

PALMDALE WATER DISTRICT

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www.palmdalewater.org

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LAGERLOF, SENECAI, GOSNEY & KRUSE LLP
Attorneys



November 21, 2013

***Agenda for a Meeting
of the Water Supply & Reliability Committee of the Palmdale Water District
Committee Members: Gordon Dexter-Chair, Gloria Dizmang
to be held at the District's office at 2029 East Avenue Q, Palmdale***

Monday, November 25, 2013

5:00 p.m.

NOTE: To comply with the Americans with Disabilities Act, to participate in any Board meeting please contact Dawn Deans at 661-947-4111 x1003 at least 48 hours prior to a Board meeting to inform us of your needs and to determine if accommodation is feasible.

Agenda item materials, as well as materials related to agenda items submitted after distribution of the agenda packets, are available for public review at the District's office located at 2029 East Avenue Q, Palmdale. Please call Dawn Deans at 661-947-4111 x1003 for public review of materials.

PUBLIC COMMENT GUIDELINES: The prescribed time limit per speaker is three-minutes. Please refrain from public displays or outbursts such as unsolicited applause, comments, or cheering. Any disruptive activities that substantially interfere with the ability of the District to carry out its meeting will not be permitted and offenders will be requested to leave the meeting.

Each item on the agenda shall be deemed to include any appropriate motion, resolution, or ordinance to take action on any item.

- 1) Roll call.
- 2) Adoption of agenda.
- 3) Public comments.
- 4) Action Items: (The public shall have an opportunity to comment on any action item as each item is considered by the Committee prior to action being taken.)

- 4.1) Consideration and possible action on approval of minutes of meeting held October 21, 2013.
- 4.2) Presentation of monthly water demand and supply status. (Water & Energy Resources Manager Pernula)
- 4.3) Status on the operations of the State Water Project. (Water & Energy Resources Manager Pernula)
- 4.4) Consideration and possible action on entering into and funding purchase options in the 2014 State Water Contractors Dry Year Water Transfer Program. (\$ 25,000.00 – Budgeted – Water & Energy Resources Manager Pernula)
- 4.5) Consideration and possible action to recommend approval of the Cooperative Agreement between the City of Palmdale, Antelope Valley East Kern Water Agency, Palmdale Water District, and Los Angeles County Waterworks District No. 40, Antelope Valley to design, construct, operate and maintain the Upper Amargosa Creek Flood Control, Recharge, and Habitat Restoration Project. (\$1.25 million – Water Revenue Bond funding – Engineering Manager Knudson)
- 5) Project updates.
 - 5.1) Palmdale Recycled Water Authority. (General Manager LaMoreaux)
 - 5.2) Water purchase opportunities. (Water & Energy Resources Manager Pernula)
 - 5.3) Water banking opportunities. (Water & Energy Resources Manager Pernula)
 - 5.4) Littlerock Dam Sediment Removal Project. (Engineering Manager Knudson)
- 6) Information items.
- 7) Board members' requests for future agenda items.
- 8) Adjournment.


DENNIS D. LaMOREAUX,
General Manager

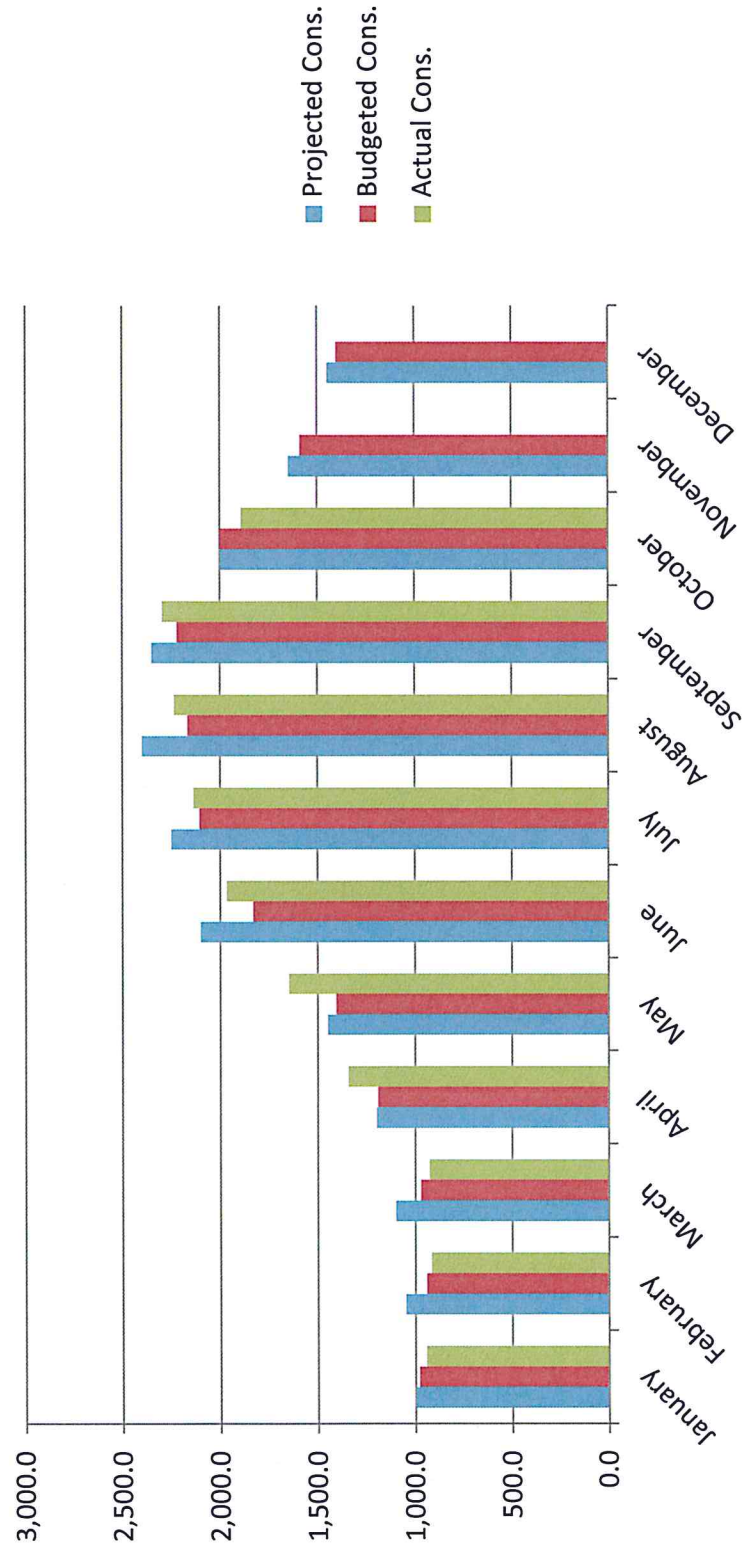
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AGENDA ITEM NO. 4.2

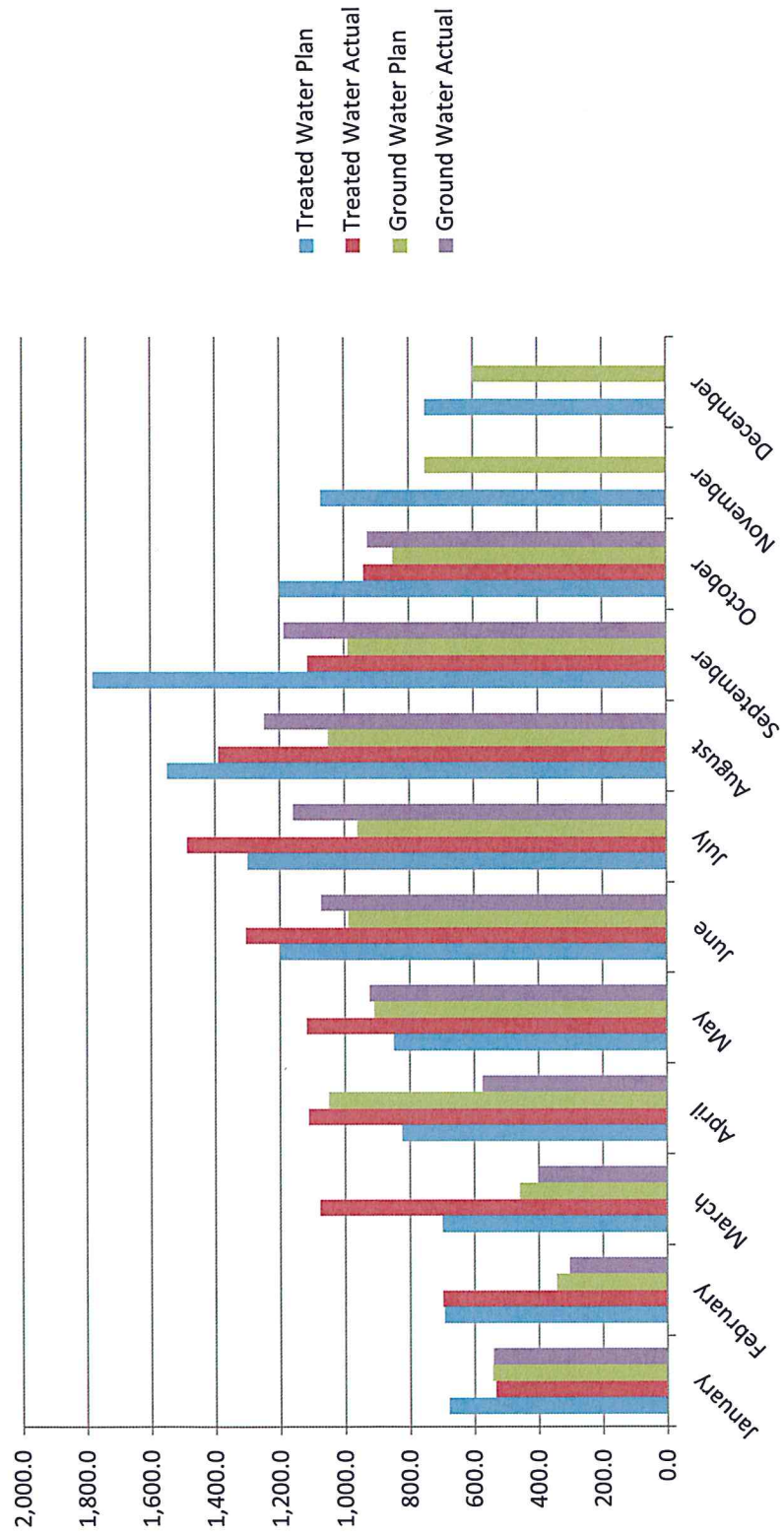
Month	Five-Year Aver. Consumption (ac.-ft.)	Budgeted 2013 Consumption (ac.-ft.)	Actual 2013 Consumption (ac.-ft.)	Difference (Act. - Pred.) (ac.-ft.)
Jan.	1018.1	979	944.3	-34.8
Feb.	987.5	941	918.3	-22.4
March	966.0	970	960.7	-9.8
April	1248.3	1,191.5	1,344.2	152.7
May	1535.9	1,405.0	1,649.6	244.6
June	1974.0	1,830.7	1,966.9	136.2
July	2335.5	2,104.6	2,135.7	31.1
Aug.	2347.3	2,165.7	2,234.8	69.1
Sept.	2389.4	2,219.2	2,295.9	76.7
Oct.	2149.1	2,002.1	1,891.7	-110.4
Nov.	1513.5	1,588.3	0.0	0.0
Dec.	1272.0	1,402.5	0.0	0.0
	19,736.6	15,809.2	16,342.1	532.9
2008 thru 2012		20,000.0		3.3%

