

**AGENDA
REGULAR MEETING
CITY OF BANNING
BANNING, CALIFORNIA**

December 8, 2009
6:30 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey St.

Per City Council Resolution No. 1997-33 matters taken up by the Council before 10:00 p.m. may be concluded, but no new matters shall be taken up after 10:00 p.m. except upon a unanimous vote of the council members present and voting.

I. CALL TO ORDER

- Invocation
- Pledge of Allegiance
- Roll Call – Council Members Franklin, Hanna, Machisic, Robinson, Mayor Botts

**II. PUBLIC COMMENTS/CORRESPONDENCE/APPOINTMENTS/
PRESENTATIONS/ANNOUNCEMENTS**

Report by City Attorney

Report by City Manager

PUBLIC COMMENTS – *On Items Not on the Agenda*

A three-minute limitation shall apply to each member of the public who wishes to address the Mayor and Council on a matter not on the agenda. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to "share" his/her three minutes with any other member of the public. (Usually, any items received under this heading are referred to staff or future study, research, completion and/or future Council Action.) (See last page. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

CORRESPONDENCE: Items received under this category may be received and filed or referred to staff for future research or a future agenda.

ANNOUNCEMENTS/COUNCIL REPORTS: *(Upcoming Events/Other Items and Report if any)*

The City of Banning promotes and supports a high quality of life that ensures a safe and friendly environment, fosters new opportunities and provides responsive, fair treatment to all and is the pride of its citizens.

PRESENTATIONS:

- 1. Presentation of Proclamation to Brian Santiago Flores, Banning High School Cross Country Runner 1

REORGANIZATION OF CITY COUNCIL

- City Clerk (ORAL)

III. CONSENT ITEMS

(The following items have been recommended for approval and will be acted upon simultaneously, unless any member of the City Council wishes to remove an item for separate consideration.)

Motion: That the City Council approve Consent Item 1 through 8

Items to be pulled _____, _____, _____, _____ for discussion.

(Resolutions require a recorded majority vote of the total membership of the City Council)

- 1. Approval of Minutes – Regular Meeting – 11/24/09 2
- 2. Report of Investments for October 2009. 11
- 3. Approval of Settlement Agreements for Schoen Litigation 24
- 4. Resolution No. 2009-103, Awarding the Construction Contract for Project No. 2009-04, Street Improvements and Sidewalk Improvements at Various Locations 38
- 5. Resolution No. 2009-104, In Support of the Local Taxpayer, Public Safety and Transportation Protection Act of 2010. 47
- 6. Resolution No. 2009-106, Awarding a Professional Services Agreement for the Urban Water Management Plan Update for the City’s Water Utility to Geoscience Support Services, Inc. 50
- 7. Resolution No. 2009-109, Approving Payment in the Amount of \$3,648 for Participation in the Riverside County District Attorney’s Office “Project Safe Neighborhoods” During FY 08-09 55
- 8. Notice of Completion for Project No. 2006-02, “Storm Line D” Improvements on Ramsey Street, martin Street and Williams Street. 60
- 9. Accept the Right-of-Way Dedications from Assessor’s Parcel Numbers: 541-290-003, 541-290-004, 541-290-006, 541-290-007, 541-290-008 and 541-290-011 (*Airport Drainage Improvements and Lincoln St. Improvements*) . . . 65

- Open for Public Comments
- Make Motion

IV. ORDINANCES

- 1. Proposed Ordinance No. 1415, Stormwater Code Staff Report 108
Recommendation: That the City Council adopt Ordinance No. 1415, Stormwater Code, Amending and updating City Municipal Code Title 13, Section 13.24, which is the City’s Existing Stormwater Management Plan.

Mayor asks the City Clerk to read the title of Ordinance No. 1415:
*“An Ordinance of the City Council of the City of Banning
Amending the Code of the City of Banning, California,
1965, Title 13, Chapter 13.24 Now Entitled Stormwater Code.”*

Motion: I move to waive further reading of Ordinance No. 1415
(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1415 pass its first reading.

2. Transient Occupancy Tax Implementation Urgency Ordinance
Staff Report 226
Recommendation: That the City Council adopt Urgency Ordinance No. 1416.

Mayor asks the City Clerk to read the title of Ordinance No. 1416:
*“An Urgency Ordinance of the City Council of the City of Banning,
California, Amending Section 3.16.030 and Adding Section 3.16.140
Of Chapter 3.16 of the banning Municipal Code. .”*

Motion: I move to waive further reading of Ordinance No. 1416
(Requires a majority vote of Council)

Motion: I move that Urgency Ordinance No. 1416 be adopted.

3. First Reading of an Amendment to the General Provision Chapter of the
Municipal Code Regarding City Council Issuing of Subpoenas.
Staff Report 232
Recommendation: That the City Council adopt Ordinance No. 1417

Mayor asks the City Clerk to read the title of Ordinance No. 1417:
*“An Ordinance Adding Chapter 1.30 to Title 1 of the Banning
Municipal Code Relating to Legislative Subpoenas, and
Adding Section 2.68.040 to Title 2, Chapter 2.68, to Authorize
the Issuance of Subpoenas in Personnel System Hearings.”*

Motion: I move to waive further reading of Ordinance No. 1417
(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1417 pass its first reading.

V. REPORTS OF OFFICERS

1. Kirby Warner, Interim Finance Director
A. General Fund Budget Update. 239
**Recommendation: That the City Council consider information provided
regarding the status of the General Fund budget and direct staff to
implement Alternative 1 as described in the report. Also, instruct staff
to bring back to the Council specific policies on the issues and
assumptions outlined in the staff report.**

- 2 Duane Burk, Public Works Director
 - A. Resolution No. 2009-105, Approving the Projects for the Fiscal Year 2010-2011 Community Development Block Grant (CDBG) Program 243
Recommendation: That the City Council adopt Resolution No. 2009-105, Approving the Project for Fiscal Year 2010-2011 Community Development Block Grant (CDBG) Program and authorize staff to submit said applications to the Riverside County Economic Development Agency.

- 3. Fred Mason, Electric Utility Director
 - A. Resolution No. 2009-107, Approving the Repayment of the Electric Utility Charges to the Affected Schedule TOU Customers 251
Recommendation: That the City Council adopt Resolution No. 2009-107 and approve the repayment of the Electric Utility rate assessment overcharge to the affected Schedule Time of Use (TOU) customers in the amount of \$1,042,807.14, as detailed on the spreadsheet attached herewith as Exhibit "A", and authorize the appropriation and transfer of said amount from the Electric Rate Stability Fund (672) to the Electric Operations Fund (670).

 - B. Resolution No. 2009-108, Approving the Application for Energy Efficiency and Conservation Block Grant Funds from the California Energy Commission 257
Recommendation: That the City Council approve the application for Energy Efficiency and Conservation Block Grant ("EECBG") funds available through the California Energy Commission's ("CEC") EECBG Program, attached herewith as Exhibit "A".

VI. ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items –

- 1. Schedule Meetings with Our State and County Elected Officials
- 2. Set New Date for Joint Meeting with Banning School Board *(Date to be determined)*
- 3. Additional Splash Pad at Replier Park Aquatics Center *(ETA 1/12/10)*
- 4. Community Advisory Panel for Renewable Energy Opportunities *(ETA 1/12/10)*
- 5. How AB 920 dealing with Electric Energy will affect City *(ETA 1/12/10)*
- 6. Development Impact Fees Report *(ETA 1/12/10)*
- 7. Massage Ordinance *(ETA 1/26/10)*

Future Meetings

- 1. Special Meeting – Closed Session – December 15, 2009 at 8:00 a.m. – City Manager Interviews

VII. ADJOURNMENT

Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Thursday, 8 a.m. to 5 p.m.

NOTICE: Any member of the public may address this meeting of the Mayor and Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor and Council. No member of the public shall be permitted to "share" his/her five minutes with any other member of the public.

Any member of the public may address this meeting of the Mayor and Council on any item which does not appear on the agenda, but is of interest to the general public and is an item upon which the Mayor and Council may act. A three-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor and Council. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to "share" his/her three minutes with any other member of the public. The Mayor and Council will in most instances refer items of discussion which do not appear on the agenda to staff for appropriate action or direct that the item be placed on a future agenda of the Mayor and Council. However, no other action shall be taken, nor discussion held by the Mayor and Council on any item which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of Section 54954.2 of the Government Code.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office (909) 922-3102. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II].

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

11/24/09
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Botts on November 24, 2009 at 6:30 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Franklin
Councilmember Hanna
Councilmember Robinson
Councilmember Machisic
Mayor Botts

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Sam Racadio, Interim City Manager
David Aleshire, City Attorney
Kirby Warner, Interim Finance Director
Duane Burk, Public Works Director
Zaiton Abu-Bakar, Community Development Dir.
Leonard Purvis, Police Chief
Heidi Meraz, Community Services Director
Hoyl Belt, Human Resources Director
Chuck Thurman, Electrical Operations Manager
Marie A. Calderon, City Clerk

The invocation was given by Interim City Manager Racadio. Mayor Botts invited the audience to join him in the Pledge of Allegiance to the Flag.

PUBLIC COMMENTS/CORRESPONDENCE /ANNOUNCEMENTS

Report by City Attorney – There was none.

Report by City Manager

City Manager said that at the next City Council meeting on December 8th there will be a presentation by the State of California on the Mid-County Justice Center beginning at 4:30 p.m.

PUBLIC COMMENTS – *On Items Not on the Agenda*

Bill Dickson, 5700 W. Wilson reminded everyone about the Hispanic Chamber Toy Giveaway on Dec. 13th at Replier Park from 1 to 5 p.m.

Charlene Sakurai, 4985 Bermuda Dunes addressed the Council on behalf of the Alliance thanking them and all the departments of the City and all of those volunteers that participated in

making the Phineas Festival a success from the opening of the Fox Theater to the Haven Coffee House, the tree lighting and the exhibit at the Banning Center for the Arts. It was a tremendous show of community spirit all around and a great positive reaction by the city. This will just continue to get better and better as we move along.

CORRESPONDENCE: None

ANNOUNCEMENTS/COUNCIL REPORTS: *(Upcoming Events/Other Items and Report if any)*

Mayor Botts said on behalf of the City thank you to the Alliance, the Banning Chamber of Commerce, and Habitat for Humanity. Habitat for Humanity finished up two homes going to two young Hispanic families and there was a dedication with 75 to 100 people in attendance. He thanked all of the hundreds of volunteers with Habitat for Humanity. The Haven opening and theater opening was also held with thousands of people downtown this weekend. Thank you to the Banning Chamber of Commerce and the Alliance for the Phineas Festival. Thank you to Doug and Monte Hammer who volunteered their antique fire trucks for this festival giving everyone a ride. Thank you to the many volunteers with all the organizations in making this a very special weekend.

Councilmember Robinson –

- Said the Banning Chamber of Commerce had a quarterly meeting and the guest speaker was Assemblyman Cook.
- There was a Banning Golf Tournament for the Boys and Girls Club with 120 golfers participating. There were many things given to this group so that they didn't have to pay for green fees and all the things that are so expensive and they made a great deal of money for the Banning and Beaumont Boys and Girls Club.
- Carol's Kitchen yesterday served a Thanksgiving Dinner serving hundreds of people. Carol's Kitchen was also given a key to their new refrigerated truck so that they can go and pick up produce and cold storage items and deliver it fresh.
- On December 10th the State of the City Address will be given at the Fox Theater. There will also be a ribbon cutting for the Fox Theater on that date.

Mayor Pro Tem Hanna –

- Said that H.E.L.P. is our local food pantry and they receive USDA food and folks who qualify to receive food from H.E.L.P. have to be low income. They have doubled the number of people that they have helped this year and they will have given away 500,000 pounds of food this year. H.E.L.P. is located in Banning south of Ramsey on 6th Street.
- Another ongoing project of the Banning Cultural Alliance is Banning Revitalization Initiative working with the University of Redlands students that are working on marketing programs with business owners in the downtown, public information and surveys and they will be continuing their work in helping us to revitalize downtown.
- While we have a completely new Fox Theater the prices are the same. It is \$5 general admission to first run movies, \$3.75 for seniors and children and on Wednesdays before 6 p.m. it is \$2.50.
- Haven Coffee House and Art Gallery, Gift Shop and Bookstore are open. Right now they are opening at 6 a.m. every morning. If they don't get enough demand after a few weeks, they will open later.

- We have probably 600 to 700 folks who are Hmong from Laos and they have a New Year's Celebration every year on Thanksgiving Day. They will be having this celebration at Repplier Park beginning at 10 a.m. Come out and see their traditions and celebrations.

Councilmember Franklin –

- Thanked everyone who worked so hard over this past weekend. She also thanked all of the residents who came out because it wouldn't have been a success without them.
- Thursday there will be a Thanksgiving Dinner provided by Legacy Christian Center at the Community Center from 11:30 a.m. to 1 p.m. It is free to anybody that would like to attend.
- Nov. 28th from 9 to 11 a.m. there will be a free workshop for any high school student in Banning or Beaumont and the topic is Job Application Process. Ken Sandefur is going to talk about how to complete an application, how to dress, how to answer questions in an interview, as well as, how to fill out an on-line application. It will be held at the Mt. San Jacinto Office across the street from Sizzler on Ramsey Street.
- This past Saturday we had our first high school student as far as we know in the history of Banning to qualify for the State Cross Country Finals. His name is Brian Santiago Flores. Also, the whole team did qualify for CIF. He will be completing this coming Saturday in Fresno at the State level.
- December 2nd at 5:30 p.m. the San Geronio Memorial Hospital Tree Lighting will take place at the hospital.
- Those that may be interested in getting a temporary job the US Census has job openings. Jobs are still available and the lowest range on the job is from \$11.25 up to \$18.50 an hour. You can call 866-861-2010.
- She thanked Morongo for the 7000 turkeys that were passed out last week. Today Proline employees raised enough funds to provide 100 complete Thanksgiving dinners. They did it for people who were customers of H.E.L.P.

Mayor Botts said thanked the staff in all the City departments in helping as we put on events and try to get businesses open and work with them. Also, a special thank you to each department for their participation this weekend.

PRESENTATIONS:

1. Stagecoach Days Report by Sue Palmer and Volunteers

Mrs. Palmer addressed the City Council giving an update on Stagecoach Days for 2009. She and the Stagecoach Days Committee are happy to report that this year's event was successful. They worked hard to put on an event that would be entertaining to the community but yet, make sure that it paid for itself. The first big decision made was to eliminate the rodeo for this year because they knew that all of the businesses were hurting with the current economy and didn't think they would be able to get the sponsors needed to put on an expensive rodeo. It was a hard decision to make but the Committee was determined to put on an event that would pay for itself. They also went out and asked businesses to sponsor Stagecoach Days and did get a few sponsors and the Committee put together a very tight budget. As you can see by the numbers after all the expenses were paid they have a little money left over to start fundraisers for next year. She has a detailed list of incomes and expenses if anyone would like a copy.

The Net Income and Expense report that she gave to the Council (see Exhibit "A") is just the basic net figures. The bottom line is that they came out a little over \$5,000 dollars to the good. Obviously that was with scaling everything back and trying to put on the best event that they could within the means that they had. Based on the sponsorship that they had determined how much money they would be able to spend on advertising, parade, carnival, entertainment, etc. and obviously they think it turned out good. There were many, many volunteers that participated to put this event on. They know that there have been issues in the past with some businesses and volunteers that have been unhappy for various different reasons so they have tried to go above and beyond to work with these people to try to get them into the fold and mend any fences that needed to be mended. Mrs. Palmer continued her presentation going over such items such as the parade, carnival improvement, entertainment, kid zone and The Pass Has Talent. In regards to the weather they had one good day and the other days were very cold and windy. Because of the bad weather the Committee has made a bold decision to change the date for next year's Stagecoach Days to September 9, 10, 11 and 12. This would be three weeks earlier and they are hoping to have great weather for all four days and allow the community to enjoy the events without the threat of bad weather. They are already in the planning stages for fundraisers for next year and they are looking for community members who want to give back to their community by serving on the Board and volunteering for Stagecoach Days. They want to encourage new and experienced community members to serve on the Stagecoach Days Committee for 2010. People can contact the Community Center or any one of the current members to get more information and their next meeting is on January 11, 2010 at 5:30 p.m. She introduced some of the Committee Members who were in attendance and they included J. R. Algower, President; Linda Escandel, Vice-President, Helen Barnes, Heidi Meraz, and Jim Mildren and his wife.

The Council thanked the Stagecoach Days Committee and Sue Palmer and also all the members for having a very successful event. People had a good time and they loved the parade and they did an amazing job. Also the partnerships with the Alliance for The Pass Has Talent drew a lot of people and it was very entertaining. It is a good idea to bring those kinds of connections together.

CONSENT ITEMS

1. Approval of Minutes – Regular Meeting – 11/10/09

Recommendation: That the minutes of the regular meeting of November 10, 2009 be approved.

2. Ordinance No. 1412 – 2nd Reading: An Ordinance of the City of Banning, Amending and Superseding Ordinance No. 1344 to Update Its Participation in the Western Riverside County Transportation Uniform Mitigation Fee (TUMF) Program and Adopt a Temporary TUMF Reduction.

Recommendation: That Ordinance No. 1412 pass its second reading and be adopted.

3. Resolution No. 2009-100, Reciting the Fact of the Special Municipal Election Held in Said City on November 3, 2009, Declaring the Result Thereof and Such Other Matters

as Provided by Law.

Recommendation: That the City Council adopt Resolution No. 2009-100.

4. Resolution No. 2009-96, Accepting the 2010 Supplemental Law Enforcement Services Fund Allocation and Authorizing the Banning Police Department to Use the Funds Towards the Purchase of Law Enforcement Related Equipment and Training.

Recommendation: That the City Council adopt Resolution No. 209-96.

Motion Franklin/Hanna to approve Consent Items 1, 2, 3 and 4. Mayor Botts opened the item for public comments. There were none. **Motion carried, all in favor with Councilmember Machisic abstaining on Consent Item No. 1.**

ORDINANCES

1. Ordinance No. 1413, An Urgency Ordinance to amend the Banning Municipal Code Section 9.16.030, establishing a method to allow a person or company to destroy pests in the city.
(Staff Report – Sam Racadio, Interim City Manager)

City Manager said that they found that the Banning Municipal Code relating to discharging of guns and pests control does not have a procedure or a method for processing. This ordinance would set forth a requirement that the Police Chief would have to authorize anyone who is in charge of the responsibility of destroying pests.

Mayor Botts opened the item for public comments. There were none.

Mayor Botts asked the City Clerk to read the title of Ordinance No. 1413. City Clerk read: Ordinance No. 1413, An Urgency Ordinance of the City Council of the City of Banning Amending Section 9.16.030 of Chapter 9.16 of Title 9 of the Banning Municipal Code to Require a Permit from the Chief of Police for the Use of Guns by Persons Licensed to Destroy Pests.

Motion Hanna/Robinson to waive further reading of Ordinance No. 1413. Motion carried, all in favor.

Motion Machisic/Robinson that Urgency Ordinance No. 1413 be adopted. Motion carried, all in favor.

REPORTS OF OFFICERS

1. Resolution No. 2009-99, Approving Participation in a Study to Determine the Feasibility for a San Gorgonio Pass Area Joint Powers Authority for Transportation.
(Staff Report - Heidi Meraz, Community Services Director)

Mrs. Meraz gave the staff report as contained in the staff report.

6

Councilmember Robinson said in regards to this agreement who would actually represent the City at these negotiations with these other cities and would it stay that way with this JPA.

Mrs. Meraz said that presently Mayor Botts and Councilmember Franklin represent the City. She said that this is not authorizing the JPA. This is strictly exploring the feasibility of it. They are just asking for the Council's approval to consider looking into this.

City Manager said if it resulted in a joint powers authority and if the Board was made up of elected officials, that would all have to come back to the Council and they would have to appoint who they would want to serve on it.

Councilmember Machisic said that with three cities our size with Calimesa being at about 9,000 and Beaumont with about 32,000 and with Banning at 29,000 he would like to see the idea explored beyond this about the possibility of joining Riverside County transportation system. It is a bigger system and he would be more concerned about connections with the city of Riverside because to some extent we are a long distance away from Riverside and Riverside has other connections with larger cities. He would like to see it studied from that point of view and also from the expense point of view.

Mayor Botts said that they are looking at all parts of this and there are multiple issues that they want to look at. Everything is on the table.

Councilmember Franklin said what they talked about at the last committee meeting is really for them to get the blessing of the Council to continue the conversations.

Mayor Botts opened the item for public comments. There were none.

Motion Franklin/Machisic hat the City Council adopt Resolution No. 2009-99, Approving Participation in a Study to Determine the Feasibility for a San Gorgonio Pass Area Joint Powers Authority for Transportation. Motion carried, all in favor.

2. Appointment of Economic Development Committee
(Staff Report - Sam Racadio, Interim City Manager)

City Manager gave the staff report as contained in the agenda packet. They are one position short for the at-large appointment and the Banning Unified School District has given the name of Kelly Daily to represent the school board. There was one application was sent in but there is no record of that.

Councilmember Robinson asked what would be the procedure to extend this out further to get more applications. City Manager said that there could be a motion to extend it and be voted on to whatever date the Council wanted to extend it to.

Councilmember Franklin said she spoke with Helen Barnes who actually applied and had been on the previous EDC committee and she mentioned to the City Manager that she had a concern that she had said she submitted two applications and no one can find either one and since she was on the prior committee she understands the process and she would like to see that the

people that have already applied have already show an interest. She is not sure by extending the time frame that they would get a whole lot more interest. She would suggest putting her in this fifth slot recognizing whatever the committee does still has to be approved by the Council. That would give us the opportunity to have the committee actually move forward. It hasn't met in a good while and she would like to see it be able to meet and come up with some good ideas.

Mayor Pro Tem Hanna said given the time of year that if we extended it through the first of the year, they could officially receive Helen Barnes application and also make an effort to get whatever other applications they can. She is sure that it won't meet until sometime after the first of year so she doesn't see any harm in extending it to January 5th.

Mayor Botts opened the item for public comments. There were none.

Motion Robinson/Hanna that the City Council extend the time to accept applications for the Economic Development Committee to January 5, 2010. Motion carried, with Councilmembers Franklin and Machisic voting no.

ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items –

Mayor Pro Tem Hanna said that on December 8th there will be a special presentation by the State and we have a budget session planned for that same date and she wondered whether Pending Items 4, 5 and 6 unless they are somehow caught up in the budget discussion could be moved to January. Also in regards to Pending Item No. 5, Community Advisory Panel for Renewable Energy Opportunities, she wanted to see if that was in fact a sustainable committee that was approved by the City Council on our sustainable policies.

City Manager said that Consent Items 4, 5, and 6 could be continued to January 12th. In regards to Item No. 5 he spoke to Fred Mason about it and he has looked at the records and it was discussed and given different names and he is ready to bring back a report on the scope and the purpose and they will need only one committee for that.

Councilmember Robinson said that they met for the Community Development Block Grant panel and he didn't see anything on this and he knows that Mr. Burk said that was due on December 11th. Also in regards to Project Status Reports he would like something updated monthly.

City Manager said that in regards to the Community Development Block Grant that is on staff's internal scheduling and scheduled for December 8th. In regards to the Project Status reports they can get something to the Council monthly.

Councilmember Machisic said that the Council is going to have some early sessions dealing with finances and at the present time there are three towing companies in this city and his understanding that we are working on a contact with those three towing companies right now. He would like as part of the budget process to look at the towing contract per say because he

thinks we need to look at whatever revenue sources might be available. He said that he brought this up three or four years ago but he would like to revisit it to see what the potential is. He would like to see the pros and cons of it.

There was Council consensus to have some discussion regarding the towing contracts.

1. Schedule Meetings with Our State and County Elected Officials
2. Set New Date for Joint Meeting with Banning School Board *(Date to be determined)*
3. Budget Study Session on balancing the budget *(ETA 12/8/09)*
4. Additional Splash Pad at Replier Park Aquatics Center *(ETA 12/8/09)*
5. Community Advisory Panel for Renewable Energy Opportunities *(ETA 12/8/09)*
6. How AB 920 dealing with Electric Energy will affect City *(ETA 12/8/09)*
7. Development Impact Fees Report *(ETA 1/12/10)*
8. Massage Ordinance *(ETA 1/26/10)*

Future Meetings

1. Special Meeting – Closed Session – December 15, 2009 at 8:00 a.m. – City Manager Interviews

ADDENDUM - CLOSED SESSION

City Attorney said the City Council will meet in closed session pursuant to the provisions of Government Code Section 54957 is to consider personnel matters in the recruitment of a City Manager candidate.

Meeting went into closed session at 7:17 p.m. and returned to regular session at 8:09 p.m.

City Attorney reported that the City Council met in closed session and considered the appointment of City Manager candidates and did not take any reportable action but will proceed with interviews.

ADJOURNMENT

By common consent the meeting adjourned at 8:10 p.m.

Marie A. Calderon, City Clerk

THE ACTION MINUTES ARE A SUMMARY OF ACTIONS TAKEN BY THE CITY COUNCIL. A COPY OF THE MEETING IS AVAILABLE IN DVD FORMAT AND CAN BE REQUESTED IN WRITING TO THE CITY CLERK'S OFFICE.

Rec'd 11/24/09
Council mtg.

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	
1	STAGECOACH DAYS FINANCIAL REPORT --NET TOTALS 2009																	
2	Sponsors	7800	3796	5044	2945	2510	8321											
3																		
4																		
5	Income	7800	3796	5044	2945	2510	8321											30,416
6																		
7																		
8																		
9	Expenses		600	187	1265	2510		5469	570	5106	2226	1780	3050	918	200	1470		25352
10																		
11																		
12																		
13	Totals	7800	3196	4857	1680	0	8321	-5469	-570	-5106	-2226	-1780	-3050	-918	-200	-1470		5064

10

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: December 8, 2009
TO: Mayor and City Council
FROM: Kirby Warner, Interim Finance Director
SUBJECT: Report of Investments for October 2009

RECOMMENDATION: "The City Council receive and place these required monthly *Reports of Investments* on file."

JUSTIFICATION: State law requires that a monthly report of investments be submitted to the Chief Executive Officer and the Legislative Body.

BACKGROUND: This report includes investments on hand at the end of October 2009. As of October 31, 2009, the City's operating funds totaled \$65,382,591. Included in operating funds is \$3,686,282 of restricted CRA bond proceeds that are on deposit with LAIF and reflected separately on the Treasurer's Report. As of October 31, 2009 approximately 44% of the City's unrestricted cash balances were invested in investments other than LAIF.

Presented are three months of Investment Reports. October is a first issue, while August and September are included to provide multiple months of statements for comparison.

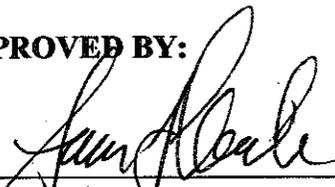
FISCAL DATA: The latest reports from the State indicate that the average interest achieved by the Local Agency Investment Fund (LAIF) decreased to 0.646 % in October. The average rate for all investments in October was 1.148%.

RECOMMENDED BY:



Kirby Warner
Interim Finance Director

APPROVED BY:



Sara Racadio
Interim City Manager

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Summary Schedule of Cash and Investments

Operating Funds		<u>Amount</u>
<i>Petty Cash</i>		2,305
<i>Bank Accounts</i>		
	Interest	
	Rate Amount	
Wells Fargo Bank	0.000%	243,393
Wells Fargo Bank-Investment Account	0.100%	1,561,707
Bank of America-Airport	0.300%	7,085
Bank of America-Parking Citations	0.300%	4,127
Bank of America-CNG Station	0.300%	<u>3,828</u>
<i>Money Market and Bank Account Sub-Total</i>		1,820,139
<i>Government Pools</i>		
Local Agency Investment Fund: Account #1	0.646%	31,196,602
Account #2 Operating Amount		2,816,181
Account #2 CRA Bond Cash Bal		3,686,282
Local Agency Investment Fund: Account #2	0.646%	<u>6,502,463</u>
<i>Government Pool Sub-Total</i>		<u>37,699,065</u>
Operating Cash Balance		39,521,509
<i>Restricted Operating Funds at Riverside Public Utilities</i>		
Highmark U.S. Government Money Market Fund	0.150%	758,991
<i>Other Investments</i>		
Investments-US Bank/Piper Jaffray - See Page 2	1.982%	25,102,091
Operating Funds Total		<u>65,382,591</u>

Fiscal Agent		<u>Amount</u>
BNY Western Trust Company		538,762
US Bank		<u>65,262,006</u>
<i>Fiscal Agent Total</i>		<u>65,800,768</u>

Deferred Compensation		<u>Amount</u>
City Employee Trust Accounts		<u>4,276,527</u>
<i>Deferred Compensation Total</i>		<u>4,276,527</u>

City of Banning Investment Report

October 31, 2009

Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	Discount or (Premium) Amortization	Market Value
<u>Bank Accounts</u>								
243,393	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	243,393	n/a	243,393
1,561,707	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	1,561,707	n/a	1,561,707
7,085	Bank of America-Airport	n/a	0.30%	daily	varies	7,085	n/a	7,085
4,127	Bank of America-Parking Citations	n/a	0.30%	daily	varies	4,127	n/a	4,127
3,828	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,828	n/a	3,828
	Sub-total							1,820,139
<u>Government Pools</u>								
31,196,602	L.A.I.F. account #1	n/a	0.646%	daily	varies	31,196,602	n/a	31,196,602
6,502,463	L.A.I.F. account #2	n/a	0.646%	daily	varies	6,502,463	n/a	6,502,463
								37,699,065
<u>Investments-US Bank/Piper Jaffray</u>								
3,000,000	Federal Farm Credit Banks	n/a	2.000%	12/30/2010	12/30/2008	3,000,000	0	3,006,630
6,000,000	Federal Farm Credit Banks	n/a	2.120%	9/23/2011	3/24/2008	6,000,000	0	6,037,380
3,000,000	Fed Natl Mig Assn	n/a	2.040%	12/30/2011	12/23/2008	3,000,000	0	3,015,000
11,170,000	Federal Farm Credit Banks	n/a	2.000%	1/30/2012	6/12/2009	11,170,000	0	11,233,446
1,500,000	Federal Farm Credit Banks	n/a	1.550%	7/7/2011	7/7/2009	1,500,000	0	1,503,360
306,275	Money Market	n/a	0.000%	daily	varies	306,275	0	306,275
	US Bank/Piper Jaffray Average Rate=		1.982%					25,102,091

Average Rate All= 1.148%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 14, 2009. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 276 days and does not include Bond Reserve Fund Investments.

13

City of Banning Investment Report

October 31, 2009

Individual Investments with Fiscal Agent

Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Maturity Date	Bond Reserve	Minimum Reserve Requirement	Interest Oct-09	Market Value 10/31/2009
TRUSTEE								
BNY WESTERN TRUST COMPANY								
1997 Admin Building COPs Refunding	2020	Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	6.270% 0.000%	11/1/2020 daily	522,375	522,375	*	522,562 16,200
US BANK								
1991 Wilson St. Assessment District	2012	AIM U.S. Treasury Money Market	0.500%	daily	265,580	265,580	10.32	265,590
2005 Fair Oaks Ranch Estates	2035	First Amer Treas Oblig Fd CL D	0.280%	daily	190,323	190,323	47.69	189,396
2003 CRA Tax Allocation Bonds	2028	Forward Delivery Agreement - B of A US Bank MmKt	4.560% 0.300%	daily	971,763	971,763	0.00 *	991,881
Surplus Fund		First Amer Treas Oblig Fd CL D	0.300%	daily			5.61	22,741
		First Amer Treas Oblig Fd CL D	0.025%	daily			0.04	146
		First Amer Treas Oblig Fd CL D		daily				8
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007								
Redevelop Fund	2037	First Amer Treas Oblig Fd CL D	0.300%	daily			2.92	11,841
	11/27/2009	Reliance Trust Company GIC # 9AMGGBEF37	2.950%					3,336,669
	5/21/2009	Reliance Trust Company GIC # 9AMGGBEU8	0.750%					3,500,000
	11/19/2009	Reliance Trust Company GIC # 9AMGGBEV6	2.950%					8,000,000
Reserve Fund		First Amer Treas Oblig Fd CL D	0.300%	daily	1,880,751	1,880,751	462.70	1,876,981
Special Fund		First Amer Treas Oblig Fd CL D	0.300%	daily			0.05	185
Surplus Fund		First Amer Treas Oblig Fd CL D	0.320%	daily				9
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Bond Fund		First Amer Treas Oblig Fd CL D	0.300%	daily			0.54	262,443
Principal Account		First Amer Treas Oblig Fd CL D	0.300%	daily			33.68	125,553
		First Amer Treas Oblig Fd CL D	0.300%	daily			571.67	758,346
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Bond Fund		First Amer Treas Oblig Fd CL D	0.300%	daily			79.26	1,155,127
Principal Account		First Amer Treas Oblig Fd CL D	0.300%	daily			570.31	332,580
Reserve Fund		First Amer Treas Oblig Fd CL D	0.300%	daily			4,484.04	2,313,531
Project Fund		First Amer Treas Oblig Fd CL D	0.300%	daily				18,189,897

14

City of Banning Investment Report

October 31, 2009

Bond Maturity Date	Bond Issue Description	Investment Description	Current Yield	Bond Reserve Bond Maturity Date	Minimum Reserve Requirement	Interest Oct-09	10/31/2009 Market Value
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES							
11/17/2011	Reliance Trust Company GIC # 9AMGGBEZ7		3.650%				3,016,509
	First Amer Treas Oblig Fd CL D		0.300%	daily		400.85	1,626,101
11/27/2009	Reliance Tr Co Contract # 9AMGGBF29		2.950%				8,036,457
5/21/2009	Reliance Trust Company GIC #9AMGGBEX2		0.750%				3,250,000
11/19/2009	Reliance Trust Company GIC #9AMGGBEY0		2.950%				8,000,000
Acquisition & Construction							
*Paid Semi-Annually-Deposited into Money Mkt Account						6,671.54	65,800,768

Deferred Compensation

Balance 10/1/2009	Description	10/31/2009
911,025	Various Employee Selected Mutual Funds	902,518
2,590,298	Various Employee Selected Mutual Funds	2,580,509
822,433	Various Employee Selected Mutual Funds	793,499
<u>4,323,757</u>		<u>4,276,527</u>

Summary Schedule of Cash and Investments

Operating Funds		<u>Amount</u>
<i>Petty Cash</i>		2,305
<i>Bank Accounts</i>		
	Interest	
	Rate	Amount
Wells Fargo Bank	0.000%	193,138
Wells Fargo Bank-Investment Account	0.100%	442,203
Bank of America-Airport	0.300%	7,769
Bank of America-Parking Citations	0.300%	4,626
Bank of America-CNG Station	0.300%	<u>3,873</u>
<i>Money Market and Bank Account Sub-Total</i>		651,610
<i>Government Pools</i>		
Local Agency Investment Fund: Account #1	0.750%	31,126,213
Account #2 Operating Amount		7,533,214
Account #2 CRA Bond Cash Bal		3,688,992
Local Agency Investment Fund: Account #2	0.750%	<u>11,222,206</u>
<i>Government Pool Sub-Total</i>		<u>42,348,419</u>
Operating Cash Balance		43,002,333
<i>Restricted Operating Funds at Riverside Public Utilities</i>		
Highmark U.S. Government Money Market Fund	0.150%	419,593
<i>Other Investments</i>		
Investments-US Bank/Piper Jaffray - See Page 2	1.991%	24,999,548
Operating Funds Total		<u><u>68,421,474</u></u>

Fiscal Agent

	<u>Amount</u>
BNY Western Trust Company	538,762
US Bank	<u>63,839,757</u>
<i>Fiscal Agent Total</i>	<u><u>64,378,519</u></u>

Deferred Compensation

City Employee Trust Accounts	<u>4,323,757</u>
<i>Deferred Compensation Total</i>	<u><u>4,323,757</u></u>

16

City of Banning Investment Report

September 30, 2009

Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	Discount or (Premium) Amortization	Market Value
<i>Bank Accounts</i>								
193,138	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	193,138	n/a	193,138
442,203	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	442,203	n/a	442,203
7,769	Bank of America-Airport	n/a	0.30%	daily	varies	7,769	n/a	7,769
4,626	Bank of America-Parking Citations	n/a	0.30%	daily	varies	4,626	n/a	4,626
3,873	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,873	n/a	3,873
	Sub-total							651,610
<i>Government Pools</i>								
31,126,213	L.A.I.F. account #1	n/a	0.750%	daily	varies	31,126,213	n/a	31,126,213
11,222,206	L.A.I.F. account #2	n/a	0.750%	daily	varies	11,222,206	n/a	11,222,206
								42,348,419
<i>Investments-US Bank/Piper Jaffray</i>								
3,000,000	Federal Farm Credit Banks	n/a	2.000%	12/30/2010	12/30/2008	3,000,000	0	3,016,890
6,000,000	Federal Farm Credit Banks	n/a	2.120%	9/23/2011	3/24/2008	6,000,000	0	6,043,680
3,000,000	Fedl Natl Mtg Assn	n/a	2.040%	12/30/2011	12/23/2008	3,000,000	0	3,010,170
11,170,000	Federal Farm Credit Banks	n/a	2.000%	1/30/2012	6/12/2009	11,170,000	0	11,229,313
1,500,000	Federal Farm Credit Banks	n/a	1.550%	7/7/2011	7/7/2009	1,500,000	0	1,504,920
194,575	Money Market	n/a	0.000%	daily	varies	194,575	0	194,575
	US Bank/Piper Jaffray Average Rate=		1.991%					24,999,548

Average Rate All= 1.198%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 14, 2009. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 273 days and does not include Bond Reserve Fund Investments.

City of Banning Investment Report

September 30, 2009

Individual Investments with Fiscal Agent

Bond Maturity Date	Bond Issue Description	Investment Description	Current Yield	Bond Reserve	Minimum Reserve Requirement	Interest Sep-09	Market Value 9/30/2009
2020	1997 Admin Building COPs Refunding	Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	6.2700% 0.0000%	11/1/2020 daily	522,375	*	522,562 16,200
2012	1991 Wilson St. Assessment District	AIM U.S. Treasury Money Market	0.4700%	daily	265,580	0.02	265,580
2035	2005 Fair Oaks Ranch Estates	First Amer Treas Oblig Fd CL D	0.3200%	daily	12	1.86	12
2028	2003 CRA Tax Allocation Bonds	First Amer Treas Oblig Fd CL D	0.3000%	daily	190,323	56.05	189,349
		Forward Delivery Agreement - B of A	4.5600%	daily	971,763	0.00 *	991,663
		US Bank Mmkt	0.3000%	daily		21.83	22,736
		First Amer Treas Oblig Fd CL D	0.3000%	daily		11.22	145
		First Amer Treas Oblig Fd CL D	0.025%	daily			8
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007							
2037	Redevelop Fund	First Amer Treas Oblig Fd CL D	0.3000%	daily		3.02	11,838
11/27/2009		Reliance Trust Company GIC # 9AMGGBF37	2.9500%				3,336,669
5/21/2009		Reliance Trust Company GIC # 9AMGGBEU8	0.7500%				3,500,000
11/19/2009		Reliance Trust Company GIC # 9AMGGBEV6	2.9500%				8,000,000
	Reserve Fund	First Amer Treas Oblig Fd CL D	0.3000%	daily	1,880,751	478.00	1,876,519
	Special Fund	First Amer Treas Oblig Fd CL D	0.3000%	daily		14.28	185
	Surplus Fund	First Amer Treas Oblig Fd CL D	0.3200%	daily			9
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES							
	Bond Fund	First Amer Treas Oblig Fd CL D	0.3000%	daily		0.56	2,208
	Principal Account	First Amer Treas Oblig Fd CL D	0.3000%	daily		116.60	125,519
		First Amer Treas Oblig Fd CL D	0.3000%	daily		938.41	757,774
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES							
	Bond Fund	First Amer Treas Oblig Fd CL D	0.4200%	daily		0.07	332,500
	Principal Account	First Amer Treas Oblig Fd CL D	0.3000%	daily		589.17	2,312,961
	Reserve Fund	First Amer Treas Oblig Fd CL D	0.3000%	daily		4,445.47	18,185,413
	Project Fund	First Amer Treas Oblig Fd CL D	0.3000%	daily			

18

City of Banning Investment Report

September 30, 2009

Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Reserve	Minimum Reserve Requirement	Interest Sep-09	9/30/2009 Market Value
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES							
Acquisition & Construction	11/17/2011	Reliance Trust Company GIC # 9AMGGBEZ7 First Amer Treas Oblig Fd CL D	3.650%			414.11	3,016,509
	11/27/2009	Reliance Tr Co Contract # 9AMGGBF29	0.300%	daily			1,625,700
	5/21/2009	Reliance Trust Company GIC #9AMGGBEX2	2.950%				8,036,457
	11/19/2009	Reliance Trust Company GIC #9AMGGBEY0	0.750%				3,250,000
			2.950%				8,000,000
Total						7,090.67	64,378,519

*Paid Semi-Annually-Deposited into Money Mkt Account

Deferred Compensation

Balance	07/01/09 to 6/30/2009 Quarterly Activity	9/30/2009
7/1/2009		
ICMA Retirement Corporation	Contributions 11,196	911,025
CALPERS 457 Program	Withdrawals (213,686)	2,590,298
NATION WIDE-PEBSCO	Gain/Loss 146,882	822,433
	(103,615)	
	(16,229)	
	43,757	
4,147,963		4,323,757

Summary Schedule of Cash and Investments

Operating Funds

Petty Cash

Amount
2,305

Bank Accounts

	Interest Rate	Amount
Wells Fargo Bank	0.000%	32,845
Wells Fargo Bank-Investment Account	0.100%	671,463
Bank of America-Airport	0.300%	4,205
Bank of America-Parking Citations	0.300%	3,380
Bank of America-CNG Station	0.300%	3,213

Money Market and Bank Account Sub-Total 715,107

Government Pools

Local Agency Investment Fund: Account #1 0.925% 31,126,213

Account #2 Operating Amount 8,926,770

Account #2 CRA Bond Cash Bal 3,695,436

Local Agency Investment Fund: Account #2 0.925% 12,622,206

Government Pool Sub-Total 43,748,419

Operating Cash Balance **44,465,831**

Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund 0.150% **482,919**

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2 1.996% **24,905,219**

Operating Funds Total 69,853,969

Fiscal Agent

	Amount
BNY Western Trust Company	538,762
US Bank	67,085,617

Fiscal Agent Total 67,624,379

Deferred Compensation

City Employee Trust Accounts 4,186,784

Deferred Compensation Total 4,186,784

City of Banning Investment Report

August 31, 2009

Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	Discount or (Premium) Amortization	Market Value
<u>Bank Accounts</u>								
32,845	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	32,845	n/a	32,845
671,463	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	671,463	n/a	671,463
4,205	Bank of America-Airport	n/a	0.30%	daily	varies	4,205	n/a	4,205
3,380	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,380	n/a	3,380
3,213	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,213	n/a	3,213
	Sub-total							715,107
<u>Government Pools</u>								
31,126,213	L.A.I.F. account #1	n/a	0.925%	daily	varies	31,126,213	n/a	31,126,213
12,622,206	L.A.I.F. account #2	n/a	0.925%	daily	varies	12,622,206	n/a	12,622,206
								43,748,419
<u>Investments-US Bank/Piper Jaffray</u>								
3,000,000	Federal Farm Credit Banks	n/a	2.000%	12/30/2010	12/30/2008	3,000,000	0	3,013,200
6,000,000	Federal Farm Credit Banks	n/a	2.120%	9/23/2011	3/24/2008	6,000,000	0	6,043,560
3,000,000	Fedl Natl Mtg Assn	n/a	2.040%	12/30/2011	12/23/2008	3,000,000	0	3,012,180
11,170,000	Federal Farm Credit Banks	n/a	2.000%	1/30/2012	6/12/2009	11,170,000	0	11,200,159
1,500,000	Federal Farm Credit Banks	n/a	1.550%	7/7/2011	7/7/2009	1,500,000	0	1,505,295
130,825	Money Market	n/a	0.000%	daily	varies	130,825	0	130,825
	US Bank/Piper Jaffray Average Rate=		1.996%					24,905,219

Average Rate All= 1.300%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 14, 2009. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 278 days and does not include Bond Reserve Fund Investments.

21

City of Banning Investment Report

August 31, 2009

Individual Investments with Fiscal Agent

Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Maturity Date	Minimum Reserve Requirement	Interest Aug-09	Market Value 8/31/2009
TRUSTEE							
BNY WESTERN TRUST COMPANY							
1997 Admin Building COPs Refunding	2020	Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	6.270% 0.000%	11/1/2020 daily	522,375	*	522,562 16,200
US BANK							
1991 Wilson St. Assessment District	2012	AIM U.S. Treasury Money Market First Amer Treas Oblig Fd CL D	0.460% 0.300%	daily daily	265,580	51.07	265,782 226,033
2005 Fair Oaks Ranch Estates	2035	First Amer Treas Oblig Fd CL D	0.300%	daily	190,323	55.27	310,919
2003 CRA Tax Allocation Bonds	2028	Forward Delivery Agreement - B of A First Amer Treas Oblig Fd CL D First Amer Treas Oblig Fd CL D	4.560% 0.300% 0.025%	daily daily daily	971,763	0.00 * 126.26	993,683 134 8
Surplus Fund							
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007							
Redevelop Fund	2037	First Amer Treas Oblig Fd CL D	0.300%	daily		3.01	11,832
	11/27/2009	Reliance Trust Company GIC # 9AMGGBF37	2.950%				3,336,669
	5/21/2009	Reliance Trust Company GIC # 9AMGGBEU8	0.750%				3,500,000
	11/19/2009	Reliance Trust Company GIC # 9AMGGBEV6	2.950%				8,000,000
Reserve Fund		First Amer Treas Oblig Fd CL D	0.300%	daily	1,880,751	478.02	1,875,562
Special Fund		First Amer Treas Oblig Fd CL D	0.300%	daily		170.83	171
Surplus Fund		First Amer Treas Oblig Fd CL D	0.320%	daily			9
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES							
Bond Fund		First Amer Treas Oblig Fd CL D	0.300%	daily		0.56	2,207
Principal Account		First Amer Treas Oblig Fd CL D	0.300%	daily		116.57	457,617
		First Amer Treas Oblig Fd CL D	0.300%	daily		938.19	3,683,111
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES							
Bond Fund		First Amer Treas Oblig Fd CL D	0.420%	daily			2
Principal Account		First Amer Treas Oblig Fd CL D	0.300%	daily		0.07	285
Reserve Fund		First Amer Treas Oblig Fd CL D	0.300%	daily		589.02	2,312,371
Project Fund		First Amer Treas Oblig Fd CL D	0.300%	daily		4,326.43	18,180,968
	5/7/2009	Federal Home Loan Banks	2.780%	daily		16,402.00	0

22

City of Banning Investment Report

August 31, 2009

Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Reserve Bond Maturity Date	Minimum Reserve Requirement	Interest Aug-09	8/31/2009 Market Value
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES							
Acquisition & Construction	11/17/2011	Reliance Trust Company GIC # 9AMGGBEZ7	3.650%			253.77	3,016,509
	11/27/2009	First Amer Treas Oblig Fd CL D	0.300%	daily			1,625,286
	5/21/2009	Reliance Tr Co Contract # 9AMGGBEF29	2.950%				8,036,457
	11/19/2009	Reliance Trust Company GIC #9AMGGBEX2	0.750%				3,250,000
	11/19/2009	Reliance Trust Company GIC #9AMGGBEY0	2.950%				8,000,000
Total							67,624,379

*Paid Semi-Annually-Deposited into Money Mkt Account

Deferred Compensation

Balance	8/1/2009	8/31/2009
ICMA Retirement Corporation	863,008	883,860
CALPERS 457 Program	2,485,009	2,494,304
NATION WIDE-PEBSO	813,619	808,620
	<u>4,161,637</u>	<u>4,186,784</u>

23

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: December 8, 2009
TO: Honorable Mayor and Members of the City Council
FROM: Anthony R. Taylor, Esq., Special Litigation Counsel
SUBJECT: Approval of Settlement Agreements for Schoen Litigation

RECOMMENDATION

That the City Council approve the two settlement agreements (attached hereto) in *Schoen v. Dorning, et al.*, Riverside Superior Court, Case No. INC 079177.

BACKGROUND

This matter involves litigation by Plaintiff, Paula Schoen ("Plaintiff"), who was a tenant as her residence and place of business, at the Oddfellows Building, 42 West Ramsey Street, from November of 1995 to December of 2007.

Plaintiff claims that in December of 2007 she was constructively evicted by Dirk Dorning, Robert Freedman and Banning Commercial Investors (the "Landlords") from the property due to construction work performed pursuant to the Agency's OPA, dated March 27, 2007. This lawsuit was brought thereafter by Plaintiff on July 30, 2008 against the Landlords as well as the City and Agency.

Two settlement agreements have been prepared for this matter: (1) between the Plaintiff and the City/Agency and (2) between the Landlords and City/Agency, at the request of the Plaintiff's attorney, so that the deal points between the foregoing parties are kept separate and to avoid confusion.

Under the terms of the first settlement agreement, the Plaintiff has agreed to accept \$50,000, which is provided under the Third Amended OPA, as settlement of all of her claims against the City and Agency.

Under the terms of the second settlement agreement, the Landlords and the City/Agency agree to resolve any and all claims between them, including for attorneys' fees and costs, in exchange for the above settlement payment to the

Plaintiff, and have agreed not to file cross-complaints against each other, subject to court approval, as explained below.

The two settlement agreements resolve this litigation as between the Plaintiff and the City/Agency and the Landlords and the City/Agency. However, Plaintiff's lawsuit is proceeding forward as against the Landlords.

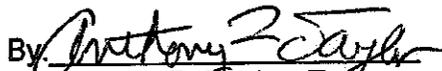
Under Code of Civil Procedure § 877.6, a motion for good faith settlement is required to obtain court approval to resolve any and all potential claims between the City/Agency and the Landlords because the Landlords will remain as defendants in the litigation.

This motion is anticipated to be filed by the Landlords to obtain the additional assurance that they have no further liability exposure to the City/Agency under the terms of the OPA, which is provided in the attached settlement agreement between these parties. We do not anticipate that the Court's ruling on this motion will have any additional impact to the City/Agency because the City/Agency is not proceeding with a cross-complaint against the Landlords based on the Plaintiff's acceptance of the settlement payment.

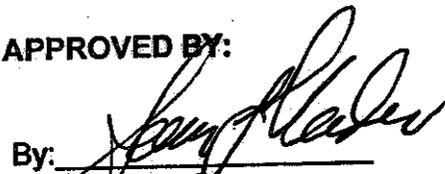
FISCAL DATA

The settlement payment of \$50,000 is made available from the loan described in Section 2.C.(1) of the Third Amendment to the OPA between the Landlords and the Agency that was previously approved by the Agency Board. No other impact to the City or the Agency's budget is expected.

RECOMMENDED BY:

By: 
Anthony R. Taylor, Esq.
Special Litigation Counsel

APPROVED BY:

By: 
Sam Racadio
Interim City Manager

SETTLEMENT AGREEMENT & RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims (the "AGREEMENT") is entered into by and between PLAINTIFF, PAULA SCHOEN ("PLAINTIFF") and DEFENDANTS CITY OF BANNING (the "CITY") and the BANNING REDEVELOPMENT AGENCY (the "AGENCY") collectively referred to as the "PARTIES", to terminate fully and finally only those disputes by PLAINTIFF against the CITY and the AGENCY arising out of, or related to, the ACTION defined hereinafter.

RECITALS

WHEREAS, PLAINTIFF maintained her residence and place of business at the Odd Fellows Building, 42 West Ramsey Street, in the City of Banning, APN 540-204-010 (the "PROPERTY") from November of 1995 to December of 2007; and

WHEREAS, DIRK DORNING, ROBERT E. FREEMAN and BANNING COMMERCIAL INVESTORS are and were the landlords of the PROPERTY during all relevant times herein (collectively referred to as the "LANDLORDS"); and

WHEREAS, PLAINTIFF claims, among several actions, that she was constructively evicted from the PROPERTY in December, 2007; and

WHEREAS, there is an agreement known as the Owner Participation Agreement, dated March 27, 2007 (the "OPA"), between the LANDLORDS and the AGENCY relating to the redevelopment of the Property; and

WHEREAS, PLAINTIFF filed a lawsuit entitled *Schoen v. Dorning, et al.*, in the Superior Court for the County of Riverside, Case No. INC 079177, on or about July 30, 2008, against the LANDLORDS, the CITY and the AGENCY (the "ACTION"); and

WHEREAS, the PLAINTIFF agrees to resolve, fully and finally only those disputes by PLAINTIFF against the CITY and the AGENCY arising out of, or related to, the ACTION.

AGREEMENT

The above Recitals are incorporated by reference as if set forth in full herein.

NOW, THEREFORE, for full and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and based upon the foregoing recitals and the terms, conditions, covenants, and agreements contained herein, all PARTIES hereto agree as follows:

1. **Settlement Payment.** Payment to PLAINTIFF of the total sum of FIFTY THOUSAND DOLLARS (\$50,000.00) shall be made by the AGENCY (the "SETTLEMENT SUM") in full consideration and settlement of any and all claims by PLAINTIFF against the CITY and the AGENCY in the ACTION and specifically excluding any and all claims by PLAINTIFF against the LANDLORDS. The SETTLEMENT SUM shall be payable only after the execution of this AGREEMENT by all PARTIES and their respective counsel, as well as receipt by counsel for the CITY and AGENCY of an executed Request for Dismissal of the CITY and AGENCY from the ACTION, with prejudice, from counsel for the PLAINTIFF. Payment of the SETTLEMENT SUM will be made in the form of a check made payable to PLAINTIFF'S counsel of record, Law Offices of Joseph A. Roman c/o Paula Schoen.

2. **Dismissal Of The Action.** PLAINTIFF shall cause the ACTION to be dismissed against

26

the CITY and AGENCY, with prejudice, within seven (7) calendar days of receipt of the entire SETTLEMENT SUM. The PARTIES are to bear their own costs and attorneys' fees.

3. **Release.** For valuable consideration, the receipt and adequacy of which are hereby acknowledged, the PLAINTIFF does hereby release and forever discharge the respective "RELEASEES" hereunder, but specifically excluding the LANDLORDS, consisting of the CITY, AGENCY, the CITY and AGENCY's respective elected and/or appointed public officials, officers, employees and agents, including, but not limited to, each of their associates, predecessors, successors, heirs, assignees, agents, directors, officers, employees, representatives, elected or appointed public officials, attorneys, and all persons acting by, through, under or in concert with them, or any of them, of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages (including, without limitation, those claims and alleged damages for relocation assistance, loss of income, earnings, personal injury, expenses of relocation, attorneys' fees and/or court costs), losses, costs or expenses, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "CLAIMS or LIABILITIES"), which the PLAINTIFF now has or may hereafter have against the RELEASEES, or any of them but again excluding expressly the LANDLORDS, arising out of, based upon, or relating to the ACTION as well as any matters, causes, or things whatsoever that were, or have been, alleged in the respective pleadings filed in said suit, or that could be alleged out of the PLAINTIFF'S use and enjoyment of the PROPERTY.

4. **Discovery Of Different Or Additional Facts.** The PARTIES acknowledge that they may hereafter discover facts different from or in addition to those that they now know or believe to be true with respect to the claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever that are the subject of the Release set forth in Paragraph 3 of this AGREEMENT, and expressly agree to assume the risk of the possible discovery of additional or different facts, injuries, damages and/or claims and the PARTIES agree that this AGREEMENT shall be and remain effective in all respects regardless of such additional or different facts injuries, damages and/or claims. The CITY and AGENCY agree, however, to cooperate in the PLAINTIFF's First Request for Production of Documents and Notice of Deposition of the Person Most Knowledgeable which shall be issued on or before the date of the AGREEMENT.

5. **Waiver Of Civil Code Section 1542.** Further, the PLAINTIFF expressly agrees to waive and relinquish all rights and benefits she may have under Section 1542 of the Civil Code of the State of California. That section reads as follows:

§1542. [General release; extent] A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

6. **No Other Pending Actions.** The PARTIES each represent that they have not filed any complaint(s), cross-complaint(s) and/or charge(s) (other than the ACTION and again excluding the LANDLORDS) against the RELEASEES, arising out of or relating to the PLAINTIFF'S occupancy of the PROPERTY and/or the matters alleged in the ACTION, with any local, state or federal agency or court; and that if any such agency or court assumes jurisdiction of any complaint or charge against any party, or its predecessors, successors, heirs, assigns, employees, shareholders, officers, directors, agents, attorneys, subsidiaries, divisions or affiliated corporations or organizations, whether previously or hereafter affiliated in any manner, on behalf of PLAINTIFF or any other party, whenever filed, that party will request such agency or court to withdraw and dismiss the matter forthwith.

7. **Non-Admission Of Liability.** The PARTIES acknowledge and agree that this AGREEMENT is a settlement of disputed claims. Neither the fact that the PARTIES have settled nor the

terms of this AGREEMENT shall be construed in any manner as an admission of any liability by any party hereto, or any of its employees, or an affiliated person(s) or entity/ies, including the CITY and AGENCY'S attorneys, all of whom have consistently taken the position that they have no liability whatsoever to PLAINTIFF.

8. No Assignment Of Claims. PLAINTIFF warrants that she has made no assignment, and will make no assignment, of any claim, chose in action, right of action or any right of any kind whatsoever, embodied in any of the claims and allegations referred to herein, and that no other person or entity of any kind had or has any interest in any of the demands, obligations, actions, causes of action, debts, liabilities, rights, contracts, damages, attorneys' fees, costs, expenses, losses or claims referred to herein.

9. Successors And Assigns. This AGREEMENT, and all the terms and provisions hereof, shall be binding upon and shall inure to the benefit of the PARTIES and their respective heirs, legal representatives, successors and assigns.

10. Knowing And Voluntary. This AGREEMENT is an important legal document and in all respects has been voluntarily and knowingly executed by the PARTIES hereto. The PARTIES specifically represent that prior to signing this AGREEMENT they have been provided a reasonable period of time within which to consider whether to accept this AGREEMENT. The PARTIES further represent that they have each carefully read and fully understand all of the provisions of this AGREEMENT, and that they are voluntarily, knowingly, and without coercion entering into this AGREEMENT based upon their own judgment.

11. Assistance Of Counsel. The PARTIES each specifically represent that they have consulted to their satisfaction with and received independent advice from their respective counsel prior to executing this AGREEMENT concerning the terms and conditions of this AGREEMENT.

12. Counterparts. This AGREEMENT may be executed in multiple counterparts, each of which shall be considered an original but all of which shall constitute one agreement.

13. Singular And Plural. Whenever required by the context, as used in this AGREEMENT the singular shall include the plural, and the masculine gender shall include the feminine and the neuter, and the feminine gender shall include the masculine and the neuter.

14. Enforcement Costs. Should any legal action be required to enforce the terms of this AGREEMENT, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled.

15. Severability. Should any portion, word, clause, phrase, sentence or paragraph of this AGREEMENT be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

16. Headings. Headings at the beginning of each numbered section of this AGREEMENT are solely for the convenience of the PARTIES and are not a substantive part of this AGREEMENT.

17. Ambiguity. The PARTIES acknowledge that this AGREEMENT was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against any of the PARTIES, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

18. Waiver. Failure to insist on compliance with any term, covenant or condition contained in this AGREEMENT shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this AGREEMENT at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

19. Governing Law. This AGREEMENT is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed under the laws of said State without giving effect to conflicts of laws principles.

20. Entire Agreement. This AGREEMENT constitutes the entire agreement between the PARTIES who have executed it and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied between the PARTIES to this AGREEMENT. The PARTIES to this AGREEMENT each acknowledge that no representations, inducements, promises, agreements, or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this AGREEMENT, that they have not executed this AGREEMENT in reliance on any such representation, inducement, promise, agreement or warranty, and that no representation, inducement, promise, agreement or warranty not contained in this AGREEMENT, including, but not limited to, any purported supplements, modifications, waivers, or terminations of this AGREEMENT shall be valid or binding, unless executed in writing by all of the PARTIES to this AGREEMENT.

21. Modifications. Any alteration, change, or modification of or to this AGREEMENT shall be made by written instrument executed by each party hereto in order to become effective.

22. Authority To Sign. The persons executing this AGREEMENT on behalf of the entity parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this AGREEMENT on behalf of said party and to bind that party, including its directors, officers, members, managers, agents, successors and assigns, (iii) by so executing this AGREEMENT, such party is formally bound to the provisions of this AGREEMENT, and (iv) the entering into this AGREEMENT does not violate any provision of any other agreement to which said party is bound.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, by signing below, the undersigned agree to all terms and conditions of this Settlement Agreement and Release of All Claims, consisting of a total of 5 pages, on the dates set forth below.

