achieve this goal the Act encourages local water management agencies to prepare and adopt IRWM Plans aimed at promoting integrated regional water management to ensure sustainable water uses, reliable water supplies, better water quality, environmental stewardship, efficient urban development, protection of agriculture, and a strong economy.

California voters passed Propositions 50 in 2002 and Propositions 84 and 1E in 2006 to fund competitive grants for projects to improve the quality, quantity and reliability of water supplies consistent with an approved IRWM plan. Proposition 50 provided \$500 M to fund competitive grants for projects consistent with an adopted IRWM plan. Proposition 84 provided an additional \$1B, for IRWM Planning and Implementation. Proposition 1E, provided \$300,000,000 for IRWM Storm Water Flood Management. The funding authorized by these propositions is jointly administered by the DWR and the State Water Board.

The incentive provided by the original Proposition 50 funding as well as the direction provided in grant program guidelines, were major drivers for progress in IRWM over the last several years. The Proposition 84 and 1E grant cycles are continuing this process and will provide at least \$71 million to San Diego region over the next few years. This \$71 million will be split (in

accordance with the existing funding memorandum) among the three regional IRWM planning groups; San Diego, South Orange County, and Upper Santa Margarita.

To be eligible for Proposition 84 and 1E grant funding, a project must be part of the [IRWM Plan](#). Funding Round 1 began in October 2010. Round 2 should occur in 2011 and Round 3 should follow in 2013. Examples of projects that may be supported by these grants include water conservation programs, recycled water retrofits, infrastructure upgrades, pollution reduction activities, and habitat conservation and preservation.

4. Update – Groundwater Cleanup, AMETEK Facility, El Cajon

Staff Contact: Brian McDaniel

AMETEK Inc. is under a Cleanup and Abatement Order (CAO) to cleanup a chlorinated solvent plume in groundwater originating from the former Ketema Facility at 790 Greenfield Drive in El Cajon. Ametek submitted a Remedial Investigation Report (RI) on December 15, 2010 which included the recommendations listed below. The San Diego Water Board, by letter dated January 24, 2011, concurred with the proposed recommendations:

- Collect discrete-depth groundwater samples from the median of State Route 67 in the vicinity of the Bradley Avenue overpass. The samples will be utilized to assess the potential for off-site contaminant releases related to preferential migration pathways from the Facility.
- Complete additional off-site monitoring wells to further delineate the vertical extent of contaminants migrating from the site.
- Collect additional groundwater samples as part of a continued dye tracing study. Sample results will address preferential migration pathways related to contaminant releases from the facility.
- Continue implementing a remedial pilot test study utilizing hydrogen peroxide to breakdown and reduce contaminants identified during site characterization.

The facility has been used since the 1950s for aerospace manufacturing. Concentrations of solvents in groundwater are above Maximum Contaminant Levels (MCLs) in both on- and off-site wells. MCLs are public health-protective drinking water standards and can be found in California Code of Regulations (CCR) Title 22 sections 64431 - 64444.

The primary contaminants of concern are:

- Trichloroethene (TCE);
- 1,1-Dichloroethene (1,1-DCE);
- 1,1,1-Trichloroethane (1,1,1-TCA);
- Tetrachloroethene (PCE);
- 1,1-dichloroethane (1,1-DCA); and
- 1,4-dioxane.

The CAO required Ametek to submit a Remedial Investigation and Feasibility Study Report in December 2010. In Addendum No. 1 to the CAO, the San Diego Water Board agreed to Ametek's request to separate the required report into two submittals. Ametek indicated this will allow additional time to complete the remedial pilot test study and provide the additional information necessary for a comprehensive Feasibility Study (FS) evaluation.

The next CAO milestone for Ametek is to submit the FS Report 120 days after completion of the remedial pilot test study. The FS report will provide an evaluation of cleanup alternatives, and is expected to be submitted sometime in June 2011. Ametek will submit a Remedial Action Plan 120 days after submittal of the FS evaluation.

5. Basin Plan Triennial Review

Staff Contact: Deborah Woodward

As part of the current review of the Water Quality Control Plan for the San Diego Basin (Basin Plan), also known as the Triennial Review, the first meeting of the Triennial Review Advisory Committee (TRAC) was held on January 27, 2011. The San Diego Water Board created the TRAC to enhance stakeholder participation in the Triennial Review and obtain stakeholder input prior to the formal public comment period. Interested parties were invited to self-nominate for TRAC membership. All nominees were selected to be TRAC members. The TRAC includes representatives of local, state, and federal agencies; tribes; and NGOs.

The product of the Triennial Review is a short list of the highest priority suggested Basin Plan changes for staff to work on over the next three years. The San Diego Water Board has solicited and received suggestions for Basin Plan changes and compiled a list of those suggestions. The TRAC is tasked with prioritizing approximately 60 suggestions and developing a recommended short list. The TRAC is not being asked to consider suggested changes of a "housekeeping" nature or those best addressed by other programs. To complete the Triennial Review, a short list of the highest priority suggestions (potential Basin Plan amendments) will need to be adopted by the San Diego Water Board. An agenda item for that action is scheduled for the June 2011 meeting.

Updates and notices about the Triennial Review are sent to those who subscribe to the "Basin Plan Issues" electronic mailing list at:

http://www.waterboards.ca.gov/resources/email_subscriptions/reg9_subscribe.shtml

Information about the Triennial Review, including a list of TRAC members, is available at:

http://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/tri_review.shtml.

The Basin Plan is available at:

http://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/index.shtml

6. International Wastewater Treatment Plant Compliance with Secondary Treatment Requirements (*Attachment B-6*)

Staff Contact: David Barker

The International Boundary and Water Commission, U.S. Section's (IBWC) South Bay International Wastewater Treatment Plant (IWTP), located about 2 miles west of the San Ysidro Port of Entry, has recently been upgraded from an advanced primary to a secondary treatment plant. This facility treats up to 25 million gallons per day (MGD) of sewage flows originating in Tijuana, Mexico and discharges the treated wastewater to the Pacific Ocean through the South Bay Ocean Outfall. The IWTP was designed to treat wastewater flows that exceed the capacity of the existing Tijuana, Mexico sewage collection and treatment system thereby relieving pressure on the Mexican system and reducing transborder wastewater flows in the Tijuana River. The IWTP also receives additional transborder wastewater flows captured by collection and conveyance facilities located adjacent to the international border in four canyons tributary to the Tijuana River.

The IWTP discharge is regulated under the terms of a National Pollutant Discharge Elimination System (NPDES) permit adopted by the San Diego Water Board. The IBWC was under federal court order to achieve full compliance with NPDES permit secondary treatment requirements through construction and operation of IWTP upgrades by January 5, 2011. The IBWC's press release dated January 5, 2011 reported that secondary treatment facilities became operational in November 2010 and the IBWC submitted a status report to the court on December 14, 2010 documenting the actions that had been completed to fulfill the commitment.

On January 7, 2011, the San Diego Water Board inspected the IWTP and obtained preliminary information from IBWC regarding the status of meeting the January 5, 2011 secondary treatment compliance date. Although the preliminary effluent data for December 2010 appears to indicate that the IWTP effluent may be meeting the NPDES permit secondary treatment requirements, a final determination of permit compliance cannot be made until a review of all the effluent data for the January 2011 reporting period is complete. San Diego Water Board staff also discussed the status of on-going wastewater flow bypasses that are compromising IWTP's ability to provide full secondary treatment for all wastewater flows.

As a follow-up to the January 7, 2011 inspection, the San Diego Water Board sent a letter to IBWC dated January 20, 2011 (see Attachment B-6) requesting additional information on the wastewater bypasses and more recent IWTP effluent data to further evaluate the plant's compliance with secondary treatment requirements. The additional information and effluent data is due by February 11, 2011. Staff will provide a compliance status update in a future Executive Officer report.

7. Lake San Marcos Update (*Attachment B-7*)

Staff Contact: Chiara Clemente

Since the last Executive Officer Report update dated 11/2010, the San Diego Water Board has continued to work closely with regulated entities to finalize execution of the Participation

Agreement for voluntary clean-up of nutrients in Lake San Marcos. The Participation Agreement (PA, Attachment B-7a) stipulates the process, timing, roles, and cost-sharing mechanism for dischargers to coordinate diagnostic studies and subsequent clean-up actions. Addendum B to the PA (Attachment B-7b) contains draft provisions for the San Diego Water Board's oversight of the voluntary diagnostic and clean-up effort detailed in the PA. The Board's participation in Addendum B would be in lieu of an enforcement action, provided that the member entities to the PA are working together in accordance with the process described in the PA. The Executive Officer is now prepared to sign Addendum B, and considers this to be the preferred approach because of the substantial interest and investment by several of the stakeholders, the value to be gained in implementing a voluntary alternative to expensive adversarial approaches, and the potential to apply this approach to other watersheds in the San Diego Region.

To date, the City of San Marcos, the Vallecitos Water District, San Marcos Unified School District, and Caltrans have either signed or agreed to sign the PA. The City of Escondido and the County of San Diego are considering signing the PA. All parties have been invited to sign the PA by February 24, 2011, at the San Diego Water Board offices.

The Citizen's Development Corporation (CDC) is the water rights license holder and owner of the lake property. In light of CDC's pending bankruptcy proceeding, the San Diego Water Board is pursuing additional measures to ensure that adequate funds are secured for the CDC's role in the diagnostic and clean-up effort. Mr. David Robinson from the Attorney General's Office will be providing San Diego Water Board legal representation in CDC's bankruptcy proceedings. In order to ensure that the bankruptcy court, as well as creditors in the bankruptcy and any prospective purchasers of Lake San Marcos, are fully aware of the scope of the San Diego Water Board's police and regulatory powers concerning CDC's environmental obligations and the seriousness of Lake San Marcos water quality conditions, an enforcement order may be issued that directs CDC to undertake certain diagnostic work to characterize the conditions of the Lake.

8. Regulation of Brine Waste Discharges from Desalination Facilities ***(Attachment B-8)***

Staff Contact: David Barker

On January 12, 2011, the San Diego Water Board adopted Order No. R9-2011-0016 (Order), an NPDES permit for the City of Oceanside's Ocean Outfall discharge. The point established in the Order for compliance with technologically based effluent limitations (TBELs) for a ground water desalination facility brine discharge was a key issue raised by the City Of Oceanside as well as other interested persons in the hearing. The Board Members were particularly concerned that the lack of flexibility may lead to unnecessarily stringent requirements for the discharge of brine and other waste for projects designed to augment local water supply needs. At the conclusion of the hearing the San Diego Water Board Members adopted the tentative Order recommended by staff, but requested that the Executive Officer prepare a written memorandum to the State Water Board expressing their concern that the NPDES regulations may not provide sufficient flexibility for

setting the point of compliance for TBELs in NPDES permits. Accordingly, I directed the drafting of a memorandum to Tom Howard, Executive Director of the State Water Board addressing these concerns and proposing an update to the Ocean Plan Table A that would clarify how brine wastes could be regulated in NPDES permits. A copy of this memorandum (attached to this report) is being sent to US EPA and we will work with State Water Board to elevate this issue in the Ocean Plan ongoing update.

9. Mission Valley Terminal Cleanup Update

Staff Contact: Sean McClain

Kinder-Morgan Energy Partners (KMEP) recently reported that cleanup of gasoline free product in soil and groundwater for most of the Qualcomm Stadium area appears to be in compliance with the December 31, 2010 deadline in the cleanup and abatement order. In addition to regular testing of the groundwater and soil vapors, KMEP is planning a vapor rebound study to include in a final compliance evaluation report to demonstrate that residual light non-aqueous phase petroleum liquid (LNAPL, or free product) has been removed to the extent technically practicable from the soil and groundwater beneath Qualcomm Stadium.

One element of the study is to determine the extent to which total petroleum hydrocarbon (TPH) concentrations might increase (i.e. rebound) while the soil vapor extraction (SVE) system is inactive. Monitoring of primary SVE wells, soil vapor (SV) probes, and temporary SV probes within the LNAPL-affected soil will be conducted on a weekly basis for up to six weeks. Although some rebound is expected, a large, persistent increase in soil vapor concentration could indicate that more cleanup is needed.

The San Diego Water Board expects KMEP to submit a compliance evaluation report by June 30, 2011, showing the extent to which gasoline free product has been removed in compliance with the December 31, 2010 deadline. The next deadline for the cleanup is to remove the gasoline constituents dissolved in groundwater. The deadline for that is December 31, 2013.

Although KMEP reported that soil cleanup for most of the Qualcomm Stadium area appears to be in compliance with the cleanup deadline, a new area of LNAPL-affected soil was not. The new area was discovered in July 2009 adjacent to the western limits of the previously known extent of the LNAPL zone. KMEP recently expanded the SVE system into the new area to include a network of 51 additional SVE wells to remediate the LNAPL-affected soil.

The Mission Valley Terminal (MVT) is a 10.5 acre aboveground storage tank (AST) facility located in Murphy Canyon near its terminus at Mission Valley (San Diego River Valley). The MVT is owned and operated by KMEP. Gasoline releases from the terminal created a groundwater contamination plume that extended off-Terminal to the south and southwest. The plume extends over approximately 2,000 feet beneath the Qualcomm Stadium parking lot. The City of San Diego is the land owner and has sued KMEP claiming damages.

KMEP began cleaning up the soil and groundwater in 1994. The cleanup has been expanded several times to include SVE along with groundwater extraction. There are 243 SVE extraction

wells and 19 groundwater extraction wells operating to remove gasoline constituents from the soil and groundwater at this time.

For further information, please visit the State Water Resource Control Board's Geotracker website at <http://www.geotracker.waterboards.ca.gov/> (type "SL607392800" in the Global ID and choose "Search for All Sites") to obtain recent groundwater and remediation status reports in PDF format.

10. Remedial Action for Waste Removal from a Former Burn Dump Site at Marine Corps Base Camp Pendleton

Staff Contact: Cheryl Prowell and Beatrice Griffey

The Naval Facilities Engineering Command Southwest (Navy) has excavated 64,636 tons of contaminated soil from a former burn dump, located within the riparian habitat of the Santa Margarita River watershed. The burn dump is also located above a critical municipal water supply for Marine Corps Base Camp Pendleton. This site was one of nine areas used by the Marine Corps to burn refuse from Base operations from 1942 to the early 1970s.

Waste burning operations left behind concentrations of harmful chemicals in soil including antimony, arsenic, chromium, copper, iron, lead, zinc, dioxins, and furans. In addition to contaminated soils, buried drums were also discovered at the site. Chemicals that leaked from the drums along with chemicals from the burn operations have polluted the underlying aquifer. Although the excavation eliminated the sources of the groundwater pollution, residual concentrations of metals, volatile organic compounds, and pesticides remain in the groundwater. In addition to removing the sources of groundwater pollution, the excavation has also eliminated the health risks to humans and wildlife from exposure to the contaminated soils.

The Navy will issue a Final Remedial Action Completion Report for the soil cleanup after all comments from the regulatory agencies (San Diego Water Board, Department of Toxic Substances Control, and USEPA) are adequately addressed. The Navy plans to complete a Data Gaps Analysis Study and a Focused Feasibility Study to address the remaining groundwater pollution at the former burn dump.

11. Status of Soil Cleanup and Brownfield Redevelopment at Stuart Mesa East Agricultural Fields

Staff Contact: Cheryl Prowell

A third phase of soil cleanup has been successfully completed by the Navy in preparation for constructing military housing on the Stuart Mesa East Agricultural Fields at Marine Corps Base Camp Pendleton. The conversion of the agricultural fields into Base housing qualifies as a brownfield redevelopment project because the cleanup will allow the property to be put to a more productive use. The San Diego Water Board will issue a No Further Action letter for this phase of the cleanup if no significant public comments are received in response to the public

notice published in the February 2011 Board Meeting Agenda. This phase of the cleanup involved excavating 611,380 tons of soil to restore 221.9 acres of land located in proximity to the Santa Margarita River and adjacent to Interstate Highway 5.

The Stuart Mesa East Agricultural Fields consist of 376-acres that were contaminated by the pesticides toxaphene and dieldrin in the course of farming operations. Cleanup of this brownfield is being conducted in phases to allow the fields to be redeveloped as quickly as possible in order to meet the timelines in the Marine Corps' "Grow the Force" initiative. The first phase of the soil cleanup was completed in November 2009 and construction of housing in this area is underway. The second phase of the cleanup, completed in May 2010, provided an alignment for the utilities that will serve the planned development. The third phase of the cleanup provided area for additional housing that is scheduled for construction at a later date. The Navy plans to execute the final phase of soil excavation during the spring of 2011.

Part C – Statewide Issues of Importance to the San Diego Region

1. Recommended Comprehensive Monitoring Program Strategy for California

Staff Contact: Bruce Posthumus

California Water Code Sections 13167 and 13181 (as amended and added by Senate Bill 1070 (Kehoe, 2006)) require the boards, departments and offices in the California Environmental Protection Agency and the California Resources Agency to integrate and coordinate their water quality and related ecosystem monitoring, assessment, and reporting. SB 1070 also mandated creation of the California Water Quality Monitoring Council (Monitoring Council), whose members represent a variety of interests. The Monitoring Council is charged with developing specific recommendations to improve the coordination and cost-effectiveness of water quality and ecosystem monitoring and assessment, enhance the integration of monitoring data across departments and agencies, and increase public access to monitoring data and assessment information.

In late December 2010, the Monitoring Council provided a progress report on its work and released its recommended Comprehensive Monitoring Program Strategy for California (Monitoring Strategy) called for by SB 1070. The recommended Monitoring Strategy is intended to ensure that information to address questions of interest to the public (e.g., "Are waters in Mission Bay safe for swimming?") is produced, readily available, and easily understood. The "My Water Quality" website, which is a work in progress, provides a glimpse of what the Monitoring Council envisions.

As reported at the September 2010 meeting, San Diego Water Board staff has begun to lay the groundwork for development and implementation of new and improved monitoring and assessment programs for various types of waters in the San Diego Region. These efforts have been and will continue to be informed by the work of the Monitoring Council.

Links:

1. Information about the Monitoring Council and its recommended Monitoring Strategy:

http://www.waterboards.ca.gov/mywaterquality/monitoring_council/

2. "My Water Quality" website: www.CaWaterQuality.net

3. Agenda materials for item 18 at the September 2010 meeting

("Assessing the Health of San Diego Region Waters"):

http://www.waterboards.ca.gov/sandiego/board_info/agendas/2010/sep/item18/eosr_revised.pdf

http://www.waterboards.ca.gov/sandiego/board_info/agendas/2010/sep/item18/SuppDoc1.pdf

2. Proposed Amendments to the Water Quality Control Plan for Enclosed Bays and Estuaries

Staff Contact: Julie Chan

The State Water Board is proposing amendments to the Water Quality Control Plan for Enclosed Bays and Estuaries - Part 1 Sediment Quality (Bays and Estuaries Plan). The proposed amendments consist of:

- A narrative sediment quality objective for protecting wildlife and fish from harmful effects of pollutants in sediments;
- A means to assess sediment quality in relation to the wildlife and fish objectives; and
- Other minor edits to correct typographical errors, and to clarify and support the proposed additions to the Bays and Estuaries Plan.

