

**REVISED AGENDA FOR MEETING OF BOARD OF DIRECTORS
OF
SAN BERNARDINO VALLEY CONSERVATION TRUST,
a California Nonprofit Public Benefit Corporation**

Wednesday, July 20, 2022 – 2:00 P.M.

This meeting is being conducted via teleconference/Zoom. Anyone wishing to join the meeting can join via Zoom: Call in (669) 900-6833, Meeting ID: 848-1840-9036
To join the Zoom Meeting online: <https://us06web.zoom.us/j/84818409036>

Note: Copies of staff reports and other documents relating to the items on this agenda are on file at the San Bernardino Valley Water Conservation District office and are available for public review during regular District business hours. New information relating to agenda topics listed, received, or generated by the District after the posting of this agenda, but before the meeting, will be made available upon request. The San Bernardino Valley Conservation Trust intends to follow California Open Meeting laws and the Americans with Disabilities Act (ADA) in all respects. If you need special assistance with respect to the agenda or other written materials forwarded to the members of the Board for consideration at the Board meeting, or if as an attendee or a participant at this meeting you will need special assistance, the District will attempt to accommodate you in every reasonable manner. Please contact Athena Monge at (909) 793-2503 at least 48 hours prior to the meeting to inform her of your particular needs and to determine if accommodation is feasible. Please advise us at that time if you will need accommodations to attend or participate in meetings on a regular basis.

CALL TO ORDER

ROLL CALL

1. PUBLIC PARTICIPATION

Members of the public may address the Board of Directors on any item that is within the jurisdiction of the Board; however, no action may be taken on any item not appearing on the agenda unless the action is otherwise authorized by Subdivision (b) Section 54954.2 of the Government Code.

2. APPROVAL OF MINUTES FROM APRIL 20, 2022.....p. 3

Presenter: Betsy Miller

Recommendation: Review and approve minutes from April 20, 2022, as presented.

3. DESIGNATE ANNUAL BOARD MEETING DATE

Presenter: Betsy Miller

Recommendation: Recommend designating October 19, 2022 quarterly Board meeting as Annual Board Meeting to be in compliance with Trust Bylaws.

4. FINANCIAL STATUS UPDATE.....p. 9

Presenter: Angie Quiroga

Recommendation: Review and approve quarterly financial report

5. WASH PLAN SPRING 2022 MONITORING UPDATE

Presenter: Milan Mitrovich

Recommendation: Receive update on Wash Plan monitoring program.

6. WASH PLAN SAN BERNARDINO KANGAROO RAT 2022 MONITORING.....p. 11
PROGRAM PROFESSIONAL SERVICES AGREEMENT

Presenter: Milan Mitrovich

Recommendation: Review and approve a Professional Services Agreement with Origin Biological for an amount not to exceed \$35,590 as shown in the attachments.

7. COMMUNITY MITIGATION UPDATES

Presenter: Betsy Miller

Recommendation: Receive update on Community Mitigation projects

8. DR HORTON TRESPASS UPDATE

Presenter: Betsy Miller

Recommendation: Receive update on DR Horton trespass remediation.

9. GRANT STATUS UPDATE

Presenter: Betsy Miller

Recommendation: Receive update on grant opportunities.

10. ADJOURN MEETING

The next regular scheduled Board of Directors Meeting will be on Wednesday, October 19, 2022 at 2:00 p.m., at 1630 W. Redlands Blvd., Redlands, CA.

**MINUTES FOR MEETING OF BOARD OF DIRECTORS
OF
SAN BERNARDINO VALLEY CONSERVATION TRUST,**
a California Nonprofit Public Benefit Corporation

Wednesday, April 20, 2022 – 2:00 pm

CALL TO ORDER –2:10 p.m. (Via teleconference and Zoom)

ROLL CALL

David E. Raley, SBV Water Conservation District (District)
John Longville, SBV Water Conservation District (Arrival, approx. 2:30 pm)
T. Milford Harrison, SBV Municipal Water District
Jim Earsom, IE Resource Conservation District (IERCD)

Betsy Miller, SBV Water Conservation District
Angie Quiroga, SBV Water Conservation District
Milan Mitrovich, SBV Water Conservation District
Bob Stewart, SBV Water Conservation District
Joanna Gibson, SBV Municipal Water District

1. PUBLIC PARTICIPATION -None
2. APPROVAL OF MINUTES FROM JANUARY 05, 2022

Action: Motion was made by Director Harrison and seconded by President Raley to approve the meeting minutes from January 05, 2022. The motion carried 2-0 with Vice President Longville noted absent from the vote and Director Earsom abstaining as he was not yet a Director at that time.

President Raley: Yes
Vice President Longville: Absent
Director Harrison: Yes
Director Earsom: Abstained

3. FINANCIAL STATUS UPDATE

Angie Quiroga provided the financial status update. She directed Board members to package page 8 noting the Jan-Mar 2021 liabilities were reduced due to both the reimbursement payment received from Robertson’s for their share of state permitting fees and an adjustment made for fees charged associated with the land exchange. The District will assume responsibility for the land exchange fees this fiscal year for legal services from Brownstein Hyatt and an appraisal fee from Resource Technology. District staff has reviewed and will review in further detail the liabilities due to the District from the Trust to confirm who the responsibility falls upon. Ms. Quiroga noted City of Redlands has since reimbursed their \$70,099.25 state permitting fees shown included in the District liability. On package page 9,

little activity has occurred in this past period with our mitigation agreements. A small amount will be reimbursed to the District primarily for District staff time.

