

Memorandum of Understanding

Regarding Request for State Water Project Recharge at Cactus Basins

This Memorandum of Understanding Regarding Request for Recharge of State Water Project water at Cactus Basin (“**MOU**”) is entered into and effective as of 8th day of October, 2024 (“**Effective Date**”), by and between San Bernardino County (“**County**”), San Bernardino County Flood Control District (“**Flood Control District**”) and the San Bernardino Valley Municipal Water District (“**San Bernardino Valley**”). Flood Control District and San Bernardino Valley may be referred to herein individually as a “**Party**” or together, as the “**Parties.**”

RECITALS

WHEREAS, San Bernardino County is a legal subdivision and body corporate and politic of the State of California, duly organized and existing under and by virtue of the Constitution and laws of the State of California;

WHEREAS, the Flood Control District was created by the San Bernardino County Flood Control Act of 1939 (the “**Act**”), found in Chapter 43 of the Water Code Appendix, with the statutory purpose to “provide for the control of the flood and storm waters of the Flood Control District” and “to conserve such waters for beneficial and useful purposes” by capturing, spreading, storing, retaining, and through percolation; and

WHEREAS, the Act also empowers the Flood Control District to spread, store, retain and percolate such waters into groundwater basins for the common benefit of the Flood Control District; and

WHEREAS, the Flood Control District owns the flood control detention basins and associated appurtenances commonly referred to as the Cactus Basins in the City of Rialto located within its service area (“**Cactus Basins**”) that are used to temporarily detain water from rain events that could cause flooding (“**Flood Control Activities**”), and

WHEREAS, San Bernardino Valley was formed in 1954 as a regional agency for the purpose of planning a long-range water supply for the San Bernardino Valley, importing water into its service area from the State Water Project, and managing groundwater storage within its boundaries; and

WHEREAS, both the Flood Control District and San Bernardino Valley rely on revenues collected from property taxes on properties located within the Parties’ common service area for the common and mutual benefit of such properties; and

WHEREAS, San Bernardino Valley estimates that its ratepayers will, over the period from 1960 to 2085, have invested over \$1 billion on State Water Project payments and on facilities constructed to convey supplemental water for direct delivery and for recharge of the groundwater basins in San Bernardino Valley’s service area; and

WHEREAS, the Flood Control District and San Bernardino Valley have a long history of cooperation dating back to an agreement dated September 25, 1972 (“**1972 Agreement**”), whereby Flood Control District allowed San Bernardino Valley to use Flood

Control District Facilities for groundwater recharge in the San Bernardino Basin and provided San Bernardino Valley with easements for the construction and operation of facilities relating to water transmission, water capture, spreading, and recharge; and

WHEREAS, in 2013, the Flood Control District and San Bernardino Valley entered into a ten year Planning Memorandum of Understanding (Agreement No. 13-608; the “**2013 Agreement**”) to outline the cooperative manner in which the Flood Control District and San Bernardino Valley would work together to identify and analyze the suitability of Flood Control District facilities for recharge purposes; and

WHEREAS, the 1972 and 2013 Agreement were terminated by the Flood Control District and San Bernardino Valley and superseded in 2023 by the “Joint Groundwater Recharge and Facilities Planning Agreement” (“**2023 Agreement**”); and

WHEREAS, the 2023 Agreement excluded recharge of State Water Project water at Cactus Basins and stated that if recharge were to occur at Cactus Basin, it will be subject to a separate agreement mutually agreed upon by the Parties, that may include an implementation and adaptive management plan (“AMP”), or other conditions; and

WHEREAS, similar to the uses of other Flood Control District facilities under the 2023 Agreement, San Bernardino Valley desires to explore and evaluate the opportunity to utilize Cactus Basins, when they are not needed for Flood Control Activities, for groundwater water transport, capture, spreading and recharge of State Water Project water (“**SWP Recharge Activities**”); and

WHEREAS, the use of the Devil Canyon-Azusa Pipeline, as well as other facilities owned or operated by San Bernardino Valley for the purpose of groundwater recharge, is of benefit to San Bernardino Valley’s customers who reside in the San Bernardino Valley and within the Flood Control District’s Zone 2; and