A public hearing on the proposed amendments is scheduled for April 4, 2011 at the State Water Board headquarters in Sacramento. The public notice announcing the hearing date, comment period, and other information can be found at this link.

http://www.waterboards.ca.gov/water_issues/programs/bptcp/docs/sediment/012811notice_sqo.pdf

The draft Staff Report/Substitute Environmental Document, proposed draft amendments, draft CEQA checklist, and Draft Economic Analysis are posted at

http://www.waterboards.ca.gov/water_issues/programs/bptcp/sediment.shtml

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

Significant NPDES Permits,
WDRs, and Actions of the
San Diego Water Board

February 9, 2011

APPENDED TO EXECUTIVE OFFICER'S REPORT

DATE OF REPORT
February 3, 2011

**TENTATIVE SCHEDULE
SIGNIFICANT NPDES PERMITS, WDRS, AND ACTIONS
OF THE SAN DIEGO WATER BOARD**

Action Agenda Item	Action Type	Draft Complete	Public Review & Comment	Consent Item
March 9, 2011 Regional Board Meeting San Diego Water Board Office				
Waste Discharge Requirements for Wineries in the San Diego Region (<i>Grove</i>)	Informational Item	na	na	na
Former Teledyne Ryan Facility (<i>Tom Alo</i>)	Neg. Dec. Adoption	100%	10%	No
Former Teledyne Ryan Facility (<i>Tom Alo</i>)	CAO Addendum	90%	0%	No
Poseidon Mitigation Site Approval (<i>Eric Becker</i>)	Tentative Resolution	0%	50%	No
Jack Eitzen, Administrative Civil Liability, for violations of Order 99-08-DWQ (<i>Rebecca Stewart</i>)	Administrative Civil Liability	20%	75%	No
Jack Eitzen, Administrative Civil Liability, for violations of Basin Plan Prohibitions 1 and 14 and Order No. 99-08-DWQ. (<i>Rebecca Stewart</i>)	Administrative Civil Liability	20%	75%	No
Healthy Times, Inc., Administrative Civil Liability, for violations of Order 97-03-DWQ (<i>Frank Melbourn</i>)	Administrative Civil Liability	20%	15%	No
April 13, 2011 Regional Board Meeting San Diego Water Board Office				
Status Report on Permit Reissuance for the International Boundary and Water Commission (<i>Barker / Morris</i>)	Informational Item	na	na	na
May 11, 2011 Regional Board Meeting Mission Viejo				
Status Report on Harbors and Bays Monitoring (<i>Busse / Posthumus</i>)	Informational Item	NA	NA	NA
US Navy--Naval Base San Diego (including Graving Dock) - San Diego Bay (<i>Kristin Schwall</i>)	NPDES Permit Reissuance	80%	0%	maybe
NPDES General Permit for Fireworks - San Diego Region (<i>Michelle Mata</i>)	NEW NPDES General Permit	90%	40%	No

November 2010 - Summary of Public Sanitary Sewer Overflows in Region 9												
Responsible Agency	Collection System	Total Number of SSO locations	Total Vol of SSOs (gal)	Total Vol Recovered (gal)	Total Vol Reaching Surface Water	Percent Recovered	Percent Reaching Surface Water	Miles of Pressure Sewer	Miles of Gravity Sewer	Miles of Laterals	Total Number of SSO locations per 100 miles of Sewer	Tot Vol of SSOs Reaching Surface Water per 100 miles of Sewer
Category 1 SSO												
Rancho Santa Fe Community Services District	Santa Fe Valley CS	1	2,000	2,000	0	100	0	2	14.2	0	6.1	0
San Diego City	San Diego City CS	2	1,740	470	1,180	27	67	145	3,002.00	2,000.00	0	22.9
Vallecitos Water District	Meadowlark CS	1	1,160	1,160	1,160	100	100	19.5	247	0	0.3	435.2
Category 2 SSO												
AC/S Environmental Security, MCB Camp Pendleton	Usmc Base, Camp Pendleton CS	3	140	80	0	57	0	32	104	80	1.3	0
Buena Sanitation District	Buena CS	1	375	375	0	100	0	8	100.9	0	0.9	0
Coronado City	City Of Coronado CS	1	20	20	0	100	0	6.6	39.3	1	2.1	0
San Diego City	San Diego City CS	1	200	0	0	0	0	145	3,002.00	2,000.00	0	0
San Diego Cnty Dept of Public Works	County Of San Diego CS	1	225	225	0	100	0	4	371	64	0.2	0
TOTALS		11	5860	4330	2340			362.1	6880.4	4145		

CS = Collection System

December 2010 - Summary of Public Sanitary Sewer Overflows in Region 9

Responsible Agency	Collection System	Total Number of SSO locations	Total Vol of SSOs (gal)	Total Vol Recovered (gal)	Total Vol Reaching Surface Water	Percent Recovered	Percent Reaching Surface Water	Miles of Pressure Sewer	Miles of Gravity Sewer	Miles of Laterals	Total Number of SSO locations per 100 miles of Sewer	Tot Vol of SSOs Reaching Surface Water per 100 miles of Sewer
Category 1 SSO												
El Cajon City	City Of El Cajon CS	1	94,000	2,000	92,000	2	97	0	195	0	0.5	47,179.40
La Mesa City	City Of La Mesa CS	5	1,320,700	0	1,320,700	0	100	0	155	0	3.2	852,064.50
Laguna Beach City	City Of Laguna Beach CS	5	63,800	0	63,800	0	100	4.5	95	0	5	64,120.60
Marine Corps Base, Camp Pendleton	Usmc Base, Camp Pendleton CS	3	16,250	0	16,250	0	100	32	104	80	1.3	7,523.10
Oceanside PWD	La Salina WWTP, Oceanside CS	2	5,540,000	40,000	5,500,000	0	99	40	450	0	0.4	1,122,448.90
Padre Dam Municipal Water District	Padre Dam CS	2	1,001,200	50	1,001,150	0	99	5	161	0	1.2	603,102.40
San Diego City	San Diego City CS	6	33,840	2,625	31,215	7	92	145	3,002.00	2,000.00	0.1	606.4
San Diego Cnty Dept of Public Works	County Of San Diego CS	2	117,000	0	117,000	0	100	4	371	64	0.4	26,651.40
UC San Diego	University Of California, San Diego CS	1	200	5	195	2	97	2	25	3	3.3	650
Vallecitos Water District	Meadowlark CS	2	7,580	0	7,580	0	100	19.5	247	0	0.7	2,844.20
Category 2 SSO												
Del Mar City	City Of Del Mar CS	1	80	80	0	100	0	1.8	29	0	3.2	0
San Diego City	San Diego City CS	2	360	0	0	0	0	145	3,002.00	2,000.00	0	0
San Diego Cnty Dept of Public Works	County Of San Diego CS	1	235	235	0	100	0	4	371	64	0.2	0
Vallecitos Water District	Meadowlark CS	1	46	46	0	100	0	19.5	247	0	0.3	0
	TOTALS	34	8195291	45041	8149890			422.3	8454	4211		
CS = Collection System												

Nov and Dec 2010 - Summary of Private Lateral Sewage Discharges in Region 9

Reporting Agency	Collection System	Total Number of PLSD locations	Total Vol of PLSDs (gal)	Total Vol Recovered (gal)	Total Vol Reaching Surface Water	Percent Recovered	Percent Reaching Surface Water	Miles of Private Lateral	Total Number of PLSD locations per 100 miles of Sewer	Tot Vol of PLSDs Reaching Surface Water per 100 miles of Sewer
Category 1 PLSD										
Carlsbad MWD	Carlsbad MWD CS	1	25	20	5	80	20	124	0.8	4
Fallbrook Public Utility Dist	Fallbrook Plant 1, Oceanside of CS	1	200	200	150	100	75	18	5.5	833.3
Laguna Beach City	City Of Laguna Beach CS	4	610	100	510	16	83	102	3.9	500
San Diego City	San Diego City CS	4	760	90	670	11	88	4,049.00	0.1	32.6
Vista City	City Of Vista CS	1	5	5	5	100	100	151.5	0.6	3.3
Category 2 PLSD										
Coronado City	City Of Coronado CS	1	20	20	0	100	0	50	2	0
Carlsbad MWD	Carlsbad MWD CS	1	10	10	0	100	0	124	0.8	0
Chula Vista City	City Of Chula Vista CS	3	1100	1070	0	97	0	0	0	0
El Cajon City	City Of El Cajon CS	2	440	440	0	100	0	189	1	0
Laguna Beach City	City Of Laguna Beach CS	1	4	0	0	0	0	102	0.9	0
San Diego City	San Diego City CS	8	2,301	2,155	146	93	6	4,049.00	0.3	7.1
San Juan Capistrano City	City Of San Juan Capistrano CS	1	20	20	0	100	0	50	2	0
TOTAL		28	5495	4130	1486			9008.5		

CS = Collection System

2010 - Summary of Public Sanitary Sewer Overflows in Region 9

Responsible Agency	Collection System	Total Number of SSO locations	Total Vol of SSOs (gal)	Total Vol Recovered (gal)	Total Vol Reaching Surface Water	Percent Recovered	Percent Reaching Surface Water	Miles of Pressure Sewer	Miles of Gravity Sewer	Miles of Laterals	Total Number of SSO locations per 100 miles of Sewer	Tot Vol of SSOs Reaching Surface Water per 100 miles of Sewer
22nd District Agricultural Association	22nd District Agricultural Association CS	1	50	50	0	100	0	0.7	1.6	0.4	37	0
AC/S Environmental Security, MCB Camp Pendleton	Usmc Base, Camp Pendleton CS	26	46,888	29,700	13,525	63	28	32	104	80	12	6,261.50
Buena Sanitation District	Buena CS	2	905	375	0	41	0	8	100.9	0	1.8	0
Coronado City	City Of Coronado CS	5	332	332	0	100	0	6.6	39.3	1	10.6	0
Ca Dept of Parks & Rec Winterhaven	San Clemente State Beach CS	1	75	75	0	100	0	0	2.1	0.9	33.3	0
Ca Dept of Parks & Rec Winterhaven	Doheny State Beach CS	0	0	0	0	0	0	0.1	2	1.5	0	0
Ca Dept of Parks & Rec Winterhaven	San Mateo Campground/ San Onofre CS	1	50	0	0	0	0	1.2	0.6	0.1	52.6	0
Carlsbad MWD	Carlsbad MWD CS	4	266,774	263,423	3,320	98	1	4.8	282	0	1.3	1,157.60
Chula Vista City	City Of Chula Vista CS	8	24,214	19,290	4,899	79	20	2.6	488	0	1.6	998.5
CSU San Diego	San Diego State University CS	0	0	0	0	0	0	0	5	4	0	0
Del Mar City	City Of Del Mar CS	1	80	80	0	100	0	1.8	29	0	3.2	0
Eastern Municipal Water District	Temecula Valley RCS	2	9,528	3,000	6,075	31	63	78	1,169.00	0	0.1	487.1
El Cajon City	City Of El Cajon CS	3	94,190	2,120	92,030	2	97	0	195	0	1.5	47,194.80
El Toro Water District	El Toro Water District R9 CS	1	250	0	250	0	100	5	142	36	0.5	136.6
Elsinore Valley Municipal Water Dist	Southern Section CS	0	0	0	0	0	0	2	38.1	n/a	0	0
Encinitas City	City Of Encinitas CS	1	42	15	0	35	0	4	120	0	0.8	0
Escondido City	Harrf Disch To San Eljjo Oo CS	3	855	0	800	0	93	10.7	365	0	0.7	212.9
Fairbanks Ranch CSD	Fairbanks Ranch CS	0	0	0	0	0	0	0.7	15	11.5	0	0
Fallbrook Public Utility Dist	Fallbrook Plant 1, Oceanside of CS	5	7,150	800	6,000	11	83	4.6	76.8	0	6.1	7,371.00
Imperial Beach City	City Of Imperial Beach CS	3	345	29	301	8	87	4.4	39.5	0.3	6.7	680.9
Irvine Ranch Water District	IRWD EI Toro CS	0	0	0	0	0	0	0.4	27.5	21.9	0	0
Irvine Ranch Water District	Los Alisos WRP CS	0	0	0	0	0	0	1.7	127.7	122.1	0	0

Responsible Agency	Collection System	Total Number of SSO locations	Total Vol of SSOs (gal)	Total Vol Recovered (gal)	Total Vol Reaching Surface Water	Percent Recovered	Percent Reaching Surface Water	Miles of Pressure Sewer	Miles of Gravity Sewer	Miles of Laterals	Total Number of SSO locations per 100 miles of Sewer	Tot Vol of SSOs Reaching Surface Water per 100 miles of Sewer
La Mesa City	City Of La Mesa CS	8	1,322,780	307	1,320,965	0	99	0	155	0	5.1	852,235.40
Laguna Beach City	City Of Laguna Beach CS	9	64,387	187	64,200	0	99	4.5	95	0	9	64,522.60
Lemon Grove City	City of Lemon Grove CS	0	0	0	0	0	0	0.1	62.4	124	0	0.00
Leucadia Wastewater District	Leucadia Wastewater District CS	3	81,080	11,300	69,780	13	86	11.4	193	0	1.4	34,138.90
Marine Corps Base, Camp Pendleton	Usmc Base, Camp Pendleton CS	3	16,250	0	16,250	0	100	32	104	80	1.3	7,523.10
Moulton Niguel Water District	Moulton Niguel Water District CS	1	1,500	0	1,500	0	100	20	510	0	0.1	283
Murrieta WMWD	Murrieta WMWD CS	0	0	0	0	0	0	0	200	50	0	0
National City	City Of National City CS	1	1,500	100	1,400	6	93	1	96.9	0	1	1,430.00
Oceanside PWD	La Salina WWTP, Oceanside Otrf CS	5	5,563,175	40,049	5,500,625	0	98	40	450	0	1	1,122,576.50
Olivenhain MWD	4-S Ranch CS	2	7,950	5,450	0	68	0	5.5	40	0	4.3	0
Otay MWD	Otay Water District CS	0	0	0	0	0	0	1.7	79.9	23.5	0	0
Padre Dam Municipal Water District	Padre Dam CS	3	1,001,205	55	1,001,150	0	99	5	161	0	1.8	603,102.40
Poway City	City of Poway CS	0	0	0	0	0	0	10	178	68	0	0.00
Rainbow MWD	Rainbow Municipal Water Dist CS	2	582	0	0	0	0	4	52	0	3.5	0
Ramona MWD	San Vicente-Treatment Plant CS	1	250	0	0	0	0	1	40	21	1.6	0
Ramona MWD	Santa Maria CS.	0	0	0	0	0	0	4	45	62	0	0
Rancho Claifornia Water District	Santa Rosa WRF CS	0	0	0	0	0	0	11	70	0	0	0
Rancho Santa Fe Community Services District	Santa Fe Valley CS	1	2,000	2,000	0	100	0	2	14.2	0	6.1	0
Rancho Santa Fe Community Services District	Rancho Santa Fe San Dist Plant CS	0	0	0	0	0	0	6	60	45	0	0
San Clemente City	City of San Clemente CS	0	0	0	0	0	0	1	180	0	0	0
San Diego City	San Diego City CS	40	74,164	17,615	39,555	23	53	145	3,002.00	2,000.00	0.7	768.5
San Diego Cnty Dept of Public Works	County Of San Diego CS	9	124,475	3,185	118,100	2	94	4	371	64	2	26,902.00

Responsible Agency	Collection System	Total Number of SSO locations	Total Vol of SSOs (gal)	Total Vol Recovered (gal)	Total Vol Reaching Surface Water	Percent Recovered	Percent Reaching Surface Water	Miles of Pressure Sewer	Miles of Gravity Sewer	Miles of Laterals	Total Number of SSO locations per 100 miles of Sewer	Tot Vol of SSOs Reaching Surface Water per 100 miles of Sewer
San Diego Cnty Dept of Public Works	Heise Park Campground CS	0	0	0	0	0	0	1	1	1	0	0.00
San Diego Cnty Dept of Public Works	Julian Water Pollution Facil. CS	0	0	0	0	0	0	0.4	6	0	0	0.00
San Diego Cnty Dept of Public Works	Pine Valley Sd CS	0	0	0	0	0	0	0	0.5	0	0	0.00
San Diego Cnty Dept of Public Works	Rancho Del Campo CS	0	0	0	0	0	0	0.1	5.9	0	0	0.00
San Juan Capistrano City	City Of San Juan Capistrano CS	1	100	100	0	100	0	0.2	123	0	0.8	0
Santa Margarita Water Dist	Santa Margarita Water District CS	2	2,296,481	1,425,222	871,409	62	37	12	600	165	0.2	112,150.40
Solana Beach City	City of Solana Beach CS	0	0	0	0	0	0	2	39	28	0	0.00
South Coast Water District	South Coast Water District CS	2	575	100	475	17	82	3.2	138	0	1.4	336.4
Trabuco Canyon WD	Trabuco Canyon Water District CS	1	1,800	0	1,800	0	100	3	44	0	2.1	3,829.70
UC San Diego	University Of California, San Diego CS	5	385	40	195	10	50	2	25	3	16.6	650
US Marine Corps Recruit Depot	MCRD CS	0	0	0	0	0	0	0	4	2.5	0	0
Vallecitos Water District	Meadowlark CS	4	8,786	1,206	8,740	13	99	19.5	247	0	1.5	3,279.50
Valley Center MWD	Lower Moosa Canyon CS	0	0	0	0	0	0	5	50	14	0	0.00
Valley Center MWD	Woods Valley CS	0	0	0	0	0	0	0	5.2	4.5	0	0.00
Vista City	City Of Vista CS	1	22,700	12,300	10,400	54	45	0.2	215.1	0	0.4	4,830.40
Whispering Palms CSD	Whispering Palms CS	0	0	0	0	0	0	1	26	23	0	0.00
	TOTALS	171	11043853	1838505	9153744			528.1	11059.2	3058.2		

CS = Collection System
Bold = no spills

2010 - Summary of Private Lateral Sewage Discharges in Region 9

Reporting Agency	Collection System	Total Number of PLSD locations	Total Vol of PLSDs (gal)	Total Vol Recovered (gal)	Total Vol Reaching Surface Water	Percent Recovered	Percent Reaching Surface Water	Miles of Private Lateral	Total Number of PLSD locations per 100 miles of Sewer	Tot Vol of PLSDs Reaching Surface Water per 100 miles of Sewer
Coronado City	City Of Coronado CS	3	130	130	0	100	0	50	6.1	0
Carlsbad MWD	Carlsbad MWD CS	18	1,022	2,232	55	218	5	124	14.5	44.3
Chula Vista City	City Of Chula Vista CS	12	241,820	2,800	238,470	1	98	0	0	0
Eastern Municipal Water District	Temecula Valley RCS	4	4,269	4,065	0	95	0	0	0	0
El Cajon City	City Of El Cajon CS	5	720	610	100	84	13	189	2.6	52.9
Escondido City	Harrf Disch To San Elijo CS	9	1,098	888	158	80	14	83.2	10.8	189.9
Fallbrook Public Utility Dist	Fallbrook Plant 1, Oceanside of CS	5	750	310	450	41	60	18	27.7	2,500.00
Imperial Beach City	City Of Imperial Beach CS	3	955	59	900	6	94	103	2.9	876.3
Laguna Beach City	City Of Laguna Beach CS	7	629	115	510	18	81	102	6.8	500
Leucadia Wastewater District	Leucadia Wastewater District CS	1	100	0	0	0	0	300	0.3	0
Moulton Niguel Water District	Moulton Niguel Water District CS	1	275	200	75	72	27	500	0.2	15
Oceanside PWD	La Salina WWTP, Oceanside CS	1	500	250	0	50	0	195	0.5	0
Padre Dam Municipal Water District	Padre Dam CS	4	170	30	130	17	76	160	2.5	81.2
Ramona MWD	Santa Maria CS	1	50	50	0	100	0	62	2.5	0
San Diego City	San Diego City CS	47	22,716	7,939	13,101	34	57	4,049.00	2.2	639.3
San Juan Capistrano City	City Of San Juan Capistrano CS	1	20	20	0	100	0	50	2	0
South Coast Water District	South Coast Water District CS	2	60	40	0	66	0	150	1.3	0
Vallecitos Water District	Meadowlark CS	7	807	792	0	98	0	271	2.5	0

Reporting Agency	Collection System	Total Number of PLSD locations	Total Vol of PLSDs (gal)	Total Vol Recovered (gal)	Total Vol Reaching Surface Water	Percent Recovered	Percent Reaching Surface Water	Miles of Private Lateral	Total Number of PLSD locations per 100 miles of Sewer	Tot Vol of PLSDs Reaching Surface Water per 100 miles of Sewer
Valley Center MWD	Lower Moosa Canyon Recl Facil CS	1	300	10	0	3	0	14	7.1	0
Vista City	City Of Vista CS	8	497	1,625	417	326	83	151.5	5.2	275.2
	TOTAL	140	276888	22165	254366			6571.7		



California Regional Water Quality Control Board San Diego Region

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Linda S. Adams
*Acting Secretary for
Environmental Protection*

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<http://www.waterboards.ca.gov/sandiego>

Edmund G. Brown Jr.
Governor

January 20, 2011

In reply refer to:

CRU:9 000000732:JCofrancesco
CIWQS Place ID 257821

Mr. Steve Smullen
Area Operations Manager
U.S. International Boundary and Water Commission
San Diego Field Office
2225 Dairy Mart Road
San Ysidro, CA 92173

Dear Mr. Smullen:

SUBJECT: IBWC, South Bay IWTP, Request for Report on Wastewater Bypass

The compliance of U.S. International Boundary and Water Commission (IBWC) with secondary treatment requirements at the South Bay International Wastewater Treatment Plant (IWTP) is a long standing issue of vital concern to the San Diego Water Board. On January 7, 2011, David Barker and Brian Kelley of the San Diego Water Board staff met with you to inspect the IWTP and obtain preliminary information regarding recent reports of wastewater bypasses occurring at the IWTP which are compromising IWTP's ability to provide full secondary treatment for all wastewater flows discharged to the Pacific Ocean via the South Bay Ocean Outfall. As a follow-up to the inspection the San Diego Water Board has reviewed the IBWC's NPDES permit reporting requirements pertaining to the on-going wastewater flow bypasses at the IWTP. Before discussing the bypass reporting requirements I would first like to review the San Diego Water Board's understanding of the effects of the wastewater bypasses on IBWC's compliance with secondary treatment requirements at the IWTP.

As you know the IBWC is under federal court order to achieve full compliance with secondary treatment requirements through construction and operation of IWTP upgrades by January 5, 2011. The IBWC's press release dated January 5, 2011 reported that secondary treatment facilities became operational in November 2010 and the IBWC submitted a status report to the court on December 14, 2010 documenting the actions that had been completed to fulfill the commitment. The IBWC reported that the upgrade is designed to comply with water quality standards applicable in the United States for total suspended solids, biochemical oxygen demand, and acute and chronic toxicity. IBWC also reported that ongoing sampling shows that the effluent is meeting the secondary treatment standards.