President Raley inquired if staff is still comfortable with the 70% equity/30% fixed investment strategy. Ms. Miller stated at this time we continue to believe that is the appropriate investment. PFM Asset Management does send monthly reports. Daniel Cozad has introduced her to our investment advisors and she will begin having meetings with them in the next couple of months. President Raley requested reviewing our investment portfolio at the next meeting to be sure this is still the best allocation. This item was received and filed.

4. WASH PLAN SBKR MONITORING UPDATE

Milan Mitrovich provided the SBKR monitoring update stating consistent with the requirements of the Wash Plan HCP, the District retained US Geological Services (USGS) in 2021 to develop a scientifically valid and cost-effective monitoring program for SBKR in the Wash Plan preserve. USGS completed analysis of first year trapping data collected this last fall and are working on a draft report now. Joanna Gibson stated this work will be very helpful as this sampling methodology can be expanded outside the Wash Plan area. This monitoring protocol can be used to include the Lytle Cajon population of SBKR as well. Mr. Mitrovich concurred there are a lot of opportunities, and the intent was to share this protocol with other agencies and stakeholders to be able to expand it across the wash to other geographies with SBKR. In completing the analysis, we now have our first estimates of density or abundance of SBKR across the Wash Plan preserve. Total estimated SBKR in the 1500 acre preserve, with confidence, ranges from 2300 to upwards of 3300. These numbers will be improved with time and help us determine what to consider as we move forward. Mr. Mitrovich shared field work trapping photos as he explained the second component of field work which started this week. This is where they go back in the spring and do habitat assessments at the 100 locations SBKR were previously found. Soil samples, vegetation, and vegetation coverage are analyzed and folded into the analysis. Ms. Miller added this information is very valuable because it will tell us where we need to do restoration moving forward. A map of SBKR plot locations was displayed.

On April 7th we had a regional coordination meeting to report on where we are with this report, where we are with the analyses and to discuss our monitoring approach and early results. Those in attendance were the USGS, USFWSCDFW, Valley District, San Bernardino Flood Control, BLM, San Diego Zoo, Western/Riverside HCP and the Cone Creek Conservation Bank. Of the 31 invited, all 31 came which shows the interest in management and conservation of the species. The information was well received. Mr. Mitrovich further discussed some of the trapping results. He stated 15,000 trap checks were made in 27 days. Two nights and two days of setting traps. 178 unique individuals identified. 96% of occupied plots were high quality habitat. 53% of plots in total were occupied. There is a lot going on with SBKR and a lot of interest with the partners. President Raley inquired if the regulators are happy. Mr. Mitrovich stated they are excited about the good work we are doing and were pleased with what we were able to report out. Discussion ensued. This item was received and filed.

5. WASH PLAN IMPLEMENTATION CONTRACTS UPDATE

Mr. Mitrovich stated we are about to start our second year of gnatcatcher monitoring working with biologist Mike Romich. He is initiating his first round of surveying this week. He will continue surveying, like last year, a week of surveys through April, May, and June. We will be

going back to areas that we had gnatcatchers last year. Last year we had breeding and we will look to confirm that again. The USFWS is very interested to hear we had gnatcatchers breeding in the Wash. The slender-horned spinyflower restoration program kicked off in March with our consultant team from Dudek and followed up with a field meeting April 6th. We have been exploring populations and colonies there and getting a sense of what is most important to get done this year with a dry, January, February, and March. We are looking to see what we can do this year and what we can push into next year based on the flexibility that is in our contract. Monitoring of our historic populations will be initiated mid-May and then looking at different aspects of what we can do in terms of soils, environmental variables, etc. Largely pushing wash wide surveys into next year. Our vegetation classification and mapping of the wash is being done by AECOM. Flights are scheduled to begin in a week or two for capturing aerial imagery of the preserve at about a 6-inch resolution which will complement field surveys in early May for mapping efforts. This work is to be completed by Fall of this year.