Month	Five-Year Aver. Production (ac.-ft.)	Projected 2013 Production (ac.-ft.)	Actual 2013 Production (ac.-ft.)	Difference (Act. - Pred.) (ac.-ft.)
Jan.	1082.4	1,217.8	1,076.7	-141.2
Feb.	990.3	1,036.3	1,001.2	-35.1
March	1336.7	1,164.9	1,481.1	316.2
April	1633.2	1,646.4	1,686.0	39.6
May	2134.5	2,207.1	2,042.1	-165.0
June	2362.4	2,434.8	2,378.8	-56.0
July	2696.4	2,736.8	2,645.7	-91.1
Aug.	2717.7	2,763.3	2,637.0	-126.3
Sept.	2344.3	2,512.8	2,299.6	-213.2
Oct.	1910.8	2,241.9	1,866.2	-375.7
Nov.	1399.4	1,652.2	0.0	0.0
Dec.	1078.2	1,385.6	0.0	0.0
	21,686.3	19,962.2	19,114.4	-847.8
2008 thru 2012		23,000.0		-4.4%

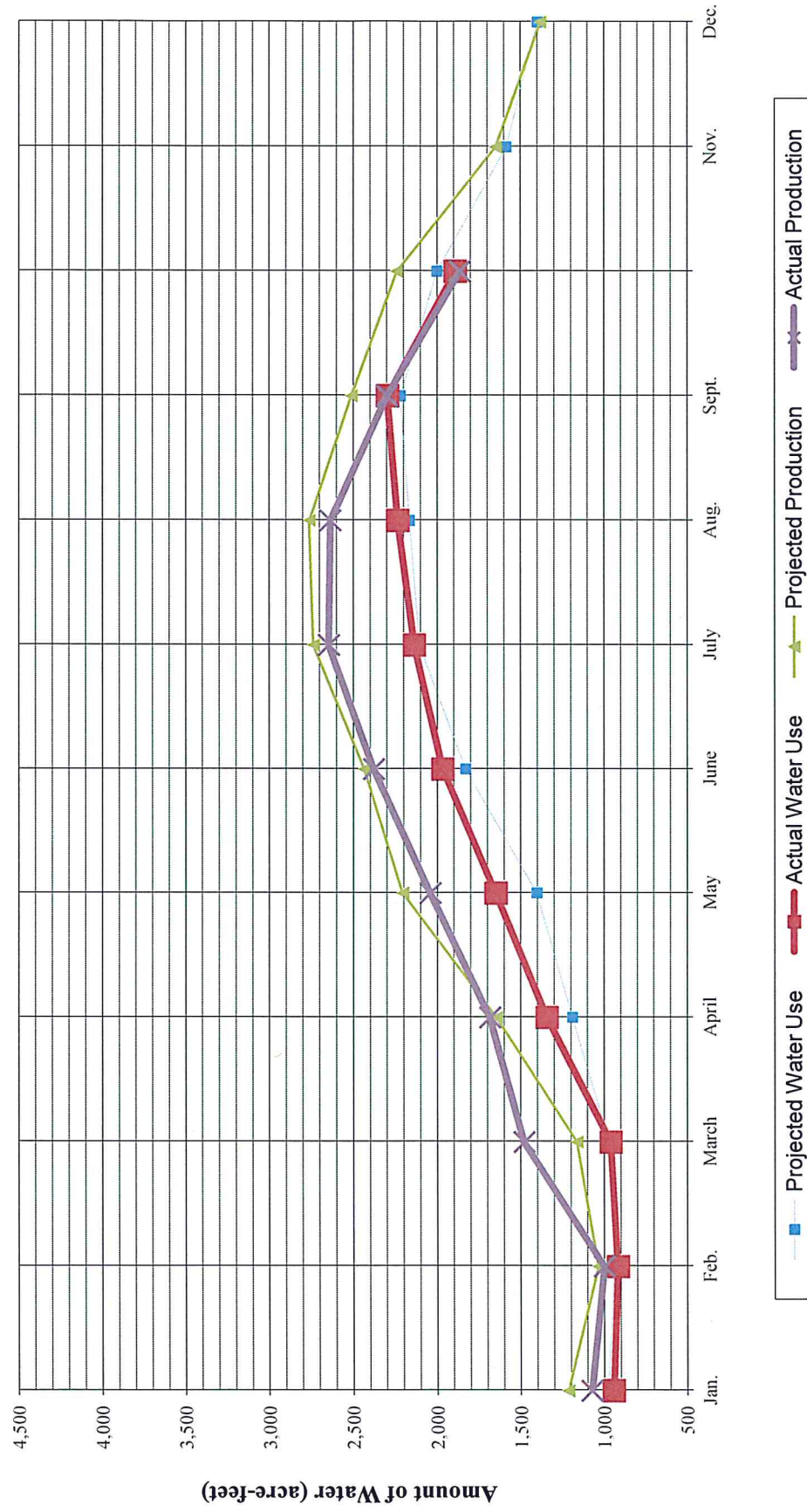
Projected, Budgeted, and Actual Consumption Comparisons In A/F



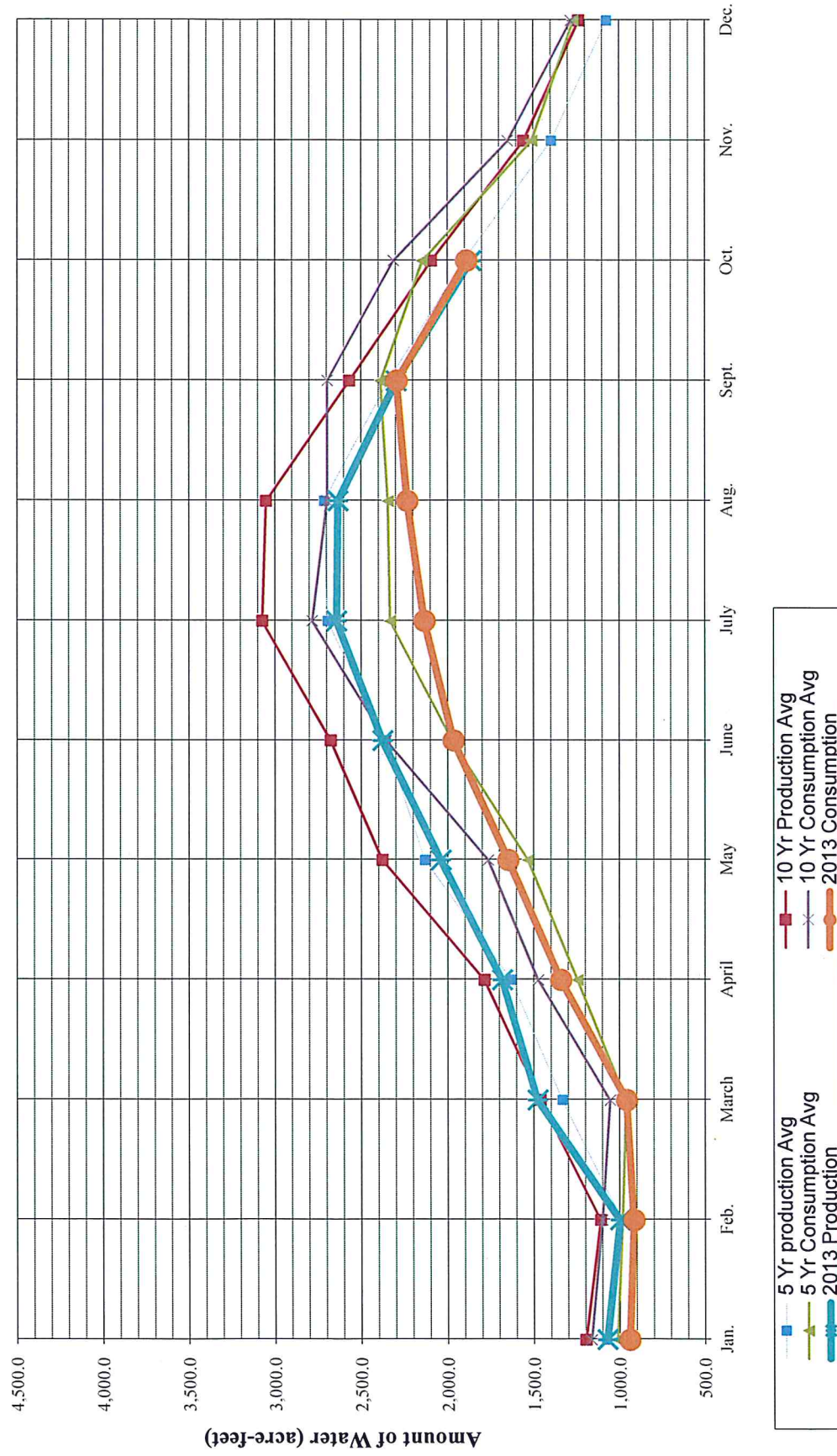
Actual Production vs Plan Comparisons A/F



