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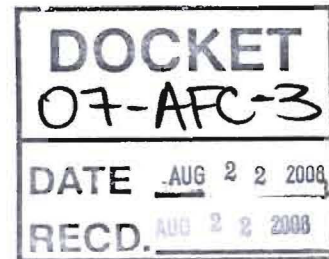
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August 22, 2008

File No. 030137-0012

VIA FEDEX

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-AFC-3
1516 Ninth Street, MS-4
Sacramento, California 95814-5512



Re: CPV Sentinel Energy Project: Docket No. 07-AFC-3

Dear Sir/Madam:

Pursuant to California Code of Regulations, title 20, sections 1209, 1209.5, and 1210, enclosed herewith for filing please find a letter from Michael Carroll to John Kessler enclosing documents related to Applicant's proposed water supply plan for the above-referenced project.

Please note that the enclosed submittal was also filed today via electronic mail to your attention.

Very truly yours,

Paul E. Kihm
Senior Paralegal

Enclosure

cc: CEC 07-AFC-3 Proof of Service List (w/encl. via e-mail)
Michael J. Carroll, Esq. (w/ encl.)

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August 22, 2008

Mr. John Kessler
Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: CPV Sentinel Energy Project (Docket 07-AFC-03)

Dear John:

Enclosed are documents related to CPV Sentinel LLC's proposed water supply plan for the CPV Sentinel Energy Project.

Water Importation Element

The following documents relate to action taken by the Desert Water Agency on August 19, 2008:

- Water Supply Agreement between CPV Sentinel, LLC and Desert Water Agency, which includes as Exhibit B the Water Supply Agreement between North Kern Water Storage District and Desert Water Agency.
- Staff Report to Desert Water Agency Board of Directors, dated August 19, 2008.
- Desert Water Agency Board Resolution No. 982, adopted August 19, 2008.
- Notice of Exemption, Approval of water transfer agreements to allow 8,350 acre feet of Colorado River Aqueduct water to be delivered to Desert Water Agency's Mission Springs Spreading Grounds, dated August 19, 2008.
- Draft Agreement between the California Department of Water Resources, Kern County Water Agency and Desert Water Agency for the Transportation of Water in State Water Project Facilities.

Consistent with the terms of the Memorandum of Understanding for Implementation of the Ocotillo Well Metering Agreement, which was previously provided to the CEC, the agreement between CPV Sentinel and Desert Water Agency for the purchase and delivery of

imported water to the Mission Creek Sub Basin to provide a source of water for CPV Sentinel's use separate and distinct from the native groundwater of the Mission Creek Sub Basin.

Under the terms of the agreement, DWA and CPV will cooperate to purchase non-state water project waters for delivery to DWA via the State Water Project Edmund G. Brown California Aqueduct in accordance with the power plant's requirements over its useful life. Purchases will be made at times convenient to the parties when economically attractive water supplies are available. DWA has agreed to purchase any water that CPV Sentinel designates in the future. These waters will be exchanged with The Metropolitan Water District of California under the terms of existing exchange agreements, and Metropolitan will deliver a like amount of Colorado River Water to DWA. DWA will deliver all of this exchanged water to the Mission Creek Spreading Grounds which recharge the Mission Creek Sub Basin. After percolation and payment by CPV Sentinel, ownership of ninety two percent 92% of the deliveries from Metropolitan will be transferred to CPV Sentinel for pumping by the Sentinel Power Plant. Under these terms, CPV Sentinel would take ownership of this water only after the CEC has completed licensing of the power plant and the power plant has achieved financial close.

Since the agreement provides that all groundwater pumping by the CPV Sentinel Project will constitute recovery of imported water and none of the pumping will be native waters of the Mission Creek Sub Basin, the groundwater production of CPV Sentinel is exempt from the Replenishment Assessment normally charged by DWA. However, CPV Sentinel has agreed to pay an extraction fee equal to the DWA Replenishment Assessment so that CPV Sentinel would contribute to the ongoing replenishment program of DWA as though it was pumping native water from the groundwater sub basin. Payment of this extraction fee could potentially be discontinued in the future if in conjunction with a future adjudication of the groundwater basin or other court action DWA agreed to a strict assignment of the existing replenishment supplies to others.

The agreement contains detailed terms for the repayment by CPV Sentinel of DWA's costs for an initial purchase of 8,350 acre-feet of water from the North Kern Water Storage District. The agreement between North Kern Water Storage District and DWA for this purchase is an exhibit to the CPV/DWA agreement. Under the terms of this purchase agreement, CPV Sentinel will make non-refundable deposits totaling one-half million dollars (\$500,000) toward the cost of this transaction and will repay all of DWA's costs with interest after the project has been licensed and obtained financing. The water from NKWSD must be delivered to DWA at the California Aqueduct between September 1, 2008 and September 1, 2009. The estimated schedule for delivery provides that all water from NKWSD will be delivered between September 1, 2008 and December 31, 2008. It is anticipated that deliveries of exchange water for these initial deliveries will be made from Metropolitan to the Mission Creek sub basin beginning in 2009 and completed by 2015.

The following documents relate to the California Environmental Quality Act review that was previously completed with respect to the export of the water that is the subject of the agreement between CPV Sentinel and DWA:

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- Initial Study and Proposed Draft Subsequent Negative Declaration for the Transfer of 10,000 acre-feet per year of Banked Lower Kern River Water Project, dated September 27, 2001.
- Notice of Determination Subsequent Negative Declaration for the Transfer of 10,000 acre-feet per year of Banked Lower Kern River Water Project, dated November 13, 2001.
- Addendum No. 1 to Subsequent Negative Declaration for Transfer of 10,000 acre-feet per Year of Banked Lower Kern River Water, dated June 2008.
- Notice of Determination, Kern River Restoration and Water Supply Program; Recovery and Delivery – 8,393 acre-feet of Banked Water by Nickel Family, LLC (SCH#2000081017), dated June 17, 2008.

Water Conservation Element

Also enclosed is the definitive agreement which establishes the freshwater conservation program to be established with DWA to offset the Sentinel Project's use of freshwater from the Coachella Valley Groundwater Basin consistent with the MOU executed by CPV Sentinel with the Desert Water Agency (DWA) in February 2008. The conservation program has three elements:

- Installation of 4,800 ET Irrigation controllers on retail services within DWA (estimated savings of fresh water are between 480 and 700 acre feet per year).
- Connection of the Palm Springs National Country Club to recycled water (estimated savings of 1,000 AFY initially, growing to 1,035 AFY as summer period recycled water availability increases).
- Payment to DWA to accelerate planned improvements to the recycled water system to maximize service capabilities to the golf course

Implementation of this agreement is dependent upon approval of the conservation program by the CEC. Also, the monitoring program to determine the effectiveness of the conservation program is to be developed in consultation with the CEC.

LATHAM & WATKINS^{LLP}

Thank you for your attention to this matter. Do not hesitate to contact me if you have any questions regarding the enclosed materials.

Best regards,

Michael Carroll
(PEK)

Michael J. Carroll
of LATHAM & WATKINS LLP

Enclosures

Cc: Mark Turner, CPV

ATTACHMENT 1

WATER SUPPLY AGREEMENT

The Desert Water Agency (“DWA”) and CPV Sentinel, LLC (“CPV”) (collectively, the “Parties”) enter into this Water Supply Agreement (“Agreement”).

I. RECITALS

A. DWA is a non-profit special district created by an act of the California State Legislature on September 15, 1961. DWA relies on State Water Project (“SWP”) water, in addition to other sources of supply, to replenish the Mission Creek Subbasin (“Subbasin”), which is located in the Coachella Valley Groundwater Basin and underlies DWA’s service area. DWA replenishes the Subbasin through use of the Mission Creek Spreading Grounds (“Spreading Grounds”), which replenishment efforts provide a reliable source of water supply for other local users.

B. Pursuant to Section 15.4 of Chapter 100 of the California Water Code Appendix, DWA levies and collects water replenishment assessments from pumpers of groundwater. The revenue from these replenishment assessments (“RA”) is used to purchase water for importation and replenishment of the groundwater.

C. To further its replenishment efforts, in 1983, DWA entered into an agreement with the Metropolitan Water District of Southern California (“MWD”) whereby MWD agrees to exchange its Colorado River water with DWA for an equal quantity of water delivered through the SWP system (the “MWD Exchange

Agreement”). When exchanging such water, MWD has the option of delivering Colorado River water directly for exchange with DWA, or alternatively MWD can debit its “advance delivery account,” which account was established pursuant to an agreement entered into in 1984 between CVWD, DWA and MWD entitled the 1984 Advance Delivery Agreement.

D. Delivery of the water exchanged with MWD is further facilitated by the Mission Creek Groundwater Replenishment Agreement, entered into between DWA and the Coachella Valley Water District (“CVWD”) in April 2003 (the “2003 Replenishment Agreement”). Under the 2003 Replenishment Agreement, on an annual basis, CVWD and DWA (i) calculate the quantity of water produced by pumpers within those portions of the Subbasin and within the Whitewater River Subbasin that lie within the boundaries of CVWD and DWA, and then (ii) allocate their combined imported water supplies delivered as a result of the MWD Exchange Agreement to each subbasin in the same percentages, unless the two agencies agree otherwise.

E. On or about October 3, 2003, the Mission Springs Water District (“MSWD”) filed a lawsuit challenging, among other things, the validity of the replenishment assessments levied by DWA and CVWD to recharge the Subbasin and the Whitewater River Subbasin, respectively (the “Mission Springs Action”). On December 7, 2004, DWA, MSWD and CVWD entered into a settlement agreement to resolve the claims brought in the Mission Springs Action (the “Settlement Agreement”). Under the terms of the Settlement Agreement, the

parties reserve their right to recapture imported water that is infiltrated and percolated into the Coachella Valley Groundwater Basin.

F. Pursuant to its enabling statute, DWA assesses a RA in order to fund DWA's replenishment activities based on the quantity of each acre-foot ("AF") of groundwater produced from the applicable subbasin. In order to measure the groundwater pumped, DWA enters into well metering agreements with groundwater pumpers whereby those pumpers agree to bear the cost of installing metering facilities. On March 1, 2001, DWA entered into a well metering agreement with Ocotillo Development LLC, ("Ocotillo") in order to provide for a mechanism by which to measure and supply water needed to support Ocotillo's proposed power generation plant. An addendum to that agreement was subsequently executed in 2001. (The well metering agreement and the addendum shall be collectively referred to in this Agreement as the "Ocotillo Well Metering Agreement.")

G. Among other terms, the Ocotillo Well Metering Agreement provided that (i) DWA would cooperate in acquiring additional imported water at Ocotillo's expense for use by Ocotillo on its project, (ii) title to such water and water entitlements acquired by DWA at Ocotillo's expense for operation of its proposed project would be transferred to Ocotillo, and (iii) DWA would retain 8% of the additional imported water acquired at Ocotillo's expense as compensation for the use of DWA's water facilities used to deliver and percolate the water into the Subbasin.

H. In an effort to ensure that the substantive terms of the Ocotillo Well Metering Agreement are made applicable to the importation of water for CPV's proposed project, DWA and CPV entered into a Memorandum of Understanding For Implementation of Well Metering Agreement in February 2008 (the "Well Metering Agreement MOU"), which contemplated the Parties' procurement of additional imported water over and above DWA's existing replenishment deliveries in order to support development of CPV's project. However, in order to provide for all of the terms and conditions concerning the importation of the water described herein for CPV's project in a single agreement, the Parties intend that this Agreement comprehensively contain all of those terms and conditions, independent of the Ocotillo Well Metering Agreement and the Well Metering MOU.

I. CPV is the developer of a proposed power generation facility to be sited within DWA's boundaries and within the Subbasin (the "Project"). CPV is currently undergoing the licensing and approval process of the Project by the California Energy Commission ("CEC"). In connection with that licensing and approval process, the CEC is conducting environmental review pursuant to the applicable provisions of the California Environmental Quality Act (California Public Resources Code Section 21000, et seq.) ("CEQA").

J. The initial quantity of water to be supplied by DWA to support the Project will be purchased from the North Kern Water Storage District ("North Kern") under the terms of a water supply agreement entered into between North

Kern and DWA in August 2008 (the “North Kern Agreement”) (a true and correct copy of which is attached as Exhibit “A” hereto). (The water purchased from North Kern shall be referred to in this Agreement as the “North Kern Water.”) DWA and CPV intend to continue to work together to secure additional water supplies that will be imported to the Subbasin for use by the Project in addition to the water replenished by DWA for the benefit of other pumpers pursuant to the 2003 Replenishment Agreement.

K. Prior to entering into an agreement to sell the North Kern Water to DWA, and in general contemplation of exporting that water to a third party (not necessarily DWA or CPV), North Kern complied with the provisions of the California Environmental Quality Act (Cal. Public Resources Code §§ 21000 et seq.) (“CEQA”) by adopting the “Addendum No. 1 to Subsequent Negative Declaration for Transfer of 10,000 Acre Feet Per Year of Banked Lower Kern River Water” in June 2008 (“Addendum”). Prior to the preparation of the Addendum, the Kern County Water Agency had prepared two Negative Declarations (in 2000 and 2001) concerning its acquisition of certain water rights owned by Nickel Family LLC (“Nickel”) and the transfer of certain water to Nickel. The water received by Nickel was subsequently stored with North Kern and is the subject of the North Kern Agreement. The Addendum determined that there were no significant environmental impacts associated with the extraction of the North Kern Water from that groundwater basin and its delivery to the California Aqueduct for exportation.

L. CPV and DWA enter into this Agreement to provide the terms for the purchase of the North Kern Water for delivery by DWA to CPV to support the Project and to provide for the Parties' continued joint efforts to secure additional water supplies for the Project.

II. TERMS OF THE AGREEMENT

For valuable consideration, including the covenants and promises contained in this Agreement, the Parties agree as follows:

A. Well Metering Agreement

The Parties shall enter into the Well Metering Agreement attached hereto as Exhibit "B" concurrently with their execution of this Agreement.

B. Water To Be Exchanged By DWA For The Project

Immediately upon receipt by DWA of the North Kern Water, DWA shall cause the delivery of the North Kern Water to MWD for exchange of an equal quantity of Colorado River water (the "Exchanged NK Water") pursuant to the MWD Exchange Agreement.

C. Quantity Of Water To Be Sold And Purchased

1. Upon (a) DWA's receipt of any Exchanged NK Water from MWD; (b) DWA's delivery of that Exchanged NK Water to the location as described in Section II-(E), below; and (c) CPV's payment for that Exchanged NK Water in accordance with the provisions of this Agreement, DWA shall be deemed to have sold and transferred title to CPV, and CPV shall be deemed to have purchased and received title to, that quantity of Exchanged NK Water multiplied

by ninety-two percent (0.92). Title to the remaining eight percent (0.08) of the Exchanged NK Water not transferred to CPV shall be retained by DWA.

2. DWA and CPV shall cooperate to identify and secure additional sources of supplemental imported water over and above the quantities of imported water normally purchased by DWA for replenishment of the Subbasin. If at any time CPV identifies a source of supplemental water of suitable quality that CPV seeks to purchase and can be purchased by DWA for delivery via the MWD Exchange Agreement, then DWA shall purchase such imported water and CPV shall pay all costs attributable to the purchase and delivery of such water in accordance with an additional water supply agreement to be executed by the Parties that has commercial terms comparable to the terms of this Agreement.

3. If DWA delivers any Exchanged NK Water to the Spreading Grounds prior of its receipt of the payment owed by CPV for such water as provided in this Agreement, DWA shall retain title to such water for the sole benefit of CPV until CPV renders payment for such water in accordance with the applicable provisions of this Agreement. If DWA delivers North Kern Water to MWD pursuant to the MWD Exchange Agreement but has not received Exchanged NK Water from MWD, then DWA shall hold the right to receive such Exchanged NK Water for the sole benefit of CPV until such water is delivered by MWD to DWA.

4. DWA shall keep a written accounting of all Exchanged NK Water received from North Kern and shall provide that accounting to CPV on a semi-annual basis by invoice or other means mutually agreed upon by the Parties.

D. Preservation Of Imported Water Rights

Pursuant to all applicable law, DWA and CPV, in cooperation with one another, shall take all actions necessary to preserve all of their legal rights to recover the Exchanged NK Water imported into the Subbasin for CPV's benefit until DWA transfers title to said water to CPV pursuant to Section II-(C), above. If any legal action is commenced that seeks a determination of rights to produce water from the Subbasin (an "Adjudication"), then DWA shall not consent to relinquish its legal right to recover any and all Exchanged NK Water without CPV's prior written approval, except as may be required of DWA by final court order or applicable law.

E. Delivery Location

DWA shall deliver to CPV the Exchanged NK Water to the Spreading Grounds in the manner ordinarily undertaken by DWA to replenish the Subbasin and shall provide CPV with an accounting on a semi-annual basis of all such water delivered by DWA. Such accounting shall confirm that the amount of Exchanged NK Water so delivered shall be in addition to the replenishment water contemplated by the Settlement Agreement.

F. Water Source

The water to be delivered by DWA to CPV under this Agreement shall be the Exchanged NK Water.

G. Compliance With All Laws

In delivering North Kern Water to MWD pursuant to the MWD Exchange Agreement and delivering Exchanged NK Water to the Spreading Grounds, DWA shall comply with all applicable federal, state and local laws, regulations and agreements.

H. Payments and Purchase Price

1. Deposits

(a) Within twenty (20) calendar days of full execution of this Agreement, CPV shall have paid to DWA a \$450,000 non-refundable deposit (the "\$450,000 CPV Deposit"). The \$450,000 CPV Deposit shall be applied by DWA to satisfy its obligations under the North Kern Agreement, specifically: 1) the outstanding \$100,000 DWA Deposit, as referred in the North Kern Agreement at Section II-G (1) (a); and 2) a portion of the purchase price of the North Kern Water as described in Section II-(G) (2) (a) of the North Kern Agreement. DWA acknowledges that CPV already paid \$50,000 to North Kern on DWA's behalf to satisfy a portion of the deposit referenced in Section II-(G) (1) (a) of the North Kern Agreement.

2. Purchase Price

(a) Within thirty (30) calendar days after CPV has met all conditions precedent to the initial funding by the lenders under the limited-recourse project finance arranged to finance the construction and operation of the Project (“Financial Close”), CPV shall pay DWA an amount of money equal to (i) the amount of money previously paid by DWA to North Kern for any North Kern Water delivered by North Kern to DWA prior to Financial Close, less (ii) \$500,000 (which is the sum of the \$450,000 CPV Deposit and the additional \$50,000 referenced in Section II-H(1)(a), above) (the “Net Payment”). For any quantity of North Kern Water delivered by North Kern to DWA after Financial Close, DWA shall provide CPV with a written invoice stating the amount of money owing to North Kern from DWA under the North Kern Agreement, and CPV shall pay North Kern directly the amount designated on that invoice within thirty (30) calendar days after receipt of said invoice.