Dated: Oct. 27 2009

"PLAINTIFF"
PAULA SCHOEN

By: *Paula Schoen*
PAULA SCHOEN

Dated: _____, 2009

"CITY"
CITY OF BANNING

By: _____
Its: _____

Dated: _____, 2009

"AGENCY"
BANNING REDEVELOPMENT AGENCY

By: _____
Its: _____

APPROVED AS TO FORM:

Dated: 11-16 2009

LAW OFFICES OF JOSEPH A. ROMAN

By: *Joseph A. Roman*
~~MICHAEL J. ASSAB, ESQ.~~ JOSEPH A. ROMAN
Attorney for Plaintiff, PAULA SCHOEN

Dated: 11-16 2009

ALESHIRE & WYNDER, LLP

By: *Anthony R. Taylor*
ANTHONY R. TAYLOR, ESQ.
Attorneys for Defendants,
CITY OF BANNING AND BANNING
REDEVELOPMENT AGENCY

[END OF SIGNATURES & END OF AGREEMENT]

AWS#73174

SETTLEMENT AGREEMENT & RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims (the "AGREEMENT") is entered into by and between DEFENDANTS, DIRK DORNING, ROBERT E. FREEMAN, BANNING COMMERCIAL INVESTORS, CITY OF BANNING (the "CITY") and the BANNING REDEVELOPMENT AGENCY (the "AGENCY"), collectively referred to as the "PARTIES", to terminate fully and finally all disputes arising out of, or related to, the ACTION defined hereinafter.

RECITALS

WHEREAS, Plaintiff, Paula Schoen ("PLAINTIFF") was a tenant, as her residence and place of business, at the Odd Fellows Building, 42 West Ramsey Street, in the City of Banning, APN 540-204-010 (the "PROPERTY") from November of 1995 to December of 2007; and

WHEREAS, DIRK DORNING, ROBERT E. FREEMAN and BANNING COMMERCIAL INVESTORS are and were the landlords of the PROPERTY during all relevant times herein (collectively referred to as the "LANDLORDS"); and

WHEREAS, in December of 2007, PLAINTIFF claims that she was constructively evicted from the PROPERTY due to construction work performed pursuant to an Owner Participation Agreement, dated March 27, 2007 (the "OPA"), between the LANDLORDS and the AGENCY; and

WHEREAS, PLAINTIFF filed a lawsuit entitled *Schoen v. Dorning, et al.*, in the Superior Court for the County of Riverside, Case No. INC 079177, on or about July 30, 2008, against the LANDLORDS, the CITY and the AGENCY (the "ACTION"); and

WHEREAS, the PARTIES agree to resolve, fully and finally, all disputes concerning the CITY and AGENCY and LANDLORDS in the ACTION.

AGREEMENT

The above Recitals are incorporated by reference as if set forth in full herein.

NOW, THEREFORE, for full and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and based upon the foregoing recitals and the terms, conditions, covenants, and agreements contained herein, all PARTIES hereto agree as follows:

1. **Settlement Payment.** Fifty Thousand Dollars (\$50,000) (the "SETTLEMENT PAYMENT") shall be made available from the loan described in Section 2.C.(1) of the Third Amendment to the OPA between the LANDLORDS and the AGENCY for the CITY and

AGENCY to settle this matter with PLAINTIFF. By signing below, the LANDLORDS each agree to be bound to said obligations in the Third Amendment to the OPA and to provide the SETTLEMENT PAYMENT. If, for any reason, PLAINTIFF does not accept the SETTLEMENT PAYMENT, then the CITY and AGENCY may use the SETTLEMENT PAYMENT towards their defense costs in the ACTION.

2. **Dismissal Of The Action.** The LANDLORDS agree to cooperate fully with the dismissal, with prejudice, of the AGENCY and CITY from the ACTION, including, without limitation, supporting a motion for good faith settlement by the CITY and AGENCY, as well as any additional court filings or requirements to effectuate the dismissal, with prejudice, of the AGENCY and CITY from the ACTION.

3. **Resolution Of Potential Claims Involving The Landlords, Agency And City.** Upon acceptance by the PLAINTIFF of the SETTLEMENT PAYMENT and dismissal, with prejudice, of the ACTION as against the CITY and AGENCY by PLAINTIFF, the CITY, AGENCY and LANDLORDS each agree by signing below not to make any future claims against each other for additional payments, including, without limitation, payments for attorneys' fees and costs for the ACTION, other than the SETTLEMENT PAYMENT, and further agree not to file any cross-complaints against each other concerning the matters set forth in the ACTION. This AGREEMENT and the Third Amended OPA shall be a complete and final resolution as to the claims among the PARTIES concerning the ACTION, provided that PLAINTIFF accepts the SETTLEMENT PAYMENT, dismisses, with prejudice, the ACTION as against the CITY and AGENCY, and the Court approves the same. If, for any reason, each of those conditions fail to be satisfied, then the CITY and AGENCY do not agree to waive the above rights against the LANDLORDS. Nothing in this AGREEMENT shall otherwise modify or affect the LANDLORDS' and AGENCY'S mutual obligations to one another under the OPA and/or under any amendment thereto for all other matters that do not involve the ACTION.

4. **Discovery Of Different Or Additional Facts.** The PARTIES acknowledge that they may hereafter discover facts different from or in addition to those that they now know or believe to be true with respect to the claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever that are the subject of this AGREEMENT, and expressly agree to assume the risk of the possible discovery of additional or different facts, injuries, damages and/or claims and the PARTIES agree that this AGREEMENT shall be and remain effective in all respects regardless of such additional or different facts, injuries, damages and/or claims.

5. **No Other Pending Actions.** The PARTIES each represent that they have not filed any complaint(s), cross-complaint(s) and/or charge(s) against each other, as well as their officials, employees, or agents, arising out of or relating to the PLAINTIFF'S occupancy of the PROPERTY and/or the matters alleged in the ACTION, with any local, state or federal agency or court; and that if any such agency or court assumes jurisdiction of any complaint or charge

against any party, or its predecessors, successors, heirs, assigns, employees, shareholders, officers, directors, agents, attorneys, subsidiaries, divisions or affiliated corporations or organizations, whether previously or hereafter affiliated in any manner, on behalf of that party or any other party, whenever filed, that party will request such agency or court to withdraw and dismiss the matter forthwith.

6. **Non-Admission Of Liability.** The PARTIES acknowledge and agree that this AGREEMENT is a settlement of disputed claims. Neither the fact that the PARTIES have settled nor the terms of this AGREEMENT shall be construed in any manner as an admission of any liability by any party hereto, or any of its employees, or an affiliated person(s) or entity/ies, including the LANDLORDS', CITY and AGENCY'S respective attorneys, all of whom have consistently taken the position that they have no liability whatsoever to PLAINTIFF.

7. **No Assignment Of Claims.** LANDLORDS, CITY and AGENCY warrant that they have made no assignment, and will make no assignment, of any claim, chose in action, right of action or any right of any kind whatsoever, embodied in any of the claims and allegations referred to herein, and that no other person or entity of any kind had or has any interest in any of the demands, obligations, actions, causes of action, debts, liabilities, rights, contracts, damages, attorneys' fees, costs, expenses, losses or claims referred to herein.

8. **Successors And Assigns.** This AGREEMENT, and all the terms and provisions hereof, shall be binding upon and shall inure to the benefit of the PARTIES and their respective heirs, legal representatives, successors and assigns.

9. **Knowing And Voluntary.** This AGREEMENT is an important legal document and in all respects has been voluntarily and knowingly executed by the PARTIES hereto. The PARTIES specifically represent that prior to signing this AGREEMENT they have been provided a reasonable period of time within which to consider whether to accept this AGREEMENT. The PARTIES further represent that they have each carefully read and fully understand all of the provisions of this AGREEMENT, and that they are voluntarily, knowingly, and without coercion entering into this AGREEMENT based upon their own judgment.

10. **Assistance Of Counsel.** The PARTIES each specifically represent that they have consulted to their satisfaction with and received independent advice from their respective counsel prior to executing this AGREEMENT concerning the terms and conditions of this AGREEMENT.

11. **Counterparts.** This AGREEMENT may be executed in multiple counterparts, each of which shall be considered an original but all of which shall constitute one agreement.

12. **Singular And Plural.** Whenever required by the context, as used in this AGREEMENT the singular shall include the plural, and the masculine gender shall include the

feminine and the neuter, and the feminine gender shall include the masculine and the neuter.

13. **Enforcement Costs.** Should any legal action be required to enforce the terms of this AGREEMENT, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled.

14. **Injunctive Relief For Breach.** The PARTIES acknowledge and agree that any material violation of this AGREEMENT is likely to result in immediate and irreparable harm for which monetary damages are likely to be inadequate. Accordingly, the PARTIES consent to injunctive and other appropriate equitable relief upon the institution of proceedings therefor by any other party in order to protect the rights of the PARTIES under this AGREEMENT. Such relief shall be in addition to any other relief to which the PARTIES may be entitled at law or in equity.

15. **Severability.** Should any portion, word, clause, phrase, sentence or paragraph of this AGREEMENT be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

16. **Headings.** Headings at the beginning of each numbered section of this AGREEMENT are solely for the convenience of the PARTIES and are not a substantive part of this AGREEMENT.

17. **Ambiguity.** The PARTIES acknowledge that this AGREEMENT was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against any of the PARTIES, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

18. **Waiver.** Failure to insist on compliance with any term, covenant or condition contained in this AGREEMENT shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this AGREEMENT at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

19. **Governing Law.** This AGREEMENT is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed under the laws of said State without giving effect to conflicts of laws principles.

20. **Entire Agreement.** This AGREEMENT constitutes the entire agreement between the PARTIES who have executed it and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied between the PARTIES to this AGREEMENT for the ACTION. The PARTIES to this AGREEMENT each acknowledge that no representations, inducements, promises, agreements, or warranties,

oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this AGREEMENT, that they have not executed this AGREEMENT in reliance on any such representation, inducement, promise, agreement or warranty, and that no representation, inducement, promise, agreement or warranty not contained in this AGREEMENT, including, but not limited to, any purported supplements, modifications, waivers, or terminations of this AGREEMENT shall be valid or binding, unless executed in writing by all of the PARTIES to this AGREEMENT for the ACTION.

21. **Modifications.** Any alteration, change, or modification of or to this AGREEMENT shall be made by written instrument executed by each party hereto in order to become effective.

22. **Authority To Sign.** The persons executing this AGREEMENT on behalf of the entity parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this AGREEMENT on behalf of said party and to bind that party, including its directors, officers, members, managers, agents, successors and assigns, (iii) by so executing this AGREEMENT, such party is formally bound to the provisions of this AGREEMENT, and (iv) the entering into this AGREEMENT does not violate any provision of any other agreement to which said party is bound.

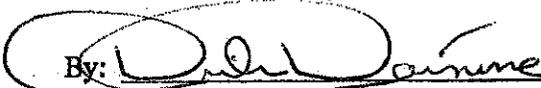
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement and Release of All Claims, consisting of a total of 7 pages, on the dates set forth below.

DIRK DORNING

Dated: 10-26, 2009

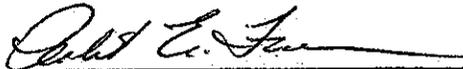
DIRK DORNING

By: 
DIRK DORNING

ROBERT E. FREEMAN

Dated: 10/26, 2009

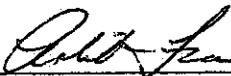
ROBERT E. FREEMAN

By: 
ROBERT E. FREEMAN

BANNING COMMERCIAL INVESTORS

Dated: 10/26, 2009

BANNING COMMERCIAL INVESTORS


By: ROBERT E. FREEMAN
Its: GENERAL PARTNER

"CITY"

Dated: _____, 2009

CITY OF BANNING

By:
Its:

"AGENCY"

Dated: _____, 2009

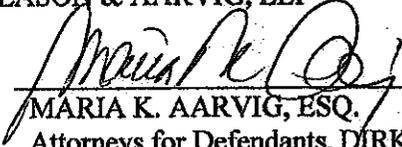
BANNING REDEVELOPMENT AGENCY

By:
Its:

APPROVED AS TO FORM:

Dated: 10/26, 2009

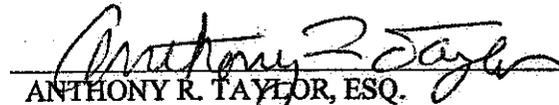
CREASON & AARVIG, LLP

By: 

MARIA K. AARVIG, ESQ.
Attorneys for Defendants, DIRK DORNING,
ROBERT E. FREEMAN AND BANNING
COMMERCIAL INVESTORS

Dated: 11-16, 2009

ALESHIRE & WYNDER, LLP

By: 

ANTHONY R. TAYLOR, ESQ.
Attorneys for Defendants,
CITY OF BANNING AND BANNING
REDEVELOPMENT AGENCY

[END OF SIGNATURES & END OF AGREEMENT]

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: December 8, 2009

TO: Honorable Mayor and City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2009-103, "Awarding the Construction Contract for Project No. 2009-04, "Street Improvements and Sidewalk Improvements at Various Locations," and approving the necessary budget appropriations for said project.

RECOMMENDATION: Adopt Resolution No. 2009-103:

I. Award the Construction Contract for Project No. 2009-04, "Street Improvements and Sidewalk Improvements at Various Locations," to Larry Jacinto Construction, Inc. of Mentone, California for an amount of "Not to Exceed" \$878,442.40.

II. Authorize the appropriation of \$546,601.00 to Account No. 101-4900-431.9316 and \$133,760.00 to Account No. 101-4900-431.5607 to cover the City's match related to the SB-821 grants and authorize the Director of Finance to make the necessary budget adjustments and transfers related to these funds.

JUSTIFICATION: Larry Jacinto, Inc. is the lowest responsive and responsible bidder to perform the work for the City of Banning's Project No. 2009-04 "Street Improvements and Sidewalk Improvements at Various Locations".

BACKGROUND: The scope of work for Project No. 2009-04 includes grinding/cold planing of existing asphalt; grading, placing new A.C. and base, and A.C. overlay per City Engineer's recommendations; constructing A.C. berm, sidewalks, curbs, gutters, driveways, cross gutters, spandrels and handicap ramps in accordance with the City of Banning and CALTRANS Standard Specifications; adjusting manholes, fire hydrants, water meters, and water valve covers to grade; removing and replacing water services, water meter boxes, and mailboxes when required by the Public Works Inspector; installation of street lights and electrical conduit, striping improvements, landscaping; and cleaning; etc., on various streets. The proposed sidewalk locations have been approved by the Riverside County Transportation Commission (RCTC) under the SB-821 Bicycle and Pedestrian Facilities Program and are shown on the attached Exhibit "A". The SB-821 Grant Program is awarded annually on a competitive basis and is open to eligible cities within Riverside County.

In FY 2008-2009, Engineering staff obtained a grant for one street location in the amount of \$45,000.00. In FY 2009-2010, Engineering staff obtained two grants for various street locations in the amount of \$107,500.00. Both of these grants were accepted by the City Council on October 14, 2008, and July 28, 2009, respectively.

It must be noted that the construction of the proposed improvements under Bid Schedules No. 4 and 6 as shown on the attached Exhibit "A" are contingent on the execution of a Parking Lot Easement Agreement and Right-of-Way Dedications, respectively, by the property owners.

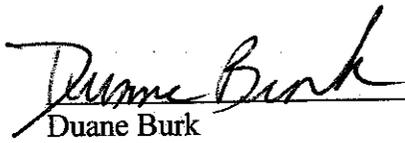
The project was advertised for bids on October 16, 2009, and October 22, 2009, as shown attached as Exhibit "B", and four bids were received and opened on November 10, 2009 with the following results:

	<u>NAME OF FIRM</u>	<u>BID AMOUNT</u>
1.	Larry Jacinto Construction, Inc.	\$878,442.40
2.	International Pavement Solutions, Inc.	\$884,899.00
3.	Cooley Construction, Inc.	\$922,808.00
4.	Silvia Construction, Inc.	\$1,133,954.50

The Engineer's estimate for the project is \$700,000.00.

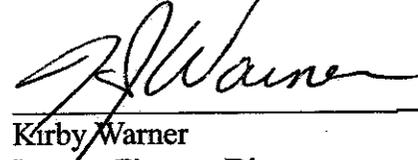
FISCAL DATA: The total project cost is \$966,286.64, which includes a 10% contingency. A portion of the funds necessary to cover this project have been previously appropriated in the SB-821 fund. Additional appropriations in the amount of \$546,601.00 in the Measure A Fund and \$133,760.00 in the SB-821 Fund are needed to cover the remaining costs of the project.

RECOMMENDED BY:



Duane Burk
Director of Public Works

REVIEWED BY:



Kirby Warner
Interim Finance Director

APPROVED BY:



Sam Racadio
Interim City Manager

RESOLUTION NO. 2009-103

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AWARDING THE CONSTRUCTION CONTRACT FOR PROJECT NO. 2009-04, "STREET IMPROVEMENTS AND SIDEWALK IMPROVEMENTS AT VARIOUS LOCATIONS"

WHEREAS, the City of Banning obtained one grant from the Riverside County Transportation Commission (RCTC) for the SB-821 Bicycle and Pedestrian Facilities Program Grant in FY 2008/2009 for one sidewalk project, amounting to \$45,000.00; and

WHEREAS, the City of Banning obtained two grants from the RCTC for the SB-821 Bicycle and Pedestrian Facilities Program Grant in FY 2009/2010 for two sidewalk and handicap projects, amounting to \$107,500.00; and

WHEREAS, Bid Schedules No. 4 and 6 as shown on the attached Exhibit "A" are contingent on the execution of a Parking Lot Easement Agreement and Right-of-Way Dedications, respectively, by the property owners; and

WHEREAS, the project was advertised for bids on October 16, 2009, and October 23, 2009, and bids were received and opened on November 10, 2009, with four contractors bidding the project; and

WHEREAS, Larry Jacinto Construction, Inc. of Mentone, California, is the lowest responsible bidder; and

WHEREAS, a portion of the funding for the project is available in the Measure "A" and SB-821 (Bicycle and Pedestrian Facilities Program Grant) funds, and additional appropriations in the amount of \$546,601.00 in the Measure A fund and \$133,760.00 in the SB-821 fund are necessary to cover the remaining costs of the project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning as follows:

- Section I.** Award the construction contract for Project No. 2009-04, "Street Improvements and Sidewalk Improvements at Various Locations," to Larry Jacinto Construction, Inc. of Mentone, California, for an amount "not to exceed" \$878,442.40, and all other bids are hereby rejected.
- Section II.** Authorize the appropriation of \$546,601.00 to Account No. 101-4900-431.9316 and \$133,760.00 to Account No. 101-4900-431.5607 and authorize the Director of Finance to make the necessary budget adjustments and transfers related to these funds.
- Section III.** The Mayor is authorized to execute the contract agreement for Project No. 2009-04, "Street Improvements and Sidewalk Improvements at Various Locations." This authorization will be rescinded if the contract agreement is not executed by both parties within thirty (30) days of the date of this resolution.

PASSED, ADOPTED AND APPROVED this 8th day of December, 2009.

Robert E. Botts, Mayor

ATTEST:

Marie A. Calderon, City Clerk

**APPROVED AS TO FORM
AND LEGAL CONTENT:**

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2009-103, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8th day of December, 2009.

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, City Clerk
City of Banning, California

41

EXHIBIT "A"

SIDEWALK IMPROVEMENT LIST FISCAL YEARS 2008/2009 and 2009/2010 SB-821 FUNDED

Bid Schedule No.	Sidewalk Locations	From	To
1.	Sims Street	Williams Street	Nicolet Street
2.	Woodland Avenue	Ramsey Street	George Street
3.	Various Locations*	Various Locations	Various Locations

* The third SB-821 grant is for the construction of handicap ramps at various locations throughout the City.

STREET IMPROVEMENT LIST

Bid Schedule No.	Street Locations
4.	San Gorgonio Avenue Parking Lot**
5.	Ramsey Street and Hospital Entrance Turn Pockets
6.	Apex Avenue and Ramsey Street Intersection Improvements***

** The project listed under Bid Schedule No. 4 is contingent on the property owner executing a Parking Lot Easement Agreement.

***The project listed under Bid Schedule No. 6 is contingent on the property owner executing Right-of-Way dedications.

EXHIBIT "B"

**NOTICE INVITING TO BID
AND SUMMARY OF BID OPENING**

PUBLIC NOTICES

**INVITING TO BID
PROJECT NO. 2009-04
"STREET IMPROVE-
MENTS AND SIDEWALK
IMPROVEMENTS AT
VARIOUS LOCATIONS"**

OWNER: City of Banning
PROJECT DESCRIPTION: The scope of work under this project includes the construction of A.C. overlay, and striping; adjusting manholes, water meters, and water valve covers to grade; construction of sidewalks, handicap ramps, curb and gutter; installation of street lights, electrical conduit, landscaping; traffic control and cleaning; etc., as shown on the approved plans. The contractor must comply with all National Pollution Discharge Elimination System (NPDES) requirements to reduce storm water runoff by implementing Best Management Practices (BMPs), as per the approved SWPPP and as directed by the Public Works Inspector.

PLANS & SPECS: Full-size drawings and specifications will be made available on October 21, 2009, and may be obtained at the Public Works Department, Engineering Division, City of Banning, 99 E. Ramsey Street, Banning, California 92220; by a non-refundable deposit of Fifty Dollars (\$50.00) per set. An additional non-refundable charge of Twenty Dollars (\$20.00) to cover the cost of wrapping, handling, and postage will be made for each set of Contract Documents mailed.

NON-MANDATORY PRE-BID CONFERENCE: October 21, 2009 at 10 a.m. at City Hall, 99 E. Ramsey St., Banning.

REQUIREMENTS: Prevailing Wage, Certified Payroll, Bid Bond, Payment and Performance Bond, Insurance, etc., per the approved specifications. Pursuant to the provisions of Public Contract Code Section 3300, the City has determined that the Contractor shall possess a valid Class A license at the time that the Contract is awarded. Failure to possess the specified license shall render the bid as not responsible and/or non-responsive and shall act as a bar to award the Contract to any bidder not possessing said license at the time of award.

SEALED BIDS DUE: October 27, 2009 and Opened Publicly at 10 a.m. local time, at the above City Hall address, Attn: City Clerk.

CITY OF BANNING, CALIFORNIA
Dated: 10/13/2009

Marie A. Calderon
City Clerk
Publish the Record
Gazette
No. 4396

10/16, 23, 2009

44

PUBLIC NOTICES

NOTICE INVITING TO BID
PROJECT NO. 2009-04
"STREET IMPROVEMENTS AND SIDEWALK IMPROVEMENTS AT VARIOUS LOCATIONS"
OWNER: City of Banning
PROJECT DESCRIPTION: The scope of work under this project includes the construction of A.C. overlay, and striping; adjusting manholes, water meters, and water valve covers to grade; construction of sidewalks, handicap ramps, curb and gutter; installation of street lights, electrical conduit, landscaping; traffic control and cleaning; etc., as shown on the approved plans. The contractor must comply with all National Pollution Discharge Elimination System (NPDES) requirements to reduce storm water runoff by implementing Best Management Practices (BMPs), as per the approved SWPPP and as directed by the Public Works inspector.
PLANS & SPECS: Full-

size drawings and specifications will be made available on October 21, 2009, and may be obtained at the Public Works Department, Engineering Division, City of Banning, 99 E. Ramsey Street, Banning, California 92220, by a non-refundable deposit of Fifty Dollars (\$50.00) per set. An additional non-refundable charge of Twenty Dollars (\$20.00) to cover the cost of wrapping, handling, and postage will be made for each set of Contract Documents mailed.

NON-MANDATORY PRE-BID CONFERENCE: October 21, 2009 at 10 a.m. at City Hall, 99 E. Ramsey St., Banning.

REQUIREMENTS: Prevailing Wage, Certified Payroll, Bid Bond, Payment and Performance Bond, Insurance, etc., per the approved specifications. Pursuant to the provisions of Public Contract Code Section 3300, the City has determined that the Contractor shall possess a valid Class A license at the time that the Contract is awarded. Failure to possess the specified license shall render the bid as not responsible and/or non-responsive and shall act as a bar to award the Contract to any bidder not possessing said license at the time of award.

SEALED BIDS DUE: November 10, 2009 and Opened Publicly at 10 a.m. local time, at the above City Hall address, Attn: City Clerk.
CITY OF BANNING, CALIFORNIA
 Dated: 10/13/2009

Marie A. Calderon
 City Clerk
 Publish the Record
 Gazette
 No. 4427

10/23, 2009

45

SUMMARY OF BIDS RECEIVED CITY OF BANNING

PROJECT NO.: PROJECT NO. 2009-04

DESCRIPTION: STREET IMPROVEMENTS AND SIDEWALK IMPROVEMENT AT
VARIOUS LOCATIONS

BID OPENING DATE: November 10, 2009 TIME: 10:00 A.M.

NAME OF BIDDER:				BID BOND	TOTAL BID AMOUNT:
1 Silvia Construction, Inc. Rancho Cucamonga, CA				ok	\$ 1,133,954.50
Larry Jacinto Construction, Inc. Mentone, CA				ok	\$ 878,442.40
3 Cooley Construction, Inc. Hesperia, CA				ok	\$ 922,808.00
2 International Paving Services, Inc. San Bernardino, CA				ok	\$ 882,255.00

VERIFIED BY: [Signature]
Merle A. Calderon, City Clerk

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: December 8, 2009

TO: Mayor and Members of the City Council

FROM: Kirby Warner, Interim Finance Director

SUBJECT: Resolution 2009-104, Supporting the Local Taxpayer, Public Safety and Transportation Protection Act of 2010

RECOMMENDATION: That the City Council approve Resolution No. 2009-104, supporting the Local Taxpayer, Public Safety and Transportation Protection Act of 2010.

DISCUSSION: The State of California Legislature has seized and borrowed billions of dollars in local government and transportation funds in the past few years. These actions have taken place in order to allow the State deal with its continuing budget deficits.

California voters have repeatedly passed ballot measures to stop the State raids of local funds and to dedicate the taxes paid on gasoline to fund local and state transportation projects. The diversion of these critical funds affected local government's ability to pay for desperately needed services such as public safety, road improvements and other activities provided to our citizens.

A coalition of local government, transportation and transit advocates have filed a constitutional amendment for potential placement on California's November 2010 statewide ballot. This amendment would close loopholes and change the State's constitution to further prevent State politicians from seizing, diverting, shifting, borrowing, transferring, suspending or otherwise taking tax revenues dedicated to funding local government services, including redevelopment.

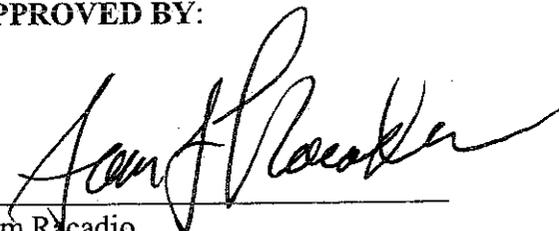
FISCAL DATA: Passage of this constitutional amendment would attempt to stop the loss of revenues for services provided by the City of Banning. There is no immediate financial commitment required for support of the proposed resolution.

RECOMMENDED BY:

APPROVED BY:



Kirby Warner
Interim Finance Director



Sam Racadio
Interim City Manager

RESOLUTION NO. 2009-104

**RESOLUTION IN SUPPORT OF THE LOCAL TAXPAYER, PUBLIC SAFETY
AND TRANSPORTATION PROTECTION ACT OF 2010**

WHEREAS, California voters have repeatedly and overwhelmingly passed separate ballot measures to stop State raids of local government funds, and to dedicate the taxes on gasoline to fund local and state transportation improvement projects, and

WHEREAS, these local government funds are critical to provide the police and fire, emergency response, parks, libraries, and other vital local services that residents rely upon every day, and gas tax funds are vital to maintain and improve local streets and roads, to make road safety improvements, relieve traffic congestion, and provide mass transit; and

WHEREAS, despite the fact that voters have repeatedly passed measures to prevent the State from taking these revenues dedicated to funding local government services and transportation improvement projects, the State Legislature has seized and borrowed billions of dollars in local government and transportation funds in the past few years; and

WHEREAS, this year's borrowing and raids of local government, redevelopment and transit funds, as well as previous, ongoing raids of local government and transportation funds have lead to severe consequences, such as layoffs of police, fire and paramedic first responders, fire station closures, stalled economic development, healthcare cutbacks, delays in road safety improvements, public transit fare increases and cutbacks in public transit services; and

WHEREAS, State politicians in Sacramento have continued to ignore the will of the voters, and current law provides no penalties when state politicians take or borrow these locally-dedicated funds; and

WHEREAS, a coalition of local government, transportation and transit advocates recently filed a constitutional amendment with the California Attorney General, called the Local Taxpayer, Public Safety, and Transportation Protection Act of 2010, for potential placement on California's November 2010 statewide ballot; and

WHEREAS, approval of this ballot initiative would close loopholes and change the constitution to further prevent State politicians in Sacramento from seizing, diverting, shifting, borrowing, transferring, suspending or otherwise taking or interfering with tax revenues dedicated to funding local government services, including redevelopment, or dedicated to transportation improvements projects and mass transit.

THEREFORE, BE IT RESOLVED that the City of Banning formally endorses the Local Taxpayer, Public Safety and Transportation Project Act of 2010, a proposed constitutional amendment.

BE IT FURTHER RESOLVED that we hereby authorize the listing of the City of Banning in support of the Local Taxpayer, Public Safety and Transportation Protection Act of 2010 and instruct staff to fax a copy of this resolution to campaign offices at 916.442.3510.

PASSED AND ADOPTED this 8th day of December, 2009.

Robert E. Botts, Mayor

ATTEST:

Marie A. Calderon, City Clerk

APPROVED AS TO FORM
AND LEGAL CONTENT:

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2009-104 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8th day of December, 2009, by the following vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

Marie A. Calderon, City Clerk
City of Banning, California

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: December 8, 2009

TO: City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2009-106, "Awarding a Professional Services Agreement for the Urban Water Management Plan Update for the City's Water Utility to GEOSCIENCE Support Services, Inc."

RECOMMENDATION: Adopt Resolution No. 2009-106, "Awarding a Professional Services Agreement for the Urban Water Management Plan Update for the City's Water Utility to GEOSCIENCE Support Services, Inc."

JUSTIFICATION: The State of California Water Code requires Urban Water Suppliers, such as the City of Banning, to submit updated Urban Water Management Plans on or before December 31, in the years ending in five and zero. This update will satisfy the requirements of the Urban Water Management Act and the subsequent amendments of the Act.

BACKGROUND: The City is the Urban Water Supplier for the water service area of the City of Banning. The City of Banning has, in the past, complied with California state law as set forth in the Urban Water Management Act (California Water Code 10610) by submitting an Urban Water Management Plan (UWMP) in 1998 and an updated UWMP in 2005. The purpose of the revised UWMP for 2010 is to review and update the information contained in the 2005 UWMP and to provide projections for the period from 2010 to 2030. The 2010 UWMP was originally due on December 31, 2010; however, Senate Bill X7 7 has extended the deadline until July 31, 2011. The senate bill requires that urban water users help the State achieve a statewide reduction of 20% in water consumption by the year 2020 and that urban water users set an interim target goal by December 31, 2015.

GEOSCIENCE Support Services, Inc. (GSSI) is a reputable firm in the water industry and has extensive experience with groundwater development, planning, resources and protection. They are familiar with geology and hydrology of the Banning area and have assisted the City, as a Consultant, in both the construction and rehabilitation of a number of water wells over the past 16 years. In November 2003, GSSI also prepared the Determination of Maximum Perennial Yield report for Banning. During this period, GSSI has compiled extensive information as it relates to the City of Banning. Based on these qualifications, previous success and experience, staff recommends the award of an agreement to GSSI in the amount of \$200,000.00 for the 2010 Urban Water Management Plan Update. Staff also recommends identifying drilling locations for future wells and services as needed be included as part of the scope of work for this agreement.

The Scope of Work for the Urban Master Water Board Plan Update includes the following as required by California Water Code Sections 10610 through 10657:

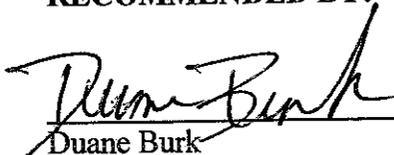
- a) Conservation and efficient use of urban water supplies.
- b) A long-term, reliable supply of water to the area.
- c) Ensure the appropriate level of reliability water service to meet the needs of the City's various categories of customers during normal, dry, and multiple dry water years.
- d) Public health issues as related to contaminants identified in certain local and imported water supplies.
- e) Implementing effective water management strategies, including groundwater storage projects and recycled projects meeting water quality and salinity targets for groundwater basins water quality objectives and promoting beneficial use of recycled water.
- f) Water quality regulations relating to the water agency selection of raw water sources, treatment alternatives, and modification to existing treatment.
- g) Changes in drinking water quality standards, which may impact the usefulness of water supplies and may ultimately impact supply reliability.
- h) Review the quality of source supplies, which can have a significant impact on water management strategies and supply reliability.

Government Code, Section 4526, requires that the selection of professional services of an engineering firm shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required, and that the services shall be provided at a fair and reasonable price.

STRATEGIC PLAN INTEGRATION: Council approval of this recommendation will meet the City's goal of providing a more reliable delivery of the water supply to the present and future customers of the Water Utility.

FISCAL DATA: An appropriation in the amount of \$200,000.00 from the Water Operations Fund to Account No. 660-6300-471.33-11 (Professional Services) is necessary in order to fund the proposed Professional Services Agreement for the Urban Water Management Plan Update and services as needed.

RECOMMENDED BY:



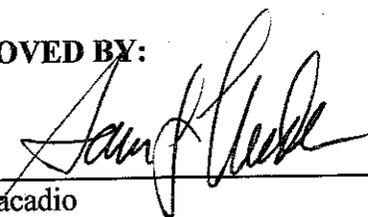
Duane Burk
Director of Public Works

REVIEWED BY:



Kirby Warner
Interim Finance Director

APPROVED BY:



Sam Racadio
Interim City Manager

RESOLUTION NO. 2009-106

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AWARDING A PROFESSIONAL SERVICES AGREEMENT FOR THE URBAN WATER MANAGEMENT PLAN UPDATE FOR THE CITY'S WATER UTILITY TO GEOSCIENCE SUPPORT SERVICES, INC.

WHEREAS, the City is the Urban Water Supplier for the water service area of the City of Banning; and

WHEREAS, the State of California Water Code requires Urban Water Suppliers to submit updated Urban Water Management Plans on or before December 31, in the years ending in five and zero; and

WHEREAS, the previous update of the Urban Water Management Plan was complete in May of 2005; and

WHEREAS, Senate Bill X7 7 has extended the deadline until July 31, 2011; and

WHEREAS, it is necessary to update City's Urban Water Management Plan in order to meet the requirements of the State of California; and

WHEREAS, GEOSCIENCE Support Services, Inc. (GSSI) is a reputable firm in the water industry and has extensive experience with groundwater development, planning, resources and protection and has successfully performed work for the City of Banning over the past 16 years; and

WHEREAS, staff recommends the award of an agreement to GSSI in the amount of \$200,000.00 for the 2010 Urban Water Management Plan Update based on their qualifications, previous success and experience; and

WHEREAS, staff also recommends identifying drilling locations for future wells and services as needed be included as part of the scope of work for this agreement; and

WHEREAS, an appropriation in the amount of \$200,000.00 from the Water Operations Fund to Account No. 660-6300-471.33-11 is necessary in order to fund the proposed Professional Services Agreement for the Urban Water Management Plan Update and services as needed.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning as follows:

Section I. Award a Professional Services Agreement to GEOSCIENCE Support Services, Inc. of Claremont, California for the Urban Water Plan Update and services as needed for the City's Water Utility in the amount of \$200,000.00.

Section II. Authorize the appropriation of \$200,000.00 from the Water Operations Funds to Account No. 660-6300-471.33-11 (Professional Services), and authorize the Director of Finance to make the necessary budget adjustments related to these funds.

Section III. The City Manager is authorized to execute the Professional Services Agreement for the Urban Water Management Plan Update and services as needed. This authorization will be rescinded if the parties do not execute the contract agreement within Sixty (60) days of this resolution.

PASSED, ADOPTED AND APPROVED this 8th day December, 2009.

Robert E. Botts, Mayor

ATTEST:

Marie A. Calderon, City Clerk

**APPROVED AS TO FORM
AND LEGAL CONTENT:**

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2009-106 was adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 8th day of December, 2009.

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon
City Clerk of the
City of Banning

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: December 8, 2009

TO: City Council

FROM: Leonard Purvis, Chief of Police

SUBJECT: Resolution No. 2009-109. Approving payment for participation in the Riverside County District Attorney's Office "Project Safe Neighborhoods" program for FY 08-09.

RECOMMENDATIONS: "Adopt Resolution No. 2009-109 approving payment for the City of Banning's participation in the Riverside County District Attorney's Office 'Project Safe Neighborhoods' program during FY 08-09."

JUSTIFICATION: The Gang Coordinator, working through the Riverside County District Attorney's Office, coordinated resources in Riverside County that brought people together in one task force to work collectively in various neighborhoods and communities to combat gang violence.

BACKGROUND: During FY 08-09, the Gang Coordinator trained and worked with employees of the Banning Police Department and Banning Unified School District, as well as local citizens, to participate in programs which provided students with a positive alternative to becoming involved in street gangs. Some of these programs included; Life Skills Classes, Campus Connection for Parents, counseling, and therapy services through Catholic Charities, School Attendance Review Board (SARB), and the Youth Accountability Team (YAT). Additionally, the Gang Coordinator was instrumental in developing the "Pastor on Premises" program in local schools, which provided pastors walking on campus to interact with students during breaks and lunches to deter gang involvement.

The City's financial responsibility for participation in this program during FY 08-09 is \$3,648, which is a reduction in cost from the original estimate of \$4,500. The delay in receiving this invoice was a direct result of the District Attorney's Office review of the appropriate billing costs for the City of Banning.

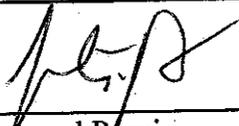
In January 2009, City Manager Brian Nakamura signed a renewal agreement with District Attorney Rod Pacheco for the City of Banning to continue its participation in the "Project Safe Neighborhoods" program during FY 08-09. The estimated cost of the program was not added to the police department's budget. See Appendix A for the signed renewal.

On November 10, 2009, the Banning City Council approved (Resolution 2009-97) continued participation in the Riverside County District Attorney's Office "Project Safe Neighborhoods" program for FY 09-10 at an estimated cost of \$3,679.

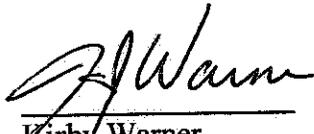
STRATEGIC PLAN INTEGRATION: Council approval of this recommendation will meet the City's goal to provide top quality and reliable service to the citizens of this community through a partnership with the Riverside County District Attorney's Office.

FISCAL DATA: The cost of the program for FY 08-09 was \$3,648. This program was not funded under the police department's FY 08-09 budget and will require an appropriation from the City's general fund.

RECOMMEND BY:

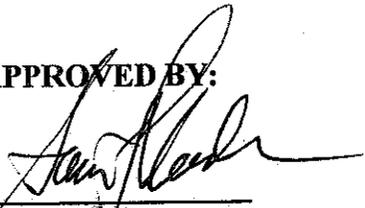


Leonard Purvis
Chief of Police



Kirby Warner
Interim Finance Director

APPROVED BY:



Sam Racadio
Interim City Manager

RESOLUTION NO. 2009-109

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING APPROVING PAYMENT IN THE AMOUNT OF \$3,648 FOR PARTICIPATION IN THE RIVERSIDE COUNTY DISTRICT ATTORNEY'S OFFICE "PROJECT SAFE NEIGHBORHOODS" DURING FY 08-09.

WHEREAS, the City Council of the City of Banning supports the Riverside County District Attorney's Office for a gang coordinator and agrees to participate in the program; and

WHEREAS, intervention by a youth accountability team has demonstrated success in working with at-risk youth; and

WHEREAS, there is a need to collaborate and coordinate the efforts of agencies within Riverside County; and

WHEREAS, participating cities would fund a portion of the gang coordinator position thereby achieving efficiency in numbers while serving the greater Riverside County are: and

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Banning supports the District Attorney's gang coordinator position under project "Safe Neighborhoods" for the greater Riverside County area and authorizes the payment of \$3,648 for the City of Banning's participation in the program during FY 08-09. Additionally, the City Council of the City of Banning authorizes an appropriation in the amount of \$3, 648 from the City's general fund to pay for the City's cost of participation during the FY 08-09 program. The Finance Department is authorized to make necessary budget adjustments related to costs associated with this resolution.

PASSED, APPROVED, AND ADOPTED this 8th day of December, 2009.

Robert E. Botts, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT:

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

ATTEST:

Marie a. Calderon, City Clerk

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2009-109 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8th day of December 2009, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning, California

**RENEWAL: PROJECT SAFE NEIGHBORHOODS
RIVERSIDE COUNTY GANG TASK FORCE PROGRAM
ADDENDUM TO MEMORANDUM OF UNDERSTANDING
BETWEEN RIVERSIDE COUNTY
AND THE CITY OF BANNING**

This very important program is up for renewal for an additional one year period. The City of Banning's renewal acceptance is due by September 15, 2008. This renewal is for an additional one year period beginning October 1, 2008, ending September 30, 2009.

The estimated costs of Project Safe Neighborhood will be the cost of a Deputy District Attorney IV at step 12 and other operational costs. The total estimated costs of the program for the one year period stated above are \$244,735. Assuming full participation in the program by all current participants, the total estimated costs for the City of Banning are \$3,748.

The County of Riverside will invoice the City of Banning for the actual cost of this program after the end of the renewal period.

County
Rod Pacheco, District Attorney
4075 Main Street
Riverside, CA 92501

City
City of Banning
99 East Ramsey Street
Banning, CA 92220

Dated: 1-8-09

COUNTY OF RIVERSIDE
By: Rod Pacheco
Rod Pacheco, District Attorney

Dated: _____

CITY OF BANNING
By: Brian Nakamura
Brian Nakamura, City Manager

ATTEST:

Dated: _____

Name & Title

**COMMUNITY REDEVELOPMENT AGENCY AGENDA
CONSENT ITEM**

DATE: December 8, 2009

TO: Community Redevelopment Agency Board

FROM: Duane Burk, Director of Public Works

SUBJECT: Notice of Completion for Project No. 2006-02, "Storm Line 'D' Improvements on Ramsey Street, Martin Street and Williams Street"

RECOMMENDATION: That the City Council accept Project No. 2006-02, "Storm Line 'D' Improvements on Ramsey Street, Martin Street and Williams Street," as complete and direct the Secretary of the Redevelopment Agency to record the Notice of Completion.

JUSTIFICATION: The contractor has completed the work as per the approved plans and specifications.

BACKGROUND: On December 10, 2008 the Community Redevelopment Agency adopted Resolution No. 2008-21, "Awarding the Construction Contract for Project No. 2006-02, 'Storm Line 'D' Improvements on Ramsey Street, Martin Street and Williams Street'" to L. G. Engineering of Yucaipa, California.

The scope of work under this project includes the construction of a 5' (W) x 4.5' (H) cast-in-place reinforced concrete single box culvert, catch basins, RCP laterals and appurtenances; relocation of 6", 8" and 12" water lines and appurtenances; A.C. overlay, and striping; adjusting manholes, water meters, and water valve covers to grade; traffic control; and cleaning; as shown on the approved plans.

FISCAL DATA: This project was completed under the original contract amount of \$1,459,780.67, with a total project cost of \$1,416,492.88. This project was funded by the Community Redevelopment Agency 2007 bond proceeds.

RECOMMENDED BY:



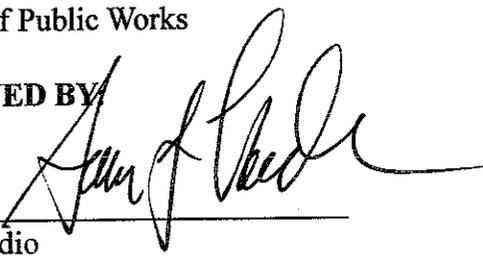
Duane Burk
Director of Public Works

REVIEWED BY:



Kirby Warner
Interim Director of Finance

APPROVED BY:



Sam Racadio
Interim City Manager

1 WHEN RECORDED MAIL TO:

2
3 The Office of the Secretary of
4 Community Redevelopment Agency
5 of the City of Banning
6 P.O. Box 998
7 Banning, California 92220

8
9 FREE RECORDING:
10 Exempt Pursuant to
11 Government Code §6103
12

13
14 NOTICE OF COMPLETION
15 STORM LINE 'D' IMPROVEMENTS ON RAMSEY STREET,
16 MARTIN STREET AND WILLIAMS
17 PROJECT NO. 2006-02

18
19 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the OWNER, the
20 Community Redevelopment Agency of the City of Banning, a municipal corporation,
21 pursuant to the provisions of Section 3093 of the Civil Code of the State of California,
22 and is hereby accepted by the OWNER, the Community Redevelopment Agency of the
23 City of Banning, pursuant to authority conferred by the Community Redevelopment
24 Agency Board this December 8, 2009, and the grantees consent to recordation thereof by
25 its duly authorized agent.

26
27 That the OWNER, the Community Redevelopment Agency of the City of Banning, and
28 L. G. Engineering. of Yucaipa, Calif., the vendee, entered into an agreement on
29 December 11, 2008, for Storm Line 'D' Improvements on Ramsey Street, Martin Street
30 and Williams. The scope of work under this project includes the construction of a 5' (W)
31 x 4.5' (H) cast-in-place reinforced concrete single box culvert, catch basins, RCP laterals
32 and appurtenances; relocation of 6", 8" and 12" water lines and appurtenances; A.C.
33 overlay, and striping; adjusting manholes, water meters, and water valve covers to grade;
34 traffic control; and cleaning; as shown on the approved plans.

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1 (1) That the work of improvement was completed on October 5, 2009, for
2 Project No. 2006-02, "Storm Line 'D' Improvements on Ramsey Street, Martin Street
3 and Williams."

4 (2) That the City of Banning, a municipal corporation, whose address is
5 Banning City Hall, 99 E. Ramsey Street, Banning, California 92220, is completing work
6 of improvement.

7 (3) That the said work of improvement was performed on Ramsey Street,
8 Martin Street and Williams Street.

9 (4) That the original contractor for said improvement was L. G. Engineering.,
10 State Contractor's License No. 874138.

11 (5) That Performance and Payment bonds were required for this project.
12

13 Dated: December 8, 2009

14 COMMUNITY REDEVELOPMENT
15 AGENCY OF THE CITY OF BANNING
16 A Municipal Corporation
17

18
19
20 By _____
21 Sam Racadio
22 Executive Director
23

24 APPROVED AS TO FORM:
25
26
27

28 _____
29 David J. Aleshire, Aleshire & Wynder, LLP
30 Agency Counsel
31
32
33
34

62

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**CITY COUNCIL MEETING
CONSENT ITEM**

DATE: December 8, 2009

TO: Honorable Mayor and City Council

FROM: Kahono Oei, City Engineer

SUBJECT: Accept the Right-of-Way Dedications from Assessor's Parcel Numbers: 541-290-003, 541-290-004, 541-290-005, 541-290-006, 541-290-007, 541-290-008 and 541-290-011

RECOMMENDATION: Accept the Right-of-Way dedications from the following Assessor's Parcel Numbers and direct the City Clerk to accept and record said dedications:

- | | |
|----------------|----------------|
| 1. 541-290-003 | 5. 541-290-007 |
| 2. 541-290-004 | 6. 541-290-008 |
| 3. 541-290-005 | 7. 541-290-011 |
| 4. 541-290-006 | |

Said Parcel Numbers are described in their related Exhibit "A" and Exhibit "B" (see attached).

JUSTIFICATION: It is essential to obtain the right-of-way in order to construct the street improvements at their ultimate location.

BACKGROUND: On August 25, 2009 the City Council approved Resolution No. 2009-76, "Awarding the Construction Contract and Approving the Professional Services Agreement for Surveying Services for Project No. 2009-01, 'Airport Drainage Improvements and Lincoln Street Improvements'".

The scope of work for Project No. 2009-01 includes the grinding/cold planing of existing pavement, construction of curb and gutter, sidewalks, driveways, street lights, AC pavement, signing and striping, trench drains, relocation of power poles and the grading of a retention basin.

The City of Banning must accept the right-of-way dedications in order to be able to construct the street improvements at their ultimate location, per the City of Banning General Plan.

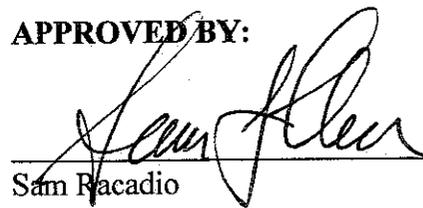
FISCAL DATA: Not applicable.

RECOMMENDED BY:



Duane Burk
Director of Public Works

APPROVED BY:



Sam Racadio
Interim City Manager

APN: 541-290-003

66

EXEMPT RECORDING
REQUESTED BY
City of Banning
PER GOV'T CODE 6103
AND WHEN RECORDED
MAIL TO:

City of Banning City Clerk
P.O. Box 998
Banning, CA. 92220

MAIL TAX STATEMENTS
TO:

City of Banning - City Clerk
P.O. Box 998
Banning, CA. 92220

OFFER OF DEDICATION - ROAD PURPOSES

The undersigned, being the present title owner(s) of record of the herein described parcel of land, do hereby make an irrevocable offer of dedication to the City of Banning, a political subdivision of the State of California, and its successors or assigns for public road, street, highway, and utility purposes, the real property situated in the City of Banning, County of Riverside, State of California, described in Exhibit "A" (legal description) and shown on Exhibit "B" (plat map) attached hereto and incorporated herein by this reference as though set forth in full.

It is understood and agreed that the City of Banning and its successors or assigns shall incur no liability with respect to such offer of dedication, and shall not assume any responsibility for the offered parcel of land or any improvements thereon or therein, until such offer has been accepted by appropriate action of the City Council or of the local governing bodies or its successors or assigns.

The provisions hereof shall inure to the benefit of and be binding upon heirs, successors, assigns, and personal representatives of the respective parties hereto.

IN WITNESS THEREOF, these presents have executed this instrument this 7th day of October, 2009.

Mark Quental
Signature

Lisa Quental
Signature

Mark Quental (owner)
Name and Title (Type)

Lisa Quental (owner)
Name and Title (Type)

Edward Quental
Signature

Signature

Edward Quental (owner)
Name and Title (Type)

Name and Title (Type)

See acknowledgements attached to this document.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Orange

On October 7, 2009 before me, Lindsay Levins, Notary Public
(Here insert name and title of the officer)

personally appeared Mark Qvental, Edward Qvental, and Lisa Qvental

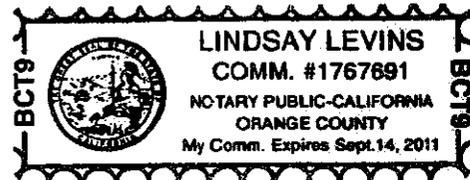
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Lindsay Levins
Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT	
<u>offer of Dedication - Road</u> <small>(Title or description of attached document)</small>	
<u>PURPOSES</u> <small>(Title or description of attached document continued)</small>	
Number of Pages <u>1</u>	Document Date <u>10/07/09</u>
<small>(Additional information)</small>	

CAPACITY CLAIMED BY THE SIGNER	
<input checked="" type="checkbox"/> Individual(s)	
<input type="checkbox"/> Corporate Officer	
<small>(Title)</small>	
<input type="checkbox"/> Partner(s)	
<input type="checkbox"/> Attorney-in-Fact	
<input type="checkbox"/> Trustee(s)	
<input type="checkbox"/> Other _____	

- INSTRUCTIONS FOR COMPLETING THIS FORM**
- Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.*
- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
 - Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
 - The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
 - Print the name(s) of document signer(s) who personally appear at the time of notarization.
 - Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, - is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
 - The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
 - Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
 - Securely attach this document to the signed document

EXHIBIT "A"

In the City of Banning, County of Riverside, State of California, being a portion of Block 182 of Map of Part of Banning Colony Lands as shown by map on file in Book 3, Page 149 of Maps, records of San Diego County and Book 5, Page 186 of Maps, records of Riverside County, California, lying within the southeast quarter of Section 10, Township 3 South, Range 1 East, S.B.M. , more particularly described as follows:

Beginning at the northwest corner of said Block 182, on the centerline of Lincoln Street, North $89^{\circ}50'17''$ West, a distance of 660.24 feet from the northeast corner of said Block 182 on the centerline of Hathaway Street;
Thence South $00^{\circ}05'54''$ West, along the west line of said Block 182, a distance of 55.00 feet, to the beginning of a non-tangent curve, concaving northerly, having an radius of 355.00 feet and an initial radial bearing of South $00^{\circ}05'36''$ West;
Thence Easterly along said curve, through a central angle of $23^{\circ}35'36''$, an arc length of 146.18 feet, to the beginning of a reverse curve, having a radius of 245.00 feet;
Thence Easterly along said reverse curve, through a central angle of $23^{\circ}43'30''$, an arc length of 101.45 feet;
Thence South $89^{\circ}46'31''$ East, a distance of 1.30 feet, to the east line of the west 242.00 feet of said Block 182;
Thence North $00^{\circ}05'54''$ East, along said east line, a distance of 4.56 feet, to the north line of said Block 182;
Thence North $89^{\circ}50'17''$ West, along said north line, a distance of 242.00 feet, to the *Point of Beginning*.

Excepting therefrom any portion lying within a previously dedicated public road.

The above described land contains 7540.33 Sq. Ft.

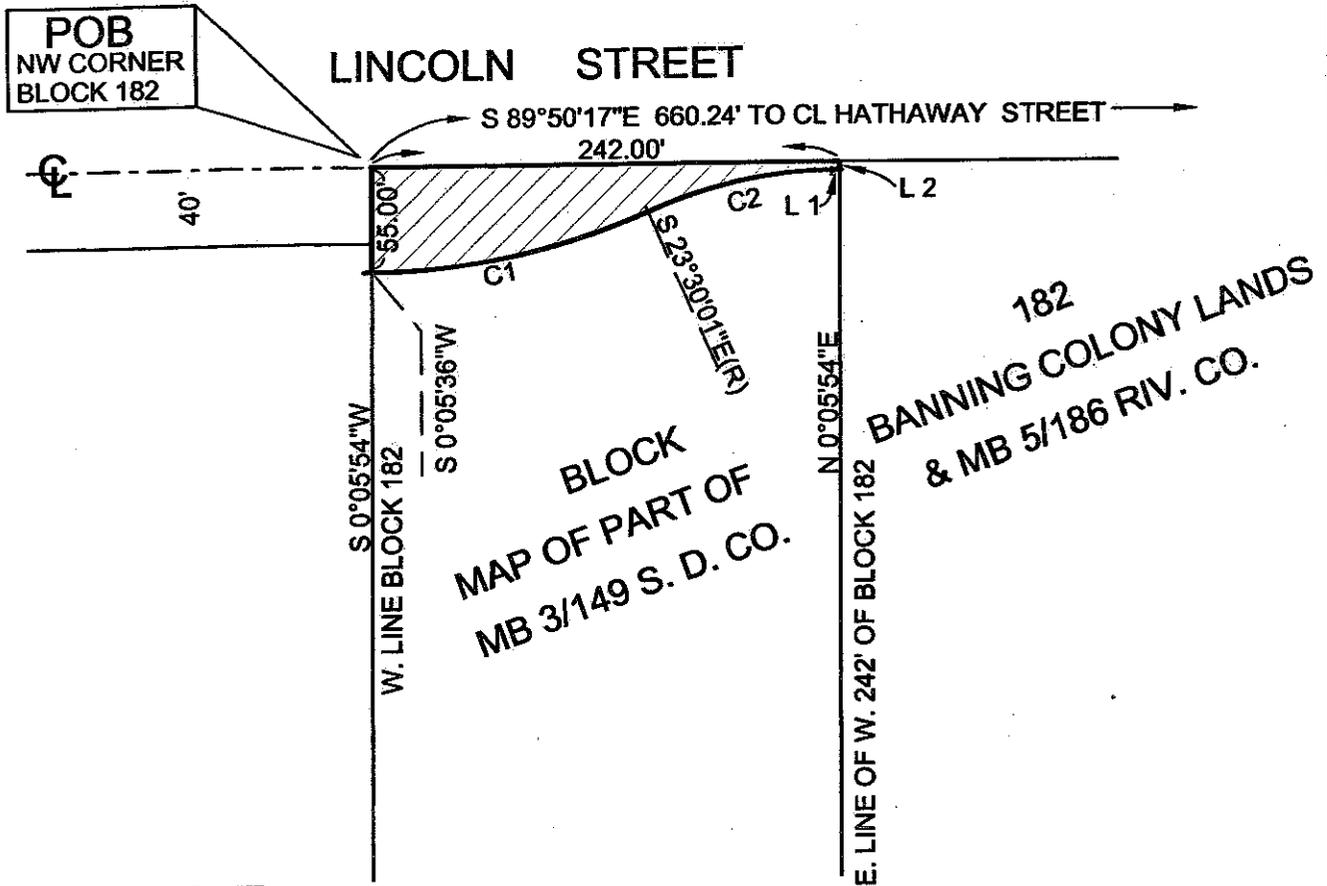
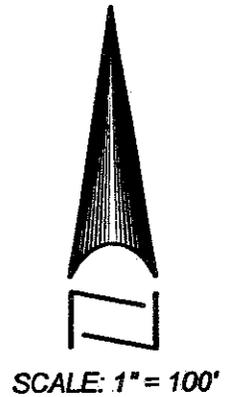
Prepared by Chester F. Ralston, LS 5174 (license expires 6/30/2011)



EXHIBIT "B"
APN 541-290-003

Line	Bearing	Distance
1	S 89°46'31"E	1.30'
2	N 0°05'54"E	4.56'

Curve	Delta Angle	Radius	Arc	Tangent
1	23°35'36"	355.00'	146.18'	74.14'
2	23°43'30"	245.00'	101.45'	51.46'



REFERENCE DATA

DOC # 2003-956862 O.R., REC. 12/05/2003
 MAP OF PART OF BANNING COLONY LANDS
 MB 3/149 S.D. CO. & MB 5/186 RIV. CO.

PREPARED BY:

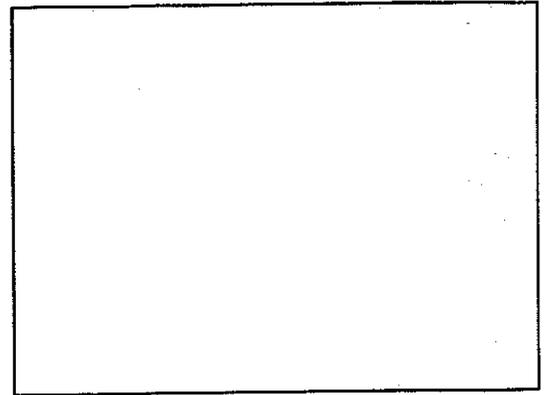
RALSTON LAND SURVEYING
 28346 ROAN RANCH ROAD
 ROMOLAND, CA 92585
 951-928-3366

Chester F. Ralston
 CHESTER F. RALSTON LS 5174



When recorded Mail To:

City Clerk
City of Banning
P.O. Box 998
Banning, CA 92220



**NO RECORDING FEE PER SECTION
6103 OF THE GOVERNMENT CODE.**

SPACE FOR RECORDER'S USE

CERTIFICATE OF ACCEPTANCE

This is to certify that the Offer of Dedication – Road Purposes for Assessor's Parcel Number 541-290-003 to the CITY OF BANNING, a municipal corporation is hereby accepted by the CITY OF BANNING pursuant to authority conferred by the City Council; and the grantees consent to recordation thereof by its duly authorized agent.

Dated: _____, 2009

CITY OF BANNING, A Municipal Corporation

By _____
Marie A. Calderon, City Clerk

APN: 541-290-004

EXEMPT RECORDING
REQUESTED BY
City of Banning
PER GOV'T CODE 6103
AND WHEN RECORDED
MAIL TO:

City of Banning City Clerk
P.O. Box 998
Banning, CA. 92220

MAIL TAX STATEMENTS
TO:

City of Banning - City Clerk
P.O. Box 998
Banning, CA. 92220

OFFER OF DEDICATION - ROAD PURPOSES

The undersigned, being the present title owner(s) of record of the herein described parcel of land, do hereby make an irrevocable offer of dedication to the City of Banning, a political subdivision of the State of California, and its successors or assigns for public road, street, highway, and utility purposes, the real property situated in the City of Banning, County of Riverside, State of California, described in Exhibit "A" (legal description) and shown on Exhibit "B" (plat map) attached hereto and incorporated herein by this reference as though set forth in full.

It is understood and agreed that the City of Banning and its successors or assigns shall incur no liability with respect to such offer of dedication, and shall not assume any responsibility for the offered parcel of land or any improvements thereon or therein, until such offer has been accepted by appropriate action of the City Council or of the local governing bodies or its successors or assigns.

The provisions hereof shall inure to the benefit of and be binding upon heirs, successors, assigns, and personal representatives of the respective parties hereto.

IN WITNESS THEREOF, these presents have executed this instrument this 20th day of Aug, 2009.

Corporation (Type Name)

A_____
Corporation (Type Name)

Belete Demissie
Signature

Amsale Berhanu Demissie
Signature

Belete Demissie (owner)
Name and Title (Type)

Amsale Berhanu Demissie (owner)
Name and Title (Type)

See acknowledgements attached to this document.