2013 PWD PRODUCTION & CUSTOMER WATER USE



2013 PWD PRODUCTION & CUSTOMER WATER USE



2013 BILLED CONSUMPTION

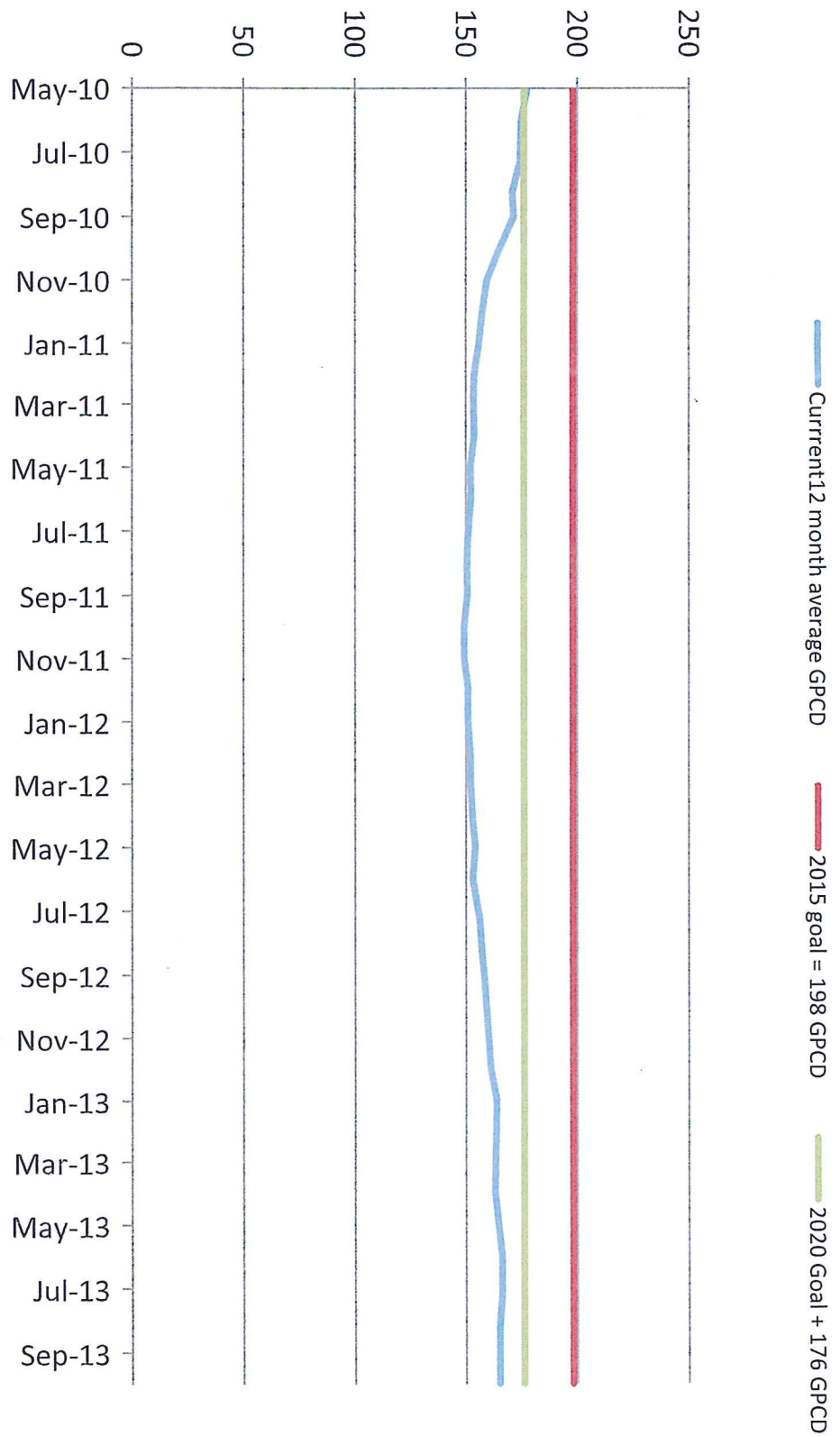
	PROJECTED	BUDGETED	ACTUAL
January	1,000.0	979.1	944
February	1,050.0	940.7	918
March	1,100.0	970.5	927
April	1,200.0	1,191.5	1,344
May	1,450.0	1,405.0	1,650
June	2,100.0	1,830.7	1,967
July	2,250.0	2,104.6	2,136
August	2,400.0	2,165.7	2,235
September	2,350.0	2,219.2	2,296
October	2,000.0	2,002.1	1,892
November	1,650.0	1,588.3	0
December	1,450.0	1,402.5	0
Totals	14,900.0	13,807.11	16,308
	20,000.0	18,800	
Running total	14,900.0	13,807.1	16,308

2013

MONTHLY TOTALS

MONTH	TOTAL af	SW af	GW af	SW %	GW%
January	1,076.7	534.50	542.2	49.64%	50.36%
February	1,001.3	697.60	303.7	69.67%	30.33%
March	1,481.0	1077.9	403.1	72.78%	27.22%
April	1,686.0	1111.8	574.2	65.94%	34.06%
May	2,042.1	1118.1	924.0	54.75%	45.25%
June	2,378.8	1305.5	1073.3	54.88%	45.12%
July	2,646.20	1486.90	1159.30	56.19%	43.81%
August	2,637.0	1389.2	1247.8	52.68%	47.32%
September	2,299.6	1113.2	1186.5	48.41%	51.59%
October	1,866.2	939.1	927.1	50.32%	49.68%
November	0.00	0.00	0.00		
December	0.00	0.00	0.00		

Running Averages	SW	GW
January	49.64%	50.36%
Jan. thru February	59.66%	40.34%
Jan. thru March	64.03%	35.97%
Jan. thru April	64.51%	35.49%
Jan. thru May	62.56%	37.44%
Jan. thru June	61.28%	38.72%
Jan. thru July	60.55%	39.45%
Jan. thru August	59.57%	40.43%
Jan. thru September	58.33%	41.67%
Jan. thru October	57.53%	42.47%
Jan. thru November	0.00%	0.00%
Jan. thru December	0.00%	0.00%



2013 Water Production Plan @ 35% Allocation

Month	Raw Surface Water Sources							Water Production						Metered Water	
	Surface		Water		Evaporation		Total	WTP		Groundwater		Total		Water	
	Carry Over (ac-ft) *	Banking & Exchange (ac-ft) from CO *	Butte (ac-ft)	PWD/SWP (ac-ft)	LrD (ac-ft)	Plan (ac-ft)	Plan (ac-ft)	Plan (ac-ft)	Actual (ac-ft)	Plan (ac-ft)	Actual (ac-ft)	Plan (ac-ft)	Actual (ac-ft)	Plan (ac-ft)	Actual (ac-ft)
January	544.0	0.0	0.0	0.0	0.0	-9.50	534.50	680.0	534.5	545.0	542.2	1,225.0	1,076.7	1,000.0	944
February	0.0	0.0	0.0	680.0	0.0	0.00	680.00	694.0	697.6	345.0	303.7	1,039.0	1,001.3	1,050.0	918
March	0.0	0.0	1100.0	0.0	0.0	-22.10	1077.90	700.0	1077.9	460.0	403.1	1,160.0	1,481.0	1,100.0	961
April	1297.0	0.0	0	0.0	0.0	-170.00	1127.00	824.0	1111.8	1,050.0	574.2	1,874.0	1,686.0	1,200.0	1,344
May	1273.0	0.0	0	0.0	39.5	-146.00	1166.50	850.0	1118.1	910.0	924.0	1,760.0	2,042.1	1,450.0	1,650
June	0.0	0.0	0	749.0	963.9	-445.00	1267.90	1,200.0	1305.5	990.0	1073.3	2,190.0	2,378.8	2,100.0	1,967
July	0.0	0.0	1209.3	0.0	322.9	-126.30	1405.90	1,300.0	1486.9	960.0	1159.3	2,260.0	2,646.2	2,250.0	2,136
August	0.0	0.0	1190	426.0	0.0	-135.00	1481.00	1,550.0	1389.2	1,050.0	1247.8	2,600.0	2,637.0	2,400.0	2,235
September	0.0	0.0	0.0	289.2	524.8	-69.00	744.96	1,780.0	1113.2	990.0	1186.5	2,770.0	2,299.6	2,350.0	2,296
October	0.0	0.0	0.0	0.0	0.0	-50.90	-50.90	1,200.0	939.1	850.0	927.1	2,050.0	1,866.2	2,000.0	1,892
November	0.0	0.0	0.0	1172.0	0.0	-50.00	1122.00	1,072.0	0.0	750.0	0.0	1,822.0	0.0	1,650.0	0
December	0.0	0.0	0.0	842.0	0.0	-39.00	803.00	750.0	0.0	600.0	0.0	1,350.0	0.0	1,450.0	0
	3,114.00	0.0	3499.3	2,144.2	1,851.1	(1,173.80)	9,434.76	10,778.0	10,773.7	8,150.0	8,341.19	18,928.0	19,114.9	16,900.0	16,343
Allocated Total Use:	2,577.0	2,000.0	3,500.0	7,455.0	3,000.0	1,250.0	13,000.0	13,000.0	11,000.0	9,500.0	9,000.00	23,000.0	21,500.00	20,000.0	19,999.0
Actual Planned Use	3,114.0		3,499.3	5,000.2			11,359.8								
Remaining Allotment:	-537.0	2,000.0	0.7	5,310.8	1,148.9	76.2	3,565.2	2,222.00	226.3	1,350.0	-658.81	4,072.0	2,385.12	3,100.0	3,656.5
WVK returned Nov/Dec 2012		2,500.0		4,158.2		1,467.5		13,916.0		7,542.0		22,500.0	21,459.0	17,800.0	19,258
Total:	3,896.0	0.0	3,500.0	7,455.0	0.0	-1,250.0									
UNUSED TO DATE	782.0	0.0	0.7	5,310.8	0.0		6,093.5					3,424.0			
Planned Available for Carryover	3,180														