Ms. Miller provided the draft Year 3 Wash Plan Implementation budget reviewing each line item. Item 1: The conservation of 200 acres of land is our jumpstart requirement. Specific areas were selected to record this easement. There is approval from USFWS to hold recordation of the easement until we receive our 2081 permit from CDFW under the California Endangered Species Act. It is in the best interest of the Wash Plan participants to wait for the 2081 permit in order to use these 200 acres as mitigation for both the Wash Plan and the CDFW permits. Hoping to receive our 2081 permit this fiscal year. in order to move forward with this requirement. Item 2: \$8,000 of funds are set aside for cleanup, trash removal, fencing, etc. For the most part our property is in good shape, but we have a place holder there in case it is needed. Item 3: Invasive grass treatments on 20 acres, where spinyflower was found, has been a requirement since the first year. IERCDC has completed that work the first two years and will complete it again this year under our MOU. Item 4: Much of the work of monitoring slender-horned spinyflower will happen this year primarily setup. Implementation will take place next year and will cost less. Item 5 and 6: Monitoring of gnatcatcher will continue and year 2 of SBKR monitoring. There is a cost associated of about \$40,000 to hire a consultant who has their permit to capture SBKR, some staff costs and USGS fees. Mr. Mitrovich will go over the draft contract with USGS in the next item. USGS prepared the protocol and there will be some costs in the early years as they do first round of some of this data analysis. Also, we are partnering with USGS to get Mr. Mitrovich trained on new techniques for percent area occupied (PAO) modeling, in which he has previous experience, in order to do this work in house in the future. Item 7: The resource management plan for the Wash Plan preserve will be done in house as Ms. Miller has extensive experience in this area and a refined template for staff to use. A draft is anticipated by early July. Item 8: The slender-horned spinyflower restoration program which Mr. Mitrovich previously reviewed in detail. Due to limited rainfall, the key aspect of this program, a preserve wide survey, was pushed to next year. Item 9: Data management for our annual report. Mr. Mitrovich has some good examples so we will be utilizing those. Item 10: Vegetation classification. Majority of work will be done this year and finishing up next year. Item 11: Placeholder for cactus wren monitoring. There was a grant opportunity missed but it is our understanding that grant or another funding source will be available in the future we are looking to seek. Lastly, because Cemex and Robertson's still have not paid their full endowment amounts, we potentially need a loan from the District up to \$265k. Once we receive our 2081 permits, anticipated to be received in the next couple of months, we expect the endowments to be paid by the mining companies. This potential loan would allow us to collect biological data in the event we have an appropriate rainfall year. Discussion ensued. This item was received and filed.

6. USGS CONTRACT FOR FY 22/23-SBKR MONITORING DATA ANALYSIS

Ms. Miller explained the USGS contract to be presented by Mr. Mitrovich is a draft in which the Board can decide to take action on today or wait for presentation of the finalized contract in July. Mr. Mitrovich discussed and provided an overview of the contract. He explained it is a draft technical assistance agreement for FY 2022/2023. It is an extension of the work USGS has been doing to assist the District in setting up the SBKR monitoring program and protocol. He reviewed the Statement of Work explaining each task. Task 1: Advancing SBKR monitoring protocol is a further refinement of PAO methodology for areas of the Wash Plan preserve. The protocol includes a monitoring component focused on long-term valuation of the Plunge Creek Conservation Project and supports data comparison with nearby monitoring programs. It is a protocol that can be expanded and is being worked on by a team that has been doing this type of work for many years for other species. Being able to take that knowledge and apply it to SBKR has been fantastic. Task 2: Present results of second year data analysis to partners and stakeholders including Wildlife agencies. We will get folks back together to review site covariance which includes vegetation, soils, and habitat conditions. Task 3: Participate in meetings and coordination with District staff. Task 4 is the analysis itself. Analyzing SBKR monitoring and habitat covariate data allows us to get estimates of abundance/density. Using both single year and multiyear data (2021 and 2022) allows us to begin to assess rates of colonization and extinction and we can estimate dynamics of this species. Task 5: Producing area occupied and abundance trend metrics which is essentially building upon the estimates reported on. Task 6: Determining preferred analyses moving forward and transfer of statistical code to the District in support of performing future analyses on an annual basis. USGS will be in a critical partnership with us during our development and can provide us with a great foundation. Task 7 is the collaboration with the District in the writing of the report detailing the results, findings, and recommendations. Chance to look at two years of data and report findings to the resource agencies. Task 8: Investigate opportunities to map SBKR density by vegetation type using new vegetation map of the Wash Preserve. This is due to be completed in the fall of 2022 by AECOM. This is an ongoing project under Wash Plan implementation. We will look for ways to integrate the two tools to determine SBKR over a larger area. Funding is estimated at \$60,000 complemented by in-kind services provided from both the District and USGS. Ms. Miller noted the funding will come from the Wash Plan Endowment and the contract will be presented to the District's Board as well. Jim Earsom moved for approval, Longville seconded. All present voted in the affirmative to accept the contract. Betsy said it will be taken to the District's board as well.

Action: Motion was made by Director Earsom and seconded by Director Longville to authorize and direct Betsy Miller to enter into a contract with USGS for SBKR monitoring data analyses upon receipt of an acceptable scope of work and timeline. The motion carried 4-0 with all Board members present voting in the affirmative.

President Raley: Yes

Vice President Longville: Yes

Director Harrison: Yes

Director Earsom: Yes

7. COMMUNITY MITIGATION UPDATES

Ms Miller briefly reviewed package page 9. She reminded the Board there are three projects in which the Trust holds mitigation balances. She stated there has been no movement over the last quarter for either the S-P Deerfield or Highland-Fifth projects. SBCTA's project has mitigation requirements that are fairly complex. A flow chart of tasks was presented. A conservation easement was submitted to CDFW for approval. Revisions were requested which have been updated and sent back. Once the conservation easement is approved, a fair amount of movement and additional work on the project will take place. We have submitted a preliminary title report, initial hazmat survey and proposed lands for acquisition form but they have not yet been approved. We should get approval on the conservation easement and the other submitted items at the same time. If approved, more charges will go against their balance. This item was received and filed.