CALIFORNIA JURAT WITH AFFIANT STATEMENT

State of California
County of Riverside

See Attached Document [Notary to cross out lines 1-5 below]

See Statement Below [Lines 1-5 to be completed only by document signer[s], not Notary]

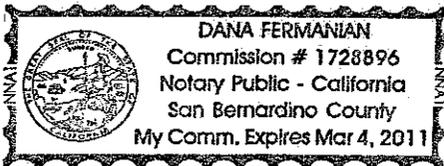
~~See Attached~~

Belete Demessie
Signature of Document Signer No. 1

Amisale Berhan Demessie
Signature of Document Signer No. 2

Subscribed and sworn to [or affirmed] before me on this
20 Day of Aug, 2009, by
Date Month Year

[1] Belete Demessie
Name of signer



Proved to me on the basis of satisfactory evidence to
be the person who appeared before me
and

[2] Amisale Berhan Demessie
Name of signer

Proved to me on the basis of satisfactory evidence to
be the person who appeared before me

Dana Fermanian
Signature of Notary Public

OPTIONAL

Though the information is not required by law, it may prove valuable
to persons relying on the document and could prevent fraudulent
removal and attachment of this form to another document
Further Description of any Attached Document

Title or Type of Document: Offer of Education fund
Document Date: 8/20/2009 Number of Pages: _____

Signer[s] Other Than Named Above _____

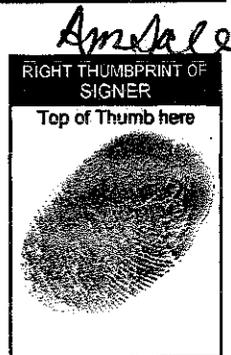
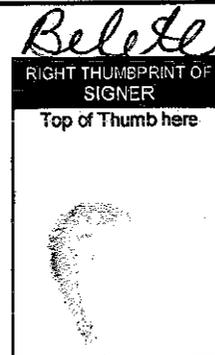


EXHIBIT "A"

In the City of Banning, County of Riverside, State of California, being a portion of Block 182 of Map of Part of Banning Colony Lands as shown by map on file in Book 3, Page 149 of Maps, records of San Diego County and Book 5, Page 186 of Maps, records of Riverside County, California, lying within the southeast quarter of Section 10, Township 3 South, Range 1 East, S.B.M., more particularly described as follows:

**Beginning at the intersection of the north line of said Block 182 with the east line of the west 242.00 feet of said Block 182;
Thence South 89°50'17"East, along said north line, a distance of 388.24 feet, to the west line of Hathaway Street (60 feet wide);
Thence South 00°46'12"West, along said west line, a distance of 60.00 feet, to the south line of the north 60 feet of said Block 182;
Thence North 89°50'17"West, along said south line, a distance of 14.00 feet, to a line that is parallel with and 44.00 feet westerly of the centerline of said Hathaway Street, as measured at right angles thereto;
Thence North 00°46'12"East, along said parallel line, a distance of 29.80 feet, to the beginning of a tangent curve, concaving southwest, having a radius of 25.00 feet;
Thence Northwesterly along said curve through a central angle of 90°32'43", an arc length of 35.51 feet;
Thence North 89°46'31"West, a distance of 348.94 feet, to the east line of the west 242.00 feet of said Block 182;
Thence North 00°05'54"E, a distance of 4.56 feet, to the *Point of Beginning*.**

The above-described land contains 2759.79 Sq. Ft.

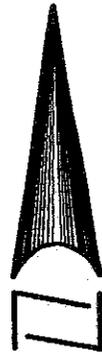
Prepared by Chester F. Ralston, LS 5174 (license expires 6/30/2011)



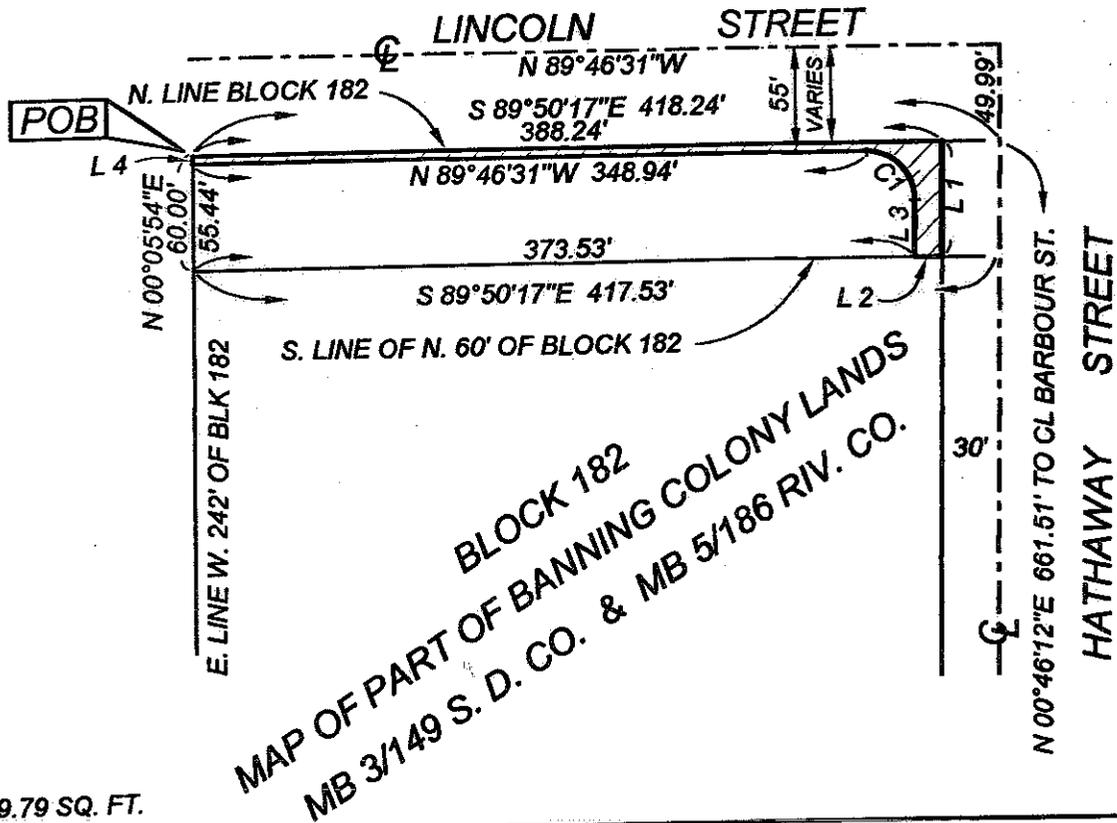
EXHIBIT "B"
APN 541-290-004

Line	Bearing	Distance
1	S 0°46'12"W	60.00'
2	N 89°50'17"W	14.00'
3	N 0°46'12"E	29.80'
4	N 0°05'54"W	4.56'

Curve	Delta Angle	Radius	Arc	Tangent
1	90°32'43"	25.00	39.51	25.24



SCALE: 1" = 100'



AREA = 2759.79 SQ. FT.

REFERENCE DATA

DOC # 2005-0027128 O.R., REC. 1/11/2005
MAP OF PART OF BANNING COLONY LANDS
MB 3/149 S.D. CO. & MB 5/186 RIV. CO.

PREPARED BY:

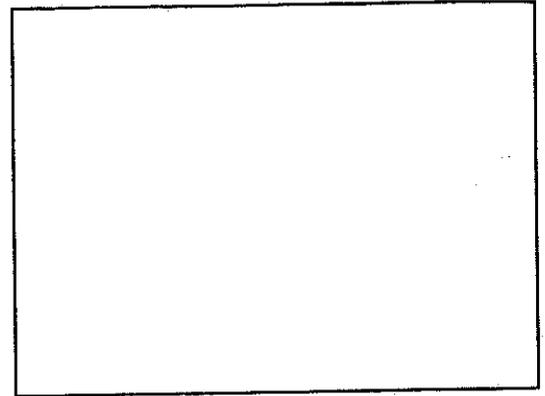
RALSTON LAND SURVEYING
28346 ROAN RANCH ROAD
ROMOLAND, CA 92585
951-928-3366

Chester F. Ralston
CHESTER F. RALSTON LS 5174



When recorded Mail To:

City Clerk
City of Banning
P.O. Box 998
Banning, CA 92220



**NO RECORDING FEE PER SECTION
6103 OF THE GOVERNMENT CODE.**

SPACE FOR RECORDER'S USE

CERTIFICATE OF ACCEPTANCE

This is to certify that the Offer of Dedication – Road Purposes for Assessor's Parcel Number 541-290-004 to the CITY OF BANNING, a municipal corporation is hereby accepted by the CITY OF BANNING pursuant to authority conferred by the City Council; and the grantees consent to recordation thereof by its duly authorized agent.

Dated: _____, 2009

CITY OF BANNING, A Municipal Corporation

By _____
Marie A. Calderon, City Clerk

APN: 541-290-005

EXEMPT RECORDING
REQUESTED BY
City of Banning
PER GOV'T CODE 6103
AND WHEN RECORDED
MAIL TO:

City of Banning City Clerk
P.O. Box 998
Banning, CA. 92220

MAIL TAX STATEMENTS
TO:

City of Banning - City Clerk
P.O. Box 998
Banning, CA. 92220

OFFER OF DEDICATION - ROAD PURPOSES

The undersigned, being the present title owner(s) of record of the herein described parcel of land, do hereby make an irrevocable offer of dedication to the City of Banning, a political subdivision of the State of California, and its successors or assigns for public road, street, highway, and utility purposes, the real property situated in the City of Banning, County of Riverside, State of California, described in Exhibit "A" (legal description) and shown on Exhibit "B" (plat map) attached hereto and incorporated herein by this reference as though set forth in full.

It is understood and agreed that the City of Banning and its successors or assigns shall incur no liability with respect to such offer of dedication, and shall not assume any responsibility for the offered parcel of land or any improvements thereon or therein, until such offer has been accepted by appropriate action of the City Council or of the local governing bodies or its successors or assigns.

The provisions hereof shall inure to the benefit of and be binding upon heirs, successors, assigns, and personal representatives of the respective parties hereto.

IN WITNESS.THEREOF, these presents have executed this instrument this 19 day of AUG.,
2009.

Corporation (Type Name)

Corporation (Type Name)

John C Tamulonis.
Signature

Carol L. Tamulonis
Signature

John Charles Tamulonis (owner)
Name and Title (Type)

Carol Lee Tamulonis (owner)
Name and Title (Type)

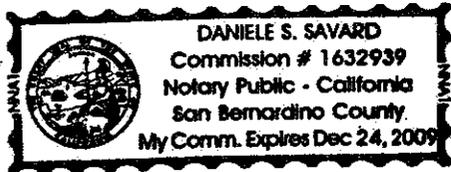
See acknowledgements attached to this document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

On 08/19/09, 2009, before me, Daniele S. Savard, a Notary Public, personally appeared John Charles Tamulonis, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



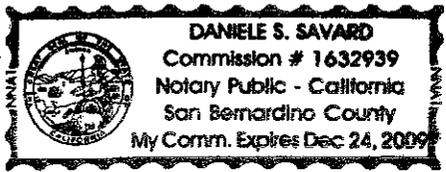
Signature [Handwritten Signature] (Seal)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

On 08/19, 2009, before me, Daniele S. Savard, a Notary Public, personally appeared Carol Lee Tamulonis, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature] (Seal)

EXHIBIT "A"

In the City of Banning, County of Riverside, State of California, being a portion of Block 182 of Map of Part of Banning Colony Lands as shown by map on file in Book 3, Page 149 of Maps, records of San Diego County and Book 5, Page 186 of Maps, records of Riverside County, California, lying within the southeast quarter of Section 10, Township 3 South, Range 1 East, S.B.M. , more particularly described as follows:

The west 14.00 feet of the east 44.00 feet of the north 120.00 feet, as measured along the east line, of said Block 182;

Except therefrom the north 60.00 feet of said Block 182.

The above-described land contains 840.00 Sq. Ft.

Prepared by Chester F. Ralston, LS 5174 (license expires 6/30/2011)



EXHIBIT "B"
APN 541-290-005

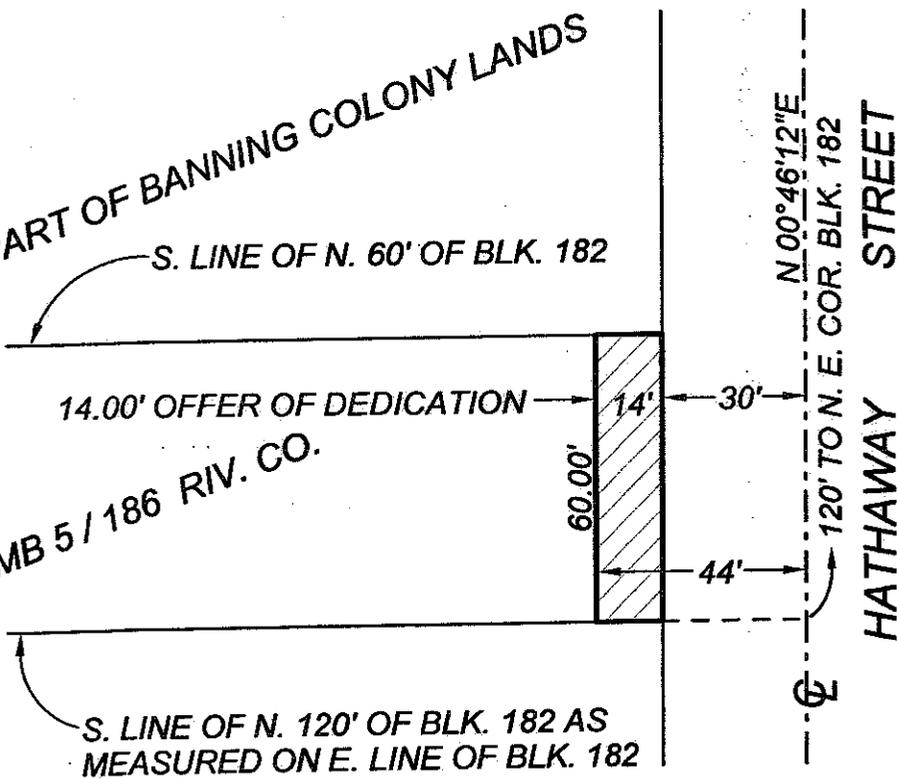


SCALE: 1" = 40'

PORTION OF BLOCK 182

MAP OF PART OF BANNING COLONY LANDS
S. LINE OF N. 60' OF BLK. 182

MB 5/186 RIV. CO.



AREA = 840.00 SQ. FT.

REFERENCE DATA

INST. NO. 78-69525 O.R., REC. 4/12/1978
MAP OF PART OF BANNING COLONY LANDS
MB 3/149 S.D. CO. & MB 5/186 RIV. CO.

PREPARED BY:

RALSTON LAND SURVEYING
28346 ROAN RANCH ROAD
ROMOLAND, CA 92585
951-928-3366

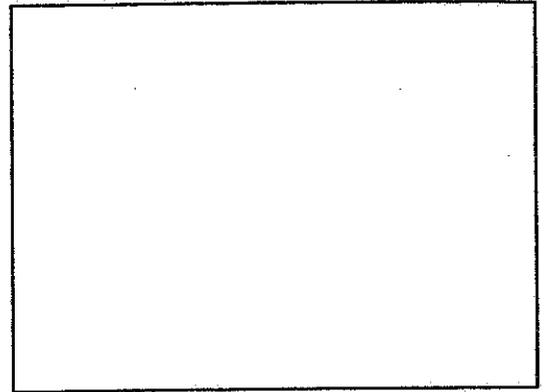
Chester F. Ralston
CHESTER F. RALSTON LS 5174



82

When recorded Mail To:

City Clerk
City of Banning
P.O. Box 998
Banning, CA 92220



**NO RECORDING FEE PER SECTION
6103 OF THE GOVERNMENT CODE.**

SPACE FOR RECORDER'S USE

CERTIFICATE OF ACCEPTANCE

This is to certify that the Offer of Dedication – Road Purposes for Assessor's Parcel Number 541-290-005 to the CITY OF BANNING, a municipal corporation is hereby accepted by the CITY OF BANNING pursuant to authority conferred by the City Council; and the grantees consent to recordation thereof by its duly authorized agent.

Dated: _____, 2009

CITY OF BANNING, A Municipal Corporation

By _____
Marie A. Calderon, City Clerk

APN: 541-290-006

84

EXEMPT RECORDING
REQUESTED BY
City of Banning
PER GOV'T CODE 6103
AND WHEN RECORDED
MAIL TO:

City of Banning City Clerk
P.O. Box 998
Banning, CA. 92220

MAIL TAX STATEMENTS
TO:

City of Banning - City Clerk
P.O. Box 998
Banning, CA. 92220

OFFER OF DEDICATION - ROAD PURPOSES

The undersigned, being the present title owner(s) of record of the herein described parcel of land, do hereby make an irrevocable offer of dedication to the City of Banning, a political subdivision of the State of California, and its successors or assigns for public road, street, highway, and utility purposes, the real property situated in the City of Banning, County of Riverside, State of California, described in Exhibit "A" (legal description) and shown on Exhibit "B" (plat map) attached hereto and incorporated herein by this reference as though set forth in full.

It is understood and agreed that the City of Banning and its successors or assigns shall incur no liability with respect to such offer of dedication, and shall not assume any responsibility for the offered parcel of land or any improvements thereon or therein, until such offer has been accepted by appropriate action of the City Council or of the local governing bodies or its successors or assigns.

The provisions hereof shall inure to the benefit of and be binding upon heirs, successors, assigns, and personal representatives of the respective parties hereto.

IN WITNESS THEREOF, these presents have executed this instrument this 19 day of AUG. 2009.

Corporation (Type Name)

Corporation (Type Name)

John C. Tamulonis
Signature

Carol L. Tamulonis
Signature

John Charles Tamulonis (owner)
Name and Title (Type)

Carol Lee Tamulonis (owner)
Name and Title (Type)

See acknowledgements attached to this document.

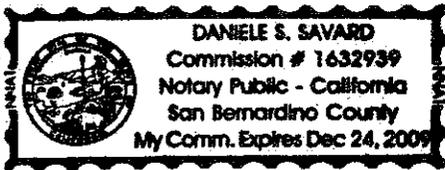
85

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

On 08/19/09, 2009, before me, Daniele S. Savard, a Notary Public, personally appeared John Charles Tamulonis, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



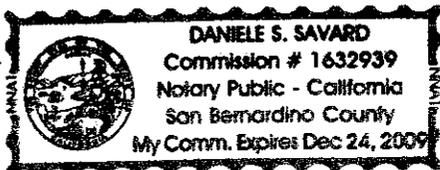
Signature [Handwritten Signature] (Seal)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

On 08/19, 2009, before me, Daniele S. Savard, a Notary Public, personally appeared DS. John Charles Tamulonis, Cardiac, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature] (Seal)

EXHIBIT "A"

In the City of Banning, County of Riverside, State of California, being a portion of Block 182 of Map of Part of Banning Colony Lands as shown by map on file in Book 3, Page 149 of Maps, records of San Diego County and Book 5, Page 186 of Maps, records of Riverside County, California, lying within the southeast quarter of Section 10, Township 3 South, Range 1 East, S.B.M., more particularly described as follows:

Commencing at a point on the east line of said Block 182, said east line being the centerline of Hathaway Street (60 feet wide), distant 120.00 feet southerly of the northeast corner of said Block 182;

Thence North $89^{\circ}50'17''$ West, parallel with the north line of said Block 182, a distance of 30.00 feet, to the Point of Beginning, being the west line of said Hathaway Street;

Thence continuing North $89^{\circ}50'17''$ West, a distance of 14.00 feet, to a line parallel with the east line of said Block 182, and 44.00 feet westerly as measured at right angles thereto;

Thence South $00^{\circ}42'12''$ West, on said parallel line, a distance of 120.40 feet to the north line of the south 421.00 feet of said Block 182, as measured along the east line of said Block 182;

Thence South $89^{\circ}41'21''$ East, on said north line, a distance of 14.00 feet, to the west line of said Hathaway Street;

Thence North $00^{\circ}42'12''$ East, along said west line, a distance of 120.43 feet, to the Point of Beginning.

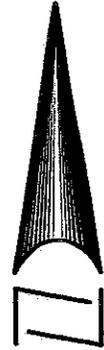
Area = 1685.79 Sq. Ft.

Prepared by Chester F. Ralston, LS 5174 (license expires 6/30/2011)

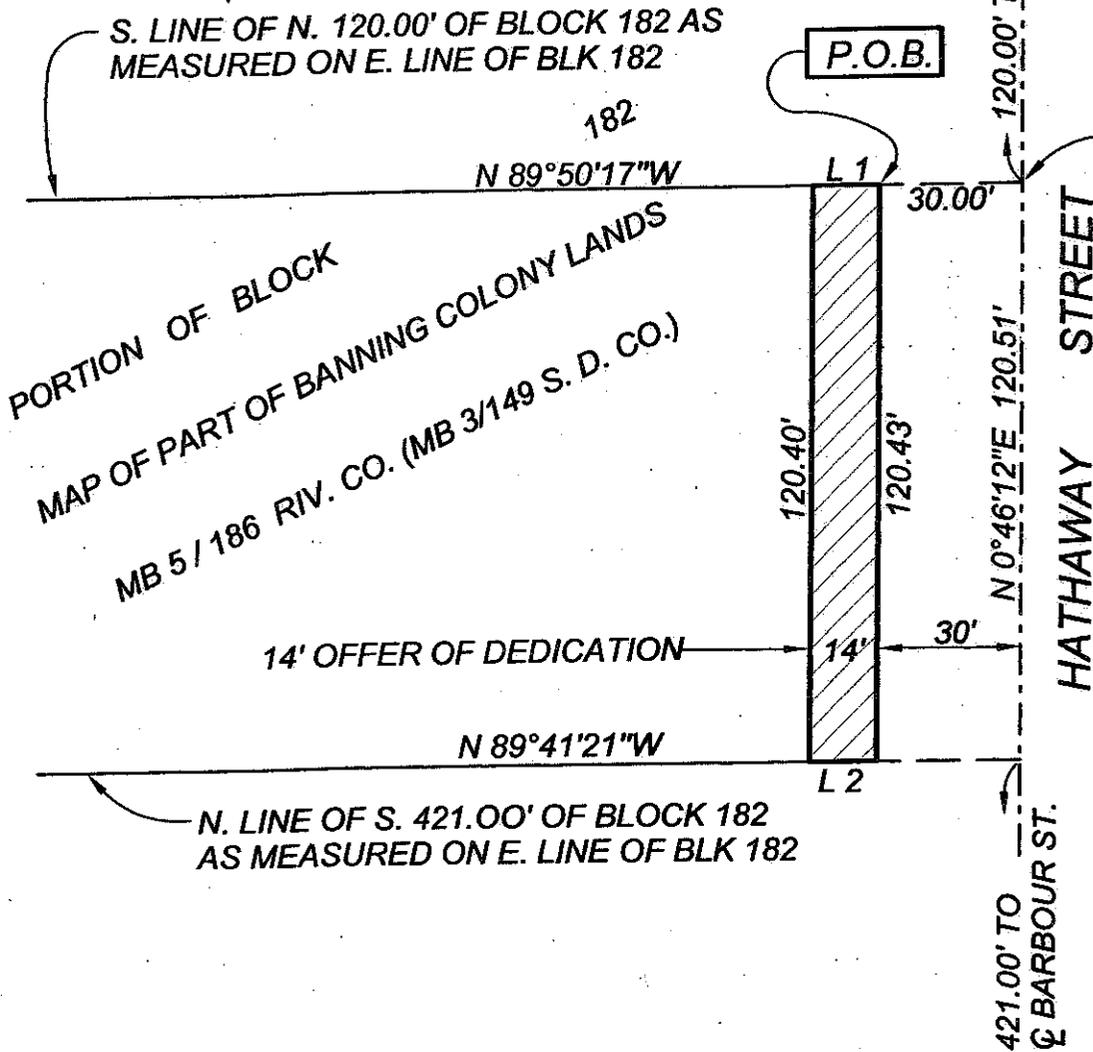


EXHIBIT "B"
 APN 541-290-006

Line	Bearing	Distance
1	N 89°50'17"W	14.00'
2	S 89°41'21"E	14.00'



SCALE: 1" = 40'



AREA = 1685.79 SQ. FT.

REFERENCE DATA

INST. NO. 86-233221 O.R., REC. 9/24/1986
 MAP OF PART OF BANNING COLONY LANDS
 MB 3/149 S.D. CO. & MB 5/186 RIV. CO.

PREPARED BY:

RALSTON LAND SURVEYING
 28346 ROAN RANCH ROAD
 ROMOLAND, CA 92585
 951-928-3366

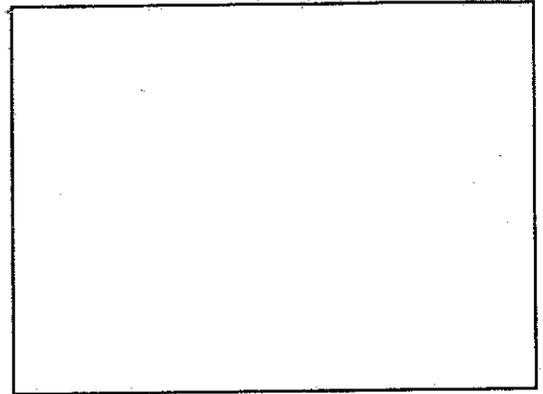
Chester F. Ralston
 CHESTER F. RALSTON LS 5174



88

When recorded Mail To:

City Clerk
City of Banning
P.O. Box 998
Banning, CA 92220



**NO RECORDING FEE PER SECTION
6103 OF THE GOVERNMENT CODE.**

SPACE FOR RECORDER'S USE

CERTIFICATE OF ACCEPTANCE

This is to certify that the Offer of Dedication – Road Purposes for Assessor's Parcel Number 541-290-006 to the CITY OF BANNING, a municipal corporation is hereby accepted by the CITY OF BANNING pursuant to authority conferred by the City Council; and the grantees consent to recordation thereof by its duly authorized agent.

Dated: _____, 2009

CITY OF BANNING, A Municipal Corporation

By _____
Marie A. Calderon, City Clerk

89

APN: 541-290-007

EXEMPT RECORDING
REQUESTED BY
City of Banning
PER GOV'T CODE 6103
AND WHEN RECORDED
MAIL TO:

City of Banning City Clerk
P.O. Box 998
Banning, CA. 92220

MAIL TAX STATEMENTS
TO:

City of Banning - City Clerk
P.O. Box 998
Banning, CA. 92220

OFFER OF DEDICATION - ROAD PURPOSES

The undersigned, being the present title owner(s) of record of the herein described parcel of land, do hereby make an irrevocable offer of dedication to the City of Banning, a political subdivision of the State of California, and its successors or assigns for public road, street, highway, and utility purposes, the real property situated in the City of Banning, County of Riverside, State of California, described in Exhibit "A" (legal description) and shown on Exhibit "B" (plat map) attached hereto and incorporated herein by this reference as though set forth in full.

It is understood and agreed that the City of Banning and its successors or assigns shall incur no liability with respect to such offer of dedication, and shall not assume any responsibility for the offered parcel of land or any improvements thereon or therein, until such offer has been accepted by appropriate action of the City Council or of the local governing bodies or its successors or assigns.

The provisions hereof shall inure to the benefit of and be binding upon heirs, successors, assigns, and personal representatives of the respective parties hereto.

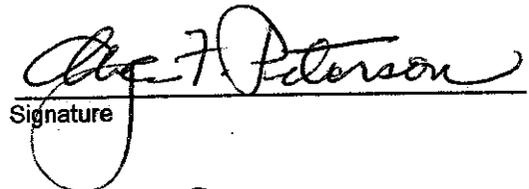
IN WITNESS THEREOF, these presents have executed this instrument this 23rd day of SEPT. 2009.

Alleon Enterprises, LLC, a California Limited Liability Company
Corporation (Type Name)



Signature

LEONARD H. PETERSON, MEMBER
Name and Title (Type)



Signature

ALYCE F. PETERSON, MEMBER
Name and Title (Type)

See acknowledgements attached to this document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

On Sept. 23, 2009 before me, Christine H. Robinson, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Leonard H. Peterson and
Alyce F. Peterson
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) were subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal and/or Stamp Above

Signature: Christine H. Robinson
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Offer of Dedication - Road Purpose
 Document Date: Sept. 23, 2009 Number of Pages: 3

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: LEONARD H. PETERSON

Signer's Name: ALYCE F. PETERSON

Corporate Officer — Title(s): MEMBER

Corporate Officer — Title(s): MEMBER

Individual

Individual

Partner — Limited General

Partner — Limited General

Attorney in Fact

Attorney in Fact

Trustee

Trustee

Guardian or Conservator

Guardian or Conservator

Other: _____

Other: _____

Signer Is Representing: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

92

EXHIBIT "A"

In the City of Banning, County of Riverside, State of California, being a portion of Block 182 of Map of Part of Banning Colony Lands as shown by map on file in Book 3, Page 149 of Maps, records of San Diego County and Book 5, Page 186 of Maps, records of Riverside County, California, lying within the southeast quarter of Section 10, Township 3 South, Range 1 East, S.B.M., more particularly described as follows:

The west 14.00 feet of the east 44.00 feet of the north 421.00 feet, as measured along the east line, of said Block 182;

Excepting the southerly 321.00 feet of said Block 182, as measured on the east line of said Block 182:

The above-described land contains 1400.00 Sq. Ft.

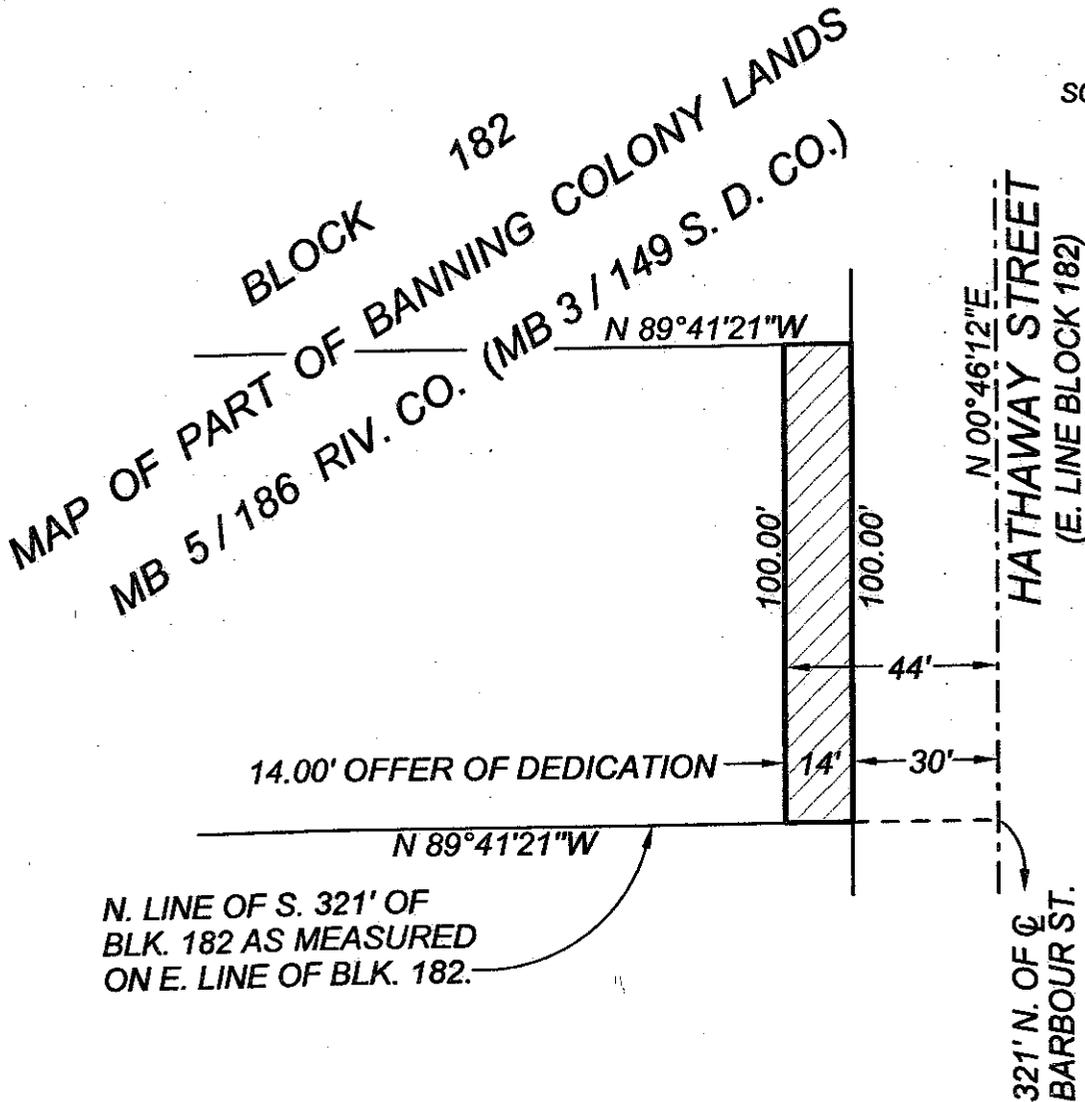
Prepared by Chester F. Ralston, LS 5174 (license expires 6/30/2011)



EXHIBIT "B"
 APN 541-290-007



SCALE: 1" = 40'



AREA = 1400.00 SQ. FT.

REFERENCE DATA

DOC # 2007-0584858 O.R., REC. 09/17/2007
 MAP OF PART OF BANNING COLONY LANDS
 MB 3/149 S.D. CO. & MB 5/186 RIV. CO.

PREPARED BY:

RALSTON LAND SURVEYING
 28346 ROAN RANCH ROAD
 ROMOLAND, CA 92585
 951-928-3366

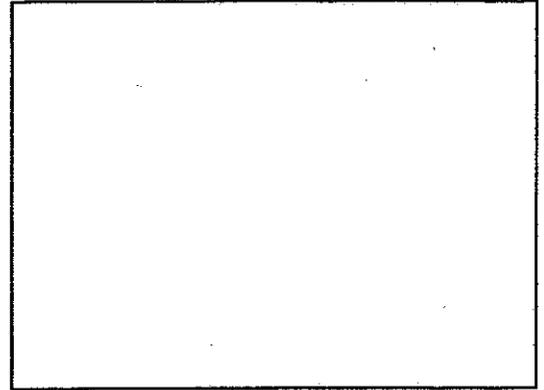
Chester F. Ralston
 CHESTER F. RALSTON LS 5174



94

When recorded Mail To:

City Clerk
City of Banning
P.O. Box 998
Banning, CA 92220



**NO RECORDING FEE PER SECTION
6103 OF THE GOVERNMENT CODE.**

SPACE FOR RECORDER'S USE

CERTIFICATE OF ACCEPTANCE

This is to certify that the Offer of Dedication – Road Purposes for Assessor's Parcel Number 541-290-007 to the CITY OF BANNING, a municipal corporation is hereby accepted by the CITY OF BANNING pursuant to authority conferred by the City Council; and the grantees consent to recordation thereof by its duly authorized agent.

Dated: _____, 2009

CITY OF BANNING, A Municipal Corporation

By _____
Marie A. Calderon, City Clerk

APN: 541-290-008

EXEMPT RECORDING
REQUESTED BY
City of Banning
PER GOVT CODE 6103
AND WHEN RECORDED
MAIL TO:

City of Banning City Clerk
P.O. Box 998
Banning, CA. 92220

MAIL TAX STATEMENTS
TO:

City of Banning - City Clerk
P.O. Box 998
Banning, CA. 92220

OFFER OF DEDICATION - ROAD PURPOSES

The undersigned, being the present title owner(s) of record of the herein described parcel of land, do hereby make an irrevocable offer of dedication to the City of Banning, a political subdivision of the State of California, and its successors or assigns for public road, street, highway, and utility purposes, the real property situated in the City of Banning, County of Riverside, State of California, described in Exhibit "A" (legal description) and shown on Exhibit "B" (plat map) attached hereto and incorporated herein by this reference as though set forth in full.

It is understood and agreed that the City of Banning and its successors or assigns shall incur no liability with respect to such offer of dedication, and shall not assume any responsibility for the offered parcel of land or any improvements thereon or therein, until such offer has been accepted by appropriate action of the City Council or of the local governing bodies or its successors or assigns.

The provisions hereof shall inure to the benefit of and be binding upon heirs, successors, assigns, and personal representatives of the respective parties hereto.

IN WITNESS THEREOF, these presents have executed this instrument this 12 day of OCTOBER 2009.

Corporation (Type Name)

[Signature]
Signature

Luis Robert Zambrana (owner)
Name and Title (Type)

Corporation (Type Name)

Bertha Zambrana
Signature

Bertha Zambrana (owner)
Name and Title (Type)

See acknowledgements attached to this document.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of RIVERSIDE

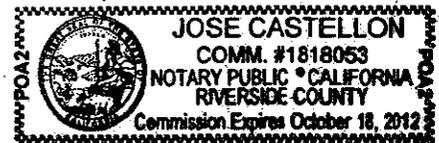
On OCTOBER 12, 2009 before me, JOSE CASTELLON NOTARY PUBLIC
(Here insert name and title of the officer)

personally appeared CUIS ROBERT ZAMBRANA AND BERTHA ZAMBRANA

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



(Handwritten Signature)
Signature of Notary Public

(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

DESCRIPTION OF THE ATTACHED DOCUMENT

OFFER OF DEDICATION - ROAD
(Title or description of attached document)

PURPOSES
(Title or description of attached document continued)

Number of Pages 7 Document Date 10/12/09

(Additional information)

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer

_____ (Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other _____

(Handwritten initials)

EXHIBIT "A"

In the City of Banning, County of Riverside, State of California, being a portion of Block 182 of Map of Part of Banning Colony Lands as shown by map on file in Book 3, Page 149 of Maps, records of San Diego County and Book 5, Page 186 of Maps, records of Riverside County, California, lying within the southeast quarter of Section 10, Township 3 South, Range 1 East, S.B.M. , more particularly described as follows:

The west 14.00 feet of the east 44.00 feet of the south 321.00 feet as measured along the east line of Block 182;

Except therefrom the south 210.00 feet of said Block 182.

The above-described land contains 1554.00 Sq. Ft.

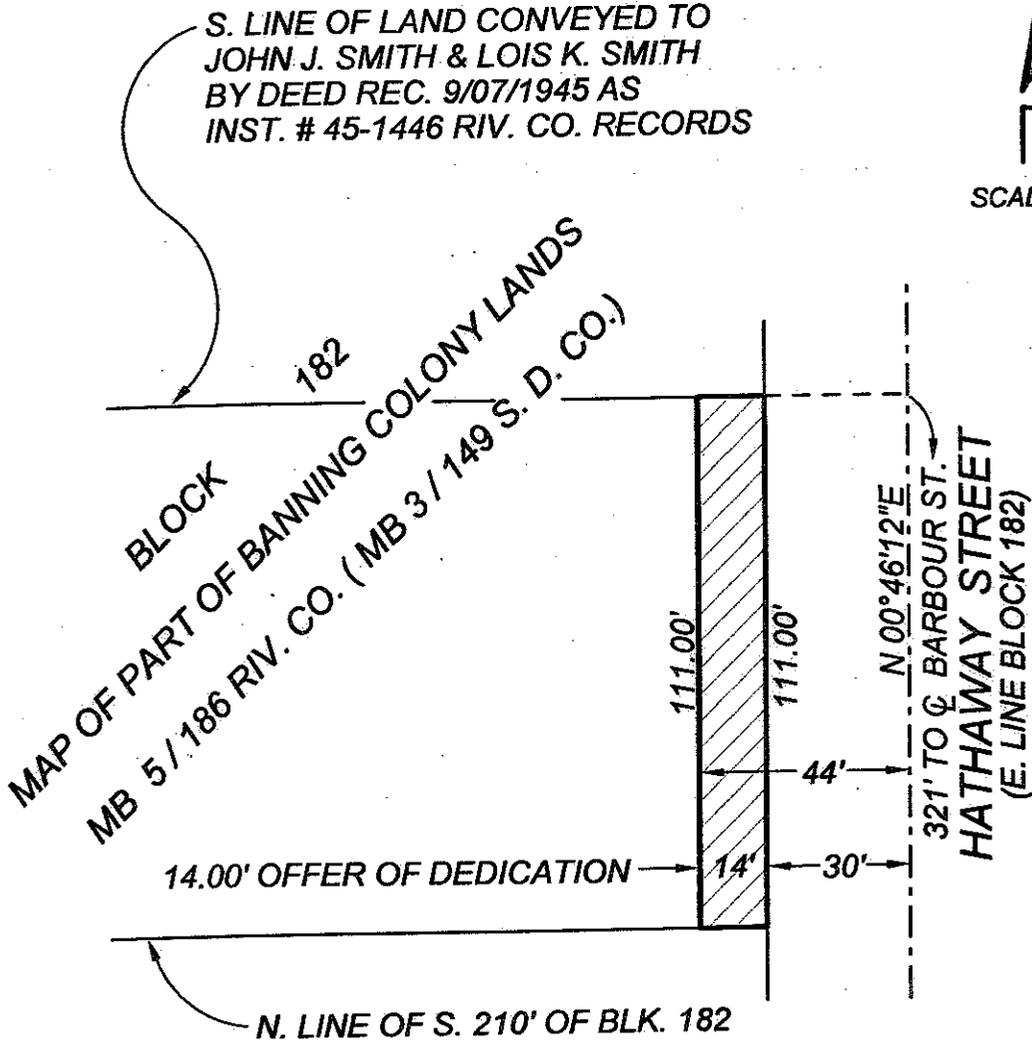
Prepared by Chester F. Ralston, LS 5174 (license expires 6/30/2011)



EXHIBIT "B"
 APN 541-290-008



SCALE: 1" = 40'



AREA = 1,554.00 SQ. FT.

REFERENCE DATA

DOC # 2003-377864 O.R., REC. 05/27/2003
 MAP OF PART OF BANNING COLONY LANDS
 MB 3/149 S.D. CO. & MB 5/186 RIV. CO.

PREPARED BY:

RALSTON LAND SURVEYING
 28346 ROAN RANCH ROAD
 ROMOLAND, CA 92585
 951-928-3366

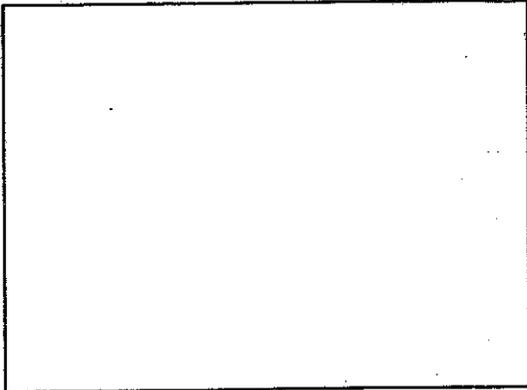
Chester F. Ralston
 CHESTER F. RALSTON LS 5174



100

When recorded Mail To:

City Clerk
City of Banning
P.O. Box 998
Banning, CA 92220



**NO RECORDING FEE PER SECTION
6103 OF THE GOVERNMENT CODE.**

SPACE FOR RECORDER'S USE

CERTIFICATE OF ACCEPTANCE

This is to certify that the Offer of Dedication – Road Purposes for Assessor's Parcel Number 541-290-008 to the CITY OF BANNING, a municipal corporation is hereby accepted by the CITY OF BANNING pursuant to authority conferred by the City Council; and the grantees consent to recordation thereof by its duly authorized agent.

Dated: _____, 2009

CITY OF BANNING, A Municipal Corporation

By _____
Marie A. Calderon, City Clerk

101

APN: 541-290-011

EXEMPT RECORDING
REQUESTED BY
City of Banning
PER GOV'T CODE 6103
AND WHEN RECORDED
MAIL TO:

City of Banning City Clerk
P.O. Box 998
Banning, CA. 92220

MAIL TAX STATEMENTS
TO:

City of Banning - City Clerk
P.O. Box 998
Banning, CA. 92220

OFFER OF DEDICATION - ROAD PURPOSES

The undersigned, being the present title owner(s) of record of the herein described parcel of land, do hereby make an irrevocable offer of dedication to the City of Banning, a political subdivision of the State of California, and its successors or assigns for public road, street, highway, and utility purposes, the real property situated in the City of Banning, County of Riverside, State of California, described in Exhibit "A" (legal description) and shown on Exhibit "B" (plat map) attached hereto and incorporated herein by this reference as though set forth in full.

It is understood and agreed that the City of Banning and its successors or assigns shall incur no liability with respect to such offer of dedication, and shall not assume any responsibility for the offered parcel of land or any improvements thereon or therein, until such offer has been accepted by appropriate action of the City Council or of the local governing bodies or its successors or assigns.

The provisions hereof shall inure to the benefit of and be binding upon heirs, successors, assigns, and personal representatives of the respective parties hereto.

IN WITNESS THEREOF, these presents have executed this instrument this 1 day of Sept
2009.

The Keith Turner Trust of November 10, 1999
Trust (Type Name)

Keith Turner
Signature

Signature

Keith Turner (Trustee)
Name and Title (Type)

Name and Title (Type)

See acknowledgements attached to this document.

103

2008 All Capacity Acknowledgement

State of California
County of Riverside

On Sept 1, 2009 before me, Elizabeth A. Baker Notary Public,
a Notary Public, personally appeared Keith Turner

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Elizabeth A. Baker (Seal)



Optional

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document
Title or Type of Document:

Offer of Dedication

Document Date: Sept 1, 2009

Number of Pages: 1

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer

- Signer's Name: _____
- Individual
- Corporate Officer—Title(s): _____
- Partner—() Limited () General
- Attorney in Fact
- Trustee
- Guardian or conservator
- Other: _____

Right Thumbprint of Signer

EXHIBIT "A"

In the City of Banning, County of Riverside, State of California, being a portion of Block 182 of Map of Part of Banning Colony Lands as shown by map on file in Book 3, Page 149 of Maps, records of San Diego County and Book 5, Page 186 of Maps, records of Riverside County, California. Lying within the southeast quarter of Section 10, Township 3 South, Range 1 East, S.B.M. , more particularly described as follows:

Beginning at the intersection of the west line of Hathaway Street (60.00 feet wide) and the north line of the south 210.00 feet of said Block 182;
Thence South $00^{\circ}46'12''$ West, along said west line, a distance of 180.01 feet, to the north line of Barbour Street (60.00 feet wide);
Thence North $89^{\circ}41'21''$ West, along said north line, a distance of 36.78 feet;
Thence at right angles, North $00^{\circ}18'39''$ East, a distance of 3.00 feet, to a point that is 33.00 feet north of the centerline of said Barbour Street, as measured at right angles thereto;
Thence North $44^{\circ}18'42''$ East, a distance of 33.11 feet, to a line parallel with and 44.00 feet westerly of the centerline of said Hathaway Street, as measured at right angles thereto;
Thence North $00^{\circ}46'12''$ East, along said parallel line, a distance of 153.19 feet, to the north line of the south 210.00 feet of said Block 182;
Thence South $89^{\circ}41'21''$ East, along said north line, a distance of 14.00 feet to the *Point of Beginning*.

The above described land contains 2860.07 Sq. Ft.

Prepared by Chester F. Ralston, LS 5174 (license expires 6/30/2011)

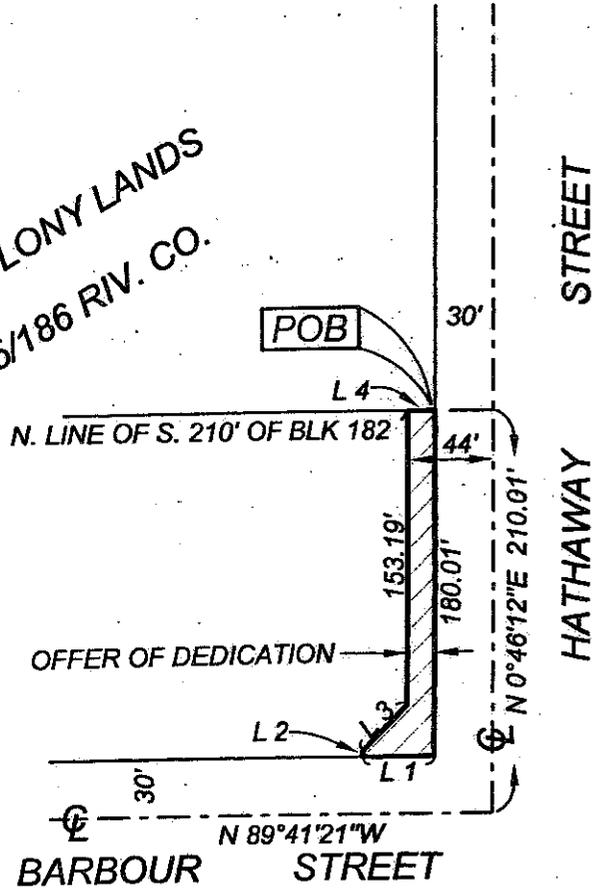


EXHIBIT "B"
 APN 541-290-011



SCALE: 1" = 100'

BLOCK 182
 MAP OF PART OF BANNING COLONY LANDS
 MB 3/149 S. D. CO. & MB 5/186 RIV. CO.



Line	Bearing	Distance
1	N 89°41'21"W	36.78'
2	N 0°18'39"E	3.00'
3	N 44°18'42"E	33.11'
4	S 89°41'21"E	14.00'

AREA = 2860.07 SQ. FT.

REFERENCE DATA

DOC # 2004-0201276 O.R., REC.03/23/2004
 MAP OF PART OF BANNING COLONY LANDS
 MB 3/149 S.D. CO. & MB 5/186 RIV. CO.

PREPARED BY:

RALSTON LAND SURVEYING
 28346 ROAN RANCH ROAD
 ROMOLAND, CA 92585
 951-928-3366

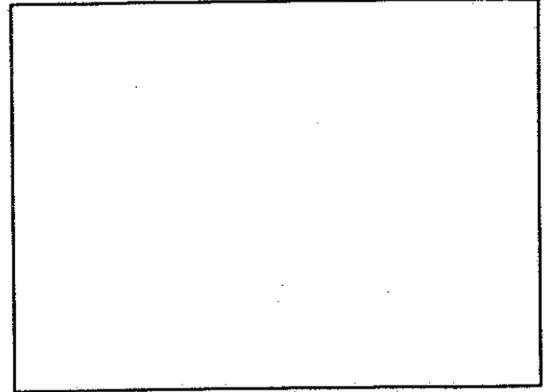


CHESTER F. RALSTON LS 5174

106

When recorded Mail To:

City Clerk
City of Banning
P.O. Box 998
Banning, CA 92220



**NO RECORDING FEE PER SECTION
6103 OF THE GOVERNMENT CODE.**

SPACE FOR RECORDER'S USE

CERTIFICATE OF ACCEPTANCE

This is to certify that the Offer of Dedication – Road Purposes for Assessor's Parcel Number 541-290-011 to the CITY OF BANNING, a municipal corporation is hereby accepted by the CITY OF BANNING pursuant to authority conferred by the City Council; and the grantees consent to recordation thereof by its duly authorized agent.

Dated: _____, 2009

CITY OF BANNING, A Municipal Corporation

By _____
Marie A. Calderon, City Clerk

107

**CITY COUNCIL AGENDA
PUBLIC HEARING**

DATE: December 8, 2009

TO: City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Proposed Ordinance No. 1415, Stormwater Code

RECOMMENDATION: Adopt Ordinance No. 1415, Stormwater Code, amending and updating City Municipal Code Title 13, Section 13.24, which is the City's existing Stormwater Management Plan.

JUSTIFICATION: It is essential to adopt this ordinance in order to comply with the new requirements of the City's National Pollutant Discharge Elimination System (NPDES) Permit No. R7-2008-0001 and to ensure adequate legal authority exists to implement and enforce the new Permit.

BACKGROUND: The National Pollutant Discharge Elimination System (NPDES) is a federally mandated program to control non-point sources of runoff pollution. The NPDES program is part of the Clean Water Act enacted by Congress in 1987. The California Regional Water Quality Control Board, Colorado River Basin, Region No. 7, in implementing the U.S. Environmental Protection Agency's Stormwater NPDES permit program, requires that the Districts and incorporated Cities within the Whitewater River Basin obtain a joint Permit to discharge stormwater into the various storm channels and washes throughout the Whitewater River Watershed area. This latest Permit has more inspection, compliance and reporting requirements and was adopted by the Regional Board on May 21, 2008. Upon review, it was determined that the City must update its' current Stormwater Ordinance No. 1212 and Municipal Code Title 13, Section 13.24 to incorporate these changes.

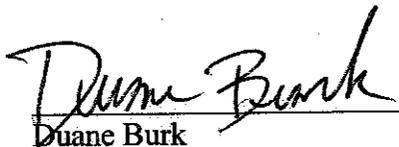
The City of Banning is required, through the Best Management Practices (BMPs), to implement practices within our community that reduce pollutants entering into the storm drain system to the maximum extent practicable. These BMPs include but are not limited to: public education; material disposal (Bulky Item Pick Up, Household Hazardous Waste, and recycling programs); spill prevention, clean up programs and the Haz-Mat Team; illegal dumping and illicit connection controls; storm drain and drainage channel inspection and maintenance; informing contractors, engineers, inspection and maintenance staff and land developers about site erosion control and construction BMPs; implementing development and approval plan review procedures as required by the Permit; and enforcing Ordinance No. 1212 and proposed Ordinance No. 1415 with respect to stormwater management and discharge controls. Other provisions of the Permit include adopting and maintaining adequate legal authority, source tracking and updating, leash law enforcement, and various other items, such as maintaining adequate fiscal resources to implement the Permit.

Upon review of the City's current Stormwater Ordinance No. 1212 and City Municipal Code Title 13, Section 13.24, the City Attorney determined that the City does not currently have sufficient legal authority to ensure compliance with the more stringent new Permit. The new NPDES Permit has expanded compliance requirements for the following: business and construction BMP implementation; inspections and enforcement; implementation of Water Quality Management Plans (WQMP) for some development projects; and the elimination of illicit discharges and illegal connections. These enhanced requirements call for additional inspections, monitoring of various business operations and construction sites disturbing over one acre (with respect to stormwater runoff), expanded documentation, tracking, and reporting of these items and others listed in the Permit, by Public Works Department staff.

Once this proposed ordinance has been adopted, the City Attorney must certify to the Regional Board that the City of Banning has adequate legal authority to enforce the new NPDES Permit. Failure by the City of Banning to implement a Best Management Practices program, obtain legal authority for this new Permit and meet the numerous other requirements of the NPDES Permit, will result in a violation of State and Federal Law, making the City subject to the associated penalties. The Notice of Public Hearing was advertised in the Record Gazette local newspaper on November 20, 2009.

FISCAL DATA: The estimated cost to implement some of the common portions of this program is calculated annually, and shared amongst the permittees based on each Agency's population. All associated costs for this Permit are charged to the Public Works Department, Street Division Account. Engineering Division staff manages and implements the program in house.

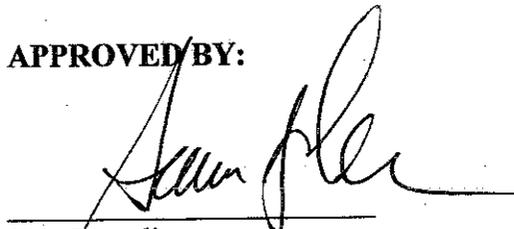
RECOMMENDED BY:


Duane Burk
Director of Public Works

REVIEWED BY:


Kirby Warner
Interim Finance Director

APPROVED BY:


Sam Racadio
Interim City Manager

CITY OF BANNING

ORDINANCE NO. 1415

**AN ORDINANCE OF THE CITY OF BANNING
AMENDING THE CODE OF THE CITY OF BANNING,
CALIFORNIA, 1965, TITLE 13, CHAPTER 13.24 NOW
ENTITLED STORMWATER CODE**

WHEREAS, the City of Banning (the "City") duly enacted on June 24, 1997 Ordinance 1212 which is entitled "An Ordinance Of The City Of Banning Adding Chapter 34 To The Banning Ordinance Code Establishing Storm Water Management And Discharge Controls"; and

WHEREAS, the City codified Chapter 34 of Ordinance 1212 in the Banning Municipal Code through Chapter 13.24 of Title 13, which shall be known as the "City of Banning Stormwater Management and Discharge Control Code" or, "Stormwater Code" for short; and

WHEREAS, the City seeks through this Ordinance to amend the Stormwater Code to ensure the future health, safety, and general welfare of the citizens, as well as compliance with existing and future National Pollutant Discharge Elimination System ("NPDES") Permits; and

WHEREAS, NPDES Permit Number CAS617002 (R7-2008-0001) is the existing NPDES Permit applicable to the City, a copy of which is attached hereto as Exhibit "A".

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING DOES
ORDAIN AS FOLLOWS:**

Section 1. Section 13.24.010 (Title) of the Stormwater Code is hereby amended to read in its entirety as follows:

"The ordinance codified in this chapter shall be known as the 'City of Banning Stormwater Management and Discharge Control Code', or the 'Stormwater Code' for short, and may be so cited."

Section 2. Section 13.24.030 (Definitions) of the Stormwater Code is hereby amended to read in its entirety as follows:

"The terms as used in this Chapter shall have the following meanings:

- A. Best Management Practice (BMP). BMP or BMPs mean schedules of activities, prohibitions of practices, general good housekeeping practices, maintenance procedures, educational programs, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to waters of the United States. BMPs shall include treatment requirements, operating procedures, and practices to control plant site

runoff, spillage or leaks, sludge or waste disposal, and drainage from raw materials storage. The California Stormwater Best Management Practice Handbooks for Municipal, Industrial/Commercial and Construction Activity provide a detailed discussion of BMPs.

- B. Detention Basin refers to a basin type structure which permits large flows of stormwater to enter and remain, but limits and controls the outflow (i.e. discharge) by having a small opening at the lowest point of the structure.
- C. Director means the Director of the Public Works Department of the City of Banning.
- D. Enforcement Officer includes the City Manager, Public Works Director, City Engineer, Building and Safety Official, Code Enforcement Officer, and their designees.
- E. Illicit Connection means any physical connection to a Storm Drain System which has not been permitted by the City of Banning, the Riverside County Flood Control and Water Conservation District, or other appropriate public agency.
- F. Illegal Discharge means any discharge to the Storm Drain System that is not composed entirely of Stormwater Runoff except discharges made pursuant to a National Pollutant Discharge Elimination System (NPDES) permit or as otherwise authorized by the Santa Ana or Colorado River Basin Regional Water Quality Control Board.
- G. Infiltration Basin refers to designs and/or practices for directing stormwater from a basin type of structure to the groundwater table through permeable soils.
- H. Municipal NPDES Permit means an area-wide NPDES permit issued to a government agency or agencies for the discharge of stormwater from a stormwater system, and shall refer to NPDES Permit Number CAS617002 (R7-2008-0001) or its successor.
- I. National Pollutant Discharge Elimination System (NPDES) Permit means a stormwater discharge permit issued by the Santa Ana or Colorado River Basin Regional Water Quality Control Board in compliance with the federal Clean Water Act.
- J. Non-Stormwater Discharge means any discharge to the Storm Drain System that is not entirely composed of stormwater.
- K. Person means any natural person, firm, association, club, organization, corporation, partnership, business trust, company or other entity which is recognized by law as the subject of rights or duties.

- L. Pollutant means anything which causes the deterioration of water quality such that it impairs subsequent and/or competing uses of the water. Pollutants may include but are not limited to paints, oil and other automotive fluids, soil, rubbish, trash, garbage, debris, refuse, waste, fecal coliform, fecal streptococcus, enterococcus, heavy metals, hazardous waste, chemicals, fresh concrete, yard waste from commercial landscaping operations, animal waste, materials that result from the process of constructing a building or structure, nauseous or offensive matter of any kind.
- M. Premises means any building, lot, parcel of land, or portion of land whether improved or unimproved.
- N. Retention Basin allows for relatively large flows of stormwater to enter in a basin type of structure during large storm events for which discharges are limited by outlet structures to a storm drain, the street, or other parts of the Storm Drain System. This type of basin notably has an outlet or discharge point so that stormwater does not accumulate in the basin for extended periods of time, when feasible, such that the stormwater permeates to a groundwater table.
- O. Storm Drain System means any facility by which stormwater may be conveyed to waters of the United States. The Storm Drain System includes, but is not limited to, any roads with drainage systems, streets, curbs, gutters, catch basins, natural and artificial channels, ditches, aqueducts, storm drains, inlets, conduit or other drainage structures.
- P. Stormwater Runoff means surface runoff and drainage associated with rainstorm events and snow melt."

Section 3. Section 13.24.070 (Discharge In Violation of Permit), subsection C., of the Stormwater Code is hereby amended to read in its entirety as follows:

- "C. A copy of the current Municipal NPDES Permit will be filed in the City Clerk's Office."

Section 4. Section 13.24.080 (Illicit Connections) of the Stormwater Code is hereby amended to be entitled "Illicit Connections and Illegal Discharges" and to read in its entirety as follows:

- "A. It is a violation of this Chapter to establish, use, maintain, or continue an Illicit Connection to the City's Storm Drain System, or to commence or continue any Illegal Discharge to the City's Storm Drain System. The prohibition against Illicit Connections is expressly retroactive and applies to past illicit connections when made.
- B. Illegal Discharges include, without limitation, the following:

112

1. Discharges of wash water resulting from the hosing or cleaning of gas stations, auto repair garages, or other types of automotive services facilities;
2. Discharges resulting from the cleaning, repair, or maintenance of any type of equipment or machinery including motor vehicles, cement-related equipment, and port-a-potty service;
3. Discharges of wash water from mobile operations such as oily or greasy discharges from mobile automobile washing or similar mobile services, and/or discharges from steam cleaning, power washing, and carpet cleaning;
4. Discharges of runoff from material storage areas containing chemicals, fuels, grease, oil, or other Hazardous Materials as that term is defined by the federal Department of Transportation; and
5. Discharges of food-related wastes, including without limitation, grease, fish processing, and restaurant kitchen mat and trash bin wash water."

