

**FIRST AMENDMENT TO THE ENVIRONMENTAL COST SHARING,
FUNDING, AND HABITAT CONSERVATION PLAN DEVELOPMENT
AGREEMENT**

This First Amendment to the Environmental Cost Sharing, Funding, and Habitat Conservation Plan Development Agreement (the "ECSA Amendment"), dated as of August 15, 2005, by and among the Imperial Irrigation District ("IID"), a California irrigation district, San Diego County Water Authority ("SDCWA"), a California county water authority, and Coachella Valley Water District ("CVWD"), a California water district, amends that certain Environmental Cost Sharing, Funding, and Habitat Conservation Plan Development Agreement by and among IID, SDCWA, and CVWD, dated October 10, 2003 ("ECSA") (IID, SDCWA, and CVWD are sometimes referred to individually in this Amendment as "Party" and collectively as the "Parties").

RECITALS

- A. IID, SDCWA, and CVWD have entered into the ECSA for the purpose of, among other things, funding certain costs associated with the Quantification Settlement Agreement ("QSA") and Related Agreements, as defined in the QSA. The ECSA, at Article 5, also provides responsibilities and procedures for development of a habitat conservation plan/natural community conservation plan ("HCP"), as defined.
- B. Pursuant to Article 5, SDCWA and CVWD, in consultation and collaboration with IID, are to use their best efforts to secure HCP approvals and related Permits under the terms and conditions prescribed therein.
- C. The Parties now desire through this Amendment to adjust their respective responsibilities under Article 5, with the result that IID will take the primary role in gaining approvals of the HCP and related Permits, and the SDCWA and CVWD role and responsibilities shall be limited to those described herein.
- D. Concurrent with the execution of this Amendment, IID and SDCWA have executed an Agreement for Termination of the IID/SDCWA Agreement for Transfer of Conserved Water: Protocol for Sharing Environmental Review and Permit Costs, entered into as of January 27, 2000 ("Termination Agreement"), as well as an Agreement to Share Additional Environmental Processing Costs for the Imperial Irrigation District Water Conservation and Transfer Project Environmental Impact Report if Required by the QSA Cases ("QSA Cases EIR Cost Sharing Agreement").

TERMS

In consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, and intending to be legally bound hereby, IID, SDCWA, and CVWD agree as follows:

1. Section 5.1 is modified by replacing it in its entirety with the following:

5.1 Responsibilities of the Parties.

- (1) **Approval of HCP.** IID, in consultation with SDCWA and CVWD, shall use reasonable efforts to cause USFWS and CDFG to approve, as soon as reasonably feasible but no later than December 31, 2007, a habitat conservation plan/natural community conservation plan ("HCP") and related Permits, which satisfy all of the standards and criteria described in Section 5.2; provided, however, that IID reserves the right, subject to approval by SDCWA and CVWD which shall not be unreasonably withheld, to modify any of the standards and criteria set forth in Section 5.2 (i) to the extent required by the Wildlife Agencies, (ii) to expedite the processing of the HCP, (iii) to address changed circumstances or legal requirements, (iv) to the extent that coverage of a species is deemed infeasible, and/or (v) as reasonably determined by IID. Also, except as approved by SDCWA and CVWD, mitigation requirements under the HCP shall not be such as to cause the estimated Costs of HCP Mitigation Requirements, including mitigation requirements under the HCP, to exceed the amount of estimated Costs of HCP Mitigation Requirements before inclusion of mitigation requirements under the HCP, as such estimates are reasonably determined at the time the HCP is approved by USFWS and CDFG. The obligation to utilize such reasonable efforts shall continue except to the extent that coverage of a species is deemed infeasible pursuant to Section 5.4 below. "Reasonable efforts" means the prudent, diligent and good-faith efforts of IID to secure the HCP and related Permits, but shall not require the expenditure by IID of more than Three Million Dollars (\$3,000,000) to fund dedicated staff, third-party consultants and counsel tasked with developing the HCP. IID shall utilize its staff and engage third-party consultants and counsel to provide: (i) any necessary studies, surveys, reports, modifications or additions to the Draft HCP, to the extent required or deemed appropriate by the Wildlife Agencies, and (ii) any documentation required for CEQA and NEPA compliance for the HCP. Should IID chose, in its absolute discretion, to expend more than Three

Million Dollars (\$3,000,000), such decision and expenditure by IID shall in no way affect the payment obligation of SDCWA and CVWD set forth in Section 5.1(2) below.