**PALMDALE WATER DISTRICT
COMMITTEE MEMORANDUM**

DATE: November 19, 2013 **November 25, 2013**
TO: WATER SUPPLY & RELIABILITY COMMITTEE **Committee Meeting**
FROM: Mr. Jon Pernula, Water & Energy Resources Manager
VIA: Mr. Dennis D. LaMoreaux, General Manager
RE: ***AGENDA ITEM NO. 4.4 – CONSIDERATION AND POSSIBLE ACTION ON
ENTERING INTO AND FUNDING PURCHASE OPTIONS IN THE 2014
STATE WATER CONTRACTORS DRY YEAR WATER TRANSFER PROGRAM***

Recommendation:

Staff recommends Committee concurrence of approval for the District to enter into the State Water Contractors (SWC's) Dry Year Water Transfer Program and further to authorize funding of initial purchase option payments, which will be determined later (estimated \$210.00 per Acre Foot (AF) with a 30% delta loss = \$300.00 AF) .

The SWC's Committee is proposing a \$5.00 per acre foot initiation and administration deposit towards the Program. It is anticipated that the District may possibly need an additional 5,000 AF of water under a 20% allocation scenario. This quantity would require an initial deposit of \$25,000.00 in order to reserve options for dry year supplemental water in 2014.

Alternative Options:

An alternative option is to independently pursue scarce dry year supplemental water purchases in a reduced water availability market.

Impact of Taking No Action:

The District may be compelled to initiate voluntary water reduction measures and/or prepare a declaration of water shortage if drought conditions persisted.

Background:

At the last (October, 2013) State Water Contractors meeting, the Department of Water Resources (DWR) hinted that the initial 2014 water allocation being considered is in the 15% range. This may occur unless there is a significant increase in anticipated fall snow levels and early runoff. DWR predicts under current conditions, in their best case model with early storms, there is enough water in storage to land the initial allocation in the mid- teens. With these early indicators in mind and the potential for a continuing drought, it is in the District's best interest to initiate participation in the Dry Year Water Transfer Program to insure adequate supplies.

PALMDALE WATER DISTRICT
WATER SUPPLY & RELIABILITY COMMITTEE

VIA: Mr. Dennis D. LaMoreaux, General Manager

-2-

November 19, 2013

The State Water Contractors (SWC's) have initiated a Dry Year Transfer Program for 2014, which is designed to help fill water shortages in the coming year. The Program will acquire water transfers from rice fallowing in northern California. The initial option/participation payment of \$5.00 per acre foot, which will go towards administrative costs, will be either billed or refunded at actual cost at Program's end. The remaining purchase deposit amounts required to secure supplemental water through contracts with willing sellers will be determined when actual available purchase quantities and their cost per acre foot are agreed upon.

There are several off-ramp points in the Program, which allows the District to decline exercising water transfer options in the event that the 2014 water year proves to be more abundant than anticipated.

District staff has looked at potential impacts due to shortages in the 2014 supplies and has already responded through the Supplemental Water Purchase Agreement with Butte County, with retaining 2013 carryover water in San Luis Reservoir, and exercising our option to take PWD water banked in the A.V. Water Bank. The critical point of decision to fully participate in this Program will be predicated on whether the final allocation is below 25% at which time this water may become essential in meeting our customers' needs.

Participation in the SWC's Dry Year Transfer Program gives insurance against water shortages if the 2014 water year turns out to be as dry as is currently predicted.

Strategic Plan Element:

This work is part of Strategic Element Goal 2.1 (Ensure adequate water supplies for existing and future customers).

Budget:

The cost to enter into and exercise options for supplemental water will be covered under PWD Operating Budget for 2014 under Water Purchases.

Supporting Documents:

- State Water Contractors Dry Year Transfer Agreement

**STATE WATER CONTRACTORS
2014 DRY YEAR WATER TRANSFER AGREEMENT**

This State Water Contractors (“SWC”) 2014 Water Transfer Agreement (“Agreement”) is effective on December 2, 2013 between and among the SWC and certain SWC member agencies who execute this Agreement with the intent to purchase water through the 2014 Dry Year Transfer Program (“Buyers”). SWC and Buyers may be referred to collectively as “Parties” and the actions being carried out under the Agreement may be referred to as the “Program”.

RECITALS

- A. The SWC is a non-profit mutual benefit corporation created under California law in 1982.
- B. The Buyers who have executed this Agreement are SWC member agencies.
- C. The Buyers desire to purchase water to help meet their service areas’ needs in 2014, and desire the SWC to act as a fiscal agent to collect, hold, disburse and account for funds deposited by the Buyers pursuant to this Agreement. The SWC is empowered to and is willing to do so.

NOW, THEREFORE, the Parties to this Agreement agree as follows:

AGREEMENT

1. BUYER-SELLER AGREEMENTS

(a) The Buyer(s), along with SWC staff, shall jointly negotiate agreements to purchase water from sellers through a contract (“Buyer-Seller Agreements”) for use by Buyers in 2014. The Buyers shall make their best efforts to complete, short of execution, negotiation of the Buyer-Seller Agreements by April 1, 2014. The SWC shall not be a party to the Buyer-Seller Agreements.

(b) Each Buyer will execute a Buyer-Seller Agreement with each seller. The water amount available for purchase by the Buyers will not be known until the Buyer-Seller Agreements are executed. The water amount may decrease if certain conditions exist and are provided for by the Buyer-Seller Agreement.

(c) Each Buyer will execute Storage and Conveyance Agreements with the California Department of Water Resources (“DWR”) and the sellers. There will be additional conditions, risks, and DWR administrative expenses associated with the Storage and Conveyance Agreements. The SWC shall not be a party to the Storage and Conveyance Agreements.

(d) The Buyers understand that (i) water purchased through the Buyer-Seller Agreements will be subject to losses and (ii) the water actually delivered by DWR could be reduced or delayed based on regulatory or judicially-imposed restrictions on DWR’s ability to operate the export pumps, or State Water Project infrastructure issues. The Buyers further understand that payments required by the Buyer-Seller Agreements and this Agreement will not be adjusted for potential reductions, as set forth above, in the water amount actually delivered.

2. INTITAL WATER REQUEST AND ALLOCATIONS

(a) On or before December 2, 2013, each Buyer shall: (i) provide written notification to the SWC for its initial water request (“Initial Request”); (ii) execute this Agreement; and (iii) remit to the SWC \$5 for each acre-foot included in its Initial Request as an initial administrative deposit (“Administrative Deposit”), to be held in trust by the SWC under Section 8. The Administrative Deposit shall be used to pay the SWC’ and Sellers’ environmental, legal and regulatory costs described in Section 6 and administrative costs incurred under this Agreement as described in Section 7.

(b) Upon executing this Agreement, submitting an Initial Request and remitting an Administrative Deposit, the Buyer shall be entitled to make a final water request (“Final Request”) pursuant to Section 3(b).

(c) The initial water allocation purchased through the Buyer-Seller Agreements will be based on the lesser of Buyer’s Initial Request or Buyer’s proportionate amount of

Table A amount compared to the total Table A amounts of all Buyers (“Initial Allocated Proportion”).

(d) Should a Party(ies) desire to adjust the allocation methodology specified in Section 2(c), the Parties who have made an Initial Request must agree unanimously in writing.

3. FINAL WATER REQUEST, EXECUTION OF BUYER-SELLER AGREEMENTS, AND PURCHASE WATER DEPOSITS

(a) On or before April 2, 2014, the SWC will provide Buyers written notice of: (i) the anticipated total water amount available for purchase through the Buyer-Seller Agreements; (ii) the Buyer-Seller Agreements final terms; and (iii) each Buyer’s Initial Allocated Proportion of water available (per Section 2c).

(b) On or before April 16, 2014, each Buyer will provide the SWC and other Buyers written notice of its Final Request. The Final Request cannot be greater than the Buyer’s Initial Request or the Initial Allocated Proportion identified in the Contractor’s April 2, 2014 notice unless agreed to in writing by all Buyers.

(c) On or before April 18, 2014, the SWC will provide Buyers written notice of any adjustments, in accordance with Section 5, to each Buyer’s Initial Allocated Proportion of water available for purchase based on the Final Request (“Final Allocated Proportion”).

(d) On or before April 21, 2014, each Buyer shall execute Buyer-Seller Agreements and remit to the SWC the first of three incremental water purchase deposits (“Purchase Deposits”) equal to the price per acre-foot established in the Buyer-Seller Agreements multiplied by one-third of the total acre-feet in its Final Allocated Proportion. The SWC shall hold the Purchase Deposits in trust under Section 8. Subsequent one-third incremental Purchase Deposits will be due to the SWC on the first day of June and July.