On December 8, 2010, Bart Christensen of the State Water Resources Control Board toured the IWTP facility and noted IBWC plant operators had discovered that a weir in the primary effluent channel overflows when flow rates to the activated sludge reactors exceed 33 million gallons per day (MGD). In a subsequent tour of the IWTP on December 31, 2010, Mr. Christensen noted that any time the IWTP diurnal process flow rate exceeded 33 MGD, the IBWC was diverting the excess flow to a channel that bypassed the secondary treatment processes and discharged to the South Bay Ocean Outfall without additional treatment. The exact amount of bypassed flow that did not receive secondary treatment was not measured, and could not be measured, as there was no metering device on the primary effluent bypass. Mr. Christensen also noted that IBWC was in the process of eliminating the need to bypass flow by removing hydraulic restrictions found in the inlet structure to the activated sludge reactors.

During the January 7, 2011 San Diego Water Board inspection you provided some preliminary IBWC plant process and effluent data, including 5-day carbonaceous biochemical oxygen demand (CBOD₅) and total suspended solids (TSS) secondary treatment process data and combined effluent TSS data. The secondary treatment process data for CBOD₅ and TSS covered a portion of December, 2010 (12/1 - 12/25) and the combined effluent TSS data covered the complete month of December, 2010. Based on this preliminary data it appeared that the combined effluent being discharged from the IWTP was meeting secondary treatment standards by the end of December 2010. Although the San Diego Water Board does not have your final complete set of effluent data for December 2010 or any data for January 2011, it appears that even with a small fraction of advanced primary flows being by-passed around the downstream activated sludge treatment processes, the IWTP effluent may be meeting the NPDES permit secondary treatment effluent limitations.

During the January 7, 2011 inspection you reported that IBWC was in the process of addressing the bypass issue by removing the hydraulic restrictions in the inlet structures to the activated sludge reactors. One of the activated sludge reactors had been repaired as of January 7; however work on the remaining six reactors was delayed because of operational problems with the drain pump station. Although you were unable to provide an exact date when all corrective work would be completed, you indicated that all drain pump repairs and reactor modifications could be completed by approximately the end of January 2011.

The term "bypass" is defined in the federal NPDES regulations at 40 CFR 122.41 as the intentional diversion of waste streams from any portion of a treatment facility. The bypass conditions of 40 CFR 122.41 are applicable to the IBWC's NPDES Permit for the IWTP. In this instance the specific applicable bypass regulation is contained in 40 CFR 122.41(m)(2) - *Bypass not exceeding limitations* which provides that the discharger may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation.

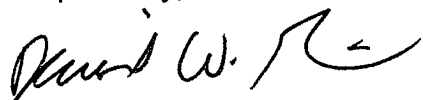
Based on the information you have provided to date, the San Diego Water Board has concluded that the temporary secondary treatment process bypasses at the IWTP as described above may meet the conditions specified in 40 CFR 122.41(m)(2).

I am requesting that IBWC continue to take all necessary steps to ensure that the bypasses do not cause NPDES permit effluent limitations to be exceeded and to terminate the bypasses in the shortest practicable time. In order to further document the circumstances of the bypasses and that the criteria for allowable bypasses in 40 CFR 122.41(m) (2) was satisfied, I am requesting that IBWC prepare and submit a written report no later than **February 11, 2011** containing the following information:

- A description of the need for the bypasses,
- A summary of the dates and times when the bypasses occurred;
- The schedule for completing pump repairs, reactor modifications, and terminating the bypasses;
- Available CBOD₅ and TSS concentration and percent removal data for December 2010 and January 2011 for the secondary treatment process flow as well as the IWTP discharge to the South Bay Ocean Outfall; and
- If the bypasses have not yet been terminated as of the report date, the anticipated time the bypasses are expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrences of the bypasses.

In the subject line of any response, please include the requested "In reply refer to:" information located in the heading of this letter. For questions pertaining to the subject matter, please contact Mr. Brian Kelley at 858-467-4254, e-mail bkellely@waterboards.ca.gov or Mr. David Barker at 858-467-2989, e-mail dbarker@waterboards.ca.gov.

Respectfully,



DAVID W. GIBSON
Executive Officer

DTB:bdk

**PARTICIPATION AGREEMENT AMONG THE
LAKE SAN MARCOS WORK GROUP**

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EXHIBITS

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Exhibit B	USMC Watershed Map
Exhibit C	Form of Work Group Proxy
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Exhibit E	New Member Addendum

PARTICIPATION AGREEMENT AMONG THE
LAKE SAN MARCOS WORK GROUP

This Participation Agreement (“Agreement”) is made by the undersigned parties, including political subdivisions of the State of California, organizations, and individuals (collectively, the “Members”), as follows:

RECITALS

Whereas, the Lake San Marcos (“Lake”) is an approximate 60-acre lake located in the unincorporated area of the County of San Diego (“County”) just outside the southwestern limits of the City of San Marcos (“San Marcos”);

Whereas, the watershed draining into San Marcos Creek (“Creek”) includes, but is not limited to, waste discharges subject to the control of the San Diego Regional Water Quality Control Board (“Regional Board”);

Whereas, San Marcos and the Vallecitos Water District (“Vallecitos”) are the “Members”;

Whereas, other entities and individuals may elect to participate as Members pursuant to Section 5.2;

Whereas, the Members may agree to perform some of the Work with parties who are not Members pursuant to a written agreement among the Members and such other parties pursuant to a separate Work and Cost Sharing Agreement to be attached hereto;

Whereas, the County, San Marcos and the City of Escondido (“Escondido”) (the “MS4 Co-Permittees”) are required by the San Diego Municipal Stormwater Permit, Order No. R9-2007-0001, to regulate surface water discharges from their respective municipal separate storm sewer systems (MS4s) to various waterways, such as creeks, streams, lakes and the ocean, to the maximum extent practicable (MEP);

Whereas, the Members and other persons and entities, who are not Members, may have discharged or represent individuals who may have discharged and may in the future discharge nitrogen and phosphorous (collectively, “Nutrients” or “Pollutants”) into the Creek and/or the Lake;

Whereas, the Regional Board, has the authority to issue Cleanup and Abatement Orders (“CAO”) and/or engage in other investigative or enforcement actions against any discharger to address past discharges and to abate future discharges of Pollutants into the Creek and/or the Lake;

Whereas, the Lake consists of an impoundment of San Marcos Creek by means of a privately-owned manmade dam at its southern end (the “Dam”), that retains water, sediment and Pollutants in the Lake;

Whereas, CDC is the fee simple owner of the land underlying the Lake and the Dam and holds an appropriative License for Diversion and Use of Water, Permit 6305, License 7224, issued by the State Water Resources Control Board (“State Board”); Division of Water Rights and holds certain riparian rights (collectively “Water Rights”);

Whereas, the Members desire to assess the presence of, and to determine the causal and contributing sources of Nutrients in the Creek and the Lake;

Whereas, the Members further desire to assess and evaluate the relative feasibility and effectiveness of reasonably available means and methods to abate Nutrient conditions in the Creek and Lake;

Whereas, the Members desire to develop and implement a remediation strategy and plan, for approval by the Regional Board, addressing the causal and contributory sources of Nutrients in the Creek and Lake to improve Nutrient water quality conditions in the Creek and Lake in accordance with such plan (collectively the “Work”);

Whereas, the Members intend to fairly allocate the responsibility and costs of the Work, and such other activities as necessary to complete the obligations required by this Agreement, among themselves and other parties responsible for causing or contributing to Nutrients in the Creek and Lake while making provision for reasonable de minimis party buy-out agreements;

Whereas, the Members desire to implement a process for involving public participation to enable interested persons to provide input at meaningful times during the progress of the Work;

Whereas, the Members will conduct the Work under the terms and conditions of this Agreement in lieu of potential regulatory enforcement proceedings commenced by the State Water Resources Control Board (“State Board”), the Regional Board, or any other public agency having jurisdiction, or a lawsuit among the Members or a lawsuit initiated by a citizen;

Whereas, without admitting any fault or liability in connection with the water quality conditions in the Creek and/or Lake, the Members wish to voluntarily (1) devote their resources to respond efficiently to conduct the Work, (2) share common legal, technical, administrative and other costs, as agreed to by the Members; (ii) identify and pursue other entities and persons potentially responsible for the impairment of the Creek or the Lake; and (3) cooperate among themselves for these purposes;

Whereas, the Members will coordinate with the Regional Board regarding the Work pursuant to the terms and conditions of a separate Administrative Agreement with the Regional Board;

THEREFORE, premised upon the Recitals, in consideration of the mutual covenants herein, and for good and valuable consideration, the Members agree as follows:

SECTION 1 THE ORGANIZATION

1.1 Organization. The Members hereby agree to accomplish the Purpose of this Agreement. Each party whose authorized representative has executed this Agreement is a Member of the San Marcos Work Group (the “Work Group”).

SECTION 2 DEFINITIONS

2.1 Definitions. Unless otherwise expressly provided for in this Agreement, the terms used in this Agreement which are defined in the California Water Code (“Water Code”), the California Code of Regulations (“CCR”), the federal Clean Water Act (“CWA”), or the Code of Federal Regulations (“CFR”) shall have the meaning assigned to them in such laws and regulations. Whenever the terms listed below are used in this Agreement or in the exhibits attached hereto and incorporated herein, the following definitions shall apply:

- (a) “Agreement” shall mean this Participation Agreement.
- (b) “Basin Plan” shall mean the current version of the Water Quality Control Plan for the San Diego Basin 9, as amended.
- (c) “Best Management Practices” (“BMPs”) as defined in 40 CFR 122.2 are schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
- (d) “Budget” shall mean the estimated not-to-exceed sum of expenditures which the Work Group feels is necessary for the satisfactory completion of each specified phase or portion of the Work.
- (e) “Consultant” or “Contractor” shall mean any person or entity, not a Member, selected by the Work Group to perform any part of the Work described in this Agreement.

(f) “Creek” shall mean that portion of the San Marcos Creek upstream of the Lake, as defined herein, and the surface waters tributary thereto.

(g) “Day” shall mean a calendar day, unless otherwise expressly provided. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or a California or federal holiday, the period shall run until the close of business of the next working day.

(h) “Initial Work” shall mean the gathering and review of historical data and the in-Lake survey work performed by Dr. Michael Anderson at the request of the Members prior to the execution of this Agreement.

(i) “Lake San Marcos” shall mean those waters of the United States and the State of California, which have been impounded by the Dam, where the boundary of such waters is defined by the perimeter of the impounded waters at 503.5 feet elevation above mean sea level ((AMSL, USGS datum), which is the listed California Department of Water Resources Division of Safety of Dams (“DOSD”) Crest Elevation), which is equal to the maximum topographical elevation of the Dam along the southern border of the Lake. For purposes of this Agreement, Lake San Marcos shall include such waters of the Creek that are downstream of a point in the Creek that is (1) equal to or less than one hundred feet (100’) upstream of the Lake and (2) downstream of the last MS4 conveyance into the Creek, whichever is less.

(j) “Lake San Marcos Basin” (the “Lake Basin”) shall mean that portion of the Richland Hydrologic Subarea whose surface waters drain directly into the Lake either naturally or through any public or private conveyance that does not first enter the Creek, plus that portion of the Richland Hydrologic Subarea which overlays any aquifer or ground water source which has a direct or indirect hydrological connection to the Lake.

(k) “Lake San Marcos Dam” (the “Dam”) is that privately-owned manmade structure built in the 1940’s, as modified thereafter, to create the Lake, and that causes the impoundment of the Creek. The DOSD Dam ID number is # 848-000 and its DOSD National ID number is CA00782.

(l) “Maximum Extent Practicable” (“MEP”) shall mean the technology-based standard established in CWA section 402(p)(3)(B)(iii) and in the Regional Board’s Order No. R9-2007-0001, NPDES No. CAS0108758, Waste Discharge Requirements for Dischargers of Urban Runoff from the Municipal Separate Storm Sewer Systems (“MS4s”) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority (the “MS4 Permit”).

(m) “Municipal Separate Storm Sewer System” (“MS4”) shall have the meaning set forth in 40 CFR 122.26(b) and as defined in the MS4 permit.

(n) “New Member” shall mean a Member joining into this Agreement as described in Section 5.2 herein.

(o) “Shared Costs” shall mean all costs authorized by the Members in accordance with the provisions of this Agreement, including but not limited to the Work as in Section 6.14, legal, technical, administrative and other costs reasonably necessary to achieve the Purpose of the Agreement.

(p) “Terminated Member” shall mean a Member which is terminated from this Agreement as provided in Section 9.5.

(q) “Upper San Marcos Creek Watershed” shall mean Twin Oaks Hydrologic Subarea 904.53 and Richland Hydrologic Subarea 904.52 within the Region 9, Carlsbad Hydrologic Unit, San Marcos Hydrologic Area, as described in the San Diego Basin Plan and shown on Exhibit A (Carlsbad Watershed Management Area) attached hereto and incorporated herein by this reference.

(r) “Voting Power” shall mean that each Member shall have a vote in the proportion that the Member’s then current allocated share of responsibility to pay Shared Costs as determined under this Agreement. Any Member that is more than sixty (60) days past due on payment of its portion of Shared Costs shall not participate in any vote until such time as said Member becomes current in such payments and shall remain liable for payment of such costs.

(s) “Water Quality Objective” shall mean the numeric or narrative limits on constituents or characteristics of water which are established for the reasonable protection of designated beneficial uses of the water or the prevention of nuisance within a specific water body as established in the “Basin Plan,” as the same may be amended to include an approved site specific water quality objective.

(t) “Water Rights” shall mean the appropriative and riparian rights to use waters of the state as defined by the United States and California Constitutions, the California Water Code, and the cases interpreting the same.

(u) “Work” shall mean those activities necessary to achieve the Purpose of this Agreement, to be accomplished as defined in Section 6.14 of this Agreement.

(v) “Work Group” shall consist of all the Members to this Agreement.

SECTION 3 PURPOSE

3.1 Purpose. The Members' purpose is to reasonably achieve nutrient Water Quality Objectives in the Lake and Creek (the "Purpose").

SECTION 4 COVERED WATER BODIES

4.1 Water Bodies Subject to this Agreement. This Agreement covers the Creek and the Lake. Both of these water bodies are located within the Carlsbad Hydrologic Unit upstream of the Dam in the uppermost hydrologic subareas ("HSA") of the Carlsbad HU (HSA 904.53 and 904.52, Exhibit B). HSA 904.53 (Twin Oaks) is centered on Twin Oaks Valley at the southern end of the Merriam Mountains. HAS 904.52 (Richland), is centered on the valley principally occupied by San Marcos. The Richland HSA is ovoid in shape and at its lower end the Creek is impounded by the Dam to create the Lake as a part of the Lake San Marcos Community Development Project. The Lake is the largest impoundment within the Creek.

Both the Creek and Lake are listed as impaired water bodies under the approved Section 303(d) of the federal Clean Water Act (CWA). The Creek is listed for phosphorus (the "Creek Pollutant"); the Lake is listed for ammonia (as nitrogen), nutrients, and phosphorus (the "Lake Pollutants").

SECTION 5 WORK GROUP ORGANIZATION

5.1 Members. The Members consist of the parties who have executed this Agreement and the Common Interest Agreement attached to this Agreement of even date herewith.

5.2 New Members. Any entity or person that becomes a Member by execution of the Addendum to this Agreement attached as Exhibit "E" subsequent to the effective date of this Agreement shall be deemed a Member ab initio and shall pay all sums which such Member would have been obligated to pay if it were a Member ab initio, plus a premium to be determined by the existing Members, which payments shall be a condition to becoming a Member.

5.3 Capacity of Members. Each Member shall hold the capacity and power to contract, sue, and be sued under California law.

5.4 Members' Cooperation. The Members shall, without waiving any applicable attorney-client, attorney work product, joint defense privilege and other privileges and immunities as well as claims of confidentiality, cooperate with each other to effectuate the Work and this Agreement, and shall make prompt payment of their

Shared Cost obligations arising under this Agreement as allocated pursuant to Section 8.1 hereof.

5.5 Withdrawal. Any Member may withdraw from all future participation in this Agreement upon written notice to the Steering Committee or its designees, or if there is no Steering Committee to the Members, effective as of the date the notice is postmarked, except that such Member shall remain liable for its Shared Costs assessed to that Member more than thirty (30) days prior to the date of withdrawal. Withdrawing Members shall pay their portion of any Shared Costs for which they are liable pursuant to this Agreement no later than sixty (60) days following the withdrawal notice from the Work Group. Any Member entering into any settlement including, but not limited to, any de minimis buy-out agreement, with the Work Group, by which an accord and satisfaction of all of the Member's obligations under this Agreement is reached, shall be deemed to have fully performed its duties and obligations under this Agreement.

5.6 Removal of a Member. If any Member fails to pay any portion of the Shared Costs assessed to that Member pursuant to this Agreement within sixty (60) days following mailing of notice of such assessment, that Member shall be considered in default, and its power to vote shall be suspended until such assessment and any penalty is paid in full, and may be terminated from this Agreement by a vote of two-thirds (2/3) of the Voting Power present in person or by proxy at a Work Group meeting called for the purpose of considering such termination. A Member subject to a termination action shall be provided with fifteen (15) days prior written notice of a Work Group meeting at which the Member's termination will be considered and the Member will be given a reasonable opportunity to be heard and present evidence in opposition to the action.

If the Work Group or Steering Committee retains any contractor or consultant in common with a Member which withdraws or is removed, such Member shall not claim any conflict of interest in, or object to, the continued provision of any technical assistance to the Work Group or Steering Committee by any such contractor or consultant.

5.7 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the Members. No assignment or delegation of the obligation to make any payment or reimbursement hereunder will release the assigning Member from its obligations under this Agreement without the prior written consent of the Work Group.

5.8 Relationship of Members. Each Member represents that it has sought and obtained any appropriate legal advice it deems necessary from legal counsel of its choosing prior to entering into this Agreement.

No Member, its representative(s), or counsel serving on the Steering Committee or any subcommittee shall act or be deemed to act as legal counsel or a representative of any other Member, unless expressly retained by such Member for such purpose, and, except

for such express retention, no attorney/client relationship is intended to be created between representatives on the Steering Committee or any subcommittee and/or the Members.

Nothing in this Agreement shall be deemed to create a partnership or joint venture and/or principal and agent relationship between or among the Members.

5.9 Committees. The Members may establish a Steering Committee (the powers and duties of which may include those enumerated in Section 7 herein) to carry out or exercise specific rights, duties and obligations of the Work Group under this Agreement. The Steering Committee may establish such other committees or subcommittees as it deems appropriate.

SECTION 6 WORK GROUP PROCEDURES

6.1 Notice of Meetings. Written notice of the time, place and purpose (including a list of issues that are anticipated will be presented to the Work Group for discussion and/or vote) of any meeting of the Work Group shall be given by the Steering Committee to each Member entitled to vote at such meeting not less than three (3) days and not more than thirty (30) days before the date of such meeting either personally, by mail, or by other means of written communications, including facsimile, or e-mail addressed to each Member at the address appearing on the Service List attached to this Agreement as Exhibit D, as amended from time to time by the Members. In the event of an emergency, the notice required may be less than three (3) days.

6.2 Meetings. The Members may authorize or direct actions under this Agreement only at meetings duly held and called for such purpose, which meetings shall be called at least quarterly by the Steering Committee, or if there is no Steering Committee by the Members. Meetings of the Work Group may be called for any purpose at any time by any three or more Members of the Steering Committee, or by twenty five percent (25%) or more of the then existing Voting Power of Work Group. Meetings may be held in person or by telephone conference. Meetings shall be conducted in general accordance to Robert's Rules of Order with meeting notes taken and distributed to the Work Group within a reasonable time after the Work Group meeting.

6.3 Members Authority to Delegate. The Members may delegate any of their powers and duties to a Steering Committee, including such powers as identified in Section 7 herein.

6.4 Reservation of Members' Rights. Each Member reserves the right to unilaterally do work in furtherance of the Purpose of the Agreement, without Work Group input or voting, provided that such work shall not adversely affect the Work of the Work Group, is coordinated with the Work of the Work Group, and shall not be subject

to the cost sharing requirements of this Agreement. However, certain portions of the Work to be performed under this Agreement, as approved by the Members, may be conducted by the Members, and the costs thereof may, as approved by the Work Group, be treated as Shared Costs as defined in Section 8.1.

6.5 Majority Rule. Except for matters reserved to the Steering Committee, any matter under this Agreement may be referred to a meeting of the Work Group. The Work Group shall attempt to make decisions by consensus; however, except as otherwise provided in this Agreement, on any matter put to a vote, such matter shall be decided by a majority (more than 50%) of the Voting Power (as defined in Section 2.1(r) of this Agreement) of the Members present in person or by proxy at the meeting, subject to the quorum limitation in Section 6.7. Decisions to hire contractors, consultants or common counsel must be approved or ratified by 60% of the Voting Power of the Members present in person or proxy at the meeting and decisions affecting the final allocation of the Members shall be determined by two-thirds of the Voting Power of the Work Group.