Section 5. Section 13.24.100 (Outdoor storage areas – Commercial and Industrial Facilities) of the Stormwater Code is hereby amended to read in its entirety as follows:

- "A. It is a violation of this chapter for any person to improperly store grease, oil or other hazardous substances in outdoor areas such that any of these substances may leak or otherwise discharge from the container in which the substance is stored. In outdoor areas, no person shall improperly store motor vehicles, machine parts, or other objects in a manner that may leak grease, oil, or other hazardous substances.
- B. To prevent the discharge of hazardous substances from the property, the City shall require the installation of a spill containment system. Spill containment systems may consist of a system of dikes, walls, barriers, berms, or other devices as required.
- C. It is a violation of this Chapter for any person to operate a spill containment system such that it allows incompatible liquids to mix and thereby create a hazardous condition.
- D. Any person or entity that owns or operates a commercial and/or industrial facility(s) shall comply with the provisions of this Chapter. All such facilities shall be subject to inspection as required by this Chapter, California Water Code §§ 13000 *et seq.* (Porter-Cologne Water Quality Control Act), Title 33 U.S.C. §§ 1251 *et seq.* (Clean Water Act), any applicable State or federal regulations promulgated thereto, and any related administrative orders or permits issued in connection therewith."

Section 6. Section 13.24.110 (Construction Sites) of the Stormwater Code is hereby amended to be entitled "Construction Sites and Onsite Storage and Infiltration of Stormwater" and to read in its entirety as follows:

"Any person performing construction work in the City shall comply with the provisions of this Chapter and the Uniform Building Code, latest edition, for erosion and sediment control, as well as City of Banning Ordinance 1388 which is incorporated by reference hereto. In addition, except as waived by or agreed to by the Director or the Director's designee consistent with NPDES permit provisions and requirements, development of all land within the City must include provisions for the management of Stormwater Runoff from the property which is to be developed, including volumetric or flow based treatment control BMP design criteria, and/or exceptions to these requirements, and methodologies used to ensure proper management of Stormwater Runoff post-construction. This management shall consist of constructing storage and/or infiltration facilities, which includes basins. At a minimum, all development will make provisions to store runoff from rainfall events up to and including the one-hundred-year, three-hour duration event. Post-development peak urban runoff discharge rates shall not exceed pre-development peak urban runoff discharge rates.

The City Engineer shall be provided for review, comment and/or approval the drainage study, hydrologic analysis and design of drainage facilities prepared by a licensed professional engineer."

Section 7. Section 13.24.120 (New Development and Redevelopment) of the Stormwater Code is hereby amended to read in its entirety as follows:

- "A. Existing development shall control Stormwater Runoff so as to prevent any deterioration of water quality that would impair subsequent or competing uses of the water. The Director shall identify the BMPs that may be implemented to prevent such deterioration and shall identify the manner of implementation.

- B. Any new development or redevelopment project shall control the volume and rate of Stormwater Runoff from the project so as to prevent any deterioration of water quality which would impair the subsequent or competing uses of the water. The Director shall establish written retention standards and guidelines and/or implement BMPs designed to control the rate and volume of Stormwater Runoff from new developments and redevelopments as may be appropriate to minimize the discharge and transport of pollutants. The standards, guidelines and BMPs shall include a provision permitting adjustments for specific projects where the Director finds that due to unique circumstances not generally applicable to other properties, such adjustments are required but in such circumstances the Director shall provide a written finding.
 - 1. All new development and redevelopment projects that fall into one of the following categories are subject to the Water Quality Management Plan Design Standards for Best Management Practices as set forth in the NPDES Permit Number CAS617002

(Section F.1.c.), which is incorporated by reference hereto, a copy of which is available in the City Clerk's Office:

- a. Singly-family hillside residences that create 10,000 square feet, or more, of impervious area where the natural slope is twenty-five percent (25%) or greater, including single-family hillside residences that create 10,000 square feet of impervious area where the natural slope is ten percent (10%) or greater where erosive soil conditions are known;
 - b. 100,000 square foot commercial and industrial developments;
 - c. Automotive repair shops (with Standard Industrial Classification ("SIC") codes 5013, 7532, 7533, 7534, 7537, 7438, and 7539);
 - d. Retail gasoline outlets disturbing greater than 5,000 square feet;
 - e. Restaurants disturbing greater than 5,000 square feet;
 - f. Home subdivisions with 10 or more housing units; and
 - g. Parking lots 5,000 square feet or more or with 25 or more parking spaces and potentially exposed to non-stormwater discharges.
- C. Acceptable methods and standards for controlling Stormwater Runoff volumes, rates, and pollutant load may include but are not limited to the following:
1. Increase Permeable Areas. Avoid placing impervious surfaces in highly porous soil areas; incorporate landscaping and open space into the project design; use porous materials for or near driveways and walkways; incorporate detention ponds and infiltration pits into the project's design; avoid placing pavement and other impervious surfaces in low lying areas.
 2. Direct Runoff to Permeable Areas. Direct Stormwater Runoff away from impermeable areas to swales, berms, green strip filters, gravel beds, and french drains. Install rain gutters and orient them toward permeable areas. Modify the grade of the property to divert flow to permeable areas and minimize the amount of Stormwater Runoff leaving the property. When designing curbs, berms or other structures, avoid designs which isolate permeable or landscaped areas.
 3. Maximize Stormwater Storage for Reuse. Use retention structures, subsurface areas, cisterns, or other structures to store Stormwater Runoff for reuse or slow release.

4. Any new development shall comply with the provisions of this Chapter, City of Banning Ordinance 1388 and the Municipal NPDES Permit, all of which are incorporated by reference hereto.
- D. In the event the Municipal NPDES Permit is modified, the Director is authorized to apply the criteria of such successor permit.
- E. In addition to the foregoing provisions, all existing and new development and redevelopment plans shall comply with Stormwater Code Section 13.24.110.
- F. Any violation of this Section is punishable as provided in the Banning Municipal Code including this Chapter. In addition, fines may be imposed on a schedule agreed to between the City and any person or entity seeking to engage in a development or redevelopment project in the City."

Section 8. Section 13.24.125, "Issuance, Suspension and Revocation of Permits or Licenses," of the Stormwater Code is hereby added to read in its entirety as follows:

- "A. No permit or license shall be issued unless it is in accordance with all the provisions of City ordinances as codified in the Banning Municipal Code, including Titles 5, 13 and 15, and any permit or license issued contrary to the provisions of the Banning Municipal Code shall be void and of no effect.
- B. An Enforcement Officer, after compliance with the procedures hereunder, may revoke or suspend a permit or license issued by the City upon a finding that:
 1. The permittee or licensee has violated any of the conditions or requirements of the permit or license, or provisions of the Banning Municipal Code and any ordinances, rules or regulations pertaining to the permit or license; or
 2. The permit or license was issued in error; or
 3. The permit or license was issued on the basis of incorrect information supplied by the permittee or licensee.
- C. Revocation or suspension of a permit or license issued by the City is proper when written notice of the violation(s) has been sent to the permittee or licensee by first class mail and the permittee or licensee has failed or neglected to correct the violation within twenty (20) days from the date the written notice was mailed."

Section 9. Section 13.24.130 (Compliance with General Permits), subsection B., of the Stormwater Code is hereby amended to read in its entirety as follows:

"B. Proof of compliance with the Municipal NPDES Permit will be required in a form acceptable to the Director prior to issuance of any city grading, building, or occupancy permits. Due to requirements set forth in the NPDES Permit changing from time to time, said compliance with the Municipal NPDES Permit requires compliance with the most recent NPDES Permit on file in the City Clerk's Office."

Section 10. Section 13.24.150 (Authority to Inspect) of the Stormwater Code is hereby amended to read in its entirety as follows:

- "A. Whenever necessary to make an inspection to enforce any of the provisions of this chapter or the Municipal NPDES Permit, or whenever an Enforcement Officer has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a violation of the provisions of this Chapter, the Enforcement Officer may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the Enforcement Officer by this chapter.
- B. Entry hereunder shall be subject to the following:
1. If such building or premises be occupied, an Enforcement Officer shall first present proper credentials and request entry; and
 2. If such building or premises be unoccupied, an Enforcement Officer shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or obtain a warrant to enter.
- C. Any request for entry made hereunder shall state that the property owner or occupant has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by a duly authorized magistrate. In the event the owner and/or occupant refuses entry after such request has been made, the official is empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.
- D. Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this Chapter and the Municipal NPDES Permit, including but not limited to random sampling and/or sampling in areas with evidence of stormwater contamination, Illicit Connections, Illegal Discharges, Non-Stormwater Discharge to the Stormwater System, follow up inspections as required by the County of Riverside, the Compliance Assistance Program ("CAP") of the NPDES Permit, or the California State Water Quality Regional Control Board, or similar factors.

- E. The property owner and/or occupant are liable for Inspection Fees as set forth in the City's adopted Fee Schedule through City Resolution 2006-114 duly adopted on September 12, 2006, which may be amended by the City Council from time to time."

Section 11. Section 13.24.180 (Requirement to Test or Monitor) of the Stormwater Code is hereby amended to read in its entirety as follows:

"A. An Enforcement officer may request that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to Stormwater Runoff, Illicit Connections, Illegal Discharges, and/or discharge of Pollutants or Non-stormwater to the Stormwater System, undertake such monitoring activities and/or analyses and furnish such reports as the Enforcement Officer may specify. The burden, including costs, of these activities, analyses and reports shall bear a reasonable relationship to the need for the monitoring, analyses and reports and the benefits to be obtained. The recipient of such request shall undertake and provide the monitoring, analyses and/or reports requested within a reasonable time frame as set forth by the Enforcement Officer or as agreed to between the Enforcement Officer and the person.

B. In the event the owner or operator of a facility subject to a monitoring and/or analyses order fails to conduct required monitoring and/or analyses and furnish the required reports in the form required, an Enforcement Officer may cause such monitoring and/or analyses to be performed within thirty (30) days.

1. The costs, therefore, including the reasonable additional administrative costs incurred by the City, shall be the responsibility of the owner of the property and/or the person or entity in possession of the property.
2. The costs thereof shall be invoiced to the owner of the property and/or the person or entity in possession of the property.
3. If the invoice is not paid within sixty (60) days of the issuance thereof, the costs may be levied as a lien upon and against the property and continue in existence until the same shall be paid consistent with the Banning Municipal Code including Chapter 8.48.
4. If the lien is not satisfied by the owner of the property within three (3) months after the completion by an Enforcement Officer of the required monitoring and/or analyses and reports, the property may be sold in satisfaction thereof in a like manner as other real property is sold under execution."

Section 12. Section 13.24.220 (Violations Deemed a Public Nuisance), subsection A., of the Stormwater Code is hereby amended to read in its entirety as follows:

"A. In addition to the penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this Chapter is a threat to the public health, safety and welfare, and may be declared and deemed a nuisance, and may be summarily abated and/or restored by an Enforcement Officer, and/or civil action to abate, enjoin or otherwise compel the cessation of such nuisance may be taken as authorized by the Banning Municipal Code including Chapter 8.48 or in any other manner provided by law."

Section 13. Section 13.24.225, "Payment of Abatement Costs, Penalties or Damages," of the Stormwater Code is hereby added to read in its entirety as follows:

"If payment of an award of abatement costs, penalties or damages is not made within ten (10) days of an administrative or judicial determination of such costs, penalties or damages, the Enforcement Officer may file a Notice of Lien as provided for in the Banning Municipal Code, Chapter 8.48, describing the real property affected and the amount of the costs, penalties or damages claimed by the City with the Office of the County Recorder of Riverside County. The Enforcement Officer may transmit the judgment or award of abatement costs, penalties or damages of the City, which shall place the amount thereof on the Assessment Roll as a special assessment to be paid with County taxes, unless paid earlier. A judgment or award of such costs, penalties or damages may also be enforced in any other manner provided by law, including the property being sold under execution if the recorded lien remains unpaid for at least three (3) months."

Section 14. Section 13.24.240 (Civil Actions), subsection B., of the Stormwater Code is hereby amended to read in its entirety as follows:

"B. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs and attorney's fees of preparing and bringing legal action under this subsection."

Section 15. Section 13.24.270 (Nonexclusivity of Remedies) of the Stormwater Code is hereby amended to read in its entirety as follows:

"Remedies under this Chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal, as provided by federal, State and local law. The remedies provided for herein shall be cumulative and not exclusive."

Section 16. Section 13.24.280 (Appeal) of the Stormwater Code is hereby amended to read in its entirety as follows:

"In addition to the provisions of Chapter 1.20 of the Banning Municipal Code, any person, firm, corporation or organization required by an Enforcement Officer to perform monitoring, analyses, reporting, or corrective activities, or for revocation or suspension of a permit or license, and who is aggrieved by the decision of an Enforcement Officer, may appeal such decision to the Director

within fifteen (15) days following the effective date of the Enforcement Officer's decision by writing to the Director. Upon receipt of such request, the Director shall request a report and recommendation from the Enforcement Officer and shall set the matter for hearing at the earliest practical date not to exceed sixty (60) days from the date the request is filed. At said hearing, the Director may hear additional evidence, and may reject, affirm or modify the Enforcement Officer's decision. Such decision shall be written and final unless appealed to the City Council, which is required pursuant to California Code of Civil Procedure § 1094.6 prior to commencing any civil action commencing."

Section 17. If any part of this Ordinance are held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, and the City hereby declares that it would have passed the remainder of this Ordinance if such invalid portion thereof had been declared invalid or unconstitutional.

Section 18. The City Clerk shall certify to the adoption of this Ordinance and shall cause a copy of the same to be published in a manner prescribed by law. This Ordinance shall take effect and be in force thirty (30) days after the adoption by the City Council for the City of Banning.

PASSED, APPROVED and ADOPTED this ____ day of _____, 2009.

Robert E. Botts, Mayor

ATTEST:

Marie A. Calderon,
City Clerk of the City of Banning

**APPROVED AS TO FORM
AND LEGAL CONTENT:**

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

120

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, do hereby certify that the foregoing Ordinance No. 1415 was duly introduced at a regular meeting of the City Council of the City of Banning, California, held on the 8th day of December, 2009 and was duly adopted at a regular meeting of said City Council held on the 12th day of January 2010 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon
City Clerk of the
City of Banning

121

EXHIBIT "A"

NPDES Permit Number CAS617002 (R7-2008-0001)

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION**

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**ORDER NO. R7-2008-0001
NPDES NO. CAS617002**

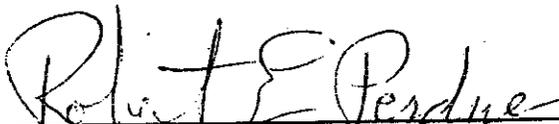
**WASTE DISCHARGE REQUIREMENTS
FOR
DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)
WITHIN THE WHITEWATER RIVER WATERSHED
RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT,
OWNER/OPERATOR
COUNTY OF RIVERSIDE, OWNER/OPERATOR
COACHELLA VALLEY WATER DISTRICT, OWNER/OPERATOR
AND INCORPORATED CITIES OF RIVERSIDE COUNTY WITHIN THE
WHITEWATER RIVER BASIN, OWNERS/OPERATORS**

Table 1. Administrative Information

This Order was adopted by the Regional Water Quality Control Board on:	May 21, 2008
This Order shall become effective on:	May 21, 2008
This Order shall expire on:	May 21, 2013
The Discharger shall file a Report of Waste Discharge in accordance with title 23, California Code of Regulations, not later than 180 days in advance of the Order expiration date as application for issuance of new <i>Waste Discharge Requirements</i> . The date for submitting a complete application for reissuance is November 23, 2012 .	

IT IS HEREBY ORDERED that this Order shall supercede Order No. 01-077 except for enforcement purposes, and, in order to meet the provisions contained in division 7 of the California Water Code (**CWC**) (commencing with section 13000) and regulations adopted hereunder, and the provisions of the federal Clean Water Act (**CWA**) (33 U.S.C. § 1251 et seq.) and regulations and guidelines adopted hereunder, the discharger shall comply with the requirements in this Order.

I, Robert Perdue, **Executive Officer**, do hereby certify that this Order, with all attachments, is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region, on May 21, 2008.



ROBERT PERDUE, Executive Officer

TABLE OF CONTENTS

A. FINDINGS 3
 Characteristics of Whitewater River Region 6
 Salton Sea 8
 Objectives of MS4 Permit 8
Urban Runoff Characterization 9
 Mitigation of *Urban Runoff* 11
Whitewater River Watershed Water Quality 12
 Hydrology and Monitoring 15
 Colorado River Region *Basin Plan* 15
 Federal NPDES *Storm Water* Regulations: 18
 Compliance with CEQA and Other Requirements 18
 B. DISCHARGE PROHIBITIONS 22
 C. ALLOWABLE *NON-STORM WATER* DISCHARGES 23
 D. *RECEIVING WATER* LIMITATIONS 25
 E. SPECIFIC *PERMITTEE* REQUIREMENTS 27
 F. BEST MANAGEMENT PRACTICES 31
 G. *TOTAL MAXIMUM DAILY LOADS* 47
 H. GENERAL PROVISIONS 49
 I. REPORTING REQUIREMENTS 51
 J. NOTIFICATIONS 55
 K. GLOSSARY OF TERMS 57
 L. MONITORING AND REPORTING 70
 M. ADMINISTRATIVE PROVISIONS 78
 N. REQUIRED SUBMITTALS, REPORTS AND COMPLIANCE TIME SCHEDULES 79
 O. FACT SHEET 82
 ATTACHMENT A – NOTICE OF INTENT 93
 ATTACHMENT B – NOTICE OF TERMINATION 94
 ATTACHMENT C – SITE MAP 95
 ATTACHMENT D– LIST OF *PRIORITY POLLUTANTS* 96
 ATTACHMENT E – *STATE BOARD* MINIMUM LEVELS 99
 ATTACHMENT F – MONITORING LOCATION MAP 103

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RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT,
OWNER/OPERATOR
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WHITEWATER RIVER WATERSHED, OWNERS/OPERATORS**

A. FINDINGS

The California Regional Water Quality Control Board, Colorado River Basin Region (*Regional Board*) finds that:

1. On March 9, 2006, the County of Riverside (*County*) and the Riverside County Flood Control and Water Conservation District (*RCFC&WCD*), in cooperation with the Coachella Valley Water District (*CVWD*) and incorporated cities, including the Cities of Banning, Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs and Rancho Mirage (hereinafter collectively referred to as the *Permittees*¹), jointly submitted *National Pollutant Discharge Elimination System (NPDES)* Application No. CAS617002 and a *Report of Waste Discharge (ROWD)* for re-issuance of *MS4 NPDES* permit (*MS4 Permit*).
2. For the purposes of this *MS4 Permit*, the following two *Permittees* are identified as the *Principal Permittees*:

County of Riverside, 4080 Lemon Street, P.O. Box 1090, Riverside, California 92501-1090; and

Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, California 92501

The *CVWD* and the Cities are identified as *Co-Permittees*. Collectively, the *Principal Permittees* and *Co-Permittees* comprise the *Permittees*. Under this organizational framework, the *Principal Permittees* are responsible for coordinating collective *Permittee* activities required by the *MS4 Permit*, including report preparation and submittals to the *Regional Board*.

3. The urbanized area of the *Whitewater River Watershed* under the jurisdiction of the *Permittees* and covered by this *MS4 Permit* is referred to as the *Whitewater River Region*. The *MS4 Permit* area referred to as the *Whitewater River Region*

¹ Permittee(s) and discharger(s) are used interchangeably in this *MS4 Permit*. Also, see Section K. Glossary of Terms for definitions of certain terms used in this *MS4 Permit*. Defined terms are capitalized and shown in italicized, bold lettering throughout the *MS4 Permit*.

is shown in Attachment C – Site Map, incorporated herein and made a part of this **MS4 Permit** by reference.

The Site Map delineates the portion of the **Whitewater River Watershed** subject to urbanization within the term of the **MS4 Permit** and includes the urbanized area of the **Whitewater River Watershed** under the jurisdiction of the **Permittees**.

4. The **Permittees** submitted a revised **Whitewater River Region Storm Water Management Plan (SWMP)**, which is contained in Appendix C of the **ROWD**, dated March 9, 2006, incorporated herein, and made a part of this **MS4 Permit** by reference. Accordingly, the **SWMP** is an enforceable component of this **MS4 Permit**. Similarly, any future **Permittee** modifications of the **SWMP**, if approved by the **Executive Officer**, become enforceable components of this **MS4 Permit** as well.
5. Discharges from the **MS4** facilities throughout the **Whitewater River Region** contribute to a cumulative **Pollutant** load to downstream **Receiving Waters**. Within the **Whitewater River Region**, it is necessary for the **Permittees** to coordinate their **Urban Runoff** management activities to achieve the greatest protection of **Receiving Water** quality. **Permittee** coordination with other **Watershed** stakeholders (e.g., **CalTrans** and the federal Bureau of Indian Affairs) is also necessary. Establishment of a management structure will assist the **Permittees** subject to this **MS4 Permit** to fund and coordinate those aspects of their joint obligations. Also, this management structure will promote cost-effective implementation of the **SWMP** within the **Whitewater River Region**.
6. The **Permittees** entered into an **Implementation Agreement** to carry out the activities, regional compliance programs and responsibilities prescribed in the previously issued **NPDES** Permit, Order No. 01-077. The **Implementation Agreement** sets forth the working framework among the multiple **Permittee** agencies. Specific provisions of that agreement include cost sharing for public education activities and water quality monitoring. The **Implementation Agreement** provides non-binding guidance as to the organizational framework of the **Principal Permittees** and **Co-Permittees** and their respective responsibilities, duties, and obligations imposed by this **MS4 Permit**.
7. The **Permittees** are separate legal entities and, as such, have the authority to develop, administer, implement, and enforce **Urban Runoff** management programs within their respective jurisdictions. In addition, the **Permittees** have maintenance responsibilities for the **MS4** facilities within their jurisdictional boundaries. Therefore, the **Permittees** are responsible for implementing that portion of the **Urban Runoff** management program for any discharges to and from their **MS4** facilities that is commensurate with those jurisdictional limitations. As explained by the U.S. Environmental Protection Agency (**USEPA**) in its preamble discussion of the Phase II Storm Water Final Rule (64 Fed. Reg. 68722, 68765-6 (Dec. 8, 1999)), because municipalities own and operate separate storm sewers, including storm sewers into which third parties may discharge **Pollutants**, **NPDES** permits may require municipalities to control the discharge of **Pollutants** into the storm sewers in the first instance. Therefore, operators of **MS4s** cannot passively

receive and discharge **Pollutants** from third parties. Instead, they must seek to control those discharges to the extent of their legal authority.

8. The **Permittees** may lack legal jurisdiction over discharges into their respective **MS4s** from certain facilities, entities, properties, and other **Point** and **Non-Point Source** discharges otherwise permitted by or under the jurisdiction of the **Regional Board**. The **Regional Board** recognizes that the **Permittees** should not be held responsible for such facilities and/or discharges. Similarly, certain activities that generate **Pollutants** present in **Urban Runoff** are beyond the ability of the **Permittees** to eliminate. Examples may include: operation of internal combustion engines, atmospheric deposition, brake pad wear, tire wear, residues from lawful application of pesticides, nutrient runoff from landscape activities, and leaching of naturally occurring minerals from local geology.
9. Consequently, certain portions of the **Whitewater River Watershed** are excluded from coverage under this **MS4 Permit**, but the **Regional Board** finds that those activities can be and/or are being addressed through other regulatory programs, including programs administered by the **Regional Board** and other federal, state and local regulatory agencies. Excluded areas include:
 - Federal lands and state properties, including, but not limited to, military bases, national forests, hospitals, colleges and universities, and highways;
 - Native American tribal lands;
 - Open space and rural (non-urbanized) areas;
 - Agricultural lands (exempted under the **CWA**); and
 - Utilities and special districts (including school districts, park districts, publicly owned treatment works and water utilities).
10. The **USEPA** Phase I **Storm Water** Final Rule was published in Volume 55 of the Federal Register on November 16, 1990, commencing with page 47990. The Phase I rule sets forth **NPDES** application requirements for: **Storm Water** discharges associated with industrial activity; discharges from a **MS4** serving a population of 250,000 or more (defined as Large **MS4s**); and discharges from **MS4s** serving a population of 100,000 or more but less than 250,000 (defined as Medium **MS4s**). This final rule became effective on December 17, 1990. On March 14, 1991, the **Executive Officer** designated the **Whitewater River Region** as an area required to have a Phase 1 **NPDES MS4 Permit**. The California Department of Finance estimated that as of January 1, 2005, approximately 402,650 persons reside in the incorporated and unincorporated portions of **Riverside County** within the **Whitewater River Watershed**.
11. Discharges of **Storm Water** runoff from lands owned by the California Department of Transportation (**CalTrans**) are currently regulated under a separate **NPDES** permit (Order No. 99-06-DWQ – **NPDES** No. CAS000003) issued by the **State Water Resources Control Board (State Board)**. **CalTrans** is required to comply with specific **Effluent Limitations** prior to discharging from its right-of-way into the **MS4** operated by the **Permittees**.

12. The **County** and the incorporated Cities of Banning, Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs, and Rancho Mirage are general purpose governments with specified land use authorities and code enforcement powers.
13. Each **Permittee** owns and operates the **MS4** through which the **Permittees** discharge **Urban Runoff** into one or more of the following **Receiving Waters**: Coachella Valley Storm Water Channel (**CVSC**), Whitewater River, San Gorgonio River, and Little and Big Morongo Washes within the jurisdiction of the **Regional Board**.
14. The **Permittees** have implemented programs to control litter, trash, and other anthropogenic-sourced materials from **Urban Runoff**. In addition to the municipal ordinances prohibiting littering, the **Permittees** will continue to implement these programs, and continue organizing and implementing other programs to reduce litter and **Illegal Discharges (IDs)**, such as solid waste collection programs, Household **Hazardous Waste (HHW)** collections, **Hazardous Material** spill response, catch basin **Cleaning**, street sweeping, and recycling programs. These programs should effectively address urban sources to reduce these materials in **Urban Runoff** to the **Maximum Extent Practicable (MEP)**. This **MS4 Permit** includes requirements for the continued implementation of programs for litter, trash, and debris control.

Characteristics of Whitewater River Region

15. The **Whitewater River Region** lies within the Whitewater River Hydrologic Unit and is unique relative to other entities regulated as Phase I **MS4s**. Some of the unique characteristics are:
 - The Whitewater River is the major drainage course in the Whitewater River Hydrologic Unit Planning Area. There is perennial flow in the surrounding mountains, but because of diversions and percolation into the basin, this perennial flow infiltrates in the Whitewater River prior to reaching the urbanized area of the Coachella Valley.
 - The **CVSC** is the constructed downstream extension of the Whitewater River channel, starting near Indio and serves as a drainage way for irrigation return flows, treated community wastewater, and **Urban Runoff**.
 - CVWD operates and maintains the **CVSC** and the regional subsurface drainage collection system for the Coachella Valley. General information from **CVWD 2006-07 Annual Review and Water Quality Report** states approximately 245,896 acre feet of water was provided for irrigation.
 - The **Whitewater River Region** is a Phase I **MS4 Permit Area** in the California desert. Precipitation in the **Whitewater River Region** is typically only 3.6 inches per year in the urbanized areas of the Coachella Valley².
 - In addition to the overall lack of precipitation in the **Whitewater River Region**, there is no defined **Rainy (Wet) Season** within the **Whitewater River**

² Water Quality Control Plan, Colorado River Basin – Region 7, California Regional Water Quality Control Board, State Water Resources Control Board October 2005, p. 1-8.

Watershed; winter storms may occur during late fall and early winter months. However, the **General Industrial Storm Water Permit** defines the **Rainy Season** to be between October 1st and May 31st.

Commonly, winter storms result from moisture-laden air from extra-tropical cyclones. Winter storms tend to be low intensity storms that cover large areas of the **Whitewater River Watershed**. The **Whitewater River Region** is also subject to summer thunderstorms, common from July through September. These summer storm events occur when moist and unstable air is subject to convective lifting. Summer thunderstorms tend to be highly localized and commonly result in high intensity precipitation. Finally, the **Whitewater River Region** is also subject to rare summer storms, which normally occur from July to September. These storms are the result of moisture-laden air originating over the Gulf of Mexico or the South Pacific Ocean. These storms can result in heavy precipitation and last several days.

- Although portions of the **Whitewater River Watershed** are experiencing rapid growth, only 3.5 percent of the **Watershed** is comprised of urban (residential, commercial, and industrial) land uses. Non-urban land uses, including rural residential, agriculture, and open space constitute the majority of the land uses.³ It is projected that the population of the **Whitewater River Watershed** will increase approximately 12.7 percent by 2010.⁴ Assuming that the urbanized area of the **Whitewater River Watershed** increases proportionally to population, 96 percent of the **Watershed** would remain in non-urban land uses in 2010. This information can be found in the **ROWD** in Sections 2.2 and 2.3, which summarizes expected population changes in each **Permittee's** jurisdiction as well as identifies significant developments proposed in the upcoming **MS4 Permit** term.
- Over one-half (57 percent) of the **Whitewater River Watershed** consists of federal, state, and tribal lands⁵ that are not under the jurisdiction of the **Permittees**.
- Non-storm **Urban Runoff** discharges to the **Receiving Waters** in the **Whitewater River Region** are relatively minor based on flow volume due to natural soils conditions and **Permittees** requirements that **New Development** infiltrate **Urban Runoff**.
- The **CVSC** has been identified as impaired for pathogens in that portion from Dillon Road to the Salton Sea and for toxaphene in that portion from Lincoln Street to the Salton Sea. Thus, further monitoring must be conducted to adequately characterize the impacts of **Non-Storm Water Urban Runoff** discharges into the **Receiving Waters**.
- The soils in the **Whitewater River Region** consist primarily of sands that promote rapid infiltration of runoff. During most years, perennial mountain streams tributary to the Whitewater River infiltrate or evapotranspire prior to reaching urbanized areas.

³ County of Riverside Assessor, current as of February 2006.

⁴ Southern California Association of Governments, <http://www.scag.ca.gov/forecast/index.htm>.

⁵ County of Riverside Assessor, current as of February 2006.

16. The City of Banning, although included as a *Permittee* on this *MS4 Permit*, does not share an interconnected *MS4* with the remainder of the *Permittees*. The *MS4* operated by the City of Banning discharges directly into the San Gorgonio River, a *Receiving Water*. Most *MS4* discharges from the City of Banning infiltrate. During significant runoff events, storm drainage may flow as far as the *CVWD* infiltration basins near the City of Palm Springs, which are several miles upstream of *Urban Runoff* discharges from the *MS4s* operated by the other *Permittees*. However, the City of Banning is included in this *MS4 Permit* to facilitate coordination with the regional programs implemented by the *Permittees* and to reduce the administrative duties on the *Regional Board*.
17. Similar to the City of Banning, the City of Desert Hot Springs also does not share an interconnected *MS4* with the remainder of the *Permittees*. The *MS4* operated by the City of Desert Hot Springs drains to several washes tributary to the Little and Big Morongo Washes, which are *Receiving Waters*. Most discharges from the City of Desert Hot Springs infiltrate. Rarely, and only during significant storm events, would any storm drainage flow into the Whitewater River. However, the City of Desert Hot Springs is included in this *MS4 Permit* to facilitate coordination with the regional programs implemented by the *Permittees* and to reduce the administrative duties on the *Regional Board*.

Salton Sea

18. The Salton Sea restoration legislation requires that the Secretary for Resources of the Salton Sea Ecosystem Restoration Program to undertake a restoration study to determine the preferred alternative for the restoration of the Salton Sea ecosystem and the permanent protection of wildlife dependent on that ecosystem. The Salton Sea ecosystem is defined to include, but not limited to, the Salton Sea, agricultural lands surrounding the Salton Sea, and the tributaries and drains within the Imperial and Coachella valleys that deliver water to the Salton Sea. The *CVSC* is tributary to the Salton Sea.
19. On June 25, 2007, the Secretary for Resources of the Salton Sea Ecosystem Restoration Program certified that the Final Programmatic Environmental Impact Report is in compliance with the California Environmental Quality Act. On January 24, 2008, the Legislative Analyst's Office released a report titled "Restoring the Salton Sea." The report discusses the history and current state of the Salton Sea and the legal and policy reasons for restoring the Salton Sea. The report also makes recommendations on how the California Legislature should proceed with the restoration.

Objectives of MS4 Permit

20. The objectives of this *MS4 Permit* are to:
- Renew Board Order No. 01-077 *NPDES* No. CAS617002, which regulates *Urban Runoff* within the *Whitewater River Watershed*;
 - Regulate the discharge of *Potential Pollutants* in *Urban Runoff* that discharge to surface waters in the *Whitewater River Region*;

- c. Regulate **Non-Storm Water** discharges associated with retrofit, maintenance, and construction activities at **Permittees'** maintenance yards, facilities, or roads; and
- d. Implement regulatory requirements prescribed in the Water Quality Control Plan for the Colorado River Basin Region of California (**Basin Plan**), and requirements of Section 402(p) of the **CWA** and Title 40 Code of Federal Regulations (40 CFR) Part 122

Urban Runoff Characterization

21. **Urban Runoff** contains **Waste**, as defined in the **CWC**, which contains **Pollutants** that could adversely affect the quality of the **Waters of the State**. The discharge of **Pollutants** in **Urban Runoff** from a **MS4** is a "discharge of **Pollutants** from a **Point Source** into **Waters of the United States**" as defined in the **CWA**.
22. **Urban Runoff** includes discharges from residential, commercial, industrial, and construction areas within the **Whitewater River Region**.
23. **Urban Runoff** may contain elevated levels of pathogens (bacteria, protozoa, viruses), **Sediment**, trash, fertilizers (nutrients, compounds of nitrogen and phosphorus), pesticides (DDT, chlordane, diazinon, chlorpyrifos), heavy metals (cadmium, chromium, copper, lead, zinc), and petroleum products (oil, grease, petroleum hydrocarbons, polycyclic aromatic hydrocarbons). **Urban Runoff** can carry these **Pollutants** to **Receiving Waters** within the **Whitewater River Region**. In addition, although infrequently, **Urban Runoff** from the **Whitewater River Region** can carry these **Pollutants** to other **Receiving Waters**, such as the Whitewater River. These **Pollutants** can then impact the **Beneficial Uses** of the **Receiving Waters** and can cause or threaten to cause a condition of **Pollution** or **Nuisance**.
24. Pathogens (from **Sanitary Sewer Overflows (SSO)**, septic system leaks, and spills and leaks from portable toilets, pets, wildlife and human activities) may impact water contact recreation and non-contact water recreation. Floatables (from trash) are an aesthetic **Nuisance** and may provide a substrate for algae and insect vectors. Oil and grease may coat birds and aquatic organisms, adversely affecting respiration and/or thermoregulation. Other petroleum hydrocarbon components may cause **Toxicity** to aquatic organisms and may impact human health. Suspended and settleable solids (from **Sediment**, trash, and industrial activities) may be deleterious to benthic organisms and may cause anaerobic conditions. **Sediments** and other suspended particulates may cause turbidity, clog fish gills, and interfere with respiration in aquatic fauna. **Sediment** and other suspended particles may also screen out light, hindering photosynthesis and normal aquatic plant growth and development.

Mitigation of Urban Runoff

29. **Pollutants** may be reduced in **Urban Runoff** by the appropriate application of **Pollution Prevention, Source Control, and Treatment Control BMPs** to the **MEP**.
30. This **MS4 Permit** provides flexibility for **Permittees** to petition the **Executive Officer** to substitute a **BMP** under this Order with an alternative **BMP**, if they can provide information and documentation on the effectiveness of the alternative, equal to or greater than the prescribed **BMP** in meeting the objectives of this **MS4 Permit**.
31. **Permittees** with land use authority authorize urbanization and land uses that may generate **Pollutants** and runoff, which can contribute to the impairment of **Receiving Waters**. Therefore, they can also exercise their legal authority to require to the **MEP** that the resulting increased **Pollutant** loads and flows do not further degrade **Receiving Waters**.
32. Urban development has three major phases: (1) land use planning for **New Development**; (2) construction; and (3) the current land use or existing development phase. Because the **Permittees** authorize each of these phases, they have commensurate responsibilities to protect **Receiving Water** quality to the **MEP** during each phase.
33. For many years, the Cities of Cathedral City, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs and Rancho Mirage have required most developments to retain and infiltrate **Urban Runoff** on-site unless located adjacent to an existing **MS4** facility.
34. This **MS4 Permit** requires the **Permittees** to continue to implement the **BMPs** listed in the approved **SWMP** and to continue to effectively prohibit **IDs** and **Illicit Connections (ICs)** to the **MS4**. One of the major elements of the **SWMP** is a **Storm Water/Urban Runoff** Management and Discharge Control Ordinance. Some of the **Permittees** with land use authority have adopted such an ordinance as well as ordinances addressing **Grading** and **Erosion** control (collectively, the "**Storm Water Ordinance**"). The purpose of each **Storm Water Ordinance** is to prohibit **Pollutant** discharges in the **MS4** and to regulate **IC/IDs** and **Non-Storm Water** discharges to the **MS4**.
35. One method to reduce **Potential Pollutants** in **Urban Runoff** is to incorporate **BMPs** to the **MEP** as early in the planning phase of a project as possible. The implementation of **BMPs** is necessary to prevent **Erosion** and sedimentation in storm and non-storm **Urban Runoff** discharges.
36. Construction activities may be a significant cause of **Receiving Water** impairment. Siltation is currently the major cause of river impairment in the United States. **Sediment** runoff rates from construction sites greatly exceed natural **Erosion** rates of undisturbed lands, causing siltation and impairment of **Receiving Waters**. However, siltation has not been identified as a cause of Receiving Water impairment in the Whitewater River Region. In addition to requiring

implementation of the full range of **BMPs**, an effective construction runoff program must include local plan review, permit conditions, field inspections, and enforcement. The **New Development Guidelines (Supplement "A"** to the Riverside County Drainage Area Management Plan) are incorporated into the **Whitewater River Region SWMP**. The purpose of the **New Development Guidelines** is to identify post-construction source **Pollutant** prevention and treatment measures that may be incorporated into development projects.

37. Enforcement of local **Urban Runoff** related ordinances, permits, and plans are an essential component of the **SWMP**. Routine inspections provide an effective means by which **Permittees** can evaluate compliance. Inspections are especially important at high-risk areas for **Pollutant** discharges, such as at industrial and construction sites.
38. Education is the foundation of the **SWMP**. Education of the **Permittee's** planning, inspection, and maintenance department staff is critical. The Public Education Program contained in the **SWMP** incorporates a well-developed approach to education and outreach. The program, entitled "Only Rain Down The Storm Drain **Pollution Prevention** Program", combines resources and efforts from the three **County MS4** permit programs to effectively communicate responsible **Urban Runoff** management. Public participation is necessary to ensure that all stakeholder interests, and a variety of creative solutions, are considered. Public participation is important in the development of a complete **Urban Runoff** management program. The **Permittees** propose to continue to emphasize the public participation component of this program.
39. The **SWMP**, Appendix A of the March 9, 2006 **ROWD**, submitted by the **Permittees**, meets the **MEP** standard, as defined in the **MS4 Permit**, with the exception of those provisions of the **MS4 Permit** that require the **SWMP** to be modified. Those portions of the **SWMP** that are to be modified are sufficiently described to enable the **Executive Officer** to review and approve the modifications on behalf of the **Regional Board**.

Whitewater River Watershed Water Quality

40. The Whitewater River is defined in the **Basin Plan** as the reach from the headwaters in the San Gorgonio Mountains to (and including) the Whitewater recharge basins near the Indian Avenue crossing in the City of Palm Springs. The reach of the Whitewater River from the Whitewater recharge basins near Indian Avenue to the **CVSC** near Indio is defined as a Wash (Intermittent or **Ephemeral Stream**) in the **Basin Plan**. The Whitewater River is not listed as an **Impaired Waterbody** within the **Whitewater River Region**. Due to the small percentage of the **Whitewater River Watershed** and the **Whitewater River Region** in Urban land uses, **Urban Runoff** constitutes a minor percentage of the total flow in the Whitewater River under storm conditions.
41. The **CVSC** is defined as the perennial reach of the Whitewater River, starting approximately from the City of Indio and terminating at the Salton Sea. A portion of the **CVSC** is contained within the **Whitewater River Region** and the upper segment of this channel has intermittent flows to a point just upstream of Dillon

25. It is recognized that **Storm Water** flows from non-urbanized areas such as National Forests, State Parks, Wilderness, and Agriculture, as shown on the Site Map, naturally exhibit high levels of suspended solids due to climate, hydrology, geology, and geography.⁶ Runoff from these non-urbanized areas may flow into the MS4 and affect flow and water quality. Toxic substances (from pesticides, petroleum products, metals, and industrial **Wastes**) can cause acute and/or chronic **Toxicity**, and may bioaccumulate in organisms to levels that may be harmful to human health. Nutrients (from fertilizer use, fire fighting chemicals, decaying plants, confined animal facilities, pets, and wildlife) can cause excessive algal blooms. These blooms may lead to problems with taste, odor, color and increased turbidity, and may depress the dissolved oxygen content leading to fish kills.

26. There is a direct correlation between "urbanization" and "impacts to receiving water quality." In general, the more heavily developed the area, the greater the potential impact to receiving waters from **Urban Runoff**.

27. During urban development two important changes may occur:

- a. Natural pervious ground cover is converted to impervious surfaces such as paved highways, streets, rooftops, and parking lots. Natural soil can both absorb rainwater and remove **Pollutants**. Because pavement and concrete can neither absorb water nor remove **Pollutants**, the absorptive characteristics of the land are greatly reduced; and
- b. Urban development may create new **Pollution** sources as human population density increases and brings with it proportionately higher levels of vehicle emissions, vehicle maintenance **Wastes**, municipal sewage, pesticides, **HHW**, pet wastes, trash, etc., which may either be washed into or directly dumped into the **MS4**.

Because of these two changes the runoff leaving the developed urban area may be significantly greater in volume, velocity, and **Pollutant** load than the predevelopment runoff from the same area. These effects are minimized when effective **Best Management Practices (BMPs)** to manage **Urban Runoff** are implemented and maintained.

28. **Urban Runoff** may contain **Pollutants** that may threaten human health. Individually and in combination, **Pollutants** discharged from **MS4s** may cause or threaten to cause a condition of **Pollution** (i.e., an alteration of water quality by **Waste** to a degree which unreasonably affects the waters for designated **Beneficial Uses** and/or facilities which serve these designated **Beneficial Uses**), **Contamination**, or **Nuisance**. The discharge of **Pollutants** from **MS4s** may cause the concentration of **Pollutants** to prevent attainment of applicable **Receiving Water Quality Objectives (WQO)** and thereby impair or threaten to impair designated **Beneficial Uses**.

⁶ Riverside County Flood Control and Water Conservation District's "Hydrology Manual," dated April 1978; page II-4 of "Santa Ana River, Design Memorandum No. 1, Phase II GDM on the Santa Ana River Mainstem, including Santiago Creek, Volume 2, Prado Dam" dated August 1988 and D.I. Inman & S.A. Jenkins "Climate Change and the Episodicity of Sediment Flux in Small California Rivers," Journal of Geology, Volume 107, pp. 251-270, 1999.

Road in the City of Indio. The **CWA** Section 303(d) List has identified portions of the **CVSC** that are not meeting **Water Quality Standards (WQS)** for pathogens and toxaphene. That portion of the **CVSC** from Dillon Road to the Salton Sea is listed as not meeting **WQS** for pathogens and the portion from Lincoln Street to the Salton Sea is listed as not meeting **WQS** for toxaphene. The 303(d) list notes that the source of the pathogen impairment is not known and a **total maximum daily load (TMDL)** and implementation plan are required to be developed to address this impairment pursuant to **CWA** Section 303(d). Toxaphene will be addressed in a future **TMDL**.

42. Bacteria data provided by the three **NPDES** wastewater treatment facilities and the **MS4 Permittees** discharging into the **CVSC** indicates that **Urban Runoff** and **Storm Water** flows contain fecal coliform levels that would violate current **WQOs** for Water Contact Recreation (**REC 1**) and Non-contact Water Recreation (**REC 2**) beneficial uses for the **CVSC**. Measured fecal coliform levels range up to 900,000 Most Probable Number [MPN] 100 milliliter [ML] (MPN/100 ml) at Avenue 52 Storm Drain in Coachella, September 1999, and 70,000 MPN/100 ml at Monroe Street Storm Drain in Indio, April 1999.
43. A Bacterial Indicator TMDL for CVSC was adopted by the Regional Board on May 16, 2007. The Regional Board also directed staff following adoption of the TMDL to conduct three public workshops with affected stakeholders and other interested persons to discuss the requirements of the TMDL. In the meantime, the TMDL was forwarded to the State Water Board for its review and approval. The first public workshop was held on July 25, 2007, the second was held on November 19, 2007, and the third was held on April 23, 2008.

The TMDL was withdrawn from the State Water Board's consideration of adoption, which had been placed as an agenda item to be heard at the State Water Board's March 18, 2008 public meeting. Pursuant to oral and written comments made in connection with the first two workshops, however, the Regional Board's Executive Officer determined that it would be appropriate to request the State Water Board to withdraw the TMDL from its agenda for a certain period of time. The withdrawal request letter, dated January 18, 2008, and addressed to the State Water Board Executive Director, explained that the withdrawal was needed to address comments and concerns raised by the Coachella Valley agricultural community regarding the appropriateness of being named as a Responsible Party in the TMDL Implementation Plan without sufficient data.

To address this data gap, agricultural dischargers and the Coachella Valley Water District proposed conducting the following tasks over an 18-month period: (1) for the first three months following State Water Board approval of the withdrawal request: the agricultural community would form a Task Force to develop a monitoring plan, which would be submitted to the Regional Board Executive Officer for his review and approval; (2) for the next 12 months: the Task Force would conduct quarterly monitoring; and (3) for the last three months: the Task Force would prepare a report of the sampling results and submit the report to the Regional Board for its consideration of approval.

Hydrology and Monitoring

45. An effective monitoring program characterizes **Urban Runoff** discharges, identifies problem areas, and determines the impact of **Urban Runoff** on **Receiving Waters**. However, due to the limited annual rainfall and the ephemeral nature of most **Receiving Waters** within the **Whitewater River Region**, collecting sufficient wet and dry weather data to characterize discharges and assess improvement or degradation in water quality due to **Urban Runoff** quality control program implementation is challenging at best. Under normal hydrologic conditions in the **Whitewater River Region**, there are limited flowing **Receiving Waters** impacted by **Urban Runoff**.
46. Although local climate and hydrology make consistent sample collection difficult, it is feasible to safely collect data from **MS4** outfalls and certain **Receiving Waters** during daylight hours of wet weather events that do not result in flash flood warnings and/or watches. The **Permittees** should continue to take efforts to collect data for the ultimate purpose of characterizing **Urban Runoff** discharges, effectiveness of implemented **BMPs**, and determining the impacts of those discharges on **Receiving Waters**, where applicable and feasible.
47. Due to the general ephemeral nature of the **Whitewater River Region** during dry weather conditions, **IC/IDs** to **Receiving Waters** from **MS4** outfalls are easily identified by field inspections. Therefore, this **MS4 permit** requires, in part, that the **Permittees'** dry weather monitoring should focus on field identification and elimination of **IC/IDs** by **Permittee's** staff.

Colorado River Region Basin Plan

48. The **Basin Plan**, as amended to date, designates the **Beneficial Uses** of ground and surface waters in the Colorado River Basin Region. The **Whitewater River Region** lies within the Whitewater River Hydrologic Unit Planning Area.
49. The majority of surface water bodies within the **Whitewater River Region** are designated as **Washes**. These include the Whitewater River, starting from the Whitewater recharge basins located west of the City of Palm Springs and extending to the upstream channel reach located one-quarter mile west of the Monroe Street crossing near the City of Indio. The majority of the urban area drains into this reach of the Whitewater River. The **Permittee's MS4** facilities drains into the following **Washes**:
- Smith Creek
 - Montgomery Creek
 - West Cathedral Canyon Channel
 - East Cathedral Canyon Channel
 - West Magnesia Canyon Channel
 - East Magnesia Canyon Channel
 - Palm Valley Storm Water Channel

- Deep Canyon Storm Water Channel
- Bear Creek
- La Quinta Resort Channel
- La Quinta Evacuation Channel
- Whitewater River from Whitewater recharge basins to the **CVSC**

The designated **Beneficial Uses** for the aforementioned **Washes** are Freshwater Replenishment (**FRSH**), Groundwater Recharge (**GRW**), Non-contact Water Recreation (**REC 2**) and Wildlife Habitat (**WILD**). All of these **Washes** are intermittent.

50. The **Permittees** also own and operate **MS4** facilities that discharge **Urban Runoff** into the following surface water bodies, which have additional designated **Beneficial Uses**:

- a. San Gorgonio River
- b. Whitewater River
- c. Tahquitz Creek
- d. Palm Canyon Creek
- e. Little Morongo Creek
- f. **CVSC**

Beneficial Uses for these specific water bodies are identified and are summarized in the following table. In addition to the **Beneficial Uses** described above, these include Municipal and Domestic Supply (**MUN**), Agriculture Supply (**AGR**), Aquaculture (**AQUA**), Industrial Service Supply (**IND**), Water Contact Recreation (**REC 1**), Warm Freshwater Habitat (**WARM**), Cold Freshwater Habitat (**COLD**), Hydropower Generation (**POW**) and Preservation of Rare, Threatened or Endangered Species (**RARE**). Note that present **Beneficial Uses** are designated by X; potential **Beneficial Uses** are designated by P and intermittent uses by I:

Waterbody	MUN	AGR	AQUA	FRSH	IND	GWR	REC1	REC2	WARM	COLD	WILD	POW	RARE	Location
CVSC ⁷				X			X ⁸	X ⁹	X		X		X ¹⁰	Perennial reach from approx. Dillon Road to Salton Sea
Little Morongo Creek	P	X				X	X	X	X		X			
Palm Canyon Creek	P	X				X	X	X	X		X			
San Gorgonio River	P	X				X	X	X		X	X			
Tahquitz Creek	P					X	X	X		X	X			
Whitewater River ¹¹	X	X				X	X	X	I	X	X	X		From headwaters to Whitewater Recharge Basins [*]
Washes ¹² (<i>Ephemeral Streams</i>)				I ¹³		I		I	I ¹⁴		I			Whitewater River from Whitewater Recharge Basins to perennial reach of CVSC (near Dillon as of 4/2005)

51. The Coachella Valley ground water basin has the following **Beneficial Uses** designated in the **Basin Plan**:

- **MUN**;
- **AGR**; and
- **IND**.

52. Numeric and narrative **WQOs** exist for the **Receiving Waters** in the **Whitewater River Region**. It is not feasible or appropriate at this time to establish **Numeric Effluent Limitations** due to the variability in the quality, quantity, and complexity of **Urban Runoff**. Moreover, the impact of **Urban Runoff** discharges on the quality of **Receiving Waters** has not been fully determined. Therefore, the **Effluent Limitations** contained in this **MS4 Permit** are narrative and include the **SWMP's** requirement to implement appropriate **BMPs**. The narrative **Effluent Limitations** constitute compliance with the requirements of the **CWA** and can be found in Section B. **DISCHARGE PROHIBITIONS**, Section D. **RECEIVING WATER LIMITATIONS** and Section G. **TOTAL MAXIMUM DAILY LOADS** of this **MS4 Permit**.

⁷ Section of perennial flow from approximately Indio to the Salton Sea.

⁸ Unauthorized use.

⁹ Unauthorized use.

¹⁰ Rare, endangered or threatened wildlife exists or utilizes these waterway(s). If the **RARE Beneficial Use** may be affected by a water quality control decision, responsibility for substantiation of the existence of rare, endangered or threatened species on a case-by-case basis is upon the California Department of Fish and Game on its own initiative and/or at the request of the **Regional Board**; and such substantiation must be provided within a reasonable time frame as approved by the Regional Board.

¹¹ Includes the section of flow from the headwaters in the San Gorgonio Mountains to (and including) the Whitewater recharge basins near Indian Avenue crossing in Palm Springs.

¹² Washes – Intermittent or **Ephemeral Streams**, including the section of ephemeral flow in the Whitewater River and the **CVSC** from Indian Avenue to approximately ½ mile west of Monroe Street crossing.

¹³ Applies only to tributaries to Salton Sea.

¹⁴ Use, if any, to be determined on a case-by-case basis.

A. FINDINGS

139

Federal NPDES Storm Water Regulations:

53. Federal regulations for Phase I **MS4 Storm Water** discharges were promulgated by the **USEPA** on November 16, 1990 (40 CFR Parts 122, 123, and 124) and apply to the discharge regulated by this **MS4 Permit**.
54. Pursuant to Section 402 of the **CWA** and Section 13370 of the **CWC**, the **USEPA** approved the California State Program to issue and enforce **NPDES** permits for discharges to surface **Waters of the State**. Section 405 of the Water Quality Act of 1987 added Section 402(p) to the **CWA**, which requires the **USEPA** to develop a phased approach to regulate **Storm Water** discharges under the **NPDES** program.
55. Section 402(p) of the **CWA** requires the issuance of **NPDES** permits for **Storm Water** discharges for which the **USEPA** Regional Administrator or the **Regional Board**, as the case may be, determines that the **Storm Water** discharges contribute to a violation of a **WQS**, or is a significant contributor of **Pollutants** to **Waters of the United States**.
56. Section 402(p) of the **CWA** requires **NPDES** permits for **MS4s** to include a requirement to effectively prohibit **Non-Storm Water** discharges into **MS4s** unless such discharges are either authorized by a separate **NPDES** permit or not prohibited in accordance with Section C. **ALLOWABLE NON-STORM WATER DISCHARGES** of this **MS4 Permit**. The requirement in the **CWA** to reduce **Pollutants** to the **MEP** provides a minimum level of water quality protection. The State may develop **WQS** more stringent than those required by the **CWA**.
57. Title 40 CFR Part 122.26 requires a proposed management program that covers the duration of this **MS4 Permit**. It must include a comprehensive planning process that involves public participation and, where necessary, intergovernmental coordination to reduce the discharge of **Pollutants** to the **MEP** using management practices, control techniques, and system, design, and engineering methods, and such other provisions that are appropriate. The proposed management program is described in the **Whitewater River Region SWMP**. The proposed management program shall include a description of **Structural** and **Source Control BMPs** to reduce **Pollutants** discharged from **Urban Runoff** into the **MS4** that are to be implemented during the term of this **MS4 Permit**.

Compliance with CEQA and Other Requirements

58. The **Permittees** will be required to comply with amendments to **WQS** or **Waste Discharge Requirements (WDRs)**, which may be imposed by the **USEPA** or the State of California prior to the expiration of this **MS4 Permit**. This **MS4 Permit** may be reopened to include **WLAs** to address **Pollutants** in **Urban Runoff** causing or contributing to the impairments in **Receiving Waters** and/or other requirements developed and adopted by the **Regional Board**. The **MS4 Permit** also includes language requiring the **Permittees** to amend the **SWMP** to address **TMDL Basin Plan** Amendments, including incorporation of **WLA** requirements.

59. **CWC** Section 13243 provides that a Regional Board, in a water quality control plan or in **WDRs**, may specify certain conditions or areas where the discharge of **Waste** or certain types of **Waste** is not permitted.
60. The issuance of an **NPDES** permit for this discharge is exempt from the provisions of the California Environmental Quality Act (**CEQA**), Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code, in accordance with **CWC** Section 13389. In accordance with Section 15301, Chapter 3, Division 6, Title 14 of the California Code of Regulations, the issuance of this **MS4 Permit**, which governs the operation of an existing facility involving negligible or no expansion of use beyond that previously existing, is exempt from **CEQA**.
61. The **Regional Board** has considered state and federal anti-degradation requirements pursuant to 40 CFR 131.12 and **State Board** Resolution No. 68-16. This **MS4 Permit** does not allow degradation of surface **Waters of the State**. Therefore, compliance with the **MS4 Permit** will satisfy these anti-degradation requirements.
62. The **State Board** issued two state-wide general permits to address **Storm Water** discharges from construction activities: the General Permit for Storm Water Discharges Associated with Construction Activities from Small Linear Underground/Overhead Projects (**NPDES** No. CAS000005) and the General Construction Activity Storm Water Permit (**NPDES** No. CAS000002) (collectively the "**General Construction Permit**"). Construction activities that qualify are required by federal regulations to obtain permit coverage under either an individual **NPDES** permit or these statewide **General Construction Permit** by filing a **Notice of Intent (NOI)** with the **State Board**. This **MS4 Permit** provides equivalent coverage of **Permittee** construction projects as the **General Construction Permit**. Therefore, separate coverage under the **General Construction Permit** is not necessary for **Permittee** construction projects within the **Whitewater River Region**. **Permittee** projects outside of the **Whitewater River Region** must obtain the appropriate **General Construction Permit** coverage, where applicable.
63. **State Mandates.** This Order does not constitute an unfunded local government mandate subject to subvention under Article XIII B, Section 6 of the California Constitution for several reasons including, but not limited to, the following. First, this Order implements federally mandated requirements under federal Clean Water Act section 402, subdivision (p)(3)(B). (33 U.S.C. § 1342(p)(3)(B).) This includes federal requirements to effectively prohibit **Non-Storm Water** discharges, to reduce the discharge of pollutants to the maximum extent practicable, and to include such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. Federal cases have held these provisions require the development of permits and permit provisions on a case-by-case basis to satisfy federal requirements. (*Natural Resources Defense Council, Inc., v. U.S. E.P.A.* (9th Cir. 1992) 966 F.2d 1292, 1308, fn. 17.) The authority exercised under this Order is not reserved state authority under the Clean Water Act's savings clause (cf. *Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 627-628 [relying on 33 U.S.C. § 1370, which allows a state to develop requirements which are not "less stringent" than federal requirements]), but instead, is part of a federal mandate to develop pollutant reduction requirements

for municipal separate storm sewer systems. To this extent, it is entirely federal authority that forms the legal basis to establish the permit provisions. (See *City of Rancho Cucamonga v. Regional Water Quality Control Bd.—Santa Ana Region* (2006) 135 Cal.App.4th 1377, 1389; *Building Industry Ass'n of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 882-883.)

Likewise, the provisions of this Order to implement **total maximum daily loads** (TMDLs) are federal mandates. The federal Clean Water Act requires TMDLs to be developed for water bodies that do not meet federal water quality standards. (33 U.S.C. § 1313(d).) Once the U.S. Environmental Protection Agency or a state develops a TMDL, federal law requires that permits must contain effluent limitations consistent with the assumptions of any applicable wasteload allocation. (40 C.F.R. § 122.44(d)(1)(vii)(B).)

Second, the **Permittees'** obligations under this Order are similar to, and in many respects less stringent than, the obligations of non-governmental dischargers who are issued NPDES permits for storm water discharges. With a few inapplicable exceptions, the Clean Water Act regulates the discharge of pollutants from point sources (33 U.S.C. § 1342) and the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) regulates the discharge of waste (Wat. Code, § 13263), both without regard to the source of the pollutant or the waste. As a result, the "costs incurred by local agencies" to protect water quality reflect an overarching regulatory scheme that places similar requirements on governmental and nongovernmental dischargers. (See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 57-58 [finding comprehensive workers compensation scheme did not create a cost for local agencies that was subject to state subvention].)

The Clean Water Act and the Porter-Cologne Water Quality Control Act largely regulate storm water with an even hand, but to the extent there is any relaxation of this even-handed regulation, it is in favor of the local agencies. Except for municipal separate storm sewer systems, the Clean Water Act requires point source discharges, including discharges of storm water associated with industrial or construction activity, to comply strictly with water quality standards. (33 U.S.C. § 1311(b)(1)(C), *Defenders of Wildlife v. Browner* (1999) 191 F.3d 1159, 1164-1165 [noting that industrial storm water discharges must strictly comply with water quality standards].) As discussed in prior State Water Resources Control Board decisions, this Order does not require strict compliance with water quality standards. (SWRCB Order No. WQ 2001-15, p. 7.) The Order, therefore, regulates the discharge of waste in municipal storm water more leniently than the discharge of waste from non-governmental sources.

Third, the **Permittees** have the authority to levy service charges, fees, or assessments sufficient to pay for compliance with this Order. The fact sheet demonstrates that numerous activities contribute to the pollutant loading in the municipal separate storm sewer system. Local agencies can levy service charges, fees, or assessments on these activities, independent of real property ownership. (See, e.g., *Apartment Ass'n of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 842 [upholding inspection fees associated with renting property].) The ability of a local agency to defray the cost of a program without

raising taxes indicates that a program does not entail a cost subject to subvention. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487-488.)

Fourth, the **Permittees** have requested permit coverage in lieu of compliance with the complete prohibition against the discharge of pollutants contained in federal Clean Water Act section 301, subdivision (a) (33 U.S.C. § 1311(a)) and in lieu of numeric restrictions on their discharges. To the extent that local agencies have voluntarily availed themselves of the permit, the program is not a state mandate. (Accord, *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 107-108.) Likewise, the **Permittees** have voluntarily sought a program-based municipal storm water permit in lieu of a numeric limits approach. (See *City of Abilene v. U.S. E.P.A.* (5th Cir. 2003) 325 F.3d 657, 662-663 [noting that municipalities can choose between a management permit or a permit with numeric limits].) The local agencies' voluntary decision to file a report of waste discharge proposing a program-based permit is a voluntary decision not subject to subvention. (See *Environmental Defense Center v. U.S. E.P.A.* (9th Cir. 2003) 344 F.3d 832, 845-848.)

Finally, the local agencies' responsibility for preventing discharges of waste that can create conditions of pollution or nuisance from conveyances that are within their ownership or control under state law predates the enactment of Article XIII B, Section 6 of the California Constitution.