WHEREAS, SWP Recharge Activities, related environmental permits and mitigation, and project funding collaboration will likely reduce Flood Control District’s costs due to the reduction or elimination of duplicative Flood Control District’s activities thereby generating a Flood Control District benefit; and

WHEREAS, the Flood Control District and San Bernardino Valley entered into an agreement in 2015 (“**2015 Funding Agreement**”) for San Bernardino Valley to fund certain pipelines and related facilities and improvements at Cactus Basins to facilitate SWP Recharge Activities at Cactus Basins when Cactus Basins are not needed for Flood Control Activities and when the use of such basins does not otherwise compromise the Flood Control District’s mission of protecting life and property from the significant risks posed by flooding; and

WHEREAS, Amendment No. 1 to the 2015 Funding Agreement was approved by the Flood Control District and San Bernardino Valley in February 2019, and Amendment No. 1 provided for increasing the budget for the facilities to be constructed at Cactus Basins and clarified the phasing of the project; and

WHEREAS, the facilities described in the 2015 Funding Agreement and Amendment No. 1 to the 2015 Funding Agreement have been constructed; and,

WHEREAS, the 2015 Funding Agreement anticipated a future agreement between the Flood Control District and San Bernardino Valley regarding SWP Recharge Activities within the Cactus Basins; and

WHEREAS, the Flood Control District and San Bernardino Valley are both signatories to the Upper Santa Ana River Watershed Integrated Regional Watershed Management Plan which establishes goals and objectives for water management, including groundwater recharge in various locations which include Flood Control District detention basins; and

WHEREAS, the California Department of Water Resources Bulletin 118 defines the boundaries of Groundwater Basin 8-002.04 Upper Santa Ana Valley – Rialto-Colton, commonly referred to as the “**Rialto-Colton Basin**”; and

WHEREAS, there are areas of groundwater contamination in the Rialto-Colton Basin that are under regulatory oversight of the California Regional Water Quality Control Board, Santa Ana Region (RWQCB-SA) and the United States Environmental Protection Agency (USEPA); the contamination consists of perchlorate and various volatile organic compounds (“**VOCs**”) and are described as a western and eastern perchlorate plume; and

WHEREAS, the RWQCB-SA has primary regulatory oversight of the western plume and USEPA has primary regulatory oversight of the eastern plume that stems from the Rockets, Fireworks and Flares Superfund Site, and both western and eastern plumes are located in the Rialto-Colton Basin; and

WHEREAS, the County is under RWQCB-SA order to remediate the western plume which remediation operations are overseen by the San Bernardino County Solid Waste Management Division and that since 2006 the County has been implementing treatment for the western plume, and a VOC plume also exists on the western portion of the Rialto Colton Basin, which the County is paying to remediate; and

WHEREAS, Emhart Industries, Inc. is currently implementing remediation activities related to a portion of the eastern plume under the oversight of USEPA and the remediation activities include pumping of groundwater and treatment of pumped groundwater; the other responsible entities for the eastern plume have not initiated implementation remediation activities; and

WHEREAS, the Cactus Basins overlie the eastern plume, and the western plume is located within that area that is likely to be hydraulically influenced by SWP Recharge Activities; and

WHEREAS, the Decree in Case No. 81264 in the Superior Court of the State of California for the County of San Bernardino (“**Rialto Decree**”) entered in 1961 established reductions in allowable pumping from the Rialto Basin, which, in general, is a subset of the

Rialto-Colton Basin, if the average spring-high groundwater elevation at three index wells declines below a specified elevation; and

WHEREAS, due to declining groundwater elevations in the Rialto-Colton Basin, reductions in allowable pumping have occurred in accordance with the Rialto Decree and the reductions in pumping have affected water supply; and

WHEREAS, San Bernardino Valley desires to make certain improvements to facilitate SWP Recharge Activities at Cactus Basins, subject to review and approval by Flood Control District; and

