

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

**Tuesday, February 19, 2019 – 1:30 P.M.**

**Location--1630 West Redlands Boulevard, Suite A, Redlands, California**

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 SEPTEMBER 28, 2018.....3**

***Presenter:*** Daniel Cozad

***Recommendation:*** Review and approve minutes from September 28, 2018, as presented.

**3. FINANCIAL STATUS UPDATE.....8**

***Presenter:*** Daniel Cozad

***Recommendation:*** Receive and file the update.

**4. SBVMWD PARTNERSHIP AGREEMENT UPDATE/PETITION TO EXPAND TRUST BOARD OF DIRECTORS.....10**

***Presenter:*** Daniel Cozad

***Recommendation:*** Review partnership agreement and consider expanding Trust Board of Directors to include one representative selected by Valley District.

5. AMENDMENT TO TRUST BYLAWS.....35

*Presenter: Daniel Cozad*

**Recommendation:** Review and consider whether to increase the number of Board of Directors from three (3) to five (5) per Trust Bylaws and to include one representative selected by Valley District. Review and consider quarterly Board meetings.

6. WASH PLAN PROGRESS UPDATE

*Presenter: Jeff Beehler*

**Recommendation:** Review and consider conservation easement requirements.

7. COMMUNITIY MITIGATION REQUESTS

*Presenter: Daniel Cozad*

**Recommendation:** Receive and file a status update on potential mitigation requests.

ADJOURN MEETING

The next regular scheduled Board of Directors Meeting will be on \_\_\_\_\_, 2019 at \_\_\_\_\_, 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**

**Friday, September 28, 2018 – 2:00 p.m.**

CALL TO ORDER – 2:08 p.m.

ROLL CALL

David E. Raley, SBV Water Conservation District (District)  
Paul Williams, Inland Empire Resource Conservation District  
John Longville, SBV Water Conservation District  
Daniel Cozad, SBV Water Conservation District  
Angie Quiroga, SBV Water Conservation District  
Jeff Beehler, SBV Water Conservation District  
Mandy Parkes, IERCD  
Scott Manno, Rogers, Anderson, Malody & Scott, LLP (RAMS)

1. PUBLIC PARTICIPATION -None
2. APPROVAL OF MINUTES FROM MARCH 15, 2018

President Raley requested a correction be made in the last paragraph of Item 11 to correct his title from Vice President to President.

**Action:** Motion was made by Vice President Williams and seconded by Director Longville to approve the meeting minutes from March 15, 2018, with minor correction requested by President Raley. The motion carried 3-0 with all directors present voting in the affirmative.

Ayes: Raley, Williams, Longville

Noes:

Absent:

Abstain:

3. NO ITEM 3
4. REVIEW DRAFT AUDIT REPORT AND CONSIDER APPROVAL

Scott Manno from RAMS presented the draft Audit Report for Fiscal Year 2017/2018. He stated in the Independent Auditor's Report on package pages 10 & 11 that RAMS had provided the highest level of opinion that an auditor can give on financial statements. He noted the Trust has \$2.7 million in cash and investments and a \$577,004 liability owed to San Bernardino Valley Water Conservation District (District) for funds loaned to complete the Wash Plan. This loan is to be reimbursed upon demand by the District with interest. He

reviewed the cash flows statement and stated the notes describe items on the balance sheet in further detail. No comparisons were provided in this audit since it is the first year's audit.

**It was moved by Director Longville and seconded by Vice President Williams to approve the draft audit report. The motion carried 3-0 with all Directors present voting in the affirmative.**

**Ayes: Raley, Williams, Longville**

**Noes:**

**Absent:**

**Abstain:**

## 5. FINANCIAL STATUS UPDATE

Daniel Cozad reviewed the financial status report on package page 20. He recapped which participants have paid their share of the Wash Plan MOU agreement and whom we are awaiting payment from. He noted the \$20,000 in deposits for mitigation credit come from two developers which have submitted deposit agreements. One developer has a signed deposit agreement with us. He noted some cash is in our California Credit Union account and the majority of funds are invested and held in US Bank which is PFM Asset Management's custodial bank. The asset allocation 70/30 split for the investments has not done as well as expected in the short term. The listed liability due to the District is for the District's loan as previously mentioned and for funds, the Trust has collected from Wash Plan participants for land buy-in costs. This liability balance will become much larger once the aggregate mining companies pay their share. Discussion ensued.

This item was received and filed.

## 6. ENDOWMENT HOLDING REQUEST (NON-WASH PLAN)

Mr. Cozad stated Mandy Parkes and Jeff Beehler have been working on a request for the Trust to hold an endowment on a project that IERCD has been working on. Ms. Parkes explained IERCD also facilitates mitigation and they have been seeing a trend in which home-owner associations (HOA) and other onsite property owners want to increase their control over some responsibilities of perpetuity land maintenance. Four Seasons Beaumont's HOA is taking on some of the lighter maintenance duties to reduce the size of the endowment they have to pay IERCD. Because they have taken on so much, if they fail to complete their required tasks it would impact the mitigation size. So, the regulatory agencies are expecting them to have their own endowment. Four Seasons isn't qualified to hold an endowment, so they need a due diligence entity to hold that endowment for them. Ms. Parkes discussed the pros and cons to the Trust holding this endowment. One pro is the endowment would add bulk to the Trust's investments. A preset cost for administration and management expenses would be clearly documented. She stated Four Seasons does have other options if this is not the direction the Trust wants to go in. If the Trust would like to accept the endowment, the parties would enter into an agreement/MOU in which the HOA would provide a deposit and cover costs such as legal fees. It would clearly outline agreed on payment schedules of the interest from the non-wasting endowment. Per Mr. Beehler, it benefits the HOA because a non-profit can invest at a more aggressive rate which allows the size of the endowment to be substantially smaller. Mr. Cozad reviewed the pros and cons on package page 21. He stated it would lower our cost per investment overall which is a benefit to the Trust. Ms. Parkes stated

there would be no responsibility for the Trust to enforce HOA rules on their members and there would be minimal overhead work. It would strictly be a financial agreement. Discussion ensued.

**It was moved by Director Longville and seconded by Vice President Williams to move into an agreement with Four Seasons Beaumont HOA if both parties can agree, and be brought back to the Board for final approval. The motion carried 3-0 with all Directors present voting in the affirmative.**

**Ayes: Raley, Williams, Longville**

**Noes:**

**Absent:**

**Abstain:**

## 7. SBVMWD AND COMMUNITY MITIGATION REQUESTS

Mr. Cozad directed the Board to package page 23. He stated this item is mostly an update. The Trust has two deposit agreements. One agreement is fully executed with Blossom Trails, a residential development on Greenspot Road in Highland. California Fish & Wildlife Service (FWS) advised Blossom Trails they need about twice as many acres of mitigation than their consultant estimated. The District's Board set the mitigation conservation easement cost at \$130,000. This fee does not include the endowment or maintenance fees. The endowment fee is estimated by staff to be about \$23,000 and a \$5,000 contribution to the Trust per acre as the "broker" in this transaction. FWS has requested the Trust provide mitigation/conservation easement to San Bernardino County Transportation Authority on behalf of the Rail to Redlands project. A small piece of land, 0.15 acres, has been committed but costs have not yet been determined. Several Wash Plan participants, such as City of Redlands and City of Highland for the Orange Street Bike Trail, will need small areas of land for mitigation, so Staff is designating a couple of acres for these needs.

Mr. Cozad explained the new joint resolution to develop a Partnership Agreement between the District and San Bernardino Valley Municipal Water District to provide up to 295 acres of mitigation for SBKR in support of the River HCP. This will take up a majority of the land we have available for mitigation with a large endowment of nearly \$7 million and a contribution to the Trust of approximately \$1.5 million. The District has agreed to request the Conservation Trust add a representative to the Board of Directors representing Valley Municipal. Mr. Cozad believes it is a reasonable request. The Board is in agreement and may add a second seat opening to keep the Board with an odd number of members. The District has committed the funds obtained for this conservation easement will be used for additional recharge or purchase of land. The Partnership Agreement should be completed in November. Mr. Cozad briefly reviewed the other possible mitigation requests provided on the list. Discussion ensued. This item was received and filed.

## 8. CONSERVATION EASEMENT REQUIREMENTS

Mr. Beehler discussed the draft Conservation Easement Deed (Deed) provided on package page 24. He stated Staff anticipates a few agreements are in the near future for some of the projects previously discussed. This Deed is explicitly written for the Wash Plan. Typically conservation lands are set aside and may have a road or utility easement. In terms of the

Wash Plan, these are working lands. Activities are envisioned to occur on these lands forever such as sinking water, having wells, roads, maintenance, and facilities. These activities are built into the Wash Plan as “covered activities,” and specific mitigation has been set aside for these activities. There are some limitations in the deed which acknowledge basins and roads will be used but the habitat values of some of the interstitial areas between the basins won’t be impinged upon. The Wash Plan HCP is more of a patchwork ensemble of mitigation lands. Mr. Beehler discussed the Prohibited Uses on page 4 of the Deed and noted the Deed is explicitly designed for lands set aside as preserve land and the preserve boundaries are laid out pretty clearly. Mr. Beehler explained the Trust would hold the easement so even if the property is sold, the Trust can hold the easement and protect the conservation value in perpetuity. He encouraged the Board to bring forward any questions or concerns prior to finalizing the Deed. This item was received and filed.

## 9. DEPOSIT AGREEMENT REVISION REQUEST

Mr. Cozad stated the Woodbridge project deposit agreement had been previously approved, but there are some requested material changes that the Board needs to review. The other marked minor changes in the agreement have been evaluated by legal counsel. A specific request has been made by the developer’s lawyer on package page 41. In Section g their lawyer is requesting the deposit they make be credited back to them, once they pay for the easement and endowment, for the upfront costs to complete the process. Mr. Cozad stated he is not recommending the Board agrees with this request. The deposit is for offsetting costs incurred by the Trust for developing an agreement. If a requesting party decides to obtain their mitigation somewhere else and does not complete the process with the Trust, the Trust does not lose money. Mr. Cozad suggested increasing the price of the conservation easement if the Board wishes to agree with the request. The Trust would then take on the risk of losing money if a mitigation seeking party does not complete the process. The Board showed opposition and provided direction to Staff to deny this request.

**It was moved by Vice President Williams and seconded by President Raley to deny the Woodbridge Project’s request to have their deposit credited back to them upon completion of the easement and endowment. The motion carried 3-0 with all Directors present voting in the affirmative.**

**Ayes: Raley, Williams, Longville**

**Noes:**

**Absent:**

**Abstain:**

Mr. Cozad had a couple of additional items he wanted to discuss. He reminded the Board Staff obtained Directors and Officers Liability and General Liability insurance in the spring. The District has about 8 miles of trails that it may make available to the public at some point in the future. Mr. Cozad asked the Trust’s insurer how much it would cost to insure these trails. The insurer stated it would cost approximately \$80, but because the Trust, including these trails, is still under the minimum exposure, there would be no additional fee. Mr. Cozad advised the Board he went ahead and added these trails at no cost to the insurance, but if there is any opposition, the District can reimburse \$80 to the Trust. The Board was not opposed.

10. ADJOURN MEETING – 3:00 P.M.

**Action:** Motion was made by Director Longville and seconded by Vice President Williams to adjourn the meeting. The next regular Board of Directors Meeting will be determined at a later date. The motion carried 3-0 with all Directors present voting in the affirmative.