(b) In addition to the monies owed by CPV to DWA referred in Section II-(H) (2) (a), CPV shall pay DWA interest on the Net Payment made by DWA prior to Financial Close. The amount of that interest shall be based on (i) the interest rate provided in the Local Agency Investment Fund of the State of California index (the “Indexed Interest Rate”) and (ii) an accrual period starting from the date that DWA pays North Kern for any North Kern Water delivered by North Kern through the thirtieth calendar day after Financial Close (the “Accrual

Period”). The applicable term of the Indexed Interest Rate shall approximate the Accrual Period.

3. Extraction Fees

Although CPV is fully paying for all water needed for the Project through the payments described in this Section II-H and therefore DWA will not need to utilize RA revenue to purchase imported water to replenish the Subbasin to account for the operation of the Project, CPV shall nonetheless pay to DWA an additional fee equal to DWA’s RA then in effect for each AF of Exchanged NK Water produced by CPV from the Subbasin (the “CPV Extraction Fee”). If CPV’s extraction of water from the Subbasin ever exceeds the quantity of the Exchanged NK Water previously delivered to the Spreading Grounds, then CPV shall be deemed to be extracting the replenishment water that DWA delivers to the Subbasin through its use of replenishment assessment funds (hereinafter referred to as “Temporary Deficit Water”). CPV and DWA shall work diligently together to cause the expeditious delivery of additional Exchanged NK Water to the Spreading Grounds to make up for CPV’s extraction of Temporary Deficit Water and thereafter provide for sufficient Exchanged NK Water for future operation of the Project. DWA shall provide for a separate accounting of any Temporary Deficit Water that CPV may produce so as to segregate the production of that water from the production of DWA’s other replenishment water by all other users in the Subbasin. If any legal action, including an Adjudication, is ever filed that seeks to quantify or restrict rights to produce any water from the Subbasin, then

DWA shall take all actions to preserve CPV's production of Temporary Deficit Water, including the actions described in Section II-D, above. In consideration for DWA's actions described in this Section, CPV shall pay the CPV Extraction Fee at all times specified herein, except CPV may cease paying that fee, in its sole discretion, if a final court order prohibits CPV from producing Temporary Deficit Water.

4. California Department of Water Resources Charges

For those variable charges assessed to DWA by the California Department of Water Resources ("DWR Charges") under the applicable provision of DWA's State Water Contract for delivery of the North Kern Water, CPV shall reimburse DWA as follows: (1) with respect to such charges paid by DWA prior to Financial Close, CPV shall pay DWA within thirty (30) calendar days after Financial Close the amount of said DWR Charges plus interest calculated in the manner described in Section II-H(2)(b), above, and (b) with respect to such DWR Charges assessed after Financial Close, CPV shall pay DWA the amount of those charges upon thirty (30) days written notice by DWA.

I. Expiration, Termination, Suspension And Specific Performance

1. Expiration. This Agreement shall expire thirty-four (34) years from the execution date provided, however, that this Agreement may be extended by CPV, in its sole discretion, upon written notice to DWA if (a) the full quantity of the Exchanged NK Water has not been delivered by DWA to the Spreading Grounds, or (b) CPV has extended its lease of the land on which the

Project is sited, so that the extended term of this Agreement shall be coterminous with the extended term of said lease.

2. Termination.

(a) Either Party may terminate this Agreement for material breach by the other Party. A termination for material breach shall become effective if the breaching party does not cure its failure to perform within thirty (30) calendar days after receipt of a notice from the other Party of its intent to terminate for material breach. Notwithstanding the preceding sentence, in the event a failure to perform cannot be reasonably cured within such thirty-day period, there shall be no default under or breach of this Agreement unless the breaching Party fails to commence and diligently proceed toward full performance of the cure within thirty (30) calendar days, or such other time period as the Parties mutually agree in writing, following receipt of written notice from the other Party specifying such failure.

(b) DWA may exercise any contractual, statutory or common law right to terminate the North Kern Agreement only upon written approval by CPV, which approval shall not be unreasonable withheld. In the event DWA terminates all or part of the North Kern Agreement pursuant to Section II-I of this Agreement, the Parties shall terminate this Agreement only as it applies to the amount of water covered under the terminated portions of the North Kern Agreement.

(3) Suspension

(a) If the performance, in whole or in part, of either Party to this Agreement is directly hindered, interrupted or prevented by acts of God, acts of war, or other matters beyond the control of the affected Party, which matters shall include the entry of either a final judgment or an injunction against DWA or CPV in any litigation filed by a third party challenging the validity or performance of this Agreement, then the performance and outstanding obligations of all Parties hereto shall be temporarily suspended to the extent and from the time performance thereof is hindered, interrupted or prevented until such time as performance may be resumed thereafter. The affected Party shall exercise its best efforts to cause the removal of the hindrance and to accomplish alternative ways of performing its obligations under this Agreement.

(b) Promptly after a Party's performance is hindered, interrupted or prevented by a cause identified in Section II-(I)(3)(a), above, the affected Party shall provide written notice to the other Party that identifies the cause of the hindrance and the estimated length that such hindrance will likely remain in place. The Parties shall cooperate with each other in attempting to remove the hindrance and determining when the hindrance has been removed. Promptly after the hindrance is removed or ceases, the affected Party shall provide written notice to the non-affected Party that states that the hindrance has been removed or ceased and performance of the Agreement has been renewed.

(c) CPV and DWA shall not enter into any contract with a third party that will hinder the delivery to or payment for water by CPV.

(4) Specific Performance In The Event Of Breach

In event of an intentional default by DWA of any of its obligations provided in Sections II-(B) and (C) of this Agreement, CPV shall have the right to obtain injunctive or other equitable relief to specifically enforce its rights under Sections II-(B) and (C) of this Agreement, including pursuing an action for specific performance without the necessity of posting a bond or other security. DWA and CPV each reserve all other claims and defenses in any action arising from a breach of this Agreement.

J. Representations And Warranties

1. Representations And Warranties By CPV

CPV represents, warrants and covenants that as of the Execution Date (a) CPV is a limited liability company duly organized, validly existing and in a good standing under the laws of the State of California, (b) CPV has all necessary power and authority to perform its obligations under this Agreement, (c) this Agreement is a valid and binding obligation of CPV enforceable against CPV in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditor's rights generally, and (d) that, to the best of CPV's knowledge, there is no litigation, proceeding or investigation pending or threatened, to which CPV is or would be a party that relates to any facility, water or other matter encompassed or contemplated by this Agreement.

2. Representations And Warranties Of DWA

DWA represents, warrants and covenants that as of the Execution Date: (a) DWA is a non-profit special district validly existing and in good standing under the laws of the State of California; (b) DWA has all necessary power and authority to perform its obligations under this Agreement; (c) this Agreement is a valid and binding obligation of DWA enforceable against DWA in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditor's rights generally; (d) that, to the best of DWA's knowledge, there is no litigation, proceeding or investigation pending or threatened, to which DWA is a party that relates to any facility, water or other matter encompassed or contemplated by this Agreement; (e) that, to the best of DWA's knowledge, the following contracts are valid and enforceable: (i) the MWD Exchange Agreement; (ii) the 2003 Replenishment Agreement; and (iii) the Settlement Agreement; and (f) that, to the best of DWA's knowledge, the Settlement Agreement does not preclude or prevent DWA from executing or performing this Agreement.

K. Dispute Resolution

This Section II-(K) shall govern all disputes, claims and controversies between the Parties arising from or relating to this Agreement ("Disputes").

1. Meet And Confer

In the event of a Dispute, the Parties agree to meet and confer in

person to attempt to reach a resolution. The meeting shall be attended by representatives of the Parties having full authority to resolve the Dispute in question. A Party may initiate the meet and confer process by service of a written notice referencing this Section II-(K), describing the nature of the Dispute, and requesting a meeting. The meeting shall thereafter be held at a mutually agreeable date and time, but in no event more than seven (7) calendar days after the date of the foregoing notice. If the Parties cannot resolve the Dispute within sixty (60) calendar days after the first meeting, the parties shall engage in a non-binding mediation, with the parties to equally share in the costs of such mediation. Said mediation shall be completed no later than sixty (60) calendar days after the completion of the original meet and confer process. No party shall file a lawsuit over a Dispute until the mediation process is completed.

L. Additional Provisions

1. Each Party's obligations under this Agreement are subject to compliance with all applicable federal, state and local laws, rules and regulations.
2. Each Party shall use its best efforts to promptly discharge its obligations under this Agreement.
3. The Parties shall cooperate with each other in preparing and executing any other agreements, whether between each other or with a third party, reasonably necessary to effectuate the purpose and objectives of this Agreement.
4. This Agreement may be modified only by a writing signed by the Parties hereto.

5. All notices required by or regarding this Agreement shall be in writing and shall be sent by first-class mail and facsimile transmission as follows:

To: CPV Sentinel, LLC
Attention: John H. Foster
Manager
35 Braintree Hill Office Park, Suite 400
Braintree, MA 02184

Telephone No: (781) 848-0253
Facsimile No: (781) 848-5804

With a Copy to: Edward J. Casey, Esq.
Weston Benshoof Rochefort Rubalcava & MacCuish LLP
333 S. Hope Street, 16th Floor
Los Angeles, CA 90071

Telephone No: (213) 576-1000
Facsimile No: (213) 576-1100

To: Desert Water Agency
Attention: David K. Luker
General Manager/Chief Engineer
Desert Water Agency
1200 Gene Autry Trail South
Palm Springs, CA 92263-1710

Telephone No: (760) 323-4971
Facsimile No: (760) 325-6505

With a Copy to: Michael T. Riddell, Esq.
Best, Best & Krieger LLP
3750 University Avenue, Suite 400
Riverside, CA 92501-3369

Telephone No: (951) 686-1450
Facsimile No: (951) 686-3083

6. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the Parties.

7. This Agreement is intended by the Parties as a final, complete and exclusive expression of their agreement, and supersedes any and all other agreements, either oral or in writing, including but not limited to the Well Metering Agreement MOU, between the Parties with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter hereof which is not contained herein shall be valid and binding.

8. The prevailing Party in any action to enforce, or for breach of, this Agreement shall recover from the other Party its reasonable attorneys' fees.

9. The Parties acknowledge that their obligations under this Agreement are unique, that each Party would suffer irreparable harm and have no adequate remedy at law if the other Party breaches its obligations hereunder.

10. If any provision of this Agreement is found to be invalid or unenforceable, then the remaining provisions shall remain in full force and effect.

11. Each person signing the Agreement represents that he or she has the authority to do so on behalf of the Party for whom he or she is signing.

12. This Agreement has been negotiated at arm's length and between Parties represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the

Party that has drafted the applicable provision is not applicable and is hereby waived.

13. This Agreement is made and entered into in the State of California, and this Agreement shall in all respects be interpreted, enforced and governed under the laws of this State.

14. This Agreement may be executed in counterparts with the same force and effect as if executed in complete documents. The "Execution Date" of this Agreement shall be the day that the last Party signs the Agreement.

15. A failure by either Party to enforce any provision of this Agreement shall not be construed as a continuing waiver, or as a waiver of the right to compel enforcement of any provision of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and deemed as of the Execution Date.

DATED: _____, 2008

CPV SENTINEL, LLC

By: _____

John H. Foster

Its: Manager

Approved As To Form:
WESTON BENSHOOF ROCHEFORT
RUBALCAVA & MacCUISSH LLP

By: _____

Edward J. Casey

Attorneys for CPV Sentinel, LLC

DATED: 8/19, 2008

DESERT WATER AGENCY
By: David K. Luker
David K. Luker
Its: General Manager/Chief Engineer

Approved As To Form:
BEST, BEST & KRIEGER LLP

By: Michael T. Riddell
Michael T. Riddell
Attorneys for Desert Water Agency

WELL METERING AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 20____ by the **DESERT WATER AGENCY** (Agency) and _____ (Pumper).

A. Pumper is the owner of a certain well or wells identified as _____, _____, and _____, which is/are used for _____ purposes. This/these well(s) is/are located within the Agency's boundaries and is/are used to extract groundwater.

B. Pursuant to Section 15.4 of Chapter 100 of the California Water Code Appendix, the Agency levies and collects water-replenishment assessments from private pumpers for the purpose of replenishing groundwater supplies within the Agency. These assessments are based upon the quantity of groundwater pumped.

C. In order to measure and record the quantity of groundwater extracted by private pumpers within the Agency, it is necessary to install and maintain metering facilities. The Agency has agreed to operate, maintain and replace meters at its own expense, provided that each pumper bear the initial cost of installing the metering facilities.

NOW, THEREFORE, the parties agree as follows:

1. Pumper hereby authorizes the Agency to install metering facilities and necessary appurtenances, at Pumper's expense, at each of Pumper's wells. The Agency will operate, maintain and replace such meters and appurtenances at its own expense. Pumper also agrees that the title to said meters and appurtenances will remain in the Agency.
2. It is the desire of the parties that each such well be equipped with a meter for each discharge outlet; that each such meter be checked for accuracy periodically; and that mechanical and/or mathematical adjustments be made for any such inaccuracy, all for the purpose of determining well production.
3. Pumper authorizes the Agency and its employees, agents and representatives to enter Pumper's property at reasonable times and to install, operate, maintain and replace meters

and appurtenances on said wells as Agency, in its discretion, deems prudent and necessary and to enter Pumper's property at reasonable times to perform any pertinent work in accordance with the provisions of this Agreement.

4. Agency, through its employees, agents and representatives, shall have the right to read said water meters at periodic intervals as deemed necessary by the Agency. Such meter readings shall be the property of the Agency, but copies will be made available to Pumper.
5. Pumper shall notify Agency before making any changes or modifications to the pump and/or piping between a well and the meter and before adding any discharge outlet to a well.
6. Pumper hereby authorizes Agency to install, operate, maintain, and replace such meters and appurtenances on Pumper's wells should the Pumper make any change to an existing well which would require any additional metering devices to render the well fully metered. The cost of installation of such metering devices shall be borne by the Pumper. Pumper also agrees that the title to said meters and appurtenances shall remain in the Agency.
7. Pumper hereby authorizes Agency to obtain pump test data and electrical consumption records pertaining to any well described herein directly from the electrical utility serving power to such well.
8. Pumper hereby authorizes Agency to collect water samples for groundwater quality analysis pertaining to any well described herein.
9. Pumper hereby authorizes Agency to take water level measurements pertaining to any well described herein.
10. Pumper hereby requests and authorizes said electrical utility and/or Agency to perform hydraulic pump tests on each well on a periodic basis as determined to be necessary by Agency. Pumper hereby grants the right of ingress and egress over Pumper's land by the employees and agents of the electrical utility and Agency for the purpose of performing said tests and releases the Agency from claims for damages to Pumper's equipment or other property resulting from said tests unless caused intentionally or by the negligence of

the employees or agents of the Agency. Pumper shall provide any personnel necessary to ensure the safe and correct operation of its pumping equipment during any such test.

11. Agency shall make arrangements for such hydraulic pump testing as it determines to be necessary.
12. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties.
13. In the event of any legal action to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reimbursement of costs and reasonable attorneys' fees expended in such proceedings.

DESERT WATER AGENCY

By: _____

Title: _____

Pumper: CPV Sentinel LLC

By: _____

Title: _____

WATER SUPPLY AGREEMENT

North Kern Water Storage District ("North Kern") and Desert Water Agency ("DWA") (collectively, the "Parties") enter into this Water Supply Agreement ("Agreement") as of the last date that either Party signs this Agreement (the "Execution Date").

I. RECITALS

A. North Kern is a water storage district formed and operating pursuant to California Water Code Sections 39000 *et seq.* North Kern water supplies principally include local Kern River water and pumped groundwater. In addition to those sources of supply, North Kern obtains State Water Project ("SWP") water through exchanges with various SWP contractors, including the Kern County Water Agency ("KCWA") or member units of KCWA.

B. North Kern has an agreement with Nickel Family LLC ("Nickel") to store Nickel's water in North Kern and to extract and deliver that water on Nickel's behalf.

C. KCWA is a political subdivision of the State of California created by an Act of the California State Legislature (Statutes 1961, Chapter 1003 or as amended). KCWA is a SWP contractor entitled to receive SWP water delivered by the California Department of Water Resources ("DWR") via the California Aqueduct. Various member units of KCWA are contractually entitled to receive SWP water from KCWA.

D. DWA is a non-profit special district created by an act of the California State Legislature on September 15, 1961. DWA relies on SWP water, in addition to other sources or supply, to replenish the groundwater basins underlying its service area, which provides a reliable source of water supply for other local users.

E. KCWA stores water in various storage accounts, including the Pioneer Groundwater Recharge and Recovery Project (the "Pioneer Project") and other local banking facilities.

F. In connection with KCWA's storage accounts, KCWA certified a Subsequent Negative Declaration pursuant to the California Environmental Quality Act (California Public Resources Code Section 21000, *et seq.*) ("CEQA") in 2001 (the "2001 Negative Declaration"). The 2001 Negative Declaration updated KCWA's September 2000 Negative Declaration for the "Kern River Restoration and Water Supply Program" relative to the acquisition of the Lower Kern River water right ("Hacienda") by KCWA. In updating the 2000 Negative Declaration, the 2001 Negative Declaration analyzed the potential impacts associated with transferring on an annual basis 10,000 acre-feet ("AF") of Hacienda Water from KCWA's groundwater banking account to Nickel in exchange for the Lower River water right by KCWA. Once transferred, the banked water supply is to be recovered from KCWA's Pioneer Project or other local banking facilities either directly or by exchange and delivered back to the California Aqueduct either directly or by exchange. In 2006, North Kern stored,

in its groundwater banking project on behalf of Nickel, 8,350 AF of such 10,000 AF made available to Nickel in 2006.

G. On June 17, 2008, North Kern certified Addendum No. 1 to the 2001 Negative Declaration (the "Negative Declaration Addendum"). The Negative Declaration Addendum analyzed the potential impacts associated with recovering the water transferred by KCWA to Nickel, which water has been temporarily banked by North Kern in 2006 for subsequent recovery and delivery. The Negative Declaration Addendum further analyzed the impacts associated with the transport of the recovered water to the California Aqueduct by either direct delivery or delivery by exchange. If direct delivery, the recovered water can be conveyed directly to the California Aqueduct through the Friant-Kern Canal, the Cross Valley Canal or the Arvin-Edison Canal or through existing and future interties with Shafter-Wasco Irrigation District and Semitropic Water Storage District. If exchanged, the recovered water will be used inside North Kern and exchanged for North Kern's Kern River water normally delivered inside North Kern. The exchanged Kern River water would then be exchanged with and used within the KCWA or member units of KCWA, for water delivered to the California Aqueduct.