64. The **Regional Board** has notified the **Permittees** and other interested agencies and **Persons** of its intent to re-issue this **MS4 Permit** for discharges of **Urban Runoff** into the **Whitewater River Region**.

The **Regional Board**, in a public hearing, heard and considered all comments pertaining to this **MS4 Permit**. The **Regional Board** reserves the right to reopen this **MS4 Permit** after proper notice and an opportunity to be heard, is given to all concerned parties.

B. DISCHARGE PROHIBITIONS

1. The discharge of **Urban Runoff** from the **Permittees' MS4** to **Waters of the United States** containing **Pollutants**, which have not been reduced to the **MEP**, is prohibited.
2. The **Permittees** shall continue to prohibit **IC/IDs** to the **MS4** through their **Storm Water Ordinances**.
3. The following discharge prohibitions are applicable to any **Person**, as defined by Section 13050(c) of the **CWC**, who is a citizen, domiciliary, or political agency or entity of California and whose activities in California could affect the quality of **Waters of the State** within the boundaries of the Colorado River Basin Region:
 - a. The discharge of **Waste** to **Waters of the State** in a manner causing, or threatening to cause, a condition of **Pollution, Contamination, or Nuisance**, as defined in **CWC** Section 13050.
 - b. The discharge of **Pollutants** or dredged or fill material to **Waters of the United States**, except as authorized by an **NPDES** permit or a dredged or fill material permit subject to the exemption described in **CWC** Section 13376.
 - c. Any discharge to the **MS4** that is not composed entirely of "**Storm Water**" is prohibited, unless authorized by Section C. ALLOWABLE **NON-STORM WATER** DISCHARGES.
 - d. The unauthorized discharge of treated or untreated sewage to **Waters of the State** or to the **MS4**.
 - e. The discharge of oil, gasoline, diesel fuel, or any other petroleum derivative or any toxic chemical or **Hazardous Waste** into the **MS4**.
 - f. **Urban Runoff** discharges from the **Permittees' MS4** which cause or contribute to exceedances of **Receiving WQS** (as defined by "**Beneficial Uses**" and **WQOs** in the **Basin Plan** and amendments thereto).

C. ALLOWABLE NON-STORM WATER DISCHARGES

1. Each **Permittee** shall effectively prohibit all types of **Non-Storm Water** discharges into the **MS4** unless such discharges are authorized in accordance with Item No. 2 of this Section.
2. The following discharges may be allowed, unless identified by the **Permittees** or the **Regional Board** as a significant source of **Pollutants** to the **Receiving Waters**:
 - a. Discharges covered by **NPDES** permits or written clearances issued by the **Regional or State Board**;
 - b. Potable water line flushing and other potable water sources;
 - c. Passive footing drains;
 - d. Water from crawl space pumps;
 - e. Discharges from landscape irrigation, lawn/garden watering and other irrigation waters;
 - f. Dechlorinated swimming pool discharges;
 - g. Non-commercial vehicle washing; (e.g. residential car washing (excluding engine degreasing) and car washing fundraisers by non-profit organizations);
 - h. Diverted stream flows;
 - i. Rising ground waters and natural springs;
 - j. Groundwater infiltration as defined in 40 CFR 35.2005 (20) and uncontaminated pumped ground water;
 - k. Flows from riparian habitats and wetlands;
 - l. Street washing activities;
 - m. Emergency water flows (i.e., fire fighting flows and other flows necessary for the protection of life and property) do not require **BMPs** and need not be prohibited. However, appropriate **BMPs** shall be considered where practicable when not interfering with emergency public health and safety issues;
 - n. Waters not otherwise containing **Wastes**, as defined in **CWC** Section 13050 (d); and
 - o. Other types of discharges identified and recommended by the **Permittees** and approved by the **Regional Board**.
3. For purposes of this **MS4 Permit**, a discharge may include **Storm Water** and other types of discharges as indicated in Section C.2.

4. If the *Permittee* or the *Regional Board* identifies an allowable discharge category from Section C.2 that causes or contributes to an exceedance of *WQS* or is a significant contributor of *Pollutants* to *Waters of the United States*, a *Permittee* shall either:

Prohibit the discharge category from entering its *MS4* or ensure that appropriate *BMPs* are implemented to the *MEP* to reduce or eliminate *Pollutants* resulting from the discharge. The *Permittees* shall also provide a report to the *Regional Board* per Section D. *RECEIVING WATER LIMITATIONS*, Item No. 2.

D. RECEIVING WATER LIMITATIONS

1. The **SWMP** and its components shall be updated to achieve compliance with **Receiving Water Limitations** associated with discharges of **Urban Runoff**. It is expected that compliance with **Receiving Water Limitations** will be achieved through an iterative process and the application of **BMPs** to the **MEP**.
2. The **Permittees** shall comply with Discharge Prohibitions, Allowable **Non-Storm Water** Discharges, and **Receiving Water Limitations** through timely implementation of control measures and other actions to reduce **Pollutants** in the discharges in accordance with the **SWMP** and other requirements of this **MS4 Permit**, including any modifications. If exceedance(s) of **WQS** persist, notwithstanding implementation of the **SWMP** and other requirements of this **MS4 Permit**, the **Permittees** shall assure compliance with Discharge Prohibitions, Allowable **Non-Storm Water** Discharges, and **Receiving Water Limitations** by complying with the following procedure:
 - a. Upon a determination by the **Permittees** or **Regional Board** that discharges of **Urban Runoff** from the **MS4** are causing or exceeding or contributing to an exceedance of an applicable **WQS**, the **Permittees** shall promptly notify **Regional Board** staff within two (2) working days by telephone (760.346.7491) or e-mail notice and thereafter submit within 30 days a report to the **Regional Board** that describes **BMPs** that are currently being implemented and additional **BMPs** that will be implemented to prevent or reduce any **Pollutants** that are causing or contributing to the exceedance of **WQSs**. The report shall include an implementation schedule. The **Regional Board** may require modifications to the report;
 - b. Alternatively, if the exceedances of the applicable **WQSs** are due to discharges to the **MS4** from activities or areas not under the jurisdiction of the **Permittees**, the **Permittees** shall promptly notify **Regional Board** staff within two (2) working days by telephone (760.346.7491) or e-mail notice and thereafter shall provide documentation of these discharges and submit a report within 30 days to the **Regional Board**. The **Permittees** shall trace the source of the discharge upstream by contacting the appropriate neighboring **MS4** facility that does have jurisdiction to locate the source of the **Pollution**;
 - c. Submit any modifications to the above reports (either D.2.a. or D.2b., as appropriate) within 30 days when required by the **Regional Board**;
 - d. Within 30 days following approval by the **Regional Board** of the report described above in D. **RECEIVING WATER LIMITATIONS**, 2.a., the **Permittees** shall revise the **SWMP** and monitoring program to incorporate the approved modified **BMPs** that will be implemented, the implementation schedule, and any additional monitoring required; and
 - e. Implement the revised **SWMP** and monitoring program in accordance with the approved implementation schedule.

D. RECEIVING WATER LIMITATIONS

147

As long as the **Permittees** have complied with the procedures set forth above and are implementing the revised **SWMP**, the **Permittees** do not have to repeat the same procedure for continuing or recurring exceedances of the same **Receiving Water Limitations**, unless directed in writing by the **Regional Board** or **Executive Officer** to develop and implement additional **BMPs**, including **Source** and **Treatment Controls BMPs**.

E. SPECIFIC PERMITTEE REQUIREMENTS1. The **Principal Permittees** shall:

- a. Coordinate **MS4 Permit** compliance activities;
- b. Establish uniform data submittal format;
- c. Prepare the **Annual Report**;
- d. Forward information received from the **Regional Board** to the **Permittees**;
- e. Implement **MS4 Permit** activities of common interest;
- f. Inform **Permittees** on **USEPA** and **Regional Board** regulations pertaining to the **MS4**;
- g. Convene all **Desert Task Force** meetings that are held at least quarterly and consist of one or more representatives from each **Permittee**. The **Desert Task Force** shall direct the maintenance and update of the **SWMP** and coordinate the implementation of the overall **Urban Runoff** program, as described in the **ROWD**; and
- h. Maintain and update the **Whitewater River Region** map.

2. Each **Permittee** shall:

- a. Comply with the requirements of the **MS4 Permit** within its jurisdictional boundaries;
- b. Annually review the **Whitewater River Region** map to ensure that it encompasses urbanized areas within the jurisdiction of the **Permittee**. If additional urbanized areas (or non-urbanized areas are incorrectly identified as urbanized) within the jurisdiction of the **Permittee** are identified, the **Permittee** shall submit an amendment to the **Whitewater River Region** map to the **Principal Permittees** as part of the **Annual Report**;
- c. Prepare and provide documents required by the **MS4 Permit** to the **Principal Permittees** in a timely manner;
- d. Implement the **Whitewater River Region SWMP** consistent with this **MS4 Permit** to:
 - i. Reduce **Potential Pollutants** in **Urban Runoff** from municipal, commercial, industrial, and residential areas to the **MEP**;
 - ii. Reduce **Potential Pollutants** in **Urban Runoff** from land development and construction sites to the **MEP** through the use of **Structural** and/or **Non-Structural BMPs**;
 - iii. Reduce **Potential Pollutants** in **Urban Runoff** from **Permittee's** maintenance activities to the **MEP**;
 - iv. Eliminate **IC/IDs** to the **MEP**;
 - v. Encourage spill prevention and containment as well as provide appropriate spill response plan for **Permittees'** maintenance facilities to the **MEP**;

E. SPECIFIC PERMITTEE REQUIREMENTS

149

- vi. Increase public awareness to the **MEP**;
 - vii. Continue to provide **MS4 Permit** compliance related workshops for **Permittee's** staff to the **MEP**; and
 - viii. Control increases in **Urban Runoff** to the **MEP** within the **Permittees'** jurisdictional boundaries so as not to cause **Erosion** or sedimentation problems downstream.
- e. Designate at least one representative to the **Desert Task Force** as described in Section E.1.g. The **Principal Permittees** shall be notified immediately, in writing, of changes to the designated representative. The designated representative shall attend the **Desert Task Force** meetings.
3. Each **Permittee** shall establish and maintain adequate legal authority through statute, ordinance, or series of contracts, which authorizes or enables the **Permittee** to implement and enforce, at a minimum, each of the following requirements contained in 40 CFR Section 122.26(d)(2)(i)(A-F):
- a. Control through ordinance, permit, contract, order or similar means, the contribution of **Pollutants** to the **MS4** by **Urban Runoff** associated with industrial activity and the quality of **Urban Runoff** discharged from sites of industrial activity;
 - b. Prohibit through ordinance, order or similar means, **IDs** to the **MS4**, including, but not limited to, discharges:
 - i. Of wash water resulting from the hosing or cleaning of gas stations, auto repair garages, or other types of automotive services facilities;
 - ii. Resulting from the cleaning, repair, or maintenance of any type of equipment or machinery including motor vehicles, cement-related equipment, and port-a-potty servicing;
 - iii. Of wash water from mobile operations such as oily or greasy discharges from mobile automobile washing, and/or discharges from steam cleaning, power washing, and carpet cleaning, etc.;
 - iv. Of runoff from material storage areas containing chemicals, fuels, grease, oil, or other **Hazardous Materials**; and
 - v. Of food-related **Wastes** (e.g., grease, fish processing, and restaurant kitchen mat and trash bin wash water, etc.).
 - c. Control through ordinance, order or similar means the discharge to the **MS4** of spills, dumping or disposal of materials other than **Urban Runoff**.
 - d. Control through interagency agreements among **Permittees** the contribution of **Pollutants** from one portion of the **MS4** to another portion of the **MS4**;
 - e. Require compliance with conditions in **Permittee** ordinances, permits, contracts or orders consistent with the Enforcement and Compliance Strategy described in Section 1.7 of the **SWMP**; and
 - f. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance with **MS4 Permit** conditions, including the prohibition on **IDs** to the **MS4**.

E. SPECIFIC **PERMITTEE** REQUIREMENTS

150

- g. **Urban Runoff** collection, transport, and storage facilities shall be in good working condition at all times to effectuate compliance with this **MS4 Permit**.

Because the **RCFC&WCD** and **CVWD** are not general purpose local government entities and only operate facilities that may convey **Urban Runoff**, these **Permittees** lack the authority to adopt and enforce ordinances to regulate development and other authorities and abilities of general purpose government entities. The **RCFC&WCD** and **CVWD** shall therefore comply with this Provision as well as other aspects of this **MS4 Permit** only to the extent of their statutory authority and within the constraints imposed by the California Constitution.

4. Each **Permittee** shall review its ordinances to ensure that they continue to have adequate authority to implement and enforce this **MS4 Permit**. Each **Permittee** shall submit a statement (signed by legal counsel) certifying legal authority to implement and enforce this **MS4 Permit**. If such legal authority does not currently exist for a **Permittee**, that **Permittee** shall provide an implementation schedule identifying the legal changes necessary to adopt a new ordinance or to amend an existing ordinance that would enable the **Permittee** to obtain the requisite legal authority to fully implement and enforce this **MS4 Permit**. The implementation schedule shall be provided to **Regional Board** staff for its approval as part of the Fiscal Year 2008-2009 **Annual Report**. Upon completion of the approved implementation schedule, the **Permittee** shall submit a statement (signed by legal counsel) certifying legal authority to implement and enforce this **MS4 Permit**.
5. **Permittee Construction Activities:**

The **Permittees** are not required to file a Notice of Intent (**NOI**) for coverage under the "**General Construction Permit**" for **Permittee** construction projects within the **Whitewater River Region**. However, **Permittee** construction activities outside of the **Whitewater River Region** are required to file a **NOI** and must obtain coverage under and comply with the **General Construction Permit**.

For **Permittee's** activities inside the **Whitewater River Region**, the **Permittees** shall perform the following:

- a. All the **Permittees'** public works construction projects or activities that would otherwise necessitate coverage under the **General Construction Permit** by definition or pose a threat to water quality shall be reported to the **Regional Board**. The dates and location of the construction project, the party responsible for the project, and the telephone number of the responsible party shall be reported. This information shall be submitted and reported to the **Regional Board** prior to the start of construction on **MS4 Permit Notice of Intent (NOI)** form as shown on Attachment "A".
- b. A **Storm Water Pollution Prevention Plan (SWPPP)** shall be developed and implemented for all **Permittees'** public works construction projects in compliance with the appropriate **General Construction Permit**. The **SWPPP** shall be retained on-site during the entire construction period. The **Permittees** shall be responsible for assuring that the **SWPPP** is implemented. The

E. SPECIFIC **PERMITTEE** REQUIREMENTS

151

SWPPP shall contain the elements required in the appropriate **General Construction Permit**.

- c. Discharges of **Non-Storm Water** are allowed as indicated in Section C. ALLOWABLE **NON-STORM WATER DISCHARGES**. Such discharges must be described in the **SWPPP**. Wherever feasible, alternatives that do not result in discharge of **Non-Storm Water** shall be implemented.
- d. Monitoring shall be performed for all construction projects in accordance with the Section L. MONITORING AND REPORTING, Item 11 of this **MS4 Permit**.
- e. A Notice of Termination (**NOT**), shown as Attachment "B", shall be submitted to the **Regional Board** within 30 days of the completion of all construction projects.
- f. **The General Construction Permit** defines routine maintenance activities that are exempt from coverage under the **General Construction Permit**. Specific maintenance activities, which include **BMPs** implemented as part of a **Permittee's** Municipal Facility/Activities **Pollution Prevention** Plan or model municipal maintenance **BMP** fact sheets, can be considered as meeting "routine maintenance activities", as defined in the **General Construction Permit**.

F. BEST MANAGEMENT PRACTICES

1. Each *Permittee* shall implement the programs and *BMPs* to the *MEP* as described in the *SWMP* and this *MS4 Permit*. These programs and *BMPs* include the following:

- a. *IC/ID, Litter, Debris, and Trash Control Program:*

- i. The *Permittees* shall continue to reduce the discharge of *Pollutants*, including trash and debris, from their respective *MS4s* facilities to *Receiving Waters* to the *MEP*;
- ii. Develop model forms (or other mechanisms) for reporting the observations of field personnel of unauthorized dumping or spills so that the information can be used to help locate the source of *Pollutants*. The model forms shall be submitted with the Fiscal Year 2008-2009 *Annual Report*. The *Permittees* shall also maintain a database of *IC/ID* investigations. The database shall track the outcome of the case (spill/connection was terminated and cleaned up, source owner/operator educational visit, warning letter, referral to an enforcement agency, etc.) and the enforcement actions issued/taken (e.g., notice of non-compliance, notice of violation and order to comply, referral to District Attorney for prosecution);
- iii. Continue to provide, collect, and maintain litter receptacles in strategic public areas and during public events; and
- iv. Continue and/or expand an existing field program to detect and prevent dumping or routinely discharging *Pollutants* into *MS4* facilities;
- v. Continue to implement and enforce leash laws and other pet laws (i.e., pet waste clean-up, no pets in public areas) in selected public-use areas;

- Field Screening/System Surveillance*

- vi. Continue to implement and improve routine inspection and monitoring and reporting programs for their *MS4s* facilities. If routine inspections or dry weather monitoring indicate *IC/IDs*, they shall be investigated and eliminated, or regulated by the *Regional Board*, as soon as possible after detection. Elimination measures may include an escalating series of enforcement action for those *IDs* that do not endanger public health or the environment. *IDs* that endanger public health or the environment (as defined in the Reporting Section F.1.a.x.2 below) shall be eliminated immediately. A summary of these actions shall be submitted annually beginning with the 2008-2009 *Annual Report*;
- vii. Develop an implementation schedule for conducting field inspections of *MS4* facilities;

- viii. Conduct field inspections to ensure identification and elimination of **IC/IDs**;
- ix. **Pollutants** in runoff from landfills and Superfund Amendments and Reauthorization Act (**SARA**) Title III facilities will continue to be monitored in compliance with existing **Regional Board WDRs**. This will also be used to assess compliance with the **Storm Water** requirements. Data compiled and provided to the **Regional Board** in compliance with the **WDRs** will be incorporated into the **MS4 Permit** compliance reports by reference;

Reporting

- x. The **Permittees** shall immediately (within 24 hours of receipt of notice) initiate an investigation of all spills, leaks, and/or **IDs** to the **MS4** upon being put on notice by staff or a third party. Based upon their assessment and as specified below, the **Permittees** with jurisdiction for the spill shall report all discharges that endanger human health or the environment as follows:
 - 1. By phone to the Office of Emergency Services (the "**OES**") at (800-852-7550) and to the **Regional Board** at (760-346-7491).
 - 2. At a minimum, any sewage spill above 1,000 gallons or that could impact water contact recreation, any oil spill that could impact wildlife, any **Hazardous Material** spill where residents are evacuated, any spill of reportable quantities of **Hazardous Waste** (as defined in 40CFR 117 and 40 CFR 302), or any other spill or discharge that is reportable to the **OES** (collectively, an "**Emergency Situation**") shall be reported within twenty-four (24) hours of becoming aware of the circumstances. Additional reporting requirements shall be per Section I. REPORTING REQUIREMENTS, Item No. 6.a.
- xi. Other spill incidents, including any unauthorized discharge, that are not incidents reportable to the **OES** shall be reported to the **Executive Officer** as part of the **Annual Report** per Section F.1.a.xvi. This report shall contain a description of the non-compliance, its causes, the duration, and the actual or anticipated time for achieving compliance. The report shall include complete details of the steps that the **Permittee** has taken, or intends to take in order to prevent recurrence;
- xii. A report of the discharge or incident described in Section F.1.a.x shall be submitted to the **Executive Officer** as part of the **Annual Report** per Section F.1.a.xvi. This report shall contain a description of the non-compliance, its causes, the duration, and the actual or anticipated time for achieving compliance. The report shall include complete details of the steps that the **Permittee** has taken, or intends to take in order to prevent recurrence;

- xiii. The **Permittees** may propose an alternative reporting program, including reportable incidents and quantities, jointly with other agencies such as the **County** Department of Environmental Health (**DEH**) for approval by the **Executive Officer**;
- xiv. In cases where an incident is reportable to the **OES** and/or **Executive Officer** and that incident has been reported to the **OES** and/or **Executive Officer**, as applicable, by another responsible agency, the **Permittee** with jurisdiction is not required to duplicate the report;

Incident Response, Investigation, and Clean Up

- xv. Continue to support the existing **Hazardous Materials** incident response programs implemented jointly by the **County DEH** and the **County** Fire Department **HAZMAT** Team;

Evaluation and Assessment

- xvi. The **Permittees** shall annually report on the reporting items described in the **SWMP**; and
- xvii. By June 15, 2009, the **Permittees** shall amend the **SWMP** as necessary to insure that they summarize their **IC/ID** activity programs annually. **IC/ID** performance and compliance evaluation shall include the following:
 - Provide a copy of standardized **IC/ID** reporting form(s).
 - Provide summary reports of the following on **IC/ID** activity information:
 - The number of reports received
 - The number of cases investigated/responded to by **IC/ID** source

b. Commercial/Industrial Program

Source Identification, Inspection and Enforcement

- i. The **Permittees** shall coordinate with **County DEH**, **Regional Board** staff, and others as necessary to develop a commercial and industrial facility database;
- ii. The **Permittees** shall maintain an implementation schedule for conducting inspections of the targeted list of facilities listed in the database;
- iii. The existing Compliance/Assistance Program (**CAP**) described in Section 3 of the **SWMP** meets the intent of this section. However, individual **Permittees** may propose an alternative inspection program for **Regional Board** approval as part of their **Annual Reports**;
- iv. Each **Permittee** shall continue to enforce its ordinances, including its **Storm Water Ordinance**, at industrial and commercial facilities as

- necessary to maintain compliance with this **MS4 Permit. CAP** for Industrial/Commercial surveys that indicate facilities out of compliance with **Permittee's Storm Water Ordinances**, shall be re-inspected by **Permittee's** staff. Sanctions for non-compliance may include: verbal or written warnings, issuance of notices of violation or non-compliance, obtaining an administrative compliance, stop work, or cease and desist order, the imposition of monetary penalties or criminal prosecution (infraction or misdemeanor);
- v. Implement and enforce regulations that require all new industrial facilities subject to the General Industrial Activities **Storm Water Permit (General Industrial Permit)** to show proof of compliance (such as a waste discharge identification (**WDID**) number from submittal of a **NOI**) prior to: 1) issuance of a business license (applicable only to those **Permittees** which require business licenses) or 2) issuance of a certificate of occupancy for **New Development**;
 - vi. Upon referral of an industrial facility to **Regional Board** staff for failure to obtain coverage under the **General Industrial Permit**, failure to keep a **SWPPP** at the industrial facility, or an observed act or omission that suggests failure to comply with either, the **Permittee** will take no further action at the industrial facility with regard to securing compliance with the **General Industrial Permit**. It is understood by the **Permittees** and **Regional Board** staff that this will preclude duplication of effort and insures that consistent direction is provided to the facility owner/manager as to what is required to bring the facility into compliance with the **General Industrial Permit**. Each **Permittee** shall take appropriate actions to bring an industrial facility into compliance with its local ordinances, rules, regulations, and **WQMP**, when approved;

Evaluation and Assessment

- vii. The **Permittees** shall annually report on the reporting items described in the **SWMP**;
- viii. By June 15, 2009, the **Permittees** shall amend the **SWMP** as necessary to require reporting of the number of commercial and industrial facilities in their source databases, by type:
 - Restaurants;
 - Automotive services;
 - Industrial; and
 - Mobile cleaning businesses.
- ix. By June 15, 2009, the **Permittees** shall amend the **SWMP** as necessary to require reporting of the number of commercial and industrial facilities visited under the auspices of the **CAP** provided by the **County** or alternative program approved by the **Regional Board**, and/or directly by the **Permittees** during the reporting period.

F. BEST MANAGEMENT PRACTICES

156

c. New Development/Redevelopment and Construction Activities Program

Permittees shall:

- i. Inform developers, contractors, operators, and agency staff about upcoming educational and training workshops on construction site **Erosion** and **Sediment** control and construction materials management sponsored by industry groups, professional organizations and public agencies.

Make associated public education materials available at the public counter and staff bulletin boards, as appropriate;

- ii. Inform architects, engineers, building department personnel, and local government officials on water quality problems associated with **Urban Runoff** and the requirements for meeting **NPDES** laws and program goals for properly managing the quality of **Urban Runoff**.

Provide information on upcoming training workshops and distribute educational materials as appropriate;

- iii. The *Permittees* shall review and enhance the **SWMP New Development and Redevelopment Project** requirements in a manner appropriate for the unique conditions and needs of the **Whitewater River Region** by June 15, 2009. The revised **SWMP** should be submitted to the **Regional Board** as part of the Fiscal Year 2008-2009 **Annual Report**. These requirements will be incorporated into a revision of the **SWMP** when completed. In the interim, the *Permittees* shall continue to implement the development and approval review procedures outlined in the **SWMP**. The *Permittees* must:

1. Develop, implement and enforce a program to address **Urban Runoff** from **New Development and Redevelopment Projects** that disturb areas equal to or greater than 1 acre, including projects less than 1 acre that are part of a larger common plan of development or sale, that discharge into the **MS4** by ensuring that controls are in place that would prevent or minimize water quality impacts to the **MEP**;
2. Develop and implement **BMP** strategies, which include a combination of **Structural** and/or **Non-Structural BMPs** appropriate for the **Whitewater River Region**;
3. Use an ordinance or other regulatory mechanism to address post-construction **Urban Runoff** from **New Development and Redevelopment Projects** to the extent allowable under state or local law. The requirements must include the design standards specified in Item No. 1.c.iv, of this Section (below) or a functionally equivalent program that is acceptable to the **Regional Board**; and

4. Ensures adequate long-term operation and maintenance of **BMPs**.
- iv. All discretionary **New Development** and **Redevelopment Projects** (**Priority Development Projects**) submitted after June 15, 2009, that fall into one of the following Priority Development Project categories are subject to the **WQMP** design standards specified in Item No. 1. c.v. of this Section (below):
1. Single-family hillside residences that create 10,000 square feet, or more, of impervious area where the natural slope is twenty-five percent (25%) or greater, including single-family hillside residences that create 10,000 square feet of impervious area where the natural slope is ten percent (10%) or greater where erosive soil conditions are known;
 2. 100,000 square foot commercial and industrial developments;
 3. Automotive repair shops (with Standard Industrial Classification ("**SIC**") codes 5013, 7532, 7533, 7534, 7537, 7438, and 7539);
 4. Retail gasoline outlets disturbing greater than 5,000 square feet;
 5. Restaurants disturbing greater than 5,000 square feet;
 6. Home subdivisions with 10 or more housing units; and
 7. Parking Lots 5,000 square feet or more or with 25 or more parking spaces and potentially exposed to **Urban Runoff**.
- v. **WQMP** Design Standards. Discretionary development specified in Section F.1.c.iv. (above) must implement the following **BMPs**:
1. **Peak-Urban Runoff** Discharge Rates.
Post development peak **Urban Runoff** discharge rates shall not exceed pre-development rate for developments where the increased peak **Urban Runoff** discharge rate will result in increased potential for downstream **Erosion**. The **Permittees** shall propose a design standard for Peak-**Urban Runoff** Discharge Rate control.
 2. **Site Design BMPs**.
Unless infeasible, the following **Site Design BMPs** are required and must be implemented in the site layout during the subdivision design and approval process, consistent with applicable General Plan and Local Area Plan policies:
 - a. Minimize **Urban Runoff**, Minimize Impervious Footprint, and Conserve Natural Areas, and
 - b. Minimize Directly Connected Impervious Area.
 - c. The **Permittees** shall develop measurable goals for the implementation of these Site Design BMPs.

3. **Source Control BMPs.**

The **Permittees** shall minimize **Pollutants** in **Urban Runoff** through the implementation of **Source Control BMPs**. **Urban Runoff** from a site has the potential to contribute oil and grease, suspended solids, metal, gasoline, pesticides, and pathogens to the **MS4**. The development must be designed so as to minimize, to the **MEP**, the introduction of **Pollutants** that may result in significant impacts, generated from site runoff of directly connected impervious areas to the **MS4** as approved by the building official. The **Permittees** shall require the following **Source Control BMPs**:

- a. Protect slopes and channels from eroding;
- b. Include storm drain inlet stenciling and signage;
- c. Include properly designed outdoor material storage areas;
- d. Include properly designed trash storage areas; and
- e. Design **Source Control BMPs** correctly so as to remove **Pollutants** to the **MEP**.

4. **Treatment Control BMPs.**

The **WQMP** shall require **Treatment Control BMPs** for all **Priority Development Projects**. All **Treatment Control BMPs** shall be located so as to infiltrate, filter or treat the required runoff volume or flow prior to its discharge to any **Receiving Water**. Multiple **Priority Development Projects** may share **Treatment Control BMPs** as long as construction of any shared **Treatment Control BMP** is completed prior to the use of any development project from which the **Treatment Control BMP** will receive **Urban Runoff**, and prior to discharge to a **Receiving Water**. **Treatment Control BMPs** shall be designed to address **Pollutants of Concern**. **Pollutants of Concern** consist of any **Pollutants** generated by the development, including **Pollutants** that are listed under **CWA** Section 303(d), **Pollutants** associated with the land use type of the development and legacy **Pollutants** associated with past use of the development site that may be exposed to **Urban Runoff**. **Treatment Control BMPs** shall be collectively sized to comply with the following numeric sizing criteria:

- a. Volumetric **Treatment Control BMP** design criteria.
 - i. The 85th percentile 24-hour event determined as the maximized capture **Storm Water** volume for the area, from the formula recommended in **Urban Runoff** Quality Management, Water

Environment Federation Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998); or

- ii. The volume of annual runoff based on unit basin storage water quality volume, to achieve 80% or more volume treatment by the method recommended in California Stormwater **Best Management Practices** Handbook – Industrial/Commercial (2003); or
- iii. The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for “treatment” that achieves approximately the same reduction in **Pollutant** loads achieved by the 85th percentile 24-hour runoff event; or
- iv. The method approved in the **County Water Quality Management Plan for Urban Runoff**, dated September 17, 2004 (**WQMP**); or
- v. An alternative treatment design criteria, appropriate for the unique arid hydrologic conditions of the **Whitewater River Region** that has been proposed by the **Permittees** and is acceptable to the **Executive Officer**.

b. Flow-Based **BMP** design criteria

- i. The maximum flow rate of runoff produced from a rainfall intensity of 0.2 inch of rainfall per hour, for each hour of a storm event; or
- ii. The maximum flow rate of runoff produced by the 85th percentile hourly rainfall intensity (for each hour of the storm event), as determined from the local historical rainfall record, multiplied by a factor of two; or
- iii. The maximum flow rate of runoff for each hour of a storm event, as determined from the local historical rainfall record that achieves approximately the same reduction in **Pollutant** loads and flows as achieved by mitigation of the 85th percentile hourly rainfall intensity multiplied by a factor of two; or
- iv. An alternative treatment design criteria, appropriate for the unique arid hydrologic conditions of the **Whitewater River Region** proposed by the **Permittees** and accepted by the **Executive Officer**.

5. **Treatment Control Alternatives and Waivers.**

- a. Projects that retain and infiltrate 100% of the rainfall conditions specified in Section F.1.c.v.4 are deemed to comply with the **Treatment Control BMP** requirements of that Section.
- b. The **Permittees** may propose, for **Executive Officer's** approval, a site design **BMP** substitution program for incorporation into the **WQMP**, which would allow the **Permittees** to substitute implementation of high level **Low Impact Development (LID) Site Design BMPs** for implementation of some or all **Treatment Control BMPs**. The site design **BMP** substitution program must develop and utilize specific design criteria for each **LID** site design **BMP** to be utilized by the site design **BMP** substitution program.
- c. A **Permittee** may provide for a **Priority Development Project** to be waived from the requirement of implementing **Treatment Control BMPs**. All waivers, along with documentation justifying the issuance of a waiver, must be submitted to the **Regional Board** staff in writing within thirty (30) calendar days. If the **Executive Officer** determines that waivers are being inappropriately granted, this **MS4 Permit** may be reopened to modify these waiver conditions. Waivers may be granted:
 - i. If infeasibility can be established. A waiver of infeasibility shall only be granted by a **Permittee** when all available **Treatment Control BMPs** have been considered and rejected as technically infeasible and/or the cost of implementing the **Treatment Control BMP** greatly outweighs the **Pollution** control benefit; or
 - ii. For those portions of the **Whitewater River Region** that will not result in a discharge to **Receiving Waters** under the rainfall conditions specified in Section F.1.c.v.4.

6. **Limitation of Use of Infiltration BMPs.**

- a. Infiltration based **Treatment Control BMPs** shall:
 - i. Be located at least 500 feet horizontally from water supply wells, unless it can be shown that well construction and site geology will provide adequate protection for the domestic water well in which case the minimum distance will be provided on a case by case basis; and

- ii. Not cause a **Nuisance**, including odor, vectors or **Pollution** as defined by **CWC** Section 13050.

d. **Private Construction Activities Program**

- i. The **Permittees** shall continue to implement and enforce a program to reduce **Pollutants** in any **Urban Runoff** to the **MS4** from construction activities that result in a **Land Disturbance** of greater than or equal to one acre. Reduction of **Urban Runoff** discharges from construction activity disturbing less than one acre must be included in a program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. The program must continue to include implementation of, at a minimum:
 1. Ordinances or other regulatory mechanism to require **Erosion** and **Sediment** controls, as well as sanctions, or other effective mechanisms, to ensure compliance, to the extent allowable under State or local law;
 2. Requirements for construction site operators to implement appropriate **Erosion** and **Sediment** control **BMPs**;
 3. Requirements for construction site operators to control **Waste** such as discarded building materials, concrete truck wash-out, chemicals, litter, and sanitary **Waste** at the construction site that may cause adverse impacts to water quality;
 4. Procedures for site plan review which incorporate consideration of potential water quality impacts; and
 5. Procedures for site inspection and enforcement control measures. Each **Permittee** shall continue to conduct construction site inspections for compliance with its ordinances, including its stormwater ordinance, regulations, codes and the **WQMP**, when approved. Sanctions for non-compliance may include: verbal and/or written warnings, issuance of notices of violation or non-compliance, obtaining an administrative compliance, stop work or cease and desist order, a civil citation or injunction, the imposition of monetary penalties or criminal prosecution (infraction or misdemeanor). Construction site inspections shall at a minimum address:
 - a. Check for submittal of a **NOI** in compliance with the **General Construction Permit**, if required;
 - b. Confirm a **SWPPP**, if required, is onsite;
 - c. Confirm compliance with the **Permittee's** ordinances; and
 - d. Check for active **Non-Storm Water** discharges or potential **IC/IDs** to the **MS4**.

- ii. Identify priorities for inspecting sites and enforcing control measures for construction projects that disturb areas equal to or greater than 1 acre. In establishing priorities for the inspection of construction sites consistent with this **MS4 Permit**, the **Permittees** shall identify sites of high threat to **Receiving Water** quality. Evaluation of construction sites should be based on such factors as soil **Erosion** potential, project size, proximity and sensitivity of **Receiving Waters**, history of compliance, and other relevant factors. High priority sites may be changed to a normal priority during a construction:
 1. Sites that disturb an area greater than fifty (50) acres; and
 2. Sites that disturb greater than one (1) acre and directly discharge to an identified 303 (d) listed waterbody.
- iii. If a **Permittee** receives notice by its staff of a possible violation of the **General Construction Permit** or other order or permit issued by the **State** or **Regional Board**, the **Permittee** shall, within two (2) working days, provide oral (Telephone: 760.346.7491) and e-mail notice to **Regional Board** staff of the location within its jurisdiction where the incident occurred and describe the nature of the incident;
- iv. Upon referral of a construction site to **Regional Board** staff for failure to obtain coverage under the applicable **General Construction Permit**, failure to keep a **SWPPP** at the construction site, if applicable, or an observed act or omission that suggests failure to comply with either, the **Permittee** will take no further action at the construction site with regard to securing compliance with the **General Construction Permit**. Each **Permittee** shall continue to take appropriate action to bring a construction site into compliance with its local ordinances, rules, and regulations;
- v. Prior to the issuance of a building, **Grading** or other construction project permits, the **Permittees** shall require proof that the applicant has filed a **NOI** for the **General Construction Permit** if such coverage is required;

Evaluation and Assessment

- vi. By June 15, 2009, the **Permittees** shall amend the **SWMP** to require **Annual Reports** to summarize and evaluate inspection prioritization criteria and inspection schedule as part of the **Annual Report**; and
- vii. By June 15, 2009, the **Permittees** shall amend the **SWMP** to require **Annual Reports** to describe and evaluate process for evaluating **New Development** and **Redevelopment Projects**.

e. Permittee Activities Program

i. Sewage Systems

Permittees shall provide Sanitary Sewer Operators access to their **MS4** facilities for the purposes of allowing control of **SSOs** or for the purpose of limiting the impacts to **Receiving Waters** once a spill has

entered the **MS4 Permitees** subject to **State Board Water Quality Order No. 2006-0003 (SSOs)** shall obtain coverage under that Order.

ii. **Permittee Facilities and Operations**

Requirements for all **Permitees'** storage or maintenance areas.

1. Continue to maintain and implement **Permittee's** municipal facility/activity **Pollution Prevention** plans for **Permittee** maintenance areas; and
2. Incorporate the **BMPs** outlined in the **SWMP** for new **Permittee's** municipal facility/activity **Pollution Prevention** plans for existing facilities where applicable by June 15, 2009.

iii. **Landscape Maintenance**

Each **Permittee** will require that pesticides be applied in conformance with existing state and federal regulations.

iv. **Permittee Streets and Roads**

1. Maintain the model fact sheet of **BMPs** for common road maintenance activities. Each **Permittee** will continue to require road maintenance personnel to review periodically and implement the **BMPs**; and
2. Continue to implement appropriate elements of the model fact sheet of **BMPs** for common road maintenance activities into road maintenance contracts. Each **Permittee** will continue to incorporate applicable elements into road maintenance contracts.

v. **MS4 Facilities**

1. Continue to implement the existing field program to detect and prevent dumping or **IDs** into **MS4** facilities; and
2. Continue to implement **MS4** maintenance schedules for basins, inlets and open channels.

vi. **Evaluation and Assessment**

1. The **Permitees** shall address the reporting items described in the **SWMP** in the **Annual Report**;
2. By June 15, 2009, the **SWMP** shall be amended as necessary to require the **Permitees** with jurisdiction over a sanitary sewer to confirm the sewage spill response plans are developed and current;
3. By June 15, 2009, the **SWMP** shall be amended as necessary to require the **Permitees** to summarize the number of municipal facilities that they operate in the **Whitewater River Region MS4 Permit Area** and to verify whether those municipal facilities have facility **Pollution Prevention** plans onsite;

4. By June 15, 2009, the **SWMP** shall be amended as necessary to require the **Permittees** to maintain a list of pesticide application personnel and verify applicator certifications; and
5. By June 15, 2009, the **SWMP** shall be amended as necessary to require the **Permittees** to verify that stencils and/or markers are maintained on inlets to the **MS4**.

f. **Public Education and Outreach Program**

i. General Public Outreach

1. Continue to educate/inform the general public on the impacts of littering, and other improper disposal on **Receiving Water** quality;
2. Continue to educate/inform the general public on the impacts of dumping **Pollutants** into **MS4** facilities. Educate/inform the general public on **Receiving Water** impacts from leakage or dumping of gasoline, oil and grease, antifreeze and hydraulic fluid from vehicles into the streets; and
3. Continue to educate/inform the general public about **BMPs** for residential car washing.

ii. Landscaping

1. Continue to educate/inform the general public on the proper application and management of pesticides, fertilizers and herbicides, as well as the proper management of irrigation systems to prevent runoff to the **MS4**. Where appropriate, coordinate with the Natural Resources Conservation Service, Resource Conservation Districts and University of California Cooperative Extension;
2. Continue to educate/inform the general public on the **Receiving Water** impacts of dumping **Pollutants** into the **MS4**; and
3. Continue to support the efforts of the **County HHW Program**, which provides a convenient means to properly dispose of oil, antifreeze, pesticides, herbicides, paints, solvents, and other potentially harmful chemicals.

iii. Home Maintenance

1. Continue to educate/inform the general public on the **Receiving Water** impacts of dumping **Pollutants** into the **MS4**; and
2. Continue to support the efforts of the **County HHW Program**, which provides a convenient means to properly dispose of oil, antifreeze, pesticides, herbicides, paints, solvents, and other potentially harmful chemicals.

iv. Illegal Dumping

1. Continue to educate/inform the general public on the **Receiving Water** impacts of littering and other improper disposal; and
2. Continue to educate/inform the general public on the **Receiving Water** impacts of dumping **Pollutants** into the **MS4**;

v. Pet Ownership

1. Continue to educate/inform the general public regarding the need to clean-up and properly dispose of pet **Waste**.

vi. Construction

Continue to inform contractors, operators, and **Permittee's** staff about upcoming educational and training workshops on construction site **Erosion** control and construction materials management sponsored by professional organizations and public agencies. Make associated public education materials available at the public counter and staff bulletin boards, as appropriate.

vii. Industrial/Commercial

Continue to educate/inform landowners, tenants, business owners, and industrial operations regarding the need to implement appropriate **BMPs** to control **Non-Storm Water** discharges and to properly maintain indoor and outdoor material storage areas.

viii. **Permittees'** Employees

The **Permittees** shall develop training programs for the following categories for their employees. The training program should cover a) requirements of this **MS4 Permit** and the **General Industrial and Construction Activities Permits**, b) proper **BMP** implementation, c) identification of **IC/IDs** that may be associated with the area of training, and d) address any additional topics described below:

1. **Permittee's** Maintenance Staff;

- a. **Permittees** shall continue to educate/inform **Permittee's** personnel responsible for **MS4** facility, park, golf course, and highway right-of-way maintenance on the proper use and management of pesticides, fertilizers, and herbicides. Alternative methods for controlling insects and weeds such as biological controls and the use of less toxic chemicals should be encouraged. This training may be accomplished through existing mandatory training programs for pesticide, fertilizer and herbicide management.

2. Industrial/Commercial Inspectors;

F. BEST MANAGEMENT PRACTICES

166

3. **New Development/Redevelopment** Staff; and
4. Construction Inspectors.

ix. Evaluation and Assessment

1. The **Permittees** shall address on the reporting items described in the **SWMP** in the **Annual Report**;
2. By June 15, 2009, the **SWMP** shall be amended as necessary to require the **Permittees** to document usage (call volume, type) of the "Only Rain Down The Storm Drain **Pollution Prevention** Program" hotline;
3. By June 15, 2009, the **SWMP** shall be amended as necessary to require the **Permittees** to document **HHW** Collection Program activities including:
 - a. Event dates and number of days per event;
 - b. Type and amount of material collected; and
 - c. Advertisement impressions by type (newspaper, television, radio, banners, flyers, etc.) for the **Permittees'** internal use.
4. By June 15, 2009, the **SWMP** shall be amended as necessary to require the **Permittees** to track the number of regional public education outreach events conducted, by type (construction, industrial, residential, **New Development**, schools, general public, etc), including topic and approximate attendance where applicable;
5. By June 15, 2009, the **SWMP** shall be amended as necessary to require the **Permittees** to use public surveys and impression counts, where feasible, to assess the effectiveness of the public education and outreach program over the course of the **MS4 Permit** term and to document those results;
6. By June 15, 2009, the **SWMP** shall be amended as necessary to require **Permittees** to report, in summary, the scope and purpose of the regional public education materials available to the various target audiences used during the reporting period. It is expected that brief descriptions of materials would be appropriate; and
7. By June 15, 2009, the **SWMP** shall be amended as necessary to require the **Permittee** employee training to be reported. **Annual Reports** should include topic (municipal maintenance, industrial/commercial inspections, construction inspections, **New Development**), date and number of employees trained.
8. By June 15, 2009, the **SWMP** shall be amended as necessary to require the **Permittee** identify existing code requirements for on-site storage and infiltration of stormwater on new development and redevelopment projects, including the design

storm and/or volumetric requirements, the exceptions to storage/infiltration requirements, and the methodology used to ensure that storage/infiltration areas are retained post-construction.

G. TOTAL MAXIMUM DAILY LOADS

1. The *Permittees* shall modify the *SWMP*, as necessary, to incorporate appropriate *BMPs* to address *WLAs* developed and approved pursuant to the *TMDL CWA* Section 303(d) process for impaired waterbodies. Proposed revisions to the *SWMP* shall be consistent with *TMDL* Implementation Tasks assigned to the *Permittees* and submitted to the *Executive Officer* for review and approval, which may include water quality monitoring and *BMPs* to *MEP*. Revisions to the *SWMP* approved by the *Executive Officer* shall be implemented in accordance with the Implementation Plan for the *TMDL WLAs*.
2. A Bacterial Indicator TMDL for CVSC was adopted by the Regional Board on May 16, 2007. The Regional Board also directed staff following adoption of the TMDL to conduct three public workshops with affected stakeholders and other interested persons to discuss the requirements of the TMDL. In the meantime, the TMDL was forwarded to the State Water Board for its review and approval. The first public workshop was held on July 25, 2007, the second was held on November 19, 2007, and the third was held on April 23, 2008.

The TMDL was withdrawn from the State Water Board's consideration of adoption, which had been placed as an agenda item to be heard at the State Water Board's March 18, 2008 public meeting. Pursuant to oral and written comments made in connection with the first two workshops, however, the Regional Board's Executive Officer determined that it would be appropriate to request the State Water Board to withdraw the TMDL from its agenda for a certain period of time. The withdrawal request letter, dated January 18, 2008, and addressed to the State Water Board Executive Director, explained that the withdrawal was needed to address comments and concerns raised by the Coachella Valley agricultural community regarding the appropriateness of being named as a Responsible Party in the TMDL Implementation Plan without sufficient data.

To address this data gap, agricultural dischargers and the Coachella Valley Water District proposed conducting the following tasks over an 18-month period: (1) for the first three months following State Water Board approval of the withdrawal request: the agricultural community would form a Task Force to develop a monitoring plan, which would be submitted to the Regional Board Executive Officer for his review and approval; (2) for the next 12 months: the Task Force would conduct quarterly monitoring; and (3) for the last three months: the Task Force would prepare a report of the sampling results and submit the report to the Regional Board for its consideration of approval.

The State Water Board approved the withdrawal request, which it announced in a public notice dated February 22, 2008. Since then, the agricultural community and the Coachella Valley Water District formed the proposed Task Force to begin developing a Monitoring Plan, which would be submitted to the Regional Board Executive Officer for his review and approval.

G. TOTAL MAXIMUM DAILY LOADS

169

The TMDL identified Urban Runoff from the County and the City of Coachella outfalls, Caltrans outfalls, outfalls from Native American Tribal lands, and Non-Point Source discharges, including wildlife and transients into the CVSC, as potential sources of pathogens. Therefore, TMDL pathogen Wasteload Allocations (WLAs) were assigned to the County and the City of Coachella. The pathogen WLA has been defined for E. coli as a log mean (Geomean) of the MPN $\leq 126/100$ ml (based on a minimum of not less than five samples during a 30-day period), or 400 MPN/100 ml for a single sample. Monitoring this MS4 Permit requires the County and the City of Coachella to achieve the pathogen WLAs through compliance with the TMDL Implementation Plan, based on the compliance schedule provided in the TMDL for their Urban Runoff discharges.

The WLAs will be submitted to the State Water Board, OAL, and USEPA only after the agricultural community's Task Force has completed the 12 months of sampling and submitted a report of its findings to the Regional Board's Executive Officer for his review and approval. To the extent that the TMDL needs to be revised based on the data collected, the TMDL will be recirculated for another round of public comment. Following the public comment period, any revisions to the TMDL, which may result from comments received and the sampling data collected, will be scheduled for Regional Board consideration at another public hearing.

H. GENERAL PROVISIONS

1. Duty to Mitigate [40 CFR 122.41(d)]

The **Permittees** shall take all reasonable steps to minimize any discharge or prevent any discharge or sludge use or disposal in violation of this **MS4 Permit**, which has a reasonable likelihood of adversely affecting human health or the environment.

2. Proper Operation and Maintenance [40 CFR 122.41(e)]

The **Permittees** shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the **Permittees** to achieve compliance with the conditions of this **MS4 Permit**. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, which are installed by the discharger only when the operation is necessary to achieve compliance with the conditions of this **MS4 Permit**.

3. Permit Actions [40 CFR 122.41(f)] [**CWC** § 13381]

This **MS4 Permit** may be modified, revoked and reissued, or terminated for cause including, but not limited to the following:

- a. Violation of any condition contained in the requirements or Permits; or
- b. Obtaining this Permit by misrepresentation or failure to disclose fully all relevant facts; or
- c. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

The filing of a request by the Permittee for a **MS4 Permit** modification, revocation, and reissuance, or termination or a notification of planned changes or anticipated noncompliance does not stay any permit condition of this **MS4 Permit**.

4. Property Rights [40 CFR 122.41(g)] [**CWC** §13263(g)]

This **MS4 Permit** does not convey any property rights of any sort or any exclusive privilege. No discharge of **Waste** into the **Waters of the State**, whether or not the discharge is made pursuant to **WDRs**, shall create a vested right to continue the discharge. All authorized discharges of **Waste** into **Waters of the State** are privileges not rights.

5. Inspection and Entry [40 CFR 122.41(i)] [**CWC** § 13267(c)]

The **Permittees** shall allow an authorized **Regional Board** representative, or an authorized representative of the **USEPA** (including an authorized contractor acting as a representative of the **Regional Board** or **USEPA**), upon presentation of credentials and other documents as may be required by law, to:

- a. Enter upon the *Permittee's* premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this *MS4 Permit*;
 - b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this *MS4 Permit*;
 - c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this *MS4 Permit*; and
 - d. Sample or monitor at reasonable times, for the purposes of assuring compliance with this *MS4 Permit* or as otherwise authorized by the *CWA* or *CWC*, any substances or parameters at any location.
6. The *Permittees* shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this *MS4 Permit*, including such accelerated or additional monitoring as may be necessary to determine the nature and impact of the non-complying discharge.
7. The provisions of this *MS4 Permit* are severable, and if any provision of this *MS4 Permit*, or the application of any provision of this *MS4 Permit* to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this *MS4 Permit*, shall not be affected thereby.
8. The *Permittees* shall comply with any interim *Effluent Limitations* as established by addendum, enforcement action, or revised *WDRs* that have been, or may be, adopted by this *Regional Board*.
9. In cases where *Urban Runoff* quality is impacted by discharges of *Wastes* from lands not owned, operated or maintained by; or under the regulatory jurisdiction of the *Permittee(s)*, the *Permittee(s)* may petition the *Regional Board* to regulate those discharges, to the extent the *Regional Board* has jurisdiction over such discharges. Such a petition shall include:
- a. A written description of the discharge and any documentation of water quality problems caused by the discharge;
 - b. An 8 ½ inch x 11 inch location map which delineates the problem area; and
 - c. Documentation that the *Permittee(s)* does not have jurisdiction over the discharge and/or is unable to require compliance.

The *Permittee(s)* may submit such petitions at any time.

I. REPORTING REQUIREMENTS

1. Duty to Reapply [40 CFR 122.41(b)]

This **MS4 Permit** expires on May 21, 2013. If the **Permittees** wish to continue any activity regulated by this **MS4 Permit** after the expiration date of this **MS4 Permit**, the **Permittees** must apply for and obtain a new **MS4 Permit**. The **Permittees** must file a **ROWD** in accordance with Title 23, California Code of Regulations, not later than 180 days in advance of the expiration date of this **MS4 Permit** as application for issuance of a new **MS4 Permit**. The **ROWD** shall, at a minimum, include:

- a. Any revisions to the **SWMP** including, but not limited to, activities the **Permittees** proposed to undertake during the next **MS4 Permit** term, goals and objectives of such activities, an evaluation of the need for additional **Source Control** and/or **Structural BMPs**, proposed pilot studies, etc.;
- b. Any new or revised program elements and compliance schedule(s) necessary to comply with Section D. **RECEIVING WATER LIMITATIONS** and Section G. **TOTAL MAXIMUM DAILY LOADS** of this **MS4 Permit**;
- c. Changes in land use and/or population including map updates; and
- d. Significant changes to the **MS4s**, outfalls, detention or retention basins or dams, and other controls, including map updates of the **MS4s**.

2. Duty to Provide Information [40 CFR 122.41 (h)]

The **Permittees** shall furnish to the **Regional Board**, **State Board**, or **USEPA**, within a reasonable time, any information which the **Regional Board**, **State Board**, or **USEPA** may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this **MS4 Permit**, or to determine compliance with this Permit. The **Permittees** shall also furnish to the **Regional Board**, **State Board**, or **USEPA**, upon request, copies of records required to be kept by this **MS4 Permit**.

3. Anticipated Non-Compliance [40 CFR 122.41 (l)(2)]

The **Permittees** shall give advance notice to the **Regional Board** of any planned changes in the permitted facility or activity that may result in noncompliance with the requirements of this **MS4 Permit**.

4. Transfers [40 CFR 122.41(l)(3)]

This **MS4 Permit** is not transferable to any **Person** except after notice to the **Regional Board**. The **Regional Board** may require modification or revocation and reissuance of this **MS4 Permit** to change the name of the **Permittees** and incorporate such other requirements as may be necessary under the **CWA** or the **CWC** in accordance with the following:

a. Transfers by Modification [40 CFR 122.61(a)]

This **MS4 Permit** may be transferred by the **Permittees** to a new owner or operator only if this **MS4 Permit** has been modified or revoked and

I. REPORTING REQUIREMENTS

173

reissued, or a minor modification made to identify the new *Permittee* and incorporate such other requirements as may be necessary under the *CWA* or *CWC*.

- b. The *Regional Board* does not notify the existing *Permittee* and the proposed new *Permittee* of its intent to modify or revoke and reissue this *MS4 Permit*. A modification under this subparagraph may also be a minor modification under 40 CFR Part 122.63. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 40 CFR Part 122.63 b. (2) of this reporting requirement.

5. Compliance Schedules [40 CFR 122.41(l)(5)]

Written reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this *MS4 Permit* shall be submitted to the *Regional Board* no later than 14 days following each schedule date.

6. Twenty-four Hour Reporting [40 CFR 122.41 (l)(6)]

- a. Each *Permittee* shall report any noncompliance that may endanger human health or the environment. Any information shall be provided orally to the *Regional Board* within 24 hours from the time the *Permittee* becomes aware of the circumstances. A written description of any noncompliance shall be submitted to the *Regional Board* within five business days of such an occurrence and contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

7. The *Permittees* shall report all instances of noncompliance at the time monitoring reports are submitted.

8. Where a *Permittee* becomes aware that it failed to submit any relevant facts in a *ROWD*, or submitted incorrect information in a *ROWD*, or in any report to the *Regional Board*, it shall promptly submit such facts or information.

9. Signatory Requirements [40 CFR 122.41(k)(1) and 40 CFR 122.22]

All applications, reports, or information submitted to the *Regional Board* shall be signed and certified.

All *ROWDs* shall be signed as follows:

- i. For a municipality or other public agency: by either a principal executive officer or ranking elected official.
- b. All reports required by this *MS4 Permit*, and other information requested by the *Regional Board* shall be signed by a *Person* described in Item No. 9.
- a. of this reporting requirement, or by a duly authorized representative of that *Person*. A *Person* is a duly authorized representative only if:

- i. The authorization is made in writing by a **Person** described in Item No. 9. a. of this reporting requirement;
 - ii. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity (e.g., an individual or position having overall responsibility for environmental matters for the company); and
 - iii. The written authorization is submitted to the **Regional Board**.
- c. If an authorization under paragraph b. of this reporting requirement is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirement of Item No. 9. b. of this reporting requirement must be submitted to **Regional Board** prior to or together with any reports, information, or applications to be signed by an authorized representative.
- d. Any **Person** signing a document under paragraph Item No. 9 a. or b. of this reporting requirement shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the **Person** or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

10. Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this **MS4 Permit** shall be available for public inspection at the offices of the **Regional Board**. As required by the **CWA**, **ROWDs**, this **MS4 Permit**, and monitoring data shall not be considered confidential.

11. The discharger shall submit reports and provide notifications as required by this **MS4 Permit** to the following:

Executive Officer
California Regional Water Quality Control Board Colorado River Basin Region
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260

Eugene Bromley
U.S. Environmental Protection Agency - Region IX Permits Issuance Section
(W-5-1)
75 Hawthorne Street
San Francisco, CA 94105

Unless otherwise directed, the discharger shall submit one hard copy and one electronic copy of each report required under this **MS4 Permit** to the **Regional Board** and one electronic copy to **USEPA**.

J. NOTIFICATIONS1. **CWC** Section 13263(g)

No discharge of **Waste** into the **Waters of the State**, whether or not such discharge is made pursuant to **WDRs**, shall create a vested right to continue such discharge. All discharges of **Waste** into **Waters of the State** are privileges, not rights.

2. The **Regional Board** has, in prior years, issued a limited number of individual **NPDES** permits for **Non-Storm Water** discharges. The **Regional Board** or **State Board** may in the future, upon prior notice to the **Permittee(s)**, issue an **NPDES** permit for any **Non-Storm Water** discharge (or class of **Non-Storm Water** discharges) to the **MS4**. **Permittees** may prohibit any **Non-Storm Water** discharge (or class of **Non-Storm Water** discharges) to the **MS4** that is authorized under such separate **NPDES** permits.3. Enforcement Provisions [40 CFR 122.41(a)(2)] [**CWC** Sections 13385 and 13387].

The **CWA** provides that any **Person**, who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any condition or limitation of this **MS4 Permit**, is subject to a civil penalty not to exceed \$25,000 per day for each violation. The **CWA** provides that any **Person**, who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation of this **MS4 Permit**, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than one year, or both. In the case of a second or subsequent conviction for a negligent violation, a **Person** shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than two years, or both. Any **Person** who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than three years, or both. In the case of a second or subsequent conviction for a knowing violation, a **Person** shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than six years, or both. Any **Person** who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any condition or limitation of this **MS4 Permit**, and who knows at that time that he or she thereby places another **Person** in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a **Person** shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the **CWA** shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

4. Nothing in this **MS4 Permit** shall be construed to preclude the institution of any legal action or relieve the **Permittee** from any responsibilities, liabilities, or penalties to which the **Permittees** are or may be subject to under Section 311 of the **CWA** or established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the **CWA**.

K. GLOSSARY OF TERMS

AGR – Agriculture Supply

Annual Report – Annual Compliance Report required under this **MS4 Permit**.

AQUA – Aquaculture

Basin Plan – Water Quality Control Plan developed by the **Regional Board**.

Beneficial Uses – The uses of water necessary for the survival and well-being of humans, plants, and wildlife. "**Beneficial Uses**" of the **Waters of the State** that may be protected include, but are not limited to, domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves. Existing **Beneficial Uses** are the uses that were actually attained in the surface or ground water on or after November 28, 1975; and potential **Beneficial Uses** are uses that may be attained through the implementation of various control measures. "**Beneficial Uses**" are equivalent to "Designated Uses" under federal law. [CWC Section 13050(f)].

Best Available Technology (BAT) – It is the technology-based standard established by congress in **CWA Section 402(p)(3)(A)** for industrial dischargers of **Storm Water**. Technology based standards established the level of **Pollutant** reductions that dischargers must achieve, typically by treatment or by a combination of treatment and **BMPs**. The best economically achievable technology that will result in reasonable further progress toward the national goal of eliminating the discharge of all **Pollutants**, as determined in accordance with regulations issued by the **USEPA** Administrator. Factors relating to the assessment of **BAT** shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the permitting authority deems appropriate. **BAT** generally emphasizes treatment methods first and **Pollution Prevention** and **Source Control BMPs** secondarily.

Best Management Practices (BMPs) – **BMPs** are defined in 40 CFR 122.2 as schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the **Pollution of Waters of the United States**. **BMPs** also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or **Waste** disposal, or drainage from raw material storage. In the case of **MS4** permits, the **Effluent Limitations** required is implementation of **BMPs** to the **MEP**.

CalTrans – California Department of Transportation

CAP – Compliance Assistance Program

CASQA – California Stormwater Quality Association

CEQA – California Environmental Quality Act (Section 21000 et seq. of the California Public Resources Code)

Cleaning – The removal of litter or debris that can impact **Receiving Waters**.

K. GLOSSARY OF TERMS

179

CMP – Consolidated Program for Water Quality Monitoring

COLD – Cold and Freshwater Habitat *Beneficial Use*

Contamination – As defined in the Porter-Cologne Water Quality Control Act, **Contamination** is “an impairment of the quality of *Waters of the State* by *Waste* to a degree which creates a hazard to the public health through poisoning or through the spread of disease.” ‘**Contamination**’ includes any equivalent effect resulting from the disposal of *Waste* whether or not *Waters of the United States* are affected.

Co-Permittees – **CVWD** and incorporated cities, including the Cities of Banning, Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs and Rancho Mirage are identified as the **Co-Permittees** of this **MS4 Permit**.

County – County of Riverside, a legal subdivision of the State of California.

CVSC – Coachella Valley Stormwater Channel

CVWD – Coachella Valley Water District

CWA – Federal Clean Water Act

CWA Section 402(p) – [33 USC 1342(p)] is the federal statute requiring discharges of **Storm Water** from **MS4** and industrial facilities and activities to obtain **NPDES** permits.