8. COORDINATION WITH THE NATIONAL HABITAT CONSERVATION PLANNING COALITION

Ms. Miller stated this is an item that came to us in just the last couple of weeks. Both Ms. Miller and Valley District's General Manager Heather Dyer serve on the Board of the National Habitat Conservation Planning Coalition (Coalition). The Coalition is in the process of obtaining their non-profit status and are seeking a current non-profit organization to accept sponsorship dollars, for a conference they intend to have this fall, until they achieve their non-profit status. Ms. Miller explained if the Board is interested in assisting the Coalition, the Trust would accept donations on their behalf and then release those donations back to them once their non-profit approval is received. She advised there would be very limited costs for us to deposit these checks and writing a check back. Director Harrison voiced his support. He stated he is on the government relations committee for this organization and is directly involved with it. He stated this organization is doing great things and is growing by leaps and bounds. They are working closely with various elected officials and a number of agencies in Washington, DC relative to funding for habitat conservation and are seeing some success.

Action: Motion was made by Vice President Longville and seconded by Director Harrison to authorize and direct Betsy Miller to enter into an agreement to temporarily accept and hold donations to/for the National Habitat Conservation Planning Coalition. The motion carried 4-0 with all Board members present voting in the affirmative.

President Raley: Yes
Vice President Longville: Yes
Director Harrison: Yes
Director Earsom: Yes

9. DR HORTON TREPASS REMEDIATION AND GREENSPOT ROAD LAND OPTIONS

Ms. Miller stated we have continued following up with DR Horton. They have received our comments but we have not heard back from them yet. There is no additional information at this time on the Greenspot Road land options as staff has been busy with more pressing items. Director Harrison asked if we are moving toward an agreement with DR Horton or a potential lawsuit. Ms. Miller stated she is assuming we will come to an agreement but they have been very slow to respond which is bringing some concern. Legal counsel has been involved with the situation and we hope to resolve the issue without legal action. Director Harrison suggested

a closed session on this item with legal counsel. President Raley concurred and suggested a closed session item at the next meeting if progress has not been made. This item was received and filed.

10. ADJOURN MEETING – 3:10 pm.

Action: A motion was made by Vice President Longville and seconded by Director Harrison to adjourn the meeting. The next regular Board of Director’s meeting will be held on Wednesday, July 20, 2022, at 2:00 pm at 1630 W. Redlands Blvd., Redlands, CA or via teleconference and Zoom. The motion carried 4-0 with all Directors present voting in the affirmative.

President Raley: Yes
Vice President Longville: Yes
Director Harrison: Yes
Director Earsom: Yes

