



Department of Water and Power

MEMORANDUM

DATE: May 4, 2009

TO: Karly Gaynor, Business Supervisor

FROM: Michelle Tveito, Assistant to the General Manager

SUBJECT: Fully executed agreement for file

Please find the attached "Agreement concerning Water Production from the Coldwater Basin" with the EVMWD dated April 21, 2009 for your records.

AGREEMENT CONCERNING WATER PRODUCTION FROM THE COLDWATER BASIN

THIS AGREEMENT, effective this 1st day of December, 2008, is made and entered into by and between the CITY OF CORONA, a municipal corporation ("City") and the ELSINORE VALLEY MUNICIPAL WATER DISTRICT, a municipal water district ("District"). The City and the District are sometimes collectively referred to herein as the "Parties."

RECITALS

A. The City and the District both own and operate water production facilities in the Coldwater Basin in Temescal Canyon of Riverside County. The agreed-upon boundaries of the Coldwater Basin are depicted on the map attached hereto as Exhibit "A" and made a part hereof.

B. Pursuant to that certain "Agreement of Sale of Certain Assets of the Corona City Water Company and the Temescal Water Company to the City of Corona" dated December 27, 1963 (hereafter referred to as the "1963 Agreement"), the Parties (or their predecessors) agreed to restrict a portion of the Coldwater Basin from which the District may produce water.

C. The District constructed a well ("the Trilogy Well") in order to replace production lost when its Well 72 went out of production due to the expansion of Cemex, Inc. Sand and Gravel Mining Activities. The location of the Trilogy Well is not in accord with the terms of the 1963 Agreement.

D. By this Agreement, the Parties (i) intend to supersede all prior agreements dealing with the subject matter hereof, including the 1963 Agreement and that certain January 6, 1999 "Agreement for the Sale or Exchange of Water Between the City of Corona and Elsinore Valley Municipal Water District" (the "1999 Agreement"), (ii) intend to provide for the joint use of the Trilogy Well, and (iii) intend to establish a process and develop projects which will enhance the available supply of groundwater in the Coldwater Basin, and to maximize the sustainable use thereof.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. **Operating Committee.** Within 30 days of the effective date hereof, the City Manager of the City and the General Manager of the District shall each appoint a representative to a Committee ("the Operating Committee") which will make operational decisions in order to implement the terms and provisions of this Agreement. Any such appointee may be replaced through the same appointment process, and any vacancy in an Operating Committee position shall be filled promptly by such appointment. The primary purpose of the Operating Committee is to ensure that the City and the District be allowed to pump sufficient water from the Coldwater Basin to meet their respective requirements and to maximize the sustainable use of the Basin as a water supply. A primary function of the Operating Committee will be to annually determine the amount of groundwater that can be safely extracted from the Coldwater Basin (the "Allowable Production").

2. **Determining Allowable Production.** The Allowable Production by the Parties shall be determined by the Operating Committee as follows:

a. The accounting year shall be July 1 to June 30. The accounting commencement date shall be July 1, 2008. Thereafter, the Allowable Production shall be determined by May 1 of each year.

b. The Allowable Production will be determined in light of the best information available to the Operating Committee. It shall be the goal of the Operating Committee to estimate an amount of Production that (i) ensures the sustainability of the Basin as a water supply and (ii) allows the Parties to flexibly adjust the Allowable Production in response to extreme hydrologic conditions and/or the short term operational needs of each of the Parties.

c. The amount of the annual Allowable Production shall be allocated to each Party annually by the Operating Committee, and will be equal to their respective share in the total of: Native Safe Yield **plus** return flows and water imported to the Basin by either or both Parties during the preceding fiscal year:

i. The initial Native Safe Yield shall be 3,300 acre feet per year for each of the first five fiscal years following the effective date of this Agreement. Thereafter, the Operating Committee shall re-determine the Native Safe Yield every five years;

ii. The initial shares in the total of Native Safe Yield, return flows and water imported to the Basin shall be as follows:

To the City:	64%
To the District:	32%

The remaining 4% shall be allocated in the aggregate to the private well producers in the Coldwater Basin. The two-thirds/one-third proportion shall also be used to allocate the costs and expenses incurred in connection with the study and implementation of capital projects jointly undertaken by the Parties in each of the first five years following the effective date of this Agreement.

d. The Operating Committee shall review, every five years following the effective date of this Agreement, the annual production records of all producers in the Coldwater Basin to determine the actual amount of groundwater production by each producer. At the conclusion of such review, the respective shares of the Parties in Native Safe Yield for the following five years shall be adjusted on a pro-rata basis. For example, if the actual production of the overlying producers is 2% and not 4%, then the City shall be entitled to 63.2917% of the difference and the District shall be entitled to 34.7083%.

3. **Storage Rights.** The City and the District shall have the right to store un-produced Allowable Production up to ten times their initial share in the Native Safe Yield

multiplied by the initial Native Safe Yield of 3,300 acre feet per year, in a Storage Account; provided, however, that the maximum amount of groundwater storage shall be:

- a. For the City: 21,120 acre feet;
- b. For the District: 10,560 acre feet.

4. **Annual Production Right.** The “Annual Production Right” of a Party shall be equal to a Party’s Annual Allowable Production **plus** some or all of the water held in that Party’s Storage Account as determined by that Party.

5. **Joint Use of the Trilogy Well.** Although the City and the District individually own and operate groundwater production wells in the Coldwater Basin, they mutually acknowledge and agree that joint operation of the District’s Trilogy Well is desirable because it is capable of producing large amounts of water cost-effectively. Under the supervision of the Operating Committee, which shall review the specifications and bids thereon, the District shall complete construction of the Well and the pipelines connecting the Well to the City’s and the District’s water distribution systems. Thereafter, the District shall operate and maintain the Well and deliver therefrom, to the District and to the City, such amounts of water as may be ordered by them through the Operating Committee.

6. **Water Rate.** The cost of water produced from the Trilogy Well shall consist of Fixed Costs and Variable Costs:

a. **Fixed Costs** consist of 20 annual replacement cost payments of approximately \$60,000.00, which is the annual payment amortized at 5% over 20 years on a principal of \$750,000.00. This will provide adequate funds to replace or refurbish the pumping equipment after a 20-year useful life. The District shall be obligated to pay one-third of the Fixed Costs, and the City shall be obligated to pay two-thirds of such Costs. Fixed Costs shall be paid by the District and the City whether or not the Parties purchase water produced by the Well. These funds, and all accumulated interest, shall be held in a separate interest-bearing fund specifically for future replacement or refurbishment of the Well.

b. **Variable Costs** consist of the actual costs and expenses incurred in operating and maintaining the Trilogy Well, and shall be paid in proportion to the amount of water purchased by a Party. The Operating Committee shall annually reconcile the Variable Costs with the amount of revenue received from the sale of water to ensure that the revenue is sufficient to defray such Costs. Any revenue shortfalls shall be pro-ratably shared by the Parties; excess revenue shall be carried over to the next year or refunded upon request.

7. **Supplemental Water Projects.** The District owns surface water rights licensed by the State Water Resources Control Board in Mayhew, Indian and Horsethief Creeks, which licenses authorize the diversion and storage of up to 1,887 acre feet per year. Under the supervision of the Operating Committee, the City and the District shall jointly formulate and fund plans and projects to deliver such water for storage in the Coldwater Basin, to be shared by the Parties as a component of their respective Annual Production Right.

8. **Trilogy Well Operations.** The District shall retain title in and to the Trilogy Well and the parcel of land upon which it is located, shall operate the Trilogy Well and, as may be necessary from time-to-time rehabilitate the Trilogy Well. All operations shall be conducted under the supervision of the Operating Committee, and the Committee shall provide a quarterly report of such operations to the Parties.

9. **Access and Indemnification.** The District shall provide reasonable access to the City's agents and employees to inspect operations at the Trilogy Well. The District shall indemnify the City and its elected officials, officers, agents and employees and hold each of them harmless from any damages, claims, actions, causes of action or suits, including attendant costs and attorneys' fees, which may arise out of or be in any way connected with the District's operation of the Trilogy Well except for any such damages, claims, actions, causes of action or suits alleged or found to be caused by the negligent, reckless or intentional actions of any of the City's elected officials, officers, agents or employees.

