

OTAY WATER DISTRICT
ENGINEERING, OPERATIONS & WATER RESOURCES COMMITTEE MEETING
and
SPECIAL MEETING OF THE BOARD OF DIRECTORS

2554 SWEETWATER SPRINGS BOULEVARD
SPRING VALLEY, CALIFORNIA
Board Room

THURSDAY
March 12, 2015
11:30 A.M.

This is a District Committee meeting. This meeting is being posted as a special meeting in order to comply with the Brown Act (Government Code Section §54954.2) in the event that a quorum of the Board is present. Items will be deliberated, however, no formal board actions will be taken at this meeting. The committee makes recommendations to the full board for its consideration and formal action.

AGENDA

1. ROLL CALL
2. PUBLIC PARTICIPATION – OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO SPEAK TO THE BOARD ON ANY SUBJECT MATTER WITHIN THE BOARD'S JURISDICTION BUT NOT AN ITEM ON TODAY'S AGENDA

DISCUSSION ITEMS

3. APPROVE THE UPDATED WATER SUPPLY ASSESSMENT AND VERIFICATION REPORT DATED FEBRUARY 2015 FOR THE OTAY RANCH PLANNING AREA 12 FREEWAY COMMERCIAL PROJECT AS REQUIRED BY SENATE BILLS 610 AND 221 (COBURN-BOYD/KENNEDY) [10 min]
4. AWARD A CONSTRUCTION CONTRACT TO ABHE AND SVOBODA, INC. (A & S) FOR THE 850-3 RESERVOIR INTERIOR COATING PROJECT IN AN AMOUNT NOT-TO-EXCEED \$366,720 (CAMERON) [5 min]
5. AWARD A PROFESSIONAL AS-NEEDED GEOTECHNICAL SERVICES CONTRACT TO NINYO AND MOORE GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS (NINYO & MOORE) IN AN AMOUNT NOT-TO-EXCEED \$175,000 FOR A PERIOD OF FOUR (4) YEARS (FY 2015 THROUGH FY 2018, ENDING JUNE 30, 2018) (CAMERON) [5 min]
6. SAN DIEGO COUNTY WATER AUTHORITY UPDATE (WATTON) [10 minutes]
7. ADJOURNMENT

BOARD MEMBERS ATTENDING:
Gary Croucher, Chair
Tim Smith

All items appearing on this agenda, whether or not expressly listed for action, may be deliberated and may be subject to action by the Board.

The Agenda, and any attachments containing written information, are available at the District's website at www.otaywater.gov. Written changes to any items to be considered at the open meeting, or to any attachments, will be posted on the District's website. Copies of the Agenda and all attachments are also available through the District Secretary by contacting her at (619) 670-2280.

If you have any disability that would require accommodation in order to enable you to participate in this meeting, please call the District Secretary at 670-2280 at least 24 hours prior to the meeting.

Certification of Posting

I certify that on March 6, 2015 I posted a copy of the foregoing agenda near the regular meeting place of the Board of Directors of Otay Water District, said time being at least 24 hours in advance of the meeting of the Board of Directors (Government Code Section §54954.2).

Executed at Spring Valley, California on March 6, 2015.

/s/ Susan Cruz, District Secretary



AGENDA ITEM 3

STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	April 1, 2015		
SUBMITTED BY:	Lisa Coburn-Boyd Environmental Compliance Specialist Bob Kennedy Engineering Manager	CIP./G.F. NO:	D0933- 090217	DIV. NO.	1
APPROVED BY:	<input checked="" type="checkbox"/> Rod Posada, Chief, Engineering <input checked="" type="checkbox"/> German Alvarez, Assistant General Manager <input checked="" type="checkbox"/> Mark Watton, General Manager				
SUBJECT:	Approval of Water Supply Assessment and Verification Report (February 2015) for the Otay Ranch Planning Area 12 Freeway Commercial Project				

GENERAL MANAGER'S RECOMMENDATION:

That the Otay Water District (District) Board of Directors (Board) approve the Water Supply Assessment Report (WSA&V Report) dated February 2015 for the Otay Ranch Planning Area 12 Freeway Commercial Project, as required by Senate Bills 610 and 221 (see Exhibit A for Project location).

COMMITTEE ACTION:

Please see Attachment A.

PURPOSE:

To obtain Board approval of the February 2015 WSA&V Report for the Otay Ranch Planning Area 12 Freeway Commercial Project, as required by Senate Bill 610 and Senate Bill 221 (SB 610 and SB 221).

ANALYSIS:

The City of Chula Vista submitted a request to the District for an updated WSA&V Report, pursuant to SB 610 and SB 221. SB 610 and SB 221 require that, upon the request of the City or County, a water purveyor, such as the District, prepare a water supply assessment and verification report to be included in the

California Environmental Quality Act (CEQA) environmental documentation. The original WSA&V Report for the Freeway Commercial Project was approved by the District Board of Directors in July 2013. An updated WSA&V Report is needed because of changes in the configuration of the Project and in the Project's potable and recycled water demands. SB 610 requires a city or county to evaluate whether water supplies will be sufficient to meet the projected water demand for certain "projects" that are otherwise subject to the requirement of the CEQA. SB 610 provides its own definition of "project" in Water Code Section 10912.

SB 221 requires affirmative written verification from the water purveyor of the public water system that sufficient water supplies are planned to be available for certain residential subdivisions of property. The requirements of SB 610 and SB 221 are addressed by the February 2015 WSA&V Report for this Project. The WSA&V Report was prepared by the District in consultation with Dexter Wilson Engineering, Inc., the San Diego County Water Authority (Water Authority), and the City of Chula Vista (City).

Prior to transmittal to the City, the WSA&V Report must be approved by the Board of Directors. An additional explanation of the intent of SB 610 and SB 221 is provided in Exhibit C, Otay Ranch Planning Area 12 Freeway Commercial Project WSA&V Report is provided as Exhibit D.

For the Otay Ranch Planning Area 12 Freeway Commercial Project, the City is the responsible land use agency that requested the SB 610 and SB 221 water supply assessment and verification report from the District. The request for the WSA&V Reports, in compliance with SB 610 and SB 221 requirements, was made by the City because the Project meets or exceeds one or both of the following SB 610 and SB 221 criteria:

- A proposed residential development of more than 500 dwelling units.
- A proposed commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space.
- A mixed-use project that includes one or more of the land uses specified in SB 610.

- A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project.

The Otay Ranch Planning Area 12 Freeway Commercial Project is located along the southern boundary of Olympic Parkway and includes development on both sides of Town Center Drive. Baldwin and Sons development concept for the approximately 34.5 acre site includes multi-family residential, hotel, commercial, and a park site. The Project site is planned for 650 residential units, 310 hotel rooms, and up to 25,000 square feet of commercial development. The current entitlement on the property was for the entire 34.5 acres to be commercial with up to 347,000 square feet of building space.

The expected potable water demands for the Planning Area 12 Freeway Commercial Project are 0.208 million gallons per day (MGD) or about 233 acre-feet per year (AFY). This is 173 AFY higher than the demand estimate in the District's 2010 Water Resources Master Plan Update and the District's 2010 UWMP (60 AFY) and 46 AFY higher than the 2013 WSA&V Report projections (187 AFY). The projected recycled water demand for the proposed Project is approximately 0.035 MGD or about 38.8 AFY, representing about 16% of total Project water demand. The table below illustrates the changes in the project since the 2013 report.

Land Use	WSA&V (May 2013)				WSA&V (Feb 2015)			
	Area (ac.)	Dwelling Units	Average Potable Demand (AFY)	Average Recycled Demand (AFY)	Area (ac.)	Dwelling Units	Average Potable Demand (AFY)	Average Recycled Demand (AFY)
Multi-Family Residential		448	129	22.7		650	188	33.0
Hotel (2)		257	33	0		310	39	0
Commercial	14.5		25	3.4	4.0		6	1.0
Park	1.0		0	2.4	2.0		0	4.8
Total			187				233	38.8

The 173 AFY increase is accounted for through the Accelerated Forecasted Growth demand increment of the Water Authority's 2010 UWMP. As documented in the Water Authority's 2010 UWMP, the Water Authority is planning to meet future and existing demands which include the demand increment associated with the accelerated forecasted growth. The Water Authority will assist its member agencies in tracking the environmental documents

provided by the agencies that include water supply assessments and verifications reports that utilize the accelerated forecasted growth demand increment to demonstrate supplies for the development. In addition, the next update of the demand forecast for the Water Authority's 2015 UWMP will be based on SANDAG's most recently updated forecast, which will include the Project. Therefore, based on the findings from the District's 2010 UWMP and the Water Authority's 2010 UWMP, this Project will result in no unanticipated demands.