Betsy Miller
Secretary/CFO

San Bernardino Valley Conservation Trust

Unaudited Financial Status as of June 30, 2022

Cash Status-California Credit Union		As of 07/1/21	As of 06/30/2022
	7/1/2021 Beginning Balance	889,071.81	
Revenue:	7/14/2021 S-P Deerfield Mitigation deposit		10,260.06
	7/14/2021 SBCTA Mitigation deposit		58,250.00
	8/10/2021 CEMEX payment in error		65,511.00
	8/10/2021 Independent Contributions		125.00
	9/30/2021 Interest Earned (Jul-Sept)		121.57
	12/31/2021 Interest Earned (Oct-Dec)		14.43
	3/22/2022 Reimbursement for SI-100 Filing Fee		20.00
	3/31/2022 Interest Earned (Jan-Mar)		-
	4/27/2022 Independent Contributions for SBVCT 90th Anniv		1,000.00
	5/3/2022 ACWA Excellence Donation Award 2022		5,000.00
	6/17/2022 Independent Contributions for SBVCT 90th Anniv		1,100.00
	6/28/2022 NHCPC Donation deposit		500.00
Total Revenue:			141,902.06
Expenses:	8/13/2021 CEMEX Reimbursement Payment		(65,511.00)
	8/31/2021 RAMS Inv 66672-FY 20/21 Audit Progress payment		(2,250.00)
	9/30/2021 RAMS Inv 66926-FY 20/21 Audit Progress payment		(905.00)
	10/29/2021 SBVWCD-Earned Mitigation Credits thru 09/30/21		(25,986.67)
	11/19/2021 Registry of Charitable Trusts-Annual Fee		(75.00)
	11/30/2021 RAMS Inv 67519-Form 990 filing		(375.00)
	12/15/2021 Secretary of State-SI-100 Filing Fee		(20.00)
	1/26/2022 RAMS Inv 67756		(150.00)
	2/28/2022 SBVWCD-Earned Mitigation Credits thru 12/31/21		(4,025.02)
	3/9/2022 Alliance Member Services-Insurance		(1,351.00)
	6/30/2022 Daniel Cozad-SBVCT 90th Anniv Celebration		(751.19)
	6/30/2022 ThunderWheel Communications-SBVCT 90th Anniv		(998.72)
	6/30/2022 SBVWCD-Earned Mitigation Credits thru 06/30/22		(14,586.12)
Total Expenses:			(116,984.72)
	ENDING BALANCE		913,989.15
Investments-US Bank		As of 07/1/21	As of 09/30/21
	7/1/2021 Beginning Balance	3,438,512.65	
Revenue:	9/30/2021 Accrued Income, Interest, Dividends (Jul-Sept)		5,197.31
	9/30/2021 Unrealized Gain/Loss (Jul-Sept)		(52,363.81)
	9/30/2021 Realized Gain/Loss (Jul-Sept)		39,336.35
	12/31/2021 Accrued Income, Interest, Dividends (Oct-Dec)		33,387.99
	12/31/2021 Unrealized Gain/Loss (Oct-Dec)		(117,924.39)
	12/31/2021 Realized Gain/Loss (Oct-Dec)		263,457.12
	3/31/2022 Accrued Income, Interest, Dividends (Jan-Mar)		7,656.04
	3/31/2022 Unrealized Gain/Loss (Jan-Mar)		(237,490.86)
	3/31/2022 Realized Gain/Loss (Jan-Mar)		271.65
	6/30/2022 Accrued Income, Interest, Dividends (Apr-Jun)		10,058.55
	6/30/2022 Unrealized Gain/Loss (Apr-Jun)		(425,415.00)
	6/30/2022 Realized Gain/Loss (Apr-Jun)		(4,884.13)
Total Revenue:			(478,713.18)
Expenses:	7/31/2021 US Bank Administrative Trust Fees		(875.00)
	9/20/2021 PFM Advisory & Management Fees(May-Jun)		(2,802.72)
	10/31/2021 US Bank Administrative Trust Fees		(875.00)
	12/31/2021 PFM Advisory & Management Fees(Aug-Oct)		(2,799.82)
	1/26/2022 US Bank Administrative Trust Fees		(875.00)
	3/15/2022 PFM Advisory & Management Fees(Nov-Jan)		(2,750.88)
	4/30/2022 US Bank Administrative Trust Fees		(875.00)
	6/30/2022 PFM Advisory & Management Fees(Feb-Apr)		(2,554.51)
Total Expenses:			(14,407.93)
	ENDING BALANCE		2,945,391.54
Accounts Receivable			
	Cemex/Robertson's-Wash Plan MOU		7,843,563.00
	BALANCE		7,843,563.00
Liabilities			
	Balance at 06/30/21	1,941,550.48	
	Jul-Sept 2021	158,062.33	
	Oct-Dec 2021	99,075.34	
	Jan-Mar 2022	(65,102.52)	
	Apr-Jun 2022	40,522.54	
	Due to SBVWCD-Wash Plan (includes \$70,589.22 State Permitting fees)		2,174,108.17
	Due to SBVWCD-Earned Mitigation Credits		-
	Unearned Mitigation Credit Balance (see back)		214,451.33
	NHCPC Sponsorship Deposit Account		500.00
	BALANCE		2,389,059.50

Deposit Agreements	Date	Project	Deposits	Staff Time Expenses	Biologist Fees	Legal Fees	Mitigation Credit Balance
1. S-P Deerfield	2/28/2018	Blossom Trails	\$ 36,763.59	\$ 30,800.91	\$ 3,131.20	\$ 1,650.00	\$ 1,181.48
2. Highland-Fifth Orange Partners	10/17/2018	Woodbridge	\$ 10,000.00	\$ 4,759.77	\$ -	\$ 400.00	\$ 4,840.23
3. SB County Transportation Authority	3/17/2020	SR 210 Lane Addition	\$ 435,255.03	\$ 50,815.23	\$144,231.09	\$31,779.09	\$ 208,429.62
Total			\$ 482,018.62	\$ 86,375.91	\$147,362.29	\$33,829.09	\$ 214,451.33
		Reimbursement Due to SBVWCD		\$ -			

**PROFESSIONAL SERVICES AGREEMENT
FOR EXPERT CONSULTANT SERVICES
FOR SAN BERNARDINO KANGAROO RAT
2022 MONITORING PROGRAM**

THIS CONTRACT SERVICES AGREEMENT FOR EXPERT CONSULTANT SERVICES FOR SAN BERNARDINO KANGAROO RAT 2022 MONITORING PROGRAM (“Agreement”) is entered into by and between the **SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT**, a special district (“District”), and **ORIGIN BIOLOGICAL**, a California Corporation (“Consultant”), is effective upon signature by District and Consultant.

NOW THEREFORE, the parties hereto agree as follows:

1.0 SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all of the terms and conditions of this Agreement, the Consultant shall provide and assist the District with biological, technical, and other professional support to coordinate efforts to study, formulate, and implement the San Bernardino Kangaroo Rat 2022 Monitoring Program (“Program”), as part of the District’s ongoing efforts to implement the Upper Santa Ana River Wash Habitat Conservation Program, (“HCP”), and to secure and comply with permits from both federal and state resource agencies in connection with same. Consultant shall perform all work according to the contract scope of work, budget, and schedule; shown as Attachments A, B, and C to this Agreement. Consultant warrants that all work and services will be performed in a competent, professional, and satisfactory manner, consistent with no less than the level of skill and care ordinarily exercised by professionals in Consultant’s field within the industry.

