

**JOINT PROSECUTION AND COST-SHARING AGREEMENT RE FINAL RULE OF
THE UNITED STATES FISH & WILDLIFE SERVICE TO DESIGNATE CRITICAL
HABITAT FOR THE SANTA ANA SUCKER**

This Joint Prosecution and Cost-Sharing Agreement (“**Agreement**”) is entered into by and among the undersigned (the “**Parties**”), as listed on Exhibit A hereto.

RECITALS

A. The Parties are cooperating on efforts to review and analyze the effects of the United States Fish & Wildlife Service’s Final Rule to Designate Critical Habitat for the Santa Ana Sucker (the “**Final Rule**”), which was published in the Federal Register on December 14, 2010. If the Parties conclude that the Final Rule has adverse effects, including but not limited to preventing maintenance of existing infrastructure, preventing the construction of new infrastructure, and/or limiting the diversion of water from the Santa Ana River or other streams, one or more of the Parties may commence litigation against the United States or seek other relief from the effects of the Final Rule. These cooperative efforts, both before and during any litigation may include the utilization of various experts and consultants to assist with the review and evaluation of the effects of the Final Rule, and the necessity, wisdom, and efficacy of potential challenges to it.

B. Through this Agreement, the Parties desire to govern their payment of costs and fees arising from their cooperative efforts and to confirm their common interests in maintaining a joint prosecution with respect to the Final Rule, to allow them to continue to share information related to the Final Rule, while continuing to preserve, to the fullest extent possible, the protections of the attorney-client privilege, work product privilege, common-interest doctrine,

**CONFIDENTIAL
JOINT PROSECUTION MATERIAL**

deliberative process privilege, executive privilege, privileges regarding mediation or settlement communications, or any other privilege or protection existing under state or federal law.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, and the mutual covenants and conditions contained herein, the Parties agree as follows:

1. The Parties shall contribute the sums listed in Exhibit B hereto, which sets forth each Party's contribution towards the fees and costs collectively incurred in the Parties' cooperative efforts on the Final Rule, plus the funds that may be needed to pursue a challenge to the Final Rule (whether by litigation or otherwise). If additional funds are needed, then the participating Parties will agree upon the amount of additional call(s) for funds and each participating Party's contribution to such call(s). In the event that any new parties decide to join the undersigned Parties and participate in this Agreement, Exhibits A and B shall be modified accordingly, and the amounts contributed shall be adjusted. San Bernardino Valley Municipal Water District shall have the responsibility for collecting each Party's contribution of funds, processing invoices submitted by the experts and consultants pursuant to their scopes of work attached hereto, coordinating communications among the Parties to the retained consulting experts, and for maintaining an accurate accounting of this administration of funds.

2. For purposes of this Agreement, "Joint Prosecution Materials" includes, but is not limited to, all communications (including communications related to the Final Rule or the proposed rule issued by the United States Fish & Wildlife Service on December 9, 2009 made prior to the execution of this Agreement), factual materials, mental impressions, legal analyses, theories or strategies, memoranda, reports, notes, emails or any other communications or documents that are protected from disclosure by the attorney-client privilege, work product

privilege, deliberative process privilege, executive privilege, common-interest doctrine, joint prosecution/defense doctrine, privileges regarding mediation or settlement communications, or any other privilege or protection existing under state or federal law, and that are exchanged among the Parties and/or their respective counsel in connection with the Final Rule. Joint Prosecution Materials do not include final versions of any correspondence, studies, or reports prepared by or on behalf of one or more Parties intended for review by the United States Fish & Wildlife Service or a non-Party.

3. The Parties will maintain as confidential all Joint Prosecution Materials (as defined above). Disclosure of Joint Prosecution Materials shall be limited to the Parties and their employees and contractors as well as any counsel, consultants, and lobbyists retained by the parties, or on behalf of the parties, for the purpose of maintaining a joint prosecution with respect to the Final Rule, subject to the further provisions of this Agreement.

4. Any Joint Prosecution Materials shared or transmitted by or between Parties should be clearly designated "CONFIDENTIAL: JOINT PROSECUTION MATERIALS." However, the failure to include such designation shall not preclude such materials from being afforded the protections of this Agreement and shall not be construed to constitute a waiver of any privilege or other protection.

5. Each Party shall take all appropriate measures to ensure that any person who is granted access to Joint Prosecution Materials is familiar with the terms of this Agreement and complies with those terms.

6. Each Party is represented by its own respective legal counsel in connection with the Final Rule, and the cooperative efforts referenced herein. Said legal counsel will not have an attorney-client relationship with any other Party to this Agreement as a result of the legal

counsel's participation in discussions and actions related to the Parties' cooperative efforts on the Final Rule. Similarly, said legal counsel will not have a duty of loyalty or confidentiality to any Party to this Agreement other than the legal counsel's specific client(s), and consequently, no Party may seek to disqualify the legal counsel for another Party as a result of the legal counsel's participation in discussions and actions related to the Parties' cooperative efforts on the Final Rule.