6.6 Voting by Proxy. A Member eligible to vote at a Work Group meeting may assign in writing, using the proxy form attached as Exhibit C to this Agreement or similar form, its Voting Power (as defined in Section 2.1(r) to another Member eligible to vote at the meeting.

6.7 Quorum for Work Group. Forty percent (40%) of the eligible Voting Power of the Work Group shall be present in person or represented by proxy at any Work Group meeting.

6.8 Apportionment of Voting Power. Votes shall be apportioned among the Members in accordance with Section 7 of this Agreement. All Members will work expeditiously and in good faith to establish an apportionment of responsibility as provided for in Section 8 herein. Until such time as the Members have apportioned the share of responsibility, under Section 8.4 each Member shall have one (1) vote, (the "Initial Work Group Voting Power").

6.9 Right to Audit. The Members shall each have the right to audit and inspect the books and records of the Steering Committee and the Work Group during reasonable business hours. All such records shall be kept by the secretary of the Steering Committee.

6.10 Shared Information. Consistent with the provisions of the Common Interest Agreement as executed by the parties on the same date as this Agreement, the Members agree that information discussed at meetings held pursuant to the Agreement, including but not limited to, decisions concerning allocations created hereunder, unless otherwise provided for, shall be kept confidential and shall not be disclosed to any person or public agency not a Member without the consent of the Members holding a majority of the Voting Power. From time to time, the Members may elect to disclose or transmit to

the Regional Board and non-Members, information necessary to carry out the purposes of this Agreement. The Members intend that no claim of work product doctrine protection, attorney-client privilege or other privilege be waived by reason of sharing of some information with Members.

6.11 Work Completion. The Work required by this Agreement shall be deemed complete when the Members have received the Regional Board's written determination that all Work has been satisfactorily performed.

6.12 Compliance With Laws. Members shall perform all actions required pursuant to this Agreement in accordance with all applicable local, state, and federal laws, regulations, and orders.

6.13 Procurement of Contractors or Consultants. The Work undertaken by the Work Group shall be deemed a "public work" within the meaning of California Labor Code Section 1720(a)(1); and, for work performed by contractors within the meaning of California Public Contract Code Section 1101, shall be deemed a "public work contract" subject to the requirements of the Public Contract Code. In determining whether to apply the provisions applicable to contracting with state agencies (Sections 1011 et seq.) or contracting by local agencies (Sections 20100 et seq.), Members shall apply the provisions of each that are the most stringent, as if the Work Group were a public entity.

6.14 Phasing of Work. The Work shall be logically phased, with each phase being substantially completed before the scope of work for the next phase is authorized. The scope of work for later phases shall be structured and defined to logically build upon Work performed in earlier phases and to focus its purpose based on Work performed in earlier phases. Work shall mean (a) the diagnostic assessment of existing Nutrient conditions, as well as the identification and assessment of the contributing and causal sources and pathways affecting Nutrient conditions in the Lake and Creek ("Diagnosis Work"); (b) the identification and feasibility assessment of alternative processes, means, methods, and technologies for abating the Nutrient conditions in the Lake and Creek, improving the existing Nutrient water quality conditions in the Creek and Lake, and the determining feasible site-specific Water Quality Objectives (the "Feasibility Work"); (c) the development of a remediation plan to achieve the Water Quality Objectives within a reasonable period of time ("Remedial Action Plan"); (d) implementation of the Remedial Action Plan; (e) pre-and-post project Nutrient monitoring in the Creek and Lake ("Monitoring Work"); and (f) work incidental thereto. Each phase of Work shall be further tiered in logical sub-phases, as appropriate. A Budget for each phase or sub-phase of Work and a corresponding Shared Cost assessment shall be made upon Members for the amount of the Budget prior to the initiation of each phase or sub-phase of Work.

SECTION 7
STEERING COMMITTEE

7.1 Steering Committee. The Steering Committee shall consist of two or more Members who shall serve for such terms as determined by the Members from time to time.

7.2 Enumerated Powers of the Steering Committee. The powers, duties and responsibilities of the Steering Committee may include, but are not limited to, the following:

- (a) recommendations, coordination, supervision of execution, any contractors, or common counsel and consultants, as approved by the Work Group;
- (b) appointing subcommittees, including technical and allocation subcommittees as deemed necessary;
- (c) negotiating and referring settlement matters to the Work Group;
- (d) electing a chairperson and such other officers of the Steering Committee, who will also act as chairperson of the Work Group;
- (e) negotiating with state or federal governmental agencies, including the Regional Board with respect to other all actions or request by the Work Group related to the Work or Purpose of this agreement;
- (f) recommending to the Work Group that litigation be commenced against any party;
- (g) circulating to the Work Group such material as the Steering Committee deems necessary;
- (h) conducting such other activities that are necessary and proper to carry out the Purpose of this Agreement;
- (i) calling meetings of the Work Group;
- (j) recommending to the Work Group a de minimis buyout proposal, if appropriate, and/or a partial or total cashout proposal;
- (k) proposing a method of allocation of Shared Costs;
- (l) proposing removal of Member(s) from the Work Group for non-payment of the Member's Shared Costs allocation; and

(m) those activities authorized by the Steering Committee to be done on behalf of the Work Group shall be funded by the Members as Shared Costs. The Steering Committee's authority to expend Work Group funds shall be limited to the amount of any funds then available as the result of prior assessments.

7.3 Project Manager. The Steering Committee may designate one or more Members to act as the Project Manager(s) to administer the Work Group's contracts with consultants and/or contractors performing Work. If no Project Manager is designated the chair of the Steering Committee shall act as the Project Manager.

7.4 Notice of Meetings. The Steering Committee may authorize or direct actions under this Agreement only at meetings duly held and called for such purpose, which meetings should be called regularly by the Steering Committee. Meetings of the Steering Committee may be called by the Chairperson or by any two Members of the Committee. Whenever feasible, written notice of the time, place and purpose of any meeting of the Steering Committee shall be given to each Steering Committee Member at least three (3) days and not more than thirty (30) days before the date of such meeting either personally by mail or by other means of written communication, including facsimile, charges prepaid, addressed to each such member at the address appearing on a service list to be maintained by the Steering Committee. Meetings may be held by telephone conference.

7.5 Quorum for Steering Committee. Fifty percent (50%) of the eligible Voting Power of the Steering Committee members shall be present in person or represented by proxy at any Steering Committee.

7.6 Voting. The Steering Committee shall attempt to make decisions by consensus; however, any matter put to a vote by the Steering Committee shall be decided by a majority (more than 50%) of the Steering Committee members present in person or by proxy at the meeting.

7.7 Minutes. Minutes shall be kept of all Steering Committee meetings and provided in draft form within twenty (20) days of the meeting to the Members for review, comment and approval. The Steering Committee secretary shall keep copies of all minutes.

7.8 Record Retention. The Secretary of the Steering Committee or his/her designee shall retain records of activities undertaken in the performance of this Agreement for a period of five (5) years and shall also instruct consultants and contractors to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work for the same period. At the conclusion of the aforementioned document retention period, the Work Group shall notify the Members and the Regional Board in writing at least 90 days prior to the destruction of any such records or documents, and, upon request by a Member or the

Regional Board, the Steering Committee shall deliver any such records or documents to the Members or to the Regional Board. The Steering Committee may make reasonable assertions that certain documents, records and other information are privileged under the attorney-client privilege, attorney work product doctrine, or any other privilege or confidentiality recognized by California or federal law.

7.9 Compensation of Steering Committee. The Members of the Steering Committee and all subcommittees formed under the Agreement shall serve as volunteers without compensation from the Work Group.

7.10 Common Counsel for Cost Recovery or Litigation Against Other Persons. The Steering Committee may recommend to the Work Group that a claim be asserted on behalf of the Members against other persons or business entities, that are believed to be legally responsible for all or some of the costs incurred by Members relating to the Creek or Lake. No such claim may be asserted by common counsel under this Agreement without the consent of a majority of the Voting Power of the Work Group as defined in Section 2.1(r), and any Member may elect to decline participation in any such suit, and may, but need not, in lieu of such participation assign its claims to the other Members. Nothing in this section shall affect or impair the right of any Member to assert any claim in its own name and right against any person or business entity. In the event a claim is asserted on behalf of participating Members against other persons, any recovery resulting from such action shall be distributed among the participating Members in proportion to the participating Members' assessed and paid contributions in support of such claim, including any and all costs of pursuing that claim. Any recoveries shall be distributed among participating Members only after all costs of the action to prosecute a claim are first paid. Members who decline participation in any such claim and/or suit shall not be responsible for any costs of common counsel with respect to such claim and/or suit, but shall likewise not participate in any proceeds recovered or otherwise as a result of such claim and/or suit by the participating Members. Any Member who withdraws from such suit after it has commenced and before it has been resolved shall forfeit any right, title or interest in any sums recovered pursuant to such suit, if any.

7.11 Common Counsel – Waiver of Conflict of Interest. In the event that common counsel is retained to represent the Work Group, each Member agrees that: (1) it will not claim or assert that, based solely on said counsel's past or present representation of a Member in this or any other matter, said counsel has a conflict of interest in performing legal services authorized by the Steering Committee, arising out of the Lake or Creek, or any Work under this Agreement; (2) it will not claim or assert that, based solely on said counsel's representation of the Work Group under the terms of this Agreement, said counsel has a conflict of interest in connection with any representation involving a Member unrelated to the Lake or Creek; (3) it will not claim or assert that, based solely on said counsel's representation of the Work Group under the terms of this Agreement, said counsel has a conflict of interest in any future representation of any

person or entity unless the subject matter relating to said representation arises out of or in connection with the Work on the Creek or Lake; (4) if any conflict develops in the performance of the Work authorized by the Steering Committee and the performance of Work authorized by a Member that has retained said common counsel separately with respect to the Creek or Lake, that Member consents to common counsel's continued performance of the Work authorized by the Steering Committee; and (5) if a Member withdraws or is removed from this Agreement or its representation by common counsel is terminated, it shall not claim any conflict of interest in, or object to, the continued representation by common counsel of all or any of the other Members in connection with any legal services arising out of the Creek or Lake.

Should the Steering Committee discuss a cash-out option or a de minimis settlement with any Member potentially eligible for such a resolution, no such Member will claim any conflict of interest in, or object to, the continued representation by any technical or legal consultant retained by the Steering Committee to represent the Work Group.

SECTION 8 ALLOCATION OF COSTS

8.1 Shared Costs. Shared Costs (as defined in Section 2.1(o)) shall be assessed by the Members or Steering Committee and be paid by the Members in accordance with such Members' allocated share of liability as determined by the Members or Steering Committee and as approved by two-thirds of the Voting Power of the Work Group. All assessments shall be due and payable within forty-five (45) days of mailing of notice thereof. A Member shall be deemed to be in default of its obligations hereunder if its payment of its Shared Costs allocation is not received within sixty (60) days of mailing of notice thereof. Each Member's contractual liability hereunder shall be several, not joint and several, nor joint. The Members' timely payment of assessed Shared Costs is necessary to ensure that the required costs and expenses incurred in performing the Work ("Costs of Work") are fully and timely paid.

8.2 Interim Allocation. The Work Group may in accordance with the terms of this Agreement establish an interim allocation of the Members' share of liability for the Work, and other obligations of the Work Group under this Agreement for the period commencing with the effective date until a final allocation is established under Section 8.4 (the "Interim Allocation"). This Interim Allocation will be subject to reallocation as part of the Final Allocation process as provided for in Section 8.4. Any monies contributed by a Member pursuant to the Interim Allocation are subject to adjustment and, as appropriate, Members shall be entitled to reimbursement or required to make an additional contribution based on that Member's proportionate share of responsibility for the payment of Shared Costs as determined in the Final Allocation.

8.3 Addition of New Members. Upon the inclusion of New Members into the Work Group as provided in this Agreement, such New Members shall be assigned an allocation share consistent with the Interim Allocation and the Final Allocation as appropriate, based on the best information then in possession of the Work Group and the proportionate shares of the existing Members shall be equitably diluted. New Members shall be required to pay their proportionate share of the total amount of Shared Costs assessed as of the time the New Member joins the Work Group. In the event this occurs during the Interim Allocation period, the New Member's payment shall be disbursed as reimbursement to the existing Members in equal shares. In the event this occurs after Final Allocation, the New Member's payment shall be retained by the Steering Committee for use in the Work and credited proportionately to the accounts of the existing Members.

8.4 Final Allocations.

(a) The Steering Committee and the Work Group will strive to determine a fair and reasonable method or process by which a Final Allocation can be assigned to each Member on or before December 31, 2010, or as soon as reasonable possible thereafter. Until the Work Group approves a Final Allocation, the Work Group will make assessments to cover Shared Costs pursuant to the Interim Allocation which shall mean each Member shall be allocated an equal share or some other agreed to method as approved by more than fifty percent (50%) of the Voting Power of the Work Group. The Final Allocation formula shall be approved by two-thirds (66%) of the Interim Allocation Voting Power of the Work Group. The Final Allocation shall be binding on all Members subject to their right to withdrawal under Section 9.4. The Final Allocation formula shall be adopted as an amendment to this Agreement to supersede the Interim Allocation as provided for in Section 5.5.

(b) In determining the Final Allocation formula for apportioning responsibility among the Members for the Shared Costs, the Members shall use reasonable means and methods of apportionment which result in allocations among the Members bearing a reasonable relationship and nexus to the acts, omissions, operations, events, and property of the Members that the Work Group reasonably determines has caused or contributed to the Nutrient impairment of the Creek and/or the Lake. In making this assessment, the Member may consider both the type and mass of the Pollutants, and the extent to which such Pollutants have affected the water quality of the Creek and the Lake, the cost to abate such water quality conditions, and other relevant factors. The Members may also consider the retention of the Nutrients in these water bodies, the duration, frequency, estimated mass loading, and effect of the discharge (whether point or non-point source).

(c) Reservation of Powers by Public Agencies. Public agency Members have the capability under applicable public agency statutes to identify and levy fees for

programs and facilities for activities other than Work, as defined in Section 2.1(u) of this Agreement, and this Agreement does not modify or change those capabilities or powers.

(d) The Final Allocation formula, as modified, shall be used for all subsequent Shared Costs assessments of the Work Group. In the Final Allocation, each Member shall be given credit for Interim Allocation previously paid to the Work Group.

8.5 Custodial Account. The funds collected pursuant to this Agreement shall be maintained in a Custodial Account held by San Marcos, or such other Member or person, approved by the Steering Committee, for the purposes set forth herein. San Marcos is hereby authorized to maintain such funds within the city control or to open a custodial account for the benefit of the Work Group at a banking institution selected by San Marcos. San Marcos or its designee shall provide periodic accounting to the Members of the funds received, spent, and obligated, and a final accounting upon the termination of the Agreement. San Marcos or other custodian shall be entitled to a reasonable fee for the account management services, as negotiated and agreed to by the Steering Committee and San Marcos.

8.6 Purpose of Funds. All monies provided by Members pursuant to this Agreement shall be used solely to achieve the Purposes of this Agreement and shall not be considered as payment for any fines, penalties or monetary sanction.

8.7 Allocation in the Event of Default. The unpaid balance of any defaulting Member's share may be assessed by the Steering Committee against the other Members hereto (without waiving any rights such Members may have against the defaulting Member or its successors or assigns) in the same proportion as the other Members would have been obligated to pay if the defaulting Member had not been a signatory of this Agreement.

8.8 Adjustments to the Final Allocation. Apportioned shares of responsibility made under the provisions of Section 8.3 may be appropriately adjusted upon discovery of new and credible information supporting such adjustment. Such adjustments shall be subject to a vote of more than fifty percent (50%) of the Voting Power of the Work Group.

8.9 Distribution of Excess Funds. Upon completion of the Work, or upon sooner termination of this Agreement, and after payment of all outstanding costs and expenses incurred by the Work Group in furtherance of this Agreement, the Steering Committee shall distribute any excess funds remaining in the Work Group account to the Members in proportion to their respective allocated share of responsibility to pay Shared Costs.

8.10 Penalties for Non-Payment of Cash Call. The Members agree that the timely and complete payment of Work Group approved Shared Costs assessments ("Cash

Call”) is essential. Therefore, a Member failing to make its cash contributions to the Work Group in full within the time prescribed, shall be in default and liable for a penalty equal to five percent (5%) of the Member’s allocated share of the assessment plus an additional five percent (5%) for each thirty (30) days said payment is late up to a maximum penalty of twenty-five percent (25%) or as otherwise permitted by law whichever is less. Each Member’s contractual liability hereunder shall be several, not joint and several, nor joint.

8.11 Prior Funding. Prior to entering into this Agreement, certain parties, including Members contributed up to \$1,000 to fund historical document review and preliminary in-Lake field sampling, which money was paid to San Marcos and deposited in the Lake San Marcos and Upper San Marcos Creek Work Group Administration Fund (“Initial Fund”). These contributions are nonrefundable and was not a part of this Agreement.

8.12 Cashout Option. The Steering Committee may propose the terms and conditions of a cashout option whereby Members may pay a cash amount plus a premium to cover unforeseen liabilities, cost of the work, and other contingencies, and be relieved of some or all of its obligations under this Agreement. A Member electing a cashout option would receive the same contribution protections from the remaining Members and Regional Board or other state or federal governmental agencies, if any, relating to the Work as received by any other Member from the remaining Members and said agencies upon completion of the Work.

8.13 De Minimis Settlement. Based upon the proportionate Final Allocation formula developed by the Work Group the Members may find that certain Members are allocated responsibility for only a small portion of the shared costs. Where a Member’s contribution to Nutrients in the Creek and/or the Lake are minimal when compared with the overall man-induced contributions of Nutrients to the Creek and/or Lake (a de minimis Member), the Work Group may negotiate a good faith settlement agreement with such de minimis Member, bearing a reasonable and rational nexus with the amount of Nutrients contributed to the water bodies by such de minimis Member and a good faith estimate of the costs to complete the Work plus a reasonable premium to cover unforeseen liabilities, cost of the work, and other contingencies. A de minimis Member may elect to postpone entry into a de minimis settlement agreement until after the Work Group’s remediation plan is approved by the Regional Board. A de minimis Member entering into a settlement agreement shall be credited with assessments and contributions paid to the Work Group and those amounts described in Section 8.14. Such a de minimis Member shall also be entitled to a release, and covenant not to sue, and indemnity from the Work Group relating to further Work and Shared Costs assessments necessary to complete the Work required by this Agreement; and shall be entitled to the protections afforded de minimis Members under an Administrative Agreement, if any is entered into, with the Regional Board. The Members may negotiate such good faith settlement

agreements with de minimis parties whose contribution of Nutrients to the Creek and Lake is determined to be an acceptably small percentage of the total Nutrient load in or to these waters.

8.14 Incurred Transactional Costs. Certain Members of the Work Group have contributed substantial resources to the solicitation of Members and the negotiation and development of this Agreement, the Administrative Agreement with the Regional Board, and Common Interest Agreement. Such Members shall be entitled to recover a reasonable amount of such expenditures from the other Members and New Members. The reasonable value shall be determined in good faith by a majority vote of the Work Group. At a reasonable time in the future, the requesting Member(s) shall identify in writing its/their reasonable cost and expenses in providing the above described services. The Work Group shall evaluate the reasonableness of the costs and expenses requested and approve the request, by a majority vote, or identify those cost and expenses in dispute. The dispute shall be resolved pursuant to the Dispute Resolution provisions set out in Section 12 of this Agreement. The reimbursement to the requesting Member can be by cash payment or credit against its allocable portion of Shared Costs.

8.15 Public Participation. Early public notification and meaningful opportunity for public participation is an important means for the public to be informed of planned Work activities and to provide timely input addressing public concerns as key decisions are being made concerning the Work and future use of the water bodies. The Work Group will develop a public participation plan for approval by Regional Board that would, among other things, provide for the distribution of fact sheets, a contact number and/or website or other means to provide current information to the interested public concerning Work activities and the overall status of the Work and providing for meaningful opportunities, throughout the planning process, for members of the public to voice their concerns and opinions on site-specific issues and proposed Work activities.

SECTION 9 DENIAL OF LIABILITY AND INDEMNIFICATION

9.1 Reservation of Rights. This Agreement and the activities engaged in pursuant to the Agreement shall not constitute, or be interpreted, construed or used as evidence of any admission of liability, law or fact, a waiver of any right or defense, nor an estoppel against any Member by Members as among themselves or by any other person or governmental body. However, nothing in this section is intended or should be construed to limit, bar or otherwise impede the enforcement of any term or condition of the Agreement against any party to this Agreement.