Ayes: Raley, Williams, Longville

Noes:

Absent:

Abstain:

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Daniel B. Cozad  
Secretary/CFO

# San Bernardino Valley Conservation Trust

## Financial Status as of January 31, 2019

### Wash Plan MOU-Exhibit D (Approved July 22, 2016) Expected Income

Covered Party (Participant)	Total			Paid
	Estimated Land and Species Total	Issuance Cost /Land Buy-In	Total	
San Bernardino Valley Water Conservation District	\$ 51,427	\$ 2,616	\$ 54,042	\$ 54,042
East Valley Water District	\$ 49,286	\$ 2,507	\$ 51,792	\$ 51,792
City of Highland	\$ 193,134	\$ 9,823	\$ 202,957	\$ 202,957
Robertson's and Cemex	\$ 7,843,563	\$ 398,940	\$ 8,242,503	\$ -
City of Redlands	\$ 28,063	\$ 1,427	\$ 29,490	\$ 29,490
San Bernardino Valley Municipal Water District	\$ 1,665,027	\$ 709,687	\$ 2,374,714	\$ 2,374,714
<b>Expected Total:</b>	<b>\$ 9,830,500</b>	<b>\$ 1,125,000</b>	<b>\$ 10,995,500</b>	<b>\$ 2,712,995</b>
<b>Current Total Received:</b>	<b>\$ 1,986,935</b>	<b>\$ 726,060</b>	<b>\$ 2,712,995</b>	

Total Independent Contributions	\$ 20.00
Total Deposits For Mitigation Credit	\$ 20,000.00

### California Credit Union Account Balance (Account Opened July 21, 2016)

As of:	Deposits	Interest Earned	Fees	Expenses	Withdrawals /Transfers	Balance
7/31/2018	\$ 10,000.00	\$ 13.71	\$ -	\$ -	\$ -	\$ 332,200.16
8/31/2018	\$ -	\$ 14.11	\$ -	\$ -	\$ -	\$ 332,214.27
9/30/2018	\$ -	\$ 13.65	\$ -	\$ -	\$ -	\$ 332,227.92
10/31/2018	\$ -	\$ 14.11	\$ -	\$ -	\$ -	\$ 332,242.03
11/30/2018	\$ -	\$ 13.65	\$ -	\$ -	\$ -	\$ 332,255.68
12/31/2018	\$ -	\$ 14.11	\$ -	\$ -	\$ -	\$ 332,269.79
1/31/2019	\$ -	\$ 14.11	\$ -	\$ 3,103.47	\$ -	\$ 329,180.43
<b>YTD TOTALS</b>	<b>\$ 10,000.00</b>	<b>\$ 97.45</b>	<b>\$ -</b>	<b>\$ 3,103.47</b>	<b>\$ -</b>	<b>\$ 329,180.43</b>

### US Bank Investments Balance (Account Opened April 25, 2018)

As of:	Deposits	Accrued Income & Interest	Fees	Unrealized Gain/Loss	Realized Gain/Loss	Market Value
7/31/2018	\$ -	\$ 1,370.77	\$ (307.69)	\$ 48,797.67	\$ -	\$ 2,430,696.68
8/31/2018	\$ -	\$ 1,840.23	\$ (794.26)	\$ 26,695.50	\$ -	\$ 2,458,438.15
9/30/2018	\$ -	\$ 1,673.07	\$ (816.96)	\$ 4,638.19	\$ -	\$ 2,463,932.45
10/31/2018	\$ -	\$ 1,619.19	\$ (1,513.38)	\$ (147,805.57)	\$ -	\$ 2,316,232.69
11/30/2018	\$ -	\$ 1,968.43	\$ (660.19)	\$ 32,576.31	\$ -	\$ 2,350,117.24
12/31/2018	\$ -	\$ 1,653.88	\$ (735.85)	\$ (161,188.98)	\$ 1,032.98	\$ 2,190,879.27
1/31/2019	\$ -	\$ 16,005.72	\$ (1,596.90)	\$ 147,145.28	\$ 1,766.62	\$ 2,354,199.99
<b>YTD TOTALS</b>	\$ -	\$ 26,131.29	\$ (6,425.23)	\$ (49,141.60)	\$ 2,799.60	<b>\$2,354,199.99</b>

### Liability to SBVWCD

As of:	Expenses	Balance
7/31/2018	\$ 7,600.49	\$ 584,604.20
8/31/2018	\$ 10,931.37	\$ 595,535.57
9/30/2018	\$ 13,139.76	\$ 608,675.33
10/31/2018	\$ 10,479.75	\$ 619,155.08
11/30/2018	\$ 14,436.21	\$ 633,591.29
12/31/2018	\$ 42,316.89	\$ 675,908.18
1/31/2019	\$ 25,381.60	\$ <b>701,289.78</b>

**PARTNERSHIP AGREEMENT FOR JOINT ACTIVE RECHARGE PROJECT  
DEVELOPMENT UNDER THE UPPER SANTA ANA RIVER HABITAT  
CONSERVATION PLAN**

This PARTNERSHIP AGREEMENT FOR JOINT ACTIVE RECHARGE PROJECT DEVELOPMENT UNDER THE UPPER SANTA ANA RIVER HABITAT CONSERVATION PLAN (“Agreement”) is entered into this 8th day of January, 2019, by and between the SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT (“Conservation District”) and SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT (“Valley District”), in consideration of all of the following:

**RECITALS:**

**WHEREAS**, the Conservation District and Valley District (individually sometimes referred to herein as a “party,” or collectively “parties”) enjoy a strong, recent history of cooperation and pooling of resources toward regional betterment of the availability, quality and flexibility of groundwater supplies and management, including all of the following:

1. Entering into an “Easement and License Agreement” on or about April 2008, whereby the Conservation District and Valley District agreed to cooperate in the sharing of available recharge facilities, and the development of additional facilities and the sharing of maintenance costs in connection with same;
2. Entering into an “Agreement to Develop and Operate Enhanced Recharge Facilities” on or about October 2012, under which Valley District leased facilities of the Conservation District, and the parties delineated responsibilities for the operation and maintenance of existing spreading basins and opportunities for the development, ownership, and operation of new facilities; and
3. Assuming joint lead organizational responsibilities leading to the “San Bernardino Basin Groundwater Council Framework Agreement,” an initiative which formed a multi-agency forum for assessment, planning, and funding for balancing the availability of local native water supplies with imported water supplies, and balancing commitments under prior water adjudications with historical and evolving current groundwater production demands, while striking an equitable balance for prospective funding and planning for long-term groundwater resource sustainability;

**WHEREAS**, the Conservation District has for some time been formulating, sponsoring, coordinating, and serving as lead agency for the Upper Santa Ana River Wash Land Management and Habitat Conservation Plan (“Wash Plan”), under which it has undertaken extensive habitat modeling development, field surveys and verifications, habitat assessments, formulations of habitat management plans and funding estimates for same, and otherwise

conducted negotiations with resource protection agencies, including the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, to establish reasonable and responsible criteria for the balancing of habitat preservation and management needs with the demands for the public benefits resulting from public work projects and other "Covered Activities" under the Wash Plan;

**WHEREAS**, through the efforts of the Wash Plan, the Conservation District, acting in coordination with the resource protection agencies, has developed habitat surveys, habitat assessment tools, and proposed management plans and programs which are anticipated to serve as the basis of a successful approval of the Wash Plan, and implementation of a multi-agency Incidental Take Permit, along with a habitat conservation plan to offset impacts to endangered and threatened species and their critical habitats from covered activities included within the Wash Plan;

**WHEREAS**, Valley District has been a supportive member and investor of the Wash Plan;

**WHEREAS**, Valley District has, in its own right and in conjunction with public agency partners, including the Conservation District, undertaken the Upper Santa Ana River Habitat Conservation Plan ("River HCP"), as part of its mission to expand and improve the region's capacity to divert, store, and recharge water. The governance of the River HCP is still in the process of being negotiated, but its participants presently anticipate a Joint Powers Authority or some similar mechanism. The River HCP's covered activities will include the proposed Active Recharge Projects, which will expand available facilities for increased regional groundwater management, including accommodation of both native water and imported water supplies on a regionally cooperative basis;

**WHEREAS**, the Conservation District as a partner in and member of the River HCP has participated in review of the Active Recharge Projects, especially the Mill Creek Project;

**WHEREAS**, both Valley District and the Conservation District seek to build upon the positive work done in the Wash Plan, and the positive working relationships with resource protection agencies fostered thereby, in advancing the Active Recharge Projects and the River HCP;

**WHEREAS**, Valley District and its River HCP partners have estimated that mitigation requirements for the River HCP, including Active Recharge Projects, may call for substantial amounts of acreage of San Bernardino kangaroo rat or other species habitat to be placed under conservation easements in mitigation of effects from River HCP covered activities;

**WHEREAS**, the Conservation District and Valley District now wish to draw upon their strong and productive recent history of cooperation to combine their resources and expertise in service of the advancement and effectuation of the River HCP and Active Recharge Projects, while at the same time ensuring that the fiscal and other benefits flowing from the necessary

habitat preservation and mitigation components of those efforts redound to the benefit of, and stay within the purview of, local regional water interests, to serve the joint constituencies of the Conservation District and Valley District;

**WHEREAS**, the Conservation District has identified that it owns approximately two hundred ninety five (295) acres of lands it believes constitute suitable San Bernardino kangaroo rat or other species' habitat, which may be appropriate for use in conjunction with the anticipated habitat mitigation requirements expected for the River HCP, including Active Recharge Projects; and

**WHEREAS**, both the Conservation District and Valley District realize that available San Bernardino kangaroo rat and other species' habitat could be purchased from, or sold to, private development or other interests, at varying costs, and by varying purchasing agencies. However, both Conservation District and Valley District believe that coordinating the available habitat owned by one water agency to the use and benefit of another agency, in furtherance of projects which will improve the overall capacity of the region they both serve to preserve, manage, and maximize groundwater supplies, is in their mutual best interest, and more importantly in the best interest of their joint constituencies.

**NOW THEREFORE, IN CONSIDERATION OF ALL OF THE FOREGOING, THE PARTIES DO HEREBY AGREE AS FOLLOWS:**

**I. HABITAT AREA**

The property to which this Agreement pertains consists of the approximately two hundred ninety five (295) acres of property designated as "neutral lands" under the Wash Plan, and area in portions of the Conservation District's Mill Creek spreading grounds, or other areas owned by the District within the designated Critical Habitat of the San Bernardino Kangaroo Rat, or other threatened or endangered species ("Habitat Area"). The Habitat Area is depicted in Exhibit A, hereto. The parties understand that formal legal description will be required for all component properties of the Habitat Area, for the successful recordation of a conservation easement. Consequently, the parties agree to identify the Habitat Area for present purposes by way of general reference and mapping, and agree to meet and confer as may be necessary to share the responsibility and cost of delineating with more precision the areas to be included in the Habitat Area, with the objective being to assure it includes the contemplated two hundred ninety five (295) acres within SBKR or other species' Critical Habitat in all or portions of the following parcels: 016831106, 029705102, 029701107, 029707113, 029707108, 029707103, 029707116, 029707110, 029705106, 029707102, 029705105, 029705101, 016832110, 016832102, 016838102, 016834104, 016834204, 016834209, 016834206, 030213114 or in other lands owned by the District.

## **II. DUE DILIGENCE PERIOD FOR REVIEW AND ASSESSMENT OF HABITAT AREA**

Although significant information on the biological and habitat status of the Habitat Areas have been developed by the Conservation District through the Wash Plan and the Mill Creek Habitat Evaluation, both conducted in cooperation with SBVMWD, the Conservation District makes no warranty, guarantee, or representation that the Habitat Area, or any part of it, is suitable for Valley District's purposes in connection with the habitat requirements of the River HCP. Beginning on the date that this Agreement is signed by both parties, and continuing for a period of one hundred twenty (120) days thereafter, Valley District shall have the right to enter on, though, and over the Habitat Area, and to perform any such surveys, mapping, species observation or trapping, soil sampling, or other reviews and investigations of the Habitat Area as it may, in its discretion, deem necessary or appropriate to determine for its own purposes whether these areas of critical habitat are suitable for potential application as habitat mitigation for covered activities under the River HCP. Valley District shall defend, indemnify, and hold harmless the Conservation District from any claim for injury or damage, whether to persons or to property, arising out of the exercise by Valley District, or any of its consultants, employees, contractors, or assignees, of this right of entry. Both parties acknowledge Conservation District has made available to Valley District existing mapping, GIS files, and habitat surveys or models performed, and Conservation District will provide at no cost other literature reviews or summaries, assessments, or other reports or data within its possession and control which Valley District may reasonably request, in order that Valley District may verify for its own purposes that these areas of the Habitat Area are suitable for River HCP mitigation purposes. After such 120 day period, if Valley District determines that the Habitat Area is not suitable for mitigation purposes for the River HCP, it shall so notify the Conservation District in writing, and this Agreement shall thereupon terminate, with no further obligation of either party to the other. Any such notice must pertain to the entire two hundred ninety five (295) acres of Habitat Area, and Valley District may not opt to accept some but not all of such area, or divide the Habitat Area, though in the event the due diligence investigations indicate the parties' present presumptions regarding the suitability and amenability of the Habitat Area prove to be incorrect, the due diligence period may be extended by mutual written agreement of the parties for their exploration of potential modification of the scope or location of the constituent properties of the Habitat Area. Absent such rejection notice from Valley District to the Conservation District, however, at expiration of the due diligence period (as may be extended), Valley District shall be deemed to have satisfied itself regarding the physical condition, habitat suitability, and amenability of the Habitat Area for use as prospective mitigation for the covered activities under the River HCP.