WHEREAS, SWP Recharge Activities in Cactus Basins will help meet current and future demands for water among Flood Control District's and San Bernardino Valley's shared constituents, it could also pose a threat of exposure of contaminants to wells not currently impacted by the western and eastern plumes, impact current remedial systems, and extend the length of treatment; and

WHEREAS, San Bernardino Valley issued a Notice of Preparation of an Environmental Impact Report ("EIR") (SCH #2022070127) in July 2022 for the Cactus Basins Recharge Project ("Project") to assess potential environmental impacts of the Project; and

WHEREAS, the Project identified in the Notice of Preparation would facilitate SWP Recharge Activities in Cactus Basins, and includes recharge of State Water Project water to the Cactus Basins 3 as related to recharge operations, and construction and operation of the Cactus Basins Pipeline; the proposed pipeline will flow under pressure to a concrete distribution structure where it will flow by gravity to a City of Rialto storm drain; a concrete structure housing the flow control valves and meters will be constructed adjacent to the turnout off of the Devil Canyon Azusa Pipeline, in which San Bernardino Valley has access to State Water Project water; and

WHEREAS, San Bernardino Valley contracted with Geoscience Support Services Inc (Geoscience) to conduct groundwater modeling of perchlorate in groundwater in the Rialto-Colton Basin associated with the proposed Project; and

WHEREAS, Geoscience prepared a technical memorandum titled 'Modeling Evaluation for Proposed Artificial Recharge Project at The Cactus Basins' dated March 2022 and a subsequent technical memorandum dated July 2022 in which Geoscience evaluated a baseline condition with no SWP Recharge Activities and four scenarios with varying amounts of SWP Recharge Activities at Cactus Basins, with a maximum annual recharge of 6,904 acre-feet; and,

WHEREAS, the Parties have not yet reached a common understanding of impacts of the requested SWP Recharge Activities at Cactus Basins upon perchlorate plume movement and plume remediation activities in the Rialto-Colton Basin; and

WHEREAS, additional discussion of technical and cost issues related to impacts of the requested SWP Recharge Activities at Cactus Basins upon perchlorate plume movement and plume remediation activities is therefore necessary; and

WHEREAS, the SWP Recharge Activities increase financial and legal risk to the County and Flood Control District; and

WHEREAS, preparation of the draft EIR for the Project began in year 2022 but preparation of the EIR was stopped to provide time for Flood Control District and San Bernardino Valley to develop an approach to address concerns raised by the County and Flood Control District regarding the potential impact of the Project upon movement of groundwater contamination including perchlorate and VOCs and groundwater remediation systems; and

WHEREAS, due to San Bernardino Valley's request for SWP Recharge Activities at Cactus Basins, the Parties agree that they will meet to determine if recharge is feasible, address the technical concerns and comments, consider legal and financial protections to mitigate the risks of recharge, and that in developing a recharge agreement it may include an AMP; and

WHEREAS, the AMP may describe the hydrogeological conditions in the vicinity of the Cactus Basins including groundwater contaminant plumes, groundwater remediation systems for the western and eastern plumes, regulatory oversight of groundwater remediation, existing groundwater monitoring programs, and other relevant information; and

WHEREAS, the AMP may describe an approach to monitor groundwater conditions to assess if the proposed Project may have unforeseen, unintended impacts on the movement of perchlorate in groundwater or on existing groundwater remediation systems; and

WHEREAS, the AMP will describe an approach to assess the data collected, how the data will be assessed, and threshold criteria whereby if the threshold criteria are exceeded, the rate of SWP Recharge Activities will be reduced so that the threshold criteria are no longer exceeded; and

WHEREAS, since development of an AMP can be difficult and challenging and contentious to apply, the Parties are committed to mechanisms that offer legal and cost protections for the County and Flood Control District, including indemnity and release provisions, financial guarantees, and Rialto-Colton Basin wide partnership and planning opportunities; and