7. Except where required by the order of a court of competent jurisdiction, or by the prior written consent of the remaining Parties, a Party will not reveal to non-Parties any Joint Prosecution Materials it has received from another Party.

8. Each Party shall notify the Party that generated any Joint Prosecution Materials of any request to disclose the Joint Prosecution Materials to any non-Party, or of any proceeding before any court, administrative agency, or tribunal to compel the disclosure of such Joint Prosecution Materials, as soon as practicable after receipt of such request or the initiation of such proceeding. If a Party becomes subject to any judicial or administrative order purporting to compel release of Joint Prosecution Materials, that Party shall: (a) promptly notify the Party that generated the materials and all remaining Parties, and (b) make all reasonable efforts to give that Party an opportunity to protect the Joint Prosecution Materials.

9. No party is required to treat as confidential within the meaning of this Agreement any material where such material is, or hereafter becomes (without violation of this Agreement), public record, public knowledge, or is obtained from sources other than exchanges under this Agreement.

10. The sharing of Joint Prosecution Materials among the Parties is not intended to and will not constitute a waiver of any privilege or other protection of confidentiality, including

but not limited to the attorney-client privilege, work product privilege, common-interest doctrine, deliberative process privilege, executive privilege, privileges relating to mediation or settlement communications, or any other privilege or protection existing under state or federal law.

11. Execution of this Agreement constitutes the mutual agreement of the Parties that any sharing of Joint Prosecution Materials among themselves is reasonably necessary for the accomplishment of the Parties' common purposes as described above. Any sharing of Joint Prosecution Materials among the Parties is in reliance on this Agreement and the protections that arise from the Parties' common interests in reviewing, evaluating and potentially challenging the Final Rule.

12. Nothing in this Agreement shall obligate any Party to exchange documents or information with any other Party, whether or not such documents or information would be covered by this Agreement as Joint Prosecution Materials.

13. By this Agreement the Parties each acknowledge and agree that cooperation in the matters referenced above may involve the communication and sharing of confidential information and further agree that the interests of the Parties are not adverse as to matters within the scope of this Agreement. Each of the Parties has had a full opportunity to consult with separate counsel, is fully informed, and has concluded that the risk of any potential conflict of interest is outweighed by the benefits and efficiencies afforded by the opportunities for cooperation and sharing of Joint Prosecution Materials as provided for herein. The Parties consent to the sharing of Joint Prosecution Materials among their counsel, waive any potential conflict of interest created thereby, and mutually agree that this sharing of Joint Prosecution Materials and cooperation shall not constitute grounds for seeking disqualification of counsel in any matter or action.

14. If there is a breach of this Agreement by a Party, the Parties agree that the non-breaching Party will have no adequate remedy at law in money or damages and shall be entitled to seek and obtain, in addition to all other remedies that may be available, a temporary restraining order, injunctive relief, or other equitable relief against the breach or its continuance.

15. Nothing in this Agreement shall be construed to waive any rights, claims, or privileges that any Party shall have against another Party or any other person or entity.

16. This Agreement shall be binding upon the successors and assigns of the Parties.

17. This Agreement is made under, and shall be construed in accordance with, the laws of the State of California.

18. The individuals signing this Agreement in a representative capacity warrant that they have the authority to do so on behalf of the entity or entities they represent, and further agree that as representatives of the entity or entities that they respectively represent, they themselves are bound by all terms of this Agreement.

19. Any Party may withdraw from this Agreement by providing written notice to the other Parties. If a Party withdraws from this Agreement, the provisions of this Agreement shall continue to apply to the Joint Prosecution Materials that were shared during the time period when that Party was a party to this Agreement.

20. All notices and other communications required to be given to a Party under the terms of this Agreement (a) shall be in writing, (b) shall be personally delivered, or transmitted by facsimile or email, and (c) shall be directed to such Party at the address, facsimile number or email address specified below, or at such other address, facsimile number or email address as such Party may hereafter designate by notice in accordance with this paragraph.

Exhibit A

List of Parties

1. San Bernardino Valley Municipal Water District
2. Western Municipal Water District of Riverside County
3. City of Riverside Public Utilities
4. City of San Bernardino Municipal Water Department
5. San Bernardino Valley Water Conservation District
6. East Valley Water District
7. City of Redlands
8. Yucaipa Valley Water District
9. Bear Valley Mutual Water Company/Crafton Water Company
10. Big Bear Municipal Water District
11. West Valley Water District
12. Riverside County Flood Control District

Exhibit B

Each Party's Contribution

Agency	Contribution
San Bernardino Valley Municipal Water District	\$90,000
Western Municipal Water District	\$75,000
City of San Bernardino Municipal Water Department	\$75,000
City of Riverside Public Utilities Department	\$75,000
San Bernardino Valley Water Conservation District	\$1,000
East Valley Water District	\$75,000
City of Redlands	\$50,000
Yucaipa Valley Water District	\$15,000
Bear Valley/Crafton Water Companies	\$50,000
Big Bear Municipal Water District	\$15,000
Riverside County Flood Control District	\$75,000
West Valley Water District	\$15,000
Total	\$611,000

21. This Agreement may be executed in counterparts, each of which so executed shall be deemed an original irrespective of the date of the execution, and said counterparts shall together constitute one and the same Agreement. Further, facsimile or .PDF copies of signatures shall be as effective as original signatures for evidencing execution of this Agreement.