## **III. CONSERVATION EASEMENT FUNDING**

Within thirty (30) days of the expiration of the due diligence period, Valley District shall pay to Conservation District the sum of EIGHTEEN MILLION FOUR HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$18,437,500.00), which represents a unit

price of \$125,000 per acre for 147.5 acres or one half of the two hundred ninety five (295) acres of Habitat Area to be set aside and reserved for satisfying the anticipated habitat mitigation requirements for the River HCP (“Initial Conservation Easement Funding”). The remaining EIGHTEEN MILLION FOUR HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$18,437,500.00), half of the Conservation Easement Funding (“Subsequent Conservation Easement Funding”) shall be remitted by Valley District to Conservation District upon the occurrence of the first of the following :

- The governance entity for the River HCP or Valley District commits to the use of acreage from the Habitat Area in excess of 147.5 acres in the aggregate, pursuant to any habitat conservation plan, incidental take or other environmental regulatory permit application
- The Conservation District is requested to commit in writing to agree to the imposition of conservation easements serving the River HCP over acreage from the Habitat Area in excess of 147.5 acres in the aggregate,
- Valley District and Conservation District both agree that, regardless of the status of environmental or other processing on the River HCP, Conservation District requires funding in excess of the initial one-half payment of the Conservation Easement Funding to meet financial demands of water conservation efforts, including “Transfer Projects” as defined below, or related land acquisitions, water quality or supply facilities development, and other related projects.
- Thirty-Six (36) months following the Effective Date of this Agreement

Both the Initial Conservation Easement Funding and Subsequent Conservation Easement Funding shall be remitted in cash, and shall be paid in a single, lump-sum payment. Immediately upon receipt of the Initial Conservation Easement Funding, the Conservation District will revise its reserve policy to segregate the entire amount in a separate fund, and shall not commingle any Conservation Easement Funding with any other reserves, funds, or monies of the Conservation District. Conservation District shall provide to Valley District, upon reasonable request by Valley District but no more than once in any twelve month period, an accounting of the amount of the Conservation Easement Funding remaining, and any application of Conservation Easement Funding to any purpose since the date of the last accounting.

#### **IV. RESTRICTED USE OF CONSERVATION EASEMENT FUNDS**

Conservation District shall hold and administer the Conservation Easement Funding, and shall have the authority, in its discretion, to invest all or any part consistent with the Conservation District’s then-applicable statement of investment policy. All interest or other revenues that may be earned thereon shall accrue to the Conservation District and shall designate a share of said interest to be utilized to offset the staff and overhead expenses associated with the development and administration of the Transfer Projects incurred by the Conservation District. Notwithstanding the foregoing, Conservation District shall not pledge, encumber, or otherwise hypothecate any portion of the Conservation Easement Funding principal, except as may be

specifically permitted herein. Conservation District shall hold, apply, and use the Conservation Easement Funding principal only in the furtherance of water conservation efforts, including "Transfer Projects" (defined below) or related land acquisitions, water quality or supply facilities development, and other related projects contemplated hereunder with similar benefits, which projects are located within the jurisdictional boundaries of at least one of the two parties hereto.

**V. PARTNERSHIP AGREEMENT POLICY COMMITTEE**

The parties shall form a "Partnership Agreement Policy Committee" consisting of the general managers and one Board appointed member of both the Conservation District and Valley District, or their designees, and one representative of the San Bernardino Basin Groundwater Council, to be appointed by the San Bernardino Basin Groundwater Council pursuant to procedures it shall determine. The Partnership Agreement Policy Committee shall meet regularly, no less than quarterly, to review and advise the Conservation District on the status and commitment of the Conservation Easement Funding to capital projects and its interest revenues, and implementation of renewal, upgrade, relocation, rehabilitation, or maintenance projects to which the Conservation Easement Funding is to be devoted, including the Transfer Projects. The Partnership Agreement Policy committee's advice and recommendations shall be provided to the Conservation District and Valley District in writing, with a copy to be delivered to the Groundwater Council. All actions taken by the Partnership Agreement Policy committee shall be based on unanimous agreement. The Partnership Agreement Policy Committee may make recommendations, but except as otherwise provided in this Agreement, may not itself bind the legislative bodies of either the Conservation District or Valley District.

**VI. RESERVATION OF HABITAT AREA FOR CONSERVATION EASEMENT**

From and after the receipt of the Initial Conservation Easement Funding by the Conservation District, the Conservation District shall reserve two hundred ninety five (295) acres of conservation easement capacity within the Habitat Area in trust on behalf of water conservation and supply projects for all formally participating agencies of the River HCP (whether through a joint powers agency or other cooperative agreement or mechanism), for the purpose of the dedication, use, and ultimate commitment under conservation easements of the property included therein for mitigation requirements for the River HCP. From and after the receipt by the Conservation District of the Initial Conservation Easement Funding, and continuing until the recordation of conservation easements on the entirety of the Habitat Area, or the other termination of this Agreement, the Conservation District shall not encumber, hypothecate, pledge, sell, lease, or otherwise transfer or assign any right, title, or interest in any portion of the Habitat Area that might reduce the potential use of the Habitat Area for habitat mitigation purposes for the River HCP, such that the useable portion of the Habitat Area falls below the two hundred ninety five (295) acres. Conservation District shall continue to use reasonable diligence in the oversight of the Habitat Area during the time the Habitat Area is so reserved, and shall continue to take reasonable measures to protect such areas from trespass, spoliation, or destructive unauthorized use which would prevent its use for habitat mitigation, in

accordance with existing Conservation District land stewardship policies. Likewise, during the time the Habitat Area is so reserved, the Conservation District shall undertake no activity on, over, or within the Habitat Area that destroys, derogates, or eliminates the habitat qualities of the Habitat Area, including grading, scraping, or intentional introduction of destructive, non-native plant or animal species.

#### **VII. CONSERVATION EASEMENT – PLEDGE AND RECORDATION**

To the extent that the Conservation Easement Funding has been paid to the Conservation District (either through the Initial Conservation Easement Funding as to 147.5 acres of the Habitat Area, or the Subsequent Conservation Easement Funding as to any acreage in the Habitat Area in excess of 147.5 acres), upon approval of the River HCP, and at such time as incidental take permits or other permits requiring mitigation from the Habitat Area are ready to issue, or at any such earlier time as may be agreed to by both parties hereto, Conservation District shall record conservation easements over the Habitat Area, up to and including the full two hundred ninety five (295) acres of the Habitat Area. The form of such conservation easement shall be subject to the reasonable approval of the applicable permitting agencies, the Conservation District, and Conservation Trust, which approval shall not be unreasonably withheld or delayed.

#### **VIII. VALLEY DISTRICT HABITAT OBLIGATIONS**

The Conservation Easement Funding is intended as consideration to the Conservation District for making the Habitat Area available for conservation easements, and its cooperation in facilitating recorded conservation easements over the same. It shall be the sole responsibility of Valley District, at its cost and expense, to absorb the cost of any Habitat Area surveys, mapping, trapping or other habitat tracking, assessment, characterization, or any physical site preparation work that may be required by the applicable permitting agencies as a condition to the acceptance of the Habitat Area as appropriate offsetting mitigation to impacts from River HCP covered activities. Further, it shall be the responsibility of Valley District, at its sole cost and expense, to fund any initial treatment, or management efforts, on the habitat Area, and to fund the non-wasting or other endowment that will be required by applicable permitting agencies to sustain the permanent habitat mitigation management programs that may ultimately be approved as part of the River HCP for the Habitat Area. The parties contemplate that the non-wasting or other endowment shall be held by the Conservation Trust, a 501(c) (3) nonprofit corporation, in compliance with California Department of Fish and Wildlife requirements and regulations.

#### **IX. SAN BERNARDINO VALLEY CONSERVATION TRUST**

Both Conservation District and Valley District contemplate that the conservation easements will be held by the San Bernardino Valley Conservation Trust, who will also administer non-wasting or other endowment that will be required and approved as part of the River HCP. Valley District and the San Bernardino Valley Conservation Trust may enter into any such agreements, memoranda of understanding, or other contracts governing the details of Valley District's payment of non-wasting or other endowments, habitat management plan

compliance and reporting of same, or other matters, as may be necessary or convenient to assure the smooth, efficient implementation of habitat management plan responsibilities, and funding for meeting such responsibilities that would be carried out on up to the two hundred ninety five (295) acres of Habitat Area under Conservation Easements by the San Bernardino Valley Conservation Trust. Both Conservation District and Valley District will petition the San Bernardino Valley Conservation Trust for an expansion of its board of directors, to include one representative selected by Valley District. Notwithstanding the statements of intention of the parties herein, the Conservation Trust is not intended to be, and is not, a third party beneficiary of this Agreement.

**X. TRANSFER PROJECTS**

Conservation District and Valley District have identified the following conceptual projects contemplated to be included as part of the covered activities of the River HCP as "Transfer Projects." Conservation Easement Funding will be applied to these conceptual projects or to projects which achieve similar benefits to the "Transfer Projects", and the ownership and responsibility for them will be allocated as provided herein:

- (a) Plunge Creek Basins 1 and 2 construction
- (b) City Creek Basins construction
- (c) Waterman Basin reconstruction and maintenance
- (d) Twin Creek Basin repairs and maintenance
- (e) Mill Creek Diversion Expansion Construction

Additional description of these conceptual projects, their estimated costs, and a diagram showing the general location of the Transfer Projects is attached hereto as Exhibit B. The Transfer Projects are at this time conceptual, and their costs are estimated. They are listed herein as examples of projects to which the Conservation Easement Funding will be applied, pending further identification of scope, timing, and available funding between the parties hereto, and the ultimate approval of the River HCP. The Transfer Project listing is not exclusive as to projects for which the Conservation Easement Funding may be applied, nor is it a commitment on the part of the Conservation District herein to fund, construct, or manage such Transfer Projects, or any of them.