The request for compliance with SB 221 requirements was made by the City because the Project will exceed the SB 221 criteria of a proposed residential development subdivision of more than 500 dwelling units.

Pursuant to SB 610 and SB 221, the WSA&V Report incorporates by reference the current Urban Water Management Plans and other water resources planning documents of the District, the Water Authority, and the Metropolitan Water District of Southern California (Metropolitan). The District prepared the WSA&V Report in consultation with Dexter Wilson Engineering, Inc., the Water Authority, and the City, which demonstrates and documents that sufficient water supplies are planned for and are intended to be made available over a 20-year planning horizon under normal supply conditions, in single and multiple-dry years to meet the projected demand of the Otay Ranch Planning Area 12 Freeway Commercial Project and other planned development projects within the District.

FISCAL IMPACT: Joe Beachem, Chief Financial Officer

The District has been reimbursed \$8,000 for all costs associated with the preparation of the Otay Ranch Planning Area 12 Freeway Commercial Project WSA&V Report. The reimbursement was accomplished via an \$8,000 deposit the Project proponents placed with the District on December 16, 2014.

STRATEGIC GOAL:

The preparation and approval of the WSA&V Report for the Otay Ranch Planning Area 12 Freeway Commercial Project supports the District's Mission statement, "To provide high value water and wastewater services to the customers of the Otay Water District in a professional, effective, and efficient manner" and the District's Strategic Goal 3.1.1, "Actively manage water supply and demand."



ATTACHMENT A

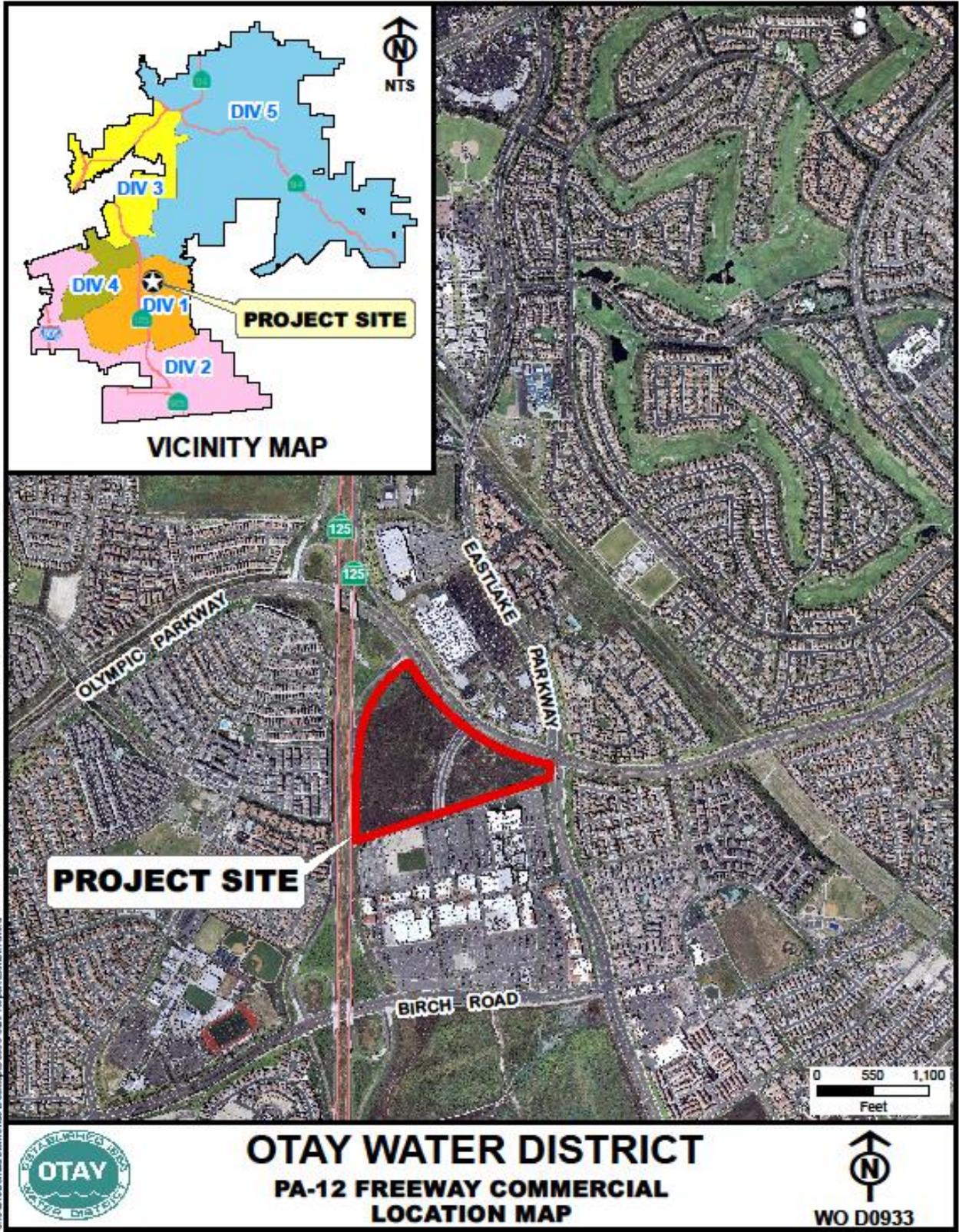
SUBJECT/PROJECT: D0933-090217	Approval of Water Supply Assessment and Verification Report (February 2015) for the Otay Ranch Planning Area 12 Freeway Commercial Project
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COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee (Committee) reviewed this item at a meeting held on March 12, 2015. The Committee supported Staff's recommendation.

NOTE:

The "Committee Action" is written in anticipation of the Committee moving the item forward for Board approval. This report will be sent to the Board as a Committee approved item, or modified to reflect any discussion or changes as directed from the Committee prior to presentation to the full Board.



C:\Users\matt.hernandez\Desktop\0903-09-01-PA-12-Report-Exhibit A.mxd

EXHIBIT A

EXHIBIT B

Background Information

The Otay Water District (District) prepared the updated February 2015 Water Supply Assessment and Verification (WSA&V) Report for the Otay Ranch Planning Area 12 Freeway Commercial Project at the request of the City of Chula Vista (City). The City's WSA&V request letter dated February 25, 2015 was received by the District on February 25, 2015 so the 90-day deadline for the District to provide the Board an approved WSA&V Report to the City ends May 25, 2015.

The Otay Ranch Planning Area 12 Freeway Commercial Project is located within the jurisdictions of the District, the San Diego County Water Authority (Water Authority), and the Metropolitan Water District of Southern California (MWD). See Exhibit A for Project location. To obtain permanent imported water supply service, land areas are required to be within the jurisdictions of the District, Water Authority, and MWD.

The February 2015 WSA&V Report for the Otay Ranch Planning Area 12 Freeway Commercial Project has been prepared by the District in consultation with Dexter Wilson Engineering, Inc., the Water Authority, and the City, pursuant to Public Resources Code Section 21151.9 and California Water Code Sections 10631, 10656, 10910, 10911, 10912, and 10915 referred to as Senate Bill (SB) 610 and Government Code Sections 65867.5, 66455.3, and 66473.7 referred to as SB 221. SB 610 and SB 221 amended state law, effective January 1, 2002, intending to improve the link between information on water supply availability and certain land use decisions made by cities and counties. SB 610 requires that the water purveyor of the public water system prepare a water supply assessment to be included in the California Environmental Quality Act (CEQA) environmental documentation and approval process of certain proposed projects. SB 221 requires affirmative written verification from the water purveyor of the public water system that sufficient water supplies are to be available for certain residential subdivision of property. The requirements of SB 610 and SB 221 are addressed in the May 2013 WSA&V Report for the Otay Ranch Planning Area 12 Freeway Commercial Project.

The expected potable water demands for the Planning Area 12 Freeway Commercial Project are 0.208 million gallons per day (MGD) or about 233 acre-feet per year (AFY). This is 173 AFY higher than the demand estimate in the District's 2010 Water Resources Master Plan Update and District's 2010 UWMP and 46 AFY higher than the 2013 WSA&V report first done for the project. The projected recycled water demand for the proposed Project is approximately 0.035 MGD or about 38.8 AFY, representing about 16% of total Project water demand.

The 173 AFY increase in demand is accounted for through the Accelerated Forecasted Growth demand increment of the Water Authority's 2010 UWMP. As documented in the Water Authority's 2010 UWMP, the Water Authority is planning to meet future and

existing demands which include the demand increment associated with the accelerated forecasted growth. The Water Authority will assist its member agencies in tracking the environmental documents provided by the agencies that include water supply assessments and verifications reports that utilize the accelerated forecasted growth demand increment to demonstrate supplies for the development. In addition, the next update of the demand forecast for the Water Authority's 2015 UWMP will be based on SANDAG's most recently updated forecast, which will include the Project. Therefore, based on the findings from the Otay WD's 2010 UWMP and the Water Authority's 2010 UWMP, this Project will result in no unanticipated demands.