- (2) **Payment to IID by SDCWA and CVWD.** In consideration for the release of SDCWA and CVWD from their obligations as originally provided in Sections 5.1 through 5.5 of the ECSA, within 60 days after the date of this Amendment: (i) SDCWA shall pay to IID the sum of Two Million Dollars (\$2,000,000), and (ii) CVWD shall pay to IID the sum of One Million Dollars (\$1,000,000). All such funds paid by SDCWA and CVWD are to be utilized by IID to secure approvals of the HCP and related Permits, but if any such funds are not utilized by IID for that purpose, IID shall refund to SDCWA and CVWD, in proportion to their payments, the amount of such funds that are not so utilized. Except for the obligations of SDCWA and CVWD to grant reasonable approvals as specified in this Section 5.1, to participate in accordance with Section 5.1(4), and conditioned upon timely payment of the amounts prescribed in this Subsection 5.1(2), IID hereby releases SDCWA and CVWD from any obligation or duty under Sections 5.1 through 5.5 with respect to development and approval of the HCP and related Permits. The foregoing release shall not affect any obligations of CVWD and SDCWA under the Conservation Agreement among the Bureau of Reclamation, IID, CVWD, and SDCWA dated October 10, 2003, or any other QSA or Related Agreement.
- (3) **Reimbursement of SDCWA and CVWD Payments.** In the event that IID receives reimbursement from the QSA-JPA for costs incurred to secure approvals of the HCP and related Permits, IID shall reimburse SDCWA and CVWD proportionally for payments made by them pursuant to Section 5.1(2) up to the amount that is reimbursed to IID by the QSA-JPA, but not exceeding Three Million Dollars (\$3,000,000). IID shall keep SDCWA and CVWD informed about IID's efforts to cause USFWS and CDFG to approve the HCP, and the costs of such efforts.
- (4) **Participation by SDCWA and CVWD.** SDCWA and CVWD shall support approval of the HCP in conformance with the HCP Standards and Criteria, and shall use reasonable efforts and diligence to cooperate and provide assistance to IID in connection with such process, as reasonably requested by IID. Such assistance may include (i) participating in meetings with IID to develop strategy, (ii) attending meetings with the Wildlife Agencies staff to support positions reasonably taken

by IID consistent with the HCP Standards and Criteria, (iii) making their staff and lobbyists available during the process to provide advice and support, or facilitate approval of the HCP and related Permits, and (iv) contacting and meeting with state and federal officials to support or facilitate approval of the HCP and related Permits. All costs and expenses incurred by SDCWA and CVWD shall be borne by SDCWA and CVWD without any right to receive reimbursement from IID."

2. Section 5.3 is deleted in its entirety.
3. Section 5.4 is modified by replacing it in its entirety with the following:

"5.4 Revival of Efforts. In the event that coverage of a Class A or Class B Covered Species is deemed infeasible as of December 31, 2007, and if new information becomes available which indicates that approval of coverage of that species by the Wildlife Agencies is feasible and within the budget of Expected HCP Mitigation Costs (as adjusted to reflect any then-identifiable actual Costs or updated estimates), IID shall revive its reasonable efforts to obtain coverage for that species."

4. Section 5.5 is modified by deleting "SDCWA and CVWD" and substituting therefor "IID."
5. As part of the QSA and Related Agreements, IID, CVWD, SDCWA and the State of California through the CDFG entered into the Quantification Settlement Agreement Joint Powers Authority Creation and Funding Agreement ("QSA-JPA Agreement") on October 10, 2003. Pursuant to the QSA-JPA Agreement, a joint powers authority, the "QSA JPA" was created to administer payments to IID for implementation of certain specified environmental mitigation obligations, including obligations imposed by the State Water Resources Control Board related to the HCP. As a result of the ECSA Amendment, CVWD and SDCWA acknowledge and agree that they have a limited economic stake in mitigation and permit compliance decisions, but have a continuing stake in ensuring the viability and durability of environmental compliance. As part of this Amendment, SDCWA and CVWD covenant not to utilize JPA staff or their positions on the JPA to interfere with scientific, biological or habitat-related negotiations or decisions by the Implementation Team or Wildlife Agencies. SDCWA and CVWD are not otherwise limited by this Section 5 in their JPA roles, and, notwithstanding the previous sentence, shall retain the right, among other functions, to review and consider matters that may vary the economic costs of satisfying environmental mitigation and permit compliance conditions, such as the timing of mitigation compliance actions.
6. As modified by this Amendment, the ECSA shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the day and year first written above.

IMPERIAL IRRIGATION DISTRICT

Elston K. Grubaugh 7/28/05
Elston K. Grubaugh
Interim General Manager

John P. Carter
John P. Carter, Special Counsel

SAN DIEGO COUNTY WATER AUTHORITY

[Signature]
General Manager

Asst James J. Taylor
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COACHELLA VALLEY WATER DISTRICT

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