**XI. TRANSFER PROJECT PROCESSING.**

Valley District will continue to have responsibility for permitting the Transfer Projects, to the extent such approval is part of the River HCP. To the extent additional permitting, in addition to or beyond that provided by the approvals attendant to the River HCP, is required prior to implementation of the Transfer Projects, Conservation District may, but is not obliged to, require that Valley District serve as lead agency for the filing, prosecution, funding, and

completion of all such additional permitting applications or procedures, including but not limited to processing under NEPA or CEQA. For those Transfer Projects the Conservation District does decide to proceed to fund in whole or in part with proceeds from the Conservation Easement Funding, in consultation with Valley District through the Partnership Agreement Policy Committee, Conservation District will assume the lead role in feasibility studies, engineering design, construction plan development, construction permitting, advertising, bidding, award, property or right of way acquisition, scheduling, construction, and maintenance and operation of the Transfer Projects, as may be required for each. Prior to initiating any Transfer Project, the parties shall meet and confer regarding its planning, engineering, award, bidding, and construction costs. Conservation District shall, prior to putting any Transfer Project out to bid, present the final construction engineering drawings, contract specifications, construction cost estimates, construction schedules, and the advertising and bid package ("Construction Package") to the Partnership Agreement Policy Committee for their review and concurrence. To the extent the planning, engineering, award, bidding, and construction costs of a Transfer Project undertaken by the parties hereunder cannot be fully funded by the proceeds of the Conservation Easement Funding, the parties shall determine, before undertaking the Transfer Project, whether Valley District will advance or reimburse the Conservation District for the additional project costs above available Conservation Easement Funding for the completion of the applicable Transfer Project, whether other funding is available to meet any shortfall, or whether a reduced or modified scope of the Transfer Project is appropriate to secure the highest available benefit to preserve, manage, and maximize groundwater supplies within existing available funding. Upon concurrence by the Partnership Agreement Policy Committee with the Construction Package, the Conservation District will undertake construction of the Transfer Project, and shall pursue it diligently to completion. The Conservation District shall report of the progress of any Transfer Project construction to the parties at all meetings of the Partnership Agreement Policy Committee, including schedules, budgeting, change orders or changes in scope, and any disputes or potential disputes with the contractor. To the extent the Valley District believes through the course of a Transfer Project's construction that the Conservation District is proceeding at a pace which exhibits bad faith delay, or the Conservation District's construction management and oversight is substantially below the prevailing standards of skill, competence, or timeliness in the professional construction fields generally given the scope and nature of the applicable Transfer Project ("Construction Default"), Valley District shall present written documentation supporting such belief at a meeting of the Partnership Agreement Policy Committee, and the parties shall thereupon proceed to Dispute Resolution under Section XVII below. If such processes fail to yield resolution, the parties agree that either may pursue any legal remedy at law or in equity, and specifically agree that among such equitable remedies, a court or other agreed tribunal may upon making an independent judgment finding of the existence of a Construction Default by the Conservation District, permit Valley District to assume control of the supervision of and completion of the construction of the Transfer Project, in which event Valley District may utilize those portions of the Conservation Easement Funding budgeted and concurred in by the Partnership Agreement Policy Committee for the applicable Transfer Project, towards such completion. Upon completion of each of the Transfer Projects, Conservation District shall maintain and operate such projects. The application of Conservation Easement Funding toward

capital construction of the Transfer Projects, and the relative priority of application of such funding to the Transfer Projects, shall be determined by the Conservation District, with input by Valley District in the forum of the Partnership Agreement Policy Committee.

**XII. ADDITIONAL PARTNERSHIP ON TRANSFER PROJECTS**

To the extent that any Transfer Project develops “new water” under the Western Judgment, the Riverside County entities benefitting from such “new water” may participate in the Transfer Projects, up to 27.95% of the costs paid to the Conservation District, upon such terms and conditions as all participants may agree. In the event the Riverside County entities choose not to join a Transfer Project at inception, but later determine to participate in such projects, such terms and conditions will include an escalation rate to reflect the time value of funds invested by the parties hereto, and other prior contributions to the applicable Transfer Project by the participants in same up to that point, as all participants may agree.

**XIII. LAFCO APPROVAL**

To the extent that implementation of any of the Transfer Projects by the Conservation District may require approval of the San Bernardino County Local Agency Formation Commission (“LAFCO”), whether through activation of latent powers or the adjustment of jurisdictional boundaries of the Conservation District, or otherwise, Conservation District and Valley District agree to present a joint application for such LAFCO approval, agree to cooperate reasonably in supporting such application to effectuate the purposes hereof, and shall share evenly in the costs of any such proceeding.

**XIV. STATE WATER BOARD PETITION**

To the extent that a request to the State Water Resources Control Board is required for any change in diversion location to any prior water right, whether held by Valley District or Conservation District, in order to effectuate the Transfer Projects, the River HCP, or the effective habitat mitigation plan ultimately approved for the Habitat Area as part of the River HCP, and so long as not in derogation of the cooperating party’s own existing water rights, each party agrees to cooperate reasonably with the other to develop such an application, and agrees to cooperate reasonably in supporting such application to effectuate the purposes hereof.

**XV. TERM**

This Agreement shall take effect immediately upon its approval by both parties, and shall continue in full force and effect for a period of five (5) years thereafter, except those provisions relating to the transfer of the Transfer Projects to the Conservation District, which in the event such Transfer Projects are funded and implemented, the Conservation District obligations with respect to such Transfer Projects will survive the termination of this Agreement. In the event the River HCP is not approved within the five (5) year term of this Agreement, the parties may agree

in writing to an additional extension, up to and including an additional five (5) years, for a total of ten (10) years. In the event the River HCP effort is discontinued or abandoned by the River HCP partners, prior to the expiration of the term of this Agreement, and prior to the recordation of conservation easements on the Habitat Area, this Agreement may be terminated earlier than the expiration of its term, by mutual agreement of the parties.

**XVI. RELEASE OF HABITAT AREA IF RIVER HCP FAILS OR IS ABANDONED**

In the event the River HCP does not come to fruition, and either fails to secure approval from the applicable regulatory agencies, or is otherwise abandoned by the River HCP partners, prior to the expiration of the term of this Agreement and prior to the recordation of conservation easements on the Habitat Area, Conservation District may, but is not obligated to, release the Habitat Area from its reservation for River HCP mitigation purposes. In the event there is a factual dispute regarding whether the River HCP effort has been discontinued or abandoned by the River HCP partners, the matter shall be referred to dispute resolution processes as provided under Section XVI below. If the Conservation District attempts to exercise this right prior to the expiration of this Agreement, it must provide written notice to Valley District for one (1) year prior to the effective date of any release from reservation of any then-remaining, undedicated portions of Habitat Area, which are not then under conservation easements, and for which no non-wasting or other endowment has been paid. The one-year period shall be tolled during the pendency of dispute resolution proceedings regarding any factual dispute regarding whether the River HCP effort has been discontinued or abandoned by the River HCP partners. On or before the expiration of the one year period following such notice, Conservation District shall refund to Valley District the amount of \$125,000 per acre of all then-undedicated areas of Habitat Area, which are not then under conservation easements and for which no non-wasting or other endowment has been paid, and for which either the Initial Conservation Easement Funding or the Subsequent Conservation Easement Funding has been paid by Valley District to Conservation District, as a precondition to removing such areas from reservation. Notwithstanding any of the foregoing, however, the sum of five million dollars (\$5,000,000.00) from the Initial Conservation Easement Funding shall be exempt from any refund by the Conservation District to Valley District, and shall be restricted only by the requirement for Conservation District to use such funds as specified in Section IV above. In the event the Conservation District exercises the right hereunder before the River HCP has received dedication or the benefit of Conservation Easements of at least forty (40) acres of the Habitat Area, the parties shall meet and confer to identify a proportionate amount of undedicated acreage from the Habitat Area which shall be made available to Valley District for other projects meeting the project objectives of the use restrictions of Sections IV above. In no event, however, shall the amount of Habitat Area made available for Conservation Easements to Valley District from the Habitat Area be less than forty (40) acres, once the Initial Conservation Easement Funding has been paid.

## **XVII. DISPUTE RESOLUTION**

The Parties recognize that there may be disputes regarding the obligations of the Parties or the interpretation of this Agreement. The Parties agree that they may attempt to resolve disputes as follows:

### **A. Statement Describing Alleged Violation of Agreement**

A party alleging a violation of this Agreement (the "Initiating Party") shall provide a written statement describing all facts that it believes constitute a violation of this Agreement to the other party alleged to have violated the terms of this Agreement (the "Responding Party").

### **B. Response to Statement of Alleged Violation**

The Responding Party shall have sixty (60) days from the date of the written statement to prepare a written response to the allegation of a violation of this Agreement and serve that response on the Initiating Party or to cure the alleged violation to the reasonable satisfaction of the Initiating Party. The Initiating Party and the Responding Party shall then meet within thirty (30) days of the date of the response to attempt to resolve the dispute amicably.

### **C. Mediation of Dispute**

If the Initiating Party and the Responding Party cannot resolve the dispute within ninety (90) days of the date of the written response, they shall engage a mediator, experienced in water-related disputes, to attempt to resolve the dispute. Each party shall ensure that it is represented at the mediation by a Director or other representative with authority to settle. These representatives of the Initiating Party and the Responding Party may consult with staff and/or technical consultants during the mediation and such staff and/or technical consultants may be present during the mediation. The costs of the mediator shall be divided evenly between the Initiating Party and the Responding Party. The decision of the mediator shall be non-binding.

### **D. Reservation of Rights**

Subject to the above requirements, in the event that mediation fails, each party retains and may exercise all legal and equitable rights and remedies it may have to enforce the terms of this Agreement; provided, that prior to commencing litigation, a party shall provide at least five (5) calendar days' written notice of its intent to sue.

## **XVIII. RELATIONSHIP TO WATER RIGHTS IN PRIOR AGREEMENTS**

Nothing in this Agreement is intended to modify the water rights of the parties, whether existing under a judgment, proceedings of the State Water Resources Control Board, or the common law. Nothing in this Agreement is intended to modify any existing agreements between

the parties, unless expressly stated herein. Nothing in this Agreement shall be construed as an admission by any party regarding any water right or priority of either of the parties, and the parties agree that this Agreement, to the extent allowed by law, preserves all rights of the parties as they may exist as of the effective date of this Agreement. Nothing in this Agreement is to be construed as altering the priorities or entitlements of water right holders among themselves to water from the Santa Ana River, Mill Creek, or any other source.

## **XIX. MISCELLANEOUS**

### **A. Authority**

Each signatory of this Agreement represents that s/he is authorized to execute this Agreement on behalf of the party for which s/he signs. Each party represents that it has legal authority to enter into this Agreement and to perform all obligations under this Agreement, and that by doing so; such party is not in breach or violation of any other agreement or contract.

### **B. Amendment**

This Agreement may be amended or modified only by a written instrument approved by both parties.

### **C. Jurisdiction and Venue**

This Agreement shall be governed by and construed in accordance with the laws of the State of California, except for its conflicts of law rules. Any suit, action, or proceeding brought under the scope of this Agreement shall be brought and maintained to the extent allowed by law in the County of San Bernardino, California.

### **D. Headings**

The paragraph headings used in this Agreement are intended for convenience only and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the Parties to this Agreement.

### **E. Construction and Interpretation**

This Agreement has been arrived at through negotiations, and each party has had a full and fair opportunity to draft, review, and revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in the construction or interpretation of this Agreement.

#### **F. Entire Agreement**

This Agreement constitutes the entire agreement of the parties with respect to its subject matter, and supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this Agreement.

#### **G. Partial Invalidity**

If, after the date of execution of this Agreement, any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws or adjudicatory decisions effective during the term of this Agreement, such provision shall be fully severable. However, in lieu thereof; there shall be added a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

#### **H. Successors and Assigns**

To the extent authorized by law, this Agreement shall be binding on and inure to the benefit of the successors and assigns of the respective parties to this Agreement. No party may assign its interests in or obligations under this Agreement without the written consent of the other party, which consent shall not be unreasonably withheld or delayed.

#### **I. Waivers**

Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement, and forbearance to enforce one or more of the remedies provided in this Agreement shall not be deemed to be a waiver of that remedy.

#### **J. Attorneys' Fees and Costs**

The prevailing party in any litigation or other action to enforce or interpret this Agreement shall be entitled to reasonable attorneys' fees, expert witnesses' fees, costs of suit, and other and necessary disbursements, in addition to any other relief deemed appropriate by a court of competent jurisdiction.

#### **K. Necessary Actions**

Each party agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out the purposes of this Agreement.

#### **L. Compliance with Law**

In performing their respective obligations under this Agreement, the parties shall comply with and conform to all applicable laws, rules, regulations and ordinances.