1.2 Authorization to Begin and Schedule of Performance. Consultant's term to begin work or services, shall initiate upon receipt of a Notice to Proceed by District. Further, no work or services other than that described in the Scope of Work shall be initiated by the Consultant without express authorization of the District, and documented as a Change Order to this Agreement. Consultant shall complete the Tasks specified in the Scope of Work in the time frames indicated in Attachment C, the Schedule of Performance.

1.3 Compliance With Law. All work and services rendered hereunder shall be provided in accordance with applicable ordinances, resolutions, statutes, rules, and regulations of the District and any Federal, State, or local governmental agency of competent jurisdiction, and to a standard of care and professionalism consistent with no less than the level of skill and care ordinarily exercised by professionals in Consultant’s field performing biological consulting work such as covered by this Agreement.

1.4 Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by this Agreement.

2.0 COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, the Consultant shall be paid pursuant to the pricing specified in the Fee Schedule specified in Attachment B, for completion of each Task specified in the Scope of Work. Consultant shall invoice for work done to accomplish such tasks monthly, at the “Billable Rate” specified for Team Members performing the work, as set forth in Attachment B. Total compensation for each Task specified in the Scope of Work shall not exceed the “Total Fee” specified for such Task in Attachment B, without prior written approval of the District. In no event shall the amount paid to Consultant for all work under this Agreement exceed Thirty-Five Thousand Five Hundred Ninety Dollars (\$35,590.00).

2.2 Method of Payment. Provided that Consultant is not in default under the terms of the Agreement, the Consultant shall be paid upon receipt of a detailed record of services performed and time spent. Prior to payment of the final invoice, all work authorized by the District shall be completed. No later than the 15th of each month Consultant shall furnish to District an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges with reference to the Tasks specified in the Scope of Work, specifying the work performed, the person or Team Member performing the work, and a detailed description of the services performed. District shall independently review each invoice submitted by the Consultant to determine whether the work performed, and expenses incurred, are in compliance with the provisions of this Agreement. If no charges or expenses are disputed, District will use its best efforts to cause Consultant to be paid within thirty (30) days of receipt of Consultant’s invoice. Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant, nor to constitute any waiver of any type of relief or remedy, legal or equitable, arising out of any breach or nonperformance of any aspect of the Agreement by Consultant.

3.0 COORDINATION OF WORK

3.1 Representative of Consultant. Mikael Romich is hereby designated as the principal representative of the Consultant, authorized to act in its behalf with respect to the work and services specified herein and to make all decisions in connection therewith. Any substitution of the designated representative must be approved in advance and in writing by the District.

3.2 Contract Officer. The General Manager, Betsy Miller, is hereby designated as the representative of the District, authorized to act in its behalf with respect to the work and services specified herein and make all decisions in connection therewith (“Contract Officer”). The District designates Milan Mitrovich as Project Manager, who is authorized to direct work of the Consultant.

3.3 Prohibition Against Subcontracting or Assignment. Consultant shall not contract with any entity to perform in whole or in part the work and services required of Consultant herein without the prior express written approval of the District. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of the District. Any such prohibited assignment or transfer shall be void.

3.4 Independent Consultant. Consultant shall perform all work and services

required herein as an independent contractor of the District, and shall remain under only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of the District.

4.0 INSURANCE AND INDEMNIFICATION

4.1 Insurance. The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to District, during the entire term of this Agreement including any extension thereof, the following policies of insurance:

4.1-01 Workers’ Compensation Insurance. By signature hereunder, Consultant certifies that Consultant is aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and Consultant will Agreement.

4.1-02 Workers’ Compensation and Employer’s Liability Insurance. Consultant and all sub-consultants shall cover or insure under the applicable laws relating to workers’ compensation insurance, all of their employees employed directly by them or through sub-consultants in carrying out the work contemplated under this Agreement, all in accordance with the Workers’ Compensation and Insurance Act, Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Consultant shall provide employer’s liability insurance in the amount of, at least, \$1,000,000 per accident for bodily injury and disease.

4.1-03 Liability Insurance. The Consultant shall provide and maintain at all times during the performance of this Agreement, the following commercial general liability insurance:

4.1-03.01 Coverage. Coverage shall be at least as broad as the following:

Commercial General Liability. Commercial General Liability coverage (Occurrence Form CG 0001) in the amount of one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2501 or insurer’s equivalent endorsement provided to the District) or the general aggregate limit shall be twice the required occurrence limit.

Professional Liability. Professional Liability appropriate to the Consultant’s profession covering Consultant’s wrongful acts, negligent actions, errors or omissions in the amount of one million dollars (\$1,000,000) per claim and annual aggregate.

4.1-03.02 Required Provisions. The policies specified in Section 4.1-03.01 are to state or be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days (10 days for nonpayment of premium) prior written notice by U.S. mail has been given to the District.

4.1-03.03 Required Format. All of the liability insurance shall be provided on

policy forms satisfactory to the District. All insurance correspondence, notations, certificates, or other documents from the insurance carrier or agent/broker shall each separately reference the District project number.

4.1-03.04 Deductibles and Self-Insured Retention. Any deductible or self-insurance retention must be declared to and approved by the District. At the option of the District, the insurer shall reduce or eliminate such deductibles or self-insured retention.