The District currently depends on the Water Authority and the MWD for all of its potable water supplies and regional water resource planning. The District's 2010 Urban Water Management Plan (UWMP) relies heavily on the UWMP's and Integrated Water Resources Plans (IRPs) of the Water Authority and MWD for documentation of supplies available to meet projected demands. These plans are developed to manage the uncertainties and variability of multiple supply sources and demands over the long-term through preferred water resources strategy adoption and resource development target approvals for implementation.

MWD, in October 2010, approved the update of their Integrated Water Resources Plan (IRP). The 2010 IRP Update describes an adaptive management approach to mitigate against future water supply uncertainty. The new uncertainties that are significantly affecting California's water resources include:

- The Federal Court ruling on previous operational limits on Sacramento-San Joaquin Delta to protect the Delta species. Water agencies are still trying to determine what effect the ruling will have on State Water Project (SWP) deliveries. Actual supply curtailments for MWD are contingent upon fish distribution, behavioral patterns, weather, Delta flow conditions, and how water supply reductions are divided between state and federal projects.
- Periodic extended drought conditions.

These uncertainties have rightly caused concern among Southern California water supply agencies regarding the validity of the current water supply documentation.

MWD is currently involved in several proceedings concerning Delta operations to evaluate and address environmental concerns. In addition, at the State level, the Delta Vision and Bay-Delta Conservation Plan processes are defining long-term solutions for the Delta.

The SWP represents approximately 9% of MWD's 2025 Dry Resources Mix, with the supply buffer included. A 22% cutback in SWP supply represents an overall 2% (22% of 9% is 2%) cutback in MWD supplies in 2025. Neither the Water Authority nor MWD has stated that there is insufficient water for future planning in Southern California. Each agency is in the process of reassessing and reallocating their water resources.

Under preferential rights, MWD can allocate water without regard to historic water purchases or dependence on MWD. Therefore, the Water Authority and its member agencies are taking measures to reduce dependence on MWD through development of additional supplies and a water supply portfolio that would not be jeopardized by a preferential rights allocation.

As calculated by MWD (December 11, 2012), the Water Authority's current preferential right is 17.22% of MWD's supply, while the Water Authority accounted for approximately 25% of MWD's total revenue. So MWD could theoretically cut back the Water Authority's supply and theoretically, the Water Authority should have alternative water supply sources to make up for the difference. In the Water Authority's 2010 UWMP, they had already planned to reduce reliance on MWD supplies. This reduction is planned to be achieved through diversification of their water supply portfolio.

The Water Authority's Drought Management Plan (May 2006) provides the Water Authority and its member agencies with a series of potential actions to engage when faced with a shortage of imported water supplies due to prolonged drought conditions. Such actions help avoid or minimize impacts of shortages and ensure an equitable allocation of supplies throughout the San Diego County region.

The Otay Water District Board of Directors could acknowledge the ever-present challenge of balancing water supply with demand and the inherent need to possess a flexible and adaptable water supply implementation strategy that can be relied upon during normal and dry weather conditions. The responsible regional water supply agencies have and will continue to adapt their resource plans and strategies to meet climatological, environmental, and legal challenges so that they may continue to provide water supplies to their service areas. The regional water suppliers (i.e., the Water Authority and MWD), along with the District, fully intend to maintain sufficient reliable supplies through the 20-year planning horizon under normal, single, and multiple-dry year conditions to meet projected demand of the Otay Ranch Planning Area 12 Freeway Commercial Project, along with existing and other planned development projects within the District's service area.

If the regional water suppliers determine additional water supplies will be required, or in this case, that water supply portfolios need to be reassessed and redistributed with the intent to serve the existing and future water needs throughout Southern California, the agencies must indicate the status or stage of development of actions identified in the plans they provide. MWD's 2010 IRP update will then cause the Water Authority to update its IRP, which will then provide the District with the necessary water supply documentation. Identification of a potential future action in such plans does not by itself indicate that a decision to approve or to proceed with the action has been made. The District's Board approval of the Otay Ranch Planning Area 12 Freeway Commercial Project WSA&V Report does not in any way guarantee water supply to the Project.

Alternatively, if the WSA&V Report is written to state that water supply is or will be unavailable; the District must include, in the assessment, a plan to acquire additional water supplies. At this time, the District should not state there is insufficient water supply.

So the best the District can do right now is to state the current water supply situation clearly, indicating intent to provide supply through reassessment and reallocation by the regional, as well as, the local water suppliers. In doing so, it is believed that the Board has met the intent of the SB 610 statute, that the land use agencies and the water agencies are coordinating their efforts in planning water supplies for new development.

With District Board approval of the Otay Ranch Planning Area 12 Freeway Commercial Project WSA&V Report, the Otay Ranch Planning Area 12 Freeway Commercial Project proponents can proceed with the draft environmental documentation required for the CEQA review process. The water supply issues will be addressed in these environmental documents, consistent with the WSA&V Report.

The District, as well as others, can comment on the draft EIR with recommendations that water conservation measures and actions be employed on the Otay Ranch Planning Area 12 Freeway Commercial Project.

Some recent actions regarding water supply assessments and verification reports by Otay Water District are as follows:

- The Board approved the Otay Ranch L.P. Otay Ranch Preserve and Resort Project Water Supply Assessment and Verification Report on February 4, 2009.
- The Board approved water supply assessment and verification reports for the City of Chula Vista Village 8 West Sectional Plan Area and Village 9 Sectional Plan Area on January 5, 2011.
- The Board approved the water supply assessment report for the San Diego-Tijuana Cross Border Facility on February 2, 2011.
- The Board approved the water supply assessment for the County of San Diego Rabago Technology Park on April 6, 2011.
- The Board approved the water supply assessment report for the Pio Pico Energy Center Project on October 5, 2011.
- The Board approved the water supply assessment report for the Hawano Project on March 7, 2012.
- The Board approved the water supply assessment reports for the Sunroad Otay Plaza and Otay Tech Center Projects on March 6, 2013.

- The Board approved the water supply assessment report for the Otay Ranch University Villages Project on November 6, 2013.
- The Board approved the water supply assessment report for the Otay Ranch Resort Village Project on May 7, 2014.

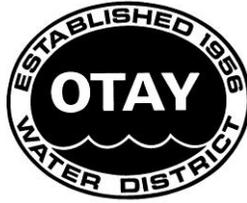
Water supplies necessary to serve the demands of the proposed Otay Ranch Planning Area 12 Freeway Commercial Project, along with existing and other projected future users, as well as the actions necessary to develop these supplies, have been identified in the water supply planning documents of the District, the Water Authority, and MWD.

The WSA&V Report includes, among other information, an identification of existing water supply entitlements, water rights, water service contracts, or agreements relevant to the identified water supply needs for the proposed Otay Ranch Planning Area 12 Freeway Commercial Project. The WSA&V Report demonstrates and documents that sufficient water supplies are planned and are intended to be available over a 20-year planning horizon, under normal conditions and in single and multiple-dry years, to meet the projected demand of the proposed Otay Ranch Planning Area 12 Freeway Commercial Project and the existing and other planned development projects within the District.

Accordingly, after approval of a WSA&V Report for the Otay Ranch Planning Area 12 Freeway Commercial Project by the District's Board of Directors, the WSA&V Report may be used to comply with the requirements of the legislation enacted by Senate Bills 610 and 221 as follows:

Senate Bill (SB) 610 Water Supply Assessment: The District's Board of Directors approved WSA&V Report may be incorporated into the California Environmental Quality Act (CEQA) compliance process for the Otay Ranch Planning Area 12 Freeway Commercial Project as a water supply assessment report consistent with the requirements of the legislation enacted by SB 610. The City of Chula Vista, as lead agency under the CEQA for the Otay Ranch Planning Area 12 Freeway Commercial Project environmental documentation, may cite the approved WSA&V Report as evidence that a sufficient water supply is planned and intended to be available to serve the Otay Ranch Planning Area 12 Freeway Commercial Project.

Senate Bill (SB) 221 Water Supply Verification: The District's Board of Directors approved WSA&V Report may be incorporated into the Otay Ranch Planning Area 12 Freeway Commercial Project as a water supply verification report, consistent with the requirements of the legislation enacted by SB 221. The City, within their process of approving the Otay Ranch Planning Area 12 Freeway Commercial Project, may cite the approved WSA&V Report as verification of intended sufficient water supply to serve the Project.