(e) If the purchased water amount allocated to a Buyer is not made available to a Buyer based on Seller’s failure to perform, causing there to be excess Purchase Deposits, the SWC shall refund any excess Purchase Deposits not needed for Buyer’s share of purchase costs.

(f) The Parties may mutually agree to adjust the dates specified in Section 3 in writing, without amending this Agreement.

4. PAYMENTS TO SELLERS

(a) Upon Buyers executing Buyer-Seller Agreements and remitting the first of the three incremental Purchase Deposits to the SWC pursuant to Section 3(d), the SWC will promptly, but no later than any notification deadline in the Buyer-Seller Agreements, notify the Sellers that the Buyers have executed the Buyer-Seller Agreements and will make payments to the Sellers for water delivery from the Purchase Deposits in accordance with the payment provisions of the Buyer-Seller.

(b) Payments made by the SWC to the Sellers based on a Buyer's Final Allocated Proportion will not be refundable to the Buyer unless Sellers fail to perform and are required to return the payments based on their failure to perform as specified in the Buyer-Seller Agreements.

5. FINAL WATER REQUEST AND ALLOCATION OF THE FULL ALLOCATION PROPORTION

(a) If a Buyer's Final Request is less than its Initial Allocated Proportion as provided in the SWC's April 2, 2014 notice in Section 3(a), or if a Buyer decides not to execute the Buyer-Seller Agreements, the forfeited potential water transfer quantity will be offered to other Buyers pursuant to Section 5(b). If a Buyer does not execute the Buyer-Seller Agreements or submit Purchase Deposits to the SWC pursuant to Section 3(d), it will be considered a withdrawn buyer ("Withdrawn Buyer") and will have no rights or obligations to purchase water pursuant to this Agreement.

(b) Each Buyer remaining in the program may request a proportionate share of water made available by Withdrawn Buyers or by reduced requests of remaining Buyers equal to its proportionate share of the total amount of Final Requests made under Section 3, not including reductions in the Final Requests of any remaining Buyers or of Withdrawn Buyers. If a remaining Buyer does not want additional supply, this reallocation process will be repeated as necessary to distribute the additional water to willing Buyers. In the case that no Buyer wishes to receive additional water and the

potential supply is greater than Buyers' needs, the supply being sought by Sellers will be reduced in accordance with provisions of the Buyer-Seller Agreements.

(c) SWC will determine each Buyer's Final Allocation Proportion, in accordance with Section 5(a) and (b), and notify each Buyer in the April 18 notice required by Section 3(c). Based on the Final Allocation Proportion the Buyer shall remit to the SWC an initial one-third incremental Purchase Deposit in accordance with Section 3(d).

(d) After the Buyer-Seller Agreements have been executed and the Sellers have been notified of the intent to purchase the water, remaining Buyers will be responsible for full payment of each incremental Purchase Deposit.

6. ENVIRONMENTAL AND OTHER REGULATORY COSTS

(a) The Buyers will incur environmental and other regulatory costs and the Buyer-Seller Agreements and letters of intent with Sellers may require the Buyers to pay a portion of Sellers' environmental and other regulatory costs necessary to implement the water transfers. The Buyers may also incur litigation costs related to the water transfers as set forth in the Buyer-Seller Agreements.

(b) The SWC are authorized to, and shall, disburse from the Administrative Deposit funds necessary to pay the Buyers' share of environmental and other regulatory and litigation costs, including any such costs required by the relevant Buyer-Seller Agreement. Subject to Section 6(c) and (d), each Buyer's Administrative Deposit will be debited with a proportionate share of these costs equal to the Final Allocated Proportion of water.

(c) Because the Buyers' environmental and regulatory costs will be incurred irrespective of whether any of the Buyers ultimately purchase water or whether there is capacity to deliver purchased water, Withdrawn Buyers will be responsible for the payment of the cost specified in 6(a) proportionate to the Initial Allocated Proportion for environmental and legal costs associated with the defense of the Program that were initiated prior to the Buyer becoming a Withdrawn Buyer. However, a Withdrawn Buyer's maximum liability for administrative costs shall be limited by its full Administrative Deposit.

(d) In the event that all Buyers withdraw from the Program or no water can ultimately be delivered, the Buyers environmental and regulatory costs responsibilities, as required in the Buyer-Seller Agreements, will be apportioned to all Buyers who executed this Agreement according to the Initial Allocated Proportion.

7. ADMINISTRATION AND ADMINISTRATIVE COSTS

The SWC will be responsible for taking the following actions to facilitate the transfers:

- (a) Hold/manage the deposits in a separate interest bearing account for the Buyers' benefit and return to the Buyers their proportionate share of any interest remaining in the account when its duties have ended under this Agreement;
- (b) Collect money from Buyers and disburse to Sellers;
- (c) Account for money/water and refund any excess deposits made by Buyers;
- (d) Administer contract changes, transfer adjustments and any repayment required due to failure/inability to deliver water;
- (e) Coordinate with DWR on behalf of the Buyers regarding the Storage and Conveyance Agreements, carriage loss calculation, and DWR administrative fees.
- (f) Subject to Section 7(g), each Buyer that receives water from this Program shall pay the SWC a proportionate share of the SWC' actual costs to administer this Agreement equal to its Final Allocated Proportion. When the SWC administrative duties have ended, it will provide the Buyers an accounting for its actual costs. If the SWC actual administration and administrative costs identified in Section 7 and the environmental and other regulatory costs identified in Section 6 exceed the Administrative Deposits, each Buyer shall pay to the SWC an amount equal to its proportionate share of its Final Allocated Proportion within 30 days of receiving an invoice from the SWC. If the costs are less than the Administrative Deposits, the SWC shall refund to each Buyer its proportionate share of the remaining Administrative Deposits based on its Final Allocated Proportion. In either case, at the conclusion of the program the SWC will retain a sum of \$2,000 from the combined Administrative Deposits to cover costs associated with typical post-program activities such as answering questions regarding water and cost accounting, preparation for program audits, and documenting the program, including "lessons learned", which will aid future programs.

(g) Withdrawn Buyers will pay the SWC a proportionate share of the SWC actual costs to administer this Agreement incurred prior to becoming a Withdrawn Buyer, designated as the date of written notification to SWC of withdrawal or failure to execute a Buyer-Seller Agreement by the required date (whichever is earliest) based on its Initial Allocated Proportion.

8. SWC' DUTIES AS FISCAL AGENT

The SWC shall hold and manage the funds deposited by Buyers in a separate interest bearing account in trust for the benefit of the Buyers and shall exercise the same duty of care in managing the Buyers account as it exercises in maintaining its own accounts.

9. INDEMNITY AND LIABILITY

(a) As between themselves, the Buyers agree to severally assume any liability of the SWC resulting from this Agreement in proportion to their respective share of the total amount of Initial Requests. The Buyers agree that the SWC shall incur no liability as a result of the SWC undertaking the work provided for by this Agreement.

(b) The Buyers agree to jointly and severally protect, defend, indemnify and hold harmless the SWC, including its directors and staff, and any members of the SWC who are not parties to this Agreement and their respective directors, officers, agents, servants, employees and consultants from and against any and all losses, claims, liens, demands, and causes of action of every kind and character, occurring or in any way incident to, connected with, or arising directly or indirectly out of the Buyers' performance or non-performance under this Agreement.

10. TERM OF AGREEMENT

This Agreement shall be effective December 2, 2013 and terminate when all duties and obligations of the Parties have been performed.

11. NOTICES

All notices required by this Agreement to be made in writing can be made by facsimile, e-mail or signed document via e-mail.

12. SIGNATURE BY COUNTERPART

This Agreement may be signed in counterparts by the Parties and, if executed in counterparts, will be deemed to be the same instrument and valid and binding on a party as if fully executed all in one copy.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by authorized officials thereof on the dates indicated below.

//

State Water Contractors

By: _____ Date: _____

BUYER _____

By: _____ Date: _____

BUYER _____

By: _____ Date: _____

BUYER _____

By: _____ Date: _____

BUYER _____

By: _____ Date: _____

**PALMDALE WATER DISTRICT
BOARD MEMORANDUM**

DATE: November 21, 2013 **November 25, 2013**
TO: WATER SUPPLY & RELIABILITY COMMITTEE **Committee Meeting**
FROM: Mr. Matthew Knudson, Engineering Manager
VIA: Mr. Dennis D. LaMoreaux, General Manager
RE: ***AGENDA ITEM NO. 4.5 – CONSIDERATION AND POSSIBLE ACTION
TO RECOMMEND APPROVAL OF THE COOPERATIVE AGREEMENT
BETWEEN THE CITY OF PALMDALE, ANTELOPE VALLEY-EAST
KERN WATER AGENCY, PALMDALE WATER DISTRICT, AND LOS
ANGELES COUNTY WATERWORKS DISTRICT NO. 40, ANTELOPE
VALLEY TO DESIGN, CONSTRUCT, OPERATE AND MAINTAIN THE
UPPER AMARGOSA CREEK FLOOD CONTROL, RECHARGE, AND
HABITAT RESTORATION PROJECT***

Recommendation:

Staff recommends that the Committee recommend:

1. Approval of the attached Cooperative Agreement between the City of Palmdale, Antelope Valley-East Kern Water Agency, Palmdale Water District, and Los Angeles County Waterworks District No. 40 to Design, Construct, Operate, and Maintain the Upper Amargosa Creek Flood Control, Recharge, and Habitat Restoration Project; and
2. Authorize the payment in the not-to-exceed amount of \$1,250,000.00 for the District's share in the total contribution required to complete the project; and
3. Authorize the General Manager to execute the attached agreement for same.