CWA Section 303(d) Water Bodies – A “section 303(d) water body” is designated by the **State Board** and **USEPA** as an Impaired Water body where water quality does not meet applicable **WQS** and/or is not expected to meet **WQSs**, even after the application of technology based **Pollution** controls required by the **CWA**. The discharge of **Urban Runoff Pollutants** by the **Permittees** may contribute to violations of applicable **WQSs**.

CWC – California Water Code

DEH – **County** Department of Environmental Health

Desert Task Force – A **Permittee** staff committee to direct the development of the **SWMP** and the implementation of the overall **Urban Runoff** program as described in the **ROWD**.

Designated Waste – A “non-Hazardous Waste containing **Pollutants** which, under ambient environmental conditions at the waste management unit, could be released at concentrations in excess of applicable **WQOs**, or which could cause degradation of *Waters of the State*.” [CCR Title 27, Chapter 3, Subchapter 2, Article 2, Section 20210; **CWC** Section 13173]

Effluent Limitations – **Effluent Limitations** are further defined at 40 CFR 122.2 and are designed to ensure that the discharge does not cause **WQOs** to be exceeded in the **Receiving Water** and does not adversely affect **Beneficial Uses**. **Effluent Limitations** are typically numeric (e.g., 10 mg/l), but can also be narrative (e.g., no toxics in toxic amounts). The **Effluent Limitations** contain in this **MS4 Permit** are narrative and include the **SWMP**'s requirement to implement appropriate **BMPs** to the **MEP**.

Emergency Situation – Any sewage spill above 1,000 gallons or that could impact water contact recreation, any oil spill that could impact wildlife, any **Hazardous Material** spill where residents are evacuated, any spill of reportable quantities of **Hazardous Waste** (as

defined in 40 CFR 117 and 40 CFR 302), or any other spill or discharge that is reportable to the **OES**.

Ephemeral Streams – Surface waters without perennial or intermittent flow. Table 2-3 of the **Basin Plan** defines **Beneficial Uses** for **Receiving Waters** within the Western Colorado River Basin. Table 2-3 broadly categorizes all surface waters not specifically named as either **Washes** or “Unlisted Perennial and Intermittent Streams”. **Ephemeral Streams** include the section of flow from the headwaters in the San Gorgonio Mountains to (and including) the Whitewater recharge basins near Indian Avenue crossing in Palm Springs.

Erosion – When land is diminished or worn away due to wind, water, or glacial ice. Often the eroded debris (silt or **Sediment**) becomes a **Pollutant** via **Storm Water** runoff. **Erosion** occurs naturally but can be intensified by land clearing activities such as farming, development, road-building, and timber harvesting.

Executive Officer – The **Executive Officer** of the **Regional Board**

FRSH – Freshwater Replenishment Beneficial Use

General Construction Permit – General Permit for **Storm Water** Discharges Associated with Construction Activity; **State Board** Order No. 99-08-DWQ (**NPDES** No. CAS000002) and the Small Linear Underground/Overhead Utility **General Construction Permit, State Board** Order No. 2003-0007-DWQ (**NPDES** No. CAS000005).

General Industrial Permit – General Permit for **Storm Water** Discharges Associated with Industrial Activities; **State Board** Order No. 97-03-DWQ (**NPDES** No. CAS000001)

General Storm Water Permits – **General Industrial Permit** and **General Construction Permit**.

Grading – The cutting and/or filling of the land surface to a desired slope or elevation.

GRW – Groundwater Recharge **Beneficial Use**

Hazardous Material – Any substance that poses a threat to human health or the environment due to its **Toxicity**, corrosiveness, ignitability, explosive nature or chemical reactivity. These also include materials named by the **USEPA** to be reported if a designated quantity of the material is spilled into the **Waters of the United States** or emitted into the environment.

Hazardous Waste – **Hazardous Waste** is defined as “any **Waste**, which, under Section 600 of Title 22 of this code, is required to be managed according to Chapter 30 of Division 4.5 of Title 22 of this code.” [CCR Title 22, Division 4.5, Chapter 11, Article 1]

HAZMAT – **Hazardous Materials**

HHW – Household **Hazardous Waste**

IC/ID – **Illicit Connection/Illegal Discharge**

Illegal Discharge (ID) - Defined at 40 CFR 122.26(b)(2) as any discharge to a **MS4** that is not composed entirely of **Storm Water** except discharges pursuant to a separate **NPDES** permit and discharges resulting from emergency fire fighting activities. The term excludes discharges that are identified as not prohibited in Section C. **ALLOWABLE NON-STORM WATER DISCHARGES** of this **MS4 Permit**, and discharges authorized by the **Executive Officer**.

Illicit Connection (IC) – Any connection to the **MS4** that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. The term **Illicit Connection** includes all **Non-Storm Water** discharges and connections except discharges pursuant to an **NPDES** permit, discharges that are identified in Section C. **ALLOWABLE NON-STORM WATER DISCHARGES** of this **MS4 Permit**, and discharges authorized by the **Executive Officer**.

Impaired Waterbody – Section 303(b) of the **CWA** requires each Regional Water Quality Control Board to routinely monitor and assess the quality of **Waters of the State** within their respective regions. If this assessment indicates that **Beneficial Uses** are not met, then that waterbody must be listed under Section 303(d) of the **CWA** as an **Impaired Waterbody**.

Implementation Agreement – Coordinates implementation of the responsibilities of the **Permittees** under the **MS4 Permit** and provides for funding of “umbrella” activities related to compliance with the **MS4 Permit**.

IND – Industrial water supply **Beneficial Use**.

Inert Waste – **Inert Waste** is defined as one that “does not contain **Hazardous Waste** or soluble **Pollutants** at concentrations in excess of applicable **WQOs**, and does not contain significant quantities of decomposable **Waste**.” [CCR Title 27, Chapter 3, Subchapter 2, Article 2, Section 20230]

Intermittent Beneficial Use – **Beneficial Uses**, which occur only seasonally because of limiting environmental conditions (e.g., provide habitat for trout during colder months of the year) and uses which are dependent on and occur only when sufficient flow exists.

Land Disturbance – The clearing, **Grading**, excavation, stockpiling, or other construction activity that result in the possible mobilization of soils or other **Pollutants** into the **MS4s**. This specifically does not include routine maintenance activity to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. This also does not include emergency construction activities required to protect public health and safety. The **Permittees** should first confirm with **Regional Board** staff if they believe that a particular routine maintenance activity is exempt under this definition from any **General Storm Water Permits** or other Orders (i.e., 401 Water Quality Certifications) issued by the **State** or **Regional Board**.

Load Allocation (LA) – The portion of a **Receiving Water's** loading capacity that is attributed either to one of its existing or future **Nonpoint Sources** of **Pollution** or to natural background sources.

Low Impact Development (LID) – The integration of site ecological and environmental goal and requirements into all phases of urban planning and design from the individual residential lot level to the entire watershed.

MEP (Maximum Extent Practicable) – **MEP** is the technology-based standard established by Congress in **CWA Section 402(p)(3)(B)(iii)** that **MS4** dischargers must meet. Technology-based standards establish the level of **Pollutant** reductions that dischargers must achieve, typically by treatment or by a combination of treatment and **BMPs**. **MEP** generally emphasizes **Pollution Prevention** and **Source Control BMPs** primarily (as the first line of defense) in combination with treatment methods serving as a

backup (additional line of defense). **MEP** considers economics and is generally, but not necessarily, less stringent than **BAT**.

A definition for **MEP** is not provided either in the statute or in the regulations. Instead the definition of **MEP** is dynamic and will be defined by the following process over time: municipalities propose their definition of **MEP** by way of their **SWMP**. Their total collective and individual activities conducted pursuant to the **SWMP** becomes their proposal for **MEP** as it applies both to their overall effort, as well as to specific activities (e.g., **MEP** for street sweeping, or **MEP** for **MS4** facility maintenance). In the absence of a proposal acceptable to the **Regional Board**, the **Regional Board** defines **MEP**.

In a memo dated February 11, 1993, entitled "Definition of **Maximum Extent Practicable**," Elizabeth Jennings, Senior Staff Counsel of the **State Board**, addressed the achievement of the **MEP** standard as follows: "To achieve the **MEP** standard, municipalities must employ whatever **Best Management Practices (BMPs)** are technically feasible (i.e., are likely to be effective) and are not cost prohibitive. The major emphasis is on technical feasibility. Reducing **Pollutants** to the **MEP** means choosing effective **BMPs**, and rejecting applicable **BMPs** only where other effective **BMPs** will serve the same purpose or the **BMPs** would not be technically feasible, or the cost would be prohibitive. In selecting **BMPs** to achieve the **MEP** standard, the following factors may be useful to consider:

- a. *Effectiveness: Will the **BMPs** address a **Pollutant** (or **Pollutant source**) of concern?*
- b. *Regulatory Compliance: Is the **BMP** in compliance with **Storm Water** regulations as well as other environmental regulations?*
- c. *Public Acceptance: Does the **BMP** have public support?*
- d. *Cost: Will the cost of implementing the **BMP** have a reasonable relationship to the **Pollution** control benefits to be achieved?*
- e. *Technical Feasibility: Is the **BMP** technically feasible considering soils, geography, water resources, etc?*

The final determination regarding whether a municipality has reduced **Pollutants** to the **MEP** can only be made by the **Regional Board** or **State Board**, and not by the municipal discharger. If a municipality reviews a lengthy menu of **BMPs** and chooses to select only a few of the least expensive, it is likely that **MEP** has not been met. On the other hand, if a municipal discharger employs all applicable **BMPs** except those where it can show that they are not technically feasible in the locality, or whose cost would exceed any benefit derived, it would have met the standard. Where a choice may be made between two **BMPs** that should provide generally comparable effectiveness, the discharger may choose the least expensive alternative and exclude the more expensive **BMP**. However, it would not be acceptable either to reject all **BMPs** that would address a pollutant source, or to pick a **BMP** base solely on cost, which would be clearly less effective. In selecting **BMPs** the municipality must make a serious attempt to comply and practical solutions may not be lightly rejected. In any case, the burden would be on the municipal discharger to show compliance with its permit. After selecting a menu of **BMPs**, it is the responsibility of the discharger to ensure that all **BMPs** are implemented."

MS4 Permit – ORDER NO. R7-2008-0001 **NPDES** No. CAS617002

MUN – Municipal and Domestic Supply **Beneficial Use**

Municipal Separate Storm Sewer System (MS4) – A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a State, city town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, **Storm Water**, or other **Wastes**, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or designated and approved management agency under section 208 of the **CWA** that discharges to **Waters of the United States**; (ii) Designated or used for collecting or conveying **Storm Water**; (iii) Which is not a combined sewer; (iv) Which is not part of the Publicly Owned Treatment Works (**POTW**) as defined at 40 CFR 122.2.

National Pollution Discharge Elimination System (NPDES) – Federal permits authorizing the discharge of **Waste** to **Waters of the United States**. All **NPDES** permits issued by the State of California are also **WDRs**.

New Development – New construction on a previously undisturbed parcel. **New Developments** do not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of a facility, nor do they include emergency new developments required to protect public health and safety. Dischargers should confirm with **Regional Board** staff whether or not a particular routine maintenance activity is subject to this **MS4 Permit**.

New Development Guidelines – Supplement A to the Riverside County Drainage Area Management Plan for the Santa Ana and Santa Margarita **Watersheds**. The **New Development Guidelines** are incorporated into the **Whitewater River Region SWMP**.

NOI (Notice of Intent) – A **NOI** is an application for coverage under either the **General Storm Water Permits**.

Non-hazardous Solid Waste – All putrescible and non-putrescible solid, semi-solid, and liquid **Wastes**, including garbage, trash, refuse, paper, rubbish, ashes, industrial **Wastes**, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid **Wastes** and other discarded solid or semi-solid **Waste**; provided that such **Wastes** do not contain **Wastes** which must be managed as **Hazardous Wastes**, or **Wastes** which contain soluble **Pollutants** in concentration which exceed applicable **WQOs** or could cause degradation of **Waters of the State**." [CCR Title 27, Chapter 3, Subchapter 2, Article 2, Section 20220]

Non-Point Source – Diffuse, widespread sources of **Pollution**. These sources may be large or small, but are generally numerous throughout a **Watershed**. **Non-Point Sources**, include but are not limited to urban, agricultural or industrial area, roads, highways, construction sites, communities served by septic systems, recreational boating activities, timber harvesting, mining, livestock grazing, as well as physical changes to stream channels, and habitat degradation. **Non-point Source Pollution** can occur year round any time rainfall, snowmelt, irrigation, or any other source of water runs over land or through the ground, picks up **Pollutants** from these numerous, diffuse sources and deposits them into rivers, lakes and coastal waters or introduces them into ground water.

Non-Storm Water – Non-Storm Water consists of all discharges to and from a **MS4** that do not originate from precipitation events (i.e., all discharges from a **MS4** other than storm water). **Non-Storm Water** includes **IDs**, non-prohibited discharges, and **NPDES** permitted discharges.

NOT – Notice of Termination of coverage under a **General Stormwater Permit**.

Nuisance – As defined in the Porter-Cologne Water Quality Control Act, “anything which meets all of the following requirements: 1) Is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. 2) Affects at the same time an entire community or neighborhood, or any considerable number of **Persons**, although the extent of the annoyance or damage inflicted upon individuals may be unequal. 3) Occurs during, or as a result of, the treatment or disposal of **Wastes**.”

Numeric Effluent Limitations – A method by which **Effluent Limitations** are prescribed for **Pollutants** in **WDRs** using concentration based criteria to implement the federal **NPDES** regulations. When **Numeric Effluent Limitations** are met at the “end-of-pipe”, the effluent discharge generally will not cause **WQSS** to be exceeded in the receiving waters (i.e., **WQS** will also be met).

OES – The Governor’s Office of Emergency Services, an agency of the State of California.

“Only Rain Down The Storm Drain” Pollution Prevention Program – County Urban Runoff public education program.

Permit Area – The **Whitewater River Region** as defined in ATTACHMENT C -SITE MAP.

Permittees – **County, RCFC&WCD, CVWD** and the Cities of Banning, Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs and Rancho Mirage. A **Permittee** to the **Whitewater River Region** is only responsible for permit conditions relating to the discharge from **MS4** facilities for which it is the operator.

Person - A **Person** is defined as an individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof. [40 CFR 122.2].

Point Source – Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operations, landfill leachate collection systems, vessel, or other floating craft from which **Pollutants** are or may be discharged.

Pollutant – Broadly defined as any agent that may cause or contribute to the degradation of water quality such that a condition of **Pollution** or **Contamination** is created or aggravated.

Pollutants of Concern - Any **Pollutants** generated by the development, including **Pollutants** that are listed under CWA Section 303(d), **Pollutants** associated with the land use type of the development and legacy **Pollutants** associated with past use of the development site that may be exposed to **Urban Runoff**.

Pollution – As defined at 40 CFR 122.2, **Pollutant** means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge,

munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

- (a) Sewage from vessels; or
- (b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources; or
- (c) Those discharged substances that are specifically excluded from coverage under **NPDES** permits pursuant to 40 CFR 122.3.

Pollution Prevention - Practices and processes which reduce or eliminate the generation of **Pollutants**, in contrast to source control, **Pollution** control, treatment or disposal.

Pollution Prevention BMPs - In general, activities or programs that aim to educate the public in order to reduce or eliminate the generation of **Pollutants**.

Post-Construction BMPs - Subsets of **BMPs** including **Source Control** and structural treatment that detain, retain, filter, or educate to prevent the release of **Pollutants** to surface waters during the final functional life of development.

Potential Pollutant - In general, any agent that may possess the ability to cause or contribute to the degradation of water quality.

POTW - Publicly owned treatment works

POW - Hydropower Generation **Beneficial Use**

Pre-Development Runoff Conditions - The runoff conditions existing onsite immediately before the planned development activities occur. **Pre-Development Runoff Conditions** are not intended to be interpreted as those conditions that existed before any human-induced land activities occurred. This pertains to redevelopment as well as initial development.

Principal Permittees - **RCFC&WCD** and the **County**

Priority Development Projects - **New Development** and **Redevelopment Projects**

Priority Pollutants - **USEPA Priority Pollutants**. See Attachment D - List of **Priority Pollutants**.

Rainy Season - Not defined for the **Whitewater River Region**. Per the **General Industrial Permit**, defined as October 1st through May 30th.

RCFC&WCD - Riverside County Flood Control and Water Conservation District

RARE - Rare, Threatened or Endangered Species **Beneficial Use**

RCWMD - **County** Waste Management Department

Receiving Water(s) – *Waters of the United States* within the *Whitewater River Region*.

Receiving Water Limitations - Receiving Water Limitations are requirements included in the *MS4 Permit* issued by the *Regional Board* to assure that the regulated discharges do not violate *WQSs* established in the *Basin Plan* at the point of discharge to *Waters of the United States*. **Receiving Water Limitations** are used to implement the requirement of *CWA* section 301(b)(1)(C) that *NPDES* permits must include any more stringent limitations necessary to meet *WQSs*.

Receiving Water Quality Objectives – WQOs specified in the *Basin Plan* for *Receiving Waters*.

REC-I – Contact water recreation *Beneficial Use*

REC-II – Non-contact water recreation *Beneficial Use*

Redevelopment Project - A project where major modifications to an existing site or structure requiring a permit issued by a *Permittee* is undertaken. Routine maintenance, interior remodeling, re-roofing, and parking lot maintenance are not included. A **Redevelopment Project** is not to be confused with the projects undertaken by a Redevelopment Agency.

Regional Board – California Regional Water Quality Control Board, Colorado River Basin
Riverside County – Territory within the geographical boundaries of the *County*.

ROWD – Report of Waste Discharge. Application for renewal of *WDRs*.

Sanitary Sewer Overflow (SSO) – Any overflow, spill, release, discharge or diversion of untreated or partially treated wastewater from a sanitary sewer system.

SARA – Superfund Amendments and Reauthorization Act. **SARA** amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) on October 17, 1986. **SARA** reflected *USEPA's* experience in administering the complex Superfund program during its first six years and made several important changes and additions to the program. **SARA**:

- stressed the importance of permanent remedies and innovative treatment technologies in cleaning up *Hazardous Waste* sites;
- required Superfund actions to consider the standards and requirements found in other State and Federal environmental laws and regulations;
- provided new enforcement authorities and settlement tools;
- increased State involvement in every phase of the Superfund program;
- increased the focus on human health problems posed by *Hazardous Waste* sites;
- encouraged greater citizen participation in making decisions on how sites should be cleaned up; and
- increased the size of the trust fund to \$8.5 billion.

SARA also required *USEPA* to revise the Hazard Ranking System (HRS) to ensure that it accurately assessed the relative degree of risk to human health and

the environment posed by uncontrolled **Hazardous Waste** sites that may be placed on the National Priorities List (NPL).

Sediment – Soil, sand, and minerals washed from land into water. **Sediment** can destroy fish-nesting areas, clog animal habitats, and cloud waters so that sunlight does not reach aquatic plants. This **MS4 Permit** regulates only the discharges of **Sediment** from anthropogenic sources and does not regulate naturally occurring sources of **Sediment**.

SIC – Standard Industrial Classification

Site Design BMPs – In general, activities or programs to educate the public or provide low cost non-physical solutions, as well as facility design or practices aimed at reducing **Urban Runoff**, increasing infiltration, reducing pollutant transport mechanisms, minimizing the difference between pre- and post-development **Urban Runoff**.

Source Control BMPs – In general, activities or programs to educate the public or provide low cost non-physical solutions, as well as facility design or practices aimed at limit the contact between **Pollutant** sources and **Storm Water** or authorized **Non-Storm Water**. Examples include: activity schedules, prohibitions of practices, street sweeping, facility maintenance, detection and elimination of **IC/ID**, and other non-structural measures. Facility design examples include providing attached lids to trash containers, or roof or awning over material and trash storage areas to prevent direct contact between water and **Pollutants**. Additional examples are provided in Section 4 of the **New Development Guidelines**, which is incorporated into the Whitewater River **SWMP**.

Southern California Monitoring Coalition (SMC) - A regional group working to improve monitoring program design, parameter test methods, calibrate labs, evaluate the effectiveness of **BMPs**, and/or advance the science and understanding of **Urban Runoff** impacts on **Receiving Waters**.

State Water Resources Control Board – State Board or SWRCB

Storm Water - "**Storm Water**" is as defined **Storm Water** runoff and snow melt runoff consisting only of those discharges that originate from precipitation events. **Storm Water** is that portion of precipitation, which flows across a surface to the **MS4 Receiving Waters**. Examples of this phenomenon include: the water that flows off a building's roof when it rains (runoff from an impervious surface); the water that flows into streams when snow on the ground begins to melt (runoff from a semi-pervious surface); and the water that flows from a vegetated surface when rainfall is in excess of the rate at which it can infiltrate into the underlying soil (runoff from a pervious surface). When all factors are equal, runoff increases as the perviousness of a surface decreases. During precipitation events in urban areas, rainwater picks up and transports **Pollutants** through **MS4s**, and ultimately to **Waters of the United States**.

Storm Water Management Plan (SWMP) – Document describing those activities and programs implemented by the **Permittees** to manage **Urban Runoff** to comply with the requirements of this **MS4 Permit** for the **Whitewater River Region**.

Storm Water Ordinance – The **Storm Water/Urban Runoff** Management and Discharge Control Ordinances and ordinances addressing **Grading** and **Erosion** control adopted by each of the **Co-Permittees**

Structural BMPs – Physical facilities or controls which may include secondary containment, treatment measures, (e.g. first flush diversion, detention/retention basins, and oil/grease separators), run-off controls (e.g., grass swales, infiltration trenches/basins, etc.), and engineering and design modification of existing structures. Additional examples are provided in Section 4 of the *New Development Guidelines*, which is incorporated into the Whitewater River **SWMP**.

Supplement "A" – Supplement "A" to the Riverside County Drainage Area Management Plan for the Santa Ana and Santa Margarita **Watersheds**. See "*New Development Guidelines*".

SWPPP – Storm Water **Pollution Prevention** Plan

TDS – Total dissolved solids.

TMLA – **County** Transportation and Land Management Agency.

Total Maximum Daily Load (TMDL) - The **TMDL** is the maximum amount of a **Pollutant** that can be discharged into a water body from all sources (point and non-point) and still maintain **WQS**. Under **CWA** section 303(d), **TMDLs** must be developed for all water bodies that do not meet **WQSs** after application of technology-based controls.

Toxicity – Adverse responses of organisms to chemicals or physical agents ranging from mortality to physiological responses such as impaired reproduction or growth anomalies.

Treatment Control BMPs – In general, activities or programs to educate the public or provide low cost non-physical solutions, as well as facility design or practices aimed at the removal of **Pollutants** from **Urban Runoff**.

TSS – Total suspended solids.

Urban Runoff - **Urban Runoff** includes those discharges from residential, commercial, industrial, and construction areas within the **Whitewater River Region MS4 Permit Area** and excludes discharges from feedlots, dairies, farms, **POTWs**, and open space. **Urban Runoff** discharges consist of **Storm Water** and **Non-Storm Water** surface runoff from drainage sub-areas with various, often mixed, land uses within all of the hydrologic drainage areas that discharge into the **Waters of the United States**. In addition to **Urban Runoff**, the **MS4s** regulated by the **MS4 Permit** receive flows from agricultural activities, open space, state and federal properties and other non-urban land uses not under the control of the **Permittees**. The quality of the discharges from the **MS4s** varies considerably and is affected by, among other things, past and present land use activities, basin hydrology, geography and geology, season, the frequency and duration of storm events, and the presence of past or present illegal and allowed disposal practices and **IC**. The **Permittees** lack legal jurisdiction over discharges into their respective **MS4s** facilities from agricultural activities, California and federal facilities, utilities and special districts, Native American tribal lands, wastewater management agencies and other point and **Non-Point Source** discharges otherwise permitted by or under the jurisdiction of the **Regional Board**. The **Regional Board** recognizes that the **Permittees** should not be held responsible for such facilities and/or discharges. Similarly, certain activities that generate **Pollutants** present in **Urban Runoff** are beyond the ability of the **Permittees** to eliminate. Examples of these include operation of internal combustion engines, atmospheric deposition, brake pad wear, tire wear, residues from lawful application of pesticides, nutrient runoff from agricultural activities, and leaching of naturally occurring minerals from local geography.

K. GLOSSARY OF TERMS

189

USEPA – United States Environmental Protection Agency

WARM – Warm freshwater habitat **Beneficial Use**

Wash – Intermittent or Ephemeral Stream as specified in the **Basin Plan**.

Waste – As defined in **CWC** 13050(d), "**Waste** includes sewage and any and all other **Waste** substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including **Waste** placed within containers of whatever nature prior to, and for purposes of, disposal." Article 2 of CCR Title 23, Chapter 15 (Chapter 15) contains a **Waste** classification system, which applies to solid and semi-solid **Waste**, which cannot be discharged directly or indirectly to Water of the State and which therefore must be discharged to land for treatment, storage, or disposal in accordance with Chapter 15. There are four classifications of **Waste** (listed in order of highest to lowest threat to water quality): **Hazardous Waste**, **Designated Waste**, **Non-Hazardous Solid Waste**, and **Inert Waste**.

Waste Discharge Requirements (WDRs) – As defined in Section 13374 of the **CWC**, the term "**Waste Discharge Requirements**" is the equivalent of the term "permits" as used in the Federal Water **Pollution** Control Act, as amended. The **Regional Board** usually reserves reference to the term "permit" to **WDRs** for discharges to surface **Waters of the United States**.

Waste Load Allocation (WLA) – **WLAs** are portions of the **TMDL** assigned to existing and future **Point Sources** and **LAs** are portions of the **TMDL** assigned to existing and future **Nonpoint Sources**, including background loads.

Waters of the United States. – **Waters of the United States** can be broadly defined as navigable surface waters and their tributaries. Groundwater is not included. As defined in 40 CFR 122.2, the **Waters of the United States** are defined as: (a) All waters, which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (b) All interstate waters, including interstate "wetlands;" (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation or destruction of which would affect or could affect interstate or foreign commerce including any such waters: (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes; (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or (3) Which are used or could be used for industrial purposes by industries in interstate commerce; (d) All impoundments of waters otherwise defined as **Waters of the United States** under this definition; (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition; (f) The territorial seas; and (g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition. **Waters of the United States** do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the **CWA**, the final authority regarding **CWA** jurisdiction remains with the **USEPA**.

Water Quality Objective (WQO) – Numerical or narrative limits on constituents or characteristics of water designated to protect designated **Beneficial Uses** of the water. [**CWC** 13050 (h)]. California's **WQOs** are established by the State and Regional Water K. GLOSSARY OF TERMS

190

Boards in the Water Quality Control Plans. As stated in the Porter-Cologne requirements for discharge (*CWC* 13263): "**Waste Discharge Requirements** shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the **Beneficial Uses** to be protected, the water objectives reasonably required for that purpose, other **Waste** discharges, the need to prevent **Nuisance**, and the provisions of Section 13241."

Numeric or narrative limits for **Pollutants** or characteristics of water designed to protect the **Beneficial Uses** of the water. In other words, a **WQO** is the maximum concentration of a **Pollutant** that can exist in a **Receiving Water** and still generally ensure that the **Beneficial Uses** of the **Receiving Water** remain protected (i.e., not impaired). Since **WQOs** are designed specifically to protect the **Beneficial Uses**, when the objectives are violated the **Beneficial Uses** are, by definition, no longer protected and become impaired. This is a fundamental concept under the Porter Cologne Act. Equally fundamental is Porter Cologne's definition of **Pollution**. A condition of **Pollution** exists when the water quality needed to support designated **Beneficial Uses** has become unreasonably affected or impaired; in other words, when the **WQOs** have been violated. These underlying definitions (regarding **Beneficial Use** protection) are the reason why all **WDRs** implementing the federal **NPDES** regulations require compliance with **WQOs** (**WQOs** are also called water quality criteria in the **CWA**).

Water Quality Standards (WQS) – The water quality goals of a waterbody (or a portion of the waterbody) designating **Beneficial Uses** (e.g., swimming, fishing, municipal drinking water supply, etc.) to be made of the water and the **WQOs** necessary to protect those uses.

Waters of the State – Any water, surface or underground, including saline waters within the boundaries of the State [*CWC* Section 13050 (e)]

Watershed - That geographical area which drains to a specified point on a watercourse, usually a confluence of streams or rivers (also known as drainage area, catchment, or river basin).

WDID – Waste discharge identification number.

Whitewater River Region - The urbanized area of the **Whitewater River Watershed** under the jurisdiction of the **Permittees** as identified in ATTACHMENT C – SITE MAP.

Whitewater River Watershed – **Watershed** tributary to the Whitewater River.

Whitewater River Watershed Benefit Assessment Area (WWBAA) - the **RCFC&WCD's** funding source for **MS4 Permit** compliance program activities. The WWBAA covers the northwesterly portion of the **Watershed** including **County** and city jurisdictions that lie within the **RCFC&WCD's** service area. WWBAA revenues fund both area-wide **MS4** program and the **RCFC&WCD's** individual **MS4 Permit** compliance activities.

WILD – Wildlife habitat **Beneficial Use**

WQMP – Water Quality Management Plan

L. MONITORING AND REPORTING

1. Pursuant to Section 13267 of the **CWC**, the **Permittees** shall comply with Monitoring and Reporting Program No. R7-2008-0001 and with the "General Monitoring and Reporting Provisions."
2. The **Permittee(s)** shall monitor the **Receiving Water** and **MS4** for **Pollutants** during the fiscal year (July 1 to June 30) beginning July 1, 2008. This monitoring will assist in the, characterization of **Urban Runoff**, effectiveness of implemented **BMPs**, and determining the impact of **Urban Runoff** in the **Whitewater River Region**. Specifically, the **Permittee(s)** shall sample in accordance with the specified monitoring schedule and constituents of concern listed in this section of the **MS4 Permit**.
3. The **Permittee(s)** may propose alternative or additional monitoring locations for approval by the **Executive Officer**.
4. The collection, preservation and holding times of all samples shall be in accordance with **USEPA**-approved procedures. Unless otherwise approved by the **Executive Officer**, all analyses shall be conducted by a laboratory certified for such analysis by the California Department of Public Health. All analyses shall be conducted in accordance with the latest edition of "Guidelines Establishing Test Procedures for Analysis of **Pollutants**" (40 CFR 136), promulgated by the **USEPA**.
5. The timing of sample collection will be contingent on the sample holding time and the normal working hours of the contract laboratory.
6. Due to the hazard of flash flooding that exists in waterbodies within the **Whitewater River Region MS4 Permit** area, sample collection shall occur only when there is enough sunlight to safely collect a monitoring sample during a **Receiving Water** wet weather monitoring event. Sampling shall not take place when it is unsafe and/or there is a flash flood warning and/or watch.
7. **Permittee** records of monitoring information shall include:
 - A. The date, exact place, and time of sampling or measurement(s);
 - B. The individual(s) who performed the sampling or measurement(s);
 - C. The date(s) analyses were performed;
 - D. The analytical techniques or method used; and
 - E. The results of such analyses.
8. The **Permittee(s)** shall retain records of all monitoring information, including all calibration and maintenance records, copies of all reports required by this **Regional Board** Order, and records of all data used to complete the application for this **Regional Board** Order, for a period of at least five (5) years from the date of the sample, measurement, report, or application. This period may be extended by request of the **Executive Officer**.

9. The **Permittees** shall conduct monitoring for field parameters, constituents of concern and for **Priority Pollutants** as described in the appropriate sections.

Field Parameters

Field Parameters to be monitored shall include: water temperature, pH, Electrical Conductivity (EC), Turbidity, and Dissolved Oxygen (DO). Additional parameters may be collected if necessary to characterize or document the **IC/ID** (oil and grease, etc.) or for use in follow up enforcement actions against sources of an **IC/ID**. The minimum levels of analysis for the field parameters shall be monitored at the appropriate minimum levels and units for comparison with **Basin Plan** objectives.

Constituents of Concern

The following table consists of constituents of concern commonly associated with **Urban Runoff**. The minimum levels of analysis for the metals shall be as shown on ATTACHMENT E – **STATE BOARD MINIMUM LEVELS**, all other constituents shall be monitored at the appropriate minimum levels and units for comparison with **Basin Plan** objectives.

Table L-1 Constituents of Concern

Total Metals	Pathogen Indicator	Nutrients & Other
Arsenic	E. coli	Nitrate as Nitrogen
Barium		Nitrite as Nitrogen
Cadmium		Ammonia as Nitrogen
Chromium		Total Kjeldahl Nitrogen
Lead		Total Nitrogen (Calculation)
Mercury		Ortho Phosphorous
Selenium		Total Phosphorus
		Total Dissolved Solids (TDS)

Priority Pollutants

Priority Pollutants to be monitored are shown on ATTACHMENT D- LIST OF **PRIORITY POLLUTANTS**. The minimum level of analysis is shown on ATTACHMENT E – **STATE BOARD MINIMUM LEVELS**.

10. The **Permittees** shall conduct the monitoring at the following types of locations:
- A. Dry Weather Outfall **IC/ID** Monitoring;
 - B. Wet Weather Outfall Monitoring;
 - C. Dry Weather **Receiving Water** Monitoring; and
 - D. Wet Weather **Receiving Water** Monitoring.

A. Dry Weather Outfall IC/ID Monitoring

Dry weather outfall **IC/ID** monitoring shall consist of regularly visiting fixed the dry weather outfall locations as shown in Table L-2 Dry Weather **IC/ID** Outfall Monitoring Locations, quarterly to look for evidence of non-typical flow and water quality conditions for each site.

The **Permittees** shall monitor for field parameters at the dry weather outfall monitoring locations as shown in the Table L-2 Dry Weather **IC/ID** Outfall Monitoring Locations.

When there is evidence of irregular flow or water quality conditions caused by an **IC/ID** activity, the **Permittee(s)** with jurisdiction over the tributary area to the outfall shall be notified of the potential **IC/ID** and be requested to conduct a follow-up **IC/ID** investigation. **IC/ID** investigation results shall be reported in the **Annual Report**.

Table L-2 Dry Weather IC/ID Outfall Monitoring Locations

Monitoring Location Lat/Long	Minimum No. of Events/Year	Type of Sample	Constituents
Ramsey Street Storm Drain 33°48'35.0", -116°51'31.5"	2	Grab or Composite	Field Parameters and E. Coli
Portola Ave Outfall 33°44'16.8", -116°22'24.6"	2	Grab or Composite	Field Parameters and E. Coli
Avenue 52 Outfall 33°40'17.4", -116°08'56.4"	2	Grab or Composite	Field Parameters and E. Coli

B. Wet Weather Outfall Monitoring

Wet Weather Outfall Monitoring shall be conducted for the purposes of evaluating long term trends in **Urban Runoff**. The data collected from these stations shall also be used to assist in assessment of potential urban contributions to chronic water quality conditions identified from the **Receiving Waters** Monitoring Program.

The **Permittees** shall monitor for field parameters and constituents of concern at the wet weather outfall monitoring locations as shown in the Table L-3 Wet Weather Outfall Monitoring Locations.

At least once during the last three years of the monitoring program the **Permittees** shall also monitor the **USEPA Priority Pollutants** list for one storm event to determine if other **Pollutants** that have historically not been detected in excess of **WQSs** are becoming problematic. See ATTACHMENT D- LIST OF **PRIORITY**

POLLUTANTS and ATTACHMENT E – **STATE BOARD** MINIMUM LEVELS for list of **Priority Pollutants** and minimum levels for analysis.

Table L-3 Wet Weather Outfall Monitoring Locations

Monitoring Location Lat., Long.	Minimum No. of Events/Year	Type of Sample	Constituents
Ramsey Street Storm Drain 33°48'35.0", -116°51'31.5"	2	Grab or Composite	Field parameters and constituents of concern; Add Priority Pollutants list to one sample event during 2 nd , 3 rd or 4 th year of MS4 Permit
Portola Avenue Outfall 33°44'16.8", -116°22'24.6"	2	Grab or Composite	Same as above
Avenue 52 Outfall 33°40'17.4", -116°08'56.4"	2	Grab or Composite	Same as above

C. Dry Weather Receiving Water Monitoring

Dry Weather **Receiving Water** Monitoring shall be conducted for the purposes of evaluating the health of the perennial portion of the **CVSC** during dry weather conditions. The data collected shall also be used to assist in assessment of potential **Urban Runoff** contributions to chronic water quality conditions identified from the **Receiving Waters** Monitoring Program.

The **Permittees** shall monitor for field parameters, constituents of concern and **Priority Pollutants** at the dry weather **Receiving Water** monitoring location as shown in the Table L-4 Dry Weather **Receiving Water** Monitoring Location.

Table L-4 Dry Weather Receiving Water Monitoring Location

Monitoring Location Lat., Long.	Minimum No. of Events/Year	Type of Sample	Constituents
CVSC at Avenue 52 Bridge 33°40'20.9", -116°08'57.8"	2	Grab or Composite	Field parameters and constituents of concern; Add Priority Pollutants list to one sample event during 2 nd , 3 rd or 4 th year of this MS4 Permit .

D. Wet Weather Receiving Water Monitoring

The **Permittees** shall monitor the **CVSC** to assess **Receiving Water** conditions during wet weather conditions. When there is hydraulic connectivity throughout the **Whitewater River Region**, as evidenced by regional stormwater flows detected at Golf Center Parkway, the **Permittees** shall also monitor the Upper Whitewater River to assist with determination of natural background concentrations of field parameters and constituents of concern that may also be found in **Urban Runoff**.

195

The *Permittees* shall monitor for field parameters, constituents of concern and *Priority Pollutants* at the wet weather *Receiving Water* monitoring locations as shown in the Table L-5 Wet Weather *Receiving Water* Monitoring Locations.

Table L-5 Wet Weather *Receiving Water* Monitoring Locations

Monitoring Location Lat., Long.	Minimum No. of Events/Year	Type of Sample	Constituents
Upper White Water River 33°59'01.5", -116°08'57.8"	2*	Grab or Composite	Field parameters and constituents of concern; Add <i>Priority Pollutants</i> list to one sample event during 2 nd , 3 rd or 4 th year of this <i>MS4 Permit</i> .
CVSC at Avenue 52 Bridge 33°40'20.9", -116°08'57.8"	2	Grab or Composite	Same as above

* - Note: Sample will be collected when there is hydraulic connectivity throughout the *Whitewater River Region*, as evidenced by regional stormwater flows detected at Golf Center Parkway.

Special Studies

The *Permittees*, individually or collectively, shall continue to participate in regional monitoring and scientific studies conducted by the Southern California Monitoring Coalition (*SMC*) and or the California Stormwater Quality Association (*CASQA*), and/or other regional groups or efforts necessary to improve monitoring program design, parameter test methods, calibrate labs, evaluate the effectiveness of *BMPs*, and/or advance the science and understanding of *Urban Runoff* impacts on *Receiving Waters*.

The *Permittees* may also be required to conduct additional monitoring required by the Implementation Plans of legally approved *TMDLs* within the *Whitewater River Watershed*. See Section G. **TOTAL MAXIMUM DAILY LOADS**.

11. Public Works Construction Monitoring

- A. The *Regional Board* may require the *Permittee(s)* to conduct additional site inspections, submit reports and certifications, or to perform sampling and analysis.
- B. The *Permittee(s)* shall conduct inspections of construction sites prior to anticipated storm events and after actual storm events to identify areas contributing to a discharge of *Storm Water* associated with construction activity. The *Permittee(s)* shall evaluate whether control practices to reduce *Pollutant* loadings identified in the *SWPPP* are adequate and properly implemented or whether additional control practices are needed. A record of the inspections must include the date of the inspection, the individual(s) who performed the inspection, and the observations. Other than reporting incidents of noncompliance with these inspections, the *Permittee(s)* are not required to submit inspection reports.
- C. Any noncompliance or anticipated noncompliance shall be reported to the *Regional Board*. The notifications shall identify the type(s) of noncompliance, describe the actions necessary to achieve compliance, and

L. MONITORING AND REPORTING

196

include a time schedule, subject to modifications by the **Regional Board**, indicating when compliance will be achieved. Noncompliance notifications must be submitted within 30 days of identification of noncompliance.

- D. Records of all inspections, compliance certifications, and noncompliance reporting must be retained for a period of at least five years. With the exception of noncompliance reporting, the **Permittee(s)** are not required to submit these records.

12. Reporting

- A. An **Annual Report** shall be submitted to the **Executive Officer** stating the results of monitoring and other reportable activities. This report shall be submitted to the **Regional Board** by January 15th of each year.
- B. The monitoring report shall describe monitoring station locations, frequency of sampling, quality assurance/quality control procedures and sampling and analysis protocols, summarize the data/results, identify methods of evaluating the data, and provide graphical summaries of the data.
- C. In addition, monitoring reports shall include an analysis of the findings of each monitoring year. The analysis shall identify acute Water Quality problems that may be indicated by water quality parameters that are measured outside of normal ranges for that parameter based on historic water quality data.
- D. Monitoring reports shall also include identification and analysis of any long-term trends in **Storm Water** or **Receiving Water** quality. The **Permittees** shall analyze long term trends for signs of chronic water quality problems. The analysis shall include identification of potential urban sources of chronic problems, effectiveness of existing **BMP** control measures, and recommend necessary next steps. Next steps may include allowing for additional time to statistically confirm a chronic water quality problem, additional data collection necessary to examine urban sources, potential revisions to the **SWMP** to address urban sources found to be contributing to the chronic condition, or other similar measures necessary to confirm and/or address the condition.
- E. All monitoring reports shall use a standard report format and shall include the following:
- i. An introduction;
 - ii. Summary of Special Studies participated in during the reporting period;
 - iii. Comprehensive interpretations and conclusions; and
 - iv. Recommendations for necessary future actions.

13. **IC/IDs**

The **Permittee(s)** shall report the following:

Activity	Reporting
To inspect and document any IC/IDs identified as part of the SWMP	Annually

14. **Whitewater River Region** Modifications

Per Section E.2.b., the **Permittees** shall report any necessary changes to the boundaries of the **Whitewater River Region**.

15. Legal Certifications

In the Fiscal Year 2008-2009 **Annual Report** the **Permittees** shall provide their legal certifications per Section E.4 of this **MS4 Permit**.

16. **MS4 Permit** Evaluation and Effectiveness Reporting Requirements

The **Permittee(s)** shall submit all reportable Evaluation and Effectiveness items contained within the **Permittees SWMP** and as required in the various Section F Evaluation and Reporting Requirements of this **MS4 Permit**.

17. Compliance Status

The **Permittee(s)** shall report the overall compliance level for the reporting period in the January 15 **Annual Report** based on the reportable items described in sections B through G of this **MS4 Permit**. This compliance status report shall also include a compliance status report for each **Permittee**.

18. Format

A. The **Permittee(s)** shall arrange the data in tabular form so that the specified information is readily discernible. The data shall be summarized in such a manner as to clearly illustrate whether the **Permittee(s)** are in compliance with the **MS4 Permit**.

B. Each **Permittee's Annual Reporting** form shall contain a transmittal page signed by a duly authorized representative of the **Permittee**. The transmittal page must contain the following statement:

"I declare under the penalty of law that I have personally examined and am familiar with the information submitted in this document, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- C. A duly authorized representative of the **Permittee(s)** may sign the documents if:
- i. The authorization is made in writing by the director, general manager or equivalent person in charge of overseeing the entire operation.
 - ii. The authorization specified an individual or person having responsibility for the overall operation; and
 - iii. The written authorization is submitted to the **Executive Officer**.

D. Submit monitoring reports to:

Executive Officer
California Regional Water Quality Control Board Colorado River Basin
Region
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260

Eugene Bromley
U.S. Environmental Protection Agency - Region IX Permits Issuance
Section (W-5-1)
75 Hawthorne Street
San Francisco, CA 94105

Unless otherwise directed, the **Permittees** shall submit one hard copy and one electronic copy of each report required under this **MS4 Permit** to the **Regional Board** and one electronic copy to **USEPA**.

M. ADMINISTRATIVE PROVISIONS

1. These requirements do not exempt the **Permittees** from compliance with any other laws, regulations, or ordinances which may be applicable; do not legalize land treatment and disposal facilities; and leave unaffected any further restraints on those facilities which may be contained in other statutes or required by other regulatory agencies.
2. This **MS4 Permit** shall become the **NPDES** permit pursuant to Section 402 of the federal **CWA**, as amended from time to time, upon adoption by the **Regional Board** provided no objections from the **USEPA** Regional Administrator have been received. If the Regional Administrator objects to the issuance, this **MS4 Permit** shall not become effective until such objection is withdrawn.

N. REQUIRED SUBMITTALS, REPORTS AND COMPLIANCE TIME SCHEDULES

1. The following submittals and reports are required in accordance with Section 13267 of the **CWC**.

- a. This **MS4 Permit** expires on May 21, 2013 and the **Permittees** must file a **ROWD** in accordance with Title 23, California Code of Regulations, not later than 180 days in advance of such date as application for issuance of a new **MS4 Permit**.
- b. All reports required by this order shall be submitted to the **Executive Officer** in accordance with the following schedule:

REFERENCE	ITEM	COMPLETION TIME AFTER PERMIT ADOPTION/ FREQUENCY	REPORT DUE DATE
E.1.g. E.2.e	Desert Task Force meetings to discuss MS4 Permit implementation and regional and statewide issues.	Minimum quarterly meetings.	Annually on January 15 th .
E.1.h E.2.b.	Review and update the Whitewater River Region MS4 boundary map.	Annually	If amended, annually on January 15 th .
E.4	Review of Ordinances	June 15, 2009	June 29, 2009
F.1.a.ii.	Develop model forms and maintain database relating to IC/ID , Litter, Debris and Trash Control Program	June 15, 2009	June 29, 2009
F.1.a.vi	Field Screening/System Surveillance	Annually	Annually on January 15 th .
F.1.a.xvi	Spill incidents, including unauthorized discharges	Annually	Annually on January 15 th .
F.1.a.xvi	IC/ID reporting requirements in SWMP.	Annually	Annually on January 15 th .
F.1.a.xvii	Amend SWMP to report on IC/ID Activity Program.	June 15, 2009	June 29, 2009
F.1.b.vii	Commercial/Industrial Program reporting requirements in SWMP.	Annually	Annually beginning January 15 th 2010.
F.1.b.viii. F.1.b.ix	Amend SWMP to report on Commercial/Industrial requirement in SWMP.	June 15, 2009	June 29, 2009

REFERENCE	ITEM	COMPLETION TIME AFTER PERMIT ADOPTION/FREQUENCY	REPORT DUE DATE
F.1.c.iii	Revise SWMP New Development and Redevelopment requirements.	June 15, 2009	June 29, 2009
F.1.d.vi	Summarize and evaluate construction inspection prioritization criteria and inspection schedule as part of Annual Report .	Annually	Annually, beginning January 15, 2010
F.1.d.vii	Describe and evaluate process for evaluating New Development and Redevelopment Projects .	Annually	Annually, beginning January 15, 2010
F.1.e.ii.2	Incorporate Permittee facilities and operations BMPs outlined in SWMP .	June 15, 2009	June 29, 2009
F.1.e.vi.1	Permittee activities program reporting requirements in SWMP	Annually	Annually on January 15 th .
F.1.e.vi.2	Amend SWMP to require Permittees with jurisdiction over a sanitary sewer to confirm sewage spill response plans are developed and current.	June 15, 2009	June 29, 2009
F.1.e.vi.3	Amend SWMP to summarize number of municipal facilities operated by Permittees and confirm all facilities have Pollution Prevention plans onsite.	June 15, 2009	June 29, 2009
F.1.e.vi.4	Amend SWMP to maintain list of pesticide application personnel and verify applicator certifications.	June 15, 2009	June 29, 2009
F.1.e.vi.5	Amend SWMP to verify stencils/markers are maintained on inlets to the MS4.	June 15, 2009	June 29, 2009
F.1.f.ix.1	Public Education Program reporting requirements in SWMP	Annually	Annually on January 15 th .

REFERENCE	ITEM	COMPLETION TIME AFTER PERMIT ADOPTION/FREQUENCY	REPORT DUE DATE
F.1.f.ix.2	Amend SWMP to document usage of 800 toll free line.	June 15, 2009	June 29, 2009
F.1.f.ix.3	Amend SWMP to document HHW Collection Program activities.	June 15, 2009	June 29, 2009
F.1.f.ix.4	Amend SWMP to track number of regional public education outreach event conducted.	June 15, 2009	June 29, 2009
F.1.f.ix.5	Amend SWMP to document impressions made through regional media outreach programs and to use public surveys to assess effectiveness of public education and outreach program.	June 15, 2009	June 29, 2009
F.1.f.ix.6	Amend SWMP to summarize scope and purpose of regional public education materials available to various audiences.	June 15, 2009	June 29, 2009
F.1.f.ix.7	Amend SWMP to report on Permittee employee training program.	June 15, 2009	June 29, 2009
F.1.f.ix.8	Amend SWMP to identify existing code requirements for on-site storage and infiltration of stormwater on new developments and redevelopment projects and the methodology used to ensure that storage/infiltration areas are retained post-construction.	June 15, 2009	June 29, 2009
G.	SWMP modifications in accordance to TMDL Implementation Tasks	Per TMDL WLAs/ Implementation Plan	Per TMDL WLAs/ Implementation Plan
L.12 – L.18	Annual Report Requirements	Annually	Annually on January 15 th .

O. FACT SHEET**1. Fact Sheet Format:**

This Fact Sheet briefly sets forth the principle facts and the significant factual, legal, methodological, and policy questions that the **Regional Board** considered in preparing Order No. R7-2008-0001. In accordance with the Code of Federal Regulations (CFR), Title 40, parts 124.8 and 124.56, this Fact Sheet includes, but is not limited to, the following information:

- Contact Information;
- Public process and notification procedures;
- A brief description of the type of facility or activity that is being regulated by the Order;
- The type and quantity of **Pollutants** discharged;
- A brief summary of the basis for the requirements in the Order; including references to the applicable statutory or regulatory provisions; and
- A discussion of the requirements in the Order.

2. Project Description and *Permittees* Information:

The following pages contain information concerning an application for renewal of **WDRs** and **NPDES** Permit, Board Order No. R7-2008-0001, **NPDES** No. CAS617002. This **MS4 Permit** prescribes **WDRs** for **Urban Runoff** from the Cities and the unincorporated areas in the **County** within the jurisdiction of the **Regional Board**.

On March 9, 2006, the **County** and the **RCFC&WCD**, in cooperation with the **CVWD** and incorporated cities, including the Cities of Banning, Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs and Rancho Mirage (hereinafter collectively referred to as the **Permittees**), jointly submitted **NPDES** Application No. CAS617002 and a **ROWD** for re-issuance of a **MS4 Permit**.

For the purposes of this **MS4 Permit**, the following two **Permittees** are identified as the **Principal Permittees**:

County of Riverside, 4080 Lemon Street, P.O. Box 1090, Riverside, California 92501-1090; and

Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, California 92501

The **CVWD** and the Cities are identified as **Co-Permittees**. Collectively, the **Principal Permittees** and **Co-Permittees** comprise the **Permittees**. Under this organizational framework, the **Principal Permittees** are responsible for coordinating collective **Permittee** activities required by the **MS4 Permit**, including report preparation and submittals to the **Regional Board**. Other specific duties

and obligations of the *Principal Permittees* and the *Co-Permittees* imposed by this *MS4 Permit* are specified in further detail in the *Implementation Agreement*, which is described in Finding No. 5 of this Order.

3: Project Area:

This *MS4 Permit* applies to the urbanized areas that lie approximately between the San Geronio Pass area to the northwest and the Salton Sea to the southeast referred to as the *Whitewater River Region*. The majority of the *Whitewater River Region* is in the Coachella Valley and is identified in ATTACHMENT C – SITE MAP. The generally northwest-southeast trending Coachella Valley is in the northern portion of a large low area in the Colorado Desert known as the Salton Basin with major drainage to the Salton Sea. The San Jacinto Mountains bound the Coachella Valley on the southwest, and the San Geronio Mountains, Indio Hills and Mecca Hills bound the Coachella Valley on the northeast side. Major drainage is through the Whitewater River, and its tributaries, which reach the northern end of the Salton Sea. The headwaters of the Whitewater River originate from Mt. San Geronio. The valley surface is characterized as wide, boulderly alluvial fans and sand dunes.

4. Exclusions to the Permitted Area:

The *Permittees* may lack legal jurisdiction over storm water discharges into their respective *MS4s* facilities from certain facilities, entities, properties, and other *Point* and *Non-Point Source* discharges otherwise permitted by or under the jurisdiction of the *Regional Board*. The *Regional Board* recognizes that the *Permittees* should not be held responsible for such facilities and/or discharges. Similarly, certain activities that generate *Pollutants* present in *Urban Runoff* are beyond the ability of the *Permittees* to eliminate. Examples include: operation of internal combustion engines, atmospheric deposition, brake pad wear, tire wear, residues from lawful application of pesticides, nutrient runoff from agricultural activities, and leaching of naturally occurring minerals from local geography. Consequently, certain portions of the *Whitewater River Watershed* are excluded from coverage under this *MS4 Permit*. Excluded areas include:

- Federal lands and state properties, including, but not limited to, military bases, national forests, hospitals, colleges and universities, and highways;
- Native American tribal lands;
- Open space and rural (non-urbanized) areas;
- Agricultural lands (exempted under the *CWA*); and
- Utilities and special districts (including school districts, park districts, publicly owned treatment works and water utilities, etc.).

These areas in the *Whitewater River Region* for which coverage under the *MS4 NPDES Permit* is excluded, are shown in ATTACHMENT C – SITE MAP.

5. CWA Requirements:

The **CWA** (33 U.S.C. § 1251 et seq.) established a national policy designed to help maintain and restore the physical, chemical and biological integrity of the nation's waters. In 1972, the **CWA** established the **NPDES** permit program to regulate the discharge of **Pollutants** from **Point Sources** to **Waters of the United States**. From 1972 to 1987, the main focus of the **NPDES** program was to regulate conventional **Pollutant** sources such as sewage treatment plants and industrial facilities. As a result, on a nationwide basis, **Non-Point Sources**, including agricultural and **Storm Water** runoff, now contribute a larger portion of many kinds of **Pollutants** than the more regulated sewage treatment plants and industrial facilities.

The National **Urban Runoff** Program (NURP) final report to Congress (**USEPA**, 1983) concluded that the goals of the **CWA** could not be achieved without addressing **Storm Water** discharges. The 1987 **CWA** amendments established a framework for regulating **Urban Runoff**. Pursuant to these amendments, the **Regional Board** began regulating municipal **Storm Water** runoff in 1996.

The **CWA** allows the **USEPA** to delegate its **NPDES** permitting authority to states with an approved environmental regulatory program. The State of California is one of the delegated states. The Porter-Cologne Act Water Quality Control Act (**CWC**, Section 13000 et seq.) authorizes the **State Board**, through its Regional Boards, to regulate and control the discharge of **Pollutants** into **Waters of the State** and tributaries thereto. Section 405 of the Water Quality Act (WQA) of 1987 added Section 402(p) to the **CWA**. Pursuant to Section 402(p)(4) of the **CWA**, the **USEPA** promulgated regulations for **Storm Water** permit applications for **Storm Water** discharges associated with industrial activities and **MS4s** serving a population of 100,000 or more. This **MS4 Permit** governing **Urban Runoff** meets both the statutory requirements of Section 402(p)(3)(B) and all requirements applicable to an **NPDES** permit issued under the issuing authority's discretionary authority in accordance with Section 401(a)(1)(B) of the **CWA**.

6. Regulatory Background and CWA Storm Water Requirements:

The **CWA** prohibits the discharge of any **Pollutant** to navigable waters from a **Point Source** unless an **NPDES** permit authorizes the discharge. Efforts to improve water quality under the **NPDES** program traditionally and primarily focused on reducing **Pollutants** in discharges of industrial process wastewater and municipal sewage. The 1987 amendments to the **CWA** required **MS4s** and industrial facilities, including construction sites, to obtain **NPDES** permits for **Storm Water** runoff from their facilities. On November 16, 1990, the **USEPA** promulgated the final Phase 1 **Storm Water** regulations. The **Storm Water** regulations are contained in 40 CFR Parts 122, 123, and 124.

On June 22, 1996, the **Regional Board** issued Order No. 96-015 to the **Permittees** (first term permit). On September 5, 2001, the **Regional Board** adopted Order No. 01-077 (second term permit). Order No. 01-077 is administratively extended in accordance with Title 23, Division 3, Chapter 9, Article 3, Section 2235.4 of the California Code of Regulations.

7. Area-Wide **MS4 Permit**:

To regulate and control **Urban Runoff** from the **Whitewater River Region** to the **MS4**, an area-wide approach is essential. The **MS4** is not controlled by a single entity; the **County**, several Cities, Caltrans, in-addition to other entities (i.e. **CVWD**, **RCFC&WCD**), manage the systems. The management and control of the entire **MS4** cannot be effectively carried out without the cooperation and efforts of all these entities. Also, it would not be meaningful to issue a **MS4 Permit** to each of the entities within the **Whitewater River Region** whose land/facilities drain into the **MS4** operated by the **Permittees**. The **Regional Board** has concluded that the best management option for the **Whitewater River Region** is to issue an area-wide **MS4 Permit** to the **RCFC&WCD**, **County**, **CVWD** and the Cities within **Whitewater River Region**. A separate **MS4 Permit** has been issued to **Caltrans**. **Urban Runoff** from other state, federal, utility, or special district facilities and state or federal lands will be permitted separately.

This area-wide **NPDES** permit for the **Whitewater River Region MS4 Permit Area** is being considered for renewal in accordance with Section 402(p) of the **CWA** and all requirements applicable to an **NPDES** permit issued under the issuing authority's discretion authority. The requirements included in this **MS4 Permit** are consistent with the **CWA**, the federal regulations governing urban **Storm Water** discharges, the **Basin Plan**, the **CWC**, and the **State Board's** Plans and Policies.

8. Coordination with Other Regional Agencies:

In developing **BMPs** and monitoring programs, consultation/coordination with other drainage management entities and other Regional Boards is essential. **Regional Board** staff will coordinate the program with other Regional Boards and other flood control entities/cities on an "as needed" basis. The **MS4 permit**/program process is at the same stage of development in both the Santa Ana and San Diego Regional Board areas of the **County**. Common programs, reports, implementation schedules and efforts are desirable and will be utilized to the **MEP**.

9. Existing Facilities and Programs:

Within the **Whitewater River Region**, the California Department of Finance estimates a population of approximately 402,650 persons as of January 1, 2005. **Storm Water** discharges from urbanized areas consist mainly of surface runoff from residential, commercial, and industrial developments. In addition, there are **Storm Water** discharges from agricultural land uses. The constituents of concern and significance in **Storm Water** discharges are: total suspended solids (**TSS**), biochemical oxygen demand (**BOD**), chemical oxygen demand (**COD**), oil and grease (**O&G**), heavy metals, nutrients and organic chemicals such as base/neutral and acid extractables, pesticides and herbicides, and petroleum hydrocarbon components.

To protect the **Beneficial Uses of Waters of the State**, **Pollutants** from all sources need to be controlled. Recognizing this, and the fact that **Urban Runoff** contains **Pollutants**, the **Permittees** and the **Regional Board** have all agreed that an area-wide **MS4 Permit** is the most effective way to develop and implement a comprehensive **Storm Water** management program in a timely manner. This **MS4 Permit** contains requirements with time schedules that will allow the **Permittees** to

continue to address water quality problems caused by **Urban Runoff** through their management programs to reduce **Pollutants** in **Urban Runoff** to the **MEP**.

10. **MS4 Permit** Requirements:

In accordance with Section 402(p)(3), as part of a program to reduce the **Pollutants** in **Urban Runoff** to the **MEP**, the **Permittees** have been required to submit existing management plans and programs being implemented or developed in the previous **MS4 Permit** to reduce **Pollutants** in **Urban Runoff**. In addition, the **Permittees** will be required to report, review and/or revise the management programs and control measures in accordance with a time schedule approved by the **Executive Officer** for this **MS4 Permit**.

If existing management programs are not effective in controlling **Pollutant** loading and in achieving the **WQOs** of the **Receiving Waters**, additional programs shall be developed and implemented upon consultation and approval of the **Executive Officer**.

The **MS4 Permit** also requires the development and implementation of management programs and/or **BMPs** during the life of the **MS4 Permit** such that the quality of **Urban Runoff** discharged can be improved and the **WQOs** of the **Receiving Waters** ultimately can be met. It is also expected that through implementation of these programs and/or **BMPs** the **Beneficial Uses** of the **Receiving Waters** will be protected.

11. **Basin Plan** and **Beneficial Uses**:

The **Basin Plan** is the basis for the **Regional Board's** regulatory programs. The **Basin Plan** was developed and is periodically reviewed and updated in accordance with relevant federal and state law and regulation, including the **CWA** and the **CWC**. As required, the **Basin Plan** designates the **Beneficial Uses** of the **Waters of the State** within the **Whitewater River Region** and specifies **WQOs** intended to protect those uses. (Beneficial uses and **WQOs**, together with an anti-degradation policy, comprise federal **WQSs**). The **Basin Plan** also specifies an implementation plan, which includes certain discharge prohibitions. In general, the **Basin Plan** makes no distinction between wet and dry weather conditions in designating **Beneficial Uses** and setting **WQOs**, i.e., the **Beneficial Uses**, and correspondingly, the **WQOs** are assumed to apply year-round. (Note: In some cases, **Beneficial Uses** for certain surface waters are designated as "I", or intermittent, in recognition of the fact that surface flows (and **Beneficial Uses**) may be present only during wet weather.)