OTAY WATER DISTRICT

WATER SUPPLY ASSESSMENT AND VERIFICATION REPORT

Otay Ranch Planning Area 12 Freeway Commercial

D0933-090217

Prepared by:

**Lisa Coburn-Boyd
Environmental Compliance Specialist
and**

**Robert Kennedy, P.E.
Engineering Manager
Otay Water District**

**in consultation with
Dexter Wilson Engineering, Inc.
and
San Diego County Water Authority**

February 2015

**Otay Water District
Water Supply Assessment and Verification Report
February 2015**

Otay Ranch Planning Area 12 Freeway Commercial

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Otay Water District Water Supply Assessment and Verification Report February 2015

Otay Ranch Planning Area 12 Freeway Commercial

Executive Summary

The Otay Water District (Otay WD) prepared this Water Supply Assessment and Verification Report (WSA&V Report) at the request of the City of Chula Vista (City) for the Otay Ranch Planning Area 12 Freeway Commercial project. Baldwin and Sons submitted a Specific Planning Area (SPA) Amendment to the City for the development of the Planning Area 12 Freeway Commercial project. This study is only for the FC-2 portion of the Planning Area 12 Freeway Commercial Project as the FC-1 site has already been developed. Otay WD approved a WSA&V Report for the project that was prepared in May 2013, but the land use plan has since changed.

Otay Ranch Planning Area 12 Freeway Commercial Project Overview and Water Use

The Planning Area 12 Freeway Commercial project is included within a land use planning document known as the Otay Ranch General Development Plan/Sub-regional Plan (Otay Ranch GDP). The County of San Diego and City of Chula Vista jointly prepared and adopted the Otay Ranch GDP. The Planning Area 12 Freeway Commercial project is located within a portion of the Otay Ranch GDP. The project is a part of the designated 14 villages and five planning areas within the Otay Ranch GDP area. The Chula Vista City Council and the San Diego County Board of Supervisors adopted the Otay Ranch GDP on October 28, 1993, which was accompanied by a Program Environmental Impact Report EIR-90-01 (SCH #89010154). As the Otay Ranch area has developed over time, the Otay Ranch GDP has been periodically amended to address land use and circulation element issues specific to individual Villages.

The Planning Area 12 Freeway Commercial project is located along the southern boundary of Olympic Parkway and includes development on both sides of Town Center Drive. Baldwin and Sons development concept for the approximately 34.5 acre site includes multi-family residential, hotel, commercial, and a park site. The project site is planned for 650 residential units, 310 hotel rooms, and up to 25,000 square feet of commercial development. The current entitlement on the property was for the entire 34.5 acres to be commercial with up to 347,000 square feet of building space.

The expected potable water demands for the Planning Area 12 Freeway Commercial Project are 0.208 million gallons per day (mgd) or about 233 acre feet per year (AFY). This is 173 AFY higher than the demand estimate in the District's 2010 Water Resources Master Plan Update and District's 2010 UWMP and 46 AFY higher than the 2013 WSA&V Report projections. The projected recycled water demand for the proposed project is approximately 0.035 mgd or about 38.8 AFY, representing about 16% of total project water demand.

The 173 AFY increase in demand is accounted for through the Accelerated Forecasted Growth demand increment of the Water Authority's 2010 UWMP. As documented in the Water Authority's 2010 UWMP, the Water Authority is planning to meet future and existing demands which include the demand increment associated with the accelerated forecasted growth. The Water Authority will assist its member agencies in tracking the environmental documents provided by the agencies that include water supply assessments and verifications reports that utilize the accelerated forecasted growth demand increment to demonstrate supplies for the development. In addition, the next update of the demand forecast for the Water Authority's 2015 UWMP will be based on SANDAG's most recently updated forecast, which will include the Project. Therefore, based on the findings from the Otay WD's 2010 UWMP and the Water Authority's 2010 UWMP, this project will result in no unanticipated demands.

The Water Authority's 2010 Urban Water Management Plan (UWMP) provides for a comprehensive planning analysis at a regional level and includes water use associated with accelerated forecasted development as part of its municipal and industrial sector demand projections. These housing and commercial units were identified by the San Diego Association of Government (SANDAG) in the course of its regional housing needs assessment, but are not yet included in existing general land use plans of local jurisdictions. The demand associated with accelerated forecasted residential development is intended to account for SANDAG's land-use development currently projected to occur between 2035 and 2050, but has the likely potential to occur on an accelerated schedule. SANDAG estimates that this accelerated forecasted residential and commercial development forecasted could occur within the planning horizon (2015 to 2035) of the 2010 UWMP. This land-use is not included in local jurisdictions' general plans, so their projected demands are incorporated at a regional level. When necessary, this additional demand increment, termed Accelerated Forecasted Growth, can be used by member agencies to meet the demands of development projects not identified in the general land use plans.

Planned Imported Water Supplies from the Water Authority and MWD

The Water Authority and the Metropolitan Water District of Southern California (MWD) have an established process that ensures supplies are being planned to meet future growth. Any annexations and revisions to established land use plans are captured in the SANDAG updated forecasts for land use planning, demographics, and economic projections. SANDAG serves as the regional, intergovernmental planning agency that develops and provides forecast

information. The Water Authority and MWD update their demand forecasts and supply needs based on the most recent SANDAG forecast approximately every five years to coincide with preparation of their UWMP's. Prior to the next forecast update, local jurisdictions may require water supply assessment and/or verification reports for proposed land developments that are not within the Otay WD, Water Authority, nor MWD jurisdictions (i.e. pending or proposed annexations) or that have revised land use plans than what is reflected in the existing growth forecasts. Proposed land areas with pending or proposed annexations or revised land use plans typically result in the creation of higher demand and supply requirements than anticipated. The Otay WD, Water Authority, and MWD next demand forecast and supply requirements and associated planning documents would then capture any increase or decrease in demands and required supplies as a result of annexations or revised land use planning decisions.

The California Urban Water Management Planning Act (Act), which is included in the California Water Code, requires all urban water suppliers within the state to prepare an UWMP and update it every five years. The purpose and importance of the UWMP has evolved since it was first required 25 years ago. State agencies and the public frequently use the document to determine if agencies are planning adequately to reliably meet future demands. As such, UWMPs serve as an important element in documenting supply availability for the purpose of compliance with state laws, Senate Bills 610 and 221, linking water supply sufficiency to large land-use development approval. Agencies must also have a UWMP prepared, pursuant to the Act, in order to be eligible for state funding and drought assistance.

MWD's Integrated Resource Plan (IRP) identifies a mix of resources (imported and local) that, when implemented, will provide 100 percent reliability for full-service demands through the attainment of regional targets set for conservation, local supplies, State Water Project supplies, Colorado River supplies, groundwater banking, and water transfers. The MWD's 2010 update to the IRP (2010 IRP Update) includes a planning buffer supply intended to mitigate against the risks associated with implementation of local and imported supply programs. The planning buffer identifies an additional increment of water that could potentially be developed if other supplies are not implemented as planned. As part of implementation of the planning buffer, MWD periodically evaluates supply development to ensure that the region is not under or over developing supplies. Managed properly, the planning buffer will help ensure that the southern California region, including San Diego County, will have adequate water supplies to meet future demands.

Water supply agencies throughout California continue to face climatological, environmental, legal, and other challenges that impact water source supply conditions, such as the court rulings regarding the Sacramento-San Joaquin Delta issues and the recent drought impacting the western states. Challenges such as these will always be present. The regional water supply agencies, the Water Authority and MWD, along with Otay WD nevertheless fully intend to have sufficient, reliable supplies to serve demands.

In Section ES-5 of MWD's 2010 Regional Urban Water Management Plan (2010 RUWMP), MWD states that MWD has supply capacities that would be sufficient to meet expected demands from 2015 through 2035. MWD has plans for supply implementation and continued development of a diversified resource mix including programs in the Colorado River Aqueduct, State Water Project, Central Valley Transfers, local resource projects, and in-region storage that enables the region to meet its water supply needs. MWD's 2010 RUWMP identifies potential reserve supplies in the supply capability analysis (Tables 2-9, 2-10, and 2-11), which could be available to meet the unanticipated demands such as those related to the Planning Area 12 Freeway Commercial Project.

The County Water Authority Act, Section 5 subdivision 11, states that the Water Authority "as far as practicable, shall provide each of its member agencies with adequate supplies of water to meet their expanding and increasing needs."