**M. Notices**

All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing unless provided otherwise in this Agreement and shall be deemed to have been duly given and received on: (i) the date of service if served personally or served by facsimile transmission on the Party by delivery to the person(s) at the address(es) designated below, which designation may be changed from time to time by a Party in writing; (ii) on the first day after mailing, if mailed by Federal Express, U.S. Express Mail, or other similar overnight courier service, postage prepaid, and addressed as provided below, or (iii) on the third day after mailing if mailed to the Party to whom notice is to be given by first class mail, registered or certified, postage prepaid, addressed as follows:

**To SAN BERNARDINO VALLEY  
MUNICIPAL WATER DISTRICT:**

**SAN BERNARDINO VALLEY MUNICIPAL  
WATER DISTRICT**

**Attn: Douglas Headrick, General Manager  
380 E. Vanderbilt Way  
San Bernardino, CA 92408**

**To SAN BERNARDINO VALLEY WATER  
CONSERVATION DISTRICT:**

**SAN BERNARDINO VALLEY WATER  
CONSERVATION DISTRICT**

**Attn: Daniel Cozad, General Manager  
1630 West Redlands Blvd., Suite A  
Redlands, California 92373**

**N. Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

**SAN BERNARDINO VALLEY WATER  
CONSERVATION DISTRICT**

By: Richard Corneille  
Richard Corneille  
Its: Board President

**ATTEST:**

By: [Signature]

**APPROVED AS TO FORM:**

**RUTAN & TUCKER, LLP**

By: David B. Cosgrove  
David B. Cosgrove,  
General Counsel

**SAN BERNARDINO VALLEY  
MUNICIPAL WATER DISTRICT**

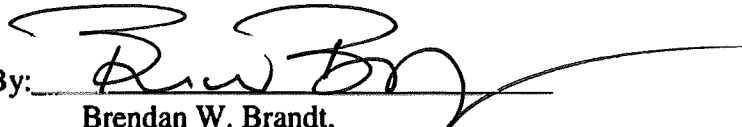
By: T. Milford Harrison  
T. Milford Harrison  
Its: Board President

**ATTEST:**

By: Douglas D. Headrick  
Douglas Headrick  
Board Secretary

**APPROVED AS TO FORM:**

**VARNER & BRANDT LLP**

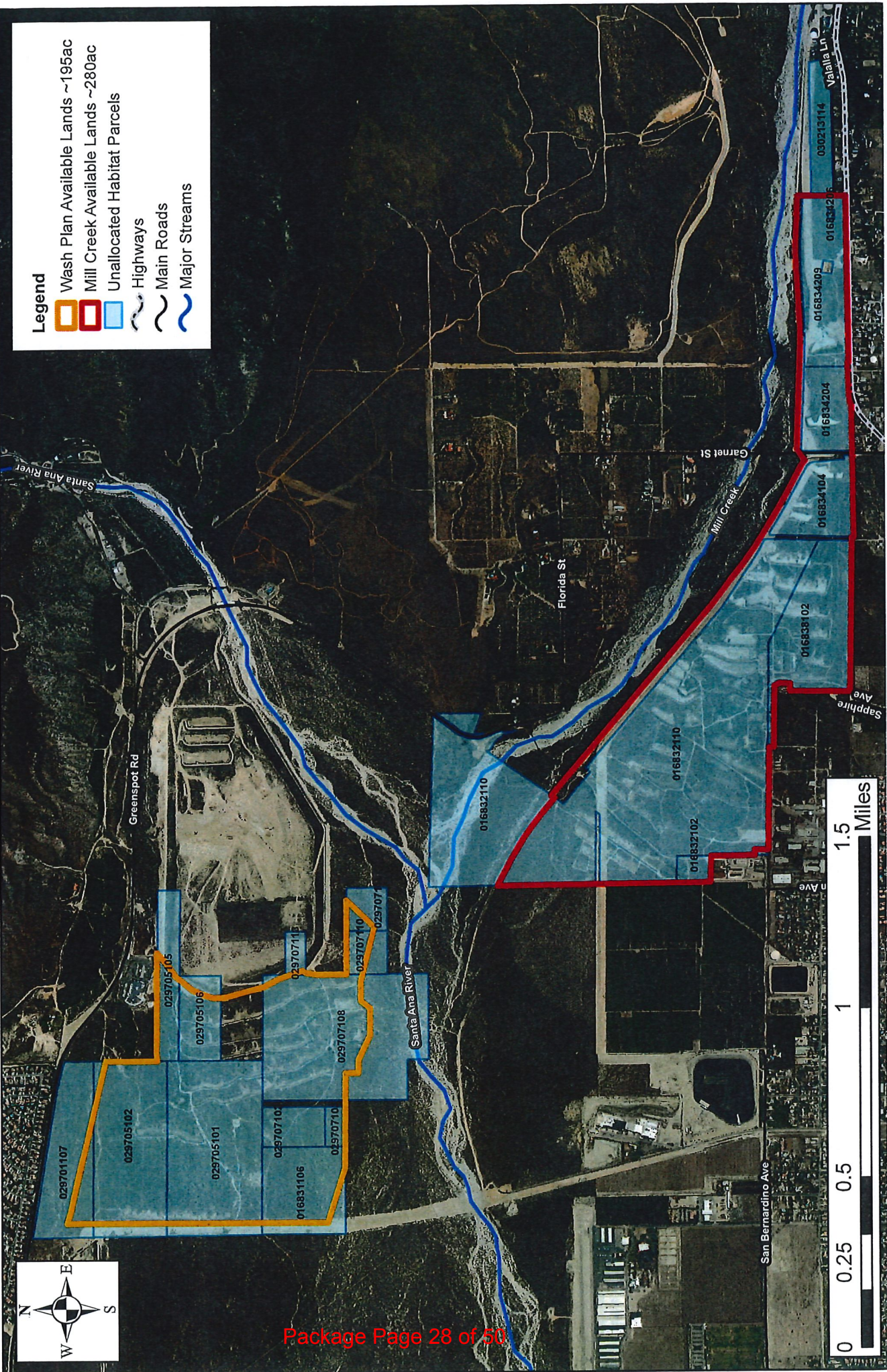
By:   
Brendan W. Brandt,  
General Counsel

**EXHIBIT A**  
**HABITAT AREA**

159/015042-0001  
12893627.1 #01/07/19  
1541156.1

# Exhibit A: Habitat Area

Coordinate System: NAD 1983 StatePlane California V FIPS 0405 Feet  
 Projection: Lambert Conformal Conic  
 Datum: North American 1983  
 Source: SBW/CD, CASIL, SBV/MWD  
 GIS Contact: Katelyn Scholte  
 M:Habitat Lands Outside Wash Plan  
 December 11, 2018



## EXHIBIT B

### Transfer Projects Conceptual Description and Diagram

#### Mill Creek:

**Location:** SBVWCD's existing Mill Creek Diversion structure east of Garnet Street and north canal diversion gate west of Garnet Street

**Description:** Increase the flow capacity of the North Canal from approximately 55 CFS to 210 CFS. The conceptual improvements would demolish the existing inlet and reconstruct the canal inlet structure in order to increase the north canal capacity to 210 CFS. Additionally, the bypass outlet structure will be re-designed and re-constructed to increase the sediment bypass function by adding an additional sediment bypass gate and channel within the inlet structure. The downstream entrance of the north canal into the spreading facility through the Army Corps of Engineers (USACOE) Mill Creek Flood Control Levee would also need to be reconstructed to handle 210 CFS. All facilities would require Section 408 permitting by the USACOE.

Mill Creek North Canal Project (210 CFS)	
Project Footprint	0.1 Acres
Diversion Capacity	385 CFS
Average Annual Flow Captured	6,096 AF
Pre-construction Cost Estimate	\$65,000
Construction Cost Estimate	\$2,530,025

#### Plunge Creek Basin 1:

**Location:** 800 feet northwest of the Orange Street Plunge Creek Crossing in the City of Highland within the existing flow path of Plunge Creek.

**Description:** Conceptual improvements include the construction of an 8 ft x 165 ft rubber dam and diversion structure within plunge creek. The singular basin will have perimeter berms along the south-east and south-west sides approximately 10 ft in height with a maximum operating water level of 8ft. There will be a total wetted area of 6 acres and a storage volume of 40 AF and a diversion capacity of 250 CFS. The basin will also have an overflow structure and 36-inch diameter drain.

Plunge Creek Basin 1	
Project Footprint	10 Acres
Diversion Capacity	250 CFS
Average Annual Flow Captured	2,481 AF
Pre-construction Cost Estimate	\$225,000
Construction Cost Estimate	\$10,675,345

**Plunge Creek Basin 2:**

**Location:** 350 feet west of the 210 freeway Plunge Creek Crossing in the City of Highland within the existing flow path of Plunge Creek. The northern edge of this basin is adjacent to the City Creek Project described below.

**Description:** Conceptual improvements at Plunge Creek site 2 for the ARP is to construct two basins, an approximately 7' diameter by 90' long rubber dam and a diversion structure within Plunge Creek. The southern edge of the new basin will act as a levee to channelize high flows past the basin. The south-east corner of the conceptual basin will be the point at which the basin berm constricts Plunge Creek; this will also be the location for the construction of an inflatable rubber dam diversion. The basin will be split into two smaller basins with one basin will have a volume of approximately 16 AF and the other approximately 50 AF. Basin berms will be approximately 10 feet high with 8 foot operating level for a total wetted area of about 11 acres and storage volume of 66 AF and a diversion capacity of 350 CFS. The basin will also have a basin overflow structure and a 36-inch basin drain.

Plunge Creek Basin 2	
Project Footprint	29 Acres
Diversion Capacity	350 CFS
Average Annual Flow Captured	1,050 AF
Pre-construction Cost Estimate	\$225,000
Construction Cost Estimate	\$12,583,867

**City Creek Basin:**

**Location:** Project is located along City Creek and is bordered by Baseline Ave due to the north and Plunge Creek to the South. The southern edge of the City Creek project borders the northern edge of the Plunge Creek 2 project described above.

**Description:** The conceptual improvements are to construct an inflatable rubber dam diversion across City Creek and a series of approximately 9 basins from Baseline Avenue extending southwest 6,200 feet. The basin layout has been developed to utilize a gravity conveyance system and to maximize usage of the available area on the site while maintaining adequate flood control capacity in City Creek Channel. Improvements include approximately 38 acres of basins with basin transfer structures, over flow structures, 36-inch basin drains, a 60' x 8' inflatable rubber dam, construction of approximately 500 CFS diversion structure, an approximately 500 CFS conveyance under Boulder Ave, an approximately 250 CFS crossing under the 210 freeway and a 250 CFS crossing under West 5<sup>th</sup> street.

City Creek Basin	
Project Footprint	64 Acres
Diversion Capacity	500 CFS
Average Annual Flow Captured	5,247 AF
Pre-construction Cost Estimate	\$330,000
Construction Cost Estimate	\$32,493,285

**Waterman Basin Improvements:**

**Location:** The Waterman Basins site is located along the west branch of Waterman Creek and is bordered by North Waterman Avenue to the west and East 40<sup>th</sup> Street to the south. The basins are an existing SBCFCD facility located approximately 3 miles north-east of the 210 Freeway/215 Freeway interchange.

**Description:** Conceptual improvements are to construct an inflatable armored dam diversion across the west branch Waterman Creek bypass channel. The existing radial gate will also be refurbished. A new operational plan would need to be implemented with SBCFCD and existing basins would need to be cleaned to remove existing silt and clay deposits. The total wetted area is about 32 acres with a storage volume of approximately 180 AF with an expected diversion capacity of about 1,000 CFS. Physical improvements include construction of two 17' x 8' spillway gates, refurbishment of the existing radial gates, refurbishment of 3 inner-basin surface transfer structures as well as 10 low-level outlets and drains.