Storm Water flows which are discharged to the **CVSC** in the **Whitewater River Region** are tributary to the Salton Sea. The **Beneficial Uses** of Salton Sea and its tributaries include **MUN, AGR, IND, GWR, REC-1, REC-2, WARM, COLD, WILD,** and **RARE**. The ultimate goal of this **Urban Runoff** management program is to protect the **Beneficial Uses** of the **Receiving Waters**.

12. **CWA** Section 303(d) List and **TMDLS**:

Pursuant to Section 303(b) of the **CWA**, the 1998 water quality assessment conducted by the **Regional Board** listed a number of water bodies within the

Region under Section 303(d) of the **CWA** as impaired water bodies. These water bodies where the designated **Beneficial Uses** are not met and the **WQOs** are being violated. The sources of the impairments may include **POTW** discharges, and runoff from agricultural, **Caltrans** outfalls, Native American Tribal Lands, open space and **Non-Point Source** discharges including wildlife and transients and urban land uses. The **Impaired Waterbody** within this **MS4 Permit** is listed for pathogens and Toxaphene.

Federal regulations require that a **TMDL** be established for each 303(d) listed waterbody for each of the **Pollutants** causing impairment. The **TMDL** is the total amount of the problem **Pollutant** that can be discharged while **WQSS** in the **Receiving Water** attained, i.e., **WQOs** are met and the **Beneficial Uses** are protected. It is the sum of the individual **WLAs** for **Point Source** inputs, **LAs** for **Non-Point Source** inputs and natural background, with a margin of safety. The **TMDLs** are the basis for limitations established in **WDRs**. The **Permittees** shall revise the SWMP, at the direction of the **Executive Officer**, to incorporate program implementation amendments so as to comply with regional, **Watershed** specific requirements, and/or **WLAs** developed and approved pursuant to the process for the designation and implementation of **TMDLs** for impaired water bodies.

13. Permit Requirements and Provisions:

The legislative history of **Storm Water** statutes (1987 **CWA** Amendments), **USEPA** regulations (40 CFR Parts 122, 123, and 124), and clarifications issued by the **State Board** (**State Board** Orders No. WQ 91-03 and WQ 92-04) indicate that a non-traditional **NPDES** permitting strategy was anticipated for regulating **Urban Runoff**. Due to the economic and technical infeasibility of full-scale end-of-pipe treatments and complexity of **Urban Runoff** quality and quantity, **MS4** permits generally include narrative requirements for the implementation of **BMPs** in place of **Numeric Effluent Limits**.

The requirements in this **MS4 Permit** are meant to specify those management practices, control techniques and system design and engineering methods that will result in **MEP** protection of the **Beneficial Uses** of the **Receiving Waters**. The **State Board** (Orders No. WQ 98-01 and WQ 99-05) concluded that **MS4s** must meet the technology-based **MEP** standard and **WQSS** (**WQOs** and **Beneficial Uses**). The U.S. Court of Appeals for the Ninth Circuit subsequently held that strict compliance with **WQSS** in **MS4** permits is at the discretion of the local permitting agency. Any requirements included in the **MS4 Permit** that are more stringent than the federal **Storm Water** regulations are in accordance with the **CWA Section 402(p)(3)(iii)**, and the **CWC Section 13377** and are consistent with the **Regional Board's** interpretation of the requisite **MEP** standard.

The **ROWD** included a discussion of the current status of the **County Urban Runoff** management program and the proposed **Urban Runoff** management programs and policies proposed for the next five years (third permit term). This **MS4 Permit** incorporates these documents and specifies performance commitments for specific elements to the **Permittees Urban Runoff** management program.

The essential components of the **Urban Runoff** management program, as established by federal regulations [40CFR122.26(d)] are (i) Adequate Legal Authority, (ii) Fiscal Resources, (iii) **Storm Water Management Plan (SWMP)** – (Public Information and Participation Program, Industrial/Commercial Facilities Program, Development Planning Program, Development Construction Program, Public Agency Activities Program, **IC/ID** Elimination Program), and (iv) Monitoring and Reporting Program. The major sections in this Order include A. Findings, B. Discharge Prohibitions, C. Allowable **Non-Storm Water** Discharges, D. **Receiving Water Limitations**, E. Specific **Permittee** Requirements, F. **Best Management Practices**, G. **Total Maximum Daily Loads**, H. General Provisions, I. Reporting Requirements, J. Notifications, K. Glossary of Terms, L. Monitoring and Reporting, M. Administrative Provisions, and N. Required Submittals and Compliance Time Schedules. These programs and policies are intended to improve **Urban Runoff** quality and protect the **Beneficial Uses of Receiving Waters** of the **Whitewater River Region**.

14. Rationale for Requirements

- a. Discharge Prohibitions – In accordance with **CWA Section 402(p)(3)(B)(ii)**, this Order prohibits the discharge of **Non-Storm Water** to the **MS4s**, with few exceptions;
- b. Allowable **Non-Storm Water** Discharges – The specified exceptions are consistent with 40 CFR 122.26(d)(2)(iv)(B)(1). If the **Permittees** or the **Executive Officer** determines that any of the exempted **Non-Storm Water** discharges is a significant source of **Pollutants**, a separate **NPDES** permit will be required;
- c. **Receiving Water Limitations** – **Receiving Water Limitations** are included to ensure that discharges of **Urban Runoff** from **MS4** systems do not exceed, cause or contribute to violations of applicable **WQSS** in **Receiving Waters**. The compliance strategy for **Receiving Water Limitations** is consistent with the **USEPA** and **State Board** guidance and recognizes the complexity of **Urban Runoff** management.
- d. Specific **Permittee** Requirements – This section contains specific language on the responsibilities of the Principal and **Co-Permittees**.
 1. The **Principal Permittees** are required to coordinate the overall **Urban Runoff** management program and the **Co-Permittees** are responsible for managing the **Urban Runoff** Program within their jurisdictions as detailed in the **ROWD**, the **Annual Reports** and Order No. R7-2008-0001.
 2. Each **Permittee** is required to address its legal authority and enforcement for this **MS4 Permit**. Each **Permittee** has adopted a number of ordinances, to establish legal authority to control discharges to the **MS4s** and to enforce these ordinances as specified in 40 CFR 122.26(d)(2)(l)(B, C, E, and F). The **Permittees** are required to enforce these ordinances

and to take enforcement actions against violators (40 CFR 122.26(d)(2)(iv.)(A-D).

e. **Best Management Practices** – The federal Regulations 40 CFR 122.26(d)(2)(iv)(A-D) are clear in placing responsibility on municipalities for control of **Urban Runoff** from third party activities and land uses to their **MS4**. Under the **CWA Section 402(p)**, municipalities are required to reduce the discharge of **Pollutants** from their **MS4s** facilities to the **MEP**. **MEP** is the critical technology-based performance standard that municipalities must attain in order to comply with their **MS4** permits. The **MEP** standard establishes the level of **Pollutant** reductions the municipality must achieve. The **MEP** standard can be achieved by means of implementing **Pollution Prevention** and **Source Control BMPs** (as the first line of defense) in combination with **Treatment Control BMPs** serving as a backup (additional line of defense). Each **Permittee** is required to implement the programs and **BMPs** to the **MEP** as described in the **SWMP** and this **MS4 Permit**. These programs and **BMPs** include as follows:

1. **IC/ID, Litter, Debris and Trash Control Program** - The **Permittees** have established a program to address **IC/IDs** and a mechanism to respond to spills, leaks and other incidents of discharges to the **MS4**. The **Permittees** are required to continue these programs to ensure that the **MS4s** do not become a source of **Pollutants** in **Receiving Waters**.
2. **Commercial/Industrial Program** – The **Permittees** will continue to identify, inspect commercial and industrial facilities, which are known to contribute substantial **Pollutant** load to **MS4s** to ensure compliance with this **MS4** permit.
3. **New Development/Redevelopment** and Construction Activities Program – The **Permittees** are required to develop and implement strategies to ensure that controls are in place to prevent or minimize water quality impacts to the **MEP** for these activities.
4. **Private Construction Activities Program** – The **Permittees** shall continue to implement and enforce a program to reduce **Pollutants** in any **Urban Runoff** to the **MS4** from construction activities that result in a **Land Disturbance** of greater than or equal to one acre. This is to enforce the **State Board General Construction Permit**.
5. **Permittee Activities Program** – The **Permittees** are required to continue to eliminate the discharges of **Pollutants** from public agency activities and facilities and re-evaluate their **MS4s** facilities annually to see if additional **BMPs** are needed to ensure protection of the **Receiving Waters**; and
6. **Public Education and Outreach Program** – The **Permittees** have committed to implement a strategic and comprehensive public

education program to maintain the integrity of the **Receiving Waters** to sustain the **Beneficial Uses**.

- f. **Total Maximum Daily Loads** – See Item No. 12. **CWA** Section 303(d) List and **TMDLs** of this Section.
- g. **General Provisions** – These general provisions were included as part of the previous **MS4 Permit**.
- h. **Reporting Requirements** – These reporting requirements were included as part of the previous **MS4 Permit**.
- i. **Notifications** – These notification requirements were included as part of the previous **MS4 Permit**.
- j. **Glossary of Terms** – This was added to provide clarity on terms used in this **MS4 Permit**.
- k. **Monitoring and Reporting** – The key focus of the monitoring and reporting program is to collect data and develop methodologies and assessment tools to more effectively understand **Urban Runoff** impacts to the **Receiving Waters**.
- l. **Administrative Provisions** – These administrative provisions were included as part of the previous **MS4 Permit**.
- m. **Required Submittals and Compliance Time Schedules** – These requirements were included as part of the previous permit and reflect new **MS4 Permit** requirements.

15. Anti-degradation Analysis:

The **Regional Board** has considered whether a complete anti-degradation analysis, pursuant to 40 CFR 131.12 and **State Board** Resolution No. 68-16, is required for these **Urban Runoff** discharges. The **Regional Board** finds that the **Pollutant** loading rates to the **Receiving Waters** will be reduced with the implementation of the requirements in this **MS4 Permit**. As a result, the quality of **Storm Water** discharges and **Receiving Waters** will be improved, thereby protecting the **Beneficial Uses** of **Waters of the United States**. This is consistent with the federal and state anti-degradation requirements and a complete anti-degradation analysis is not necessary.

16. Public Participation:

The **Regional Board** is considering the issuance of **WDRs** that will serve as an **NPDES** Permit for **MS4 Permittees**. As a step in the **WDRs** adoption process, the **Regional Board** staff has developed tentative **WDRs**. The **Regional Board** encourages public participation in the **WDRs** adoption process.

17. Notification of Interested Parties:

The **Regional Board** has notified the Dischargers and interested agencies and **Persons** of its intent to prescribe **WDRs** for the discharge and has provided them with an opportunity to submit their written comments and recommendations. Notification was provided through the following newspapers: Desert Sun and Imperial Valley Press.

18. Public Workshop:

The **Regional Board** recognizes the significance of the **County's "Only Rain Down The Storm Drain" Pollution Prevention** Program and will conduct, participate, and/or assist with at least one workshop every year during the term of this **MS4 Permit** to promote and discuss the progress of the **Urban Runoff** management program. The details of the annual workshop will be published in local newspapers and mailed to interested parties. **Persons** wishing to be included in the mailing list for any of the items related to this **MS4 Permit** may register their name, mailing address and phone number with the **Regional Board** office at the address given below.

19. Written Comments:

The staff determinations are tentative. Interested **Persons** and agencies are invited to submit written comments concerning these tentative **WDRs**. Comments must be submitted either in person or by mail to the **Executive Officer**.

Executive Officer
California Regional Water Quality Control Board
Colorado River Basin Region
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260

To be fully responded to by staff and considered by the **Regional Board**, written comments should be received at the **Regional Board** office by 5:00 p.m. on April 4, 2008.

20. Information and Copying:

The **ROWD**, related documents, tentative **WDRs**, comments received, and other information are on file and may be inspected at the address above at any time between 8:30 a.m. and 4:45 p.m., Monday through Friday. Copying of documents may be arranged through the **Regional Board** by calling (760) 346-7491.

21. Register of Interested Persons:

Any **Person** interested in being placed on the mailing list for information regarding the **WDRs** and **NPDES MS4 permit** should contact the **Regional Board**, reference this facility, and provide a name, address, and phone number.

22. Public Hearing:

The **Regional Board** will hold a public hearing on the tentative **WDRs** during its regular Board meeting on the following date and time and at the following location:

Date: May 21, 2008
Time: 10:00 a.m.
Location: City Council Chambers
City of Indio
150 Civic Center Mall
Indio, CA 92201

Interested **Persons** are invited to attend. At the public hearing, the **Regional Board** will hear testimony, if any, pertinent to the discharge, **WDRs**, and **MS4 Permit**. Oral testimony will be heard; however, for accuracy of the record, important testimony should be in writing.

Please be aware that dates and venues may change. Our Web address is www.waterboards.ca.gov/coloradriver where you can access the current agenda for changes in dates and locations.

23. WDRs Petitions:

Any aggrieved person may petition the **State Board** to review the decision of the **Regional Board** regarding the final **WDRs**. The petition must be submitted within 30 days of the **Regional Board's** decision to the following address:

State Water Resources Control Board
Office of Chief Counsel
P.O. Box 100
Sacramento, CA 95812-0100

24. Additional Information

Requests for additional information or questions regarding this Order should be directed to Jay Mirpour at (760) 776-8981.

Persons wishing further information may also write to the following address:

California Regional Water Quality Control Board
Colorado River Basin Region
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260
or call the **Regional Board** at (760) 346-7491

**ATTACHMENT B – NOTICE OF TERMINATION
NPDES**



DESERT TASK FORCE

TO COMPLY WITH THE TERMS OF THE RIVERSIDE COUNTY MUNICIPAL STORMWATER PERMIT
FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES
ORDER NO. R7-2008-0001 (NPDES NO. CAS617002)
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD -COLORADO RIVER BASIN REGION

I. OWNER

Name	Contact Person		
Mailing Address	Title		
City	State	Zip	Phone () -

II. SITE INFORMATION

A. Project Title	Site Address		
City	State	Zip	Phone () -
B. Contractor Name	Contact Person		
Local Mailing Address	Title		
City	State	Zip	Phone () -

III. BASIS OF TERMINATION

___ 1. The construction project is complete and the following conditions have been met. (Provide photograph of site to support the basis of termination)

- ✓ All elements of the Storm Water Pollution Prevention Plan have been completed.
- ✓ Construction materials and waste have been disposed of properly.
- ✓ The site is in compliance with all local storm water management requirements.
- ✓ A post-construction storm water operation and management plan is in place.
- ✓ All disturbed areas have been stabilized by the following method. (Attach additional sheet if necessary)

___ 2. Construction activities have been suspended, either ___ temporarily or ___ indefinitely and the following conditions have been met.

- ✓ All elements of the Storm Water Pollution Prevention Plan have been completed.
- ✓ Construction materials and waste have been disposed of properly.
- ✓ All disturbed areas and other areas of potential *Erosion* are stabilized.
- ✓ The site is in compliance with all local storm water management requirements.

Date of suspension ___ / ___ / ___ Expected start up date ___ / ___ / ___

IV. CERTIFICATION

I certify under penalty of law that all storm water discharges associated with construction activity from the identified site that are authorized by Section E.5 of Board Order No. R7-2008-0001 have been eliminated or that I am no longer the owner of the site. I understand that by submitting this Notice of Termination, I am no longer authorized to discharge storm water associated with construction activity under Board Order No. R7-2008-0001, and that discharging pollutants in storm water associated with construction activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this Notice of Termination does not release an owner of liability for any violation of Board Order No. R7-2008-0001 or the Clean Water Act.

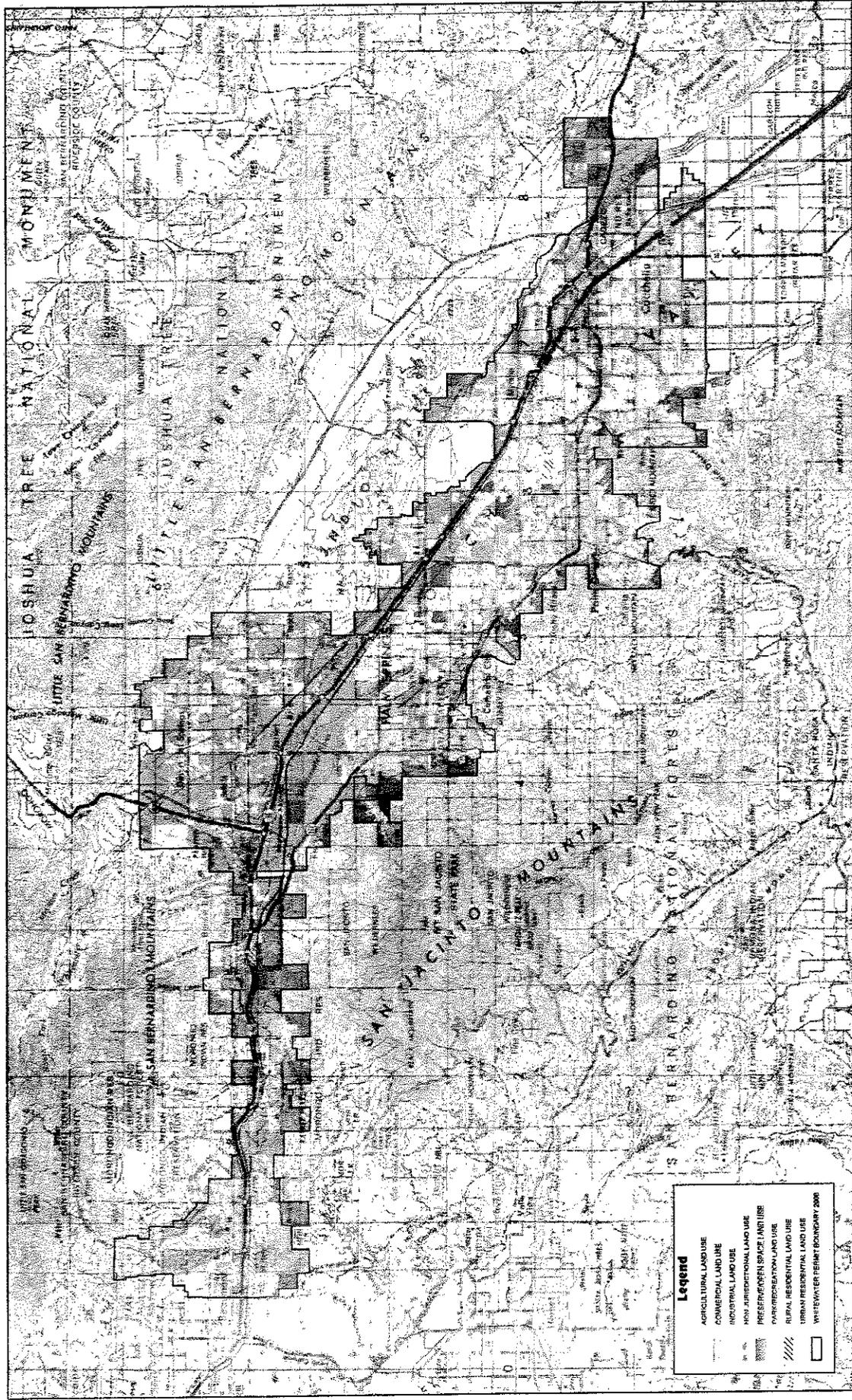
Printed Name: _____ Title: _____
Signature: _____ Date: _____

V. REGIONAL WATER QUALITY CONTROL BOARD USE ONLY

This Notice of Termination has been reviewed and approved.

Printed Name: _____ Title: _____
Signature: _____ Date: _____

ATTACHMENT C - SITE MAP



217

ATTACHMENT D- LIST OF PRIORITY POLLUTANTS

Table D-1 List of Priority Pollutants

CTR Number	Parameter	CAS Number	Suggested Analytical Methods
1	Antimony	7440360	EPA 6020/200.8
2	Arsenic	7440382	EPA 1632
3	Beryllium	7440417	EPA 6020/200.8
4	Cadmium	7440439	EPA 1638/200.8
5a	Chromium (III)	16065831	EPA 6020/200.8
5a	Chromium (VI)	18540299	EPA 7199/1636
6	Copper	7440508	EPA 6020/200.8
7	Lead	7439921	EPA 1638
8	Mercury	7439976	EPA 1669/1631
9	Nickel	7440020	EPA 6020/200.8
10	Selenium	7782492	EPA 6020/200.8
11	Silver	7440224	EPA 6020/200.8
12	Thallium	7440280	EPA 6020/200.8
13	Zinc	7440666	EPA 6020/200.8
14	Cyanide	57125	EPA 9012A
15	Asbestos	1332214	EPA/600/R-93/116(PCM)
16	2,3,7,8-TCDD	1746016	EPA 8290 (HRGC) MS
17	Acrolein	107028	EPA 8260B
18	Acrylonitrile	107131	EPA 8260B
19	Benzene	71432	EPA 8260B
20	Bromoform	75252	EPA 8260B
21	Carbon Tetrachloride	56235	EPA 8260B
22	Chlorobenzene	108907	EPA 8260B
23	Chlorodibromomethane	124481	EPA 8260B
24	Chloroethane	75003	EPA 8260B
25	2-Chloroethylvinyl Ether	110758	EPA 8260B
26	Chloroform	67663	EPA 8260B
27	Dichlorobromomethane	75274	EPA 8260B
28	1,1-Dichloroethane	75343	EPA 8260B
29	1,2-Dichloroethane	107062	EPA 8260B
30	1,1-Dichloroethylene	75354	EPA 8260B
31	1,2-Dichloropropane	78875	EPA 8260B
32	1,3-Dichloropropylene	542756	EPA 8260B
33	Ethylbenzene	100414	EPA 8260B
34	Methyl Bromide	74839	EPA 8260B
35	Methyl Chloride	74873	EPA 8260B
36	Methylene Chloride	75092	EPA 8260B
37	1,1,2,2-Tetrachloroethane	79345	EPA 8260B
38	Tetrachloroethylene	127184	EPA 8260B
39	Toluene	108883	EPA 8260B
40	1,2-Trans-Dichloroethylene	156605	EPA 8260B
41	1,1,1-Trichloroethane	71556	EPA 8260B

CTR Number	Parameter	CAS Number	Suggested Analytical Methods
42	1,12-Trichloroethane	79005	EPA 8260B
43	Trichloroethylene	79016	EPA 8260B
44	Vinyl Chloride	75014	EPA 8260B
45	2-Chlorophenol	95578	EPA 8270C
46	2,4-Dichlorophenol	120832	EPA 8270C
47	2,4-Dimethylphenol	105679	EPA 8270C
48	2-Methyl-4,6-Dinitrophenol	534521	EPA 8270C
49	2,4-Dinitrophenol	51285	EPA 8270C
50	2-Nitrophenol	88755	EPA 8270C
51	4-Nitrophenol	100027	EPA 8270C
52	3-Methyl-4-Chlorophenol	59507	EPA 8270C
53	Pentachlorophenol	87865	EPA 8270C
54	Phenol	108952	EPA 8270C
55	2,4,6-Trichlorophenol	88062	EPA 8270C
56	Acenaphthene	83329	EPA 8270C
57	Acenaphthylene	208968	EPA 8270C
58	Anthracene	120127	EPA 8270C
59	Benzidine	92875	EPA 8270C
60	Benzo(a)Anthracene	56553	EPA 8270C
61	Benzo(a)Pyrene	50328	EPA 8270C
62	Benzo(b)Fluoranthene	205992	EPA 8270C
63	Benzo(ghi)Perylene	191242	EPA 8270C
64	Benzo(k)Fluoranthene	207089	EPA 8270C
65	Bis(2-Chloroethoxy)Methane	111911	EPA 8270C
66	Bis(2-Chloroethyl)Ether	111444	EPA 8270C
67	Bis(2-Chloroisopropyl)Ether	108601	EPA 8270C
68	Bis(2-Ethylhexyl)Phthalate	117817	EPA 8270C
69	4-Bromophenyl Phenyl Ether	101553	EPA 8270C
70	Butylbenzyl Phthalate	85687	EPA 8270C
71	2-Chloronaphthalene	91587	EPA 8270C
72	4-Chlorophenyl Phenyl Ether	7005723	EPA 8270C
73	Chrysene	218019	EPA 8270C
74	Dibenzo(a,h)Anthracene	53703	EPA 8270C
75	1,2-Dichlorobenzene	95501	EPA 8260B
76	1,3-Dichlorobenzene	541731	EPA 8260B
77	1,4-Dichlorobenzene	106467	EPA 8260B
78	3,3'-Dichlorobenzidine	91941	EPA 8270C
79	Diethyl Phthalate	84662	EPA 8270C
80	Dimethyl Phthalate	131113	EPA 8270C
81	Di-n-Butyl Phthalate	84742	EPA 8270C
82	2,4-Dinitrotoluene	121142	EPA 8270C
83	2,6-Dinitrotoluene	606202	EPA 8270C
84	Di-n-Octyl Phthalate	117840	EPA 8270C
85	1,2-Diphenylhydrazine	122667	EPA 8270C
86	Fluoranthene	206440	EPA 8270C

CTR Number	Parameter	CAS Number	Suggested Analytical Methods
87	Fluorene	86737	EPA 8270C
88	Hexachlorobenzene	118741	EPA 8260B
89	Hexachlorobutadiene	87863	EPA 8260B
90	Hexachlorocyclopentadiene	77474	EPA 8270C
91	Hexachloroethane	67721	EPA 8260B
92	Indeno(1,2,3-cd)Pyrene	193395	EPA 8270C
93	Isophorone	78591	EPA 8270C
94	Naphthalene	91203	EPA 8260B
95	Nitrobenzene	98953	EPA 8270C
96	N-Nitrosodimethylamine	62759	EPA 8270C
97	N-Nitrosodi-n-Propylamine	621647	EPA 8270C
98	N-Nitrosodiphenylamine	86306	EPA 8270C
99	Phenanthrene	85018	EPA 8270C
100	Pyrene	129000	EPA 8270C
101	1,2,4-Trichlorobenzene	120821	EPA 8260B
102	Aldrin	309002	EPA 8081A
103	alpha-BHC	319846	EPA 8081A
104	beta-BHC	319857	EPA 8081A
105	gamma-BHC	58899	EPA 8081A
106	delta-BHC	319868	EPA 8081A
107	Chlordane	57749	EPA 8081A
108	4,4'-DDT	50293	EPA 8081A
109	4,4'-DDE	72559	EPA 8081A
110	4,4'-DDD	72548	EPA 8081A
111	Dieldrin	60571	EPA 8081A
112	alpha-Endosulfan	959988	EPA 8081A
113	beta-Endosulfan	33213659	EPA 8081A
114	Endosulfan Sulfate	1031078	EPA 8081A
115	Endrin	72208	EPA 8081A
116	Endrin Aldehyde	7421934	EPA 8081A
117	Heptachlor	76448	EPA 8081A
118	Heptachlor Epoxide	1024573	EPA 8081A
119	PCB-1016	12674112	EPA 8082
120	PCB-1221	11104282	EPA 8082
121	PCB-1232	11141165	EPA 8082
122	PCB-1242	53469219	EPA 8082
123	PCB-1248	12672296	EPA 8082
124	PCB-1254	11097691	EPA 8082
125	PCB-1260	11096825	EPA 8082
126	Toxaphene	8001352	EPA 8081A

ATTACHMENT E – STATE BOARD MINIMUM LEVELS**SWRCB Minimum Levels in ppb ($\mu\text{g/L}$)**

The Minimum Levels (MLs) in this appendix are for use in reporting and compliance determination purposes in accordance with section 2.4 of the State Implementation Policy. These MLs were derived from data for priority pollutants provided by State certified analytical laboratories in 1997 and 1998. These MLs shall be used until new values are adopted by the SWRCB and become effective. The following tables (Tables E-1 through E-4) present MLs for four major chemical groupings: volatile substances, semi-volatile substances, inorganics, and pesticides and PCBs.

Table E-1 Volatile Substances

Table E-1 - VOLATILE SUBSTANCES*	GC	GCMS
1,1 Dichloroethane	0.5	1
1,1 Dichloroethylene	0.5	2
1,1,1 Trichloroethane	0.5	2
1,1,2 Trichloroethane	0.5	2
1,1,2,2 Tetrachloroethane	0.5	1
1,2 Dichlorobenzene (volatile)	0.5	2
1,2 Dichloroethane	0.5	2
1,2 Dichloropropane	0.5	1
1,3 Dichlorobenzene (volatile)	0.5	2
1,3 Dichloropropene (volatile)	0.5	2
1,4 Dichlorobenzene (volatile)	0.5	2
Acrolein	2.0	5
Acrylonitrile	2.0	2
Benzene	0.5	2
Bromoform	0.5	2
Methyl Bromide	1.0	2
Carbon Tetrachloride	0.5	2
Chlorobenzene	0.5	2
Chlorodibromo-methane	0.5	2
Chloroethane	0.5	2
Chloroform	0.5	2
Chloromethane	0.5	2
Dichlorobromo-methane	0.5	2
Dichloromethane	0.5	2
Ethylbenzene	0.5	2
Tetrachloroethylene	0.5	2
Toluene	0.5	2
Trans-1,2 Dichloroethylene	0.5	1
Trichloroethene	0.5	2
Vinyl Chloride	0.5	2

* The normal method-specific factor for these substances is 1; therefore, the lowest standard concentration in the calibration curve is equal to the above ML value for each substance.

Table E-2 Semi-Volatile Substances

Table E-2 - SEMI-VOLATILE SUBSTANCES*	GC	GCMS	LC	COLOR
Benzo (a) Anthracene	10	5		
1,2 Dichlorobenzene (semivolatile)	2	2		
1,2 Diphenylhydrazine		1		
1,2,4 Trichlorobenzene	1	5		
1,3 Dichlorobenzene (semivolatile)	2	1		
1,4 Dichlorobenzene (semivolatile)	2	1		
2 Chlorophenol	2	5		
2,4 Dichlorophenol	1	5		
2,4 Dimethylphenol	1	2		
2,4 Dinitrophenol	5	5		
2,4 Dinitrotoluene	10	5		
2,4,6 Trichlorophenol	10	10		
2,6 Dinitrotoluene		5		
2- Nitrophenol		10		
2-Chloroethyl vinyl ether	1	1		
2-Chloronaphthalene		10		
3,3' Dichlorobenzidine		5		
Benzo (b) Fluoranthene		10	10	
3-Methyl-Chlorophenol	5	1		
4,6 Dinitro-2-methylphenol	10	5		
4- Nitrophenol	5	10		
4-Bromophenyl phenyl ether	10	5		
4-Chlorophenyl phenyl ether		5		
Acenaphthene	1	1	0.5	
Acenaphthylene		10	0.2	
Anthracene		10	2	
Benzidine		5		
Benzo(a) pyrene		10	2	
Benzo(g,h,l)perylene		5	0.1	
Benzo(k)fluoranthene		10	2	
bis 2-(1-Chloroethoxyl) methane		5		
bis(2-chloroethyl) ether	10	1		
bis(2-Chloroisopropyl) ether	10	2		
bis(2-Ethylhexyl) phthalate	10	5		
Butyl benzyl phthalate	10	10		
Chrysene		10	5	
di-n-Butyl phthalate		10		
di-n-Octyl phthalate		10		
Dibenzo(a,h)-anthracene		10	0.1	
Diethyl phthalate	10	2		
Dimethyl phthalate	10	2		
Fluoranthene	10	1	0.05	
Fluorene		10	0.1	

Table E-2 - SEMI-VOLATILE SUBSTANCES*	GC	GCMS	LC	COLOR
Hexachloro-cyclopentadiene	5	5		
Hexachlorobenzene	5	1		
Hexachlorobutadiene	5	1		
Hexachloroethane	5	1		
Indeno(1,2,3,cd)-pyrene		10	0.05	
Isophorone	10	1		
N-Nitroso diphenyl amine	10	1		
N-Nitroso-dimethyl amine	10	5		
N-Nitroso -di n-propyl amine	10	5		
Naphthalene	10	1	0.2	
Nitrobenzene	10	1		
Pentachlorophenol	1	5		
Phenanthrene		5	0.05	
Phenol **	1	1		50
Pyrene		10	0.05	

* With the exception of phenol by colorimetric technique, the normal method-specific factor for these substances is 1,000; therefore, the lowest standard concentration in the calibration curve is equal to the above ML value for each substance multiplied by 1,000.

** Phenol by colorimetric technique has a factor of 1.

Table E-3 Inorganics

Table E-3 - INORGANICS*	FAA	GFA A	ICP	ICPMS	SPGFA A	HYDRIDE	CVA A	COLOR	DCP
Antimony	10	5	50	0.5	5	0.5			1,000
Arsenic		2	10	2	2	1		20	1,000
Beryllium	20	0.5	2	0.5	1				1,000
Cadmium	10	0.5	10	0.25	0.5				1,000
Chromium (total)	50	2	10	0.5	1				1,000
Chromium VI	5							10	
Copper	25	5	10	0.5	2				1,000
Cyanide								5	
Lead	20	5	5	0.5	2				10,000
Mercury				0.5			0.2		
Nickel	50	5	20	1	5				1,000
Selenium		5	10	2	5	1			1,000
Silver	10	1	10	0.25	2				1,000
Thallium	10	2	10	1	5				1,000
Zinc	20		20	1	10				1,000

* The normal method-specific factor for these substances is 1; therefore, the lowest standard concentration in the calibration curve is equal to the above ML value for each substance.

Table E-4 Pesticides and PCBs

Table E-4 - PESTICIDES - PCBs*	GC
4,4'-DDD	0.05
4,4'-DDE	0.05
4,4'-DDT	0.01
a-Endosulfan	0.02
alpha-BHC	0.01
Aldrin	0.005
b-Endosulfan	0.01
Beta-BHC	0.005
Chlordane	0.1
Delta-BHC	0.005
Dieldrin	0.01
Endosulfan Sulfate	0.05
Endrin	0.01
Endrin Aldehyde	0.01
Heptachlor	0.01
Heptachlor Epoxide	0.01
Gamma-BHC (Lindane)	0.02
PCB 1016	0.5
PCB 1221	0.5
PCB 1232	0.5
PCB 1242	0.5
PCB 1248	0.5
PCB 1254	0.5
PCB 1260	0.5
Toxaphene	0.5

* The normal method-specific factor for these substances is 100; therefore, the lowest standard concentration in the calibration curve is equal to the above ML value for each substance multiplied by 100.

Techniques:

GC - Gas Chromatography

GCMS - Gas Chromatography/Mass Spectrometry

HRGCMS - High Resolution Gas Chromatography/Mass Spectrometry (i.e., EPA 1613, 1624, or 1625)

LC - High Pressure Liquid Chromatography

FAA - Flame Atomic Absorption

GFAA - Graphite Furnace Atomic Absorption

HYDRIDE - Gaseous Hydride Atomic Absorption

CVAA - Cold Vapor Atomic Absorption

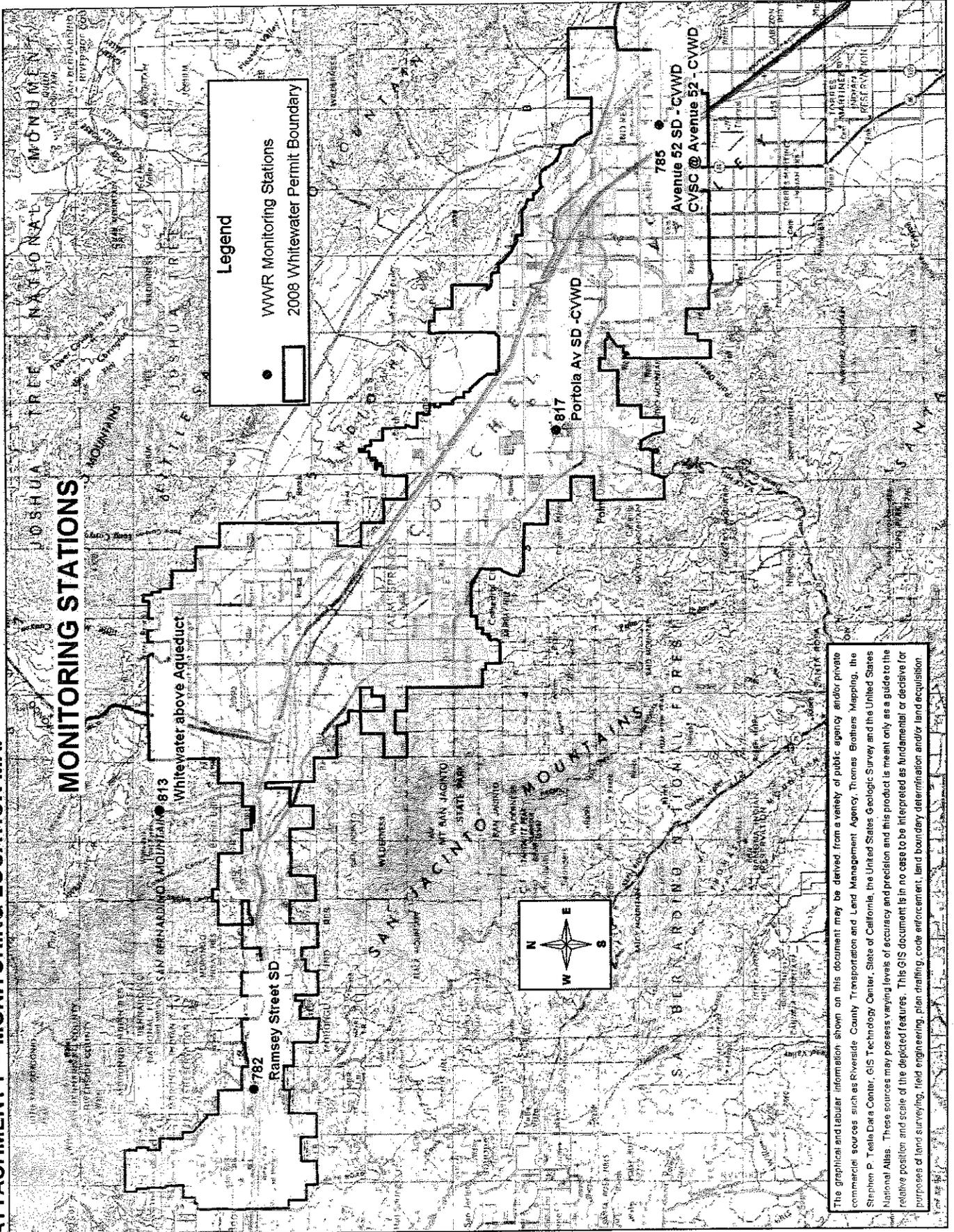
ICP - Inductively Coupled Plasma

ICPMS - Inductively Coupled Plasma/Mass Spectrometry

SPGFAA - Stabilized Platform Graphite Furnace Atomic Absorption (i.e., EPA 200.9)

DCP - Direct Current Plasma

COLOR - Colorimetric



225

CITY COUNCIL AGENDA ITEM

TO: MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM: DAVID J. ALESHIRE
CITY ATTORNEY**

**SUBJECT: TRANSIENT OCCUPANCY TAX IMPLEMENTATION URGENCY
ORDINANCE**

Summary:

On July 28, 2009, the Banning City Council ordered an election for voters to consider whether the City of Banning Transient Occupancy Tax ("TOT") should be increased by amending Chapter 3.16 (Transient Occupancy Tax) of the Banning Municipal Code and directing that the revenues be used for general fund purposes, including for public safety, maintenance of streets and public areas, and other essential services. On November 3, 2009, the voters approved Measure L by approximately 75 percent, which authorized the TOT rate to be increased from six percent (6%) to twelve percent (12%). This will impact the TOT rate paid by those occupying hotels, inns, tourist homes, motels or other similar lodging within the City of Banning ("City").

The City Council has decided to increase the TOT rate to only ten percent (10%) at this time, although the Council reserves the right to increase it up to 12 percent (12%), or decrease it, at any time after January 1, 2010. The new tax would take effect on January 1, 2010 rather than 10 days following the election so that hoteliers can work with the old rate through the holidays. The City Council must now pass an urgency ordinance to implement Measure L.

Recommendations:

1. Adopt the following urgency ordinance, entitled:

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF BANNING, CALIFORNIA, AMENDING
SECTION 3.16.030 AND ADDING SECTION 3.16.140 OF
CHAPTER 3.16 OF THE BANNING MUNICIPAL CODE**

Fiscal Impact:

The Finance Department estimated that the proposed increase in the TOT to twelve percent (12%) would generate between \$275,000 and \$300,000 in General Fund revenue annually for the City. The ten percent (10%) increase will generate less than that; no other fiscal impact is expected on the City.

226

Nature of Proceeding:

As an urgency ordinance, a four-fifths majority of the City Council is needed to pass this ordinance. The ordinance will go into effect immediately. However, the ten percent (10%) increase in the TOT rate will not take effect until January 1, 2010.

Background:

TOT rates vary by city including, for example, Palm Springs-11 ½%, Indian Wells-9.25%, La Quinta-10%, and Anaheim-15%. Measure L was placed before the voters of Banning after the City Council unanimously declared a fiscal emergency in the City based on the general economy and the State of California's own \$26 Billion deficit.

The City Council of Banning has made a number of reductions to the City's budget and services for Fiscal Year 2009-2010 to reduce the General Fund Budget by \$5.043M, including: closing City offices on Fridays; reduced hours at the police station; furloughing employees (equivalent to a 5% pay reduction); layoffs or retirement of 30 employees; and other cost-saving measures. Since 2007-08 total City reserves have fallen from \$7.2M (40% of Budget) to \$2.1M (15% of Budget).

Measure L contained the following elements: (a) permitted a maximum rate of 12% which could only be increased by the voters, (b) permitted the City Council by ordinance to set a lesser rate and otherwise retain full authority to change the manner, mode and method of collecting TOT as set forth in Chapter 3.16, (c) established a sunset provision so that the authority in Measure L to increase the TOT rate would expire on November 3, 2014.

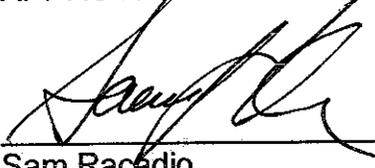
The ordinance states that the new TOT rate should start at ten percent (10%), rather than the maximum twelve percent (12%) permitted by the voters. However, the ordinance states that the City Council plans to reconsider the TOT rate in Fiscal Year 2010-11 and reserves the right to increase it up to the maximum rate of twelve percent (12%), as approved by the voters on November 3, 2009, or to decrease it.

Further, the ordinance states that the new TOT rate should go into effect on January 1, 2010, in order to give hotel operators and those impacted by the increase in rates an opportunity to make any necessary adjustments.

RECOMMENDED BY:


David J. Aleshire
City Attorney

APPROVED BY:


Sam Racadio
Interim City Manager

Attachments:

- 1) Exhibit A – Urgency Ordinance

227

ORDINANCE NO. 1416

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF BANNING, CALIFORNIA, AMENDING
SECTION 3.16.030 AND ADDING SECTION 3.16.140 OF
CHAPTER 3.16 OF THE BANNING MUNICIPAL CODE**

WHEREAS, on July 28, 2009, the Banning City Council ordered an election for voters to consider whether the City of Banning Transient Occupancy Tax ("TOT") should be increased by amending Chapter 3.16 (Transient Occupancy Tax) of the Banning Municipal Code, and directing that the revenues be used for general fund purposes including for public safety, maintenance of streets and public areas, and other essential services; and

WHEREAS, on November 3, 2009, by a vote of 3,337 yes to 1104 no (75%), the voters of the City of Banning approved Measure L, which authorized the TOT rate to be increased from six percent (6%) to twelve percent (12%), thereby affecting the TOT rate paid by those occupying hotels, inns, tourist homes, motels, or other lodging within the City of Banning; and

WHEREAS, Measure L contained the following elements: (a) permitted a maximum rate of 12% which could only be increased by the voters, (b) permitted the City Council by ordinance to set a lesser rate and otherwise retain full authority to change the manner, mode and method of collecting TOT as set forth in Chapter 3.16, (c) established a sunset provision so that the authority in Measure L to increase the TOT rate would expire on November 3, 2014; and

WHEREAS, on November 24, 2009, the City Council declared the results of the election held on November 3, 2009, in which Measure L was approved by the voters of the City of Banning; and

WHEREAS, the City Council wishes to commence the new TOT rate at ten percent (10%), rather than the maximum twelve percent (12%) permitted by the voters; and

WHEREAS, the City Council plans to reconsider the TOT rate in Fiscal Year 2010-11 and reserves the right to increase it up to the maximum rate of twelve percent (12%), as approved by the voters on November 3, 2009, or decrease it, as need requires; and

WHEREAS, the City Council desires that the new TOT rate go into effect on January 1, 2010, in order to give hotel operators and those impacted by the increase in rates an opportunity to make any necessary adjustments.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Tax Adopted. The Banning Municipal Code, Chapter 3.16, Section 3.16.030, is hereby amended to read, in its entirety, as follows:

"CHAPTER 3.16: TRANSIENT OCCUPANCY TAX

Section 3.16.030. Imposed--Amount--When payable

A. For the privilege of occupancy in any hotel or motel, each transient is subject to and shall pay a tax in the amount set forth in subsection B hereof, but such rate shall not exceed twelve percent (12%) of the rent charged by the operator, which shall be referred to herein as the "Cap Rate." Such tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel or motel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid in each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel or motel. If for any reason the tax due is not paid to the operator of the hotel or motel, the tax administrator may require that such tax shall be paid directly to the tax administrator."

B. Notwithstanding the requirements of subsection A of this section, from January 1, 2010, until amended by ordinance of the City Council, the Transient Occupancy Tax ("TOT Rate") rate shall be ten percent (10%), but in no event may such amendment exceed the Cap Rate set forth in subsection A above.

C. The Cap Rate in subsection A may only be increased by a vote of the people pursuant to Proposition 218. The TOT Rate in Subsection B may be changed by ordinance of the Council so long as it does not exceed the Cap Rate.

D. The authority to increase the TOT rate from six percent (6%) to twelve percent (12%) as provided by Measure L shall expire on November 3, 2014 unless extended by a vote of the people of Banning.

E. The City Council retains full authority to modify or add to Chapter 3.16 to change the manner, mode and method of collecting Transient Occupancy Taxes as set forth in Chapter 3.16, to the extent provided by State law.

SECTION 2. Severability. If any sections, subsections, sentences, phrases, or portions are for any reason, held to be invalid or unconstitutional by the decision of any Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of their Ordinance. The City Council of the City of Banning hereby

229

declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 3. Declaration of Urgency. This ordinance relates to the adoption of a tax, and pursuant to Government Code Section 36937 measures relating to a tax may be adopted to take effect immediately, and do not require 30 days to become effective. It is the desire of the Council to allow hoteliers to continue during the holiday season to be able to honor their advertising and contractual commitments and accordingly this Ordinance shall not take effect until the time stated in Section 4.

SECTION 4. Effective Date. This ordinance shall be considered as adopted upon the date that the vote is declared by the City Council, and will become effective on January 1, 2010.

Robert E. Botts, Mayor

ATTEST:

Marie A. Calderon, City Clerk

APPROVED AS TO FORM
AND LEGAL CONTENT:

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

230

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Urgency Ordinance No. 1416 was introduced at a regular meeting of the City Council of the City of Banning, California, held on the 8th day of December, 2009 and was duly adopted at a regular meeting of the City Council held on the 8th day of December, 2009, by the following roll-call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning, California

CITY COUNCIL AGENDA
ORDINANCE - INTRODUCTION

DATE December 8, 2009
TO Honorable Mayor and City Council
FROM Hoyle E. Belt, Human Resources Director
SUBJECT FIRST READING OF AN AMENDMENT TO THE GENERAL PROVISIONS CHAPTER OF THE MUNICIPAL CODE REGARDING CITY COUNCIL ISSUING OF SUBPOENAS

RECOMMENDATION:

Introduce and adopt Ordinance No. 1417 adding Chapter 1.30 to Title 1 of the Banning Municipal Code relating to Legislative Subpoenas, and adding Section 2.68.040 to Title 2, Chapter 2.68, to establish the ability of the City Council to issue subpoenas for purposes of securing witnesses and evidence in administrative actions or proceedings before the City Council or its authorized boards, commissions or hearing officers.

EXECUTIVE SUMMARY:

Government Code Section 37104 authorizes the City Council to issue subpoenas requiring attendance of witnesses or production of books or other documents for evidence or testimony in any action or proceeding pending before it, provided that the City Council adopts an ordinance authorizing the City Council to issue such subpoenas.

BUDGET INFORMATION:

None / No Impact.

BACKGROUND:

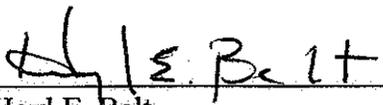
Currently, the City's municipal code does not contain provisions authorizing the issuance the subpoenas for the purposes of securing witnesses and evidence at City-authorized administrative hearings. This could negatively impact the City's ability to conduct such hearings in a full and fair manner. Under state law, however, the City Council or its designees (including hearing officers and City-authorized boards or commissions) may subpoena witnesses and records for inspection in connection with administrative hearings. This ordinance is designed to authorize the issuance of such subpoenas.

Government Code Sections 37104-37109 set forth procedures that must be followed before the City issues a subpoena:

1. Subpoenas must be signed by the Mayor and attested by the City Clerk.
2. If a person duly subpoenaed neglects or refuses to obey a subpoena, or refuses to testify or answer questions that the majority of the City Council decides are proper and pertinent, the Mayor shall report the fact to the judge of the Superior Court.
3. The judge will then be required to issue an attachment commanding the sheriff to attach the person and bring him or her before the judge. Under such circumstances, the judge will treat the uncooperative person in the same manner as someone in contempt of court in a civil trial in Superior Court.

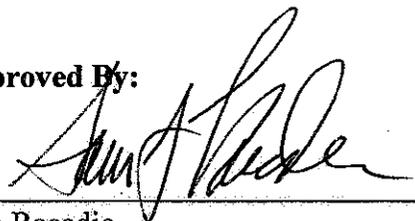
The Courts have noted there are limits on the use of legislative subpoenas by a city. In addition to the requirement that there be an authorizing ordinance, a subpoena must serve a valid legislative purpose and the information or people subpoenaed must be pertinent to the subject matter of the investigation.

Recommended By:



Hoyl E. Belt
Human Resources Director

Approved By:



Sam Racadio
Interim City Manager

Attachment:
Draft Ordinance

233

ORDINANCE NO. 1417

AN ORDINANCE ADDING CHAPTER 1.30 TO TITLE 1 OF THE BANNING MUNICIPAL CODE RELATING TO LEGISLATIVE SUBPOENAS, AND ADDING SECTION 2.68.040 TO TITLE 2, CHAPTER 2.68, TO AUTHORIZE THE ISSUANCE OF SUBPOENAS IN PERSONNEL SYSTEM HEARINGS.

WHEREAS, the United States Supreme Court has stated that "the legislative 'power of inquiry - with process to enforce it - is an essential and appropriate auxiliary to the legislative function.'" (*McGrain v. Daugherty* (1972) 273 U.S. 135, 174, quoted in *Connecticut Indemnity company v. Superior Court* (City of Lodi) (2000) 3 Cal.4th 807, 813.) The City of Banning's authority to issue subpoenas is set out in Government Code § 37104, which states:

The legislative body may issue subpoenas requiring attendance of witnesses or production of books or other documents for evidence or testimony in any action or proceeding pending before it.

WHEREAS, the issuance of a legislative subpoena pursuant to Government Code § 7104 is proper only if (i) it is authorized by ordinance or similar enactment, (ii) it serves a valid legislative purpose, and (iii) the witness or material subpoenaed is pertinent to the subject matter of the investigation. (*City of Lodi*, 3 Cal.4th at 813.)

WHEREAS, pursuant to Government Code § 37105, legislative subpoenas must be signed by the Mayor and attested to by the City Clerk. Such subpoenas may be served as subpoenas are served in civil actions.

WHEREAS, if any person duly subpoenaed neglects or refuses to obey a subpoena, or, appearing, refuses to testify or answer any questions that a majority of the City Council decide proper and pertinent, the Mayor must report the fact to the Superior Court. (Cal. Gov't Code § 37106.) The Superior Court may then enforce the subpoena, and contempt proceedings shall be the same as if the contempt had been committed in a civil trial in the Superior Court. (Gov't Code §§ 37107 - 37109.)

WHEREAS, the City desires to include specific methods of issuing legislative and/or administrative subpoenas as they relate to the conduct of administrative hearings before the City Council, any City-appointed commission, board, hearing officer or other administrative decision-maker duly authorized under the Municipal Code, or pursuant to a City resolution or contract.

WHEREAS, the City has recommended passage of such authority to issue legislative subpoenas in accordance with Government Code § 37104.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA:

SECTION 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

SECTION 2. That Title 1 of the City of Banning Municipal Code is hereby amended to add Chapter 1.30 ["Legislative Subpoenas"] to read in its entirety as follows:

"1.30.010 Purposes and Intent

This chapter is adopted for the purpose of establishing a procedure for issuing subpoenas to compel the attendance of witnesses and the production of other evidence at city administrative actions or proceedings that are brought before the city council or any other commission, board, hearing officer or other decision-making body authorized under this municipal code, or pursuant to a city resolution or contract.

1.30.020 General Authority to Issue Subpoenas.

The city council, or its designee, may issue a subpoena pursuant to California Government Code § 37104 et seq. as it may subsequently be amended in order to require attendance of witnesses or production of books or other documents for evidence or testimony in any action or proceeding pending before it, so long as it serves any valid purposes within the jurisdiction of the city council.

1.30.030 Signature and Attestation; Service.

Subpoenas issued pursuant to this chapter shall be signed by the Mayor and attested by the city clerk. They may be served as subpoenas are served in civil actions.

1.30.040 Issuance of Subpoena on Behalf of City Council Designees.

Subpoenas may be issued pursuant to Section 1.30.020 upon the city council's own motion, or at the request of any city officer, board, commission, or hearing officer authorized to prosecute or preside over any city administrative action or proceeding. Administrative actions or proceedings subject to the subpoena powers granted by this chapter include, without limitation, any hearing, judicial or quasi-judicial proceeding authorized or adopted by the city council pursuant to ordinance, resolution or contractual agreement.

1.030.050. Form of Subpoena.

City issued subpoenas will appear substantially as follows:

<u>BEFORE THE</u>	<u>OF THE CITY OF BANNING</u>
STATE OF CALIFORNIA)	IN THE MATTER OF
COUNTY OF RIVERSIDE)	SUBPOENA
CITY OF BANNING)	<input type="checkbox"/> Duces Tecum

THE CITY OF BANNING DIRECTS:

You are ordered to appear before _____, in _____ at City Hall City Council Chambers, 99 E. Ramsey Street, Banning, California 92220 on the _____ day of _____, _____, at _____ o'clock __m., to testify in a matter now pending before _____ concerning _____. You are:

Ordered to appear in person.

Not required to appear in person if you produce the records described in the accompanying affidavit and provide a copy of such records, accompanied with an affidavit or declaration that complies with Evidence Code §§ 1271, 1560, 1561, 1562, and 1271, to the following address before the date and time specified above: _____.

Ordered to appear in person and produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena.

You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in the paragraph below.

Disobedience of this subpoena or the refusal to testify (except upon constitutional grounds) may be punished as a contempt in the manner and form prescribed by law. If you have any questions about the time or date for you to appear, or if you want to ascertain that your presence is required, contact _____ at _____ before the date and time on which you are to appear.

WITNESS my hand this _____ day of _____:

ATTEST: BANNING CITY COUNCIL

By: _____ By: _____
City Clerk Mayor

1.30.060 Neglect/Refusal to Obey Subpoena; Judicial Remedies.

If any person duly subpoenaed pursuant to this chapter neglects or refuses to obey said subpoena, or, appearing, refuses to testify or answer any questions which a majority of the legislative body decide proper and pertinent, the mayor, or his/her designee, shall report that fact to the judge of the Superior Court of the County of Riverside. Pursuant to Government Code § 37107, the mayor or his/her designee shall request the judge to issue an attachment directed to the Riverside County Sheriff, commanding the sheriff to attach the person, and forthwith bring the person before the judge."

SECTION 3. That Chapter 2.68 of Title 2 of the City of Banning Municipal Code is hereby amended to add Section 2.68.040 to read in its entirety as follows:

"2.68.040 Authority to Issue Subpoenas in Personnel Matters.

All administrative procedures relating to the city's personnel system shall include the power of issuing and enforcing legislative subpoenas for purposes of compelling the attendance of witnesses and/or the production of other evidence as authorized by Municipal Code Chapter 1.30. The power to subpoena witnesses and evidence pursuant to Chapter 1.30 shall apply to all personnel proceedings regardless of whether such proceedings are established by a city ordinance, resolution, contract or collective bargaining agreement adopted by the city council."

SECTION 4. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidance or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

SECTION 5. The City Clerk is directed to cause this Ordinance to be published within fifteen (15) days of its passage in a newspaper of general circulation published and circulated within the City of Banning.

PASSED, APPROVED, AND ADOPTED this _____ day of _____
_____, 20__.

Robert E. Botts, Mayor

APPROVED AS TO FORM
AND LEGAL CONTENT:

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1417 was introduced at a regular meeting of the City Council of the City of Banning, California, held on the 8th day of December, 2009 and was duly adopted at a regular meeting of the City Council held on the _____ day of _____, 2009, by the following roll-call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning, California

238

**CITY COUNCIL AGENDA
REPORT OF OFFICERS**

DATE: December 8, 2009
TO: Mayor and Members of the City Council
FROM: Kirby Warner, Interim Finance Director
SUBJECT: General Fund Budget Update

RECOMMENDATION: That the City Council consider information provided regarding the status of the General fund budget and direct staff to implement Alternative 1 as described in the report. Also, instruct staff to bring back to the Council specific policies on the issues and assumptions outlined in the staff report.

BACKGROUND: The Fiscal Year 09/10 budget was adopted on June 23, 2009. At that time the General Fund was estimated at that time to incur a deficit of approximately \$827,265 for the year. The City Council had, after considering significant input from staff, approved \$5 million in expenditure reductions to bring the deficit to that level. The \$5 million represented over 25% of the entire fund and resulted in the elimination of 19.25 FTE positions (represents the General Funded portion of 35 citywide position eliminations), furloughs, benefit reductions and other line item eliminations.

Although revenue expectations have continued to fall as a result of the economic recession, there has been a structural aspect of the deficit for several years. A structural deficit exists when ongoing expenditures exceed ongoing revenues.

DISCUSSION: Staff has been monitoring expenditures and revenues during the first four months of the fiscal year to ensure sufficient opportunity to address any changes that develop. A review of the expenditure activity indicates departments are on track and consistent with budget projections. Anticipated savings due to furloughs, buy-back reductions and eliminated positions are producing the savings as expected. Therefore, there are no impacts on the deficit, positive or negative, from expenditure activity to date.

There have, however, been changes in various revenue projections that will affect the deficit. The first major challenge was caused by the ongoing deficit problems of the State of California. When they adopted their budget it included a provision to "borrow" property tax revenue from

local governments. This borrowing would have meant the loss of \$437,000 for the City of Banning. However, California Communities, a joint powers authority sponsored by the League of California Cities and the California Association of Counties, initiated a bond program that successfully provided the payments to agencies that participated. The financing was completed in November and Banning will receive its anticipated payments.

With a 75% approval margin, City of Banning voters approved Measure L on November 3, 2009 providing for an increase in the City's Transient Occupancy Tax (TOT). Although Measure L provided for an increase to 12%, the City Council has given staff direction to increase the tax from 6% to 10% effective January 1, 2010. This increase will provide an estimated \$100,000 for the remainder of FY 09/10 and \$200,000 for FY 10/11.

Due to continued pressure from the economic recession the City's sales tax and property tax revenues are suffering. Current estimates for these sources indicate there will be reduced amounts than was included in the budget as adopted in June. Staff is recommending a projection of further reductions in the tax estimates of an additional \$280,000. This includes general sales taxes as well as a reduction in the amount expected from the sales tax sharing agreement with the County of riverside for the Desert Hills Outlet Mall.

As a result of these fiscal issues, the deficit is now projected to be approximately \$1,007,265 for FY 09/10. The deficit for FY 10/11 is projected to be approximately \$200,000 less due to the full year of increased TOT and some improvement in sales tax receipts if the recession impacts lessen. However, that indicates an ongoing structural amount of the deficit will remain of approximately \$800,000.

ALTERNATIVES:

Staff is providing alternatives to deal with the FY 09/10 and 10/11 fiscal years as an 18 month plan. The total shortfall will be approximately \$1,700,000-1,800,000.

1. The first alternative is the one recommended by staff. It involves using lease payments from the Water fund to the General fund in the amount of \$1,250,000. This amount will be available as a result of funds remaining from the initial prepaid lease payment of \$17 million made from Utility Authority in 2005. These funds were used to complete projects including the police station, swimming pool and community center improvements. There will be between \$1,700,000 and \$2,200,000 remaining in the project funds when the police station is complete. Since they were originally bond funds there are restrictions on their future use. The City can utilize remaining amounts to make interest payments on outstanding bonds for one year after completion of projects, build additional capital projects or return the money to the trustee to redeem bonds. Staff is recommending the payment of interest for one year in the maximum amount available. The amount applicable from completion of the police station and the Brinton reservoir will be \$1,250,000. This amount of bond funds will be returned to the water fund for the purpose of interest payments to be made in May and November 2010. A like amount, currently budgeted from water operating revenues, will then be paid to the General Fund as a lease payment.

This action will leave a deficit amount in FY 10/11 \$550,000 to be dealt with. Staff anticipates the remaining projected shortfall will be addressed during the budget deliberations for FY 10/11. It will require additional ongoing revenue increases or further expenditure reductions.