By:



Print Name:

C. Patrick Milligan

Date:

April 14, 2011

Title:

Board President

Representing:

San Bernardino Valley Municipal Water District

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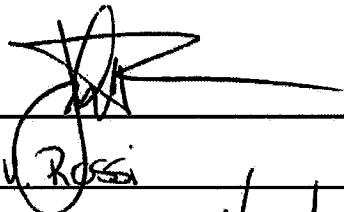
By:

Print Name:

Date:

Title:

Representing:



John U. Rossi

4/13/11

General Manager

Western Municipal Water District

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By: Belinda J. Graham
Print Name: Belinda J. Graham
Date: April 20, 2011
Title: Assistant City Manager
Representing: City of Riverside

Attest: Sherry Martin
City Clerk

APPROVED AS TO FORM
Susan Wilson
DEPUTY CITY ATTORNEY

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By: 
Print Name: Stacey Aldstadt
Date: April 6, 2011
Title: General Manager
Representing: San Bernardino Municipal Water Department

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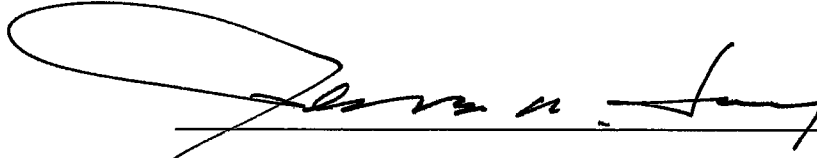
By:

Print Name:

Date:

Title:

Representing:



ELMER H. DAY

27 APRIL 2011

PRESIDENT

SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT

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By:



Print Name:

Robert Martin

Date:

April 25, 2011

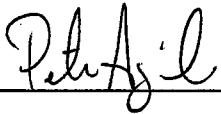
Title:

General Manager

Representing:

East Valley Water District

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By:  _____

Print Name: Pete Aguilar

Date: May 3, 2011

Title: Mayor

Representing: City of Redlands

ATTEST:

 _____
Sam Irwin, City Clerk

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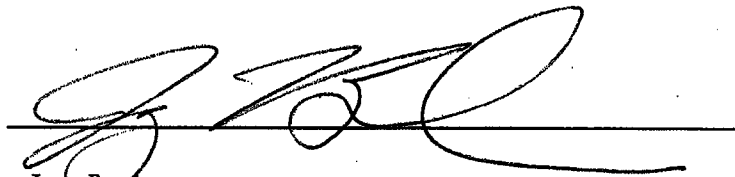
By:

Print Name:

Date:

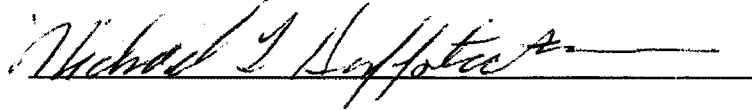
Title:

Representing:


Jay Bogn
April 26, 2011
Board President
Yucaipa Valley Water District

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By:



Print Name:

Michael Huffstutler

Date:

May 5, 2011

Title:

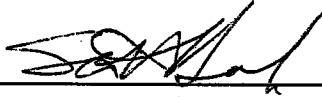
General Manager

Representing:

Bear Valley Mutual Water Company

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By:



Print Name:

Scott Heule

Date:

4/6/11

Title:

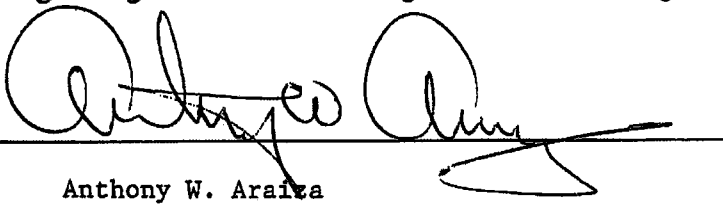
Jur. Mgr.

Representing:

Bz Bear Municipal Water District

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By:

A handwritten signature in black ink, appearing to read 'Anthony W. Araiza', is written over a horizontal line.

Print Name:

Anthony W. Araiza

Date:

April 28, 2011

Title:

General Manager

Representing:

West Valley Water District