9.2 Covenant-Not-To-Sue and Reservation of Rights. Except in accordance with Sections 19, Members to this Agreement, unless precluded by statute, covenant not to initiate, bring, or support any claim, order, demand, enforcement action or other civil or administrative proceeding against each other arising out of or related in any way to

water quality conditions relating to the Nutrient impairment of the Creek or Lake or for any liability or responsibility therefore, and agree to resolve any such disputes among themselves in accordance with the Dispute Resolution procedures set out in Section 12 of this Agreement. Except as provided in this section, each Member expressly reserves the right to claim, bring a cause of action, and/or to commence a proceeding in any judicial, administrative and/or other forum against any person not a Member to this agreement.

9.3 Right of Separate Counsel. Each Member reserves the right, at its own expense, to select and retain its own counsel to represent such Member on any matter; provided, however, that (i) a Member retaining its own counsel shall nevertheless continue to be obligated for Shared Costs assessed to that Member, including the expenses of common counsel, except where a Member declines participation in a suit as provided in Section 7.10; and (ii) Member's separate counsel have no responsibility or authority to direct litigation on behalf of the Work Group.

9.4 Indemnification. No Member or its representative(s) serving on the Steering Committee or subcommittee shall be liable to any Member for any claim, demand, liability, cost, expense, legal fee, penalty, loss or judgment incurred or arising as a result of any acts or omissions taken or made authorized by or at the direction of the Work Group.

Each Member agrees to indemnify, defend and hold harmless, to the fullest extent permitted by law (including such laws that apply uniquely to public entities), any Member and its governing body, officers, employees, representative(s), successors and assigns from and against any claim, demand, liability, cost, expense, legal fee, penalty, loss or judgment (collectively "liability") arising from or in connection with the good-faith performance of any duties or obligations under this Agreement performed at the direction of the Steering Committee or Work Group, by any Member or its governing body, officers, employees, contractors, representative(s), successors or assigns ("Acting Member") including, but not limited to, any liability arising from any contract or agreement signed by the Acting Member at the request of the Steering Committee or the Work Group to the extent that any such acts or omissions are performed at the direction of the Work Group. This indemnification shall not apply to any liability arising from a criminal proceeding where the Acting Member had reasonable cause to believe that the conduct in question was unlawful and this indemnification shall not apply to the extent the Acting Member's acts or omissions were reckless, or the result of willful misconduct.

Payments under this section shall be a Shared Cost in accordance with Section 8.1 of this Agreement, and shall be allocated among each Member that (1) was a Member when the action was taken or omission made that gives rise to this indemnification or (2) subsequently joins the Work Group.

The terms of this Section shall survive the termination of the Agreement and the withdrawal or removal of any Member, but a withdrawn or removed Member shall have

no liability under this Section for any acts, omissions, performance of duty or other events authorized after the effective date of withdrawal or removal.

SECTION 10 CONFIDENTIALITY AND USE OF INFORMATION.

10.1 Preservation of Privilege. Information disclosed by the Members to common counsel may be disclosed to any other Member, and each Member hereby expressly consents to treat such disclosure to it as being for the sole purpose of asserting any common claims or defenses arising out of the Creek or Lake. Such disclosure shall not be deemed a waiver of the attorney-client privilege or work product immunity or any other privilege.

10.2 Confidentiality of Information. Each Member agrees that information received from any other Member or its counsel, from common counsel, or from any technical consultant retained by the Work Group pursuant to this Agreement, unless otherwise provided for, shall be subject to the confidentiality provisions of the Common Interest Agreement.

SECTION 11 INSURANCE

11.1 Preservation of Coverage. The Members do not intend hereby to make any agreement that will prejudice any Member with respect to its insurers and, by entering into this Agreement, the Members anticipate that the actions taken pursuant to this Agreement will benefit such insurers. If any insurer makes any claims that any aspect of this Agreement provides a basis for rejection or limitation of coverage of a Member, the Work Group will attempt, consistent with the objectives and provisions of this Agreement, to return any Member subject to such claim to a position that is satisfactory to such insurers.

11.2 Disclosure of Terms of Agreement to Insurance Carriers. Subject to the conditions contained in the Common Interest Agreement, a Member may provide a copy of this Agreement to its insurer(s) for purposes of asserting a claim for insurance coverage at the Creek or Lake. Prior to delivery of the Agreement to an insurance carrier, the Member shall obtain a signed copy of the following language from the insurance company and the Member shall transmit the original of the signed language to the Chairperson of the Steering Committee:

The undersigned, on behalf of _____
understands that the Lake San Marcos and Upper San Marcos Creek
Work Group Participation Agreement includes a Common Interest
Agreement concerning confidential document between the
signatories thereto. The undersigned agrees that it will not disclose

the contents, or any portion of the contents, of the confidential documents to any person or entity other than employees or attorneys of _____ without first receiving written permission from the Members of the Lake San Marcos and Upper San Marcos Creek Work Group or without first receiving a court order permitting such disclosure.

Signature

Date

11.3 Work Group Insurance. The Work Group shall procure and maintain in effect throughout the performance of the Work a policy or policies of commercial general liability and automobile insurance, or provide the same through self insured retention by individual Members, providing coverage against injuries to persons or damage to property which may arise out of or in connection with the Work Group's performance of this Agreement. The insurances shall be obtained from a carrier or carriers authorized to do business in the State of California having a rating of at least A:III or better as listed in Best's Insurance Guide. The commercial general liability insurance shall provide coverage of at least \$1,000,000 per occurrence and an aggregate limit of at least \$2,000,000 for products and operation hazard, contractual liability, broad form liability, property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.

The automobile liability insurance shall provide coverage for vehicles used in connection with the performance of the Agreement, whether owned, hired, leased, or borrowed, with limits of at least \$1,000,000 per occurrence, combined single limit, for bodily injury or property damage. The Members may elect to procure the required coverage required by this section as a Work Group or by each Member independently, in which event independent Member policies of insurance shall name the Work Group, whose membership may be amended from time to time, as additional insureds in respect of the performance of this Agreement.

SECTION 12 DISPUTE RESOLUTION

12.1 Exclusive Mechanism. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising among the Members under this Agreement. The Members shall attempt to resolve any disagreements among themselves concerning this Agreement in good faith, expeditiously and informally.

12.2 Informal Process. Any dispute which arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations between the Members to the dispute. The period for informal negotiations shall not exceed thirty (30)

days from the time written notice of the dispute is served on all Members to the dispute, unless the negotiation period is modified by written agreement of the Members to the dispute.

12.3 Arbitration Decision. In the event that the Members cannot resolve a dispute by informal negotiations, a Member involved in the dispute may petition for the commencement of formal dispute resolution procedures under this Section 12 (the “Petitioner”) by serving on the other Member (the “Respondents”) a written statement of position on the matter in dispute, including supporting documents. Within 20 days after service of the petition, the Respondent shall provide a responsive statement, including supporting documentation. Within 10 days after receipt of the responsive statement, the Petitioner may submit a Reply.

Any dispute, claim or controversy arising out of or relating to this Agreement shall be determined by binding arbitration in San Diego, California, before an arbitrator. At the option of the Petitioner, the arbitration shall be administered either by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures, or by an alternate arbitration provider pursuant to the same rules. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitrator may, in the award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys’ fees of the prevailing party.

12.4 Settlement. Any agreement reached by the Members under Section 12 shall be in writing and shall, upon signature by such Members, be incorporated into and become an enforceable part of this Agreement.

SECTION 13 ACCESS

13.1 Access. The Members and their affiliates owning or controlling property where access is necessary to implement this Agreement shall provide the Regional Board, the Work Group and their respective consultants and contractors with reasonable access to such property to perform the Work.

13.2 Non-Member Owned Property. Where any action under this Agreement is to be performed in, on, or about property owned by or in possession of a person other than a Member, the Members shall use their best efforts to obtain reasonable access rights from such persons. Members shall notify the Regional Board if they are unable to obtain the necessary access to such property. For purposes of this section, if necessary, “best efforts” does include the payment of money as reasonable consideration of access.

SECTION 14
FORCE MAJEURE AND DELAY

14.1 Force Majeure. The Members agree to perform all requirements of this Agreement within the time limits established under this Agreement, unless the performance is delayed by a force majeure. For purposes of this Agreement, an event of force majeure is defined as any event arising from causes beyond the control of the Members, or of any entity controlled by the Members, including but not limited to their consultants, which delays or prevents performance of any obligation under this Agreement despite the Members' best efforts to fulfill the obligation. Force majeure does not include financial inability, however the lack of legislative appropriation, authorization or spending authority shall be treated in the same manner as force majeure.

14.2 Extension of Time. The time for performance of the obligations under this Agreement that are affected by the force majeure event will be extended for such time as is reasonably necessary to complete those obligations.

SECTION 15
INTEGRATION/APPENDICES

15.1 Entire Agreement. This Agreement and its Exhibits constitute the final, complete and exclusive agreement and understanding among the Members with respect to this Agreement. The Members acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement.

15.2 Power to Sign. Each of the undersigned Members hereby certifies, and warrants that to the best of his or her knowledge, he or she is authorized to bind his or her agency or entity to the continuing obligations described herein.

15.3 Method of Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument, which shall be held by the Secretary of the Steering Committee. Each Member shall be entitled to a complete set of copies of all counterpart signature pages upon request. In any action or proceeding, a Member need only produce a copy of the executed Agreement provided to such Member as sufficient proof of this Agreement.

15.4 Amendments. This Agreement may be amended only by a vote of at least two-thirds (2/3) of the Voting Power of the Members present in person or by proxy at a Work Group meeting called to consider such amendment. Such amendment shall become effective thirty (30) days after written notice of it is mailed to all Members. However, Sections 12 and 14 of this Agreement cannot be amended to limit the effect of those sections regarding acts or omissions taken or made prior to such amendment.

15.5 Separability. If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

15.6 Law. This Agreement shall be interpreted under the laws of the State of California.

15.7 Non-Waiver. Nothing in this Agreement shall be construed to waive or release any rights, claims or privileges which any Member shall have against any other Member or any other person or entity. Each Member agrees that during the period that it is a Member of the Work Group, all claims and actions against any other Member arising out of or related to the Creek or Lake shall be held in abeyance and all applicable statute of limitation shall be tolled as to such actions or claims.

15.8 Termination. This Agreement may be terminated by a vote of the majority of the Voting Power of the Members present in person or by proxy at a Work Group meeting called to consider such termination. To the extent that any funds exist as of the date of termination, said funds shall be returned to the Member in good standing, in the same proportion as last Work Group assessments levied and paid.

15.9 Notice. All notices, bills, invoices, reports, and other communications with a Member shall be sent to the representative designated by the Member on said Member's signature page of this Agreement. Each Member shall have the right to change its representative upon ten (10) days written notice to the Chairperson of the Steering Committee.

IN WITNESS WHEREOF, the Members hereto, or through their appointed counsel, enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the company or entity on whose behalf it is indicated that the person is signing.

Members

Member: _____
By: _____
Title: _____
Address: _____
Date: _____

Member: _____
By: _____
Title: _____
Address: _____
Date: _____

Member: _____
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By: _____
Title: _____
Address: _____
Date: _____

Member: _____
By: _____
Title: _____
Address: _____
Date: _____

Member: _____
By: _____
Title: _____
Address: _____
Date: _____

EXHIBIT A

Carlsbad WMA

SECTION 5

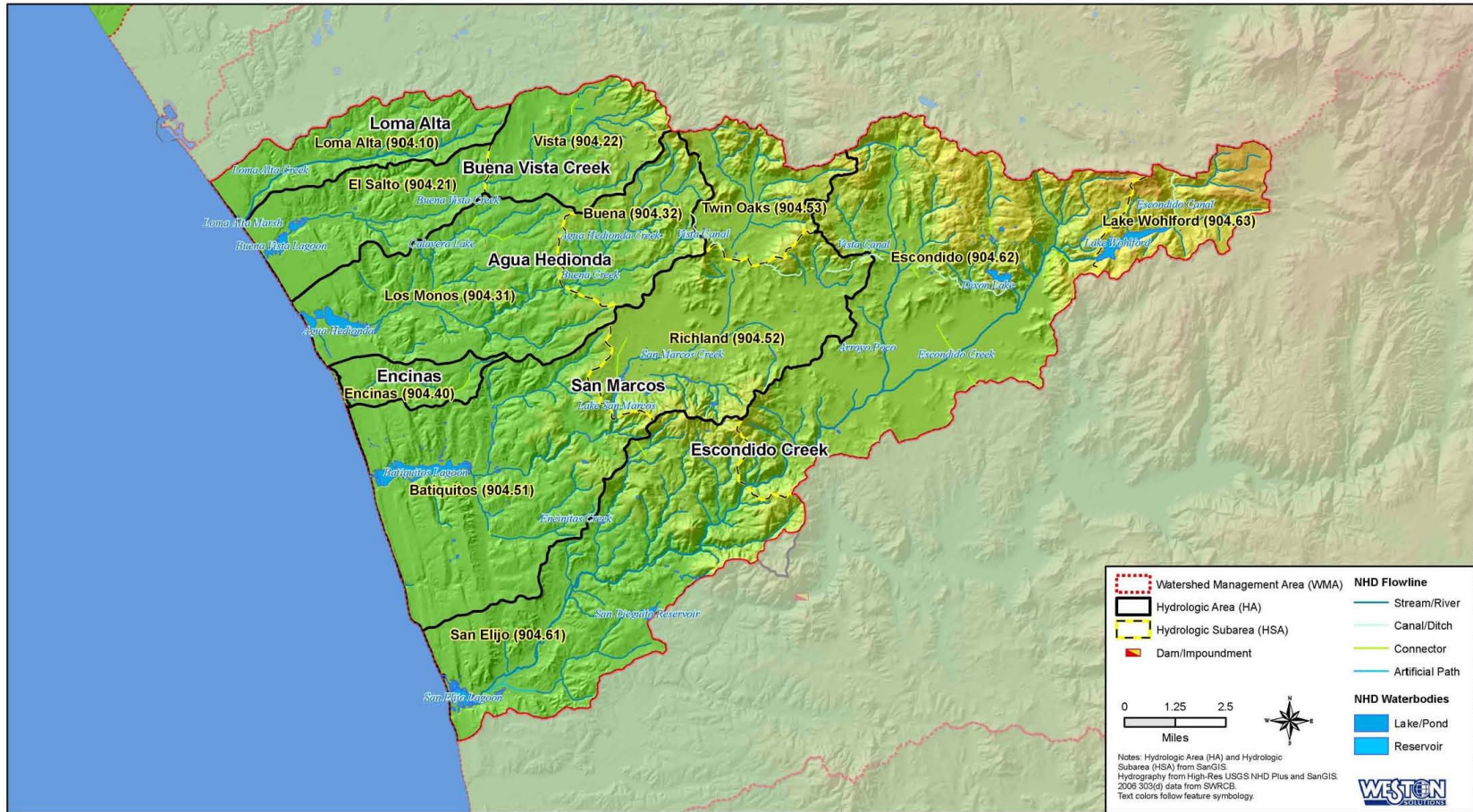


Figure 5-1. Carlsbad Watershed Management Area

EXHIBIT B

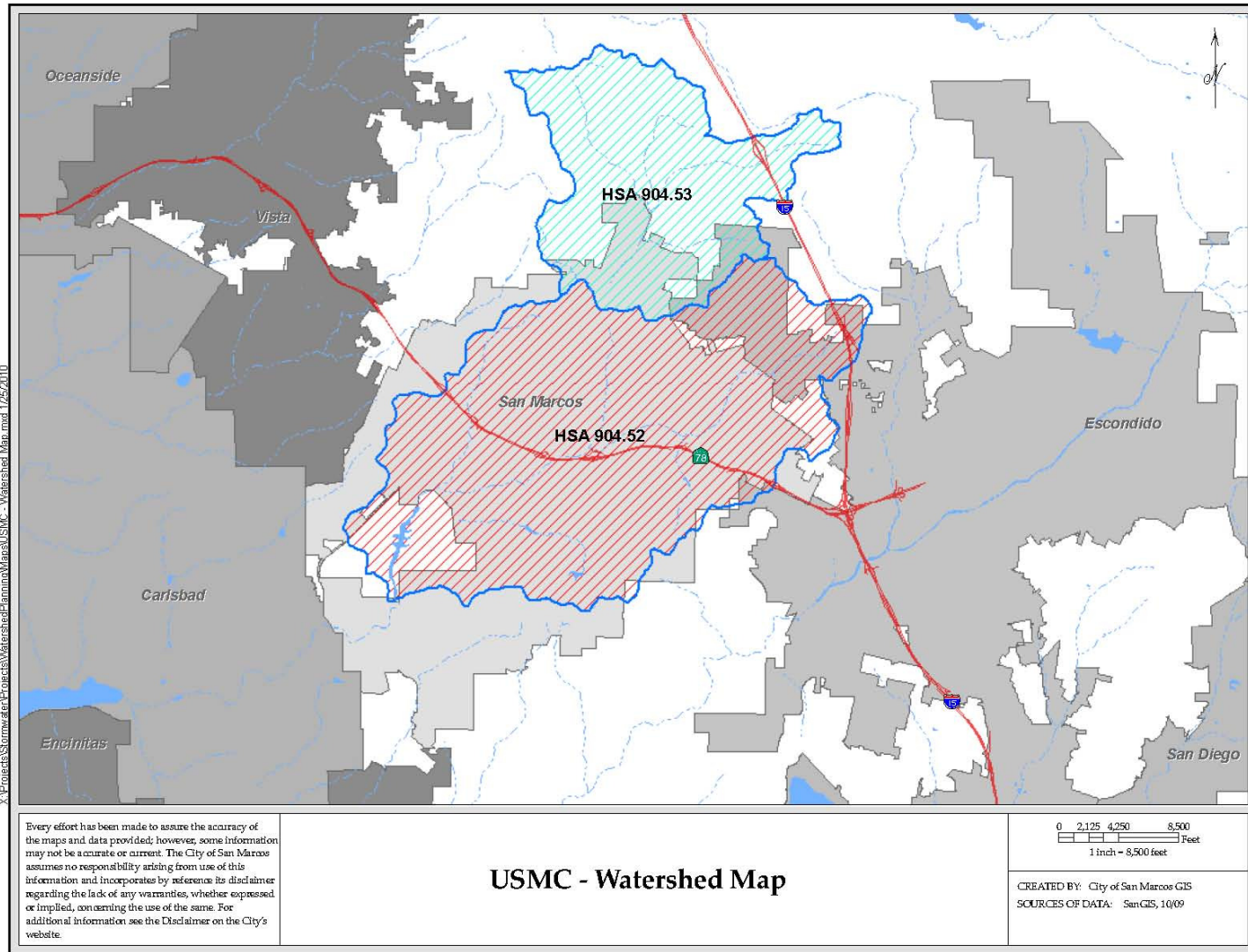


EXHIBIT C

Form of Work Group Proxy

LAKE SAN MARCOS AND UPPER SAN MARCOS CREEK WORK

GROUP PROXY

I, the duly authorized representative of _____ (hereinafter the “Member”) hereby grant the Proxy of the Member to _____ for the _____ meeting to be held on the __ day of _____. _____ is hereby authorized and empowered to vote for the Member and in the Member’s name and stead at such meeting (and at any adjournment thereof) on any issue, except for those issues listed below, put to a vote in accordance with the Lake San Marcos and Upper San Marcos Creek Work Group Participation Agreement. For those issues noted below, _____ has no authority on behalf of the Member and must abstain from voting on the Member’s behalf.

Member: _____

By: _____

Name: _____

Title: _____

Date: _____

Issues for which this proxy is not granted:

1. _____

2. _____

3. _____

EXHIBIT D

Service List

Designated Representative for Receipt of Notice and Invoices Name:

Name: _____

Firm, Department, etc.: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

EXHIBIT E

New Member Addendum

This New Member Addendum (the "Addendum") is made by the undersigned New Member(s) pursuant to Section 5.2 of the Participation Agreement Among Lake San Marcos Work Group (the "Agreement") dated April __, 2010, between the City of San Marcos and Vallecitos Water District, as follows,

RECITALS

A. The undersigned New Member(s) desire to join in the Agreement as a Member, subject to all of the rights, benefits, duties, and obligations contained therein;

B. The existing Members desire to include the undersigned New Member(s) as a Member under the Agreement, subject to the terms and conditions thereof;

NOW THEREFORE, in consideration of the mutual covenants contained in this Addendum and the Agreement, and for valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows.

1. Agreement to be Bound. The undersigned New Member(s) agree to be bound by, to assume the rights, benefits, duties, and obligations held by Members as of the date hereof under, and to in all ways fully comply with the terms and conditions of the Agreement. A copy of the Agreement, as the same may have been amended, is attached to this Addendum as Exhibit "A" and incorporated herein by this reference.

2. Due Diligence. The undersigned New Member(s) acknowledge having had a suitable opportunity to review with counsel of its choosing the Agreement, the aggregate Shared Costs as of the date of this Addendum, and the Work prior to signing this Addendum.

3. New member Payments. The undersigned New Member(s) agree to make the payments due the Work Group under Sections 5.2 and 8.3 of the Agreement as a further condition of this Addendum.

4. Further Assurances. Each party to this Addendum will, at its own cost and expense, execute and deliver such further documents and instruments and will take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Addendum.