10. **Insurance.** The Operating Committee shall cause the operation of the Trilogy Well to be ensured in a manner and extent similar to the operation of other publicly-owned wells in the Coldwater Basin.

11. **Functions of the Operating Committee.** The Operating Committee shall perform the following functions concerning management of the Basin in order to sustain it as a water resource for the benefit of the Parties:

a. Annually specify the amount of the Parties' Allowable Production, Annual Production Right and water in storage in accordance with the best information available to the Committee;

b. In its discretion, retain technical consultants to assist the Committee in establishing Allowable Production and the Annual Production Right for each Party and to evaluate and resolve other groundwater management issues;

c. Review and approve new water production facilities proposed to be developed in the Coldwater Basin by either Party and any proposal to increase the capacity of any such existing facility;

d. Represent the City and the District in transactions involving other public agencies and/or private parties intended to implement projects which will increase groundwater recharge and surface retention for the Basin;

e. Provide for joint funding, in proportion to yield, for completion of the Trilogy Well and implementing groundwater recharge and surface retention of projects;

f. Develop and implement a process whereby the City will assume the responsibility for water service to the District's present Temescal non-potable water customers located within the City but outside the Coldwater Basin including the sale by District to City of certain stranded Temescal facilities; and

g. Develop and implement a process by which the Parties will employ their best efforts to negotiate the District's sale of non-potable water to the City for use in the City's Recycled Water System.

12. Integration. This Agreement shall supersede any other agreement between the Parties or any provision or provisions therein contained including, but not limited to, the 1963 Agreement, the 1999 Agreement and Amendment No. 1 thereto dated July 18, 2001, and they are hereby deemed to be null and void and rescinded in their entirety.

13. Dispute Resolution Procedures. The Parties will attempt in good faith to resolve any dispute, claim or controversy arising out of or relating to this Agreement, as follows:

Step 1: All disputes, claims or controversies shall first be considered, and resolution shall be attempted, by the Operating Committee. If the Operating Committee is deadlocked, then the matter shall be referred to an informal negotiation between the parties, Step 2.

Step 2: The Operating Committee shall initiate such negotiations by providing written notice to the Parties setting forth the subject of the dispute. The Parties, through the City Manager of the City and the General Manager of the District, shall promptly schedule a negotiation meeting to be attended by such representatives of either Party as may be reasonably necessary to address the issues presented by the Operating Committee. If the dispute is not resolved by these informal negotiations, the issue will be submitted for mediation, Step 3.

Step 3: The Parties shall submit to a mandatory mediation, which shall be conducted by a mutually agreed-upon neutral mediator. The mediator selected shall be experienced, neutral, without conflicts of interest, and qualified to mediate disputes of the nature of those that may arise under this Agreement. If the Parties are unable to agree upon a mediator, each Party shall select one mediator, with the two selected mediators selecting a third, qualified neutral mediator. The Parties covenant that they will participate in the mediation in good faith and that they will share equally in all costs of the mediation. In the event mediation fails, the Parties shall submit the issue to binding arbitration, Step 4.

Step 4: Binding arbitration shall be initiated promptly upon the failure of the mandatory mediation phase. Arbitration shall be conducted by the Judicial Arbitration and Mediation Services, Inc. ("JAMS") or its successor, or any other neutral, impartial arbitration service that the Parties mutually agree upon, in accordance with its rules in effect at the time of the commencement of the arbitration proceeding as set forth in this Paragraph. The arbitrator chosen must decide each and every dispute in accordance with the laws of the State of California, and all other applicable laws. The arbitrator's decision is subject to judicial review by the Riverside County Superior Court for material errors of fact or law. Upon a showing of good cause the arbitrator may permit limited discovery in the arbitration proceeding.

14. Amendment. This Agreement may be amended only by agreement in writing of the Parties. No waiver of any provision of, nor any consent to any exception to the terms of this Agreement, shall be effective unless in writing and signed by the Party to be bound and then only for the specific purpose, extent and instance so provided.