WHEREAS, the Parties may desire to seek input from a Technical Advisory Group, which may include interested stakeholders, such as Rialto-Colton Basin producers, regulatory agencies such as the California Regional Water Quality Control Board Santa Ana Region and United States Environmental Protection Agency, and Responsible Entities, in development of the AMP and assist the County and Flood Control District to ensure adequate legal and cost protections from recharge activities; and

WHEREAS, as provided herein, this MOU does not authorize nor guarantee any specific project, and the Parties will comply with the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) (“**CEQA**”) prior to approving any specific project; and

AGREEMENT

The Parties hereby agree as follows:

1. Recharge Agreement

- a. The Parties agree to consider the request for SWP Recharge Activities at Cactus Basins and will meet to determine if an agreement can be reached.
- b. The Parties will coordinate on development of a regular meeting schedule to discuss an agreement and may, if desired, set a schedule to develop the AMP.
- c. The County and Flood Control District anticipate a recharge agreement to include adequate legal and cost mechanisms to protect the County and Flood Control District from legal risks and increased response costs due to SWP Recharge Activities, as well as indemnification and cost protections (i.e. financial guarantees, bonds, letter of credit, assumption of remedial programs, etc.) against third-party and regulatory agency claims or orders, and any other necessary mechanisms including, but not limited to, insurance, and waiver and release of claims.
- d. Prior to entering into an agreement, the Parties will seek input from Rialto-Colton Basin Stakeholders to better understand potential associated risks of recharge activities in Cactus Basins. The term “Stakeholders” means the Producers as defined herein, regulatory agencies such as but not limited to the RWQCB-SA and USEPA, and entities under regulatory order to treat the eastern plume. The term “Producers” shall mean water purveyors in the Rialto-Colton Basin and include, but not limited to, the West Valley Water District, Fontana Water Company, San Gabriel Valley Water Company, and the Cities of Rialto and Colton.
- e. Any recharge agreement must be approved by the County, Flood Control District and San Bernardino Valley prior to initiation of SWP Recharge Activities in Cactus Basins. The agreement must also be approved by the Producers for the purpose of providing an opportunity for the Parties to evaluate risks and obtain from the Producers adequate legal and cost mechanisms for the County and Flood Control District against claims, legal actions, or increased response costs that could be sought by Rialto-Colton Basin Stakeholders against the County and Flood Control District from recharge activities. Entities under regulatory order to treat the eastern plume shall have the opportunity to review and comment on any recharge agreement prior to approval.
- f. Nothing in this MOU requires the Parties to agree to a final recharge agreement and any activities undertaken by San Bernardino Valley to pursue recharge in Cactus Basins, such as, but not limited to, applying for grant funding, retaining consultants, etc., shall be at its sole risk and cost.

2. AMP

- a. If the Parties come to an agreement and desire to develop an AMP, they may share information and collaborate in developing an AMP for SWP Recharge Activities at Cactus Basins 3 for State Water Project recharge.

- b. The AMP is anticipated to include the following:
 - i. A description of the Rialto-Colton Basin, inflow and outflow of groundwater from the Rialto-Colton Basin, a groundwater budget for the basin, groundwater quality and associated plumes in the area of the Cactus Basins, a description of available numerical groundwater models of the basin, a description of existing groundwater level and groundwater quality monitoring program, and information on sources of contamination that contributed to groundwater contamination plumes in the vicinity of Cactus Basins.
 - ii. Documentation of baseline groundwater elevation and perchlorate and VOCs groundwater quality conditions at the time of the AMP preparation and prior to the start of SWP Recharge Activities.
 - iii. Selection of the numerical groundwater model that will be used to evaluate SWP Recharge Activities, potential adverse effects on groundwater flow and contaminant conditions, and the rates of State Water Project recharged during SWP Recharge Activities.
 - iv. A description of groundwater contamination pump-and-treat remediation systems that currently exist or are being planned or designed; including costs and anticipated future costs and timelines to treat the contamination.
 - v. Development of threshold criteria that if the threshold criteria are exceeded, SWP Recharge Activities at the Cactus Basins should be evaluated, adjusted or suspended.
 - vi. A proposed monitoring program to assess the degree to which recharge of imported water at Cactus Basins affects (1) groundwater elevations, (2) transport or movement of contaminated groundwater, and (3) groundwater remediation systems for the perchlorate plumes.
 - vii. A description of the process that will be undertaken to analyze the data collected and assessed if the threshold criteria are exceeded.
 - viii. A description of the process that will be undertaken to update the numerical groundwater model using new data collected, if needed.
 - ix. A description of how the monitoring program will be periodically reviewed as to its adequacy and how revisions will be made to the monitoring program, if needed.
- c. All costs to develop, implement, and adjust the AMP will be borne solely by San Bernardino Valley with the exception that each party shall bear its own internal staffing and legal costs. San Bernardino Valley shall reimburse the County for fees charged by a hydrogeology consultant retained by the County upon San Bernardino Valley's review and approval of the scope of work and estimated fee for such consultant.
- d. Technical Advisory Committee