As part of preparation of a written water supply assessment report, an agency's shortage contingency analysis should be considered in determining sufficiency of supply. Section 11 of the Water Authority's 2010 UWMP contains a detailed shortage contingency analysis that addresses a regional catastrophic shortage situation and drought management. The analysis demonstrates that the Water Authority and its member agencies, through the Emergency Response Plan, Emergency Storage Project, and Drought Management Plan (DMP) are taking actions to prepare for and appropriately handle an interruption of water supplies. The DMP, adopted in May 2006, provides the Water Authority and its member agencies with a series of potential actions to take when faced with a shortage of imported water supplies from MWD due to prolonged drought or other supply shortfall conditions. The actions will help the region avoid or minimize the impacts of shortages and ensure an equitable allocation of supplies.

Otay Water District Water Supply Development Program

In evaluating the availability of sufficient water supply, the Planning Area 12 Freeway Commercial project proponents are required to participate in the development of alternative water supply project(s). This can be achieved through payment of the New Water Supply Fee adopted by the Otay Water district Board in May 2010. These water supply projects are in addition to those identified as sustainable supplies in the current Water Authority and MWD UWMP, IRP, Master Plans, and other planning documents and are in response to the regional water supply issues. These new alternative water supply projects are not currently developed and are in various stages of the planning process. A few examples of these projects include the Middle Sweetwater River Basin Groundwater Well project, the North District Recycled Water Supply Concept and the Rosarito Ocean Desalination Facility project. The Water Authority and MWD next forecast and supply planning documents would capture any increase in water supplies resulting from any new water resources developed by the Otay WD.

Findings

The WSA&V Report identifies and describes the processes by which water demand projections for the proposed Planning Area 12 Freeway Commercial project will be fully included in the water demand and supply forecasts of the Urban Water Management Plans and other water resources planning documents of the Water Authority and MWD. Water supplies necessary to serve the demands of the proposed project, along with existing and other projected future users, as well as the actions necessary and status to develop these supplies, have been identified in the Planning Area 12 Freeway Commercial project WSA&V Report and will be included in the future water supply planning documents of the Water Authority and MWD.

This WSA&V Report includes, among other information, an identification of existing water supply entitlements, water rights, water service contracts, water supply projects, or agreements relevant to the identified water supply needs for the proposed Planning Area 12 Freeway Commercial project. The WSA&V Report demonstrates and documents that sufficient water supplies are planned for and are intended to be available over a 20-year planning horizon, under normal conditions and in single and multiple dry years to meet the projected demand of the proposed Planning Area 12 Freeway Commercial project and the existing and other planned development projects to be served by the Otay WD.

Accordingly, after approval of a WSA&V Report for the Planning Area 12 Freeway Commercial project by the Otay WD Board of Directors (Board), the WSA&V Report may be used to comply with the requirements of the legislation enacted by Senate Bills 610 and 221 as follows:

1. Senate Bill 610 Water Supply Assessment: The Otay WD Board approved WSA&V Report may be incorporated into the California Environmental Quality Act (CEQA) Environmental Impact Report (EIR) compliance process for the Planning Area 12 Freeway Commercial project as a water supply assessment report consistent with the requirements of the legislation enacted by SB 610. The City as lead agency under CEQA for the Planning Area 12 Freeway Commercial project EIR amendment may cite the approved WSA&V Report as evidence that a sufficient water supply is planned for and is intended to be made available to serve the Planning Area 12 Freeway Commercial project.
2. Senate Bill 221 Water Supply Verification: The Otay WD Board approved WSA&V Report may be incorporated into the City's Tentative Map approval process for the Planning Area 12 Freeway Commercial project as a water supply verification report, consistent with the requirements of the legislation enacted by SB 221. The City, within their process of approving the Planning Area 12 Freeway Commercial project's Tentative Map, may cite the approved WSA&V Report as verification of intended sufficient water supply to serve the Planning Area 12 Freeway Commercial project.

Section 1 - Purpose

The Planning Area 12 project is located in the Otay Ranch Freeway Commercial core area. This report is being prepared for the FC-2 site only within Planning Area 12 as the FC-1 site has already been developed. The northern portion of Planning Area 12 is identified as FC-2 in the August 2004 approved SPA plan and allows for up to 347,000 square feet of commercial development on 34.5 acres. Baldwin and Sons submitted a SPA amendment to the City of Chula Vista (City) for the development of the Otay Ranch Planning Area 12 Freeway Commercial project. The City requested that Otay WD prepare a WSA&V Report for the Planning Area 12 Freeway Commercial project. A WSA&V Report was prepared for the project in May 2013, but the land use plan has since changed. The current Planning Area 12 Freeway Commercial project description is provided in Section 3 of this WSA&V Report.

This WSA&V Report for the Planning Area 12 Freeway Commercial project has been prepared by the Otay WD in consultation with Dexter Wilson Engineering, Inc., the Water Authority, and the City pursuant to Public Resources Code Section 21151.9 and California Water Code Sections 10631, 10656, 10910, 10911, 10912, and 10915 referred to as Senate Bill (SB) 610 and Business and Professions Code Section 11010 and Government Code Sections 65867.5, 66455.3, and 66473.7 referred to as SB 221. SB 610 and SB 221 amended state law, effective January 1, 2002, intending to improve the link between information on water supply availability and certain land use decisions made by cities and counties. SB 610 requires that the water purveyor of the public water system prepare a water supply assessment to be included in the California Environmental Quality Act (CEQA) environmental documentation and approval process of certain proposed projects. SB 221 requires affirmative written verification from the water purveyor of the public water system that sufficient water supplies are to be available for certain residential subdivisions of property prior to approval of a tentative map. The requirements of SB 610 and SB 221 are being addressed by this WSA&V Report.

The City also requested, since the requirements of SB 610 and SB 221 are substantially similar, that Otay WD prepare both the water supply assessment and verification concurrently.

This WSA&V Report evaluates water supplies that are planned to be available during normal, single dry year, and multiple dry water years during a 20-year planning horizon to meet existing demands, expected demands of the Planning Area 12 Freeway Commercial project, and reasonably foreseeable planned future water demands served by Otay WD. The Otay WD Board of Directors approved WSA&V Report is planned to be used by the City in its evaluation of the Planning Area 12 Freeway Commercial project under the CEQA and Tentative Map approval processes.

Section 2 - Findings

The Otay WD prepared this WSA&V Report at the request of the City for the Otay Ranch Planning Area 12 Freeway Commercial project. Baldwin and Sons submitted a SPA amendment application to the City for the revised development plan of the Planning Area 12 Freeway Commercial project.

The Planning Area 12 Freeway Commercial Project is located within the jurisdictions of the Otay WD, the Water Authority, and MWD Water District of Southern California (MWD). To obtain permanent imported water supply service, land areas are required to be within the jurisdictions of the Otay WD, Water Authority, and MWD to utilize imported water supply.

The expected potable water demands for the Planning Area 12 Freeway Commercial Project are 0.208 million gallons per day (mgd) or about 233 acre feet per year (AFY). This is 173 AFY higher than the demand estimate in the District's 2010 Water Resources Master Plan Update and District's 2010 UWMP and 46 AFY higher than the projections in the 2013 WSA&V Report. The projected recycled water demand for the proposed project is approximately 0.035 mgd or about 38.8 AFY, representing about 13% of total project water demand.

The 173 AFY increase in demand is accounted for through the Accelerated Forecasted Growth demand increment of the Water Authority's 2010 UWMP. As documented in the Water Authority's 2010 UWMP, the Water Authority is planning to meet future and existing demands which include the demand increment associated with the accelerated forecasted growth. The Water Authority will assist its member agencies in tracking the environmental documents provided by the agencies that include water supply assessments and verifications reports that utilize the accelerated forecasted growth demand increment to demonstrate supplies for the development. In addition, the next update of the demand forecast for the Water Authority's 2015 UWMP will be based on SANDAG's most recently updated forecast, which will include the Project. Therefore, based on the findings from the Otay WD's 2010 UWMP and the Water Authority's 2010 UWMP, this project will result in no unanticipated demands.

The Planning Area 12 Freeway Commercial Project development proponents are required to use recycled water for irrigation and other appropriate uses. The primary benefit of using recycled water is that it will offset the potable water demands by an estimated 38.8 AFY. The WRMP Update and the 2010 Urban Water Management Plan (UWMP) anticipated that the land area to be utilized for the Planning Area 12 Freeway Commercial Project would use both potable and recycled water.

The Water Authority's 2010 UWMP provides for a comprehensive planning analysis at a regional level and includes water use associated with accelerated forecasted development as part of its municipal and industrial sector demand projections. These housing and commercial

units were identified by the SANDAG in the course of its regional housing needs assessment, but are not yet included in existing general land use plans of local jurisdictions. The demand associated with accelerated forecasted residential development is intended to account for SANDAG's land-use development currently projected to occur between 2035 and 2050, but has the likely potential to occur on an accelerated schedule. SANDAG estimates that this accelerated forecasted residential and commercial development forecasted could occur within the planning horizon (2015 to 2035) of the Water Authority's 2010 UWMP. This land-use is not included in local jurisdictions' general plans, so their projected demands are incorporated at a regional level. When necessary, this additional demand increment, termed Accelerated Forecasted Growth, can be used by member agencies to meet the demands of development projects not identified in the general land use plans.