Waterman Basin Improvements	
Project Footprint	0.25 Acres
Diversion Capacity	1,000 CFS
Average Annual Flow Captured	1,675 AF
Pre-construction Cost Estimate	\$235,000
Construction Cost Estimate	\$9,972,218

**Twin Creek Spreading Ground Improvements:**

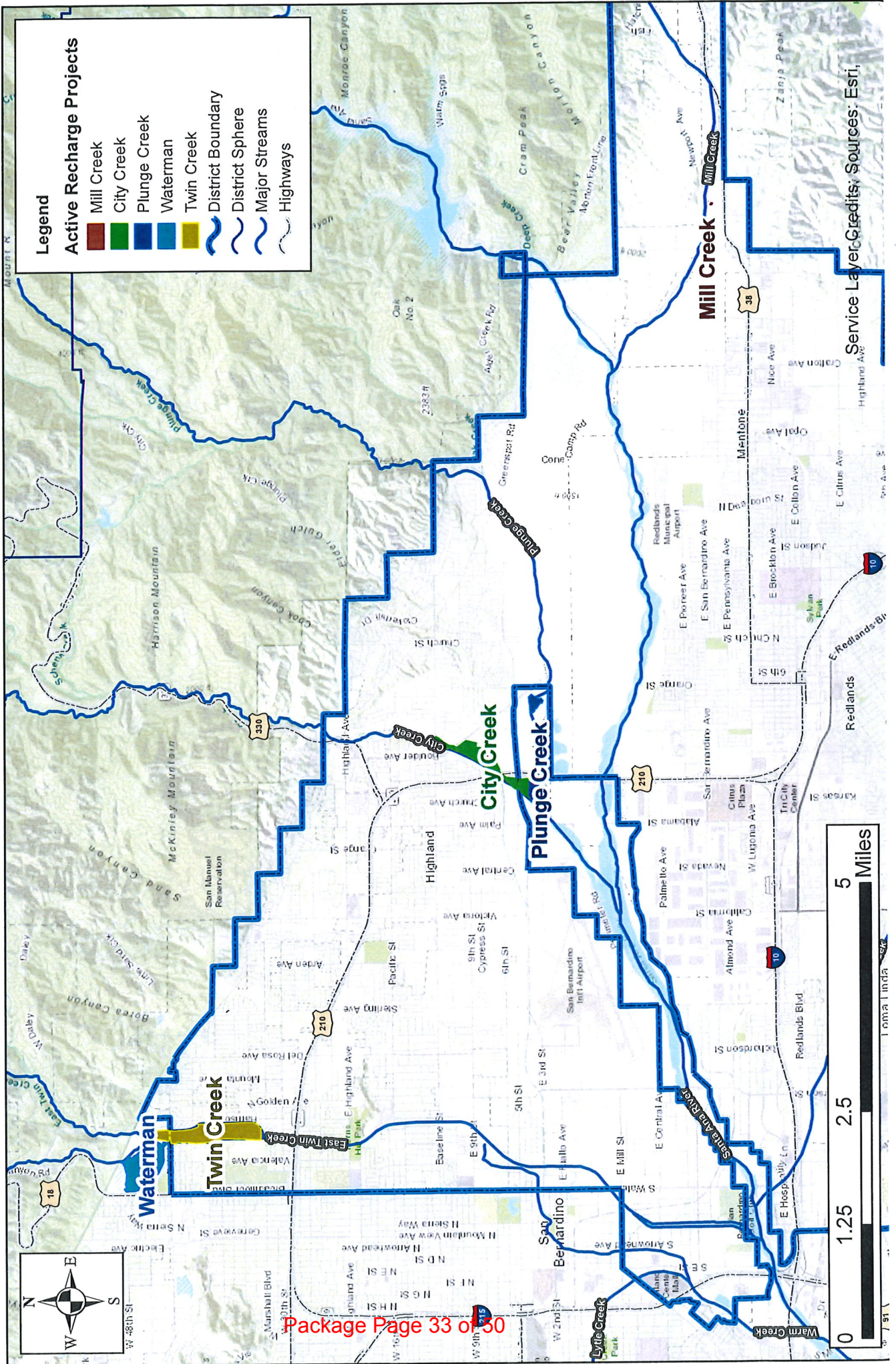
**Location:** Spreading grounds within Twin Creek bordered by Harrison Street to the east and E 40<sup>th</sup> Street to the north. The spreading grounds are an existing SBCFCD facility located approximately 3 miles north-east of the 210 Freeway/215 Freeway interchange.

**Description:** Improvements would include reconstructing and armoring the berms between each basin that are currently in disrepair as well as adding low level outlets and drains to each basin. A new operational plan would need to be implemented with SBCFCD and existing basins would need to be cleaned to remove existing silt and clay deposits. The total wetted area is approximately 70 acres with a storage volume of about 370 AF. There is no diversion structure associated with this project. The physical improvements include re-construction and armoring of the 7 existing berms, construction of 1 new water conservation berm above East 40<sup>th</sup> Street, construction of approximately 8 new low-level outlets/drains and basin re-grading.

Twin Creek Spreading Grounds Improvements	
Project Footprint	145 Acres
Diversion Capacity	NA
Average Annual Flow Captured	4,087 AF
Pre-construction Cost Estimate	\$350,000
Construction Cost Estimate	\$16,327,990

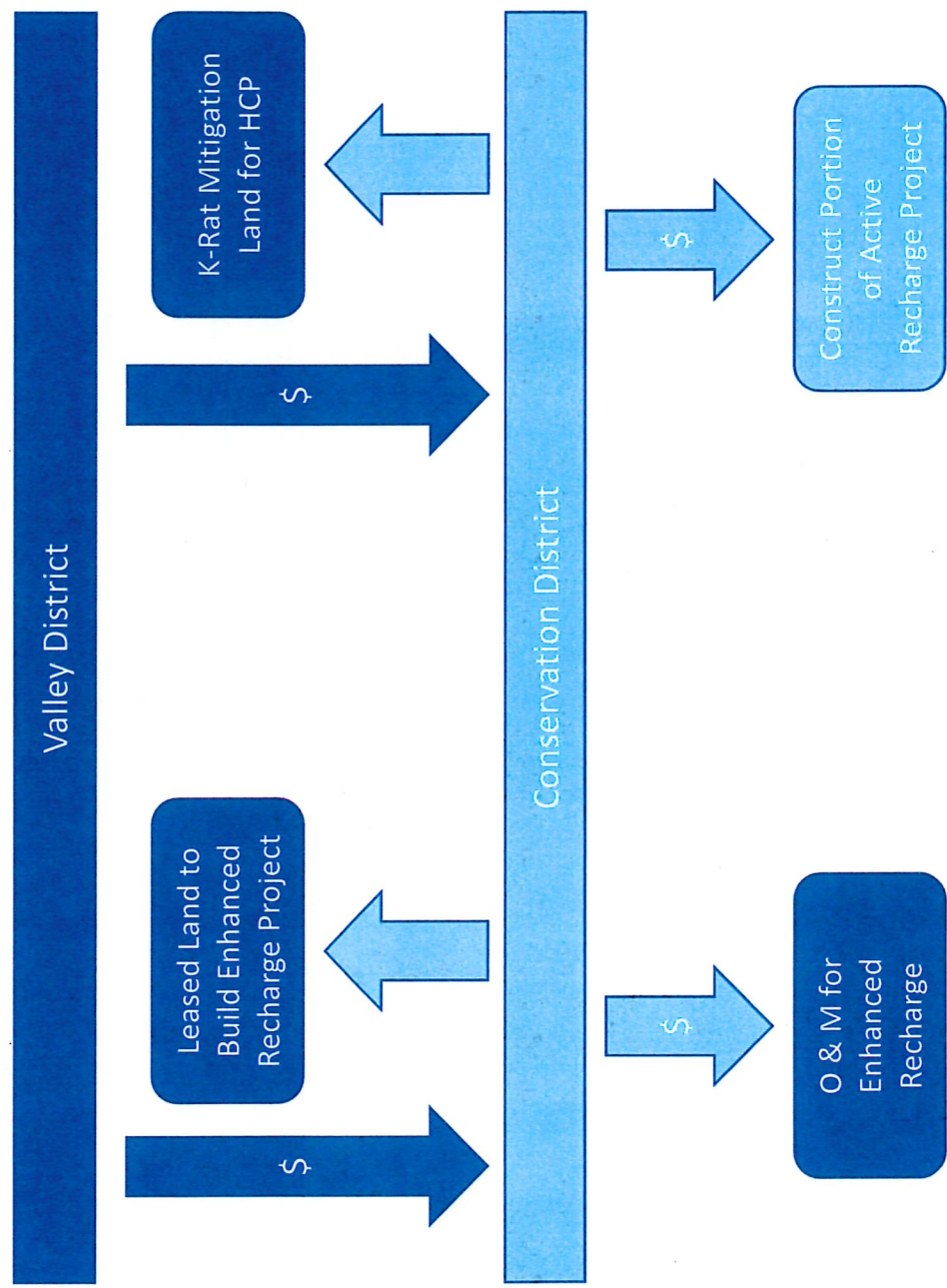
# Exhibit B: Transferring Active Recharge Projects

Coordinate System: NAD 1983 StatePlane California V FIPS 0405 Feet  
 Projection: Lambert Conformal Conic  
 Datum: North American 1983  
 Source: SBVMCD, CASIL, SBVMWD  
 GIS Contact: Katelyn Scholte  
 M: Active Recharge  
 December 11, 2018



Service Layer Credits: Sources: Esri,

# 2012 MOU 2018 Agreement



**BYLAWS  
OF  
SAN BERNARDINO VALLEY CONSERVATION TRUST  
A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION**

**ARTICLE I  
NAME**

The name of this corporation shall be the San Bernardino Valley Conservation Trust.

**ARTICLE II  
OFFICES**

**Section 1. Principal Office.** The principal office for the transaction of the business of the corporation (“principal executive office”) is located at 1630 West Redlands Blvd., Suite A, Redlands, California 92373, State of California. The directors may change the principal office from one location to another. Any change of this location shall be noted by the secretary on these Bylaws opposite this section, or this section may be amended to state the new location.

**Section 2. Other Offices.** The board of directors may at any time establish branch or subordinate offices at any place or places where the corporation is qualified to do business.

**ARTICLE III  
PURPOSES AND OBJECTIVES**

**Section 1. Specific Purpose.** The specific and primary purpose of this corporation is the direct protection or stewardship of land, water, and natural resources, including, but not limited to, agricultural lands, wildlife habitat, wetlands, endangered species habitat, open-space areas, and outdoor recreational areas. This corporation is organized and shall be operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”).

**Section 2. General Purposes.** The general purposes of this corporation are the following:

- (a) to receive, hold, and disburse gifts, bequests, devises, and other funds to advance the specific and primary purpose of this corporation;
- (b) to own, lease, and maintain suitable real and personal property which is deemed necessary to accomplish the specific and primary purpose of this corporation; and
- (c) to enter into, make, and perform, and carry out contracts which are deemed necessary to accomplish the specific and primary purpose of this corporation.

**ARTICLE IV**  
**NONPARTISAN ACTIVITIES**

This corporation has been formed under the California Nonprofit Public Benefit Corporation Law for the purposes described above, and it shall be nonprofit and nonpartisan. No substantial part of the activities of this corporation shall consist of the publication or dissemination of materials with the purpose of attempting to influence legislation, and this corporation shall not participate or intervene in any political campaign on behalf of any candidate for public office or for or against any cause or measure being submitted to the people for a vote.

This corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of its purposes and objectives described above.

**ARTICLE V**  
**DEDICATION OF ASSETS**

The property of this corporation is irrevocably dedicated to charitable purposes and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer, or member hereof or to the benefit of any private person. Upon the dissolution or winding up of this corporation, its assets remaining after payment, or provision for payment, of all of its debts and liabilities shall be distributed to the San Bernardino Valley Water Conservation District provided that it is then an organization described in Section 170(c)(1) of the Code or the corresponding provision of any future United States internal revenue law; and if not, such assets shall be distributed to a nonprofit fund, foundation or corporation designated by the board of directors which is organized and operated exclusively for charitable, educational or scientific purposes and which has established its tax exempt status under Section 501(c)(3) of the Code or the corresponding provision of any future United States internal revenue law.

**ARTICLE VI**  
**MEMBERS**

**Section 1. Directors as Members.** This corporation shall have no members. Any action which would otherwise require approval by a majority of all members or approval by the members shall require only approval of the board of directors, as authorized by Section 5310 of the California Nonprofit Corporation Law.

**Section 2. Meetings.** There shall be no meetings of members as such. The persons constituting the board of directors may, at any given time and from time to time, act in their capacity as members pursuant to Section 1 of this Article VI, at meetings of the board of directors held as provided in Section 5 of Article VII of these Bylaws.

## **ARTICLE VII** **DIRECTORS**

### **Section 1. Powers.**

(a) **General Corporate Powers.** Subject to the provisions of the California Nonprofit Corporation Law and any limitations in the articles of incorporation and these Bylaws, the business and affairs of this corporation shall be managed, and all corporate powers shall be exercised, by or under the direction of the board of directors; provided, however, that in order to preserve the nonprofit, exempt-from-income-tax status of this corporation, neither the board nor any member thereof shall do any act, or authorize or suffer the doing of any act by an officer or employee of this corporation, on behalf of the corporation, which is inconsistent with the articles or these Bylaws or the nonprofit purpose of this corporation. Any such act or acts shall be null and void.