15. **Notices.** Any notice or other communication hereunder must be given in writing and either: (a) delivered in person; (b) transmitted by telecopy, e-mail or other telecommunications mechanism; or (c) mailed, postage prepaid, as follows:

If to City: Jonathan Daly, General Manager
City of Corona
Department of Water and Power
730 Corporation Way
Corona, California 92880
Telecopier: 951-735-5786
E-mail: jonathan.daly@ci.corona.ca.us

If to District: Ronald Young, General Manager
Elsinore Valley Municipal Water District
31315 Chaney Street
Lake Elsinore, California 92531
Telecopier: 951-674-9872
E-mail: ryoung@evmwd.net

Or to any such other address or such other person as either Party shall have last designated to the other Party.

16. **Severability.** In case any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and the remainder of the provisions of this Agreement shall continue in full force and effect without impairment, provided that the essential provisions of this Agreement for both Parties remain valid, binding and enforceable.

17. **Assignment.** Neither Party shall transfer or assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

18. **Further Documents.** The Parties shall execute such other and further documents and do such further acts as may be reasonably required to effectuate the intent of the Parties and carry out the terms of this Agreement.

19. **No Third Party Beneficiaries.** Nothing in this Agreement whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties to this Agreement and their respective successors and assigns.

20. **Purchase and Sale of Assets.** The District agrees to sell and the City agrees to buy the following assets (and real property interests necessary to utilize those assets), as they are depicted on Exhibit "B" attached hereto, for the sum of \$2,000,000.00 or, at the City's election, the sum of \$2,500,000.00 paid to the District over a period of 10 years from the Effective Date of this Agreement, in equal annual installments:

- a. No. 2 Line
- b. The Riverside Booster Line
- c. MWD WR 19b Connection
- d. Miscellaneous pipelines and service laterals.

The City acknowledges and agrees that the purchase of such assets by the City will impair the District's ability to convey water to the Santa Ana River. Therefore, as additional consideration for the purchase and sale the City hereby grants the District the irrevocable right to use the City's storm drains to convey the District's water to the Santa Ana River, provided that there is available capacity in the drains to convey stormwater.

21. First Right to Purchase Temescal Valley Line. The District hereby grants to the City a right of first refusal to purchase the District's interest in the Temescal Valley Line, in the event the District determines to sell the same and has received a bona fide offer from a third party. Prior to accepting such offer, the District shall submit the same to the City, and the City shall have up to 60 calendar days to precisely match or exceed such offer in a signed and binding writing as to all terms and conditions. In the event the City does not respond in writing to the District within the time allowed, the lack of such response shall be deemed a refusal to exercise the right granted herein. In addition, in the event the District is capable of delivering clear title to the Temescal Valley Line to a purchaser, the District shall give the City 60 days' notice thereof, in order to give the City an opportunity to purchase the Temescal Valley Line.

WHEREFORE, the Parties have executed this Agreement to be effective as of the date first set forth above.

CITY OF CORONA

ELSINORE VALLEY MUNICIPAL
WATER DISTRICT

By

Mayor

By

Phil Williams, President

Dated:

April 21, 2009

Dated:

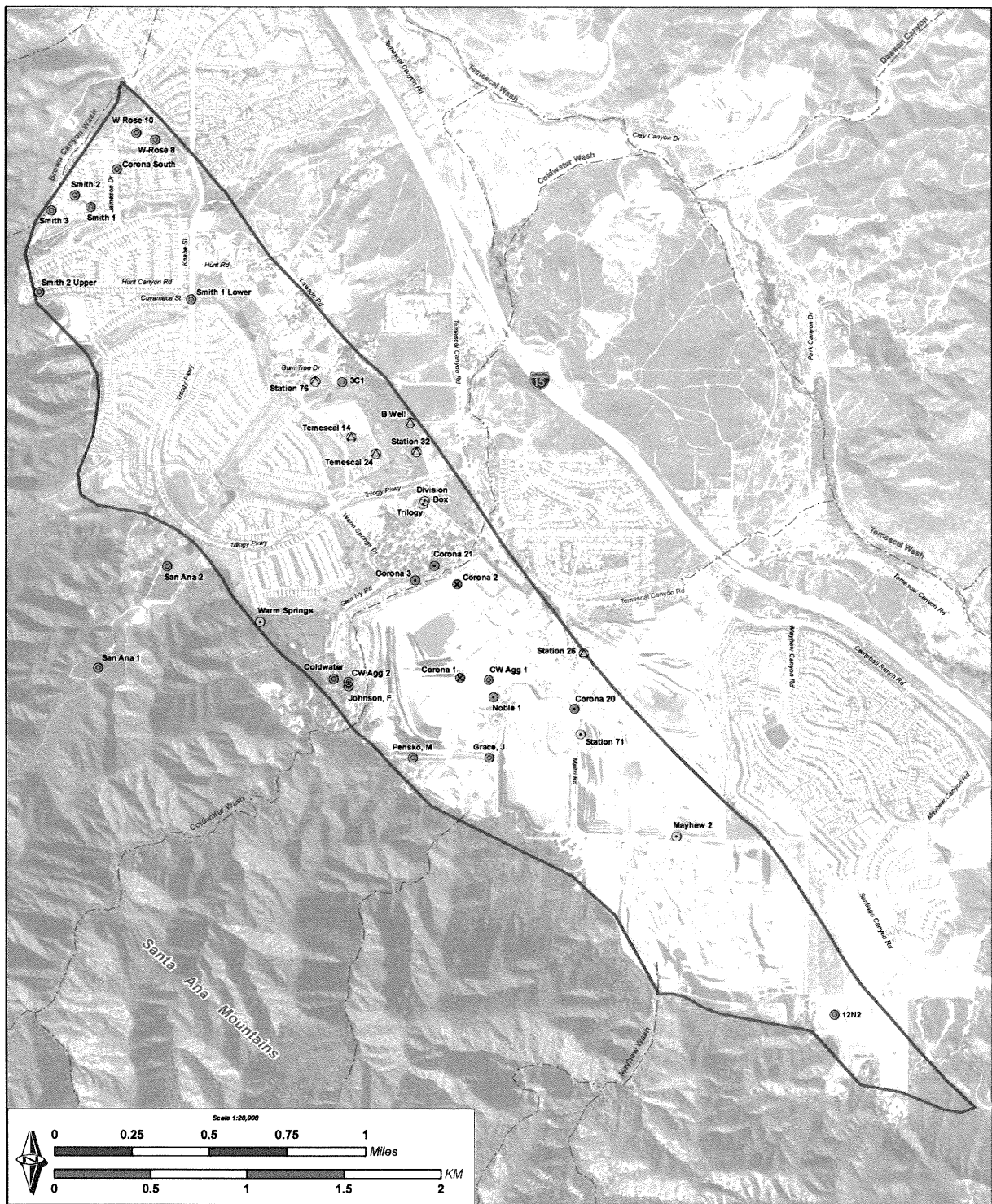
March 25, 2009

Approved as to Form:



Approved as to Form:


Akluifi & Wysocki
District Counsel



Air photo acquired in Spring 2005
Imagery Source: AirPhoto/ISA, LLC and Elsinore Valley Municipal Water District (951-954-8713)

Production Wells (Symbolized by Ownership)

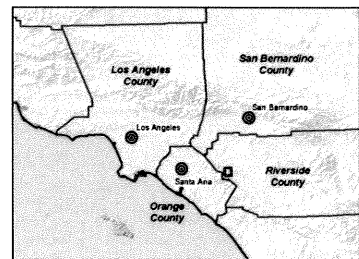
- Elsinore Valley Municipal Water District
- City of Corona
- ⊙ Private Wells (locations not confirmed)

Other Map Features

- Coldwater Basin Boundary
- Rivers & Streams

Production Wells (Symbolized by Status)

- Active
- ⊗ Inactive
- ⊗ Abandoned
- ⊙ Unknown



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Author: CMU/AEM/ETL
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File: Exhibit_A_Ledger.mxd

Coldwater Basin
Basin Boundary and Well Locations

Exhibit A