4.1-03.05 Acceptability of Insurers. Insurance is to be placed with insurers having a current A.M. Best's rating of no less than A-:VII or equivalent or as otherwise approved by the District.

4.1-03.06 Evidences and Cancellation of Insurance. Prior to execution of this Agreement, the Consultants shall file with the District evidence of insurance satisfactory to the District. The insurer will give by U.S. mail written notice to the District at least thirty (30) days prior to the effective date of any cancellation, except for nonpayment of premium for which ten (10) days prior written notice will be given. The Consultant shall, upon demand of the District, deliver to the District all such policy or policies of insurance and the receipts for payment of premiums thereon.

4.1-03.07 Errors and Omissions/Professional Negligence. Consultant shall procure and maintain errors and omissions insurance, or professional liability insurance, at all times this Agreement is in effect, covering the services to be provided hereunder in the amount of one million dollars per claim and annual aggregate.

4.1-03.08 Sub-Consultants. In the event that the Consultant employs other consultants as part of the services covered by this Agreement, consistent with Section 3.3 above, it shall be the Consultant's responsibility to confirm that each sub-consultant meets the minimum insurance requirements specified above.

4.2 Indemnification. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless and defend the District, its directors, officers, employees or designated volunteers, and each of them from and against:

4.2-01 Any and all claims, demands, causes of action, damages, costs, expenses, losses, or liabilities, in law or in equity, of every kind of nature whatsoever for, but not limited to, injury to or death of any person including District and/or Consultant, or any directors, officers, employees or designated volunteers of District or Consultant, and damages to or destruction of property of any person, including but not limited to, District and/or Consultant and their directors, officers, employees or designated volunteers, arising out of or in any manner directly or indirectly connected with the work to be performed under this Agreement, due to the Consultant's negligent acts, errors, or omissions committed or alleged to have been committed, except in those cases where the District is liable.

4.2-02 Any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind of nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Consultant, except in those cases where the District is liable.

4.2-03 Consultant shall defend, at its own cost, expense and risk, with Counsel of District's choice, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against District or District's directors, officers, employees or designated volunteers. Notwithstanding the foregoing, with respect to any professional liability claim or lawsuit, this indemnity does not include providing the primary defense of District, provided, however, Consultant shall be responsible for District's defense costs to the extent such costs are incurred as a result of Consultant's negligence, recklessness or willful misconduct.

4.2-04 Consultant shall pay and satisfy any judgment, award or decree that may be rendered against District or its directors, officers, employees or designated volunteers, in any and all such aforesaid suits, actions or other legal proceeding.

4.2-05 Consultant shall reimburse District and its directors, officers, employees or designated volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

4.2-06 Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the District, or its directors, officers, employees or designated volunteers.

4.3 Laws, Regulations and Permits. The Consultant shall give all notices required by law and comply with all laws, ordinances, rules, and regulations pertaining to the conduct of the work. The Consultant shall be liable for all violations of the law in connection with work furnished by the Consultant.

4.4 Safety. The Consultant shall execute and maintain Consultant's work so as to avoid injury or damage to any person or property. In carrying out the work, the Consultant shall at all times, exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed, and be in compliance with all federal, state and local statutory and regulatory requirements including State of California, Division of Industrial Safety (Cal/OSHA) regulations, and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act (as applicable).

5.0 TERM OF AGREEMENT

5.1 Term. This Agreement shall be effective from date of signature of both parties and shall continue in full force and effect until completion and approval of the work and services described hereunder, unless extended by mutual consent, or until otherwise terminated under Section 6.11 below.

6.0 MISCELLANEOUS

6.1 Covenant Against Discrimination. The Consultant covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance

of this Agreement.

6.2 Non-liability of District Officers and Employees. No officer or employee of the District shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the District or for any amount that may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

6.3 Conflict of Interest. No officer or employee of the District shall have any financial interest, direct or indirect, in this Agreement, nor shall any such officer or employee participate in any decision relating to the Agreement which affects his or her financial interest or the financial interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

6.4 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the District, to the General Manager and to the attention of the Contract Officer, San Bernardino Valley Water Conservation District, 1630 W. Redlands Boulevard, Suite A, Redlands, CA 92373-0581, and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement.

6.5 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement.

6.6 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time only by the mutual consent of the parties and only by an instrument in writing.

6.7 Severability. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or inability to enforce shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

6.8 Waiver. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

6.9 Attorney's Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

6.10 Ownership of Work. All work performed and all work product generated by the Consultant hereunder shall be the exclusive property of the District. The Consultant shall provide to the District all notes, maps, graphs, worksheets, reports, computer databases and programs, or any other analysis or analytical tools created or produced by the Consultant in connection with its work performed hereunder ("work"), no later than the time of the completion of the Consultant's work or earlier termination of this Agreement under Section 6.11 below. The Consultant shall not disclose or utilize its work under this Contract in any other assignment or for any other purpose, or otherwise disclose or utilize such work, without the prior written consent of the District, which consent shall not be unreasonably withheld.