Background:

The Upper Amargosa Creek Flood Control, Recharge, and Habitat Restoration Project will provide the Antelope Valley with flood control along the Amargosa Creek between 20th Street West and 25th Street West and along Elizabeth Lake Road. The recharge facility will utilize water supplies available from the California State Water Project (aqueduct) and percolate this water into the Antelope Valley aquifer so the water may be extracted for beneficial use. In addition, the Upper Amargosa Creek Recharge Project will provide a community Habitat Restoration Park.

November 21, 2013

The City has funded a preliminary evaluation of the Project by the U.S. Geological Survey for the feasibility of recharging water at the Project site, groundwater aquifer properties, potential barriers to groundwater flow, water infiltration rates, and the effects of simulated long-term artificial recharge, and the average simulated recharge capacity of the Project was determined to be 6,400 acre feet per year. The District's recharge capacity shall be proportionate to its share of the Total Contribution.

The Department of Water Resources has chosen this project to receive \$6.5 million in grant funding from the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Proposition 1E) Program. This Cooperative Agreement provides the matching funds for the aforementioned Prop. 1E grant required to complete this project. Currently, the City has funded \$2.8 million to this project, and with this Cooperative Agreement, this project has the funds to proceed with design and construction. The project is estimated to cost \$13.5 million for design, permitting, and construction.

This Cooperative Agreement between Los Angeles County Waterworks District #40, Palmdale Water District, and Antelope Valley-East Kern Water Agency is in the amount of \$5,000,000. The agreement identifies the groundwater banking, the operation and maintenance obligations, and the responsibilities for each agency. Each agency will be provided a banking capacity right in proportion to its funding share and the capacity of the project. Operation and maintenance costs will also be divided up between the agencies per their funding share. The operation and maintenance of the habitat restoration and flood control will remain the City's responsibility.

Design of the project will begin in January, 2014 and be complete by spring, 2015. Construction is anticipated to start in summer, 2015 and be complete by spring, 2016.

Strategic Plan Element:

The specific elements of the Strategic Plan addressed are (Ensure adequate water supplies for future and existing customers) Strategic Goal 2.1 (Improve reliability of groundwater) Strategic Goal 2.2.

Budget:

This project is funded through the 2013A Water Revenue Bonds.

Supporting Documents:

- Cooperative Agreement

**COOPERATIVE AGREEMENT BETWEEN THE CITY OF PALMDALE,
ANTELOPE VALLEY-EAST KERN WATER AGENCY, PALMDALE WATER
DISTRICT, AND LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40,
ANTELOPE VALLEY TO DESIGN, CONSTRUCT, OPERATE AND MAINTAIN
THE UPPER AMARGOSA CREEK FLOOD CONTROL, RECHARGE, AND
HABITAT RESTORATION PROJECT**

This Cooperative Agreement is made and entered into on this ____ day of _____, 2013, by and among the City of Palmdale ("City"), Antelope Valley-East Kern Water Agency ("AVEK"), Palmdale Water District ("PWD"), and Los Angeles County Waterworks District No. 40, Antelope Valley, ("Waterworks"), and collectively hereinafter referenced as the "Parties."

RECITALS

WHEREAS, the City is a California charter City, with all of the rights created by the California Constitution, City charter, and the general laws of the State of California;

WHEREAS, the City owns certain real property ("City Property"), more particularly described and depicted on the map attached hereto as Exhibit A and incorporated by reference, that is available for use as a spreading ground for the purpose of banking water and recharging the Antelope Valley Groundwater Basin ("Basin");

WHEREAS, the CITY is authorized to enter into this Cooperative Agreement by its charter, Article 11, section 9 of the California Constitution, and Water Code section 106.5;

WHEREAS, AVEK is a California State Water Project Contractor and authorized to enter into this Cooperative Agreement by Section 98-61 of the California Water Code Appendix;

WHEREAS, PWD is a California irrigation district organized and existing pursuant to Division 11 of the Water Code;

WHEREAS, Waterworks is a county waterworks district, duly authorized pursuant to Division 16 of the Water Code, section 55000, et seq.;

WHEREAS, Waterworks is authorized to enter this Cooperative Agreement pursuant to Water Code sections 55330, 55331 and 55335;

WHEREAS, the Parties are each members of the Antelope Valley Regional Water Management Group ("AVRWMG") and have jointly prepared and adopted the Antelope Valley Integrated Regional Water Management Plan ("AVIRWMP");

WHEREAS, the AVIRWMP provides the framework for water supply, water quality, flood control, environmental resource and land use management for the Antelope Valley Region;

WHEREAS, the Upper Amargosa Creek Flood Control, Recharge, and Habitat Restoration Project ("Project"), is a project identified in the AVIRWMP as a High Priority Project;

WHEREAS, the City intends to plan, design and construct the Project;

WHEREAS, AVEK, PWD and Waterworks desire to cooperate and assist in completing the Project;

WHEREAS the construction of the Project will require compliance with the California Environmental Quality Act ("CEQA"), and obtaining regulatory/ environmental permits, including but not limited to permits from the United States Army Corps of Engineers, the California Department of Fish and Wildlife Services, and the Lahontan Regional Water Quality Control Board;

WHEREAS the total estimated cost of the construction of the Project is approximately \$13.5/14.5 million;

WHEREAS, the City, using funds provided by the AVRWMG, prepared a successful grant application that resulted in an award of \$6,500,000 for the Project from Proposition 1E funds administered by the State of California Department of Water Resources, to assist the Antelope Valley region in constructing the Project;

WHEREAS, the City has invested \$2,022,711 as of the effective date of this Cooperative Agreement of Proposition 1E qualifying matching funds after September 30, 2008, into the Project;

WHEREAS, the City has also invested an additional \$816,400, including funds for properties purchased prior to September 30, 2008, into the Project that do not qualify for Proposition 1E matching funds;

WHEREAS, the City has funded a preliminary evaluation of the Project by the U.S. Geological Survey for the feasibility of recharging water at the Project site, groundwater aquifer properties, potential barriers to groundwater flow, water infiltration rates, and the effects of simulated long-term artificial recharge were evaluated; and the average simulated recharge capacity of the Project was determined to be 6,400 acre-feet per year ("Project Capacity");

WHEREAS, not all of the costs associated with the Project are for basin recharge and water banking, but instead relate to benefits to be provided to the City in the form of flood control and a nature park; the Parties have agreed that approximately twenty eight percent (28%) of the total cost of the Project is for the independent benefit of the City;

WHEREAS, the Project needs additional funding of approximately \$5,800,000 for the remaining unmet budget;

WHEREAS, the Parties will each receive direct benefits from the construction and operation of the Project;

WHEREAS, the Parties are each named parties in the presently pending Antelope Valley Groundwater Adjudication (*Antelope Valley Groundwater Cases*, Judicial Council Coordination Proceeding No. 4408) ("Adjudication");

WHEREAS, the Parties intend for the Project to be consistent with the Physical Solution for the Basin to be imposed through the Adjudication;

WHEREAS, any water applied for purposes of recharging the Basin or banking water in the Basin through the Project will be credited to the purchaser of said water for purposes of subsequent recovery pursuant to the judgment to be entered in the Adjudication; and,

WHEREAS, the parties will cooperate with one another to complete the design, construction, operation and maintenance of the Project, and to obtain whatever Court approvals are forthcoming in the Adjudication to implement this Cooperative Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

(1) DEFINITIONS:

In addition to the terms specially defined elsewhere in this Cooperative Agreement, the following terms shall have the following meanings:

Adjudication: Antelope Valley Groundwater Cases, Los Angeles Superior Court Case No. BC 325 201 (Judicial Council Coordination Proceeding No. 4408).

Contract Change Orders: Construction changes approved by the City, after review and consultation with the Parties; accumulative contract change orders greater than 15% of the total construction contract amount must first be approved by the Parties.

Fair Share: A Party's capacity which shall be proportionate to its share of the Total Contribution (defined below). For example, if a Party's contribution is 25 percent of the Total Contribution (i.e., \$1,450,000 of \$5,800,000), the Party's Fair Share is 1,600 acre feet per year.

Groundwater Banking Facility: Those portions of the Project that will be used for water banking operations including the Turnout.

In-Kind Services: Those design and construction management services, provided by a Party (excluding services that were unreasonable), that would otherwise be required to be performed pursuant to a contract. In-Kind Services will be valued at their

actual cost, the amount of which will be agreed by the Parties, and the valuation thereof will not include overhead, profit, or lost profit margins,

Physical Solution: Those components of the judgment and orders in Adjudication wherein water demand and water supply are balanced. A Physical Solution is typically administered by a Watermaster under the jurisdiction of the court, and is expected by the Parties to be so with regard to the Adjudication.

Plans and Specifications: Those plans and specifications for the Project as released for construction, including all Contract Change Orders.

Project: The Upper Amargosa Creek Flood Control, Recharge, and Habitat Restoration Project as prepared by the City for the grant application for Proposition 1E funds administered by the State of California Department of Water Resources.

SWP: California State Water Project.

Total Contribution: Total accumulative value of all Parties' monetary contribution to the groundwater banking basins and the agreed value of In-Kind Services.

Total Contribution Percentage: An individual Party's contribution divided by the total of all Parties' Total Contribution to the Groundwater Banking Facility.

Total Cost: The combined cost for design and construction of the Project and the Turnout. Total Cost includes "soft costs" and "hard costs" as defined by common usage in the construction industry.

Turnout: All facilities related to the physical connection between the California Aqueduct and the groundwater banking basins, including the metering building and connecting piping.

Turnout Costs: The operational, maintenance, repair and replacement costs of operating the Turnout, charged as a rate per acre foot of water delivered.