H. DWA now seeks to purchase from North Kern the Nickel water stored for Nickel in 2006, which water was analyzed under both the 2001 Negative Declaration and the Negative Declaration Addendum.

II. TERMS OF THE AGREEMENT

For valuable consideration, including the covenants and promises contained in this Agreement, the Parties agree as follows:

A. Quantity of Water to be Sold and Purchased

North Kern shall transfer and deliver to DWA, and DWA shall purchase 8,350 AF of the 2006 Nickel water analyzed under both the 2001 Negative Declaration and the Negative Declaration Addendum (the "Nickel Water").

B. Conditions Subsequent

1. Government Approvals

(a) By September 15, 2008, or as expeditiously thereafter as commercially practicable, North Kern shall obtain at their sole cost, all permits, approvals and agreements from any other governmental agency, including but not limited to DWR and KCWA ("Government Approvals"), that are necessary for North Kern to deliver the Nickel Water to the Point(s) of Delivery identified in Section II-(D), below.

(b) In the event that North Kern seeks to deliver any water under this Agreement through the Friant-Kern Canal, North Kern shall secure at their sole cost, any necessary Bureau of Reclamation Warren Act contract by the applicable dates described in this Section II-(B).

C. Delivery of Water

North Kern shall cause the delivery of the Nickel Water to DWA in accordance with the preliminary delivery schedule attached hereto as Exhibit A, which schedule shall be subject to revision based on delivery conditions, provided that the Nickel Water shall be scheduled for delivery no later than September 30, 2009.

D. Point(s) of Delivery

1. Delivery by local exchange. If North Kern causes the delivery of the Nickel Water to the California Aqueduct by exchange for SWP water of KCWA or its member units, the Point of Delivery shall be in the California Aqueduct upstream of the Buena Vista Pump Station and within Kern County. The specific California Aqueduct reach for the Point of Delivery shall be identified at the time the exchange is determined.

2. Direct Delivery to California Aqueduct. The Point(s) of Delivery for Nickel Water delivered by direct delivery to the California Aqueduct shall be the Semitropic WSD Turnout (Reach 10A), the Cross Valley Canal or Kern Water Bank Canal Turnouts (Reach 12E) or the Arvin-Edison WSD Turnout (Reach 14C).

3. North Kern shall be responsible for all costs and liabilities related to the delivery of Nickel Water to the Point(s) of Delivery referred to in this Section II-(D) and DWA shall be responsible for all costs and liabilities incurred beyond those Point(s) of Delivery.

4. In accordance with practices and procedures as required by DWR, North Kern shall cause the delivery of all Nickel Water shall be scheduled, measured and delivered to the Point(s) of Delivery referred to in this Section II-(D). Beyond the Point(s) of Delivery referred to in Section II-(D), the Nickel Water shall be scheduled, measured and delivered by DWA.

E. Water Quality

1. All water delivered pursuant to this Agreement for pumping into the California Aqueduct shall equal or exceed the water quality requirements established by DWR.

2. If North Kern is notified or becomes aware that the quality of water that it causes to be delivered for pumping into the California Aqueduct fails to satisfy any applicable water quality requirements, then North Kern shall expeditiously: (i) send a written notice to DWA and all other appropriate agencies required by law; and (ii) take all actions that are necessary to expeditiously cure said failure and thereafter deliver water to the California Aqueduct that satisfies said water quality requirements.

F. Water Source

1. The original source of water to be delivered by North Kern shall be the 8,350 AF of Nickel Water currently banked in North Kern.

G. Payments and Purchase Price

1. Deposits

(a) Within five (5) business days of full execution of this Agreement, DWA shall have paid to North Kern a \$150,000 non-refundable deposit, which deposit shall be decreased to recognize a \$50,000 deposit previously paid for the benefit of DWA prior to the execution of this Agreement (collectively, the "\$150,000 DWA Deposit"). Said deposit may be used by North Kern to pay its costs incurred in obtaining the Government Approvals described in Section II-(B)(1)(a), above.

2. Purchase Price

(a) Thirty (30) calendar days after delivery, DWA shall pay North Kern \$570 per AF for each AF of Nickel Water delivered ("Nickel Water Purchase Price"), less the \$150,000 DWA Deposit to North Kern.

(b) In addition to the Nickel Water Purchase Price, to the extent that the Nickel Water is delivered after September 2008, DWA shall pay North Kern 5% annual interest on the Nickel Water Purchase Price from September 1, 2008 pro-rated until the date of delivery of the Nickel Water, provided that the Nickel Water is delivered prior to September 30, 2009, unless the failure to deliver said water prior to that date was caused by DWA or its representatives.

3. Costs

(a) North Kern shall be responsible for all costs incurred in the recovery and delivery of water to the Point(s) of Delivery described above in Section II-(D) including, but not limited to, costs associated with securing

Government Approvals, energy costs to recover the water, treatment costs, and costs associated with transferring the water to that Point(s) of Delivery.

(b) DWA shall be responsible for all costs and liabilities incurred in transporting the water beyond the Point(s) of Delivery described in Section II-(D).

(c) DWA and North Kern shall each be responsible for its own costs related to the preparation and execution of this Agreement.

H. Infrastructure

(1) North Kern represents and warrants that it either: (i) owns and operates all facilities and infrastructure that are necessary to cause the water to be delivered to the Point(s) of Delivery as provided under Section II-D, above; and/or (ii) will enter into the agreements with third parties or other governmental agencies that are necessary to allow North Kern to use the facilities and infrastructure under the control of such other parties and agencies that are necessary for water to be delivered to the Point(s) of Delivery provided under Section II-(D).

(2) If any new or replacement facilities must be constructed by North Kern to deliver the water, such facilities and infrastructure shall be permitted and constructed at North Kern's expense in accordance with all applicable laws and regulations.

I. Expiration, Termination and Suspension

(1) Expiration. This Agreement shall expire on September 30, 2010 ("Expiration Date"), provided, however, that this Agreement may be extended by mutual written agreement of the Parties in the event that the full amount of Nickel Water has not been delivered.

(2) Termination. Prior to the expiration of the term of this Agreement, this Agreement may be terminated by either party only for material breach by the other Party. A termination for material breach shall become effective if the breaching party does not cure its failure to perform within thirty (30) calendar days after receipt of a notice from the other Party of its intent to terminate for material breach.

(3) Suspension

(a) If the performance, in whole or in part, of either Party to this Agreement is directly hindered, interrupted or prevented by acts of God, acts of war, or other matters beyond the control of the affected Party, which: (i) shall not include drought or the amount of any SWP exchange water that may be made available to North Kern or to Nickels; and (ii) shall include any litigation filed by a third party challenging North Kern's or DWA's approval of this Agreement, then the performance and outstanding obligations of all parties hereto shall be temporarily suspended to the extent and from the time performance thereof is hindered, interrupted or prevented until such time as performance may be resumed thereafter. The affected Party shall exercise its best efforts to cause

the removal of the hindrance and to accomplish alternative ways of performing its obligations under this Agreement.

(b) Promptly after a Party's performance is hindered, interrupted or prevented by a cause identified in Section II-(I)(3)(a), above, the affected Party shall provide written notice to the other Party that identifies the cause of the hindrance and the estimated length that such hindrance will likely remain in place. The Parties shall cooperate with each other in attempting to remove the hindrance and determining when the hindrance has been removed. Promptly after the hindrance is removed or ceases, the affected Party shall provide written notice to the non-affected Party that states that the hindrance has been removed or ceased and performance of the Agreement has been renewed.

(c) North Kern and DWA shall not enter into any contract with a third party that will hinder the delivery to or payment for water by DWA.

J. Specific Performance in the Event of Breach

In event of an intentional default by North Kern of any of its obligations provided in Section II-(C) of this Agreement, DWA shall have the right to obtain injunctive or other equitable relief to specifically enforce its rights under Section II-(C) of this Agreement, including pursuing an action for specific performance without the necessity of posting a bond or other security. North Kern and DWA each reserve all other claims and defenses in any action arising from a breach of this Agreement.

K. Representations and Warranties

1. Representations and Warranties by North Kern

As a material inducement to DWA to enter into this Agreement, North Kern represents, warrants and covenants that (a) North Kern is a water storage district duly organized, validly existing and in a good standing under the laws of the State of California, (b) North Kern has all necessary power and authority to perform its obligations under this Agreement, (c) this Agreement is a valid and binding obligation of North Kern enforceable against North Kern in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditor's rights generally, (d) that, to the best of North Kern's knowledge, there is no litigation, proceeding or investigation pending or threatened, to which North Kern is or would be a party that relates to any facility, water or other matter encompassed or contemplated by this Agreement, and (e) North Kern has a right to withdraw the 2006 Nickel Water from storage for delivery to DWA, in accordance with this Agreement.

2. Representations and Warranties of DWA

As a material inducement to North Kern to enter into this Agreement, DWA represents, warrants and covenants that (a) DWA is a non-profit special district validly existing and in good standing under the laws of the State of California, (b) DWA has all necessary power and authority to perform its obligations under this Agreement, (c) this Agreement is a valid and binding

obligation of DWA enforceable against DWA in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditor's rights generally, (d) that, to the best of DWA's knowledge, there is no litigation, proceeding or investigation pending or threatened, to which DWA is (or with respect to threatened litigation, would be) a party that relates to any facility, water or other matter encompassed or contemplated by this Agreement.

L. Dispute Resolution

This Section II-(L)(1) shall govern all disputes, claims and controversies between the Parties arising from or relating to this Agreement ("Disputes").

1. Meet and Confer

In the event of a Dispute, the Parties agree to meet and confer in person to attempt to reach a resolution. The meeting shall be attended by representatives of the Parties having full authority to resolve the Dispute in question. A Party may initiate the meet and confer process by service of a written notice referencing this Section II-(L), describing the nature of the Dispute, and requesting a meeting. The meeting shall thereafter be held at a mutually agreeable date and time, but in no event more than seven (7) calendar days after the date of the foregoing notice. If the Parties cannot resolve the Dispute within sixty (60) calendar days after the first meeting, the parties shall engage in a non-binding mediation, with the parties to equally share in the costs of such mediation. Said mediation shall be completed no later than sixty (60) calendar days after the

completion of the original meet and confer process. No party shall file a lawsuit over a Dispute until the mediation process is completed.

M. Additional Provisions

1. Each Party's obligations under this Agreement are subject to compliance with all applicable federal, state and local laws, rules and regulations.
2. Each Party shall use its best efforts to promptly discharge its obligations under this Agreement.
3. The Parties shall cooperate with each other in preparing and executing any other agreements, whether between each other or with a third party, that are reasonably necessary to effectuate the purpose and objectives of this Agreement.
4. This Agreement may be modified only by a writing signed by the Parties hereto.
5. All notices required by or regarding this Agreement shall be in writing and shall be sent by first-class mail and facsimile transmission as follows:

To: North Kern Water Storage District
Attention: Richard A. Diamond
General Manager
33380 Cawelo Avenue
Bakersfield, CA 93308
Telephone No: (661) 393-2696
Facsimile No: (661) 393-6884

With a Copy to: Ernest A. Conant Esq.
Young Wooldridge, LLP
1800 30th Street, 4th Fl.

Bakersfield, CA 93301
Telephone No: (661) 327-9661
Facsimile No: (661) 327-0720

To: Desert Water Agency
Attention: David K. Luker
General Manager/Chief Engineer
1200 Gene Autry Trail South
Palm Springs, CA 92263-1710
Telephone No: (760) 323-4971
Facsimile No: (760) 325-6505

With a Copy to: Michael T. Riddell, Esq.
Best, Best & Krieger LLP
3750 University Avenue, Suite 400
Riverside, CA 92501-3369
Telephone No: (951) 686-1450
Facsimile No: (951) 686-3083

6. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the Parties.

7. This Agreement is intended by the Parties as a final, complete and exclusive expression of their agreement, and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter hereof which is not contained herein shall be valid and binding.

8. The prevailing Party in any action to enforce, or for breach of, this Agreement shall recover from the other Party its reasonable attorneys' fees.

9. The Parties acknowledge that their obligations under this Agreement are unique, that each Party would suffer irreparable harm and have no adequate remedy at law if the other Party breaches its obligations hereunder.

10. If any provision of this Agreement is found to be invalid or unenforceable, then the remaining provisions shall remain in full force and effect.

11. Each person signing the Agreement represents that he or she has the authority to do so on behalf of the Party for whom he or she is signing.

12. This Agreement has been negotiated at arm's length and between Parties represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted the applicable provision is not applicable and is hereby waived.

13. This Agreement is made and entered into in the State of California, and this Agreement shall in all respects be interpreted, enforced and governed under the laws of this State.

14. This Agreement may be executed in counterparts with the same force and effect as if executed in complete documents.

15. A failure by either Party to enforce any provision of this Agreement shall not be construed as a continuing waiver, or as a waiver of the right to compel enforcement of any provision of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and deemed in effect as of the Effective Date.

DATED: _____, 2008

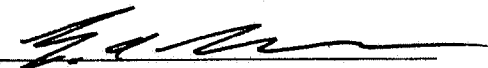
NORTH KERN WATER STORAGE DISTRICT

By: 

Richard A. Diamond

Its: General Manager

Approved As To Form:
Law Offices of Young Wooldridge, LLP

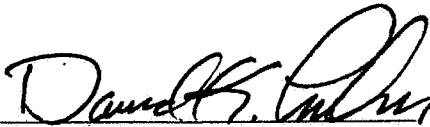
By: 

Ernest A. Conant

Attorneys for North Kern Water Storage District

DATED: 8/19, 2008

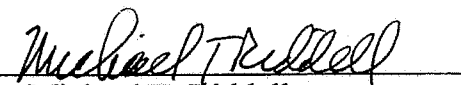
DESERT WATER AGENCY

By: 

David K. Luker

Its: General Manager/Chief Engineer

Approved As To Form:
Best, Best & Krieger, LLP

By: 

Michael T. Riddell

Attorneys for Desert Water Agency

ATTACHMENT 2

**STAFF REPORT
TO
DESERT WATER AGENCY
BOARD OF DIRECTORS**

August 19, 2008

RE: Request Adoption of Resolution No. 982 Approving (1) Execution of a Water Supply Agreement between North Kern Water Storage District and Desert Water Agency, (2) Execution of a Water Supply Agreement between CPV Sentinel LLC, and Desert Water Agency, and (3) Execution of an Agreement between the California Department of Water Resources, Kern County Water Agency, and Desert Water Agency for the Transportation of Water in State Water Project Facilities, and Directing Staff to File a Notice of Exemption Pursuant to the California Environmental Quality Act

As the Board is aware, for some time the Agency has been assisting CPV Sentinel LLC with the water plan to serve their proposed power plant. That plan is currently proceeding through the California Energy Commission permitting process. In February of 2008, Desert Water Agency approved a Memorandum of Understanding which set forth the parameters of the direction we were headed with regard to the water purchase (a copy of that Memorandum of Understanding is attached).

Proposed Resolution No. 982, and the agreements attached, are the definitive agreements necessary to facilitate the Water Supply Agreement for water delivery to the Mission Creek Spreading Basins. Board Resolution No. 982, if approved, grants Desert Water Agency approval to execute the three agreements: (1) between the North Kern Water Storage District and Desert Water Agency; (2) between CPV Sentinel LLC and Desert Water Agency; and, (3) between the California Department of Water Resources, Kern County Water Agency, and Desert Water Agency.

Resolution No. 982 sets forth some of the historical events that have occurred with regard to the Agency's State Water Contractor status, replenishment efforts, exchange agreements, and numerous CEQA approvals from various agencies. Staff recommends the Board consider Resolution No. 982 only after consideration of the three previously noted agreements.

The Water Supply Agreement between Desert Water Agency and CPV Sentinel LLC sets forth our understanding and implementation of CPV Sentinel LLC's rights pursuant to a Well Metering Agreement executed in March of 2001 (with the then Ocotillo Development Power Company) for a power plant on the same property as proposed for the Sentinel Power Plant. This agreement provides for the initial quantity of water to be acquired by CPV Sentinel LLC for its project. The agreement entails importing and

transferring 8,350 A.F. of water from the North Kern Water Storage District (by way of the California Aqueduct) to Desert Water Agency; that water will then be exchanged with the Metropolitan Water District at Devil Canyon Power Plant, in accordance with the Agency's longstanding exchange agreement with Metropolitan. Metropolitan is very supportive of this agreement, and has been cooperative in assisting us with water delivery scheduling, both to them and for an equal quantity of exchange water to the Mission Creek Spreading Basins. Deliveries to Mission Creek Spreading Basins are slated to begin in the year 2010, and will continue until deliveries are complete in approximately 2015.

The Water Supply Agreement between North Kern Water Storage District and Desert Water Agency sets forth the history and quantities of North Kern water to be purchased by Desert Water Agency at this time on behalf of CPV Sentinel LLC. This agreement sets forth North Kern's points of delivery to the California Aqueduct, the source of the water, payments and purchase price, deposits, etc. North Kern Water Storage Water District has been very cooperative and has been eager to participate in this purchase on behalf of CPV Sentinel LLC. North Kern has approved this agreement, and its form has been approved by Desert Water Agency's legal counsel.

The final draft agreement attached is between the Department of Water Resources, Kern County Water Agency, and Desert Water Agency. This Article 55 Agreement basically allows for non-project water to be delivered to Desert Water Agency through the California Aqueduct. It is similar to an agreement entered into approximately 10 years ago, when Desert Water Agency purchased flood waters from the Tulare Lake Basin area. This agreement is being reviewed by the Department of Water Resource's legal staff and Desert Water Agency's legal counsel has been actively involved with the Department of Water Resources in its preparation. The Department of Water Resources is very supportive (especially in these dry years) with this effort to get as much water into the California Aqueduct as physically possible. Staff requests approval of this agreement subject to such revisions as may be required by DWR's legal staff and approved by the Agency's General Manger and legal counsel.

Staff recommends adoption of Resolution No. 982 authorizing execution of all three agreements.