The Water Authority and MWD have an established process that ensures supplies are being planned to meet future growth. Any annexations and revisions to established land use plans are captured in the SANDAG updated forecasts for land use planning, demographics, and economic projections. SANDAG serves as the regional, intergovernmental planning agency that develops and provides forecast information. The Water Authority and MWD update their demand forecasts and supply needs based on the most recent SANDAG forecast approximately every five years to coincide with preparation of their urban water management plans. Prior to the next forecast update, local jurisdictions may require water supply assessment and/or verification reports for proposed land developments that are not within the Otay WD, Water Authority, nor MWD jurisdictions (i.e. pending or proposed annexations) or that have revised land use plans than reflected in the existing growth forecasts. Proposed land areas with pending or proposed annexations or revised land use plans typically result in creating higher demand and supply requirements than anticipated. The Otay WD, the Water Authority, and MWD next demand forecast and supply requirements and associated planning documents would then capture any increase or decrease in demands and required supplies as a result of annexations or revised land use planning decisions.

This process is utilized by the Water Authority and MWD to document the water supplies necessary to serve the demands of the proposed Planning Area 12 Freeway Commercial project, along with existing and other projected future users, as well as the actions necessary to develop these supplies. Through this process the necessary demand and supply information is thus assured to be identified and incorporated within the water supply planning documents of the Water Authority and MWD.

The Otay Water District 2010 UWMP included a water conservation component to comply with Senate Bill 7 of the Seventh Extraordinary Session (SBX 7-7), which became effective February 3, 2010. This new law was the water conservation component to the Delta legislation package, and seeks to achieve a 20 percent statewide reduction in urban per capita water use in California by December 31, 2020. Specifically, SBX 7-7 from this Extraordinary Session requires each urban retail water supplier to develop urban water use targets to help meet the 20 percent reduction goal by 2020 (20x2020), and an interim water reduction target by 2015.

Otay WD has adopted Method 1 to set its 2015 interim and 2020 water use targets. Method 1 requires setting the 2020 water use target to 80 percent of baseline per capita water use target as provided in the State's Draft 20x2020 Water Conservation Plan. The Otay WD 2015 target is 171 gallons per capita per day (gpcd) and the 2020 gpcd target at 80 percent of baseline is 152 gpcd.

The Otay WD's recent per capita water use has been declining to the point where current water use already meets the 2020 target for Method 1. This recent decline in per capita water use is largely due to drought water use restrictions, increased water costs, and economic conditions. However, Otay WD's effective water use awareness campaign and enhanced conservation mentality of its customers will likely result in some long-term carryover of these reduced consumption rates.

In evaluating the availability of sufficient water supply, the Planning Area 12 Freeway Commercial project proponents are required to participate in the development of alternative water supply project(s). This can be achieved through payment of the New Water Supply Fee adopted by the Otay Water District Board in May 2010. These water supply projects are in addition to those identified as sustainable supplies in the current Water Authority and MWD UWMP, IRP, Master Plans, and other planning documents. These new water supply projects are in response to the regional water supply issues related to the Sacramento-San Joaquin Delta and the current ongoing western states drought conditions. These new additional water supply projects are not currently developed and are in various stages of the planning process. A few examples of these alternative water supply projects include the Middle Sweetwater River Basin Groundwater Well project, the North District Recycled Water Supply Concept and the Rosarito Ocean Desalination Facility project. The Water Authority and MWD next forecast and supply planning documents would capture any increase in water supplies resulting from any new water resources developed by the Otay WD.

Water supplies necessary to serve the demands of the proposed Planning Area 12 Freeway Commercial project, along with existing and other reasonably foreseeable projected future users, as well as the actions necessary and status to develop these supplies, will be identified and included within the water supply planning documents of the Water Authority and MWD. This WSA&V Report demonstrates and verifies that with development of the resources currently identified and those that may be additional acquired, that there is sufficient water supplies being planned for and is intended to be developed over the next 20-year planning horizon to meet the projected demand of the proposed Planning Area 12 Freeway Commercial project and the existing and other reasonably foreseeable planned development projects within the Otay WD.

This WSA&V Report includes, among other information, an identification of existing water supply entitlements, water rights, water service contracts, proposed water supply projects, or agreements relevant to the identified water supply needs for the proposed Planning Area 12 Freeway Commercial project. This WSA&V Report incorporates by reference the current

Urban Water Management Plans and other water resources planning documents of the Otay WD, the Water Authority, and MWD. The Otay WD prepared this WSA&V to verify and document that sufficient water supplies are being planned for and are intended to be acquired to meet projected water demands of the Planning Area 12 Freeway Commercial project and the existing and other reasonably foreseeable planned development projects within the Otay WD for a 20-year planning horizon, in normal supply years, and in single dry and multiple dry years.

Based on a normal water supply year, the five-year increments for a 20-year projection indicate projected potable and recycled water supply is being planned for and is intended to be acquired to meet the estimated water demand targets of the Otay WD (44,883 acre-feet (AF) in 2015 to 56,614 AF in 2035 per the Otay Water District 2010 UWMP). Based on dry year forecasts, the estimated water supply is also being planned for and is intended to be acquired to meet the projected water demand, during single dry and multiple dry year scenarios. On average, the dry-year demands are about 6.4 percent higher than the normal year demands. The Otay WD recycled water supply is assumed to be drought-proof and not subject to reduction during dry periods.

Together, these findings demonstrate and verify that sufficient water supplies are being planned for and are intended to be acquired, as well as the actions necessary and status to develop these supplies are and will be further documented, to serve the proposed Planning Area 12 Freeway Commercial project and the existing and other reasonably foreseeable planned projects within the Otay WD in both normal and single and multiple dry year forecasts for a 20-year planning horizon.

Section 3 - Project Description

The Otay Ranch Planning Area 12 Freeway Commercial project is located within the City of Chula Vista, California. Refer to Appendix A for a regional location map of the proposed project.

The Planning Area 12 Freeway Commercial project is included within a land use planning document known as the Otay Ranch General Development Plan/Sub-regional Plan (Otay Ranch GDP). The County of San Diego and City of Chula Vista jointly prepared and adopted the Otay Ranch GDP. The project is a part of the designated 14 villages and five planning areas within the Otay Ranch GDP area. The Otay Ranch Freeway Commercial Project current development plan approval is dependent on the City's eventual adoption of their Sectional Planning Area Plan (SPA) amendment.

The Chula Vista City Council and the San Diego County Board of Supervisors adopted the Otay Ranch GDP on October 28, 1993, which was accompanied by a Program Environmental Impact Report EIR-90-01 (SCH #89010154).

The approximately 23,000 acre Otay Ranch is a master-planned community that includes a broad range of residential, commercial, retail, and industrial development interwoven with civic and community uses, such as libraries, parks, and schools, together with an open space preserve system consisting of approximately 11,375 acres.

The Baldwin and Sons proposed development concept for the approximately 34.5 acre Planning Area 12 Freeway Commercial project is planned as a combination of land uses as shown in Table 1.

**Table 1
 Otay Ranch PA 12 Freeway Commercial FC-2 Proposed Land Uses**

Location	Land Use Description	Area	Dwelling Units
PA 12 Freeway Commercial	Multi-Family Residential	---	650 units
PA 12 Freeway Commercial	Hotel	---	310 rooms
PA 12 Freeway Commercial	Commercial	4.0 acres	---
PA 12 Freeway Commercial	Park	2.0 acres	---

The proposed development within Planning Area 12 Freeway Commercial consists of 650 multi-family residential units, 310 hotel rooms, commercial, and a park. The project is located along the southerly edge of Olympic Parkway on both sides of Town Center Drive. Refer to Appendix B for the proposed development plan of the Planning Area 12 Freeway Commercial project.

The City has identified discretionary actions and/or permit approval requirements for the Planning Area 12 Freeway Commercial project. The projected potable and recycled water demands and resulting water supply requirements associated with the Planning Area 12 Freeway Commercial project have considered the discretionary actions and/or permit approvals and are incorporated into and used in this WSA&V Report. The water demands for the proposed Planning Area 12 Freeway Commercial project are provided in Section 5 – Historical and Projected Water Demands.