(b) **Specific Powers.** Without prejudice to these general powers, and subject to the same limitations, the directors shall have the power to:

(i) Select and remove all officers, agents, and employees of this corporation; prescribe any powers and duties for them that are consistent with law, with the articles of incorporation, and with these Bylaws; and fix their compensation.

(ii) Change the principal office in Redlands, California, from one location to another; and designate any place within Redlands, California, for the holding of any meeting or meetings.

(iii) Adopt, make, and use a corporate seal; and alter the form of the seal.

(iv) Borrow money and incur indebtedness on behalf of this corporation and cause to be executed and delivered for this corporation's purposes and objectives, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidences of debt and securities.

(v) Construct, operate, maintain and improve, buy, sell, convey, assign, mortgage, or lease any real estate and personal property necessary and incident to this corporation's purposes and objectives.

(vi) Manage the financial affairs of this corporation, including accessing all information, accounts, and property, and performing any act relating to any matter, account, transaction, or property, now owned or later acquired, as necessary and incident to this corporation's purposes and objectives.

(vii) Collect, hold, invest, manage, distribute, and apply funds in a manner consistent with this corporation's purposes and objectives.

**Section 2. Number and Qualification of Directors.**

(a) **Initial Number of Directors.** From 2016 to ~~June~~April 31~~0~~, 2019, the number of directors shall be three (3), two (2) of whom shall be duly elected or appointed members of the Board of Directors of the San Bernardino Valley Water Conservation District (the "SBVWCD-Directors").

(b) **Subsequent Number of Directors.** ~~On or before June 30, 2019,~~ ~~the~~ board of directors ~~shall has~~ determined whether to increase their number from three (3) to five (5) as of ~~July 1~~May 1, 2019. Such determination ~~shall require~~received a unanimous vote of the directors. If the directors increase their number to five (5), the two (2) additional directors shall be appointed by board of directors and shall be appropriately classified as ~~(one) an SBVWCD~~SBVMCD-Director ~~and (one) or an~~ Independent Director (as defined below).

(c) **Restriction on Interested Persons as Directors.** No persons serving on the board of directors at any time may be interested persons. An interested person is (i) any person being compensated by this corporation for services rendered to it within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director as director; and (ii) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person. However, any violation of the provisions of this paragraph shall not affect the validity or enforceability of any transaction entered into by this corporation.

**Section 3. Designation and Term of Office.**

(a) The Board of Directors of the San Bernardino Valley Water Conservation District shall initially designate two of its members to serve as SBVWCD-Directors. One SBVWCD-Director so designated shall have an initial term of three years. One SBVWCD-Director so designated shall have an initial term of two years.

(b) The signatory parties of the Memorandum Of Understanding To Implement The Habitat Conservation Plan For The Upper Santa Ana River Wash Plan And Associated Implementing Agreement (the "HCP MOU") shall initially designate one person to serve as a director (the "Independent Director"). The director so designated shall have an initial term of one year.

(c) After the completion of the initial term, each director's term of office shall be for three years.

(d) Each director, including a director designated to fill a vacancy, shall hold office until expiration of the term for which designated and until a successor has been designated.

**Section 4. Vacancies on Board.**

(a) **Events Causing Vacancy.** A vacancy or vacancies in the board of directors shall be deemed to exist on the occurrence of the following: (i) the death, resignation, or removal of an Independent Director; (ii) the declaration by resolution of the board of directors of a vacancy of the office of Independent Director who has been declared of unsound mind by an order of court or convicted of a felony or has been found by final order or judgment of any court to have breached any duty under Article 3 of Chapter 2 of the California Nonprofit Corporation Law; (iii) the vote of a majority of all the directors of the corporation to remove an Independent Director; provided, however, that the SBVWCD-Directors may not be removed, (iv) the expiration of the term of an Independent Director who is not re-designated to a subsequent term of office, or (v) the increase of the authorized number of directors.

(b) **Resignations.** Except as provided in this paragraph, any director may resign by giving written notice to the chairman of the board, if any, or to the president or the secretary of the board. The resignation shall be effective when notice is given unless the notice specifies a later time for the resignation to become effective. If the resignation of a director is effective at a future time, the board of directors may elect a successor to take office when the resignation becomes effective. Except upon notice to the Attorney General, no director may resign when this corporation would then be left without a duly elected director in charge of its affairs.

(c) **Filling Vacancies.**

(i) **Office of an Independent Director.** Vacancies in the office of an Independent Director shall be filled by the designee of the Mitigation Committee of the signatory parties of HCP MOU.

(ii) **Office of an SBVWCD-Director.** Vacancies in office of an SBVWCD-Director shall be filled by the designee of the Board of Directors of the San Bernardino Valley Water Conservation District; provided that an SBVWCD-Director vacancy may be filled only by a duly elected or appointed member of the Board of Directors of the San Bernardino Valley Water Conservation District.

(iii) Office of an SBVMCD-Director. Vacancies in office of an SBVMCD-Director shall be filled by the designee of the Board of Directors of the San Bernardino Valley Municipal Water District; provided that an SBVMWD-Director vacancy may be filled only by a duly elected or appointed sitting member of the Board of Directors of the San Bernardino Valley Municipal Water District.

(d) **No Vacancy on Reduction of Number of Directors.** No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

## **Section 5. Directors' Meetings.**

(a) **Place of Meetings.** Meetings of the board of directors may be held at any place within the City of Redlands that has been designated from time to time by resolution of the board or in the notice of the meeting. In the absence of such designation, meetings shall be held at the principal office of this corporation.

(b) **Annual Meeting.** The annual meeting of the board of directors shall be held each year on a date and at a time designated by the board of directors. The date so designated shall be within fifteen (15) months after the last annual meeting. At each annual meeting officers shall be elected and any other proper business may be transacted.

(c) **Other Regular Meetings.** Other regular meetings of the board of directors may be held at such time and place as shall from time to time be fixed by the board of directors but shall occur not less frequently than four times per year on an approximately quarterly basis.

(d) **Special Meetings.** Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairman of the board, if any, the president or any vice president, or the secretary or any two (2) directors. Notice of the time and place of special meetings shall be given to each director by one of the following methods: (i) by personal delivery of written notice; (ii) by first-class mail, postage prepaid; (iii) by telephone, either directly to the director or to a person at the director's office who would reasonably be expected to communicate that notice promptly to the director; or (iv) by telegram, charges prepaid. All such notices shall be given or sent to the director's address or telephone number as shown on the records of this corporation. In case the notice is mailed, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. In case the notice is delivered personally or by telephone or telegram, it shall be delivered personally or by telephone or to the telegraph company at least forty-eight (48) hours before the time of the holding of the meeting. The notice shall state the time of the meeting, and the place of the meeting if other than the principal office of this corporation. It need not specify the purpose of the meeting nor the place if the meeting is to be held at the principal office of this corporation.

(e) **Quorum.** A majority of the authorized number of directors shall constitute a quorum for the transaction of business, except to adjourn. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the board of directors, subject to the more stringent provisions of the articles of incorporation and the California Nonprofit Corporation Law, including, without limitation, those provisions relating to (i) approval of contracts or transactions in which a director has a direct or indirect material financial interest, (ii) appointment of committees, and (iii) indemnification of directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

(f) **Adjournment.** A majority of the directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

(g) **Notice of Adjournment.** Notice of the time and place of holding an adjourned meeting shall be given in accordance with the Brown Act.

(h) **Open Meeting Law Compliance.** Notwithstanding any other provision of these Bylaws, including but not limited to this Section 4 and Section 5 of Article VII, the corporation shall be subject to, and comply with, all of the provisions of the Brown Act; and the board of directors shall be deemed to be a “legislative body” as defined by the Brown Act.

**Section 6. Compensation.** Directors and members of committees shall receive no compensation [from the trust](#) for their services.

## **ARTICLE VIII** **OFFICERS**

**Section 1. Officers.** The officers of this corporation shall be a president, vice president, a secretary, and a chief financial officer. This corporation may also have, at the discretion of the board of directors, a chairman of the board, an executive director, more than one vice president, a treasurer, one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be appointed in accordance with the provisions of Sections 2 or 3 of this Article VIII. If there is a treasurer, he or she shall be the chief financial officer unless some other person is so appointed by the board of directors. Any number of offices may be held by the same person, except that no person serving as the secretary, the treasurer, or the chief financial officer may serve concurrently as the president or chairman of the board.

**Section 2. Appointment of Officers.** The officers of the corporation shall be appointed by the board of directors, and each shall serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment.

**Section 3. Subordinate Officers.** The board of directors may authorize the president, or another officer, to appoint any other officers, except those appointed in accordance with the provisions of Section 2 of this Article VIII, that the business of the corporation may require, each of whom shall have the title, hold office for the period, have the authority, and perform the duties specified in the Bylaws or determined from time to time by the board of directors, subject to the rights, if any, of an officer under any contract of employment..

**Section 4. Removal of Officers.** Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, with or without cause, by the board of directors, at any regular or special meeting of the board, or by an officer on whom such power of removal may be conferred by the board of directors.

**Section 5. Resignation of Officers.** Any officer may resign at any time by giving written notice to the board of directors. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any

resignation is without prejudice to the rights, if any, of this corporation under any contract to which the officer is a party.

**Section 6. Vacancies in Office.** A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled only in the manner prescribed in these Bylaws for regular designation to that office.

**Section 7. Chairman of the Board.** If such an officer be elected, the chairman of the board shall preside at meetings of the board of directors and exercise and perform such other powers and duties as may be from time to time assigned to him or her by the board of directors or prescribed by the Bylaws. If there is no president, the chairman of the board shall, in addition, be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 8 of this Article.

**Section 8. President.** Subject to such supervisory powers, if any, as may be given by the board of directors to the chairman of the board, the president shall, subject to the control of the board of directors, generally supervise, direct, and control the business and the officers of the corporation. In the absence of the chairman of the board, or if there be none, the president shall preside at all meetings of the board of directors. The president shall have such other powers and duties as may be prescribed by the board of directors or the Bylaws. The president shall be the chief executive officer of the corporation unless the chairman of the board, if any, is so designated.

**Section 9. Vice President.** In the absence or disability of the president, the vice presidents, if any, in order of their rank as fixed by the board of directors or, if not ranked, a vice president designated by the board of directors, shall perform all the duties of the president, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the board of directors or Bylaws and the chairman of the board.

**Section 10. Secretary.** The secretary shall attend to the following:

(a) **Book of Minutes.** The secretary shall keep or cause to be kept, at the principal office or such other place as the board of directors may direct, a book of minutes of all meetings and actions of directors, committees of directors, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice given, the names of those present at such meetings, the number of directors present or represented at directors' meetings, and the proceedings of such meetings.

(b) **Notices, Seal and Other Duties.** The secretary shall give, or cause to be given, notice of all meetings of the board of directors required by the Bylaws or by law to be given. The secretary shall keep the seal of the corporation in safe custody. The secretary shall have other powers and perform such other duties as may be prescribed by the board of directors or the Bylaws.

**Section 11. Chief Financial Officer.**

(a) **Books of Account.** The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of this corporation. The chief financial officer shall send or cause to be given to the directors such financial statements and reports as are required to be given by law, by these Bylaws, or by the board. The books of account shall be open to inspection by any director at all reasonable times.

(b) **Deposit and Disbursement of Money and Valuables.** The chief financial officer shall deposit all money and other valuables in the name and to the credit of this corporation with such depositories as may be designated by the board of directors and the chief financial officer shall disburse the funds of this corporation as may be ordered by the board of directors. The chief financial officer shall render to the president and directors, whenever they request it, an account of all transactions effected by the chief financial officer and of the financial condition of this corporation. The chief financial officer shall have such other powers and perform such other duties as may be prescribed by the board of directors or the Bylaws.