ATTACHMENT 3

BOARD RESOLUTION NO. 982

A RESOLUTION OF THE BOARD OF DIRECTORS OF DESERT WATER AGENCY APPROVING (1) EXECUTION OF A WATER SUPPLY AGREEMENT BETWEEN NORTH KERN WATER STORAGE DISTRICT AND DESERT WATER AGENCY, (2) EXECUTION OF A WATER SUPPLY AGREEMENT BETWEEN CPV SENTINEL, LLC, AND DESERT WATER AGENCY AND (3) EXECUTION OF AN AGREEMENT BETWEEN THE CALIFORNIA DEPARTMENT OF WATER RESOURCES, KERN COUNTY WATER AGENCY, AND DESERT WATER AGENCY FOR THE TRANSPORTATION OF WATER IN STATE WATER PROJECT FACILITIES, AND DIRECTING STAFF TO FILE A NOTICE OF EXEMPTION PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, the State Water Project (“SWP”) includes a network of existing aqueducts, reservoirs, and other water delivery and water-related facilities that deliver water from northern California to southern California; and

WHEREAS, Desert Water Agency (“DWA”) is a non-profit special district created by an act of the California State Legislature on September 15, 1961; and

WHEREAS, pursuant to Section 15.4 of Chapter 100 of the California Water Code Appendix, DWA levies and collects water replenishment assessments from pumpers of groundwater, and the revenue from these replenishment assessments is used to purchase water for importation and replenishment of the groundwater; and

WHEREAS, DWA is a State Water Contractor that receives SWP water under a long-standing agreement with the California Department of Water Resources; and

WHEREAS, to further its replenishment efforts, in 1973, DWA certified an Environmental Impact Report and entered into an agreement with the Metropolitan Water District of Southern California (“MWD”) whereby MWD agreed to exchange water from its Colorado River Aqueduct for an equal quantity of DWA’s SWP water amounts (the “MWD Exchange Agreement”); and

WHEREAS, in 1973 and pursuant to the Environmental Impact Report, DWA began using the Colorado River water to supplemental the natural recharge of groundwater resources underlying DWA’s service area; and

WHEREAS, in 1983, DWA certified another Environmental Impact Report before executing an extension of the MWD Exchange Agreement with the MWD which permitted the water exchanges to continue until 2035; and

WHEREAS, to further its replenishments efforts, in 2002 DWA’s Board of Directors adopted Resolution No. 850, making findings under the California Environmental Quality Act and, in its role as responsible agency, adopted a Programmatic Environmental Impact Report for an additional transfer of up to 100,000 acre-feet per year of SWP water from MWD to DWA and to Coachella Valley Water District; and

WHEREAS, the Programmatic Environmental Impact Report assessed the environmental impacts of average long-term deliveries of imported water to the Upper Coachella Valley Groundwater Basin in the amount of 140,000 acre feet per year; and

WHEREAS, DWA currently operates the Mission Springs Spreading Grounds which provide recharge to existing groundwater supplies within DWA's service area using Colorado River Aqueduct water supplies available under the MWD Exchange Agreement; and

WHEREAS, North Kern Water Storage District ("North Kern") is a water storage district formed and operating pursuant to California Water Code Sections 39000 et seq.; and

WHEREAS, North Kern has an agreement with Nickel Family LLC ("Nickel") to store Nickel's water in North Kern and to extract and deliver that water on Nickel's behalf; and

WHEREAS, Kern County Water Agency ("KCWA") is an independent special district of the State of California created by an Act of the California State Legislature (Statutes 1961, Chapter 1003 or as amended); and

WHEREAS, KCWA is a SWP contractor entitled to receive SWP water delivered by the California Department of Water Resources via the California Aqueduct; and

WHEREAS, KCWA stores water in various storage accounts, including the Pioneer Groundwater Recharge and Recovery Project (the "Pioneer Project") and other local banking facilities; and

WHEREAS, in connection with KCWA's storage accounts, KCWA certified a Subsequent Negative Declaration pursuant to the California Environmental Quality Act in 2001 (the "2001 Negative Declaration"), which updated KCWA's September 2000 Negative Declaration for the "Kern River Restoration and Water Supply Program" relative to the acquisition of the Lower Kern River water right ("Hacienda") by KCWA; and

WHEREAS, in updating the 2000 Negative Declaration, the 2001 Negative Declaration analyzed the potential impacts associated with transferring on an annual basis 10,000 acre-feet of Hacienda Water from KCWA's groundwater banking account to Nickel in exchange for use of the Lower Kern River water right by KCWA; and

WHEREAS, once transferred, the banked water supply is to be recovered from KCWA's Pioneer Project or other local banking facilities either directly or by exchange and delivered back to the California Aqueduct either directly or by exchange; and

WHEREAS, on June 17, 2008, North Kern certified Addendum No. 1 to the 2001 Negative Declaration (the "Negative Declaration Addendum") which analyzed the potential impacts associated with recovering the water transferred by KCWA to Nickel, which water has been temporarily banked by North Kern in 2006 for subsequent recovery and delivery; and

WHEREAS, the Negative Declaration Addendum further analyzed the impacts associated with the transport of the recovered water to the California Aqueduct by either direct delivery or delivery by exchange and determined that there were no additional impacts; and

WHEREAS, on June 18, 2008 and pursuant to the California Environmental Quality Act (“CEQA”), North Kern filed a Notice of Determination and the CEQA statute of limitations for challenging North Kern’s approval has now expired; and

WHEREAS, DWA now seeks to purchase from North Kern 8,350 acre feet of the Nickel water, which water was analyzed under both the 2001 Negative Declaration and the Negative Declaration Addendum, and to transfer that water to MWD in exchange for an equal quantity of water from MWD’s Colorado River Aqueduct; and

WHEREAS, DWA has agreed to deliver the exchanged water received as a result of the water transfer into its Mission Springs Spreading Grounds where it will percolate into the groundwater supply for the benefit of, and use by, CPV Sentinel, LLP (“CPV”) contingent upon approval of CPV’s power project, which is a proposed power generation facility to be sited within DWA’s boundaries, by the California Energy Commission (“CEC”); and

WHEREAS, this purchased water, when added to the other water which DWA and Coachella Valley Water District will deliver to the Upper Coachella Valley Groundwater Basin in the year that the purchased water is delivered, together will total less than 140,000 acre feet; and

WHEREAS, the CEC has the exclusive authority to certify the construction, modification and operation of power plants 50 megawatts (MW) or larger and therefore has exclusive authority to certify the construction and operation of CPV’s power plant; and

WHEREAS, the CEC certification is in lieu of any permit required by state, regional, or local agencies, and federal agencies to the extent permitted by federal law (Public Resources Code § 25500); and

WHEREAS, the CEC must review power plant Applications for Certification to assess potential environmental impacts including potential impacts to public health and safety, potential measures to mitigate those impacts (Public Resources Code § 25519), and compliance with applicable governmental laws or standards (Public Resources Code, § 25523(d)); and

WHEREAS, the CEC acts as lead agency and conducts its environmental analysis in accordance with the requirements of CEQA, and no additional environmental analysis is required because the CEC’s site certification program has been certified by the California Resources Agency as meeting all requirements of a certified regulatory program (Public Resources Code, § 21080.5 and State CEQA Guidelines § 15250 et seq.); and

WHEREAS, if CPV’s proposed power generation project is not licensed, DWA will retain title to the water; and

WHEREAS, DWA will use only existing facilities to effectuate the water transfers described above and no expansion of existing facilities or construction of new facilities is required for delivery and percolation of the water into the groundwater basin;

NOW THEREFORE, BE IT RESOLVED by the Board of Directors of Desert Water Agency as follows:

Section 1 – Incorporation of Recitals: The above recitals are true and correct and are hereby incorporated into this Resolution as though set forth fully herein.

Section 2 – California Environmental Quality Act: Based upon the record as a whole, including but not limited to the three Agreements, all the CEQA documents referenced in the above recitals, the staff report, and other information, the Board of Directors finds that the execution of the agreements and the actions they contemplate are, as a whole, exempt from environmental review under the California Environmental Quality Act (Public Resources Code §§ 21000 et seq. and State CEQA Guidelines §§ 15000 et seq.) (“CEQA”).

Specifically, the Board of Directors finds that the facilities necessary to carry out the proposed actions have already been analyzed, approved, and constructed, such that only existing facilities would be used to effectuate the water transfers and no expansion of existing facilities or construction of new facilities is required. Accordingly, the Board’s actions are exempt from CEQA pursuant to State CEQA Guidelines section 15301, which states that environmental review is not required for “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination.” The Board of Directors further finds that the Agreements and water transfers do not involve cumulative impacts, potentially significant impacts, unusually sensitive environments, or any other unique or unusual environmental impacts.

Additionally, the Board’s actions are limited to the water transfer actions approved through this Resolution, because CPV’s power project is within the exclusive jurisdiction of the California Energy Commission and will be fully analyzed through an environmental document pursuant to the Commission’s certified state regulatory program under Public Resources Code section 21080.5 and State CEQA Guidelines sections 15250 et seq.

Section 3 – Approval of Water Supply Agreement Between North Kern Water Storage District And Desert Water Agency: The Board of Directors hereby approves the Water Supply Agreement Between North Kern Water Storage District and DWA.

Section 4 – Approval of Water Supply Agreement Between Desert Water Agency and CPV Sentinel, LLC: The Board of Directors hereby approves the Water Supply Agreement Between CPV Sentinel, LLC and DWA.

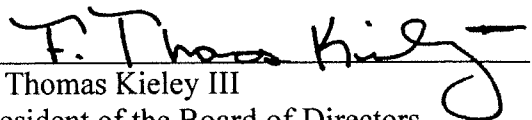
Section 5 – Approval of Use of State Water Project Facilities Agreement: The Board of Directors hereby approves the Agreement between the California Department of Water Resources, Kern County Water Agency, and DWA for the use of SWP facilities to transport the water purchased from North Kern Water Storage District.

Section 6 – Execution of Agreements: The Board of Directors of DWA hereby authorizes the execution of the Agreements described in the preceding Sections.

Section 7 – Custodian of Record: The Administrative Record for DWA decisions on the Agreements discussed herein shall be maintained at DWA offices located at 1200 Gene Autry Trail South, Palm Springs, California. The custodian of records is the Secretary to the Board of Directors.

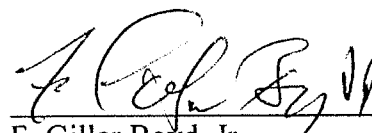
Section 8 – Staff Direction: Staff is hereby directed to prepare and file a Notice of Exemption under the California Environmental Quality Act within five (5) working days of the execution of this Resolution.

ADOPTED this 19th day of August, 2008.



F. Thomas Kieley III
President of the Board of Directors

ATTEST:



F. Gillar Boyd, Jr.
Secretary-Treasurer of the Board of Directors

ATTACHMENT 4

NOTICE OF EXEMPTION

(California Environmental Quality Act)

To: County Clerk's Office
Riverside County
P. O. Box 751
2720 Gateway Drive
Riverside, CA 92502-0751

From: Desert Water Agency
1200 Gene Autry Trail
Palm Springs, California 92264
Phone: (760) 323-4971

FILED
RIVERSIDE COUNTY

Office of Planning and Research
1400 Tenth Street, Room 222
Sacramento, CA 95814
Attn: State Clearinghouse

AUG 20 2008

LARRY W. WARD, CLERK
By *T. Marshall* T. Marshall
Deputy

Project Title: Approval of water transfer agreements to allow 8,350 acre feet of Colorado River Aqueduct water to be delivered to Desert Water Agency's Mission Springs Spreading Grounds.

Project Location - Specific: Within the service territory of the Desert Water Agency

Project Location - City: North of the City of Palm Springs **County:** County of Riverside

Description of Nature, Purpose, and Beneficiaries of Project: On August 19, 2008, the Board of Directors of the Desert Water Agency approved (1) Execution of a Water Supply Agreement Between North Kern Water Storage District and Desert Water Agency, (2) Execution of a Water Supply Agreement Between CPV Sentinel, LLC and Desert Water Agency, and (3) Execution of an Agreement Between the California Department of Water Resources, Kern County Water Agency, and Desert Water Agency for the Transportation of Water in State Water Project Facilities. These agreements authorize the purchase of 8,350 acre feet of water from North Kern Water Storage District and the transfer of that water, via existing State Water Project facilities, to the Metropolitan Water District of Southern California. In exchange for that water, Metropolitan Water District shall deliver to Desert Water Agency an equal quantity of water from its Colorado River Aqueduct entitlements for delivery to Desert Water Agency's Mission Springs Spreading Grounds for potential future purchase by CPV Sentinel, LLC in connection with a power project being analyzed by the California Energy Commission.

Name of Public Agency Approving Project: Desert Water Agency

COUNTY CLERK
Neg. Declaration/Ntc Determination
Filed per P.R.C. 21152
POSTED

AUG 20 2008

Exempt Status (check one):

- Ministerial Action.
- Declared Emergency
- Emergency Project
- Categorical Exemption (State CEQA Guidelines § 15301 [Existing Facilities])
- Statutory Exemption (Pub. Res. Code § 21080.5; State CEQA Guidelines § 15250 et seq. [State Certified Regulatory Program])
- Other

Removed: _____
By: _____ Dept.
County of Riverside, State of California

Reasons why project is exempt: The water transfers approved by Desert Water Agency use existing facilities and a long-established water trade process to obtain 8,350 acre feet of Colorado River Aqueduct water. Desert Water Agency has been using Colorado River Aqueduct water to

assist with the natural recharge of the groundwater basin since 1973, and the Agreements do not authorize the expansion of any existing facilities or the construction of any facilities. State CEQA Guidelines section 15301 provides that environmental review is not required for "the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination." Accordingly, the Agreements and the water transfers that they authorize are exempt from environmental review under CEQA. Moreover, Desert Water Agency found that the water transfers do not involve cumulative impacts, potentially significant impacts, unusually sensitive environments, or any other unique or unusual environmental impacts that might merit environmental review.

Additionally, the Board's actions are limited to the water transfer actions approved through this Resolution, because CPV's potential future power project is within the exclusive jurisdiction of the California Energy Commission and will be fully analyzed through an environmental document pursuant to the Commission's certified state regulatory program under Public Resources Code section 21080.5 and State CEQA Guidelines sections 15250 et seq.

Contact Person & Telephone Number: David K. Luker, General Manager
Phone: (760) 323-4971

8/19/2008
Date
RVPUB\752345.1

David K. Luker
for Desert Water Agency

STATE OF CALIFORNIA - THE RESOURCES AGENCY
DEPARTMENT OF FISH AND GAME
ENVIRONMENTAL FILING FEE CASH RECEIPT

Receipt # 200800864

Lead Agency: DESERT WATER AGENCY Date: 08/20/2008

County Agency of Filing: Riverside Document No: 200800864

Project Title: APPROVAL OF WATER TRANSFER AGREEMENTS TO ALLOW 8,350 ACRE FEET OF COL

Project Applicant Name: DESERT WATER AGENCY Phone Number: 760-323-4971

Project Applicant Address: 1200 GENE AUTRY TRAIL PALM SPRINGS, CA 92264

Project Applicant: Private Entity

CHECK APPLICABLE FEES:

- | | |
|---|----------------|
| <input type="checkbox"/> Environmental Impact Report | _____ |
| <input type="checkbox"/> Negative Declaration | _____ |
| <input type="checkbox"/> Application Fee Water Diversion (State Water Resources Control Board Only) | _____ |
| <input type="checkbox"/> Project Subject to Certified Regulatory Programs | _____ |
| <input checked="" type="checkbox"/> County Administration Fee | <u>\$64.00</u> |
| <input type="checkbox"/> Project that is exempt from fees (DeMinimis Exemption) | |
| <input checked="" type="checkbox"/> Project that is exempt from fees (Notice of Exemption) | |
| Total Received | <u>\$64.00</u> |



Signature and title of person receiving payment: _____

Notes:

 *** TX REPORT ***

TRANSMISSION OK

TX/RX NO 4707
 CONNECTION TEL 2#217#919163233018
 CONNECTION ID
 ST. TIME 08/20 12:24
 USAGE T 01'39
 PGS. SENT 4
 RESULT OK

BEST BEST & KRIEGER

ATTORNEYS AT LAW

3750 University Avenue, Suite 400
 Post Office Box 1028
 Riverside, California 92502-1028
 (951) 686-1450
 (951) 686-3083 Fax
 BBKlaw.com

SACRAMENTO
 (916) 325-4000

SAN DIEGO
 (619) 525-1300

WALNUT CREEK
 (925) 977-9300

INDIAN WELLS
 (760) 588-2511

IRVINE
 (949) 263-2600

LOS ANGELES
 (213) 617-8100

ONTARIO
 (909) 989-8584

FACSIMILE TRANSMISSION

DATE: August 20, 2008

TO:

NAME	FAX NO.	PHONE NO.
State Clearinghouse Office of Planning and Research	916/323-3018	

FROM: Steve Adams

RE: Filing of Notice of Exemption for the Approval of Water Transfer Agreements to Allow 8,350 Acre Feet of COL

FILE No.: 01358.00000	USER No.: 1474	NO. OF PAGES, INCLUDING COVER: 4
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MESSAGE:

The attached Notice of Exemption was filed and posted with the Riverside County Clerk on August 20, 2008, by Desert Water Agency, acting in its capacity as a Lead Agency under CEQA for the approval of water transfer agreements to allow 8,350 acre feet of Colorado River Aqueduct water to be delivered to Desert Water Agency's Mission Springs Spreading Grounds.

ATTACHMENT 5

Mr. David K. Luker
General Manager
Desert Water Agency
1200 Gene Autry Trail South
Post Office Box 1710
Palm Springs, California 92263-1710

Dear Mr. Luker:

This is in reply to Mr. Michael Riddell's letter requesting the Department of Water Resources' (DWR) approval to convey up to 8,350 acre-feet of non-project water to Desert Water Agency (DWA). The non-project water will be pumped and introduced into the California Aqueduct from Reaches 10A, 12E or 13B for subsequent delivery to DWA at Reach 26A of the California Aqueduct. DWA requested this water be delivered pursuant to Article 55 of DWA's long-term Water Supply Contract with DWR.

DWA and North Kern Water Storage District (NKWSD) have entered into an agreement entitled "Water Supply Agreement", executed xxxx, 2008. Said agreement, herein referred to as the "DWA/North Kern Agreement", contains the provisions governing the basic terms, conditions and price of the proposed DWA purchase from NKWSD of the Nickel water stored in NKWSD in 2006.

Metropolitan Water District of Southern California (MWDSC) has concurred with the delivery of such water to Reach 26A of the California Aqueduct. MWDSC determined that the amount of water delivered under this Agreement is within the existing limit of the Exchange Agreement between MWDSC and DWA, and no amendments to that agreement are necessary.