- i. The Parties may coordinate meetings of a Technical Advisory Group to assist with preparing the AMP.
 - ii. The membership of the Technical Advisory Group has not been finalized but it is anticipated to include the Parties; additionally the Technical Advisory Group would be open to participation of the Retail Water Agencies in the Rialto Colton Basin, regulatory agencies involved with oversight of remediation of contamination that occurs in the vicinity of the Cactus Basins, and Responsible Entities for operating groundwater remediation systems in the vicinity of Cactus Basins; consultants to each of the above listed entities may also participate in the Technical Advisory Group.
 - iii. The role of the Technical Advisory Group is to provide input on factors to consider in developing the AMP, provide input on assumptions used in preparation of the AMP, providing information and data, provide comments on the proposed AMP and to discuss legal and cost protections for the County and Flood Control District in the event of recharge consistent with Section 1 above; the Technical Advisory Group does not have approval authority over the AMP but may indicate if it concurs with the AMP.
3. Nothing in this MOU requires the Parties to agree to a final recharge agreement or AMP.
4. The Parties will not make any public relations-related announcements to the effect that recharge at Cactus Basins will occur unless a final recharge agreement has been formally approved by all Parties and their respective boards.
5. TERM: The term of this MOU shall be for one year from October 8, 2024 until October 7, 2025, with the option to extend for one additional year upon mutual written approval from the County Chief Executive Officer and the San Bernardino Valley Chief Executive Officer/General Manager.

6. ELECTRONIC SIGNATURES

This MOU may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same MOU. The parties shall be entitled to sign and transmit an electronic signature of this MOU (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed MOU upon request.

SIGNATURE SECTION (continued on next page)

IN WITNESS THEREOF, the Parties hereto have each caused this Memorandum of Understanding to be subscribed by its respective duly authorized officers, on their behalf.

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT

APPROVED AS TO FORM FOR SAN
BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT:

By: _____
Name: Paul R. Kielhold
Title: President, Board of Directors
Date: _____

By: _____
Meredith E. Mikkell,
San Bernardino Valley Municipal
Water District Special Counsel

ATTEST:

COUNTY:

DISTRICT:

SAN BERNARDINO COUNTY

SAN BERNARDINO COUNTY FLOOD
CONTROL DISTRICT

Dawn Rowe, Chair, Board of Supervisors

Dawn Rowe, Chair, Board of Supervisors

Dated: _____

Dated: _____

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN
DELIVERED TO THE CHAIRMAN OF
THE BOARD

Lynna Monell
Clerk of the Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN
DELIVERED TO THE CHAIRMAN OF
THE BOARD

Lynna Monell
Clerk of the Board of Supervisors

By _____
Deputy

By _____
Deputy

(Signatures continued next page)

APPROVED AS TO LEGAL FORM FOR
SAN BERNARDINO COUNTY:

Tom Bunton, County Counsel

Maria Insixiengmay
Deputy County Counsel

APPROVED AS TO LEGAL FORM FOR
SAN BERNARDINO COUNTY FLOOD
CONTROL DISTRICT:

Tom Bunton, County Counsel

Sophie A. Curtis
Deputy County Counsel