Water Costs: The cost of raw water delivered at the Turnout, including administration and overhead, charged as a rate per acre foot of water delivered. The water costs are determined by the actual ownership of the raw water at the Turnout, and governed by existing or future operational and ownership contracts.

(2) CITY'S OBLIGATIONS:

- a. To award and administer the contracts for the design and construction of the Project pursuant to Plans and Specifications, and to act, in consultation with the other Parties, with respect to the design of the Project, and on behalf of the Parties in all negotiations pertaining to the Project. Facilities to be owned by AVEK shall be constructed according to AVEK's specifications, and the Plans and Specifications shall be signed by AVEK's engineer prior to

construction. AVEK's Board of Directors will accept such facilities into AVEK's water delivery system upon certification by AVEK's engineer that they have been constructed in accordance with the approved Plans and Specifications.

- b. To have previously contributed \$2,839,111 towards the Total Cost of the Project, as of the date of execution of the Agreement.
- c. To have contributed, as of the date of execution of the Agreement, \$1,950,469 of the aforementioned \$2,839,111 for the City-only benefit portion of the Project referenced in the Recitals above and the remaining \$807,002 designated for the Groundwater Banking Facility.
- d. To make additional contributions, if needed, in the form of In-Kind Services for the Project.
- e. To obtain and maintain all necessary State, local, or other needed regulatory approval, applicable permits, and compliance with CEQA to construct and operate the Project.
- f. To notify the Parties 48 hours in advance of the start of construction of the Project so that the Parties may each furnish an inspector, at no cost to the other Parties, to monitor construction of the Project. City's inspector(s) shall consult with Parties' inspectors with respect to Contract Change Orders for Project, but City's inspector's instructions to City's contractor shall be final upon a mutually agreed upon solution by the Parties to any and all Contract Change Orders.
- g. To pay the Water Costs, if any, for the purchase of imported water supplies to be banked in the Project, in conformity with existing and future AVEK contracts, or if water is acquired from any other source, in accordance with the terms of this Cooperative Agreement.
- h. To pay for the Turnout Costs associated with delivering water purchased by the City to the Project through the Turnout on behalf of the City.
- i. To operate and maintain the non-AVEK Project facilities through its own forces or through contracts with one or more of the Parties or private contractors.
- j. To furnish for approval by the Parties, within 60 days after acceptance of Project by the City, a final accounting ("Final Accounting") of the actual total cost of Project.
- k. To furnish Parties, within 60 days after acceptance of Project by the City, a reproducible set of as-built drawings of Project.

- l. To take all necessary steps to complete the Project pursuant to the approved Plans and Specifications.
- m. To cooperate with and assist the other Parties in obtaining any Court approvals in the Adjudication required to complete and operate the Project. The City agrees that this Agreement shall not be admissible to undermine any Party's position on any issue related to in the Adjudication.

(3) WATERWORKS' OBLIGATIONS:

- a. To pay to the City the sum of \$1,250,000 as its share of the Total Contribution as required to complete the Project.
- b. Provide inspection consultation for the Project on an as-needed basis.
- c. To pay the Water Costs, if any, for the purchase of imported water supplies to be banked in the Project, in conformity with existing and future AVEK contracts, or if water is acquired from any other source, in accordance with the terms of this Cooperative Agreement..
- d. To pay for the Turnout Costs associated with delivering water purchased by Waterworks to the Project through the Turnout on behalf of Waterworks.
- e. To cooperate with and assist the other Parties in obtaining any Court approvals in the Adjudication required to complete and operate the Project. Waterworks agrees that this Agreement shall not be admissible to undermine any Party's position in the Adjudication, on any issue.
- f. To use its existing groundwater extraction system to recover water AVEK banked in the Project, in lieu of contractual supply, per a mutually agreed annual schedule, subject to AVEK's payment of a banked water recovery fee established by Waterworks to recover costs incurred

(4) AVEK'S OBLIGATIONS:

- a. To pay to the City the sum of \$2,500,000 as its share of the Total Contribution as required to complete the Project. If project costs increase from initial estimate, AVEK's Fair Share of Project Capacity shall be adjusted to correspond to AVEK's maximum \$2,500,000 contribution.

- b. To maintain and operate the Turnout to serve the Project to the satisfaction of the Parties and the State Department of Water Resources.
- c. To assist the City in obtaining all the required approvals from the State Department of Water Resources for the design and construction of the Turnout.
- d. To assist in the design and construction, and to own, operate and maintain approximately 5,100 feet of 48-inch pipeline to deliver SWP Water from the metering vault at the Turnout to the Project.
- e. To furnish, install, own, operate and maintain a sufficient facility to measure the amount of water delivered to the Project. AVEK agrees to consider oversizing such meter for possible excess volume for future expansion of the subject recharge facilities.
- f. To provide SWP Water and other water from the California Aqueduct, subject to availability and capacity, to the Parties to this Cooperative Agreement, including AVEK, for purposes of water banking in the Project, at the Amargosa Banking Rate, and consistent with any requirements that may be imposed as a result of the Adjudication, including the anticipated Physical Solution therein. AVEK shall also wheel non-SWP water purchased by Parties through a separate agreement with AVEK to bank in the Project, subject to AVEK's system capacity.
- g. To maintain an accounting of the volume of water delivered to the Project through the Turnout on behalf of each of the Parties. Delivered amounts will be based on monthly reporting from the State Department of Water Resources.
- h. To bill the City, PWD, and Waterworks, respectively, for the costs associated with the purchase and delivery of SWP Water or other outside water to the Project through the Turnout for banking in the Project on behalf of these Parties, consistent with the terms of this Cooperative Agreement.
- i. To cooperate with and assist the other Parties in obtaining any Court approvals in the Adjudication required for completing and operating the Project. AVEK agrees this Agreement shall not be admissible to undermine any Party's position on any issue related to the Adjudication.

(5) PWD'S OBLIGATIONS:

- a. To pay to the City the sum of \$1,250,000 as its share in the Total Contribution required to complete the Project. That amount shall be

held by the City in a segregated account, to be used only for expenses related to the design, construction and operation of the Project.

- b. Provide inspection consultation for the Project on an as-needed basis.
- c. To pay the Water Costs, if any, for the purchase of imported water supplies to be banked in the Project, and in conformity with existing or future PWD contracts, or water acquired from any other source, at the sole discretion of PWD, in accordance with the terms of this Cooperative Agreement.
- d. To pay for the Turnout Costs associated with delivering water purchased by PWD to the Project through the Turnout on behalf of PWD.
- e. To cooperate with and assist the other Parties in obtaining any Court approvals in the Adjudication required to complete and operate the Project. PWD agrees this Agreement shall not be admissible to undermine any Party's position on any issue related to the Adjudication.
- f. PWD agrees to use its groundwater extraction system to recover AVEK water banked in the Project for the benefit of AVEK per a mutually agreed annual schedule, subject to AVEK's payment of a banked water recovery fee established by PWD to recover costs incurred.

(6) IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:

- a. Water banked through the Project will be credited to the Party that purchased the imported water, whether the purchased water was from AVEK or some other source, as between the Parties to this Cooperative Agreement, less a ten (10) percent downward adjustment for a leave behind and normal losses for all purposes, subject to such further adjustments or conditions as may be required by the Adjudication, including the anticipated Physical Solution therein. Nothing herein shall prevent AVEK from storing water in the Project for its own account at its own expense.
- b. No Party will assert before the court in the Adjudication, the Watermaster to be appointed pursuant to the Physical Solution to be imposed in the Adjudication, or in an administrative hearing that any other Party lacks the legal right to bank and recover banked water in the Project, consistent with the terms of this Cooperative Agreement. The substantive legal and practical details of the extent

of such asserted banked water right, such as the amount, cost, the priority of recovery, etc., are excluded from this prohibition.

- c. The Parties will be responsible for the annual costs incurred by the City in operating and maintaining the Groundwater Banking Facility of the Project in the following manner: In the first year following the completion of the Groundwater Banking Facility, the proportion of operational costs is equal to the Fair Share Percentage of each Party. In the second and subsequent years, an individual Party's operational costs shall be equal to the proportionate share of the volume of water imported and banked in the Project in that given year. In any year in which water is not delivered for banking to the Project, the Parties will pay their Fair Share Percentage of operation and maintenance costs of the Groundwater Banking Facility.
- d. The Parties agree to maintain a cost effective and prudent maintenance budget. The parties agree to meet annually to review and approve the maintenance budget. It is agreed that the initial maintenance budget is estimated to be \$250,000, which will be reviewed annually after a review of the actual cost by the Parties. The parties agree to work cooperatively to modify the Cooperative Agreement if necessary to maintain a cost effective and prudent operating and maintenance budget.
- e. The Project Capacity is based upon the preliminary investigative work performed by the United States Geological Survey (USGS) and shall be used as the base amount by which the initial Fair Share determination is made.
- f. If a Party's funds deposited with the City exceed that Party's share of the Total Contribution, based upon the Final Accounting, such excess funds shall be refunded to that Party within sixty (60) days of the Parties' acceptance of the Final Accounting.
- g. If a Party's share of the Project costs exceeds funds deposited with the City, based upon the Final Accounting, each Party will pay its Fair Share within sixty (60) days of the City's submission of, and Parties' acceptance of the Final Accounting, and the ratification of a Final Fair Share Agreement Amendment by the Parties.
- h. Upon Final Accounting of the Project, each Party's Fair Share shall be determined by each individual Party's contribution to the Project and such determinations will be ratified by an amendment to this agreement ("Final Fair Share Agreement Amendment")