NKWSD has an agreement with Nickel Family LLC (Nickel) to store Nickel's water in NKWSD and to extract and deliver that water on Nickel's behalf. In 2006 under the

contract with Kern County Water Agency (KCWA), Nickel stored 8,350 acre-feet of Lower Kern River ("Hacienda") water into NKWSD recharge facilities for banking in the groundwater basin. Nickel now wishes to recover said stored water from the groundwater basin underlying NKWSD and have it delivered to the California Aqueduct, for subsequent delivery to DWA.

DWR is willing to approve the conveyance of up to 8,350 acre-feet of non-project water to DWA, in accordance with Article 55 of DWA's long-term Water Supply Contract, subject to the following terms and conditions:

GENERAL PROVISIONS

1. Definitions: When used in this Agreement, the following definitions shall apply:
 - a. The "Water Supply Contract" shall mean the water supply contract between DWR and DWA, dated October 17, 1962, and as amended.
 - b. "non-project water" shall mean the Nickel water that was previously stored in NKWSD in 2006 and will be made available for delivery to DWA.
 - c. "Point of introduction" shall mean Reaches 10A, 12E or 13B of the California Aqueduct where the non-project water will be pumped and introduced into the California Aqueduct for subsequent delivery to DMA
 - d. If not otherwise specified, the definitions in DWA's Water Supply Contract with DWR shall apply to this Agreement.
2. This Agreement shall become effective when executed by all parties. This Agreement shall provide for the delivery of non-project water to DWA through

December 31, 2009, and shall terminate on December 31, 2009 or upon final payments of all costs attributable to this Agreement, whichever occurs later. However, the liability, hold harmless and indemnification obligations in this Agreement shall remain in effect until December 31, 2013, or until any claim or litigation concerning this Agreement is finally resolved, whichever occurs later.

3. This approval is unique, and shall not be considered a precedent for future agreements or DWR activities.

4. For California Environment Quality Act (CEQA) compliance, NKWSD has prepared "Addendum No. 1 to the Subsequent Negative Declaration for the Transfer of 10,000 acre-feet per year of Banked Lower Kern River water," and filed a Notice of Determination (NOD) with the State Office of Planning and Research (OPR) (SCH #2000081017) on June 18, 2008. NKWSD also filed the NOD with the Kern County Clerk's office on June 17, 2008. The Addendum addresses the recovery and delivery to the California Aqueduct of the 8,393 acre-feet of Nickel's water banked in NKWSD. The Subsequent Negative Declaration was completed by KCWA in 2001, and referenced two other environmental documents: (1) the KCWA Negative Declaration for the Kern River Restoration and Water Supply Program, September 7, 2000 (SCH #2000081017) and (2) The KCWA Negative Declaration for the Pioneer Groundwater Recharge and Recovery Project, November 13, 1996 (SCH #96111037). Additionally, DWA has filed an NOE for this agreement based on (1) a CEQA exemption for the power plant facilities that are subject to environmental assessment by the CEC; (2) a CEQA exemption for existing

facilities (since no new facilities will be constructed); and (3) a Programmatic EIR for a suite of water management actions prepared by Coachella Valley Water District and adopted by DWA in 2002. In approving this Agreement, DWR reviewed the referenced documents and concurred with the DWA, NKWSD, and KCWA determinations. DWR will file a NOE with the OPR after executing this Agreement.

WATER DELIVERY TO DWA

5. The non-project water will be made available by direct delivery of such water into Reaches 10A, 12E or 13B of the California Aqueduct. DWR agrees to convey such water from the point of introduction to DWA at Reach 26A of the California Aqueduct.
6. DWA shall submit for DWR's approval a revised water delivery schedule showing the anticipated change to the monthly delivery pattern to accommodate the delivery of non-project water to DWA after all approvals have been obtained and before water is delivered under this Agreement. The revised water delivery schedule shall be faxed to the State Water Project Analysis Office (SWPAO), Attention: Water Delivery Section, at (916) 653-9628, and shall reference this Agreement (SWPAO #08055).
7. All water delivery schedules and revisions shall be in accordance with Article 12 of DWA's long-term Water Supply Contract with DWR. DWA shall submit a weekly schedule to the Southern Field Division (Attn: Janet Rollins, Fax (661) 294-3651) showing the deliveries to DWA. The schedules shall be

submitted by 10 a.m. Wednesday for the following week (Monday through Sunday) and shall be concurrently faxed to the following:

- a. State Water Project Operations Control Office
Chief, Pre-Scheduling Section, FAX (916) 574-2782
Chief, Operation Scheduling Section, FAX (916) 574-2785
 - b. San Joaquin District
Robert Bitner at (559) 230-3301
8. DWR's approval is dependent upon DWR's overall conveyance ability and planned SWP operations. DWR shall not be obligated to deliver the non-project water in amounts in excess of DWA's proportionate use-of-facilities factors that would adversely impact the delivery of allocated SWP water to other SWP contractors or adversely impact SWP operations or facilities. DWA will be responsible for any adverse impacts that may result from the conveyance of non-project water, as determined by DWR.
9. Non-project water will be conveyed by DWR from Reaches 10A, 12E, or 13B where such water will be pumped and introduced to the California Aqueduct to DWA at Reach 26A.

WATER DELIVERED INTO THE CALIFORNIA AQUEDUCT

10. The facility used to pump water into the California Aqueduct must have an executed agreement with DWR for the introduction of local water into the California Aqueduct.
11. Water pumped from the groundwater basins within NKWSD and introduced into Reaches 10A, 12E or 13B of the California Aqueduct shall meet DWR's water

quality standards in effect when water is introduced into the California Aqueduct.

12. Non-project water that will be pumped and introduced to the California Aqueduct is subject to the "Interim Department of Water Resources Water Quality Criteria for Acceptance of Non-Project Water Into the State Water Project, March 1, 2001", or other document that supersedes this interim document.

CHARGES

13. DWA shall pay to DWR the SWP charges associated with the delivery of non-project water in effect for the year in which the water is delivered to DWA, from the point of introduction at Reach 10A, 12E or 13B to Reach 26A of the California Aqueduct, in accordance with Article 55 of DWA's long-term Water Supply Contract, including but not limited to:
 - a. The same costs for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water as is calculated for annual Table A water from the point of introduction in Reaches 10A, 12E or 13B of the California Aqueduct to DWA at Reach 26A.
 - b. All incremental operation, maintenance, and replacement costs, and any other incremental costs, as determined by DWR.
 - c. Any identified demonstrable increase in non-power costs that would otherwise be borne by the SWP contractors not signatory to this Agreement or by DWR as a result of activities pursuant to this Agreement.

- d. Charges and payment terms in this Agreement shall be subject to DWA Water Supply Contract in their current forms and as amended in the future.
14. All payments under this Agreement not covered by DWA's Water Supply Contract shall be due within 30 days after the date of DWR's billing, and interest shall be charged for all delinquent payments. DWA shall pay DWR accrued interest on all overdue payments at the rate of one percent per month from the due date to the date of payment.

LIABILITY

15. DWR is providing conveyance service only and is not responsible for the use, effects, or disposal of non-project water beyond DWA's turnouts in Reach 26A of the California Aqueduct. Water delivered pursuant to this Agreement shall remain subject to Article 13 of DWA's long-term Water Supply Contract with DWR, with responsibilities for liabilities under the terms of that article shifting from DWR to DWA when the water passes through the turnouts to DWA.
16. Notwithstanding Article 13 of the Water Supply Contract, DWA and KCWA agree to hold DWR, or its Directors, officers, or employees harmless from any direct or indirect loss, liability, cause of action, or claim and shall indemnify DWR for all costs, damages, and liabilities that DWR or SWP contractors incur as result of DWR providing services under this Agreement. In the event that any claim or liability against DWR, its Directors, officers or employees, jointly and severally, arises out of this Agreement, DWA and KCWA shall be jointly and severally responsible to defend, indemnify, and hold DWR and any of its Directors, officer, or employee harmless from any such claim.

17. If DWR is precluded in whole or in part from delivering non-project water as a result of uncontrollable forces, it is relieved from the obligation to deliver the water to the extent it is reasonably unable to complete the obligation due to the uncontrollable forces. Uncontrollable forces shall include, but are not limited to, earthquakes, fires, tornadoes, floods and other natural disasters. DWA shall not be entitled to recover any administrative or conveyance costs paid for non-project water that was delivered either before or during the occurrence of uncontrollable forces.

EXECUTION

18. This Agreement may be executed in counterpart. The parties agree to accept facsimile or electronically scanned signatures as original signatures. The Agreement shall take effect as soon as all parties have signed.
19. Immediately after execution, DWA and KCWA shall transmit a copy of the executed Agreement by facsimile or electronic file to Robert B. Cooke, Chief, State Water Project Analysis Office at (916) 653-9628 or cooke@water.ca.gov and to each other at:

DWA: (760) 325-6505 or dluker@dwa.org

KCWA: (661) 634-1428 or cCreel@kcwa.com

If DWA or KCWA needs a Board of Directors' approval of this Agreement, that party shall send a facsimile or electronic file of the board approval to the other two parties.

If you have any questions or need additional information, you may contact me at

(916) 653-4313 and refer to SWPAO #08055.

Sincerely,

Raphael A. Torres
Deputy Director

ACCEPTED:

DESERT WATER AGENCY

KERN COUNTY WATER AGENCY

Signature

Signature

Title

Title

Date

Date

Enclosures

ATTACHMENT 6



15701 Highway 178 • P.O. Box 60679 • Bakersfield, CA 93386-0679
(661) 872-5050 • Fax: (661) 872-7141 • E-mail: nfilc@lightspeed.net

October 1, 2001

Mr. Scott Morris
Attorney at Law
Kronick, Moskowitz, Tiedemann & Girard
400 Capitol Mall 27th Floor
Sacramento CA 95814-4417

Dear Mr. Morris:

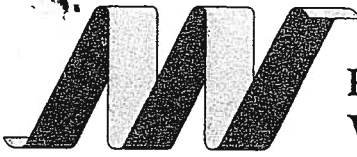
Enclosed you will find a copy of the September 27, 2001 memo from Thomas N. Clark, Kern County Water Agency, regarding the California Environmental Quality Act Compliance for the Transfer of 10,000 acre feet year per of Banked Lower Kern River Water Project and the enclosures thereto.

If you have any questions or comments, please contact us.

Sincerely,

Rita J. Rowland
Administrative Assistant

/rjr
encs.



KERN COUNTY
WATER AGENCY

GROUNDWATER/KRP

Directors:

Fred L. Starrh
Vice President
Division 1

Terry Rogers
Division 2

Peter Frick
President
Division 3

Michael Radon
Division 4

Adrienne J. Mathews
Division 5

Lawrence P. Gallagher
Division 6

Gene A. Lundquist
Division 7

Thomas N. Clark
General Manager

John F. Stovall
General Counsel

September 27, 2001

TO: Responsible Agencies and Interested Parties

FROM: Thomas N. Clark

SUBJECT: California Environmental Quality Act (CEQA) Compliance for
the Transfer of 10,000 acre-feet per year of Banked Lower Kern
River Water Project

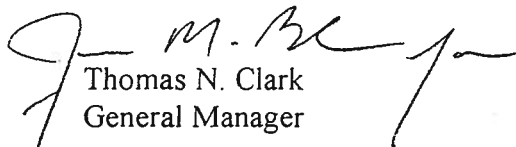
Pursuant to CEQA, the Kern County Water Agency (Agency) will be the Lead Agency and has prepared an Initial Study and Proposed Draft Subsequent Negative Declaration for the *Transfer of 10,000 acre-feet per year of Banked Lower Kern River Water Project*. We are soliciting the views of your agency as to the scope and content of the environmental information which is applicable to your agency's statutory responsibilities in connection with the proposed project.

In order to review and consider your comments during the public review period, the Agency requests that all comments be received prior to 5:00 p.m., Monday, November 5, 2001. Following the review and comment period, the Initial Study, along with the Subsequent Negative Declaration will be presented to the Agency Board of Directors for adoption, at a public hearing to be held at 12:00 p.m. on Tuesday, November 13, 2001 at the Agency's administration office at 3200 Rio Mirada Drive, Bakersfield, CA. Please submit written comments to:

Mr. Thomas N. Clark, General Manager
Kern County Water Agency
P.O. Box 58
Bakersfield, CA 93302-0058

If you require any further information contact Kane Totzke at (661) 634-1468.

Sincerely,


Thomas N. Clark
General Manager

Mailing Address:
P.O. Box 58
Bakersfield, CA 93302-0058
Phone: 661/634-1400
Fax: 661/634-1428

Enclosures

KERN COUNTY WATER AGENCY
Environmental Initial Study Form
[for CEQA Guidelines section 15162 determination]

1. Project title: Transfer of 10,000 acre-feet per year of Banked Lower Kern River Water

2. Lead agency name and address:

Kern County Water Agency
P.O. Box 58
3200 Rio Mirada Drive
Bakersfield CA 93302-0058

3. Contact person and phone number: Thomas N. Clark, General Manager, 661-634-1400

4. Project location: Water storage in and transfer from the Kern County Water Agency (Agency) Pioneer Groundwater Recharge and Recovery Project and/or other local banking facilities, Kern County, California (see attached map(s); water delivery via the Department of Water Resources California Aqueduct.

5. Project sponsor's name and address: Same as lead agency.

6. Description of project: In September 2000, the Kern County Water Agency (Agency) certified a Negative Declaration for the *Kern River Restoration and Water Supply Program* (Program). A component of the Program was acquisition of the Lower Kern River water right (Lower Right), i.e., Hacienda/Garces pre-1914 water right. Studies conducted by Agency staff showed that the controllable average annual yield from the Lower Right was approximately 40,000 acre-feet. Historically, the prior owner of the Lower Right, Nickel Family, LLC had exported at least 10,000 acre-feet per year from the basin under various terms and conditions. For example, during the period of 1992 through 2001, an average of approximately 13,000 acre-feet was delivered out-of County. Subsequent to the Board certification of the Negative Declaration for the Program, the Agency detailed a proposal to continue to transfer, on an annual basis, the 10,000 acre-feet of water from the Agency's groundwater bank account. The transferred water will be recovered from the Agency's storage account in the Pioneer Groundwater Recharge and Recovery Project and/or other local banking facilities either directly or by exchange and delivered back to the California Aqueduct either directly or by exchange, via the Kern Water Bank Canal and/or the Cross Valley Canal. For more information concerning the project, see the *Kern County Water Agency Environmental Initial Study Form [for CEQA Guidelines section 15162 Determination]* dated September 27, 2001 (the "Initial Study"), which is available for review and copying during regular business hours at the Agency office at the above address.

7. General plan designation and zoning: Not applicable to the present project.

8. Surrounding land uses and setting: The Pioneer Groundwater Recharge and Recovery Project is located over the Kern River fan, west of Bakersfield. The Project is adjacent to the Berrenda Mesa Groundwater Recovery Project and the City of Bakersfield's 2800-Acre Recharge Project. Urban development is encroaching from the east and farming is taking place on lands to the south and north.

9. Other public agencies whose approval is required: State Department of Water Resources for point of delivery agreement for the transferred water.

10. Purpose and explanation of Initial Study form: The Agency has prepared the Initial Study in order to determine whether the approval and implementation of the project as described in the Initial Study require subsequent or additional environmental review under CEQA Guidelines section 15162. The purpose of the project is to continue to transfer the 10,000 acre-feet of water per year. The transferred water will be recovered from the Agency's storage account in the Pioneer Groundwater Recharge and Recovery Project or other local banking facilities either directly or by exchange and delivered back to the California Aqueduct either directly or by exchange, via the Kern Water Bank Canal and/or the Cross Valley Canal. The recipient entity(s) of the transferred water are unknown at this time. A portion or all of this water may be transferred outside Agency boundaries. In comparing

water transfers between the prior owner and the Agency, except for which groundwater banking project the water is delivered from, the physical arrangement and potential impacts remain very much the same.

The Initial Study evaluates the incremental differences between the impacts of the transfer of the 10,000 acre-feet from the prior owner versus transfer by the Agency as the new owner of the water and the Agency's use of the Pioneer Groundwater Bank Supply and/or other local groundwater banking facilities, as previously described, analyzed and approved in the previous CEQA documents. For more information concerning the purpose of the Initial Study and this Subsequent Negative Declaration, see the Initial Study.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

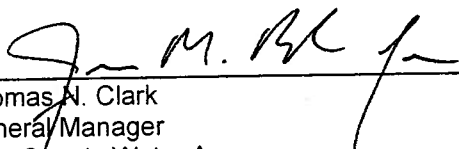
The environmental factors checked below would be potentially affected by this change in the water supply contract, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

- | | | |
|--|---|---|
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Agriculture Resources | <input type="checkbox"/> Resources Air Quality |
| <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Geology /Soils |
| <input type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Hydrology / Water Quality | <input type="checkbox"/> Land Use/ Planning |
| <input type="checkbox"/> Mineral Resources | <input type="checkbox"/> Noise | <input type="checkbox"/> Population / Housing |
| <input type="checkbox"/> Public Services | <input type="checkbox"/> Recreation | <input type="checkbox"/> Transportation/Traffic |
| <input type="checkbox"/> Utilities / Service Systems | <input type="checkbox"/> Mandatory Findings of Significance | <input checked="" type="checkbox"/> None |

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

- I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in the previous CEQA Documents pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to the previous CEQA Documents, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required. A SUBSEQUENT NEGATIVE DECLARATION will be prepared to confirm this conclusion. (CEQA Guidelines section 15162).