5. Entire Addendum; Waiver. This Addendum constitutes the final, complete and exclusive statement between the parties pertaining to the terms and conditions of this Addendum, and this Addendum supersedes all prior and contemporaneous understandings or agreements of the parties, and is binding on and inures to the benefit of

their respective heirs, representatives, successors and assigns. Neither party has been induced to enter into this Addendum by, nor is either party relying on any representation or warranty outside those expressly set forth in this

6. Addendum. Any agreement made after the date of this Addendum is ineffective to modify, waive, or terminate this Addendum, in whole or in part, unless that agreement is in writing, is signed by the parties to this Addendum, and specifically states that the agreement modifies this Addendum.

7. Governing Law. This Addendum will be governed by, and construed in accordance with, California Law.

8. Effective Date and Consent of existing Members. The existing members' consent to this Addendum is a condition precedent to the effectiveness and validity of this Addendum. The date of execution of the Consent clause below by the existing Members shall be the effective date of this Addendum. If the existing Members do not execute the Consent clause below, then this Addendum shall not become effective and shall be null and void.

9. Execution in Counterparts. This Addendum may be executed in any number of counterparts, each of which when so executed shall be deemed an original and all of which shall constitute together one and the same instrument, and shall be effective upon execution by all of the Parties

IN WITNESS WHEREOF, the undersigned New member(s) have executed this Addendum in San Diego County, California, as follows,

New Member:

By: _____
Its: _____
Date: _____

Address and Contact Information

Consent of Existing Members

In reliance upon the foregoing and subject to the payments of the New Members executing the Addendum required under Sections 5.2 and 8.3 of the Agreement, the existing members Consent to the Addendum and agree that such New Members shall be members under the Agreement subject to all the terms and conditions thereof, its rights, benefits, duties, and obligations. The undersigned warrants that it is a Member under the Agreement and authorized by all Members under the Agreement to execute this Consent clause to the Addendum on behalf of all Members.

IN WITNESS WHEREOF, the undersigned member representative has executed this Consent in San Diego County, California.

Existing Members

By: _____

Name: _____

Its: _____

Date: _____

DRAFT

ADDENDUM B TO PARTICIPATION AGREEMENT

**SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD
PROVISIONS**

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ADDENDUM B TO THE PARTICIPATION AGREEMENT

San Diego Regional Water Quality Control Board Provisions

The Participation Agreement (herein called the “Agreement”) is hereby amended by this Addendum B (the “Addendum”). This Addendum is entered into this __ day of January 2011 by and between the undersigned political subdivisions of the State of California, municipalities, other organizations, and individuals (herein collectively comprising the “Members”), and the CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION (the “RWQCB”),¹ as follows:

RECITALS

A. The Members have drafted the Agreement whereby they will agree upon the manner and means by which they will perform certain work to benefit water quality in San Marcos Creek (“Creek”) and Lake San Marcos (“Lake”).

B. To provide leadership, to promote the voluntary and timely progression of the work, to define the process of coordination between the Members and the RWQCB, to ensure reasonable public participation, and to provide regulatory supervision and timely completion of the covered work the RWQCB now desires to enter into an agreement with the Members relative to the Agreement in the form of this Addendum.

C. Except in the case of parties signing the Agreement after the date that the RWQCB signs the Addendum (“New Members”), the Members will execute the Participation Agreement and the Addendum prior to or concurrent with the RWQCB’s execution of the Addendum.

Now therefore, based upon the foregoing recitals and in consideration of the mutual covenants and other good and valuable consideration contained herein, the RWQCB and the Members agree as follows:

1. Definitions. For the purposes of this Addendum, unless otherwise expressly provided for in this Addendum, the terms used herein are defined in the Agreement, the Water Code, the California Code of Regulations (“CCR”), the Clean Water Act, or the Code of Federal Regulations (“CFR”), and shall have the

¹ The San Diego Water Board has delegated to the Executive Officer all delegable authorities under the California Water Code. Except as specified in Sections 14, 15 and 33 of this Addendum, the Executive Officer’s actions or inactions under this Addendum are actions or inactions of the San Diego Water Board.

meaning assigned to them in the Agreement and in such laws and regulations. Whenever the terms listed below are used in this Addendum or in the exhibits attached hereto and incorporated by reference herein, the following definitions shall apply:

(a) “Consultant” or “Contractor” shall mean any person or entity, not a Member, selected by the Members or the RWQCB to perform any part of the Work described in the Agreement or this Addendum.

(b) “De-Minimis Party” shall mean a Member who elects to exercise its rights under de-minimis party buy-out agreements, negotiated and agreed to by the remaining Members under the Agreement, allowing the de-minimis party to pay an appropriate sum to such remaining Members in partial or full satisfaction of the de-minimis party’s remaining obligations to perform the Members’ Scope of Work under the Agreement, except there shall be no de-minimis buy-out option unless and until the number of signatories to the Agreement equal three or more Members and at no time shall the Members number less than two (2).

(c) “Effective Date” of this Addendum shall mean the date this Addendum has been executed by both the RWQCB and at least one Member.

(d) “Feasible” shall mean what is technologically and economically feasible within the meaning of Section III. H. 1 of State Water Resources Control Board Resolution No. 92-49 (as amended on April 21, 1994 and October 2, 1996) entitled, Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304.

(e) Impaired Water Bodies. The San Marcos Creek Watershed extends approximately 14.11 miles inland from the Pacific Coast, is about 36,050 acres in area, and represents 27% of the Carlsbad Hydrologic Unit. The Upper San Marcos Creek Watershed encompasses two of its three basins, the upper basin centered on Twin Oaks Valley at the southern end of Merriam Mountains (Twin Oaks Hydrologic Subarea HU 904.53) and the middle basin centered on the valley occupied by the City of San Marcos (Richland Hydrologic HSA 904.52), as shown on Exhibit A attached hereto and incorporated herein by this reference (as the “Watershed”). For purposes of the Agreement and this Addendum, the Watershed includes the Creek and its tributaries down to the dam, which impounds the Creek and creates the Lake. Downstream of the dam is the lower basin of the San Marcos Creek Watershed (known as the Baticuitos Hydrologic Subarea HU 904.51).

Under §303(d) of the Clean Water Act, the Creek is listed for sediment toxicity, phosphorus, and DDE; and the Lake is listed for ammonia (as N), nutrients, and phosphorus.

(f) Matters Addressed. The Matters Addressed in this Addendum shall include (a) the collective discharges of the Members and the individual discharges of the Members occurring prior to the Effective Date that caused or contributed to the Nutrient impairment in the Impaired Water Bodies (“Members’ Discharges”), (b) the Members’ Discharges occurring after the Effective Date, to the extent the same represent a continuation of discharges occurring prior to the Effective Date and are the subject of the investigation, cleanup and/or abatement of Nutrient impairment in the Impaired Water Bodies, and (c) the Members’ Scope of Work described in Exhibit B, as the same may be amended from time to time.

(g) “Member”, for purposes of this Addendum, shall mean a party which is both a Member under the Participation Agreement and a party to this Addendum. The RWQCB is not a Member and, apart from the express terms and conditions of this Addendum, the RWQCB shall not have any responsibilities or obligations to perform the Members’ Scope of Work under the Agreement or the Addendum.

(h) “New Member” shall mean a party which is both a New Member as defined in Section 5.2 of the Agreement and becomes a party to this Addendum.

(i) “Non-Member”, for purposes of this Addendum, shall mean any person, political subdivisions of the State of California, governmental agencies, municipalities, entities, organizations, and individuals which at any time, are potentially responsible and/or liable for Nutrients impairment in the Impaired Water Bodies, but who have not signed the Agreement and/or this Addendum.

(j) “Nutrients” shall mean phosphorus, ammonia (as N), and nutrients, as listed for the Creek and Lake under §303(d) of the Clean Water Act.

(k) “Terminated Member” shall mean a Member terminated from the Agreement as provided in Section 5.6 thereof and/or from this Addendum as provided in Section 33(b) hereof. A Member terminated from the Agreement shall be deemed terminated from this Addendum. A Member

which voluntarily withdraws from the Agreement as provided in Section 5.5 thereof and/or from this Addendum shall be deemed to have voluntarily terminated this Addendum in respect of such Member.

(l) Intentionally deleted.

(m) “Water Quality Objective” shall have the meaning set forth in Water Code Section 13050(h) as, "The limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area." In addition, the term “water quality objective” is further characterized in Chapter 3 of The Water Quality Control Plan for the San Diego Basin 9 (Basin Plan). For purposes of the Work to be performed by the Work Group (as such term is defined below), such Work shall be sufficient to achieve water quality objectives in the Impaired Water Bodies having such numeric or narrative limits on Nutrients or Nutrient-related characteristics of water which can be feasibly achieved and provide reasonable protection of designated beneficial uses of the Creek and Lake and the prevention of nuisance consistent with Water Code Section 13241. Such water quality objectives may be those defined in the applicable water quality control plan or site specific objectives, as appropriate. In the event biologically-based thresholds, bio-objectives, or other water quality objectives become viable and accepted alternatives to existing chemistry or toxicity based or criteria Nutrient objectives for the Creek and the Lake during the progress of the Work, the Members and the RWQCB shall collaborate to describe the appropriate Water Quality Objectives to be attained by the Work Group, recognizing the effects on water quality caused by various physical and other factors, such as, the hydro-modification effects of the dam, the effects of groundwater infiltration, waterfowl habitation, atmospheric deposition, the warming trend of inland waters, the impacts of historic and current water rights use practices, and surrounding land use, among other water quality factors beyond surface water Nutrient discharges over which the Members have no or limited control, in addition to the biological and chemical effects on water quality (collectively, the “Other Causal and Contributing Factors”). The RWQCB shall determine what water quality objectives can reasonably be achieved within a reasonable period by considering what is technologically and economically feasible and shall take into account environmental characteristics of the hydrogeologic unit under consideration pursuant to State Water Resources Control Board Resolution No. 92-49, as amended.

(n) “Work” shall mean the (a) diagnostic assessment of existing Nutrient conditions, as well as the identification and assessment of the contributing and causal sources and pathways affecting Nutrient conditions in the Lake and Creek (“Diagnosis Work”); (b) identification and feasibility assessment of alternative processes, means, methods, and technologies for abating the Nutrient conditions in the Lake and Creek, improving the existing Nutrient water quality conditions in the Creek and Lake, and determining feasible site-specific Water Quality Objectives (the “Feasibility Work”); (c) development of an abatement plan to achieve the Water Quality Objectives within a reasonable period of time (“Abatement Planning Work”); (d) implementation of the Abatement Plan (“Implementation Work”); (e) pre-and-post project Nutrient monitoring in the Creek and Lake (“Monitoring Work”); and (f) work incidental thereto (“Incidental Work”) all as is reasonably necessary to achieve the Project Purpose described in Section 4 of this Addendum to the reasonable satisfaction of the RWQCB. The RWQCB and the Members agree that the Work shall be performed by the Work Group in the following manner. The portion of the Work to be performed by the Members is described in Exhibit B to this Addendum, as such Exhibit B is amended from time to time as described below (the “Members Scope of Work”). The balance of the Work will be performed by the Non-Members, if any, under such alternatives, including enforcement action(s), as deemed appropriate by RWQCB. In assessing and imposing responsibility, obligations, and/or liability on the Work group to perform Work to achieve the Project Purpose described in Section 4, the RWQCB agrees to take into account the Other Causal and Contributing Factors (as described in Section 1(m)). Such Other Causal and Contributing Factors may be determined to represent a substantial percentage of the overall causal and/or contributing factors resulting in the Nutrient impairment of the Impaired Water Bodies and, therefore, the RWQCB shall not require a Member to perform Work, including cleanup and abatement Work, beyond the scope of their obligation to perform such Work as described in Water Code Sections 13225(c), 13267(b), 13304(a), and 13370 et seq. (collectively, the Water Code Obligations).

(o) “Work Group” shall mean the Members and all Non-Members which are, after the Effective Date, working in coordination with the RWQCB to perform the Work, whether as Members under the Participation Agreement and this Addendum B, or as Non-Members under an enforcement order.

2. Voluntary Participation by the Members. The Members have entered into this Addendum and the Agreement voluntarily, in consideration of the RWQCB's covenant not to sue set forth in Section 16 of this Addendum, to develop and implement a pilot program whereby the Members would develop and conduct the Work in accordance with a voluntary process as expressed in the Agreement. The Members have entered into this Addendum and the Agreement with the goal of contributing their allocated share (as defined in the Agreement) toward achieving lasting water quality for the Lake and the Creek in advance of the schedule reasonably contemplated under the formal TMDL process for the Impaired Water Bodies, and with the goal of developing a structural framework for such voluntary process that can be used as an effective alternative to the formal TMDL process for achieving water quality improvements at a quicker pace than in other impaired water bodies throughout Region 9 and other Regional Boards. The Members desire to work collaboratively with the RWQCB to develop effective procedures and strategies for such voluntary process and to describe and implement their allocated share of the Work necessary to achieve the Project Purpose.

3. RWQCB Jurisdiction. Pursuant to Porter-Cologne Water Quality Control Act ("Water Code") §§13000 et seq., the RWQCB has jurisdiction over the surface waters and ground waters within the Watershed. This jurisdiction includes, but is not limited to, the right to formulate, adopt, and amend water quality control plans (Basin Plans) pursuant to Water Code §§13240 et seq.; to impose waste discharge requirements pursuant to Water Code §§13260 et seq.; to administer the federal National Pollutant Discharges Elimination System ("NPDES") pursuant to the federal Water Pollution Control Act ("Clean Water Act") §402 and Water Code §§13370 et seq.; and, to take enforcement actions as provided in Water Code §§13200 et seq. and §§13300 et seq. The RWQCB contends that it has a sufficient factual and legal basis for exercising its authority to compel the Members and Non-Members, individually or collectively, to perform the Work, as defined in Section 1(m) herein, and as described in the Members' Scope of Work attached hereto as Exhibit B and incorporated herein by this reference.

4. Project Purpose. The Project Purpose shall be the Feasible abatement of the Nutrient impairment related conditions in the Lake and the Creek, as necessary to achieve existing or site specific Water Quality Objectives providing reasonable protection of designated beneficial uses.

5. Work Phases. The RWQCB and the Members agree that the Work to be performed by the Work Group shall be accomplished in reasonable and logical

phases or sub-phases, with the findings, determinations, and progress made as a part of each of the earlier phases or sub-phases being used to define, focus, and develop later phases or sub-phases, in order to achieve the appropriate Water Quality Objectives in accordance with sound science and in a cost-effective and efficient manner. In addition, the total Work necessary to accomplish the Project Purpose shall be performed by the Work Group, in part by the Members as described in Exhibit B (Members' Scope of Work) and in part by the Non-Members, if any, under such enforcement proceedings as RWQCB deems appropriate.

6. Implementation of the Members' Scope of Work. The Members shall perform the Members' Scope of Work described in Exhibit B to this Addendum, and upon execution of this Addendum, the RWQCB and the Members agree that the phase or sub-phase of the Work described in Exhibit B represents a reasonable and logical phase or sub-phase of the overall Work to be performed by the Work Group. The RWQCB and the Members further agree that Exhibit B shall be amended, as necessary, to include each later phase or sub-phase of the Work to be performed by the Members, using the Members' Scope of Work Amendment Form attached to this Addendum as Exhibit C. Each phase or sub-phase of the Members' Scope of Work described in Exhibit B shall include a schedule for performing such phase or sub-phase of the Members' Scope of Work which, based on the best information available to the Members, is Feasible. The Members may amend the Members' Scope of Work and schedule described in Exhibit B upon a demonstration of good cause to the RWQCB, which shall review and approve, modify, or reject the proposed Members' Scope of Work or schedule amendment within a reasonable time not to exceed sixty (60) days, or the amended schedule shall be deemed acceptable. The RWQCB's execution of any Members' Scope of Work Amendment Form shall be deemed its approval of the included phase or sub-phase of Members' Scope of Work and schedule described therein.

7. Modification Of Work. If the RWQCB reasonably determines, on the basis of new information, that a modification of the Members' Scope of Work, or a phase or sub-phase of the Members' Scope of Work as described in Exhibit B, is necessary to achieve the overall Project Purpose, the RWQCB may require the Members to evaluate and consider amending such Members' Scope of Work, or phase sub-phase of such Members' Scope of Work, in such a manner as the RWQCB reasonably determines would meet the overall Project Purpose; provided, however, that any new information upon which such determination is based shall have been previously unknown or reasonably unavailable to the RWQCB at the Effective Date and which if known to RWQCB at the Effective Date would have

materially affected RWQCB's approval of the Members' Scope of Work as set forth in Exhibit B. The RWQCB shall convey such requirement to the Members by written notice setting forth the new information and basis for the RWQCB's determination that an amendment to the Members' Scope of Work is necessary. Within a reasonable time of receiving the RWQCB's notice, the Members shall conduct an independent evaluation of the new information and basis identified by the RWQCB and provide the RWQCB with their written response describing either the Members' rationale for why an amendment to the Members' Scope of Work is not necessary or a proposed amendment to the Members' Scope of Work addressing the basis for the RWQCB's notice. If the Members and the RWQCB are in disagreement, the parties agree to coordinate and negotiate in good faith to resolve any such disagreement and to facilitate a determination of whether or not, and to what extent, an amendment to the Members' Scope of Work is necessary in accordance with the Dispute Resolution provisions of Section 15 of this Addendum.

8. Public Participation. Within sixty (60) days after the Effective Date, the Members shall develop and submit a plan to the RWQCB setting forth a process for providing the public with reasonable notice and opportunity to comment upon the Members' Scope of Work and subsequent revisions thereto ("Public Participation Plan"). In addition, the Members shall cooperate with and support the RWQCB in its efforts to provide reasonable public participation related to the Work.

9. Progress Reports. The Members shall provide the RWQCB with semi-annual written progress reports regarding the Members' performance of the Members' Scope of Work.

10. Technical Reports. The Members shall submit copies of all final technical reports of Members' Scope of Work phases or sub-phases performed by the Members for review by the RWQCB which may, within a reasonable time not to exceed sixty (60) days from receipt, (a) approve the report, (b) approve the report on specified conditions, (c) disapprove the report, in whole or in part, requiring changes be made, or (d) any combination of the foregoing.

11. Force Majeure. Force Majeure is any occurrence beyond the control of the Members which renders the Members, notwithstanding their exercise of due diligence, unable to perform their obligations hereunder due, but not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, action or inaction of legislative bodies, judicial bodies, or regulatory

agencies, or other proper governmental authority, which may prevent the Members from performing the Members' Scope of Work. The Members shall not be considered to be in default in the performance of any of the provisions contained in this Addendum when and to the extent failure of performance shall be caused by an event(s) of Force Majeure. If the Members are rendered wholly or partly unable to perform their obligations under this Addendum, the Members shall be excused from whatever performance is affected by the event of Force Majeure to the extent so affected, provided that: (i) the Members give the RWQCB written notice describing the particulars of the occurrence within two (2) weeks from its onset, (ii) performance shall only be delayed to the extent caused by Force Majeure, (iii) the Members use reasonable efforts to mitigate their inability to perform, and (iv) when the Members are reasonably able to resume performance of their obligations under this Addendum, the Members shall give the RWQCB written notice to that effect. If the ability of the Members to perform the Members' Scope of Work is caused by the actions or inactions of legislative bodies, judicial bodies, or regulatory agencies or other proper governmental authority, this Addendum may be amended to comply or conform with the legal or regulatory change which caused the nonperformance. If the RWQCB does not agree that the Members' nonperformance is attributable to an event of Force Majeure, then the matter may be subject to the Dispute Resolution procedures set forth in Section 16 of this Addendum.

12. No Further Action Letter. Upon a demonstration by the Members, to the reasonable satisfaction of the RWQCB, that the Members have satisfactorily performed the Members' Scope of Work, as amended, and that such Members' Scope of Work is consistent with their Water Code Obligations in respect of the Impaired Water Bodies, taking into account the Other Causal and Contributing Factors, RWQCB shall issue a No Further Action Letter or other substantially similar written instrument evidencing that the Member's Scope of Work obligations under this Addendum are concluded and releasing the Members, according to terms to be provided in the letter, from liability and performance of further Work to cleanup and/or abate Nutrients in the Impaired Water Bodies. Issuance of a No Further Action letter may require a public notice period under applicable public participation provisions in Water Code sections 13307.1 and/or 13307.5.

13. California Environmental Quality Act (CEQA). The Members shall coordinate with the RWQCB and Non-Members to determine the applicability of the California Environmental Quality Act ("CEQA") to the various phases of the Member's Scope of Work. To the extent CEQA applies to any phase of the

Member's Scope of Work, actions necessary to comply with CEQA shall be pursued by the Members in coordination with the RWQCB, and in coordination with Non-Members as necessary and appropriate.