Section 4 – Otay Water District

The Otay WD is a municipal water district formed in 1956 pursuant to the Municipal Water District Act of 1911 (Water Code §§ 71000 et seq.). The Otay WD joined the Water Authority as a member agency in 1956 to acquire the right to purchase and distribute imported water throughout its service area. The Water Authority is an agency responsible for the wholesale supply of water to its 24 public agency members in San Diego County.

The Otay WD currently relies on the Water Authority for 100 percent of its treated potable water supply. The Water Authority is the agency responsible for the supply of imported water into San Diego County through its membership in MWD. The Water Authority currently obtains the vast majority of its imported supply from MWD, but is in the process of diversifying its available supplies.

The Otay WD provides water service to residential, commercial, industrial, and agricultural customers, and for environmental and fire protection uses. In addition to providing water throughout its service area, Otay WD also provides sewage collection and treatment services to a portion of its service area known as the Jamacha Basin. The Otay WD also owns and operates the Ralph W. Chapman Water Reclamation Facility (RWCWRF) which has an effective treatment capacity of 1.2 mgd or about 1,300 AFY to produce recycled water. On May 18, 2007 an additional source of recycled water supply, at least 6 mgd or about 6,720 AFY, became available to Otay WD from the City of San Diego's South Bay Water Reclamation Plant (SBWRP).

The Otay WD jurisdictional area is generally located within the south central portion of San Diego County and includes approximately 125 square miles. The Otay WD serves portions of the unincorporated communities of southern El Cajon, La Mesa, Rancho San Diego, Jamul, Spring Valley, Bonita, and Otay Mesa, the eastern portion of the City of Chula Vista and a portion of the City of San Diego on Otay Mesa. The Otay WD jurisdiction boundaries are roughly bounded on the north by the Padre Dam Municipal Water District, on the northwest by the Helix Water District, and on the west by the South Bay Irrigation District (Sweetwater Authority) and the City of San Diego. The southern boundary of Otay WD is the international border with Mexico.

The planning area addressed in the Otay WD 2010 WRMP Update and the Otay WD 2010 UWMP includes the land within the jurisdictional boundary of the Otay WD and those areas outside of the present Otay WD boundaries considered to be in the Area of Influence of the Otay WD. Figure 2-1 contained within the Otay WD 2010 WRMP Update shows the jurisdictional boundary of the Otay WD and the Area of Influence. The planning area is approximately 143 square miles, of which approximately 125 square miles are within the Otay WD current boundaries and approximately 18 square miles are in the Area of Influence. The area east of Otay WD is rural and currently not within any water purveyor jurisdiction and potentially could be served by the Otay WD in the future if the need for imported water becomes necessary, as is the case for the Area of Influence.

The City of Chula Vista, the City of San Diego, and the County of San Diego are the three land use planning agencies within the Otay WD jurisdiction. Data on forecasts for land use planning, demographics, economic projections, population, and the future rate of growth within Otay WD were obtained from the SANDAG. SANDAG serves as the regional, intergovernmental planning agency that develops and provides forecast information through the year 2050. Population growth within the Otay WD service area is expected to increase from the 2010 figure of approximately 198,616 to an estimated 284,997 by 2035. Land use

information used to develop water demand projections are based upon Specific or Sectional Planning Areas, the Otay Ranch General Development Plan/Sub-regional Plan, East Otay Mesa Specific Plan Area, San Diego County Community Plans, and City of San Diego Otay Mesa Community Plan, City of Chula Vista, and County of San Diego General Plans.

The Otay WD long-term historic growth rate has been approximately 4 percent. The growth rate has significantly slowed due to the current economic conditions and it is expected to slow as the inventory of developable land is diminished.

Climatic conditions within the Otay WD service area are characteristically Mediterranean near the coast, with mild temperatures year round. Inland areas are both hotter in summer and cooler in winter, with summer temperatures often exceeding 90 degrees and winter temperatures occasionally dipping to below freezing. Most of the region's rainfall occurs during the months of December through March. Average annual rainfall is approximately 12.17 inches per year.

Historic climate data were obtained from the Western Regional Climate Center for Station 042706 (El Cajon). This station was selected because its annual temperature variation is representative of most of the Otay WD service area. While there is a station in the City of Chula Vista, the temperature variation at the City of Chula Vista station is more typical of a coastal environment than the conditions in most of the Otay WD service area.

4.1 Urban Water Management Plan

In accordance with the California Urban Water Management Planning Act and recent legislation, the Otay WD Board of Directors adopted an UWMP in June 2011 and subsequently submitted the plan to the California Department of Water Resources (DWR). The Otay WD 2010 UWMP is currently being reviewed by DWR. As required by law, the Otay WD 2010 UWMP includes projected water supplies required to meet future demands through 2035. In accordance with Water Code Section 10910 (c)(2) and Government Code Section 66473.7 (c)(3), information from the Otay Water District 2010 UWMP along with supplemental information from the Otay WD WRMP Update have been utilized to prepare this WSA&V Report and are incorporated herein by reference.

The state Legislature passed Senate Bill 7 as part of the Seventh Extraordinary Session (SBX 7-7) on November 10, 2009, which became effective February 3, 2010. This new law was the water conservation component to the Delta legislation package and seeks to achieve a 20 percent statewide reduction in urban per capita water use in California by December 31, 2020. Specifically, SBX 7-7 from this Extraordinary Session requires each urban retail water supplier to develop urban water use targets to help meet the 20 percent reduction goal by 2020 (20x2020), and an interim water reduction target by 2015.

The SBX 7-7 target setting process includes the following: (1) baseline daily per capita water use; (2) urban water use target; (3) interim water use target; (4) compliance daily per capita

water use, including technical bases and supporting data for those determinations. In order for an agency to meet its 2020 water use target, each agency can increase its use of recycled water to offset potable water use and also step up its water conservation measures. The required water use targets for 2020 and an interim target for 2015 are determined using one of four target methods – each method has numerous methodologies. The 2020 urban water use target may be updated in a supplier’s 2015 UWMP.

In 2015, urban retail water suppliers will be required to report interim compliance followed by actual compliance in 2020. Interim compliance is halfway between the baseline water use and 2020 target. Baseline, target, and compliance-year water use estimates are required to be reported in gallons per capita per day (gpcd).

Failure to meet adopted targets will result in the ineligibility of a water supplier to receive grants or loans administered by the State unless one (1) of two (2) exceptions is met. Exception one (1) states a water supplier may be eligible if they have submitted a schedule, financing plan, and budget to DWR for approval to achieve the per capita water use reductions. Exception two (2) states a water supplier may be eligible if an entire water service area qualifies as a disadvantaged community.

Otay WD has adopted Method 1 to set its 2015 interim and 2020 water use targets. Method 1 requires setting the 2020 water use target to 80 percent of baseline per capita water use target as provided in the State’s Draft 20x2020 Water Conservation Plan. The Otay WD 2015 target is 171 gpcd and the 2020 gpcd target at 80 percent of baseline is 152 gpcd.

The Otay WD’s recent per capita water use has been declining to the point where current water use already meets the 2020 target for Method 1. This recent decline in per capita water use is largely due to drought water use restrictions, increased water costs, and poor economic conditions. However, Otay WD’s effective water use awareness campaign and enhanced conservation mentality of its customers will likely result in some long-term carryover of these reduced consumption rates beyond the current drought period.

Section 5 – Historical and Projected Water Demands

The projected demands for Otay WD are based on Specific or Sectional Planning Areas, the Otay Ranch General Development Plan/Sub-regional Plan, the East Otay Mesa Specific Plan Area, San Diego County Community Plans, and City of San Diego Otay Mesa Community Plan, City of Chula Vista and County of San Diego General Plans. This land use information is also used by SANDAG as the basis for its most recent forecast data. This land use information is utilized in the preparation of the Otay WD 2010 WRMP, and Otay WD 2010 UWMP to develop the forecasted demands and supply requirements.

In 1994, the Water Authority selected the Institute for Water Resources-Municipal and Industrial Needs (MAIN) computer model to forecast municipal and industrial water use for the San Diego region. The MAIN model uses demographic and economic data to project sector-level water demands (i.e. residential and non-residential demands). This econometric model has over a quarter of a century of practical application and is used by many cities and water agencies throughout the United States. The Water Authority's version of the MAIN model was modified to reflect the San Diego region's unique parameters and is known as CWA-MAIN.

The foundation of the water demand forecast is the underlying demographic and economic projections. This was a primary reason, why, in 1992 the Water Authority and SANDAG entered into a Memorandum of Agreement (MOA), in which the Water Authority agreed to use the SANDAG current regional growth forecast for water supply planning purposes. In addition, the MOA recognizes that water supply reliability must be a component of San Diego County's regional growth management strategy required by Proposition C, as passed by the San Diego County voters in 1988. The MOA ensures a strong linkage between local general plan land use forecasts and water demand projections and resulting supply needs for the San Diego region.