Thomas N. Clark
General Manager
Kern County Water Agency

9/27/01
Date

Environmental Initial Study Checklist:

<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
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I. AESTHETICS -- Would the project:

- | | | | | |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Have a substantial adverse effect on a scenic vista? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Substantially degrade the existing visual character or quality of the site and its surroundings? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

II. AGRICULTURE RESOURCES -- In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:

- | | | | | |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Conflict with existing zoning for agricultural use, or a Williamson Act contract? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

III. AIR QUALITY -- Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:

- | | | | | |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Conflict with or obstruct implementation of the applicable air quality plan? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

IV. BIOLOGICAL RESOURCES -- Would the project:

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

V. CULTURAL RESOURCES -- Would the project:

a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
VI. GEOLOGY AND SOILS -- Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
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VII. HAZARDS AND HAZARDOUS MATERIALS --

Would the project:

- | | | | | |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

VIII. HYDROLOGY AND WATER QUALITY -- Would the project:

- | | | | | |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Violate any water quality standards or waste discharge requirements? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|

	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Place housing within a 100-year flood hazard area as mapped on a Federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j) Inundation by seiche, tsunami, or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
IX. LAND USE AND PLANNING - Would the project:				
a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

X. MINERAL RESOURCES -- Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

XI. NOISE -- Would the project result in:

a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

XII. POPULATION AND HOUSING -- Would the project:

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

XIII. PUBLIC SERVICES

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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XIV. RECREATION --

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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XV. TRANSPORTATION/TRAFFIC -- Would the project:

a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Result in inadequate parking capacity?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

XVI. UTILITIES AND SERVICE SYSTEMS --

Would the project:

a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the projects projected demand in addition to the providers existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Be served by a landfill with sufficient permitted capacity to accommodate the projects solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
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XVII. MANDATORY FINDINGS OF SIGNIFICANCE --

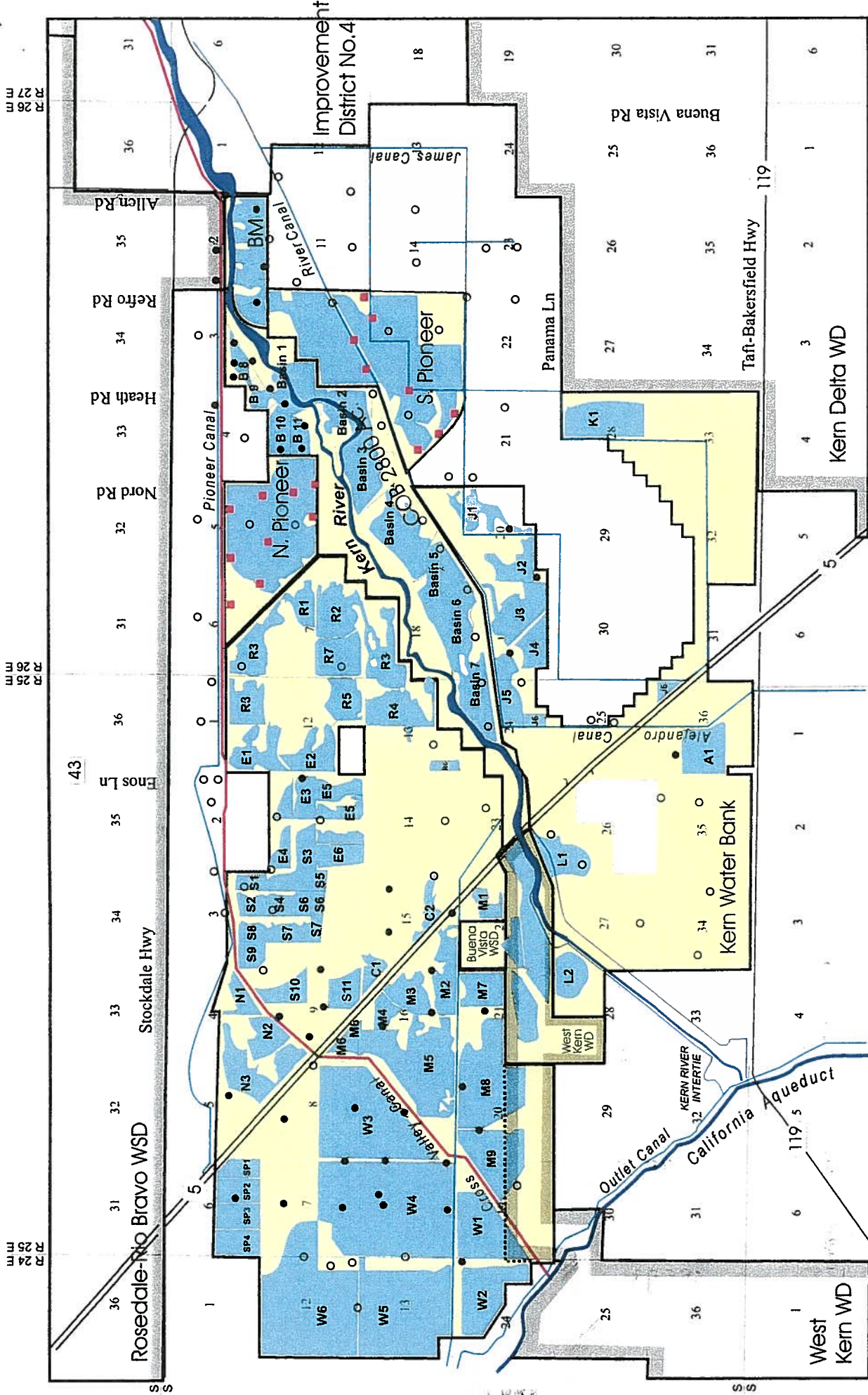
- | | | | | |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

LIST OF REFERENCES AND SUPPORTING FACTUAL BASES

The following documents are available for review at the Kern County Water Agency's administrative office 3200 Rio Mirada Drive, Bakersfield, CA., between the hours of 8:00am to 5:00pm, Monday through Friday.

- Kern County Water Agency's Negative Declaration for the *Kern River Restoration and Water Supply Program*, dated September 7, 2000 (SCH# 2000081017)
- Kern County Water Agency Negative Declaration for the Pioneer Groundwater Recharge and Recovery Project, dated November 13, 1996 (SCH# 96111037)

Kern Fan Area Groundwater Recharge/Recovery Facilities



- Legend**
- Existing Project Well
 - Existing Ag Well
 - Future Project Well

KERN COUNTY WATER AGENCY
NOTICE OF INTENT TO ADOPT SUBSEQUENT NEGATIVE DECLARATION
[to confirm CEQA Guidelines section 15162 determination]

Pursuant to the California Environmental Quality Act and CEQA Guidelines, the Kern County Water Agency hereby provides notice of its intent to adopt a Subsequent Negative Declaration pursuant to CEQA Guidelines section 15162 for the following:

1. **Name of Project:** Transfer of 10,000 acre-feet per year of Banked Lower Kern River Water
2. **Project Lead Agency and Sponsor:** Kern County Water Agency, P.O. Box 58, 3200 Rio Mirada Drive, Bakersfield CA 93302-0058. Contact person: Thomas N. Clark, General Manager, 661-634-1400.
3. **Project Description:** In September 2000, the Kern County Water Agency (Agency) certified a Negative Declaration for the *Kern River Restoration and Water Supply Program* (Program). A component of the Program was acquisition of the Lower Kern River water right (Lower Right), i.e., Hacienda/Garces pre-1914 water right. Studies conducted by Agency staff showed that the controllable average annual yield from the Lower Right was approximately 40,000 acre-feet. Historically, the prior owner of the Lower Right, Nickel Family, LLC had exported at least 10,000 acre-feet per year from the basin under various terms and conditions. For example, during the period of 1992 through 2001, an average of approximately 13,000 acre-feet was delivered out-of County. Subsequent to the Board certification of the Negative Declaration for the Program, the Agency detailed a proposal to continue to transfer, on an annual basis, the 10,000 acre-feet of water from the Agency's bank account located on the Pioneer Project and/or from other local banking facilities. As such, the Agency is proposing the Project, Transfer 10,000 acre-feet per year of Banked Lower Kern River Water. The transferred water would be recovery from the Agency's Pioneer Groundwater Recharge and Recovery Project located in the Kern Fan area and/or from other local banking facilities, either directly or by exchange and conveyed back to the California Aqueduct via the Kern Water Bank Canal and/or the Cross Valley Canal either directly or by exchange. For more information concerning the project, see the *Kern County Water Agency Environmental Initial Study Form [for CEQA Guidelines section 15162 Determination]* dated September 27, 2001 (the "Initial Study"), which is available for review and copying during regular business hours at the Agency office at the above address.
4. **Purpose and explanation of Initial Study:** The Agency has prepared the Initial Study in order to determine whether the approval and implementation of the project as described in the Initial Study require subsequent or additional environmental review under CEQA Guidelines section 15162. The purpose of the project is to continue to transfer the 10,000 acre-feet of water per year. The transferred water will be recovered from the Agency's storage account in the Pioneer Groundwater Recharge and Recovery Project and/or from other local banking facilities and either directly or by exchange and delivered back to the California Aqueduct either directly or by exchange, via the Kern Water Bank Canal and/or the Cross Valley Canal. The recipient entity(s) of the transferred water are unknown at this time. A portion or all of this water may be transferred outside Agency boundaries. In comparing water transfers between the prior owner and the Agency, except for which groundwater banking project the water is delivered from, the physical arrangement and potential impacts remain very much the same.

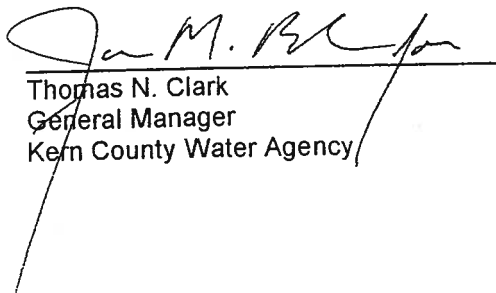
The Initial Study evaluates the incremental differences between the impacts of the transfer of the 10,000 acre-feet from the prior owner versus transfer by the Agency as the new owner of the water and the use of the Agency's Pioneer Groundwater banked supply and/or other local banking facilities, as previously described, analyzed and approved in the previous CEQA documents. For more information concerning the purpose of the Initial Study and this Subsequent Negative Declaration, see the Initial Study.
5. **Project Location:** Water storage in and transfer from Agency Pioneer Groundwater Recharge and Recovery Project and/or other local banking facilities, Kern County, California (see map attached to Initial Study); water delivery via the State Department of Water Resources California Aqueduct.

6. **Proposed Finding:** The Agency Board of Directors has reviewed the proposed project, Initial Study, comments received on the proposal to adopt this Subsequent Negative Declaration, and other documents and information from Agency staff, and on the basis of this information and the whole record before Agency, hereby finds and determines as follows: (a) The Initial Study and Subsequent Negative Declaration reflect Agency's independent judgment and analysis; and (b) and the Agency's Kern River Restoration and Water Supply Program and the Pioneer Groundwater Recharge and Recovery Project (i) have been analyzed adequately in the previous negative declarations pursuant to applicable standards, and (ii) impacts have been avoided or mitigated pursuant to the previous negative declarations, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required. This Subsequent Negative Declaration confirms this conclusion.

7. **Initial Study:** A copy of the Initial Study is either attached or available for public review at the Agency office at the above address.

8. **Location of Background Documents:** The Initial Study documents referenced in the Initial Study, notice of intent to adopt Subsequent Negative Declaration, comments on the Initial Study, and other documents concerning this project are on file and available for public review at the Agency office at the above address. The Agency Board Secretary (same address) is the custodian of the documents that constitute the record of proceedings upon which the decision in this matter is based.

9. **Public Review:** Public comments on this proposal to adopt a Subsequent Negative Declaration will be received by the Agency at the above address beginning September 28, 2001 and ending November 5, 2001. The Agency Board of Directors is expected to consider the adoption of the Subsequent Negative Declaration at a public meeting scheduled for Tuesday, November 13, 2001 at 12:00 p.m., at the Agency's offices at the above address.


Thomas N. Clark
General Manager
Kern County Water Agency

9/27/01
Date

**KERN COUNTY WATER AGENCY
SUBSEQUENT NEGATIVE DECLARATION
[to confirm CEQA Guidelines section 15162 determination]**

Pursuant to the California Environmental Quality Act and CEQA Guidelines, the Kern County Water Agency hereby adopts this Subsequent negative declaration pursuant to CEQA Guidelines section 15162 for the following:

1. **Name of Project:** Transfer of 10,000 acre-feet per year of Banked Lower Kern River water.
2. **Project Lead Agency and Sponsor:** Kern County Water Agency, P.O. Box 58, 3200 Rio Mirada Drive, Bakersfield CA 93302-0058. Contact person: Thomas N. Clark, General Manager, 661-634-1400.
3. **Project Description:** In September 2000, the Kern County Water Agency (Agency) certified a Negative Declaration for the *Kern River Restoration and Water Supply Program* (Program). A component of the Program was acquisition of the Lower Kern River water right (Lower Right), i.e., Hacienda/Garces pre-1914 water right. Studies conducted by Agency staff showed that the controllable average annual yield from the Lower Right was approximately 40,000 acre-feet. Historically, the prior owner of the Lower Right, Nickel Family, LLC had exported at least 10,000 acre-feet per year from the basin under various terms and conditions. For example, during the period from 1992 through 2001, approximately 13,000 acre-feet of Lower Kern River water was exported out-of-County. Subsequent to the Board certification of the Negative Declaration for the Program, the Agency detailed a proposal to continue to transfer, on an annual basis, the 10,000 acre-feet of water from the Agency's groundwater bank account. The transferred water will be recovered from the Agency's storage account in the Pioneer Groundwater Recharge and Recovery Project and/or from other local banking facilities either directly or by exchange and delivered back to the California Aqueduct either directly or by exchange, via the Kern Water Bank Canal and/or the Cross Valley Canal. For more information concerning the project, see the *Kern County Water Agency Environmental Initial Study Form [for CEQA Guidelines section 15162 Determination]* dated September 27, 2001 (the "Initial Study"), which is available for review and copying during regular business hours at the Agency office at the above address.
4. **Purpose and explanation of Initial Study:** The Agency has prepared the Initial Study in order to determine whether the approval and implementation of the project as described in the Initial Study require subsequent or additional environmental review under CEQA Guidelines section 15162. The purpose of the project is to continue to transfer the 10,000 acre-feet of water per year. The recipient entity(s) of the transferred water are unknown at this time. A portion or all of this water may be transferred outside Agency boundaries. In comparing water transfers between the prior owner and the Agency, except for which groundwater banking project the water is delivered from, the physical arrangement and potential impacts remain very much the same.
The Initial Study evaluates the incremental differences between the impacts of the transfer of the 10,000 acre-feet from the prior owner versus transfer by the Agency as the new owner of the water and use of the Agency's Pioneer groundwater bank supply and/or other local banking facilities, as previously described, analyzed and approved in the previous CEQA documents. For more information concerning the purpose of the Initial Study and this Subsequent Negative Declaration, see the Initial Study. CEQA compliance for acquisition of the Lower Kern River water right and the Pioneer Groundwater Recharge and Recovery Project are available for review at the above address.
5. **Project Location:** Water storage in and transfer from Agency Pioneer Groundwater Recharge and Recovery Project and/or other local banking facilities, Kern County, California (see map attached to Initial Study); water delivery via the State Department of Water Resources California Aqueduct.
6. **Finding:** The Agency Board of Directors has reviewed the proposed project, Initial Study, comments received on the proposal to adopt this Subsequent Negative Declaration, and other documents and information from Agency staff, and on the basis of this information and the whole record before Agency,

hereby finds and determines as follows: (a) The Initial Study and Subsequent Negative Declaration reflect Agency's independent judgment and analysis; and (b) the Agency's Kern River Restoration and Water Supply Program and the Pioneer Groundwater Recharge and Recovery Project and other local banking facilities (i) have been analyzed adequately in the previous CEQA documents pursuant to applicable standards, and (ii) impacts have been avoided or mitigated pursuant to the previous negative declarations, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required. This Subsequent Negative Declaration confirms this conclusion.

7. Initial Study: A copy of the Initial Study is either attached or available for public review at the Agency office at the above address.

8. Location of Background Documents: The Initial Study, documents referenced in the Initial Study, notice of intent to adopt Subsequent Negative Declaration, comments on the Initial Study, and other documents concerning this project are on file and available for public review at the Agency office at the above address. The Agency Board Secretary (same address) is the custodian of the documents that constitute the record of proceedings upon which the decision in this matter is based.

By: _____
President

Date: _____

ATTACHMENT 7

CEQA Notice of Determination

RECEIVED WITH FEE
RECEIPT # D 1410000

To: X Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

From: Kern County Water Agency
P.O. Box 58
3200 Rio Mirada Drive
Bakersfield, CA 93302

COPY

6

X County Clerk
County of Kern
1115 Truxton Ave., 2nd Floor
Bakersfield, CA 93301

Handwritten signature

Subject: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

Project Title: Transfer of 10,000 acre-feet per year of Banked Lower Kern River Water

State Clearinghouse Number
(If submitted to Clearinghouse)

**Lead Agency/
Contact Person**

Area Code/Telephone/Extension

SCH # 2000081017

Kern County Water Agency/
General Manager Thomas N. Clark

661-634-1400

Project Location (include county)
See attached Negative Declaration.

Project Description:
See attached Negative Declaration.

This is to advise that on November 13, 2001 the Kern County Water Agency (as lead agency) approved the project (more particularly described in the attached Negative Declaration) and determined that no additional environmental review is required.

An Initial Study and Subsequent Negative Declaration with findings were prepared for the Agency's recent action pursuant to the provisions of CEQA Guidelines section 15162 concluding that no additional environmental review is required. The recent action will not have any significant effect on the environment that was not already addressed in the previous CEQA documents for this project. Mitigation measures and statements of overriding consideration were already adopted for the previously considered project.

This is to certify that the Initial Study with comments and responses and record of project approval is available to the general public at Kern County Water Agency, P.O. Box 58, 3200 Rio Mirada Drive, Bakersfield, CA 93302.