(c) **Bond.** If required by the board of directors, the chief financial officer shall give this corporation a bond in the amount and with the surety or sureties specified by the board of directors for faithful performance of the duties of such office and for restoration to this corporation of all its books, papers, vouchers, money, and other property of every kind in the possession or under control of the chief financial officer on such officer's death, resignation, retirement, or removal from office.

**ARTICLE IX**

**INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS**

**Section 1. Right of Indemnity.** To the fullest extent permitted by law, this corporation shall indemnify any present or former director, officer, employee or other "agent" of the corporation, as that term is defined in Section 5238 of the California Nonprofit Corporation Law, against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred by them in connection with any "proceeding," as that term is used in that Section, and including an action by or in the right of the corporation, by reason of the fact that the person is or was a person described in that section. "Expenses," as used in this bylaw, shall have the same meaning as in Section 5238(a) of the California Corporations Code.

**Section 2. Approval of Indemnity.** On written request to the board by any person seeking indemnification under Section 5238(b) or Section 5238(c) of the California Corporations Code, the board shall promptly determine under Section 5238(e) of the California Corporations Code whether the applicable standard of conduct set forth in Section 5238(b) or Section 5238(c) has been met and, if so, the board shall authorize indemnification. If the board cannot authorize indemnification because the number of directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of directors who are not parties to that proceeding, application shall be made by this corporation or the agent or the attorney or other person rendering a defense to the agent to the court in which the proceeding is

or was pending for a determination, whether or not the application by the agent, attorney, or other person is opposed by this corporation.

**Section 3. Advancement of Expenses.** To the fullest extent permitted by law and except as otherwise determined by the board in a specific instance, expenses incurred by a person seeking indemnification under Sections 1 and 2 above in defending any proceeding covered by those Sections shall be advanced by the corporation before final disposition of the proceeding, on receipt by the corporation of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately determined that the person is entitled to be indemnified by the corporation for those expenses.

**Section 4. Insurance.** The corporation shall have the right to purchase and maintain insurance to the full extent permitted by law on behalf of its officers, directors, employees, and other agents, against any liability asserted against or incurred by any officer, director, employee, or agent in such capacity or arising out of the officer's, director's, employee's, or agent's status as such.

## **ARTICLE X** **RECORDS AND REPORTS**

**Section. 1 Maintenance of Corporate Records.** The corporation shall keep:

- (a) Adequate and correct books and records of account; and
- (b) Written minutes of the proceedings of its board and committees of the board.

**Section 2. Inspection by Directors.** Every director shall have the absolute right at any reasonable time to inspect the corporation's books, records, documents of every kind, physical properties, and the records of each of its subsidiaries. The inspection may be made in person or by the director's agent or attorney. The right of inspection includes the right to copy and make extracts of documents.

**Section3. Annual Report.** The corporation shall cause an annual report to be sent to the directors within one hundred twenty (120) days after the close of the corporation's fiscal year. That report shall contain the following information, in appropriate detail, for the fiscal year:

- (a) The assets and liabilities, including the trust funds, of the corporation as of the end of the fiscal year.
- (b) The principal changes in assets and liabilities, including trust funds.
- (c) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes.
- (d) The expenses or disbursements of the corporation for both general and restricted purposes.

- (e) The balance of each individual endowment, if any, at the beginning of the fiscal year.
- (f) The amount of any contribution to any endowment, if any, during the fiscal year including, but not limited to, gifts, grants, and contributions received.
- (g) The net amounts of investment earnings, gains, and losses during the fiscal year, including both realized and unrealized amounts.
- (h) The amounts distributed during the fiscal year that accomplish the purpose for which any endowment, if any, was established.
- (i) The administrative expenses charged to each endowment, if any, from internal or third-party sources during the fiscal year.
- (j) The balance of any endowment or other fund at the end of the fiscal year.
- (k) The specific asset allocation percentages including, but not limited to, cash, fixed income, equities, and alternative investments.
- (l) Any information required by Section 4 below.

The annual report shall be accompanied by any report on it of independent accountants, or, if there is no such report, by the certificate of an authorized officer of the corporation that such statements were prepared without audit from the corporation's books and records.

This requirement of an annual report shall not apply if the corporation receives less than Twenty-Five Thousand Dollars (\$25,000.00) in gross receipts during the fiscal year, provided, however, that the information specified above for inclusion in an annual report must be furnished annually to all directors who request it in writing.

**Section 4. Annual Statement of Certain Transactions and Indemnifications.** As part of the annual report to all directors, or as a separate document if no annual report is issued, the corporation shall annually prepare and furnish to each director a statement of any transaction or indemnification of the following kind within one hundred twenty (120) days after the end of the corporation's fiscal year:

- (a) Any transaction (i) in which the corporation, its parent, or its subsidiary was a party, (ii) in which an "interested person" had a direct or indirect material financial interest, and (iii) which involved more than Fifty Thousand Dollars (\$50,000.00), or was one of a number of transactions with the same interested person involving, in the aggregate, more than Fifty Thousand Dollars (\$50,000.00). For this purpose, an "interested person" is either of the following:
  - (i) Any director or officer of the corporation, its parent, or subsidiary (but mere common directorship shall not be considered such an interest); or

(ii) Any holder of more than ten percent (10%) of the voting power of the corporation, its parent, or its subsidiary.

The statement shall include a brief description of the transaction, the names of interested persons involved, their relationship to the corporation, the nature of their interest in the transaction and, if practicable, the amount of that interest, provided that if the transaction was with a partnership in which the interested person is a partner, only the interest of the partnership need be stated.

(b) Any indemnifications or advances aggregating more than Ten Thousand Dollars (\$10,000.00) paid during the fiscal year to any officer or director of the corporation under Article IX of these Bylaws, unless that indemnification has already been approved by the directors under Section 5238(e)(2) of the California Corporations Code.

**Section 5. Audit.** No less frequently than biannually, the corporation shall cause to be performed an independent audit of any non-wasting endowment fund. The results of such audit shall be provided to all directors. All such audit costs shall be paid from the applicable non-wasting endowment fund.

## **ARTICLE XI**

### **COMPLIANCE WITH CONFLICT OF INTEREST LAWS**

**Section 1. Application of Political Reform Act.** Notwithstanding any other provision of these Bylaws, the corporation shall comply with, all of the provisions of the Political Reform Act of 1976, as amended, Government Code Section 81000, *et seq.*, (“PRA”). The corporation shall operate as if it is an “agency,” and each director and officer shall operate as if he or she is a “designated employee,” as defined in the PRA. Each director and officer shall comply with the conflict of interest reporting and disqualification requirements of the PRA. The board of directors shall adopt, periodically review, and, if necessary, amend, a “conflict of interest code” as such term is defined in the PRA.

**Section 2. Application of Government Code Section 1090.** SBVWCD-Directors shall comply with the provisions of California Government Code section 1090, *et seq.* (“Section 1090”) and the corporation shall operate as if it is a “body” of which the SBVWCD-Director is a member. No Independent Director shall be financially interested in any contract made by him or her in his or her official capacity as a director or by the corporation. Nor shall any Independent Director be a purchaser at any sale or vendors at any purchase made by him or her in his or her official capacity as a director or made by the Board. The prohibitions in this Section 2 shall be interpreted in the same manner as the prohibitions contained in Section 1090. Every contract made in violation of this Section 2 by an Independent Director may be avoided at the instance of any party except the officer interested therein.

## **ARTICLE XII**

### **MISCELLANEOUS**

**Section 1. Fiscal Year.** The fiscal year of this corporation shall commence on July 1 and conclude on the immediately following June 30.

**Section 2. Budget.** Prior to the commencement of each fiscal year of this corporation, the board of directors shall adopt a budget setting forth the estimated capital, operating, and other expenditures required in connection with, and estimated receipts from, the activities of the corporation for such fiscal year; provided, however, that during its first fiscal year, the board of directors shall adopt a budget for that initial year within four months of the first meeting of the board of directors. No budget shall be deemed adopted by the board of directors unless a majority of the SBVWCD-Directors approve such budget. No expenditure may be made or obligation incurred which, when added to any other expenditure for the fiscal year of the corporation, exceeds the budget for that fiscal year by more than \$5,000.00 or any line item specified in the budget by more than five percent (5%), without the prior written approval of a majority of the SBVWCD-Directors.

**Section 3. Investment Policies; Money Manager.**

(a) **Creation of an Endowment Investment Policy.** If this corporation holds an endowment, the board of directors shall create, consider, and circulate for review and comment among all the signatory parties to the HCP MOU, an endowment investment policy. To this end, upon approval of the endowment investment policy by the board of directors, this corporation will circulate written copies of same to all the signatory parties to the HCP MOU, for review and comment. If a signatory party to the HCP MOU has not provided comment within thirty (30) days of receipt of the endowment investment policy, that party shall be deemed to have approved the endowment investment policy. All comments to the endowment investment policy received by this corporation shall be circulated to all signatory parties to the HCP MOU contributing to the endowment, with a recommendation by this corporation on whether to accept, reject, or modify in whole or part any revisions suggested by the comment. Each party contributing to the endowment shall then have thirty (30) days to respond whether it concurs in this corporation's recommendation. Failure of a party to indicate whether it concurs in this corporation's recommendation within such thirty (30) day period shall be deemed as concurrence. If a majority of the parties contributing to the endowment do not concur, this corporation shall call a meeting of the parties to resolve the matter, and the decision of a majority of the parties shall govern.

(b) **Contents of an Endowment Investment Policy.** The endowment investment policy will identify the individuals or entities with authority to direct investment of the funds of the endowment, the types of investments eligible for investment of the endowment's funds, the investment strategy for such investment, and the manner in which such investments will be directed to meeting the threshold rates of return needed to sustain the application habitat mitigation program costs without reducing or imperiling the endowment's principal.

(c) **Review of the Endowment Investment Policy.** The endowment investment policy shall be reviewed annually by this corporation, and may be amended or adjusted as necessary to assure the investment of the funds in any endowment is meeting applicable criteria on returns. Any amendments to the endowment investment policy shall follow the same review and comment procedure for its original adoption in Section 3(a), above.

(d) **General Investment Policy.** To the extent this corporation has or intends to have investments outside the scope of an endowment, the board of directors shall adopt and annually review and, if necessary, amend an investment policy for such investments of the corporation. Such investment policy may be part of the endowment investment policy or separate therefrom at the discretion of the board of directors. Neither the investment policy nor any amendment thereof shall be deemed adopted by the board of directors unless a majority of the SBVWCD-Directors approve such investment policy or amendment.

(e) **Money Manager.** The board of directors may engage a reputable money management firm to manage and invest the idle funds of the corporation in accordance with the investment policy described in Section 3(d), above. Such engagement shall require the approval of a majority of the SBVWCD-Directors.

**Section 4. Checks, Drafts, Evidence of Indebtedness.** All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to this corporation, shall be signed or endorsed by such person or persons and in such manner as from time to time shall be determined by resolution of the board of directors. Such resolution shall require the approval of a majority of the directors.

**Section 5. Corporate Contracts and Instruments; How Executed.** The board of directors, except as otherwise provided in these Bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of this corporation, and this authority may be general or confined to specific instances; and, unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind this corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

**Section 6. Construction and Definitions.** Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the California Nonprofit Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the above, the masculine gender includes the feminine and neuter, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a legal entity and a natural person.

**Section 7. Compliance With Public Records Act.** The corporation shall comply with the provisions of the California Public Records Act, California Government Code Section 6250 *et. seq.* The corporation shall be deemed a "Local Agency" as that term is used in the California Public Records Act, and as such, shall be subject to all obligations and exemptions under the California Public Records Act.

## **ARTICLE XIII** **AMENDMENTS**

New Bylaws may be adopted or these Bylaws may be amended or repealed by approval of a majority of the board of directors.



CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting Secretary of:

San Bernardino Valley Conservation Trust, a California nonprofit public benefit corporation

2. That the foregoing Bylaws, comprising of fifteen (15) pages, constitute the Bylaws of said corporation as duly adopted at a meeting of the Board of Directors of the Corporation held on March 10, 2016.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 10 day of March, 2016.

\_\_\_\_\_  
\_\_\_\_\_, Secretary