14. Payment of Administrative Costs. The Members shall reimburse the RWQCB for its reasonable costs associated with administration of this Addendum ("Administrative Costs"). Administrative Costs shall not include RWQCB's costs or expenses in undertaking any enforcement action against Non-Members or in administering the performance of Work by Non-Members. The RWQCB will provide the Members with a quarterly detailed accounting of the RWQCB's accrued Administrative Costs. The Members may provide notice of any challenge to the quarterly bill for Administrative Costs by letter mailed to RWQCB Executive Officer within sixty (60) days after the Members receive the quarterly bill. If the Members dispute a bill, or any part thereof, they shall first attempt to informally resolve the dispute with the RWQCB Executive Officer. If the dispute cannot be resolved with the Executive Officer, the Members may formally request dispute resolution with regard to the billing in accordance with the process for Dispute Resolution under Section 15 of this Addendum. If the dispute pertains to only a portion of the costs included in the billing, the Members shall pay all costs which are not in dispute.

The payment of undisputed Administrative Costs shall be made by the Members by check within ninety (90) days after receipt of the bill. The check shall be disbursed to the State Board according to instructions provided by the State Board. A copy of the transmittal letter and a copy of the check shall be sent to the RWQCB at:

California Regional Water Quality Control Board,
San Diego Region
9174 Sky Park, Suite 100
San Diego, California 92123-4353

Attention: Chiara Clemente

If a bill is not paid by the Members within ninety (90) days after it is sent by the RWQCB, the Members may be deemed to be in default of this Addendum. Bills for Administrative Costs shall be mailed to:

City of San Marcos
San Marcos, CA 92069

Attention: _____

15. Dispute Resolution. Unless otherwise expressly provided for in this Addendum, the Dispute Resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Addendum. However, the procedures set forth in this Section shall not apply to actions by RWQCB to enforce obligations that have not been disputed in accordance with this Section or to the RWQCB determination to terminate this Addendum pursuant to Section 33 of this Addendum.

(a) Notice of Dispute. Any dispute which arises under or with respect to this Addendum shall in the first instance be the subject of informal negotiations between the Members and RWQCB's Executive Officer. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. A Notice of Dispute must be received by the non-disputing party(ies) within sixty (60) days of a party becoming aware of the action or inaction that is the subject of the dispute. After such time, the action or inaction is not subject to dispute or administrative or judicial review. The period for informal negotiations shall not exceed sixty (60) days from the time the Notice of Dispute is first received, unless such time period is modified by written agreement of the parties to the dispute.

(b) Statements of Position. In the event that the parties cannot resolve a dispute by informal negotiations under Section 16(a), then the position advanced by the RWQCB's Executive Officer shall be considered binding unless, within sixty (60) days after the conclusion of the informal negotiation period, the Members shall serve on the Assistant Executive Officer, who has not previously been involved in the activities of the Members or the Work in this matter (the "Independent Hearing Officer"), a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Members. Within sixty (60) days after receipt of the Members' Statement of Position, the RWQCB's Executive Officer will serve on the Members, with a copy to the Independent Hearing Officer, its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the RWQCB. Within ten (10) days after receipt of the RWQCB's Executive Officer's Statement of Position, the Members may submit a Reply. An administrative record of the dispute shall be maintained by the RWQCB and shall contain all statements of position,

including supporting documentation or other evidence, submitted pursuant to this Section.

(c) Administrative Decision. The Independent Hearing Officer shall issue a final administrative decision resolving the dispute that shall be based on the administrative record compiled pursuant to Section 16(b). The decision shall be binding upon the Members, subject only to the right of the Members to seek administrative and judicial review of the administrative decision pursuant to Sections 16(d) and 16(e).

(d) Review by the RWQCB. Any administrative decision made pursuant to Section 16(c) shall be reviewable in a public meeting by a quorum of the RWQCB, provided that a motion for reconsideration of the decision is filed by the Members with the RWQCB within thirty (30) days of receipt of the Independent Hearing Officer's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Addendum. Within twenty (20) days of receipt of the Members' motion for reconsideration, the RWQCB's Executive Officer may file a response to the Members' motion. In proceedings on any dispute that is accorded review on the administrative record under applicable principles of law, the Members shall have the burden of demonstrating that the Independent Hearing Officer's decision is not supported by substantial evidence or otherwise not in accordance with law. In the event that a dispute is accorded review on the administrative record under applicable principles of law, reconsideration of the Independent Hearing Officer's decision shall be on the administrative record compiled pursuant to Section 16(b).

(e) Review by the State Board and Judicial Review. Review of action or inaction by the RWQCB on the motion for reconsideration may be sought at the State Board, by petition. A decision by the RWQCB on the Members' motion for reconsideration shall constitute an "action" of the RWQCB within the meaning of 23 CCR Section 2050. Should the RWQCB not issue a decision on the Members' motion for reconsideration of the Independent Hearing Officer's determination, the failure to do so shall constitute a "failure to act" of the RWQCB within the meaning of 23 CCR Section 2050. The Members may petition such "action" or "failure to act" to the State Board for review in accordance with applicable law. Following State Board action on the petition, which may include a review of the matter

or a denial of the petition without such review, the Members may seek judicial review in accordance with applicable law.

(f) Interim Effect of Dispute Resolution Invocation. The invocation of Dispute Resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Members under this Addendum unless the RWQCB agrees otherwise or unless so ordered by the State Board or a court of competent jurisdiction.

16. Covenant Not to Sue by RWQCB. Subject to Section 15 and subsections (a) and (b) of this Section 16, and for as long as the Members are in good faith substantially complying with the obligations of this Addendum, and in consideration for the Members' Scope of Work that will be performed and the payments that will be made by the Members under the terms of this Addendum, the RWQCB covenants not to sue, take enforcement action, or take other administrative action against the Members relating to the Matters Addressed, as described in Section 1(f) hereof. The RWQCB's covenant not to sue the Members shall take effect upon the Effective Date, and shall extend only to the Members or former Members who entered into settlement agreements with the Members as approved pursuant to Section 28 of this Addendum, and their respective governing bodies, directors, council members, supervisors, officers (whether or not elected), employees, contractors, consultants, representatives, successors and assigns, and does not extend to any Non-Member, Terminated Member as of the effective date of such Member's termination from this Addendum, or any other person or entity who might otherwise be potentially responsible for causing or contributing to Nutrient impairment in the Impaired Water Bodies. Further, the RWQCB covenant not to sue shall be subject to the following:

(a) Rights Against Third Parties. Nothing in this Section shall limit the RWQCB's rights against any Non-Member, Terminated Member or third person or entity, including, without limitation, the RWQCB's right to sue, take enforcement action, or take any other administrative action against any such party. It shall not be a violation of this Covenant Not to Sue for the RWQCB to issue an enforcement order under Water Code section 13000, et seq. to a Member(s) provided that concurrent with issuance of the enforcement order the RWQCB agrees not to enforce the terms of said enforcement order in recognition of the Member's voluntary, good faith participation in the Participation Agreement.

(b) Reservation of Rights. The RWQCB covenant not to sue does not pertain to any matter other than Matters Addressed, as defined in Section

1(f) of this Addendum, and the RWQCB reserves all rights against the Members with respect to all other matters, including but not limited to, the following:

(i) Claims based on a failure, after a reasonable opportunity to cure, by the Members to meet a material requirement of this Addendum;

(ii) The criminal liability of any Member;

(iii) For the violation by the Members of any local, state or federal water quality law, rule, or regulation, by any act or omission other than an act or omission arising out of or in connection with the Matters Addressed as defined in Section 1(f) of this Addendum;

(iv) The right of the RWQCB to compel the Members to amend the Members' Scope of Work, or any phase or sub-phase of the Members' Scope of Work, if information concerning the Nutrient impairment in the Impaired Water Bodies, or the causal and/or contributing factors thereof, previously unknown or reasonably unavailable to the RWQCB at the Effective Date is discovered by RWQCB, and which if known to RWQCB at the Effective Date would have materially affected RWQCB's approval of the Members' Scope of Work as set forth in Exhibit B.

17. Covenant Not to Sue by the Members.

(a) Member Covenant Not To Sue RWQCB. Subject to the provisions of Section 15 (Dispute Resolution), the Members, and each of them, hereby covenant not to sue and agree not to assert any claims or causes of action against the RWQCB or its officers and employees regarding any of the Matters Addressed in this Addendum.

(b) Limitations. This covenant not to sue shall not apply in the event that the RWQCB commences a cause of action or issues an order pursuant to RWQCB's reservation of rights set forth in Section 16 against a Member, but only to the extent that the Member's claims arise from the material facts that are the basis of relief the RWQCB is seeking pursuant to the applicable Section 16 RWQCB reservation of rights.

(c) The Members reserve, and this Addendum is without prejudice to, claims against the RWQCB, for money damages for personal injury

(including injury, disease, or death) or property damage (including loss or loss of use) caused by the negligent act or omission, recklessness, or willful misconduct of any employee of the RWQCB while acting within the scope of his or her office, or employment under circumstances where a private person would be liable in accordance with the law of the place where the act or omission occurred. However, any such claim against the RWQCB shall not include a claim for any damages to the extent caused by the negligent, reckless, or intentional acts or omissions of any person, including any consultant or contractor, who is not a RWQCB or SWRCB employee; nor shall any such claim include a claim based on RWQCB's approval or oversight of the Members' Scope of Work or the Work overall, or any phase or sub-phase of the Work. The foregoing does not constitute a waiver of sovereign immunity or a waiver of any other defenses that the RWQCB may assert.

18. Further Actions Necessary to Protect Public. Except as specifically provided in this Addendum, nothing in this Addendum shall limit the power and authority of the RWQCB to take, direct, or order all actions necessary to protect public health, safety, or welfare, to protect the environment, or to prevent, cleanup, abate, remediate or minimize an actual or threatened release or discharge of hazardous substances, waste, pollutants, or contaminants in, on, at, or from the Creek and/or Lake. Further, nothing herein shall prevent the RWQCB from seeking legal or equitable relief to enforce the terms of this Addendum.

19. Waiver of Equitable Defenses. In any administrative or judicial proceeding initiated by the RWQCB to enforce this Addendum, the Members shall not contest their obligation to comply with this Addendum; provided, however, that nothing in this Section affects the enforceability of the covenants not to sue set forth in Sections 16 and 17. In such proceedings, the Members may raise any defenses that are relevant to the issue of whether or not they have complied with the terms of the Addendum.

20. Tolling Agreement. The RWQCB and the Members agree that all statutes of limitations applicable as of the Effective Date to any rights, claims, causes of action, counterclaims, crossclaims, administrative claims or actions, and/or defenses with respect to the Matters Addressed that the RWQCB could assert against the Members or the Members could assert against the RWQCB as of the Effective Date shall be tolled for the period between the Effective Date and the Tolling Termination Date (as defined below), and this tolling period shall be excluded from all computations of any applicable period of limitations. Such potentially applicable statutes of limitations that are tolled by this Addendum

include, without limitation, any applicable time limits within which an action may be commenced against the RWQCB under the provisions of the California Tort Claims Act, including, without limitation, §945.6 of the California Government Code. The Tolling Termination Date shall mean the date upon which the Tolling Agreement provided for in this herein terminates. The Tolling Termination Date, unless otherwise extended, shall be the earlier of: (a) sixty (60) days after the termination of this Addendum pursuant to Section 32 due to a breach of the Addendum by the Members; (b) sixty (60) days after final termination of this Addendum by the RWQCB pursuant to Section 33 of this Addendum; or (c) the completion of the Members' Scope of Work and the issuance of a No Further Action Letter as described under Section 12 of this Addendum.

21. Contribution Protection. With regard to claims for contribution against one or more of the Members raised by any Non-Member, the RWQCB agrees that the Members, and each of them, have earned certain protection from such contribution actions or claims related to the Matters Addressed in this Addendum, provided the RWQCB can legally provide such protection. As and for such protection to the maximum extent practicable, the RWQCB agrees to provide without charge to the Members requested support to the affected Members in their defense, counterclaim, and/or cross claim against any contribution claim or action raised by any Non-Member and arising out of or related to the Matters Addressed. Unless the RWQCB elects to do so, such reasonable support shall not include the RWQCB becoming a party in any judicial or administrative proceeding; and, shall include cooperating with the affected Member to provide requested evidence the affected Member deems reasonably necessary for such defense, counterclaim, or cross complaint. Such evidence shall consist of evidence reasonably available to RWQCB, such as declarations of RWQCB staff and publicly-available documents in the RWQCB files pertaining to proceedings affecting San Marcos Creek and/or Lake San Marcos.

22. Member Reservation of Rights Against Non-Member Parties. Nothing in this Addendum shall be construed to create any rights in, or grant any cause of action to, any Non-Member. The Members hereby expressly reserve, and this Addendum preserves and is without prejudice to, any and all rights and remedies (including, but not limited to, any right to contribution, indemnification and/or reimbursement), defenses, claims, demands, and causes of action that the Members, or any of them, may have with respect to any Non-Member regarding any matter whatsoever.

23. No Admission of Liability. While the Members have shown a high level of cooperation in responding to the water quality conditions existing in the

Impaired Water Bodies, and as a tenet of this voluntary process, neither the execution of this Addendum or the Agreement, nor the actions undertaken or to be undertaken by a Member in performance of either the Agreement or this Addendum, shall in any way constitute or otherwise be construed as an admission of any fact, liability or responsibility in any way related to the Matters Addressed or any water quality or other conditions existing or threatened in the Impaired Water Bodies. The Members expressly retain the right to controvert, deny, and fully defend against any claim, demand, penalty, cause of action, or proceeding of whatsoever kind or nature made or brought in any administrative, judicial, or other forum, by any federal, state, or local governmental agency having jurisdiction or by any organization or person, arising out of or in any way in connection with the Matters Addressed or any water quality or other conditions in the Impaired Water Bodies

24. Notification of RWQCB Regarding Claims For Contribution. The Members agree that with respect to any suit or claim for contribution brought by them for matters related to this Addendum, they will notify RWQCB in writing at least sixty (60) days prior to the initiation of any legal action. The Members also agree that with respect to any suit or claim for contribution brought against them for matters related to this Addendum, they will notify RWQCB in writing of such suit or claim within fifteen (15) days of service of the complaint or other claim on the Members, or any of them. In addition, the Members shall notify the RWQCB within ten (10) days of service or receipt of any motion for summary judgment, within ten (10) days of receipt of any order from a court setting a case for trial, and provide reasonable prior notice for ex parte hearings or injunctive actions.

25. No Waiver of RWQCB Claims. Except as provided in this Addendum, in any subsequent administrative or judicial proceeding initiated by the RWQCB for injunctive relief, recovery of response costs, or other relief relating to the Matters Addressed or allowed by this Addendum, neither the RWQCB nor the Members shall assert, or maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the RWQCB or the Members in the subsequent proceeding were or should have been brought in the instant case.

26. Termination and Satisfaction. This Addendum shall not terminate until the earlier of (a) termination of this Addendum pursuant to Section 32 due to a breach of the Addendum by the Members; (b) final termination of this Addendum by the RWQCB pursuant to Section 33 of this Addendum; or (c) the RWQCB issues a No Further Action Letter or similar document evidencing the completion

of the Members' Scope of Work as described in Section 12 hereof. Upon the earlier of these events, this Addendum shall be terminated except for the provisions of Sections 21, 23, 25, 27, 28, and 31, and such other continuing rights and obligations of the parties under this Addendum.

27. Government Liabilities. The State of California, including the RWQCB, shall not be liable for any injuries or damages to persons or property resulting from acts or omissions of the Members or their contractors, consultants, or representatives in carrying out the Members' Scope of Work or other activities pursuant to this Addendum; and, the State of California, including the RWQCB, shall not be construed as a party to any contract entered into by the Members with contractors, consultants, or representatives for the purpose of carrying out Members' Scope of Work activities pursuant to this Addendum or for any other purpose.

28. De Minimis Settlements. As long as there are three or more Members to the Agreement and this Addendum at the time that those Members with the power to vote pursuant to the Agreement agree in writing upon a *de-minimis* Settlement in respect of a Member(s), the Members may then submit the proposed *de-minimis* settlement to the RWQCB for approval. A *de-minimis* settlement shall be based on credible evidence that a Member(s) should be released from the Agreement and this Addendum because its responsibility for the Members' Scope of Work and the Work overall is *de minimis*. If, based on the credible evidence presented to the RWQCB, the RWQCB concurs with the proposed *de-minimis* settlement because it appears on the basis of such credible evidence that the effects of the discharge and/or Other Causal or Contributing Factors for which the proposed *de minimis* Member(s) are responsible are minimal in quantity and/or impact when compared with the aggregate effects of all other discharges and/or Other Causal or Contributing Factors for which the proposed *de minimis* Member(s) are not responsible, then the proposed *de minimis* settlement shall be deemed approved. The *de-minimis* Member(s), upon meeting its obligations under the *de-minimis* settlement agreement, shall be entitled to all of the benefits and protections afforded Members under this Agreement, such as, the RWQCB Covenant Not to Sue, Contribution Protection, and the right to receive a No Further Action Letter at the time a No Further Action Letter is provided to Members. Similarly, the *de minimis* Member(s) shall remain obligated to the RWQCB and the remaining Members under Sections 17, 19, 20, and 25.

29. Future Cooperation By the RWQCB. The RWQCB and the Members recognize that the Members represent a subset of those persons, entities, and agencies that may be responsible for causing or contributing to Nutrient

impairment in the Impaired Water Bodies. The RWQCB agrees to compel response actions including, without limitation, investigative studies, abatement, and/or clean-up actions, as it determines to be appropriate in the exercise of its discretion, under Water Code Sections 13225, 13267, and/or 13300 et seq., and as appropriate, to pursue recovery of future response or oversight costs and penalties against persons, political subdivisions, and other organizations not a party to the Agreement and this Addendum (i.e., Non-Members) whose discharges and/or other acts or omissions have caused, permitted, or contributed to Nutrient impairment in the Lake and/or the Creek, where the RWQCB determines that sufficient information exists to warrant such action and that such action is consistent with its statutory authority. The RWQCB agrees to work in good faith to provide the Members with reasonable access to documents concerning unlawful discharges of Nutrients into, and other causal or contributing acts or omissions responsible for Nutrient impairment in the Lake and/or the Creek.

30. Communications. All approvals and decisions of the RWQCB regarding submittals and notifications related to the Impaired Water Bodies by any person or entity will be communicated to the Members in writing by the Executive Officer or his designee within a reasonable time, but in no event longer than thirty (30) days after receipt of such information. No informal advice, guidance, suggestions or comments by the RWQCB regarding reports, plans, specifications, schedules or any other writings by the Members shall be construed to relieve the Members of their collective obligation to obtain such formal approvals as may be required by this Addendum.

31. Record Retention. Unless otherwise provided for in this Addendum, all data, reports and other documents shall be preserved by the Members for a minimum of five (5) years after the conclusion of all of the Members' Scope of Work under this Addendum. If the RWQCB requests that some or all of these documents be preserved for a longer period of time, the Members shall either comply with that request and deliver the documents to the RWQCB, or permit the RWQCB, at its own costs, to copy the documents prior to destruction. The Members shall notify the RWQCB in writing, at least thirty (30) days prior to destroying any documents prepared pursuant to this Addendum.

32. Event of Default.

Each of the following occurrences constitutes an Event of Default by the Members under this Addendum:

(a) Any representation of the Members set forth in this Addendum, or otherwise delivered by a Member to RWQCB pursuant to this Addendum, which is false in any material respect when so made or furnished;

(b) Work Group's failure to perform any material part of its obligations under this Addendum.

Upon the occurrence of an Event of Default, which is not cured by the Members within sixty (60) days (or such longer period if such default is not reasonably capable of being cured within such sixty (60) day period) after the date on which written notice of the Event of Default has been given to the Members by RWQCB, then RWQCB may exercise any right, power or remedy available to it under this Addendum, or otherwise available at law or in equity and has, in particular, without limiting the generality of the foregoing, the right to terminate this Addendum upon written notice to Members, in which event RWQCB has no further obligations hereunder. No courses of dealing on the part of RWQCB or delay or failure on the part of RWQCB, that is consistent with state law, to exercise any right will operate as a waiver of such right or otherwise prejudice RWQCB's rights, powers or remedies. RWQCB's decision to terminate this Agreement under subsection (b) is not subject to claim or dispute under Section 15. In the event RWQCB terminates the Addendum under this Section 32, RWQCB shall make an equitable adjustment in the future Work required of the Members to achieve the Project Purpose taking into account the following:

(c) All the Members' Scope of Work performed up to the effective date of termination.

(d) The Members' collective and individual actual and reasonable costs of terminating any ongoing Work and the Members' collective and individual actual and reasonable costs of performing the Members' Scope of Work completed up to the effective date of termination.

(e) The amount of any Administrative Costs paid by the Members.

(f) Any amounts for Administrative Costs owing by the Members to RWQCB under the terms of this Addendum.