Date received for filing and posting at OPR: _____

TSNA
Signature, Thomas N. Clark, General Manager, Kern County Water Agency

11/13/01
Date

Notice of Environmental Document
Posted by County Clerk on 11-16-01
and for 60 days in creation, pursuant to
Section 21152(c), Public Resources Code

**KERN COUNTY WATER AGENCY
SUBSEQUENT NEGATIVE DECLARATION
[to confirm CEQA Guidelines section 15162 determination]**

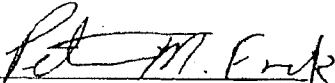
Pursuant to the California Environmental Quality Act and CEQA Guidelines, the Kern County Water Agency hereby adopts this Subsequent negative declaration pursuant to CEQA Guidelines section 15162 for the following:

1. **Name of Project:** Transfer of 10,000 acre-feet per year of Banked Lower Kern River water.
2. **Project Lead Agency and Sponsor:** Kern County Water Agency, P.O. Box 58, 3200 Rio Mirada Drive, Bakersfield CA 93302-0058. Contact person: Thomas N. Clark, General Manager, 661-634-1400.
3. **Project Description:** In September 2000, the Kern County Water Agency (Agency) certified a Negative Declaration for the *Kern River Restoration and Water Supply Program* (Program). A component of the Program was acquisition of the Lower Kern River water right (Lower Right), i.e., Hacienda/Garces pre-1914 water right. Studies conducted by Agency staff showed that the controllable average annual yield from the Lower Right was approximately 40,000 acre-feet. Historically, the prior owner of the Lower Right, Nickel Family, LLC had exported at least 10,000 acre-feet per year from the basin under various terms and conditions. For example, during the period from 1992 through 2001, approximately 13,000 acre-feet of Lower River water was exported out-of-County. Subsequent to the Board certification of the Negative Declaration for the Program, the Agency detailed a proposal to continue to transfer, on an annual basis, the 10,000 acre-feet of water from the Agency's groundwater bank account. The transferred water will be recovered from the Agency's storage account in the Pioneer Groundwater Recharge and Recovery Project and/or from other local banking facilities either directly or by exchange and delivered back to the California Aqueduct either directly or by exchange, via the Kern Water Bank Canal and/or the Cross Valley Canal. For more information concerning the project, see the *Kern County Water Agency Environmental Initial Study Form [for CEQA Guidelines section 15162 Determination]* dated September 27, 2001 (the "Initial Study"), which is available for review and copying during regular business hours at the Agency office at the above address.
4. **Purpose and explanation of Initial Study:** The Agency has prepared the Initial Study in order to determine whether the approval and implementation of the project as described in the Initial Study require subsequent or additional environmental review under CEQA Guidelines section 15162. The purpose of the project is to continue to transfer the 10,000 acre-feet of water per year. The recipient entity(s) of the transferred water are unknown at this time. A portion or all of this water may be transferred outside Agency boundaries. In comparing water transfers between the prior owner and the Agency, except for which groundwater banking project the water is delivered from, the physical arrangement and potential impacts remain very much the same.
The Initial Study evaluates the incremental differences between the impacts of the transfer of the 10,000 acre-feet from the prior owner versus transfer by the Agency as the new owner of the water and use of the Agency's Pioneer groundwater bank supply and/or other local banking facilities, as previously described, analyzed and approved in the previous CEQA documents. For more information concerning the purpose of the Initial Study and this Subsequent Negative Declaration, see the Initial Study. CEQA compliance for acquisition of the Lower Kern River water right and the Pioneer Groundwater Recharge and Recovery Project are available for review at the above address.
5. **Project Location:** Water storage in and transfer from Agency Pioneer Groundwater Recharge and Recovery Project and/or other local banking facilities, Kern County, California (see map attached to Initial Study); water delivery via the State Department of Water Resources California Aqueduct.
6. **Finding:** The Agency Board of Directors has reviewed the proposed project, Initial Study, comments received on the proposal to adopt this Subsequent Negative Declaration, and other documents and information from Agency staff, and on the basis of this information and the whole record before Agency,

hereby finds and determines as follows: (a) The Initial Study and Subsequent Negative Declaration reflect Agency's independent judgment and analysis; and (b) the Agency's Kern River Restoration and Water Supply Program and the Pioneer Groundwater Recharge and Recovery Project and other local banking facilities (i) have been analyzed adequately in the previous CEQA documents pursuant to applicable standards, and (ii) impacts have been avoided or mitigated pursuant to the previous negative declarations, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required. This Subsequent Negative Declaration confirms this conclusion.

7. **Initial Study:** A copy of the Initial Study is either attached or available for public review at the Agency office at the above address.

8. **Location of Background Documents:** The Initial Study, documents referenced in the Initial Study, notice of intent to adopt Subsequent Negative Declaration, comments on the Initial Study, and other documents concerning this project are on file and available for public review at the Agency office at the above address. The Agency Board Secretary (same address) is the custodian of the documents that constitute the record of proceedings upon which the decision in this matter is based.

By: 
President

Date: 11/13/01

CALIFORNIA DEPARTMENT OF FISH AND GAME

CERTIFICATE OF FEE EXEMPTION

De Minimis Impact Finding

Project Title: Kern County Water Agency's (Agency) Transfer of 10,000 acre-feet per year of Banked Lower Kern River Water Project

Location: California Aqueduct, Kern County

Project Description: The Project is to continue the transfer 10,000 acre-feet per year of banked Lower Kern River Water. The transferred water would come from the Agency's banked groundwater account stored in the Pioneer Groundwater Recharge and Recovery Project and/or other local banking facilities and would be recovered either directly or by exchange and conveyed back to the California Aqueduct either directly or by exchange.

Findings of Exemption:

1. The project consists of a water transfer.
2. A Subsequent Negative Declaration has been conducted by Kern County Water Agency (lead agency) which evaluates the potential for adverse environmental impacts resulting from the approval and implementation of the project.
3. The lead agency has no evidence before it, including the information in the Subsequent Negative Declaration and comments of appropriate reviewing agencies, to indicate that the proposed project could have any potential for adverse effects on fish and wildlife resources.

Certification:

I hereby certify that the public agency has made the above finding(s) and that the project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 71.2 of the Fish and Game Code.



Title: General Manager

Local Lead Agency: Kern County Water Agency

Date: November 13, 2001

ATTACHMENT 8

**Addendum No. 1
to Subsequent Negative Declaration for
Transfer of 10,000 acre-feet per Year of
Banked Lower Kern River Water**

Prepared by:

North Kern Water Storage District
Kern County, California

June 2008

INTRODUCTION

Background

The North Kern Water Storage District (North Kern or District) has prepared this Addendum No. 1 to the Subsequent Negative Declaration for the “Transfer of 10,000 acre-feet per Year of Banked Lower Kern River Water” (SND; SCH# 2000081017) pursuant to the California Environmental Quality Act (CEQA) and the CEQA Guidelines. This Addendum addresses the recovery and delivery to the California Aqueduct of 8,393 AF of Lower Kern River (“Hacienda”) water banked in North Kern.

Project Overview

The SND updated the Agency’s September 2000 Negative Declaration for the “Kern River Restoration and Water Supply Program” relative to the acquisition of the Lower Kern River water right (“Hacienda”) by the Agency from Nickel Family, LLC (“Nickel”). The SND, which is described more fully below along with the 2000 Negative Declaration, supported the Agency’s action to approve the “Contract to Transfer the Kern River Lower River Water Rights” (“contract”) with Nickel.

In 2006 Nickel delivered 8,393 AF of water transferred from the Agency under the contract into North Kern recharge facilities for banking in the groundwater basin. Nickel now wishes to recover this stored water from the groundwater basin underlying North Kern and have it delivered to the California Aqueduct pursuant to the SND.

Previous Environmental Documentation

As noted above, two environmental documents have been prepared in support of the transfer of the Lower River water right:

- Subsequent Negative Declaration for the “Transfer of 10,000 acre-feet per Year of Banked Lower Kern River Water” (SND; SCH# 2000081017).
- Negative Declaration for the “Kern River Restoration and Water Supply Program”

The SND was completed by the Kern County Water Agency (Agency) in November 2001 and updated the Agency’s September 2000 Negative Declaration for the “Kern River Restoration and Water Supply Program” relative to the acquisition of the Lower Kern River water right (“Hacienda”) by the Agency. More specifically, the SND outlined a program for the Agency to continue to transfer, on an annual basis, the 10,000 acre-feet (AF) of water from the Agency’s groundwater bank account to Nickel in partial compensation for the acquisition of the Lower River water right by the Agency. The SND indicated that the transferred water would be recovered “from the Agency’s storage account in the Pioneer Groundwater Recharge and

NORTH KERN WATER STORAGE DISTRICT

Addendum No. 1 to Subsequent Negative Declaration for Transfer of 10,000 Acre-Feet per Year of Banked Lower Kern River Water

June 2008

Page 3

Recovery Project and/or from other local banking facilities either directly or by exchange and delivered back to the California Aqueduct either direct or by exchange, via the Kern Water Bank Canal and/or Cross Valley Canal.” Furthermore, the SND indicates that “a portion or all of this water may be transferred outside Agency boundaries.”

PURPOSE OF ADDENDUM NO. 1

The SND provides flexibility for the Agency to transfer water from various locations in Kern County to meet their obligation to Nickel. This flexibility likely includes the ability to recover transferred water from North Kern (as “other local banking facilities”) for delivery to the California Aqueduct. Out of an abundance of caution, North Kern has prepared this Addendum No. 1 to the SND to clarify this process and outline any associated environmental impacts.

When a proposed project is changed or there are changes in the environmental setting, a determination must be made by the Lead Agency as to whether an Addendum or Subsequent environmental document is prepared. Criteria, as set forth in CEQA Guidelines Section 15162, are used to assess which environmental document is appropriate. The criteria for determining whether an Addendum or Subsequent document is prepared are outlined below. If the criteria below are true, then an Addendum is the appropriate document:

- No new significant impacts will result from the project or from new mitigation measures.
- No substantial changes have occurred with respect to the circumstances under which the project was originally proposed and the environmental document was certified; therefore it will not require major revisions to the environmental document since no new significant environmental effects and no substantial increase in the severity of previously identified impacts will occur.
- No substantial increase in the severity of environmental impact will occur.
- No new feasible alternatives or mitigation measures that would reduce impacts previously found not to be feasible have, in fact, been found to be feasible.

Section 15164 of the State CEQA Guidelines states that an Addendum to an EIR or Negative Declaration shall be prepared “if some changes or additions are necessary, but none of the conditions described in Section 15162 calling for preparation of subsequent EIR have occurred.” This Addendum reviews the changes proposed by the project and any changes to the existing conditions that have occurred since the SND was adopted. It also reviews any new information of substantial importance that was not known and could not have been known with exercise of reasonable diligence at the time that the SND was adopted. It further examines whether, as a result of any changes or any new information, a new subsequent Negative Declaration may be

NORTH KERN WATER STORAGE DISTRICT

Addendum No. 1 to Subsequent Negative Declaration for Transfer of 10,000 Acre-Feet per Year of Banked Lower Kern River Water

June 2008

Page 4

required. This examination includes an analysis of the provisions of Section 21166 of CEQA and Section 15162 of the State CEQA Guidelines and their applicability to the proposed project.

As described below, North Kern has reviewed information regarding the temporary storage of water transferred to Nickel under the contract and its recovery and conveyance to the California Aqueduct and determined that none of the conditions requiring preparation of a subsequent or supplemental Negative Declaration applied. Based upon the information provided in this Addendum, the proposed modifications will not result in new significant impacts or substantially increase the severity of impacts previously identified in the SND, and there are no previously infeasible alternatives or mitigation measures that are now feasible. Therefore, an Addendum is appropriate, and Addendum No. 1 has been prepared to address the environmental effects of the temporary storage, recovery and conveyance of transferred water.

MODIFICATIONS TO THE PROJECT AND ENVIRONMENTAL EFFECTS

By agreement with North Kern, in 2006 Nickel Family LLC banked 8,393 AF of water in North Kern. This water was transferred by the Agency to Nickel pursuant to the Agency's acquisition of the Lower Kern River water right from Nickel, as described in the SND. The transferred water was conveyed into North Kern recharge facilities and temporarily stored/banked in the groundwater basin for subsequent recovery and delivery. Nickel has requested that North Kern recover the banked water and obtain the necessary approvals to transport the water to the California Aqueduct. Conveyance to the Aqueduct will be accomplished by pumping banked water from existing North Kern wells and one of the two methods described below:

Direct Delivery

Recovered banked water can be conveyed directly to the California Aqueduct through the Friant-Kern Canal and Cross Valley Canal, Kern Water Bank Canal, or Arvin-Edison Canal, or through existing North Kern interties with Shafter-Wasco Irrigation District and Semitropic Water Storage District. Semitropic is also currently constructing an additional intertie to North Kern which will increase capacity for conveyance of banked water through Semitropic. This intertie is expected to be operational before the project is implemented.

Delivery by Exchange

Recovered banked water will be used inside North Kern and exchanged for the District's Kern River water normally delivered inside North Kern. Exchanged Kern River water would then be exchanged with and used within the Agency, or member units of the Agency, for water in the California Aqueduct.

NORTH KERN WATER STORAGE DISTRICT

Addendum No. 1 to Subsequent Negative Declaration for Transfer of 10,000 Acre-Feet per Year of Banked Lower Kern River Water

June 2008

Page 5

Environmental Effects

As envisioned by the SND, in 2006 water was transferred from the Agency to Nickel from a local water banking facility directly or through exchange. Transferred water was then delivered by Nickel into North Kern recharge facilities and banked for subsequent recovery. This recovery will result in incremental pumping and the use of conveyance facilities that would not have occurred if the transferred water was delivered to its ultimate point of use in 2006. A discussion of possible environmental effects follows:

Hydrology

To facilitate the exchanges necessary for the modified project, groundwater pumping in North Kern will increase relative to normal District operations to meet in-District needs. On a District-wide basis, the maximum short-term impacts on drawdown levels from this increased pumping are expected to be less than five feet. This incremental drawdown is nominal and not significant. Furthermore, any potential short term impacts associated with increased pumping on the groundwater basin are offset by the positive impacts of the water previously recharged to the basin (increased water levels). Finally, North Kern has a long-term positive water supply balance (supplies exceeding demand) that supports groundwater levels across the northern Kern County region and provides the foundation for the modified project.

Air Quality

The project would include the operation of existing pumps in North Kern for recovering groundwater. Currently, pumps in North Kern operate an average of 3,450 hours per year. With implementation of the modified project, pumps will operate approximately 3,800 hours per year, a 10% increase in electricity usage. Electrical power used to run the pumps is supplied by Pacific Gas and Electric (PG&E). The increase in electrical usage would not conflict with the implementation of the air quality management plan within the San Joaquin Valley Air Basin, which is designated as a State and Federal non attainment area for O₃, PM₁₀, and PM_{2.5}. Since the project would not necessitate any construction activity, mobile emissions would not increase from project implementation. Although operational emissions would result from an increase in pump usage of approximately 350 hours per year, these would not occur onsite because North Kern uses electrical pumps powered through the PG&E grid. Consequently, the modified project would not create any on-site emissions effecting sensitive receptors, nor would it significantly contribute to the emission of green house gases.

Subsidence

The project involves the recovery and conveyance of water in North Kern utilizing existing wells and infrastructure. The nominal incremental withdrawal of groundwater associated with the project will not affect regional groundwater levels that could result in subsidence.

Noise

The modified project would consist of pumping banked water with existing recovery wells and would not include the construction of any additional infrastructure. The project would not change the existing land use in the area. Currently, the recovery pumps are used on a seasonally daily basis; the project would increase the operational hours of the pumps by approximately 10%. The noise generated by the increased operation of the pumps would be consistent with the current noise levels at the pump sites.

Public Services

The conveyance of recovered water will necessitate the use of several existing public facilities (no new facilities are necessary). These facilities are not expected to be materially impacted by their use for the project, and such use will be coordinated and approved by facility owners/operators. Finally, the project will pay appropriate fees to the owners/operators for the transportation of water through their facilities.

Other Potential Effects

The environmental effects described above arguably could occur as a result of the project/proposed action. If there are other environmental effects which have not been specified herein, such effects would be immaterial and not significant, particularly since the proposed action will not involve any construction of new facilities and the proposed action, when compared to other water management activities being carried out by North Kern and the Agency this year, is minor in magnitude and scope. The project will not have an effect on fish and wildlife resources.

CONCLUSIONS

Addendum No. 1 addresses the environmental effects associated with the proposed recovery of water transferred to Nickel under the SND and banked in North Kern, and the conveyance of banked water to the California Aqueduct. The conclusions of the analysis in this Addendum are

NORTH KERN WATER STORAGE DISTRICT

Addendum No. 1 to Subsequent Negative Declaration for Transfer of 10,000 Acre-Feet per Year
of Banked Lower Kern River Water

June 2008

Page 7

not substantially different from those made in the SND. No new significant impacts will result and no substantial increase in severity of impacts will result from those identified in the SND.

ATTACHMENT 9

COPY

NOTICE OF DETERMINATION

To: X County Clerk
County of Kern
1115 Truxtun Avenue
Bakersfield, CA 93301

From: North Kern Water Storage District
33380 Cawelo Avenue
PO Box 81435
Bakersfield, CA 93380

X State Clearinghouse
P. O. Box 3044
Sacramento, CA 95812-3044

NORTH KERN

FILED
KERN COUNTY

JUN 20 2008

JUN 17 2008

WATER STORAGE DIST.

ANN K. BARNETT
AUDITOR CONTROLLER-COUNTY CLERK
BY [Signature] DEPUTY

Subject:

Filing of Notice of Determination in Compliance with Section 21152 of the Public Resources Code and CEQA Guidelines, Section 15096(i).

Project Title:

Kern River Restoration and Water Supply Program: Recovery and Delivery 8,393 AF of Banked Water by Nickel Family, LLC (SCH# 2000081017)

Project Location - Specific:

Within the Kern County Water Agency

Project Description:

In 2006 under contract from the Kern County Water Agency (Agency), the Nickel Family, LLC ("Nickel") delivered 8,393 AF of water into the North Kern Water Storage District (North Kern) recharge facilities for banking in the groundwater basin. Nickel now wishes to recover this stored water from the groundwater basin underlying North Kern and have it delivered to the California Aqueduct.

North Kern has prepared Addendum No. 1 to the Subsequent Negative Declaration for the "Transfer of 10,000 acre-feet per Year of Banked Lower Kern River Water" (SND; SCH# 2000081017) pursuant to the California Environmental Quality Act (CEQA) and the CEQA Guidelines. The Addendum addresses the recovery and delivery to the California Aqueduct of the 8,393 AF of water banked in North Kern.

The SND updated the Agency's September 2000 Negative Declaration for the "Kern River Restoration and Water Supply Program" relative to the acquisition of the Lower Kern River water right ("Hacienda") by the Agency from Nickel. The SND specifically supported the Agency's action to approve the "Contract to Transfer the Kern River Lower River Water Rights" ("contract") with Nickel.

Name of Person or Agency Carrying Out Project:

This is to advise that the North Kern Water Storage District has approved the above-described project on June 17, 2008 and has made the following determinations regarding the above-described project:

1. The project will not have a significant effect on the environment.

COPY

Notice of Environmental Document
Posted by County Clerk on 06-17-2008
and for 30 days thereafter, Pursuant to
Section 21152(C), Public Resources Code

#1705

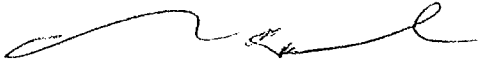
2. A Negative Declaration, a Subsequent Negative Declaration and an Addendum were prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures were not made a condition of the approval of the project.
4. A statement of overriding considerations was not adopted for this project.

This is to certify that any comments and responses and record of project approval is available to the General Public at:

NORTH KERN WATER STORAGE DISTRICT
 33380 CAWELO AVENUE
 BAKERSFIELD, CA 93308

<u>Lead Agency Contact Person:</u>	<u>Area Code</u>	<u>Phone</u>	<u>Extension</u>
Richard Diamond, General Manager	(661)	393-2696	

Date of Action: June 17, 2008



 Signature (Public Agency)

 General Manager
 (Title)

CALIFORNIA DEPARTMENT OF FISH AND GAME

CERTIFICATE OF FEE EXEMPTION

No Effect on Fish and Wildlife Finding

Project Title/Location (including county):

Title: Kern River Restoration and Water Supply Program: Recovery and Delivery 8,393 AF of Banked Water by Nickel Family, LLC

Location: Kern County; Within the Kern County Water Agency

Project Proponent: North Kern Water Storage District
Post Office Box 81435
Bakersfield, CA 93380
Attention: Richard Diamond, General Manager

Project Description:

In 2006 under contract from the Kern County Water Agency (Agency), the Nickel Family, LLC (“Nickel”) delivered 8,393 AF of water into the North Kern Water Storage District (North Kern) recharge facilities for banking in the groundwater basin. Nickel now wishes to recover this stored water from the groundwater basin underlying North Kern and have it delivered to the California Aqueduct.