- i. Each Party is solely responsible for its own groundwater pumping costs of recovering its banked water, and associated costs, including construction, maintenance, and operational cost of wells and pumps, etc., which are expressly excluded from this Agreement.
- j. As against all non-Parties, the City shall have a first priority right to recharge, store and maintain a minimum Project Capacity of 889 acre-feet in the Project. As between the Parties, the City's rights are *pari passu*.
- k. As against all non-Parties, Waterworks shall have a first priority right to a minimum Project Capacity of 1,378 acre-feet in the Project. As between the Parties, Waterworks' rights are *pari passu*.
- l. As against all non-Parties, AVEK shall have a first priority right to a minimum Project Capacity of 2,755 acre-feet in the Project. As between the Parties, AVEK's rights are *pari passu*.
- m. As against all non-Parties, PWD shall have a first priority right to a minimum Project Capacity of 1,378 acre-feet in the Project. As between the Parties, PWD's rights are *pari passu*.
- n. At a minimum, the Parties shall meet annually during the third quarter of the calendar year to establish an operational strategy for the Project for the following calendar year.
- o. The Parties may assign any or all of their first priority Project Capacity in the Project for fair market value, subject to ongoing maintenance costs of section 6(c) and 6(d) attributed to the increase in Project Capacity. The remaining Parties are to have first right of refusal on the sale of any of the other Parties' shares in proportion to their Fair Share Percentage. If any Party refuses its Fair Share Percentage, that percentage shall be available to the other Parties with a right of first refusal on the same Fair Share Percentage basis. If all Parties invoke their first refusal rights declining to purchase the priority Project Capacity, the Project Capacity right may be sold to a governmental agency, or remain unused. However, such sale must also include the assignment of the proportionate maintenance costs of section 6(c) and 6(d).
- p. The Parties may lease their unused first priority recharge capacity in the Project for fair market value, in one year increments. The remaining Parties shall have first right of refusal on the lease of any of the other Parties' shares in proportion to the Fair Share percentage. If any Party refuses its percentage, that percentage shall then be available to the other Parties with a right of first refusal on the same Fair Share Percentage basis. If all Parties invoke their

first refusal rights declining to lease the priority recharge, the recharge right may be leased to a public agency, or remain unused. However, in all lease situations, the Party remains responsible for the proportionate maintenance costs of section 6(c) and 6(d).

- q. This Cooperative Agreement is intended as a funding mechanism to assist the City in financing the Project. Nothing in this Cooperative Agreement is intended to transfer any authority or responsibility to the City for operation of Waterworks, AVEK or PWD facilities, or impose any liability on any Party other than to perform as set forth in this Cooperative Agreement.
- r. This Cooperative Agreement contains the full and complete understanding of the Parties regarding the subject matter of this Cooperative Agreement and shall not be construed against either Party as the drafter of the Cooperative Agreement which shall be deemed to have been drafted by all Parties.
- s. If any term, clause or provision of the Cooperative Agreement is held to be illegal, invalid, or unenforceable, the remainder of the Cooperative Agreement shall not be affected, but shall remain in full force and effect in accordance with the terms thereof.
- t. This Cooperative Agreement shall be governed by the local laws of the State of California. The venue for any legal action on the Cooperative Agreement shall be in the County of Los Angeles.
- u. No waiver of any breach or default by any Party shall constitute a waiver of any other breach or default, nor shall any waiver constitute a continuing waiver.
- v. No Party shall assign this Cooperative Agreement or any of such Party's rights, or obligations, other than as set forth in section 6(a) and 6(v) without the prior written consent of all other Parties, and any attempt at such assignment shall be void, notwithstanding that any Party may assign this Cooperative Agreement or any part thereof to any successor public agency legally performing the functions of the assigning Party as its successor.
- w. This Agreement may be amended or modified only by mutual written consent of all of the Parties.

(7) TERMINATION

CONSTRUCTION TERM

The Construction Term of this Cooperative Agreement is five (5) years from the date of the approval of the Parties. If ALL the Parties have not

completed ALL of their respective duties by that date, this Cooperative Agreement is terminated, unless ALL Parties agree in writing to a later date of completion. If the Cooperative Agreement is terminated for failure to complete construction pursuant to this section, the Project Groundwater Banking Facility shall be sold at fair market value. All Parties at the time of termination shall receive a pro rata share of the proceeds based on their Fair Share Percentage at the time of termination, up to the value of the Party's total investment. However, the City of Palmdale shall retain ownership of the City-only section of the Project, exclusive of the sale of the remaining Project Groundwater Banking Facility, subject to a diminution of Palmdale's Fair Share Percentage of the value of the City-owned section of the Project.

OPERATIONAL TERM

The Operational Term of this Cooperative Agreement is twenty (20) years, inclusive of the Construction Term, terminating on June 30, 2032 with two (2) optional ten (10) year extension periods, unless the Parties provide mutual written consent to modify or extend the Operational Term. The optional ten (10) year extensions are automatic unless a Party objects in writing to the extension a minimum of one (1) year in advance of the scheduled termination. At the termination of the Cooperative Agreement, all water banked in the Project shall be removed from the Project by the Parties or abandoned in place, and the Project Groundwater Banking Facility shall be sold at fair market value. All Parties at the time of termination shall receive a pro rata share of the proceeds in a percentage of their cumulative Fair Share value at the time of termination, up to the value of the Party's total investment, plus the cost of inflation pursuant to the Los Angeles Region Consumer Price Index of Los Angeles-Riverside-Orange County. However, the City of Palmdale shall retain ownership of the City-only section of the Project, exclusive of the sale of the remaining Project Groundwater Banking Facility, subject to a diminution of Palmdale's Fair Share Percentage of the value of the City-owned section of the Project. The City hereby disclaims, and shall not have any interest in any abandoned banked water on the Project site, notwithstanding that the abandoned water may be on or under the City's Project real property.

FINANCIAL TERM

If the Project is not completed, or cannot be completed for the fiscal amounts/ In-Kind Service amounts that are expressly stated in this Cooperative Agreement, then the Cooperative Agreement is terminated, unless ALL the Parties agree to a modification of the fiscal amounts, in writing. If the Cooperative Agreement is terminated for failure to complete within the fiscal amounts/ In Kind Service amounts stated, pursuant to this section, the Project Groundwater Banking Facility are to be sold at fair market value. All Parties at the time of termination shall receive a pro rata share of the proceeds based on their Fair Share Percentage at the time of termination. However, the City of Palmdale shall retain ownership of the City-only section of the Project, exclusive

of the sale of the remaining Project Groundwater Banking Facility, subject to a diminution of Palmdale's Fair Share for the value of the City-owned section of the Project.

(8) INDEMNITY

Each Party agrees to indemnify, defend, and hold harmless each other Party, including their officers, employees, and agents, from and against any and all claims, demands, liability, damages (including but not limited to, bodily injury, death, personal injury, or property damage), costs and expenses (including, but not limited to attorney fees and other litigation expenses), arising from or caused by any negligent act or omission, or any reckless or willful misconduct, of the indemnifying Party or any of its officers, agents employees, and/or contractors in the performance of any work undertaken and/or obligation assumed pursuant to this Cooperative Agreement. This indemnification will not apply to the extent that the claims, demands, liability or damages arise from the negligence, recklessness or willful misconduct of the Party or any of its officers, employees, agents or contractors seeking indemnification. This indemnity will survive termination or expiration of the Cooperative Agreement.

(9) NOTICES

Any notice demand or document from one Party to another shall be delivered in writing via First Class United States Mail or overnight courier (United States Mail Express overnight delivery, Federal Express, or equivalent overnight delivery service), or via facsimile with written confirmation as proof of delivery), or delivered in person to the below identified persons, their designees, or their successors:

Adam Ariki
Assistant Deputy Director
County of Los Angeles
Department of Public Works
P.O. Box 1460
Alhambra California 91802-1460
(626) 300-3300
Email: aariki@dpw.lacounty.gov

Dan Flory
General Manager
Antelope Valley East-Kern Water Agency
6500 W. Avenue N
Palmdale, California 93551
Telephone (661) 943-3201
Facsimile (661) 943-3204
Email: info@avek.org

Dennis LaMoreaux
General Manager
Palmdale Water District
2029 East Avenue Q
Palmdale, California 93590
Telephone (661) 456-1017
Facsimile (661) 947-8604
Email: dlamoreaux@palmdalewater.org

James C. Ledford
Mayor
City of Palmdale
38300 Sierra Highway
Palmdale, California 93550
Telephone (661) 267-5100
Facsimile (661) 267-5122
Email: jledford@cityofpalmdale.org

IN WITNESS WHEREOF, the parties hereto have caused this Cooperative Agreement to be executed by their respective officers, duly authorized, by City of Palmdale; and

City of Palmdale:

By _____
James C. Ledford
Mayor

APPROVED AS TO FORM:

By _____
Wm. Matthew Ditzhazy
City Attorney

ATTEST:

By: _____
Rebecca J. Smith
City Clerk

IN WITNESS WHEREOF, the parties hereto have caused this Cooperative Agreement to be executed by their respective officers, duly authorized, by Palmdale Water District; and

Palmdale Water District:

By _____
Dennis LaMoreaux
General Manager
Palmdale Water District

APPROVED AS TO FORM:

By _____
Thomas S. Bunn III
District Counsel

IN WITNESS WHEREOF, the parties hereto have caused this Cooperative Agreement to be executed by their respective officers, duly authorized, by Antelope Valley-East Kern Water Agency; and

Antelope Valley-East Kern Water Agency:

By _____
Dan Flory
General Manager
Antelope Valley – East Kern Water Agency

APPROVED AS TO FORM:

By _____
Michael Riddell
Agency Counsel

IN WITNESS WHEREOF, the parties hereto have caused this Cooperative Agreement to be executed by their respective officers, duly authorized, by Los Angeles County Waterworks District No. 40.

Los Angeles County Waterworks District No. 40:

By _____
Gail Farber
Director of Public Works, Los Angeles County

APPROVED AS TO FORM:
County Counsel

By _____
Michael L. Moore
Principal Deputy County Counsel