33. RWQCB Termination of Addendum and Removal of Member(s).

(a) Termination of Addendum. In the event the RWQCB reasonably determines, that further implementation of this Addendum will preclude the RWQCB from effectively achieving the Project Purpose, as described in Section 4

hereof, the RWQCB may terminate this Addendum. However, the RWQCB agrees to provide at least sixty (60) days prior written notice to the Members of its intent to terminate the Addendum and the RWQCB's basis for taking such action, and to give the Members a reasonable opportunity to be heard and to present evidence in opposition to such action and to controvert the basis and evidence for the RWQCB's intended action. A determination by the RWQCB's Executive Officer to terminate this Addendum under Section 33 is final upon expiration of 60 days following the notice of intent to terminate unless one or more Members seek reconsideration of the Executive Officer's determination by the RWQCB. A decision by the RWQCB to uphold the Executive Officer's determination is final and is not subject to State Water Board or judicial review. Upon final RWQCB termination of this Agreement, the RWQCB has no further obligations under this Addendum.

(b) Removal of Member(s) from Addendum. In the event that the RWQCB reasonably determines that continued participation by a Member(s) in further implementation of this Addendum is interfering with or impeding the RWQCB's ability to effectively achieve the Project Purpose, as described in Section 4 hereof, the RWQCB may terminate said Member(s) from this Addendum. The RWQCB agrees to provide at least thirty (30) days prior written notice to the Member(s) of its intent to terminate said Member's or Members' further participation in this Addendum and the RWQCB's basis for taking such action and to provide the Member(s) with a reasonable opportunity to be heard and to present evidence in opposition to the RWQCB's intended action. The RWQCB's Executive Officer's decision to terminate a Member's or Members' participation in this Addendum under Section 33 is final upon expiration of thirty (30) days following the notice of intent to terminate unless the Member(s) seek reconsideration of the Executive Officer's determination by the RWQCB. A decision by the RWQCB to uphold the Executive Officer's determination is final and is not subject to State Water Board or judicial review. Upon final RWQCB termination of a Member's or Members' participation in this Addendum, the RWQCB has no further obligations under this Addendum to the Terminated Member(s).

34. General Provisions.

(a) Full Authority. Each of the Members executing this Addendum represents and warrants that it/he/she has the right, power, and authority to execute this Addendum, that all approvals on its part have been obtained to fully authorize and bind said Member under this Addendum, and further represents and warrants that it/he/she has the exclusive right to prosecute,

compromise, and agree to the matters set forth herein, and that it has not sold, assigned, conveyed, or otherwise transferred such right. In addition, each Member shall delegate a representative having the responsibility and authority to implement the Member's Scope of Work and this Addendum on behalf of such Member.

(b) Further Assurances; Covenant to Sign Documents. Each party shall take all actions and do all things, and execute, with acknowledgement or affidavit, if required, any and all documents and writings that may be necessary or proper to achieve the purposes of this Addendum.

(c) Statement of Compliance. Within thirty (30) days following any written request by the RWQCB or the Members, the recipient shall execute and deliver a statement certifying that this Addendum is unmodified and in full force and effect or, if there have been modifications hereto, that this Addendum is in full force and effect as modified, that there are no current uncured defaults under this Addendum, and any other information reasonably requested.

(d) No Agency. It is expressly agreed that, in carrying out this Addendum, no relationship of principal and agent shall ever exist between or among the parties hereto.

(e) Entire Agreement. This Addendum sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings, or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Addendum. To the extent this Addendum conflicts with any prior agreements, this Addendum shall control.

(f) Incorporation of Recitals. The recitals to this Addendum, above, are hereby incorporated herein and made a part hereof.

(g) Construction of Addendum. This Addendum is the product of arms-length negotiations between and among the parties and their respective attorneys. Each of the parties hereto expressly acknowledges and agrees that this Addendum shall be deemed to have been mutually prepared so that the rule of construction to the effect that ambiguities are to be resolved against

the drafting party shall not be employed in the interpretation of this Addendum. The paragraph and section headings used in this Addendum are for reference only and shall not affect the construction of this Addendum.

(h) Notices. All notices called for pursuant to this Addendum shall be given in writing by personal delivery, or recognized overnight delivery service which obtains the signature of the addressee or its agent as evidence of delivery, or confirmed electronic transmission or telecopy/facsimile. All such notices or communications shall be deemed to have been given and received on the first to occur of: (i) actual receipt by the respective addressees listed below; or (ii) the date of delivery by recognized overnight delivery services; and/or (iii) upon receipt by the sender of electronic confirmation of delivery of such notices or communications sent by telecopy/facsimile or e-mail. A party may change its address by giving written notice thereof to the other in accordance with the provisions of this section.

MEMBERS:

City of San Marcos
1 Civic Center Drive

San Marcos, CA 92069
ATTN: Ms. Erica Ryan

WITH A COPY TO:

John J. Lormon, Esq.
Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101-4469

RWQCB:

San Diego Regional Water Quality Control Board
9174 Sky Park, Suite 100
San Diego, CA 92123-4353
ATTN: Mr. David Gibson, Executive Officer

WITH A COPY TO:

State Water Resources Control Board

Office of Chief Counsel
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353 PO Box 100
Sacramento, CA 95812-0100
ATTN: San Diego RWQCB Counsel

(i) Representations As To Due Execution. The parties represent and warrant to each other that this Addendum has been duly executed and appropriately authorized by all required governmental and other authorizations.

(j) Severability. It is agreed that if any terms, covenants, or provisions of this Addendum shall be illegal or unenforceable, such illegality or unenforceability shall not invalidate the entire Addendum, but this Addendum shall be construed as if the provision containing the illegal or unenforceable part were not a part hereof.

(k) Continuing Effect. This Addendum shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(l) Choice of Law. This Addendum shall be interpreted in accordance with and governed in all respects by the laws of the State of California, without regard to any conflict of laws provisions.

(m) Amendment. This Addendum may only be amended by a written document executed by all parties hereto, and the Exhibits may be amended by the signatories to those Exhibits, as applicable.

(n) Counterparts. This Addendum may be executed in any number of counterparts.

IN WITNESS WHEREOF, we have signed this Addendum.

SAN DIEGO REGIONAL WATER QUALITY
CONTROL BOARD,

By: _____

Its: _____

Dated: _____, 2010

COUNTY OF SAN DIEGO

By: _____

Its: _____

Dated: _____, 2010

CITY OF SAN MARCOS

By: _____

Its: _____

Dated: _____, 2010

CITY OF ESCONDIDO

By: _____

Its: _____

Dated: _____, 2010

CALIFORNIA DEPARTMENT OF TRANSPORTATION

By: _____

Its: _____

Dated: _____, 2010

SAN MARCOS UNIFIED SCHOOL DISTRICT

By: _____

Its: _____

Dated: _____, 2010

CALIFORNIA STATE UNIVERSITY SAN MARCOS

By: _____

Its: _____

Dated: _____, 2010

VALLECITOS WATER DISTRICT

By: _____

Its: _____

Dated: _____, 2010

PALOMAR COMMUNITY COLLEGE

By: _____

Its: _____

Dated: _____, 2010

By: _____

Its: _____

Dated: _____, 2010

By: _____

Its: _____

Dated: _____, 2010

By: _____

Its: _____

Dated: _____, 2010

By: _____

Its: _____

Dated: _____, 2010

EXHIBIT A

Carlsbad Watershed Management Area

EXHIBIT B

Members' Scope of Work

EXHIBIT C

Members' Scope of Work Amendment Form

DRAFT 1/10/11

Lake San Marcos - Summary

Revised Scope of Work Based on SDRWQCB Staff Review November 2010 and Other Input Since Original Scoping

Task	Description	Cost Estimate w additional / Data Contingency \$	Cost Estimate wout additional / Data Contingency \$	Notes
A	Surface Water Model	\$43,500	\$28,500	Note: Data Contingency if Additional Data required
B	Water Quality Model(Use EPA Model - TetraTech)	\$80,500	\$30,500	Note: Data Contingency if Additional Data required
C	Groundwater Model (Contingency Task) - Use EPA Models/Modules	\$378,000	\$228,000	Task C is a Contingency Task
D	Understand Water Budget	\$115,000	\$115,000	No Data Contingencies
E	Understand Nutrient Budget	\$375,000	\$375,000	No Data Contingencies
F	Understand In-Lake Process	\$379,000	\$379,000	No Data Contingencies
G	Understand Lake/Golf Course Well Use and Management	\$20,000	\$20,000	No Data Contingencies
H	Lake Data Analysis and Interpretation	\$60,000	\$60,000	No Data Contingencies
I	Deliverables/Reports	\$50,000	\$50,000	No Data Contingencies
	TOTAL ALL Tasks	\$1,501,000	\$1,286,000	
	Total without Groundwater Task C	\$1,123,000	\$1,058,000	

Lake Only Related Scope of Work (Tasks FGH)

\$459,000

\$459,000

DRAFT
LAKE SAN MARCOS
SCOPE OF WORK
1/10/2011

Task No.	Task Description	Cost Estimate (\$)
A		
Surface Water Model		
1	Develop QAPP and Monitoring Plan (SWAMP) For Monitoring and Research Tasks (Surface Water)	\$6,000
2	Surface Water (Hydrological) Concept Model Development (Surface Water Data: Surface Elevations, Runoff Rates) USE EPA Model (Tetretech)	\$15,000
3	Refine Conceptual Model (Assess Existing Data and Compile. Specify Additional Data Required)	\$7,500
4	<i>Surface Water Additional Data Required (TBD - Contingency)</i>	<i>\$15,000</i>
Subtotal Task A (with Contingencies)		\$43,500
Subtotal Task A (without Contingencies)		\$28,500
B.		
Water Quality Model(Use EPA Model - TetraTech)		
1	Develop QAPP and Monitoring Plan (SWAMP) For Monitoring and Research Tasks (Water Quality)	\$10,000
2	Concept Model - Surface Water Quality	\$7,500
3	Refine Concept Model	\$3,000
4	Assess Water Quality Data Gaps (Assess Existing Data and Compile. Specify Additional Data Required)	\$10,000
5	<i>Additional Data Required - Contingency TBD</i>	<i>\$50,000</i>
Subtotal Task B (with Contingencies)		\$80,500
Subtotal Task B (without Contingencies)		\$30,500

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Task No.	Task Description	Cost Estimate (\$)
<i>Groundwater Model (Contingency Task) - Use EPA Models/Modules</i>		
<i>Develop QAPP and Monitoring Plan (SWAMP) For</i>		
1	<i>Monitoring and Research Tasks (Groundwater)</i>	<i>\$8,000</i>
2	<i>Select Groundwater Model/Modules</i>	<i>\$15,000</i>
3	<i>Select Groundwater Consultant</i>	<i>\$5,000</i>
3	<i>Develop Concept Model - Groundwater</i>	<i>\$25,000</i>
4	<i>Refine Conceptual Model</i>	<i>\$10,000</i>
5	<i>Assess Ground Water Data Gaps (Assess Existing Data and Compile. Specify Additional Data Required)</i>	<i>\$10,000</i>
6	<i>Additional Data Required - Contingency TBD</i>	<i>\$50,000</i>
7	<i>Differentiate Groundwater Sources Agriculture etc(understand Water Budget) Assumes 100 Groundwater Samples</i>	<i>\$35,000</i>
8	<i>Contingency TBD - Differentiate Groundwater Sources - up to 4 wells @\$25k each</i>	<i>\$100,000</i>
9	<i>Understand Water Budget - Calibrate/Validate Groundwater Model</i>	<i>\$50,000</i>
10	<i>Understand Groundwater Nutrient Budget - Quantify Nutrient Concentrations in Groundwater inflow/outflow (monthly sampling event of 10-12 wells/mo)</i>	<i>\$30,000</i>
11	<i>Understand Groundwater Nutrient Budget -Calibrate and Validate Groundwater Module</i>	<i>\$30,000</i>
12	<i>Calculate Groundwater External Loading</i>	<i>\$10,000</i>
<i>Subtotal Task C (with Contingencies)</i>		<i>\$378,000</i>
<i>Subtotal Task C (without Contingencies)</i>		<i>\$228,000</i>

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Task No.	Task Description	Cost Estimate (\$)
D.	Understand Water Budget	
	Quantify Surface Inflow/Outflow (Assumes 10 sites around lake, continuous monitoring, equipment purchase)	\$60,000
1		
2	Calibrate and Validate Surface Water Model	\$50,000
	Quantify Groundwater Inflow/Outflow (with or without Groundwater Model - uses available existing data)	\$5,000
3		
	Subtotal Task D	\$115,000
E.	Understand Nutrient Budget	
	Quantify Nutrient Concentrations in Surface Inflows/Outflows (4 dry/3 wet at Task D1 10 Locations)	\$65,000
1		
	Quantify Atmospheric Deposition of Nutrients(3 samplers; 10 samples each (30 total); plus data management/analysis)	\$30,000
2		
3	Calibrate and Validate Surface Water Model	\$35,000
4	Calculate External Nutrient Loadings (Quarterly)	\$15,000
	Subtotal Task E	\$375,000

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Task No.	Task Description	Cost Estimate (\$)
F.	Understand In-Lake Process	
	<i>Develop QAPP and Monitoring Plan (SWAMP) For In Lake</i>	
1	<i>Processes</i>	\$6,000
2	Depth profiling (2 vertical profiler systems with pH, EC, DO, temp, Turb)	\$138,000
3	Quarterly oversight of Task F2 - volunteers and sonde maintenance, data management	\$20,000
4	Determine Depth and Volume of Accumulated Sediment (Sub-bottom and bathymetric survey conducted at the same time)	\$37,000
5	Contributions from Shallow Sediments	\$5,000
6	Sediment Chemistry - 20 Surface Grabs	\$30,000
7	Core Samples (3 cores w/ 5 layers - 15 total Samples)	\$50,000
8	Water Chemistry - In lake Sampling (5 grab Samples - 7 sampling days 4 dry/3 wet)	\$33,000
9	Other Water Quality Measurements Sieche Disk/Temp (Volunteer Tasks Currently Oversighted by County and not outsourced to consultant)	\$0
10	Biological Measurement - Biomass (single season sampling at 20 locations plus taxonomic identification for 3 algal bloom samples)	\$23,000
11	Biological Measurement - Lake Flora (single season sampling at 5 locations)	\$12,000
12	Fish and wildlife study (single season)	\$17,000
13	Food Web - Trophic Study	\$8,000
	Subtotal Task F	\$379,000

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Task No.	Task Description	Cost Estimate (\$)
G.	Understand Lake/Golf Course Well Use and Management	
1	Assess and Summarize Groundwater Pumping Records	\$5,000
2	Assess and Summarize Recreational Use Records(Boating)	\$5,000
3	Assess and Summarize Other Available Lake and Use Management Records	\$5,000
4	Interpret Data and Estimate Affect on Nutrient Budget	\$5,000
	Subtotal Task G	\$20,000
H.	Lake Data Analysis and Interpretation	
1	Lake water quantity inputs: groundwater vs. surface water sources, including seasonal and annual variation	\$6,000
2	Relative proportions of different sources of groundwater, including seasonal and annual variation	\$6,000
3	Relative loadings of N and P from various external sources to Lake, including seasonal and annual variation	\$6,000
4	Amount of accumulated sediment in Lake; historical decrease in Lake water storage volume	\$6,000
5	Amounts of N and P in Lake sediment reservoir	\$6,000
6	Seasonal patterns in Lake thermal stratification; estimated frequency of Lake turnover	\$6,000
7	Relative importance of external vs. in-Lake sources of N and P	\$6,000
8	Historical patterns in Lake sediment chemistry based on core samples	\$6,000
9	Estimated quality of sediment that would be released from the Lake if water is released from the lower Dam	\$6,000
10	Biological condition of Lake, effects of current nutrient conditions on biota, and effects of fish and wildlife on	\$6,000
	Subtotal Task H	\$60,000
I.	Deliverables/Reports	
1	Draft Report with Clean Up and Implementation Plan	\$40,000
2	Final Report with Clean Up and Implementation Plan	\$10,000
	Subtotal Task I	\$50,000



Linda S. Adams
Acting Secretary for
Environmental Protection

California Regional Water Quality Control Board San Diego Region

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TO: Tom Howard
Executive Director
State Water Resources Control Board

FROM: David W. Gibson 
Executive Officer
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

DATE: February 3, 2011

SUBJECT: Regulation of Brine Waste Discharges from Desalination Facilities

On January 12, 2011, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) adopted Order No. R9-2011-0016 (Order), an NPDES permit for the City of Oceanside's Ocean Outfall discharge. The point established in the Order for compliance with technologically based effluent limitations (TBELs) for a ground water desalination facility brine discharge was a key issue raised by the City Of Oceanside as well as other interested persons in the hearing. At the conclusion of the hearing the San Diego Water Board Members adopted the tentative Order recommended by staff, but requested that I communicate to the State Water Board their concern that the NPDES regulations may not provide sufficient flexibility for setting the point of compliance for TBELs in NPDES permits. The Board Members were particularly concerned that the lack of flexibility may lead to unnecessarily stringent requirements for the discharge of brine and other waste for projects designed to augment local water supply needs.

The Order regulates the combined discharges from three separate facilities including two municipal wastewater treatment plants classified as publicly owned treatment works and a desalination facility classified as an industrial facility. All three facilities are owned and operated by the City of Oceanside. Treated effluent from the three facilities is discharged through the Oceanside Ocean Outfall (Ocean Outfall) to the Pacific Ocean. Under the terms of the Order, discharges from each facility are now regulated under separate TBELs that apply to each discharge prior to mixing with any other wastewater flows directed to the Ocean Outfall.

This is a departure from prior Orders which, contrary to applicable NPDES regulations, implemented TBEL compliance at a single combined discharge point at the Ocean Outfall and not at each individual facility prior to mixing with other wastewater flows

California Environmental Protection Agency

directed to the Ocean Outfall. This change in the application of TBELs in the Order was based on three key NPDES regulations which stipulate that:

1. Technology-based treatment requirements under section 301(b) of the Clean Water Act represent the minimum level of control that must be imposed in an NPDES permit [40 CFR 125.3(a)];
2. Technology-based treatment requirements are applied prior to or at the point of discharge [40 CFR 125.3(e)]; and
3. Technology-based treatment requirements cannot be satisfied through the use of "non-treatment" techniques such as flow augmentation and in-stream mechanical aerators [40 CFR 125.3(f)]

The change was also based on Ocean Plan Table A TBELs which are applicable to 1) publicly owned treatment works discharges and 2) industrial discharges for which effluent limitation guidelines have not been established pursuant to Sections 301, 302, 304, or 306 of the Clean Water Act¹. Based on these considerations the Order requires that effluent pollutant levels be measured, and compliance with TBELs determined, at the point of discharge following the treatment process at each facility and prior to mixing with discharges from other separate facilities.

In my view, however, the real issue centers on how waste byproducts from desalination facilities are classified rather than the NPDES regulations governing the point of compliance for TBELs in NPDES permits. Waste brine discharges from desalination processes are currently regulated through a default classification as an industrial waste under both the Clean Water Act and the California Ocean Plan because they do not provide specific regulatory distinction for waste byproducts from desalination facilities. While TBELs are indeed appropriate for pollutants associated with industrial wastes, the constituents of concern in brine waste are primarily mineral salts and turbidity. These constituents present a far less significant threat to the ocean than most industrial wastes that regulated through TBELs. Nonetheless, the San Diego Water Board relied on the default industrial waste classification in its decision to adopt the Order and in recent decisions on regulation of other brine discharges. An appropriate regulatory distinction for brine waste could be provided by the State Water Board through an Ocean Plan amendment establishing a new separate classification for waste byproducts from desalination facilities.

Amendment of the California Ocean Plan is an appropriate means to address issues affecting desalination facilities throughout the state. The 2005 California Ocean Plan Triennial Review and Workplan (State Water Board Resolution No. 2005-2008) identified brine discharge from desalination facilities as a high priority issue. |

¹ 2005 California Ocean Plan adopted by the State Water Resources Control Board on January 20, 2005 and April 21, 2005, Page 12, Table A Effluent Limitations

understand that work is already underway by State Water Board staff to prepare revisions to the Ocean Plan on various issues common to desalination facilities as part of upcoming planning efforts for Ocean Plan amendment. The Ocean Plan revisions could address issues common to desalination facilities such as brine waste classification, intake water specifications, physical and toxicity characteristics of brine discharges, brine waste blending with other wastewater flows directed to a common ocean outfall, and alternative mixing zones for dense brine waste plumes. Ocean Plan revisions could also address adjustment of the Ocean Plan TBELs to reflect the specific types of waste and pollutants discharged from a desalination facility. Given the ever-increasing importance of water reuse and desalination to meet the drinking water supply and reliability needs of California, the San Diego Water Board strongly supports the State Water Board's on-going planning efforts to facilitate permitting of facilities that discharge brine waste.

At the Management Coordinating Committee meeting of January 25, 2011, you described the need for closer collaboration between the Regional Water Boards and the State Water Board on key, emerging issues of both local and statewide importance. I suggest that this is one such issue the San Diego Water Board and State Water Board could take up together to more efficiently address this important issue.

I would appreciate your consideration of the San Diego Water Board's concerns in this matter. If you would like additional information on the Order or other aspects of San Diego Water Board's regulation of brine discharges please contact me.

cc: John Kemmerer, US EPA