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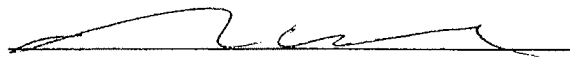
The SND updated the Agency’s September 2000 Negative Declaration for the “Kern River Restoration and Water Supply Program” relative to the acquisition of the Lower Kern River water right (“Hacienda”) by the Agency from Nickel. The SND specifically supported the Agency’s action to approve the “Contract to Transfer the Kern River Lower River Water Rights” (“contract”) with Nickel.

Findings of Exemption:

No evidence has been presented suggesting that the program individually or cumulatively will have any effect on wildlife, as defined in Fish and Game Code Section 711.2.

Certification:

I hereby certify that the public agency has made the above finding and that the project will not individually or cumulatively have any effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.



Richard Diamond

Title: General Manager

Lead Agency: Kern County Water Agency

Date: 6/17/08

ATTACHMENT 10

WATER CONSERVATION FUNDING AGREEMENT

The Desert Water Agency (“DWA”) and CPV Sentinel, LLC (“CPV”) (collectively, the “Parties”) enter into this Water Conservation Funding Agreement (“Agreement”) as of _____, 2008 (the “Execution Date”).

I. RECITALS

A. DWA is a non-profit special district created by an Act of the California State Legislature on September 15, 1961. DWA has a contract with the Department of Water Resources of the State of California (“DWR”) to receive water from the State Water Project (“SWP”). DWA exchanges its SWP water with the Metropolitan Water District of Southern California (“MWD”) for Colorado River Water pursuant to an exchange agreement. DWA uses that exchange water to, among other things, recharge the Mission Creek Subbasin (“Basin”) through its groundwater recharge facilities.

B. CPV intends to secure additional imported water supplies for delivery to the Basin in order to fully replenish the groundwater to be used for a power plant to be built on land overlying the Basin (the “Project”). CPV is currently undergoing the licensing and approval of that Project by the California Energy Commission (“CEC”).

C. To satisfy the CEC’s requirements, CPV and DWA jointly seek to conserve freshwater supplies within DWA to offset the Project’s water consumption through water recycling and conservation activities beyond those activities which would otherwise be pursued by DWA.

D. In an effort to conserve freshwater supplies to offset the Project's water consumption, on February 8, 2008, DWA and CPV entered into a Memorandum of Understanding Concerning Additional Conservation of Fresh Water Within DWA (the "Conservation MOU"). A primary objective of the Conservation MOU is to conserve freshwater supplies within DWA's boundaries either through the development of additional recycled water supplies from wastewater sources, to be used in lieu of freshwater supplies, or from conservation activities which will reduce existing consumption of freshwater supplies. Accordingly, the Conservation MOU details a program of freshwater conservation as a part of the Project to ensure that the Project causes no net increase in the freshwater use within the Basin (the "Conservation MOU").

E. Under the terms of the Conservation MOU, DWA has evaluated freshwater conservation projects whose development costs exceed the level of costs that would otherwise make such conservation projects economically feasible for DWA to pursue without the financial participation by a third party. The Parties have now reviewed those opportunities and have agreed to a combination of projects for recycled water development, as described more fully below.

II. TERMS OF THE AGREEMENT

For valuable consideration, including the covenants and promises contained in this Agreement, the Parties agree as follows:

A. Conditions Precedent

The rights and obligations under this Agreement shall not become effective until each of the following has occurred:

1. All necessary environmental review pursuant to the California Environmental Quality Act (“CEQA”) has been completed, in particular:

a. The applicable statute of limitation under CEQA has expired by which DWA is to adopt the appropriate CEQA exemption concerning the portion of this Agreement relating to the actions described in Sections II-B (1) (b) and (c), below.

b. DWA’s compliance with CEQA when it determines its future activities described in Sections II-B (1) (a), below.

2. DWA enters into a definitive agreement with Palm Springs National Golf & Country Club, Inc. (“Palm Springs National Golf Course”) to provide reclaimed water service on a permanent basis.

3. CPV receives all licensing approvals from the CEC and other applicable agencies that are necessary to cover the conservation and reclamation activities described in Section II-B, below.

4. CPV obtains the necessary power plant construction financing to cover the conservation and reclamation activities described in Section II-B, below.

B. Conservation and Reclamation Activities

1. Conservation and Reclamation Activities To Be Undertaken By DWA And Funded By CPV.

DWA is to undertake, and CPV is to fund, the following conservation and reclamation activities:

(a) Enhancements and improvements to DWA's reclaimed water system, which enhancements and improvements are to be further developed by DWA as described in Section II-C (1), below.

(b) The actual connection of the Palm Springs National Golf Course to DWA's treatment facilities and distribution system.

(c) The installation of evapotranspiration ("ET") irrigation controllers for DWA's existing residential users.

2. Conservation And Reclamation Activities To Be Undertaken By DWA At Its Sole Cost

DWA shall undertake the following conservation and reclamation activities as its sole cost, without funding by CPV:

(a) DWA shall be responsible for all permitting and operating costs necessary to provide reclaimed water service to the Palm Springs National Golf Course, including those costs associated with obtaining approvals from the State Regional Quality Control Board and the California Department of Public Health. DWA shall be solely entitled to receive any revenues associated with its sale of recycled water to the Palm Springs National Golf Course.

C. Payments

1. Upon notice by CPV to DWA that the Project has achieved financial close (“Financial Close”), CPV shall deposit with DWA \$1,000,000 (the \$1,000,000 Deposit”). DWA shall diligently work toward developing a plan to use the \$1,000,000 Deposit for enhancements and improvements to DWA’s reclaimed water system. Upon the development of that plan, DWA shall provide CPV with notice of the enhancements and improvements to be undertaken and DWA shall be responsible for conducting CEQA and securing all necessary permits with the applicable agencies.

2. Upon Financial Close, CPV shall pay DWA \$300,000 to pay the cost of physical connection of the Palm Springs National Golf Course and those capacity charges that DWA would otherwise charge for connecting the Palm Springs National Golf Course to DWA’s reclaimed water system.

3. On or before July 1, 2009, CPV shall pay DWA a deposit in the amount of \$300,000 that shall be used toward DWA’s installation of ET irrigation controllers (the “Base Controller Deposit”). CPV shall continue to restore the Base Controller Deposit to \$300,000 each year in response to DWA’s Reconciliation Invoice defined in Section II-(C)(3)(a), below (the “Annual Controller Deposit”).

a. Thirty (30) days prior to the date of receipt of each Annual Controller Deposit, DWA shall calculate the number of ET irrigation controllers installed over the previous twelve (12) month period and reconcile the

number of ET irrigation controllers installed with the Annual Controller Deposit paid the previous year. DWA shall then provide CPV an invoice stating the amount due for the next Annual Controller Deposit detailing: 1) any insufficiency or excess of the previous year's Annual Controller Deposit; and 2) the adjusted amount owed by CPV to restore the Annual Controller Deposit to \$300,000 taking into account that insufficiency or excess (the "Reconciliation Invoice").

b. CPV's obligation to pay the Annual Controller Deposit shall cease upon DWA's installation of 4,800 ET Irrigation Controllers.

4. CPV's total obligation to make payments toward the funding of DWA's conservation and reclamation efforts shall not exceed \$2,500,000.

D. DWA Monitoring

1. DWA shall monitor the effectiveness of its conservation efforts contemplated by this Agreement. The procedures for such monitoring shall be developed in consultation with the CEC and shall meet all requirements imposed by the CEC upon CPV (the "DWA Monitoring Program"). The anticipated requirements for the DWA Monitoring Program are attached hereto as Exhibit "A" and may be subsequently modified as the requirements of the CEC are more fully established.

E. Expiration and Termination

1. Expiration. This Agreement shall expire thirty (30) years from the Execution Date or upon notice by the CEC that the DWA Monitoring Program is no longer needed, whichever date comes first.

2. Termination. Prior to the expiration of the term of this Agreement, this Agreement may be terminated only for material breach by the other Party. A termination for material breach shall become effective if the breaching party does not cure its failure to perform within thirty (30) calendar days after receipt of a notice from the other Party of its intent to terminate for material breach.

F. Dispute Resolution

This Section II-(F)(1) shall govern all disputes, claims and controversies between the Parties arising from or relating to this Agreement (“Disputes”).

1. Meet and Confer

In the event of a Dispute, the Parties agree to meet and confer in person to attempt to reach a resolution. The meeting shall be attended by representatives of the Parties having full authority to resolve the Dispute in question. A Party may initiate the meet and confer process by service of a written notice referencing this Section II-(F), describing the nature of the Dispute, and requesting a meeting. The meeting shall thereafter be held at a mutually agreeable date and time, but in no event more than seven (7) calendar days after the date of the foregoing notice. If the Parties cannot resolve the Dispute within sixty (60) calendar days after the first meeting, the parties shall engage in a non-binding mediation, with the parties to equally share in the costs of such mediation. Said mediation shall be completed no later than sixty (60) calendar days after the completion of the original meet and confer process. No party shall file a lawsuit

over a Dispute until the mediation process is completed.

G. Additional Provisions

1. Each Party's obligations under this Agreement are subject to compliance with all applicable federal, state and local laws, rules and regulations.

2. Each Party shall use its best efforts to promptly discharge its obligations under this Agreement.

3. The Parties shall cooperate with each other in preparing and executing any other agreements, whether between each other or with a third party, that are reasonably necessary to effectuate the purpose and objectives of this Agreement.

4. This Agreement may be modified only by a writing signed by the Parties hereto.

5. All notices required by or regarding this Agreement shall be in writing and shall be sent by first-class mail and facsimile transmission as follows:

To: Desert Water Agency
Attention: David K. Luker
General Manager/Chief Engineer
Desert Water Agency
1200 Gene Autry Trail South
Palm Springs, CA 92263-1710

Telephone No: (760) 323-4971
Facsimile No: (760) 325-6505

With a Copy to: Michael T. Riddell, Esq.
Best, Best & Krieger LLP
3750 University Avenue, Suite 400
Riverside, CA 92501-3369

Telephone No: (951) 686-1450
Facsimile No: (951) 686-3083

To: CPV Sentinel, LLC
Attention: Gary Lambert
35 Braintree Hill Office Park, Suite 400
Braintree, MA 02184

Telephone No: (781) 848-0253
Facsimile No: (781) 848-5804

With a Copy to: Edward J. Casey, Esq.
Weston Benshoof Rochefort Rubalcava MacCuish LLP
333 S. Hope Street, 16th Floor
Los Angeles, CA 90071

Telephone No: (213) 576-1000
Facsimile No: (213) 576-1100

6. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the Parties.

7. This Agreement is intended by the Parties as a final, complete and exclusive expression of their agreement, and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter hereof which is not contained herein shall be valid and binding.

8. The prevailing Party in any action to enforce, or for breach of, this Agreement shall recover from the other Party its reasonable attorneys' fees.

9. The Parties acknowledge that their obligations under this Agreement are unique, that each Party would suffer irreparable harm and have no adequate remedy at law if the other Party breaches its obligations hereunder.

10. If any provision of this Agreement is found to be invalid or unenforceable, then the remaining provisions shall remain in full force and effect.

11. Each person signing the Agreement represents that he or she has the authority to do so on behalf of the Party for whom he or she is signing.

12. This Agreement has been negotiated at arm's length and between Parties represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted the applicable provision is not applicable and is hereby waived.

13. This Agreement is made and entered into in the State of California, and this Agreement shall in all respects be interpreted, enforced and governed under the laws of this State.

14. This Agreement may be executed in counterparts with the same force and effect as if executed in complete documents.

15. A failure by either Party to enforce any provision of this Agreement shall not be construed as a continuing waiver, or as a waiver of the right to compel enforcement of any provision of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and deemed in effect as of the Effective Date.

DATED: _____, 2008

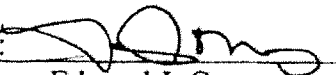
CPV SENTINEL, LLC

By: _____

Gary Lambert

Its: Manager

Approved As To Form:

By:  for

Edward J. Casey

Attorneys for CPV Sentinel, LLC

DATED: July 15, 2008

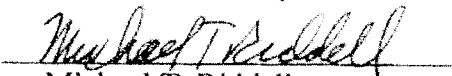
DESERT WATER AGENCY

By: 

David K. Luker

Its: General Manager/Chief Engineer

Approved As To Form:

By: 

Michael T. Riddell

Attorneys for Desert Water Agency

DATA REQUEST

82. Please discuss how the conserved water would be measured, recorded, and reported, so that water conservation measures can be evaluated.

RESPONSE

Freshwater Conservation at the Palm Springs National Golf Course. The recycled water supply agreement between DWA and the golf course will stipulate that the first priority source of water for irrigation will be recycled water, and that groundwater wells will be used only if sufficient recycled water is not available. Minor amounts of groundwater may be used for the purpose of testing, operating, and maintaining the groundwater wells and distribution system. A meter will be installed on the recycled water branch supply line to the golf course. Monthly meter readings will be taken and recorded by DWA. Monthly water use reports will be generated annually by DWA and provided to CPV Sentinel to document the actual displacement of freshwater pumping achieved at the golf course.

Freshwater Conservation Using Irrigation Controllers. The monitoring program will draw on the experience gained in the successful pilot program conducted by the Coachella Valley Water District (CVWD) with its Final Report dated June 21, 2007. In addition, lessons learned in subsequent programs by both CVWD and DWA will be applied to the monitoring and enforcement program in which CPV Sentinel will participate. See the response to Data Request 81 for a more detailed explanation of the monitoring program for the irrigation controllers.

Pumping by CPV Sentinel. Records will be compiled by CPV Sentinel for groundwater pumping as required by the relevant conditions of certification.

Annual Net Freshwater Conservation Report. CPV Sentinel will prepare an annual report of the net freshwater conserved and submit this annual report to the CEC. This report will include both the current annual amounts of freshwater conserved and the cumulative net amounts of freshwater conserved under the CPV Sentinel sponsored freshwater conservation programs.

For example for a given year, if:

- G = Golf course freshwater conserved
- I = Total irrigation controller program freshwater conserved
- O = Other freshwater conserved (if other programs are implemented)
- P = Groundwater pumped by CPV Sentinel

Then, the annual net freshwater conserved (ANC) would be:

$$ANC = G + I + O - P$$

If ANC1 is the first year annual net freshwater conserved, ANC2 is the second year, and so forth, then the cumulative net project freshwater conserved (CNC) would be:

$$CNC = ANC1 + ANC2 + ANC3, \text{ etc.}$$

At no time during the life of the project will the CNC be less than zero. In the highly unlikely event that the cumulative net freshwater conserved begins to decline to near zero, CPV Sentinel would undertake additional freshwater conservation programs to increase the conservation of freshwater. As noted in the response to Data Request 79, the Palm Springs National Golf

Course alone is expected to conserve almost the entire amount of the peak annual water consumed by the project. The project is not expected to operate at this peak consumption every year but rather only occasionally. The average annual project dispatch is 15 percent, which corresponds to 550 AFY of water consumption. The target freshwater saving per irrigation controller as presented in the February 19, 2008, Supplement to the AFC is 0.1 AFY, whereas the CVWD Pilot Program reported an average savings of 0.147 AFY. Actual annual and cumulative net freshwater conservation is expected to be greater because the Supplement to the AFC (URS, 2008) assumed a more conservative freshwater saving per irrigation controller. It is therefore expected that the cumulative net freshwater conserved will continue to increase during the life of the project to a large positive value. CPV Sentinel proposes that after five consecutive years of increasing cumulative net freshwater conservation results, the annual reports to the CEC would be suspended. CPV Sentinel would continue to record the freshwater conservation data and would then submit reports to the CEC only upon request.

**STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION**

In the Matter of:) Docket No. 07-AFC-3
)
Application for Certification,)
for the CPV SENTINEL ENERGY PROJECT) **ELECTRONIC PROOF OF SERVICE**
) **LIST**
)
) (July 24, 2008]
)
_____)

Transmission via electronic mail and by depositing one original signed document with FedEx overnight mail delivery service at Costa Mesa, California with delivery fees thereon fully prepaid and addressed to the following:

DOCKET UNIT

CALIFORNIA ENERGY COMMISSION

Attn: DOCKET NO. 07-AFC-3
1516 Ninth Street, MS-15
Sacramento, California 95814-5512
docket@energy.state.ca.us

Transmission via electronic mail addressed to the following:

APPLICANT

Mark Turner
Project Manager
CPV Sentinel, LLC
55 Second Street, Suite 525
San Francisco, California 94105
mturner@cpv.com

Dale Shileikis
Vice President
URS Corporation
221 Main Street, Suite 600
San Francisco, CA 94105-1917
dale_shileikis@urscorp.com

CPV SENTINEL ENERGY PROJECT
CEC Docket No. 07-AFC-3

Kathy Rushmore
URS Corporation
221 Main Street, Suite 600
San Francisco, CA 94105-1917
Kathy_Rushmore@URSCorp.com

INTERESTED AGENCIES

California ISO
P.O. Box 639014
Folsom, CA 95763-9014
e-recipient@caiso.com

Mohsen Nazemi
South Coast Air Quality Management District
21865 E. Copley Drive
Diamond Bar, California 91765-4182
mnazemi1@aqmd.gov

ENERGY COMMISSION

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Presiding Member
jboyd@energy.state.ca.us

Jackalyne Pfannenstiel
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jpfannen@energy.state.ca.us

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kcelli@energy.state.ca.us

John Kessler
Siting Project Manager
jkessler@energy.state.ca.us

Caryn Holmes
Staff Counsel
cholmes@energy.state.ca.us

Public Adviser
pao@energy.state.ca.us

CPV SENTINEL ENERGY PROJECT
CEC Docket No. 07-AFC-3


DECLARATION OF SERVICE

I, Paul Kihm, declare that on August 22, 2008, I deposited a copy of the attached:

LETTER FROM MICHAEL CARROLL TO JOHN KESSLER

with FedEx overnight mail delivery service at Costa Mesa, California with delivery fees thereon fully prepaid and addressed to the California Energy Commission. I further declare that transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service List above.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 22, 2008, at Costa Mesa, California.



Paul Kihm