6.11 Termination. This Agreement may be terminated by either party giving 30 days' notice in writing to the other party and sent by registered mail to the principal place of business that such notice is addressed. The right, duties, and responsibilities of the Consultant shall continue in full force during the period of this 30-day notice, unless otherwise directed by District. After the expiration of the 30-day interval following notice, no rights or liabilities shall arise out of this relationship, except that the indemnification provisions of Section 4.2 above shall survive termination, and any task undertaken by Consultant on written District authorization, and still uncompleted at the expiration of the notice period, shall be carried to completion by Consultant and paid for by District at rates provided hereunder, unless mutually agreed in writing to the contrary, in accordance with the provisions herein.

6.12 Mediation. In the event of disagreement as to termination procedures, the Consultant and District shall meet and confer in an attempt to resolve the issue. If the meet and confer process fails to resolve any controversy or claim arising out of or related to work performed under this Agreement, within 10 business days after written notice by one party to the other identifying the nature of the dispute and requesting a meet and confer conference, such claim or controversy shall be submitted to non-binding mediation unless the parties mutually agree otherwise. The submission to non-binding mediation shall be upon such terms, conditions, and procedures as the parties might mutually agree, and shall not preclude the initiation or exercise of any other remedy, legal, equitable, or otherwise, available to any party. The mediation proceedings shall take place in San Bernardino County, California.

6.13 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement and by signature below:

CONSULTANT

ORIGIN BIOLOGICAL

By: _____

Date: _____

SAN BERNARDINO VALLEY
WATER CONSERVATION DISTRICT

By: _____
Betsy Miller, General Manager

Date: _____

ATTACHMENT A

SCOPE OF WORK

PROJECT TASKS

Task 1. Meetings and Coordination

This scope includes pre-field work tasks necessary to implement the San Bernardino kangaroo rat (SBKR) monitoring protocol for 2022 (year 2) *, such as a kick-off meeting and coordination with the Conservation District and USGS.

Task 2. SBKR Trapping

This task includes trapping at 100 grids (each 5x5 [25 traps] at 10-meter spacing) for 2-nights per the monitoring protocol. It is assumed that 7-8 grids can be trapped in one session (13 sessions total) and each session would require 25 hours of field time (up to 2 biologists) plus mileage. Note, the trapping protocol is consistent with the protocol implemented by Origin Biological in 2021.

Trapping is planned to be conducted during the late summer and fall months (September - November). Fall months have the highest capture probabilities for closely related Stephens' kangaroo rat due to low availability of food resources. By trapping in the fall, there is the expectation biologists will be sampling the more stable adult population, although young SBKR can be present. Because kangaroo rat capture probabilities may decrease during full moon periods, the trapping schedule will take into consideration the timing of new and part moon phases, to the extent possible.

Following approved protocols, all SBKR handling will be conducted by experienced small mammal researcher(s) with a current U.S. Fish and Wildlife permit. All traps will be set in the afternoon using heat inactivated rolled oats and/or millet bird seed mix as bait. Traps will be checked in the evening and morning unless permitted otherwise. Individuals will be assessed for age, sex, and reproductive condition. For further species verification, weight and number of hind toes will be recorded for all kangaroo rats. A small number of dorsal hairs and photograph of one individual identified as SBKR, and one individual identified as Dulzura kangaroo rat (DKR) on all occupied plots may be taken for voucher purposes. If possible, all SBKR and DKR will be permanently marked using ear tags. This will allow for individual capture analysis among years if desired. All other rodents will be recorded to species and temporarily marked with ink to document recaptures within a trapping session.

Task 3. Data Review and Letter Report

It is assumed that an average of two hours will be spent reviewing the data for each trapping session as a quality assurance quality control measure. The data will be used to prepare a letter report that will provide the trapping methods and results. The report will show the locations of SBKR positive and negative grids, as well as locations of individual captured SBKR.

**Brehme, CS, SJ Montgomery, B. Miller, M. Romich, and RN Fisher 2022. San Bernardino*

Merriam's Kangaroo Rat (Dipodomys merriami parvus) Monitoring Protocol for San Bernardino Valley Water Conservation District. DRAFT Report to San Bernardino Valley Water Conservation District. 72p.

ATTACHMENT B
FEE SCHEDULE

		SBKR Biologist	GIS	Labor Hours	Labor @ Billing Rates	DIRECT COSTS	Total
<i>Employee Rate</i>		\$90.00	\$65.00				
Task 1. Coordination and Meetings		8		8	\$720		\$720.00
Task 2. SBKR trapping		325		325	\$29,250	\$1,500	\$30,750.00
Task 3 Environmental Monitoring Program		40	8	48	\$4,120		\$4,120.00
	Total Hours	373	8	381	\$34,090		
	Total Billing	\$33,570	\$520		\$34,090	\$1,500	\$35,590.00

ATTACHMENT C
SCHEDULE OF PERFORMANCE

Task	Start Date¹	Completion Date¹
Task 1: Coordination and Meetings	August 1, 2022	January 31, 2023
Task 2: SBKR Trapping	September 1, 2022 ²	November 30, 2022
Task 3: Data Review and Letter Report	October 1, 2022	January 31, 2023

¹ Assumes notice to proceed is received on or before August 1, 2022.

² Start date is weather dependent.