2. The second alternative would be to take no immediate action and spend available reserves in the General Fund. The General Fund has an available, unreserved balance as of July 1, 2009 of approximately \$4,000,000. The 18 month projected deficit amount represents approximately 45% of the total available. The unreserved fund balance is the City's safety net in the event of unforeseen emergencies. Current budgeting policy states that the balance should not be depleted below 10% of total expenditures. Although the remaining amount would meet this criteria staff believes this to be a minimal level. It would not be sufficient to sustain City operations in the event of a major disaster, such as a large earth quake, fire or flood, or additional economic downturn. Revenue inflows would be minimal, or nonexistent, requiring employee salaries and necessary expenditures to be paid from reserves.

3. A third alternative would be to begin making necessary expenditure reductions immediately to reduce total expenditures by \$1.8 million over the next 18 months. This would require additional cuts of approximately 9.4% in the General Fund beginning in January 2010.

This alternative would result in further reductions in staffing and reduced service levels.

Although some combination of the alternatives may eventually be necessary to address the existing and ongoing structural deficit, staff recommends Alternative 1 at this time. Final actions will depend on the full effects of the economic recovery, State budget impacts and the additional issues and assumptions discussed below.

ISSUES/ASSUMPTIONS:

1. Current expenditure levels are assumed static. Staffing levels, furloughs, salary and benefits do not change. Any increases due to employee negotiations or service level modifications will increase the estimated deficit. For instance, the California Public Employees' Retirement System (CalPERS) has notified staff that rates charged for safety and general employee retirement plans will increase in FY 10/11 and 11/12..
2. Allocations for costs associated with expenditures for insurances, capital or major maintenance will not increase. Insurance allocations were reduced for FY 09/10 to help with the deficit reduction. The estimated remaining fund balance will be at the minimum. Therefore actual expenditure results would require increased contribution from the General Fund. The actual amount will not be known until the end of this

241

fiscal year. However, based on historical levels this could create an impact of up to \$300,000 to \$500,000 for the two years.

3. Utility Authority lease payments (ongoing) to the General fund will need to be addressed. The formation of the Banning Utility Authority anticipated ongoing lease payments based on a 55 year life and total valuation of water and wastewater assets of \$268,000,000.
4. A comprehensive rate study for water and wastewater will need to be completed to address costs of operations, capital needs, debt service and lease payment capacity.
5. The hiring freeze should be continued with specific Council approval required for any new hires or reorganizations, even if the position is included in the budget. In addition, Council may consider directing staff to begin negotiations with employee groups to place a freeze on increases within salary ranges. Each of these items will provide potential cost savings during the 18 month deficit reduction period.

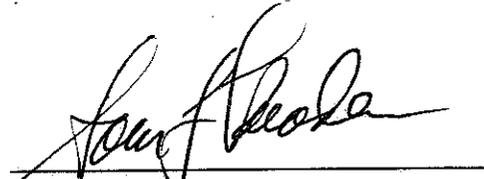
To address these issues and assumptions, and to monitor the status of the General Fund, staff could develop specific policy pronouncements for Council consideration that would help to ensure adherence to the plan.

RECOMMENDED BY:



Kirby Warner
Interim Finance Director

APPROVED BY:



Sam Racadio
Interim City Manager

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: December 8, 2009

TO: City Council

FROM: Kahono Oei, City Engineer

SUBJECT: Resolution No. 2009-105, "Approving the Projects for Fiscal Year 2010-2011 Community Development Block Grant (CDBG) Program"

RECOMMENDATION: Resolution No. 2009-105, "Approving the Projects for Fiscal Year 2010-2011 Community Development Block Grant (CDBG) Program," and authorize staff to submit said applications to the Riverside County Economic Development Agency.

JUSTIFICATION: The approval of this resolution is essential in order to utilize the federally funded grant funds available through the Community Development Block Grant (CDBG) Fiscal Year 2010-2011 program.

BACKGROUND: The City of Banning, through the Riverside County Economic Development Agency, has been submitting various projects annually for funding under the CDBG program.

Requests for applications were mailed by the Publics Works Department on September 2, 2009 to all of the City Departments and to non-profit organizations that serve the community within the City of Banning. Additionally a press release was published in the Press Enterprise on September 4, 2009 notifying the public of application availability as shown in Exhibit "A".

As part of the CDBG guidelines, the proposed projects/activities must meet the following criteria:

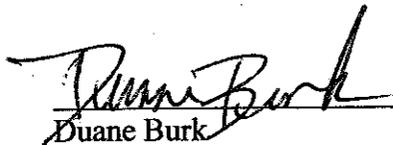
1. The project or activity must primarily benefit the low and moderate-income community.
2. The project or activity must aid in the prevention or elimination of slums and blight areas.
3. The project or activity must be designed to meet the Community's development needs and have a particular urgency.

On October 27, 2009 at its regular meeting, the City Council appointed a committee to review the applications. On November 16, 2009 the committee met with the Public Works staff as well as the applicants and provided recommendations as shown as Exhibit "B". All project applications are available at the City Clerk's office for public review.

The notice inviting public community participation was published in a local newspaper on November 20, 2009 as attached herewith as Exhibit "C". As set forth in the guidelines for utilization of the Community Development Block Grant funding, the City Council may allocate up to 15% of the total allocation to service oriented non-profit agencies.

FISCAL DATA: The estimated funding under the CDBG Fiscal Year 2010-2011 program is approximately \$165,000.00. Upon approval of the City Council, the projects will be submitted to the Riverside County Economic Development Agency and it is anticipated that final funding approval will be conveyed to the City by July, 2010.

RECOMMENDED BY:



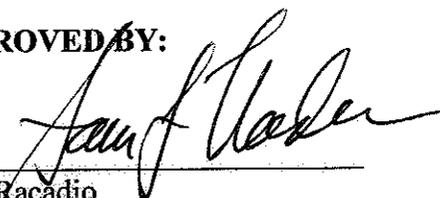
Duane Burk
Director of Public Works

REVIEWED BY:



Kirby Warner
Interim Finance Director

APPROVED BY:



Sam Racadio
Interim City Manager

RESOLUTION NO. 2009-105

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE PROJECTS FOR THE FISCAL YEAR 2010-2011 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

WHEREAS, the City of Banning has been submitting the applications for projects/activities under the Community Development Block Grant (CDBG) program to the Riverside County Economic Development Agency annually; and

WHEREAS, on September 2, 2009, the City of Banning mailed out requests for applications to the eligible organizations that serve the Community within the City of Banning and a press release was published in the Press Enterprise on September 4, 2009 as shown in Exhibit "A"; and

WHEREAS, on October 27, 2009 at its regular meeting, the City Council appointed a committee to review the applications and on November 16, 2009 the committee met with the Public Works staff as well as the applicants and provided recommendations as shown as Exhibit "B" and;

WHEREAS, the projects/activities submitted herein meet the CDBG program guidelines and/or requirements; and

WHEREAS, it is essential that the projects/activities be approved by the City Council through resolution in order for the City and its citizens to utilize the federally funded CDBG grant funds.

NOW, THEREFORE, BE IT RESOLVED as follows:

Section I. Adopt Resolution No. 2009-105, approving the projects/activities submitted for funding under the Community Development Block Grant program for Fiscal Year 2010-11 as listed in Exhibit "B", a copy of which is attached hereto.

Section II. Authorize staff to submit the CDBG application to the Riverside County Economic Development Agency for approval by their Board.

PASSED, ADOPTED AND APPROVED this 8th day of December, 2009.

Robert E. Botts, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk

**APPROVED AS TO FORM
AND LEGAL CONTENT:**

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2009-105, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8th day of December, 2009.

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, City Clerk
City of Banning, California

EXHIBIT "A"

PRESS RELEASE NOTIFYING THE PUBLIC OF APPLICATION AVAILABILITY

THE PRESS-ENTERPRISE

LOCAL

SECTION



FRIDAY

SEPTEMBER 4, 2009

BANNING

Applications for block grants invited

The city of Banning will begin accepting applications for the Community Development Block Grant Program for fiscal year 2010-11.

Services eligible for funding include child and health care, job training, services for the homeless, senior citizens and public safety and recreation programs.

Applications and guidelines will be available at www.rivcoeda.org beginning Sept. 11. Applications are due Oct. 22.

Information: 951-922-3130.

—Erin Waldner
ewaldner@PE.com

247

EXHIBIT "B"

**Requested Project for FY 2010-11
Community Development Block Grant (CDBG) Program**

CITY PROJECTS

NO.	PROJECT NAME	DESCRIPTION	FY 2010-2011 REQUESTED	AD-HOC RECOMMENDATION
1.	Replier Park Bowl Rehabilitation	Project will include design, facade, stage repair, provide additional bathrooms, improvements to the superstructure, landscaping, walkways, etc.	\$300,000.00	\$137,500.00
	Total		\$300,000.00	\$137,500.00

**Requested Projects for FY 2010-2011
Community Development Block Grant (CDBG) Program**

SERVICE RELATED PROJECTS

NO.	AGENCY	DESCRIPTION	FY 2010-11 REQUESTED	AD-HOC RECOMMENDATION
1.	Banning Library District	Banning Library Learning & Literacy Center	\$30,000.00	\$5,000.00
2.	Boys and Girls Club	Youth Development Services	\$15,000.00	\$7,500.00
3.	San Geronio Child Care Consortium	Special Needs	\$30,000.00	\$10,000.00
4.	Soroptimist House of Hope	Residential 24 HR Substance Recovery	\$12,000.00	\$5,000.00
	Total		\$87,000.00	\$27,500.00

EXHIBIT "C"
NOTICE INVITING PUBLIC
COMMUNITY PARTICIPATION

Public Notice

On Tuesday, December 8, 2009, the City of Banning will be considering the approval of Community Development Block Grant Program applications for Fiscal Year 2010-2011 at its City Council Meeting. Beginning at 6:30, the public is invited to participate throughout the duration of the public comments portion of the meeting.

Publish The Record Gazette No. 4546 11/20/2009

250

**CITY COUNCIL AGENDA
REPORT OF OFFICERS**

Date: December 8, 2009
TO: City Council
FROM: Fred Mason, Electric Utility Director
SUBJECT: Resolution No. 2009-108 Approving the Application for Energy Efficiency and Conservation Block Grant Funds From the California Energy Commission

RECOMMENDATION: The City Council approve the application for Energy Efficiency and Conservation Block Grant ("EECBG") funds available through the California Energy Commission's ("CEC") EECBG Program, attached herewith as Exhibit "A".

JUSTIFICATION: The City of Banning's Electric Utility is required to reduce its electric demand by one percent per year from 2007 through 2016 for a total of a 10 percent reduction, specifically attributable to its energy conservation efforts. In addition, the City desires to reduce its level of Greenhouse Gas ("GHG") emissions. Obtaining the EECBG funds will allow the City to complete significant energy conservation projects on a number of Municipal facilities, and will provide a major contribution toward reducing the City's energy consumption and meeting these energy demand reduction requirements.

BACKGROUND: The Federal government, specifically the Department of Energy ("DOE") has made funds available for qualified energy conservation projects. In California, the CEC was allocated a specified amount of DOE funds to be made available to smaller cities, like the City of Banning, that were not allocated funds directly by the DOE. To request these funds the City is required to submit a formal application to the CEC, detailing the energy conservation projects that it is proposing to complete using the EECBG funds. The EECBG application deadline is January 12, 2010, but the CEC has asked that participants turn in the application as soon as possible to avoid an avalanche of applications on the 12th.

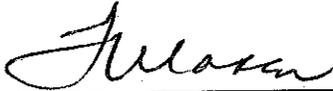
The projects that Staff is proposing are: Retrofitting all of the less efficient lighting fixtures in City Hall with high efficiency fixtures; replacing the old inefficient air conditioning units at the City Yard Administration building with high efficiency 18 SEER units; and replacing all the older inefficient motors on the water well pumps throughout the City with new efficient motors.

These projects will reduce the City's energy demand by approximately 288 kW, and save an estimated 1,069,220 kWh annually. Thereby reducing the City's annual electricity expense by an estimated \$145,830.00.

Staff recommends that Council approve Resolution No. 2009-108 and the EECBG application package, attached herewith as Exhibit "A".

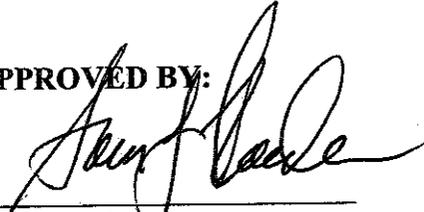
FISCAL DATA: There is no fiscal impact to the City of Banning with approving this resolution. However, if the City is awarded the EECBG funds, and the proposed projects are completed; there will be an estimated annual reduction in electricity expense in the amount of \$145,830.00.

RECOMMENDED BY:



Fred Mason
Electric Utility Director

APPROVED BY:



Sam Racadio
Interim City Manager

RESOLUTION NO. 2009-108

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
APPROVING THE APPLICATION FOR ENERGY EFFICIENCY AND
CONSERVATION BLOCK GRANT FUNDS FROM THE CALIFORNIA
ENERGY COMMISSION**

WHEREAS, the City of Banning, recognizes that it is in the interest of the regional, state, and national economy to stimulate the economy; create and retain jobs; reduce fossil fuel emissions; and reduce total energy usage and improve energy efficiency within our jurisdiction; and

WHEREAS, Energy Efficiency and Conservation Block Grant (EECBG) funds are available through the California Energy Commission's EECBG Program for grants to eligible local governments for cost-effective energy efficiency projects; and

WHEREAS, the City of Banning is eligible for EECBG funding under the California Energy Commission's EECBG Program; and

WHEREAS, the City of Banning is proposing to implement the energy efficiency projects described in Exhibit A in order to qualify for EECBG funds from the California Energy Commission; and

WHEREAS, the City of Banning has considered the application of the California Environmental Quality Act (CEQA) to the approval of the energy efficiency projects described in Exhibit A;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Banning as follows:

1. That in compliance with the CEQA, The City Council of the City of Banning finds that the approval of the energy efficiency projects described in Exhibit A is a "project" under CEQA that is exempt under 21084, 14 CCR Section 15301, because they are "Existing Facilities".

2. The City Council authorizes the submittal of the application to the California Energy Commission's EECBG Program for funds to execute the proposed projects described in Exhibit A.

3. If recommended for funding by the California Energy Commission, the City Council authorizes the City of Banning to accept a grant award up to the amount of this application for \$165,500.00, and, that the Electric Utility Director, acting for the City of Banning, is hereby authorized and empowered to execute in the name of the City of Banning, all necessary contracts and agreements, and amendments hereto, to implement and carry out the purposes specified in the application.

PASSED, APPROVED, AND ADOPTED this 8th day of December 2009.

Robert E. Botts, Mayor
City of Banning

**APPROVED AS TO FORM
AND LEGAL CONTENT:**

David J. Aleshire, City Attorney
Aleshire and Wynder, LLP

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION

I, MARIE A. CALDERON, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2009-108 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 8th day of December 2009 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, City Clerk
City of Banning, California

261

Exhibit "A"

ATTACHMENT A

APPLICATION COVER PAGE

1. Applicant Name: City of Banning

2. Type of Application: (Select one or both as appropriate)

- Direct Equipment Purchase
- Energy Efficiency Project
- Municipal Financing Program

3. Applicant Category:

- Individual City
- Collaborative (attach list of city/county name(s) included in application):
- Individual County

4. Total Grant Funds Requested: \$ 165,500.00

5. Budget Includes Prevailing Wage: (refer to Exhibits 3, 4, and 5) Yes No

6. Proposed Start Date: (no earlier than November 2009) 03 / 1 / 2010

7. Proposed End Date: (maximum September 13, 2012) 12 / 31 / 2010

8. Principal Contact/Project Manager: (serves as single point of contact for all communications)

Name: Fred Mason
 Phone: (951) 922-3265 Fax: (951) 849-1550
 Email: fmason@ci.banning.ca.us
 Organization: City of Banning
 Position/Title: Electric Utility Director

Address: 99 East Ramsey Street,
 Banning, CA 92220

9. Authorized Representative Certification: To the best of my knowledge, I certify that:

- The information contained in this grant application package is true and provides all information requested in the solicitation document.
- The proposed projects are cost-effective energy efficiency opportunities available to the eligible city/county.
- Proposed project(s) are not for prohibited activities as specified within solicitation document.
- Grant funds will be used to supplement (rather than supplant) funds already committed or expected to be received in support of the funded project.
- Applicant is in compliance with Single Audit Act requirements.



Authorized Representative Signature

11/30/09

Date

Reserved for California Energy Commission Use		
Solicitation	Date Received	Proposal Number Assigned
PON-09-001		

263

ATTACHMENT B
DIRECT EQUIPMENT PURCHASE SUPPORTING DOCUMENTATION

Item #	Existing Equipment	Proposed Equipment	City/Where	Sizing Capacity (kW/HP/ton)	Proposed Capacity (kW/HP/ton)	Estimated Load (kW/HP/ton)	Number of Hours of Operation	Equipment/ Material Cost	Total Equipment/ Material Cost	Total Project Cost	Installation Percentage
1	Lighting - See attached detailed spreadsheet	City Hall	63 kW	36 kW	27 kW	see attached detailed spreadsheet	290.00	\$ 12,240.00	\$ 5,220.00	\$ 17,460.00	0.30
2	Water Pump Motors - See attached detailed spreadsheet	Water System throughout the City of Banning	1,850 HP	1,320 HP	20%	see attached detailed spreadsheet	6.00	\$ 95,000.00	\$ 36,000.00	\$ 131,000.00	0.27
3	18 SEER 4 ton A/C unit	Utility Admin Offices	16 kW	6.33 kW	10.67 kW	see attached detailed spreadsheet	2.097	\$ 2,500.00	\$ 4,800.00	\$ 7,300.00	0.40
4	18 SEER 4 ton A/C unit	Utility Admin Offices	6.3 kW	2.67 kW	2.63 kW	see attached detailed spreadsheet	2.097	\$ 3,600.00	\$ 2,400.00	\$ 6,000.00	0.40
5	18 SEER 4 ton A/C unit	Utility Admin Offices	4.8 kW	2.67 kW	2.13 kW	see attached detailed spreadsheet	2.097	\$ 3,600.00	\$ 2,400.00	\$ 6,000.00	0.40
6											0.40
7											0.40
8											0.40
9											0.40
10											0.40
11											0.40
12											0.40
13											0.40
14											0.40
15											0.40
16											0.40
17											0.40
18											0.40
19											0.40
20											0.40
21											0.40
Totals											

* For each direct purchase where non-equipment costs exceeds 50% of total project costs, please attach written justification for the non-equipment costs.

264

Banning City Hall - Lighting Detail

A	C	D	E	G	H	I	J	K	L	M
TL Building/Room Location	TL Fixture Qty	TL Existing Fixture Type	TL Existing Fixture Watts (Single/Total)	Suggested Post Fixture Description	Suggested Post Fixture Wattage	Per Fixture Watts Saved	Total Watts Saved	Operation Hours per Year	Total kWh Saved per Year	Notes/Existing Fixture Description
1										EXCLUDED FROM RETROFIT PLAN DUE TO EXISTING OPTIMAL FIXTURE WATTAGE
2	COUNCIL CHAMBERS	RECESSED BI-PIN CFL (U)	N/A	N/A	N/A	N/A	N/A	N/A		
3	COUNCIL CHAMBERS	HIGH BAY METAL HALIDES	540/ 14040	CFL RETROFIT	80	460	11860	936	11,195	
4	COUNCIL CHAMBERS	EXIT SIGN	58/ 174	LED EXIT SIGN	7	51	153	8760	1,340	3 OF THE EXISTING SIGNS HAVE BEEN RETROFITTED TO LED
5	COUNCIL CHAMBERS	3LF32T8 4'X2' TROFFER	214/ 642	3LF28T8 W/ ELECTRONIC BALLAST	158	56	168	936	157	
6	COUNCIL CHAMBERS	2LF34T12	186/ 186	2LF28T8 W/ ELECTRONIC BALLAST	130	56	56	936	52	
7	COUNCIL CHAMBERS	2LF32T8	182/ 364	2LF28T8 W/ ELECTRONIC BALLAST	130	52	104	936	97	
8	COUNCIL CHAMBERS	1LF32T8	150/ 7200	1LF28T8 W/ ELECTRONIC BALLAST	102	48	2304	936	2,157	
9	BUILDING, RIGHT SIDE	RECESSED BI-PIN CFL (U)	N/A	N/A	N/A	N/A	N/A	N/A		EXCLUDED FROM RETROFIT PLAN DUE TO EXISTING OPTIMAL FIXTURE WATTAGE
10	BUILDING, RIGHT SIDE	HIGH BAY BI-PIN CFL (U)	N/A	N/A	N/A	N/A	N/A	N/A		EXCLUDED FROM RETROFIT PLAN DUE TO EXISTING OPTIMAL FIXTURE WATTAGE
11	BUILDING, RIGHT SIDE	EXIT SIGN	58/ 116	LED EXIT SIGN	7	51	102	8760	894	
12	BUILDING, RIGHT SIDE	3LF34T12 4'X2' SUPER SAVER TROFFER	220/ 660	3LF28T8 W/ ELECTRONIC BALLAST	158	62	174	2704	470	
13	BUILDING, RIGHT SIDE	3LF34(2T8/1T12) SUPER SAVER 4'X2' TROFFER	216/ 3456	3LF28T8 W/ ELECTRONIC BALLAST	158	58	928	2704	2,509	

Attachment B

Banning City Hall - Lighting Detail

	A	C	D	E	G	H	I	J	K	L	M
	TL Building/Room Location	TL Existing Fixture Qty	TL Existing Fixture Type	TL Existing Fixture Watts (Single/Total)	Suggested Post-Fixture Description	Suggested Post-Fixture Wattage	Per Fixture Watts Saved	Total Watts Saved	Operation Hours per Year	Total kWh Saved per Year	Notes/Existing Fixture Description
1											
14	BUILDING, RIGHT SIDE	10	3LF34(1T8/2T12)S UPER SAVER 4'X2' TROFFER	218/ 2180	3LF28T8 W/ ELECTRONIC BALLAST	158	60	600	2704	1,622	
15	BUILDING, RIGHT SIDE	1	3LF32T8 4'X2' TROFFER (1 LAMP MISSING)	214/ 214	3LF28T8 W/ ELECTRONIC BALLAST	158	56	56	2704	151	
16	BUILDING, RIGHT SIDE	17	3LF32T8 4'X2' TROFFER	214/ 3638	3LF28T8 W/ ELECTRONIC BALLAST	158	56	952	2704	2,574	
17	BUILDING, RIGHT SIDE	10	3L U-BEND F31T8	211/ 2110	2LF28T8 2' LAMP W/ ELECTRONIC BALLAST	130	81	810	2704	2,190	
18	BUILDING, RIGHT SIDE	13	2LF32T8	182/ 2366	2LF28T8 2' LAMP W/ ELECTRONIC BALLAST	130	52	676	2704	1,828	
19	BUILDING, LEFT SIDE	12	RECESSED BI- PIN CFL (U)	N/A	N/A	N/A	N/A	N/A	N/A		EXCLUDED FROM RETROFIT PLAN DUE TO EXISTING OPTIMAL FIXTURE WATTAGE
20	BUILDING, LEFT SIDE	2	HALOGEN (TRACK LIGHTING)	75/ 150	CFL R40	18	57	114	2704	308	
21	BUILDING, LEFT SIDE	3	EXIT SIGN	58/ 174	LED EXIT SIGN	7	51	153	8760	1,340	
22	BUILDING, LEFT SIDE	6	3LF34T12 4'X2' TROFFER	220/ 1320	3LF28T8 W/ ELECTRONIC BALLAST	158	62	372	2704	1,006	
23	BUILDING, LEFT SIDE	24	3LF34(2T8/1T12 SUPER SAVER) 4'X2' TROFFER	216/ 5184	3LF28T8 W/ ELECTRONIC BALLAST	158	58	1392	2704	3,764	
24	BUILDING, LEFT SIDE	22	3LF32T8 4'X2' TROFFER	214/ 4708	3LF28T8 W/ ELECTRONIC BALLAST	158	56	1232	2704	3,331	
25	BUILDING, LEFT SIDE	15	3L(1T8F32/ 2T12F34) 4'X2' TROFFER	218/ 3270	3LF28T8 W/ ELECTRONIC BALLAST	158	60	900	2704	2,434	

Banning City Hall - Lighting Detail

	A	C	D	E	G	H	I	J	K	L	M
	TL Building/Room Location	TL Fixture Qty	TL Existing Fixture Type	TL Existing Fixture Watts (Single/Total)	Suggested Post Fixture Description	Suggested Post Fixture Wattage	Per Fixture Watts Saved	Total Watts Saved	Operation Hours per Year	Total kWh Saved per Year	Notes/Existing Fixture Description
1											
26	BUILDING, LEFT SIDE	2	3 LU-BEND T8	211/ 422	2LF28T8 2' LAMP W/ ELECTRONIC BALLAST	130	81	162	2704	438	
27	BUILDING, LEFT SIDE	7	2LF32T8	182/ 1274	2LF28T8 W/ ELECTRONIC BALLAST	130	52	364	2704	984	
28	BUILDING, LEFT SIDE	2	2L(1T8F32/ 1T12F34)	184/ 388	2LF28T8 W/ ELECTRONIC BALLAST	130	54	108	2704	292	
29	BACK OF BUILDING	39	RECESSED BI-PIN CFL (U)	N/A	N/A	N/A	N/A	N/A	N/A		PLAN DUE TO EXISTING OPTIMAL FIXTURE WATTAGE
30	BACK OF BUILDING	2	HIGH BAY BI-PIN CFL (U)	N/A	N/A	N/A	N/A	N/A	N/A		PLAN DUE TO EXISTING OPTIMAL FIXTURE WATTAGE
31	BACK OF BUILDING	6	EXIT SIGNS	58/ 348	LED EXIT SIGN	7	51	306	8760	2,681	3 OF THE EXISTING SIGNS HAVE BEEN RETROFITTED TO LED
32	BACK OF BUILDING	1	3LF34T12 SUPER SAVER 4'X2' TROFFER	220/ 220	3LF28T8 W/ ELECTRONIC BALLAST	158	62	62	2704	168	
33	BACK OF BUILDING	6	3LF32T8 4'X2' TROFFER	214/ 1284	3LF28T8 W/ ELECTRONIC BALLAST	158	56	336	2704	909	
34	BACK OF BUILDING	7	1F34T12 SUPER SAVER 4'X2' TROFFER	216/ 1512	3LF28T8 W/ ELECTRONIC BALLAST	158	58	406	2704	1,098	
35	BACK OF BUILDING	2	2F34T12)SUPER SAVER 4'X2' TROFFER	218/ 436	3LF28T8 W/ ELECTRONIC BALLAST	158	60	120	2704	324	
36	BACK OF BUILDING	14	2LF34T12	186/ 2604	2LF28T8 W/ ELECTRONIC BALLAST	130	56	784	2704	2,120	
37	BACK OF BUILDING	1	2LF32T8	182/ 182	2LF28T8 W/ ELECTRONIC BALLAST	130	52	52	2704	141	

Banning City Hall - Lighting Detail

	A	C	D	E	G	H	I	J	K	L	M
	TL Building/Room Location	TL Fixture Qty	TL Existing Fixture Type	TL Existing Fixture Watts (Single/Total)	Suggested Post Fixture Description	Suggested Post Fixture Wattage	Per Fixture Watts Saved	Total Watts Saved	Operation Hours per Year	Total kWh Saved per Year	Notes/Existing Fixture Description
1											
38	BACK OF BUILDING	1	2L(1F32T8/ 1F34T12)	184/ 184	2LF28T8 W/ELECTRONIC BALLAST	130	54	54	2704	146	
39	BACK OF BUILDING	10	1LF34T12	152/ 1520	1LF28T8 W/ELECTRONIC BALLAST	102	50	500	2704	1,352	
40	BACK OF BUILDING	4	1LF32T8	150/ 600	1LF28T8 W/ELECTRONIC BALLAST	102	48	192	2704	519	

Banning City Hall - Lighting Costs

Fixture Type	Fixture Quantity	Fixture Costs	Labor Costs @ \$18.00 per hour	
3LF28T8 W/ ELECTRONIC BALLAST	133	\$5,734.96		
2LF28T8 2' LAMP W/ ELECTRONIC BALLAST	53	\$2,120.00		
LED EXIT SIGN	14	\$308.00		
CFL R40	2	\$14.00		
1LF28T8 W/ ELECTRONIC BALLAST	62	\$1,984.00		
CFL RETROFIT	26	\$2,080.00		
TOTALS	290	\$12,240.96	\$5,220.00	\$17,460.96

Banning Water Well - Existing Pump Motor Data

Local Name	Motor Brand Name	H.P.	Serial Number & / or ID Number	Model/Type	Volts	Amps
Well #1 Electric	General Electric	30	5K405XA2AS		220/440	74.6/37.3
Well # 2	Westinghouse	15	546		220/440	37.4/18.7
Well #3 Electric	Westinghouse	30	8061779		220/440	74/36.8
Well # 7	US Motors	30	1129576	CFM	220/440	
Well # 8	US Motors	75	F3208142		480	89
Well # 9	US Motors	25	SFT88-017		230/460	65/32.5
Well # 10	US Motors	20	ID# F421/R12R286R016F C60-151568		230/460	51.2/25.6
Well # 11	US Motors	25	ID# F421/R12R286R010F 89066172		230/460	
Well # 12	US Motors	25	ID# F430/S05R341R022F-4 89066171		230/460	
C2 A Well	Newman Electric	200	S1028101		460	240
C2 Booster 1	US Electric Motors	100	B410-A059R131M	High Thrust	460	240
C2 Booster 2	US Electric Motors	100	R-B410-00-246	R-322-9663	460	240
C2 Booster 3	US Electric Motors	100	R-B410-00-246	R-322-9664	460	240
C2 Booster 4	US Electric Motors	40	R-B406-00-230	R-322-9206	230/460	98/43
C2 Booster 5	US Electric Motors	25	B404-00-096	R-322-4618	230/460	62/31
C3 Well	General Electric	250	EY223051		460	274
C3 Booster #1	General Electric	125	5K6268XHIB		460	
C4 Well Motor	US Electric Motors	300	640847/V07V086R011R-1	Titan	440	345
C4 Booster #1 (E)	US Electric Motors	300	G53264/V12V2770497R-1	HighThrust	460	236
C4 Booster #2 (W)	US Electric Motors	300	G53264/V12V2770497R-2	HighThrust	460	236
C5 Well	US Electric Motors	200	6377/V02T354R030R-7	High Thrust	460	236
C5 Booster #1	US Electric Motors	200	G53264/V12V2770497R-3	High Thrust	460	236
C6 Well	US Electric Motors SGIDD451	350		Titan II	460	
M3 Well	US Electric Motors	350	G02.02158501-GT-01		460	384
M7 Well	US Electric Motors	200	6377/T06T015R010R-3	High Thrust	460	
M10 Well	US Electric Motors	200	G02-02158494-GT-01		460	229
M11 Well	US Electric Motors SGID456	150	G02-02158495-GT-01	Titan	460	170
M12 Well	US Electric Motors SGID457	300	F11-01125989-100R-01		460	330
Mt Ave Booster # 1	Baldor	15	37F196x48 Cat # JMM 33414T		230/460 3450 rpm	38/18 3 Phase
Mt Ave Booster # 2	Baldor	15	37F196x48 Cat # JMM 33414T		230/460 3450 rpm	38/18 3 Phase
Mt Ave Booster # 3	Berkley Pump	40	7474170	ODR	230/460	104/52

270

ATTACHMENT C**SCOPE OF WORK TEMPLATE
FOR DIRECT EQUIPMENT PURCHASES****Task 1 — Attend Kick-Off Meeting**

The goal of this task is to establish the lines of communication and procedures for implementing this Agreement. The Recipient shall attend a "kick-off" meeting with the Commission Project Manager and the Grants Officer. The Recipient shall bring their Project Manager and other relevant staff. The administrative and technical aspects of this Agreement will be discussed at the meeting. Prior to the kick-off meeting, the Commission Project Manager will provide an agenda to all potential meeting participants.

Topics to be discussed at this meeting will include, but are not limited to:

- Terms and Conditions of the Agreement
- Permit Documentation
- Scope of Work
- Project Schedule (including Products and Due Dates)
- Progress Reports
- Final Report

The Commission Project Manager shall designate the date and location of this meeting. This meeting may occur in person, via teleconference call, or other method at the discretion of the Commission Project Manager.

Products:

- List of Permits, if applicable

Due Date: <Insert Due Date>

Task 2 — Identify and Obtain Required Permits

The goal of this task is to obtain all permits required for work completed under this Agreement in advance of the date they are needed to keep the Agreement schedule on track.

Permit costs and the expenses associated with obtaining permits are not reimbursable under this Agreement. Permits must be identified in writing and obtained before the Recipient can incur any costs related to the use of the permits for which the Recipient will request reimbursement.

The Recipient shall prepare a letter documenting the permits required to conduct this Agreement and submit it to the Commission Project Manager at least 2 working days prior to the kick-off meeting:

1. If there are no permits required at the start of this Agreement, then state such in the letter.
2. If it is known at the beginning of the Agreement that permits will be required during the course of the Agreement, provide in the letter:
 - Type(s) of permit(s)
 - Name, address and telephone number of the permitting jurisdictions or lead agencies
 - Schedule the Recipient will follow in applying for and obtaining these permits

The list of permits and the schedule for obtaining them will be discussed at the kick-off meeting and a timetable for submitting the updated list, schedule and the copies of the permits will be developed. The implications to the Agreement if the permits are not obtained in a timely fashion or are denied will also be discussed. If applicable, permits will be included as a line item in the progress reports.

If during the course of the Agreement additional permits become necessary, then provide the appropriate information on each permit and an updated schedule to the Commission Project Manager.

As permits are obtained, send a copy of each approved permit to the Commission Project Manager.

If during the course of the Agreement permits are not obtained on time or are denied, notify the Commission Project Manager within 5 working days.

Product: Letter documenting the Permits or stating that no Permits are required
Due Date: <Insert Due Date>

Product: Updated list of permits as they change during the approved term of the Agreement
Due Date: As necessary, within 10 days of change

Product: A copy of each approved Permit
Due Date: As necessary, within 10 days of receipt of each permit

Task 3 — Purchase Equipment

The goal of this task is to purchase the approved materials/equipment as listed in the grant agreement budget. All equipment must adhere to requirements and specifications set forth in Exhibit 2 of the EECBG funding solicitation (PON-09-001).

The Recipient shall purchase the approved materials/equipment. A listing of the materials/equipment purchased shall be documented in the next monthly progress report submitted under this agreement.

Products: None

Due Date: <Insert Due Date>

Task 4 — Install Equipment

The goal of this task is to install the purchased equipment in Task 3 above.

The Recipient shall install the approved equipment. A listing of the equipment installed shall be documented in the next monthly progress report submitted under this agreement. As appropriate, photographs should be submitted to the Energy Commission Project Manager to installation has been completed. For very large projects, a sampling of photos may be used to document installation. Recipients shall work with the assigned Energy Commission Project Manager to ensure sufficient verification is provided.

Products: Photographs of Installed Equipment

Due Date: <Insert Due Date>

Task 5 — Monthly Progress Reports

The goal of this task is to periodically verify that satisfactory and continued progress is made towards achieving the objectives of this Agreement.

The Recipient shall prepare progress reports which summarize all Agreement activities conducted by the Recipient for the reporting period, including an assessment of the ability to complete the Agreement within the current budget and any anticipated cost overruns. Each progress report is due to the Commission Project Manager within 10 working days after the end of the reporting period. The terms and conditions of this Agreement provide the required specifications.

Products: Monthly Progress Reports

Due Date: By the 10th day of each month until submission of the final report.

Task 6 — Final Report

The goal of this task is to prepare a comprehensive written Final Report that describes the original purpose, approach, results and conclusions of the work done under this Agreement. The Commission Project Manager will review and approve the Final Report.

The Final Report must be completed on or before the termination date of the Agreement. The terms and conditions of this Agreement provide the recommended specifications.

The Final Report shall be a public document.

The Recipient shall prepare the Final Report and submit to the Commission Project Manager for review and approval.

Product: Final Report

Due Date: <Insert Due Date>

Attachment E-1 Category Budget

Budget Category Item	EECBG Share (\$)	Cost Share (\$)	Total Cost (\$)
Personnel:			
Direct Labor			\$ -
Fringe Benefits			\$ -
Total Personal Services	\$ -	\$ -	\$ -
Operating Expenses:			
Travel			\$ -
Equipment			\$ -
Materials/Supplies			\$ -
Contractual	\$ 165,461	\$ 8,000	\$ 173,461
Miscellaneous			\$ -
Total Operating Expenses	\$ 165,461	\$ 8,000	\$ 173,461
Overhead:			
Overhead			\$ -
Total Overhead	\$ -	\$ -	\$ -
Total	\$ 165,461	\$ 8,000	\$ 173,461

**ATTACHMENT E-2
BUDGET DETAILS**

Direct Labor, Unloaded Hourly Rates

Title / Job Classification	Maximum Rate to be Billed* (\$ / Hr)	Number of Hours	EECBG Share	Cost Share	Total Cost
	\$ -		\$ -	\$ -	\$ -
	\$ -		\$ -	\$ -	\$ -
	\$ -		\$ -	\$ -	\$ -
	\$ -		\$ -	\$ -	\$ -
	\$ -		\$ -	\$ -	\$ -
	\$ -		\$ -	\$ -	\$ -
	\$ -		\$ -	\$ -	\$ -
	\$ -		\$ -	\$ -	\$ -
	\$ -		\$ -	\$ -	\$ -
	\$ -		\$ -	\$ -	\$ -
Total Direct Labor			\$ -	\$ -	\$ -

* Maximum salary rates are caps: The Energy Commission will not reimburse at a higher rate over the term of the project.

Fringe Benefits

Title / Job Classification	Maximum % Rate to be Billed*	Base (typically Total Direct Labor)	EECBG Share	Cost Share	Total Cost
	0%		\$ -	\$ -	\$ -
	0%		\$ -	\$ -	\$ -
	0%		\$ -	\$ -	\$ -
	0%		\$ -	\$ -	\$ -
	0%		\$ -	\$ -	\$ -
	0%		\$ -	\$ -	\$ -
	0%		\$ -	\$ -	\$ -
	0%		\$ -	\$ -	\$ -
	0%		\$ -	\$ -	\$ -
	0%		\$ -	\$ -	\$ -
	0%		\$ -	\$ -	\$ -
Total Fringe Benefits			\$ -	\$ -	\$ -

* Maximum fringe benefit rates are caps: The Energy Commission will not reimburse at a higher rate over the term of the project.

Travel**

Location	Purpose	Number of Trips	People per Trip	EECBG Share*	Cost Share	Total Cost
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
Total Travel				\$ -	\$ -	\$ -

* EECBG Share: Travel is reimbursed at State rates. Higher travel costs can count as Match Share.

** Trips not identified in the approved budget or listed as "to be determined (TBD)" require advanced written approval from Commission Project Manager.

276

**ATTACHMENT E-2
BUDGET DETAILS**

Equipment

Item	Quantity	Unit Cost	EECBG Share	Cost Share	Total Cost
		\$ -	\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -	\$ -
Total Equipment			\$ -	\$ -	\$ -

Materials, Supplies

Item	Quantity	Unit Cost	EECBG Share	Cost Share	Total Cost
		\$ -	\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -	\$ -
Total Materials and Supplies			\$ -	\$ -	\$ -

Contractual

Subcontractor Name	Purpose	EECBG Share	Cost Share	Total Cost
TBD	Retrofit City Hall Lighting	\$ 17,461	\$ -	\$ 17,461
TBD	Replace Water Pump Motors w/NEMA approved motors	\$ 132,000	\$ -	\$ 132,000
TBD	Replace A/C units at the Utility Admin Offices	\$ 16,000	\$ 8,000	\$ 24,000
		\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -
Total Contractual		\$ 165,461	\$ 8,000	\$ 173,461

Miscellaneous

Item	Purpose	EECBG Share	Cost Share	Total Cost
		\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -
Total Miscellaneous		\$ -	\$ -	\$ -

**ATTACHMENT E-2
BUDGET DETAILS**

Overhead

Name of Overhead	Overhead Base*	Maximum % Rate to be Billed**	Base Cost	EECBG Share	Match Share	Total Cost
		0%	\$ -	\$ -	\$ -	\$ -
		0%	\$ -	\$ -	\$ -	\$ -
		0%	\$ -	\$ -	\$ -	\$ -
		0%	\$ -	\$ -	\$ -	\$ -
		0%	\$ -	\$ -	\$ -	\$ -
Total Overhead			\$ -	\$ -	\$ -	\$ -

* Base: Define cost categories used to charge Overhead rate, e.g., Total Labor, Total Direct Cost, Materials, Subcontracts, etc.
 ** Maximum Indirect Overhead rates are caps: Energy Commission will not reimburse at higher rates over the term of the project.

ATTACHMENT F

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE FORM

The California Environmental Quality Act (CEQA) requires state and local agencies (public agencies) to identify the significant environmental impacts of their actions and to avoid or mitigate them, if feasible. For an explanation of the CEQA process, please visit <http://ceres.ca.gov/ceqa/summary.html>. All awards (contracts, grants, and loans) funded by the Energy Commission are considered "projects" under CEQA,¹ and must therefore comply with CEQA in order to receive funding.

The Lead Agency is the public agency that has the greatest responsibility for preparing environmental documents under CEQA, and for carrying out, supervising, or approving a project. Where the award recipient is a public agency, the Lead Agency is typically the public agency. Where the award recipient is a private entity, the Lead Agency is the public agency that has greatest responsibility for supervising or approving the project as a whole.² The Energy Commission, as the funding agency, must develop CEQA findings based on review of the Lead Agency's environmental documents. **This form must be completed by the authorized legal representative of each applicant for Energy Commission funding.**

The Energy Commission may request additional information in order to clarify answers provided on this form.

1. **Has a public agency (other than the Energy Commission) determined that the activity is a "project" under CEQA (i.e., may cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment)?**
- Yes** (please state the name of the public agency below, and continue to question #2)
- City of Banning
- No** (please explain why the public agency does not consider the activity to be a "project" under CEQA):

¹ A "project" is an activity that may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Cal. Pub. Res. Code § 21065.

² 14 Cal. Code of Regs. §§ 15050, 15051. The Lead Agency typically has general governmental powers (such as a city or county), rather than a single or limited purpose (such as an air pollution control district).

Agency has not completed review (please provide an estimated date for completion of review):

Uncertain (please state reason for uncertainty):

2. Has the public agency determined that the project is exempt from CEQA?

For an explanation of CEQA exemptions, please visit:

<http://ceres.ca.gov/ceqa/flowchart/exemptions/index.html>.

Yes (please check the appropriate boxes below and list the relevant California Public Resources Code (PRC) and/or California Code of Regulations (CCR) section number, then continue to question #3):

Statutory exemption
 PRC number: _____
 CCR number: _____

Categorical exemption
 CCR number: 21084, 14 CCR Section 15301

Common sense exemption (i.e., no possible significant effect)
 CCR number: 14 CCR §15061(b)(3) (please explain why this exemption applies to the project):

No (continue to question #4)

Agency has not completed review (please provide an estimated date for completion of review):

3. Has the public agency filed a Notice of Exemption (NOE) with the County Clerk and/or Governor's Office of Planning and Research?

For an explanation of the NOE filing process, please visit:

<http://ceres.ca.gov/ceqa/flowchart/noe.html>.

To obtain an NOE form, please visit:

<http://ceres.ca.gov/ceqa/guidelines/appendices.html>.

- Yes** (please submit a copy of the NOE along with this form)
- No** (please provide an estimated filing date below. Alternatively, please submit an authorizing resolution³ that includes a finding of exemption, or an agenda item accompanying the resolution that includes a finding of exemption):

4. Has the public agency completed an Environmental document for the project (i.e., Initial Study, Negative Declaration, Mitigated Negative Declaration, Notice of Preparation, Environmental Impact Report), or does the public agency plan to complete a Environmental document?

- Yes** (please complete the following information, then continue to question #5):

Type of Environmental Review	Title of Environmental Document	State Clearinghouse Number	Completion Date	Planned Completion Date
Initial Study				
Negative Declaration				
Mitigated Negative Declaration				
Notice of Preparation				
Environmental Impact Report				

Please submit a copy of the completed Environmental document(s) to the Energy Commission.

- No** (please explain why the public agency has not completed or does not plan to complete an Environmental document):

³ See Exhibits 4 and 5 of this solicitation for examples of authorizing resolutions.

281

5. Has the public agency filed a Notice of Determination (NOD) with the County Clerk and/or Governor's Office of Planning and Research?

For an explanation of the NOD filing process, please visit:
<http://ceres.ca.gov/ceqa/flowchart/NODloclead.html>.

To obtain a Notice of Determination form, please visit:
<http://ceres.ca.gov/ceqa/guidelines/appendices.html>

- Yes** (please submit a copy of the Notice of Determination along with this form)
- No** (please provide an estimated filing date):

Name of Person Completing This Form: Fred Mason

Title: Electric Utility Director

Signature: 

Phone Number: 951-922-3260

Email: fmason@ci.banning.ca.us

Date: 11/30/2009



ATTACHMENT G

**ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT PROGRAM
NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)
COMPLIANCE/CERTIFICATION FORM**

The National Environmental Protection Act (NEPA) requires federal agencies to consider the potential environmental impacts of their proposed actions. Awards issued under this solicitation will be funded pursuant to a grant (DE-EE0000905) from the U.S. Department of Energy (DOE) to the Energy Commission that consists of American Recovery and Reinvestment Act of 2009 (ARRA) Energy Efficiency and Conservation Block Grant Program (EECBG) funds. DOE must comply with NEPA when awarding grants to states. Accordingly, recipients of awards issued under this solicitation may not take any action using federal funds for projects that would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing a final NEPA determination regarding these projects.

NEPA requires federal agencies to prepare a brief environmental analysis called an environmental assessment (EA) or a detailed analysis called an environmental impact statement (EIS), unless the project is categorically excluded from NEPA review. For additional information about NEPA, please visit:

- DOE's NEPA website at <http://www.gc.energy.gov/NEPA/>;
- The "NEPA" section of DOE's recovery Act Clearinghouse at [https://recoveryclearinghouse.energy.gov/#NATIONAL ENVIRONMENTAL POLICY ACT NEPA/](https://recoveryclearinghouse.energy.gov/#NATIONAL_ENVIRONMENTAL_POLICY_ACT_NEPA/); or
- The White House Council on Environmental Quality's *Citizen's Guide to the NEPA* at http://www.nepa.gov/ntf/Citizens_Guide_Dec07.pdf.

Categorically Excluded Projects

All projects will require an individual NEPA review and determination by DOE, unless DOE provides a categorical exclusion. **At this time DOE has not provided a categorical exclusion for any project activities under the EECBG, but has provided the following categorical exclusions for certain activities under another ARRA-funded program, the State Energy Program (SEP):**

- Energy saving projects for residential buildings;
- Energy saving projects for commercial buildings;
- Energy saving projects for industrial buildings;
- Energy efficiency and renewable energy retrofits for state departments, local jurisdictions, school and hospitals; and
- Public outreach and education.

Categorical exclusions are not absolute. A project activity that falls within a categorical exclusion may require additional NEPA review if it involves "extraordinary circumstances" that may affect the significance of its environmental effects. "Extraordinary circumstances" are defined as "unique situations presented by specific proposals, such as scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; or unresolved conflicts concerning alternate uses of available resources within the meaning of section 102(2)(E) of NEPA [42 U.S.C. § 4332(E)]."¹

If DOE grants categorical exclusions for projects under the EECBG that are similar to the categorical exclusions for projects under the SEP, Applicants may be able to satisfy the NEPA requirements for purposes of this solicitation by completing the Certification section of this form. However, if DOE does not grant similar categorical exclusions for project activities under the EECBG, or if the Applicant is unable to certify in this form that the Applicant's project falls within the DOE categorical exclusion, then the Applicant will be required to submit a completed environmental questionnaire form (Attachment H). The Energy Commission will submit the Applicant's environmental questionnaire form to the DOE Project Officer to allow DOE to conduct an individual NEPA review and determination.

If an Applicant moves forward with project activities that are not authorized for federal funding by DOE in advance of the final NEPA determination, it will do so at risk of not receiving federal funding, and such costs may not be recognized as allowable cost share. If DOE determines that NEPA requires the preparation of an environmental assessment (EA) or environmental impact statement (EIS) for a proposed program, the Applicant will be responsible for paying the cost of preparing an EA or EIS.

Preparation of these types of NEPA documents can require 6-24 months. Accordingly, Applicants should carefully consider whether such programs are consistent with the objectives of the ARRA and will allow for the expenditure of funds by the September 13, 2012 deadline.

¹ 10 C.F.R. § 1021.410(b).

284

Application of NEPA to Proposed Project: Certification of Applicant's Legal Representative:

An authorized legal representative of the Applicant must certify the following, to the best of his/her knowledge:

- The proposed project is categorically excluded from NEPA because it falls within the following category AND does not involve "extraordinary circumstances" within the meaning of 10 C.F.R. Section 1021.410:
 - Energy saving project for residential buildings
 - Energy saving project for commercial buildings
 - Energy saving project for industrial buildings
 - Energy efficiency and renewable energy retrofits for state departments, local jurisdictions, school and hospitals
 - Public outreach and education
- The proposed project falls within the categories listed above but may involve "extraordinary circumstances" within the meaning of 10 C.F.R. Section 1021.410, for the following reason(s) (attach additional pages if necessary):
- The proposed project is not categorically excluded, for the following reason(s) (attach additional pages if necessary):

The Energy Commission may request additional information in order to clarify answers provided on this form.

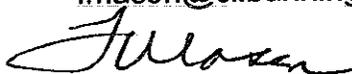
Name of Person Completing Form: Fred Mason

Title: Electric Utility Director

Organization: City of Banning

Phone Number: (951) 922-3260

Email: fmason@ci.banning.ca.us

Signature: 

Date: 11/30/2009



ATTACHMENT I

NATIONAL HISTORICAL PRESERVATION ACT FORM

1. Does your project involve a building or structure included in the National Register of Historic Places (NRHP) or one eligible for inclusion in the NRHP?

Yes

No

[If unsure, Applicant must request a record search from the California Historical Resources Information System (CHRIS). Record searches can be requested from the appropriate regional CHRIS Information Center. To determine which Information Center you must contact please see: <http://ohp.parks.ca.gov/pages/1068/files/ic%20roster.pdf>

2. If the proposed project involves a building or structure listed on or eligible for the NRHP, Applicant must complete additional information in Item 5 of the Environmental Questionnaire (NETL F 451.1-1/3-EECBG) (Attachment H of this solicitation package).

Also in Item 5, Applicants must provide the age of the property and attach a copy of communications or correspondence with the California State Historic Preservation Officer (SHPO) regarding the property.

3. If your project includes a building or structure about which the CHRIS has no information, please obtain and attach an evaluation of eligibility for inclusion in the NRHP by an architectural historian who meets the Secretary of the Interior's Standards for architectural history.

ATTACHMENT J

FINANCIAL MANAGEMENT INFORMATION

Part I (To be completed by all entities)

Name of Applicant: City of Banning
 Address: 99 East Ramsey Street, Banning, CA 92220
 Phone: (951) 922-3260
 Fax: (951) 849-1550
 Email: fmason@ci.banning.ca.us
 Number of Employees: 145

Legal Form of Business:

- Sole Proprietorship Profit
- General Partnership
- Sub Chapter S Corporation
- Limited Partnership
- Corporation
- Government Agency
- 501(c)(3) Non-Profit
- Other (identify) _____

Part II (To be completed by private and nonprofit entities only)

Nature of Business: _____
 Year Established: _____
 How Long Under Current Ownership? _____

Part III (To be completed by all entities)

1. Have you previously done business with any Federal Agency?

- Yes (If yes, list Federal Agency)
- No

Comments: WAPA, FERC, NERC

2. Does your accounting system have the ability to track costs on a reimbursable basis?

- Yes
- No

Comments:

287

3. Does your system allow for accurate, current and complete financial reporting and record keeping, as well as maintaining adequate source documentation?

- Yes
- No

Comments:

4. Does your system allow for effective internal controls and accountability?

- Yes
- No

Comments:

5. Does your organization have its financial statements reviewed by an independent public accounting firm?

- Yes
- No

Comments:

6. Are duties separated so that no one individual has complete authority over an entire financial transaction?

- Yes
- No (If no, explain why checks and balances are not appropriate)

Comments:

7. Does your organization have controls to prevent expenditure of funds in excess of approved, budgeted line item amounts? (Briefly explain your procedures)

- Yes
- No

Comments: Our accounting system notes accounts that go over budget, anytime this happens these accounts are individually reviewed.

8. Are all accounts reconciled monthly?

- Yes
- No (If no, how often are accounts reconciled?)

Comments:

9. Are all disbursements properly documented with evidence of receipt of goods or performance of services?

- Yes
- No

Comments:

10. Do you have property management policies and procedures in place for authorizing and accounting for the acquisition and disposal of property?

- Yes
- No

Comments:

11. Does your organization have an indirect cost allocation plan or a negotiated indirect cost rate?

- Yes (If yes, attach copy of rate documentation)
- No (If no, how did you arrive at the fringe benefit, overhead, and/or general and administrative rates in your proposal?)

Comments: Fringe benefits are charged at actual cost i.e. the OASDI FICA rate is 6.2%

12. Does your organization have procedures that provide assurance that consistent treatment is applied in the distribution of charges to all awards? (Briefly explain)

- Yes
- No

Comments:

13. Are there procedures to ensure procurement at competitive prices?

- Yes (If yes, briefly describe procedures.)
- No (If no, explain.)

Comments: The City of Banning has an adopted Ordinance and Purchasing Policy which includes procurement processes and procedures.

14. Is there an effective system of authorization and approval of expenditures? (Briefly explain)

- Yes
- No

Comments: Employee responsible for expenditures provides preliminary approval, dept. head provides secondary approval, then finance dept. approves based on budgeted appropriations.

15. Does your organization have a formal policy of nondiscrimination and a formal system for complying with Federal civil rights requirements?

- Yes
- No

Comments:

16. How does your organization control paid time, especially time charged to contract or grant funded projects? Briefly describe the system used to track and control paid time.

We use project numbers to keep detailed records of costs and revenues associated with a specific grant, etc. All expenditures and revenues are coded with the project number, which allows us to run reports specific to the particular grant.

17. The expenditure of \$500,000 or more of Federal funds in a fiscal year requires an organization to have an audit performed in accordance with OMB Circular A-133. Has your organization had such an audit performed?

- Yes
- No

Comments: Expenditures are reviewed annually, when they exceed \$500,000 or more a single audit is performed.

18. I understand the audit requirements and will comply with the provisions of OMB Circular A-133.

- Yes
- No

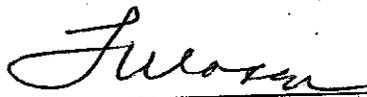
Comments:

Part IV (To be completed by all entities)

Printed Name: Fred Mason

Title: Electric Utility Director

I certify to the best of my knowledge that the above information is true and correct as of this date and that I am authorized to complete this form.


Signature

11/30/09
Date

**CITY COUNCIL AGENDA
REPORT OF OFFICERS**

Date: December 8, 2009
TO: City Council
FROM: Fred Mason, Electric Utility Director
SUBJECT: Resolution No. 2009-107 Approving the Repayment of the Electric Utility Charges to the Affected Schedule TOU Customers

RECOMMENDATION: The City Council approve the repayment of the Electric Utility rate assessment overcharge to the affected Schedule Time of Use (TOU) customers in the amount of \$1,042,807.14, as detailed on the spreadsheet attached herewith as Exhibit "A", and authorize the appropriation and transfer of said amount from the Electric Rate Stability Fund (672) to the Electric Operations Fund (670).

JUSTIFICATION: The City of Banning's Electric Utility Rules & Regulations limits the staff to repay utility billing miscalculations to a maximum of one year from the discovery of an error. With City Council approval upon appeal, payments can be made for the full 29 months for which the miscalculations were applied. Staff recommends that the Council authorize repayment for the full 29 months and not require the customer to appeal for the months beyond one year.

BACKGROUND: On March 27, 2007 the Banning City Council approved Resolution 2007-25 which authorized a revision to the Electric Rate Schedule TOU that changed the way the Non-time Related Demand Charge was applied, to make it more consistent with general electric utility industry practices. This resulted in the Non-time Related Demand Charge only being applied to the billing period (On-Peak, Mid-Peak or Off-Peak) with the highest demand, instead of being applied to each billing period as it had been done previously. However, this change was not implemented in the utility billing system at that time as required.

In November 2009, while performing a rate comparison analysis for a prospective Schedule TOU customer, this error was discovered and corrected. Staff performed an analysis and determined that miscalculated charges were incurred in the following amounts, since the initial effective date of the change to the Electric Rate Schedule TOU authorized by Resolution 2007-25 (a detailed spreadsheet is attached herewith as Exhibit "A"):

Robertson's Ready Mix	\$349,320.11
Deutsch Company – Location #19016	\$193,789.60
Deutsch Company – Location #22926	\$140,609.62
BUSD – Banning High School	\$143,114.87
Smith Correctional Facility	\$127,026.50
San Gorgonio Memorial Hospital	\$ 88,946.45

Banning's Electric Utility Rules & Regulations limits the period for which Staff can approve refunds to a maximum of one year, and these billing miscalculations occurred for up to 29 months. Therefore Staff is requesting City Council approval to repay the miscalculated charges.

Staff recommends that the City Council approve Resolution No. 2009-107 and authorize refunds to each affected Schedule TOU customer in the amounts shown above.

FISCAL DATA: Funds for these refunds are available in the Electric Rate Stability Fund (672). Staff is requesting that the City Council authorize the appropriation and transfer of \$1,042,807.14 from the Electric Rate Stability Fund (672) to the Electric Operations Fund (670). The revenue from the miscalculations was not anticipated in the recently implemented adjustments, therefore the refunds will have no impact on the expected rate revenues.

RECOMMENDED BY:



Fred Mason
Electric Utility Director



Kirby Warner
Interim Finance Director

APPROVED BY:



Sam Racadio
Interim City Manager

RESOLUTION NO. 2009-107

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
APPROVING THE REPAYMENT OF THE ELECTRIC UTILITY RATE
ASSESSMENT MISCALCULATIONS TO THE AFFECTED SCHEDULE
TIME OF USE (TOU) CUSTOMERS**

WHEREAS, the City of Banning owns and operates its Municipal Electric Utility; and

WHEREAS, the City Council approved Resolution 2007-25 which authorized a revision to the Electric Rate Schedule TOU that changed the way the Non-time Related Demand Charge was applied to make it more consistent with general electric utility industry practices; and

WHEREAS, this rate revision resulted in the Non-time Related Demand Charge only being applied to the billing period with the highest demand, instead of being applied to each billing period as it had been done previously; and

WHEREAS, the authorized rate revision was not entered into the billing system as required, resulting in miscalculated charges to the Schedule TOU customers for up to 29 months; and

WHEREAS, the Banning Electric Rules & Regulations only allow the Utility to repay billing miscalculations to a maximum of one year; and

WHEREAS, the City Council desires to repay the full amount of the miscalculated charges to the affected Utility customers in the total amount of \$1,042,807.14, as detailed in the spreadsheet attached herewith as Exhibit "A"; and

WHEREAS, funds are available in the Electric Rate Stability Fund (672);

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Banning as follows:

1. Adopt Resolution No. 2009-107 approving the Schedule TOU repayment as detailed on the spreadsheet, attached herewith as Exhibit "A", and authorize the City Manager, or his designee, to process said repayments to the affected Electric Utility customers.
2. Authorize the appropriation and transfer of \$1,042,807.14 from the Electric Rate Stability Fund (672) to the Electric Operations Fund (670) for the purpose of repaying the miscalculated charges, and authorize the Finance Director to make all necessary budget adjustments related to this resolution.
3. Authorize the Mayor to execute Resolution No. 2009-107. Said authorization shall become void if not executed within 30 days of the effective date of this resolution.

PASSED, APPROVED, AND ADOPTED this 8th day of December 2009.

Robert E. Botts, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT:

David J. Aleshire, City Attorney
Aleshire and Wynder, LLP

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION

I, MARIE A. CALDERON, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2009-107 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 8th day of December 2009 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, City Clerk
City of Banning, California

Schedule TOU - Repayment Data

Customer Name	Customer Address	Customer Acct #	Demand Overcharge	PBC Overcharge	Total Overcharge
Robertson's Ready Mix	PO Box 3600, Corona, CA 92878	43039-6494	\$339,640.36	\$9,679.75	\$349,320.11
Deutsch Company	PO Box 1020, Hemet, CA 92546	25459-19016	\$188,419.64	\$5,369.96	\$193,789.60
Deutsch Company	PO Box 1020, Hemet, CA 92546	25457-22926	\$136,713.29	\$3,896.33	\$140,609.62
Banning Unified School Dist.	161 W. Williams St., Banning, CA 92220	331-326	\$139,149.12	\$3,965.75	\$143,114.87
Smith Correctional Facility	1627 S. Hargrave St., Banning, CA 92220	7595-5580	\$123,506.56	\$3,519.94	\$127,026.50
San Geronio Memorial Hosp.	600 N. Highland Springs, Banning, CA 92220	23407-17344	\$86,481.72	\$2,464.73	\$88,946.45
			\$1,013,910.69	\$28,896.45	\$1,042,807.14

256