Consistent with the previous CWA-MAIN modeling efforts, on February 26, 2010, the SANDAG Board of Directors accepted the Series 12: 2050 Regional Growth Forecast. The 2050 Regional Growth Forecast will be used by SANDAG as the foundation for the next Regional Comprehensive Plan update. SANDAG forecasts also are used by local governments for planning, including the Water Authority's 2010 UWMP update.

The municipal and industrial forecast also included an updated accounting of projected conservation savings based on projected regional implementation of the California Urban Water Conservation Council (CUWCC) Best Management Practices and SANDAG demographic information for the period 2010 through 2035. These savings estimates were then factored into the baseline municipal and industrial demand forecast.

A separate agricultural model, also used in prior modeling efforts, was used to forecast agricultural water demands within the Water Authority service area. This model estimates agricultural demand to be met by the Water Authority's member agencies based on agricultural acreage projections provided by SANDAG, crop distribution data derived from the Department of Water Resources and the California Avocado Commission, and average crop-type watering requirements based on California Irrigation Management Information System data.

The Water Authority and MWD update their water demand and supply projections within their jurisdictions utilizing the SANDAG most recent growth forecast to project future water demands. This provides for the important strong link between demand and supply projections to the land use plans of the cities and the county. This provides for consistency between the retail and wholesale agencies water demand projections, thereby ensuring that adequate

supplies are and will be planned for the Otay WD existing and future water users. Existing land use plans, any revisions to land use plans, and annexations are captured in the SANDAG updated forecasts. The Water Authority and MWD will update their demand forecasts based on the SANDAG most recent forecast approximately every five years to coincide with preparation of their urban water management plans. Prior to the next forecast update, local jurisdictions may require water supply assessment and/or verification reports consistent with Senate Bills 610 and 221 for proposed land use developments that either have pending or proposed annexations into the Otay WD, Water Authority, and MWD or that have revised land use plans than originally anticipated. The Water Authority and MWD next forecast and supply planning documents would then capture any increase or decrease in demands caused by annexations or revised land use plans.

In evaluating the availability of sufficient water supply, the Planning Area 12 Freeway Commercial project proponents are required to participate in the development of alternative water supply project(s). This can be achieved through payment of the New Water Supply Fee adopted by the Otay WD Board in May 2010. These water supply projects are in addition to those identified as sustainable supplies in the current Water Authority and MWD UWMP, IRP, Master Plans, and other planning documents. These new water supply projects are in response to the regional water supply issues related to climatological, environmental, legal, and other challenges that impact water source supply conditions, such as the court rulings regarding the Sacramento-San Joaquin Delta and the current ongoing western states drought conditions. These new additional water supply projects are not currently developed and are in various stages of the planning process. A few examples of these alternative water supply projects include the Middle Sweetwater River Basin Groundwater Well project, the North District Recycled Water Supply Concept and the Rosarito Ocean Desalination Facility project. The Water Authority and MWD next forecast and supply planning documents would capture any increase in water supplies resulting from any new water resources developed by the Otay WD.

In addition, MWD's 2010 Regional Urban Water Management Plan identified potential reserve supplies in the supply capability analysis (Tables 2-9, 2-10, and 2-11), which could be available to meet any unanticipated demands. The Water Authority and MWD's next forecast and supply planning documents would capture any increase in necessary supply resources resulting from any new water supply resources.

The Otay WD water demand projection methodology utilizes a component land use approach. This is done by applying representative values of water use to the acreage of each land use type and then aggregating these individual land use demand projections into an overall total demand for the Otay WD. This is called the water duty method, and the water duty is the amount of water used in acre-feet per acre per year. This approach is used for all the land use types except residential development where a demand per dwelling unit was applied. In addition, commercial and industrial water use categories are further subdivided by type including separate categories for golf courses, schools, jails, prisons, hospitals, etc. where specific water demands are established.

To determine water duties for the various types of land use, the entire water meter database of the Otay WD is utilized and sorted by the appropriate land use types. The metered consumption records are then examined for each of the land uses, and water duties are determined for the various types of residential, commercial, industrial, and institutional land uses. For example the water duty factors for commercial and industrial land uses are estimated using 1,785 and 893 gallons per day per acre, respectively. Residential water demand is established based on the same data but computed on a per-dwelling unit basis. The focus is to ensure that for each of the residential land use categories (very low, low, medium, and high densities), the demand criteria used is adequately represented based upon actual data. This method is used because residential land uses constitute a substantial percentage of the total developable planning area of the Otay WD.

The WRMP Update calculates potable water demand by taking the gross acreage of a site and applying a potable water reduction factor (PWRF), which is intended to represent the percentage of acreage to be served by potable water and that not served by recycled water for irrigation. For industrial land use, as an example, the PWRF is 0.95 (i.e., 95% of the site is assumed to be served by potable water, 5% of the site is assumed to be irrigated with recycled water). The potable net acreage is then multiplied by the unit demand factor corresponding to its respective land use. This approach is used in the WRMP Update for all the land use types except residential development where a demand per dwelling unit is applied. In addition, commercial and industrial water use categories are further subdivided by type including separate categories for golf courses, schools, jails, prisons, hospitals, etc. where specific water demands are allocated.

By applying the established water duties to the proposed land uses, the projected water demand for the entire Otay WD planning area at ultimate development is determined. Projected water demands for the intervening years were determined using growth rate projections consistent with data obtained from SANDAG and the experience of the Otay WD.

The historical and projected potable water demands for Otay WD are shown in Table 2.

Table 2
Historical and Projected Potable Water Fiscal Year Demands (AF)

Water Use Sectors	2005	2010	2015	2020	2025	2030	2035
Single Family	21,233	17,165	23,633	28,312	33,600	37,211	40,635
Multi-Family	3,095	3,605	3,444	4,126	4,897	5,423	5,922
Commercial &	1,657	2,243	1,844	2,209	2,622	2,904	3,171
Institutional &	2,262	1,867	2,518	3,017	3,580	3,965	4,330
Landscape	6,458	3,732	10,134	12,141	14,408	15,957	17,425
AFG*			743	743	743	743	743
Other	2,426	584	2,700	3,235	3,839	4,252	4,643
Unaccounted for	547	23	608	729	865	958	1,046
Totals	37,668	29,219	45,626	54,511	64,554	71,412	77,914

* Accelerated Forecasted Growth Increment

Source: Otay Water District 2010 UWMP.

The historical and projected recycled water demands for Otay WD are shown in Table 3.

Table 3
Historical and Projected Recycled Water Fiscal Year Demands (AF)

Water Use Sector	2005	2010	2015	2020	2025	2030	2035
Landscape	4,090	4,000	4,400	5,000	5,800	6,800	8,000
Totals	4,090	4,000	4,400	5,000	5,800	6,800	8,000

Source: Otay Water District 2010 UWMP, Table 10.

Using the land use demand projection criteria as established in the WRMP Update, the current projected potable water demand for the proposed Planning Area 12 Freeway Commercial project, which now proposes 650 multi-family residential units, 310 hotel rooms, commercial, and park land uses, is shown in Table 4 and totals approximately 0.208 mgd or about 233 AFY. The existing land use plan for the project that was used in the WRMP Update included 34.5 acres of commercial development and resulted in a projected water use of 60 AFY. Thus, projected water demands for the property would be increased by 173 AFY as a result of the proposed land use change. This is 46 AFY more than was projected in the May 2013 WSA&V Report.

**Table 4
 Planning Area 12 Freeway Commercial Projected Potable
 Water Annual Average Demands**

Location (Land Use)	Quantity	Potable Water Factor	Net Potable Acreage/Units	Unit Rate	Average Demand
Multi-Family Residential	650 units	85%		255 gpd/unit	165,750
Commercial	4.0 ac	90%	3.6	1,785 gpd/ac	6,428
Hotel	310 rooms			115 gpd/room	35,650
Park	2.0 ac	0	0	2,155 gpd/ac	0
Total					207,828 gpd (0.208 mgd)

The current projected recycled water demand for the proposed Planning Area 12 Freeway Commercial project is provided in Table 5, which totals approximately 0.035 mgd or about 38.8 AFY, representing about 16% of total Planning Area 12 Freeway Commercial project demand.

**Table 5
 Planning Area 12 Freeway Commercial Projected Recycled
 Water Average Demands**

Location (Land Use)	Quantity	Recycled Water Factor	Net Recycled Acreage	Unit Rate	Average Demand
Multi-Family Residential	650 units	15%		45 gpd/unit	29,250
Commercial	4.0 ac	10%	0.4	2,155 gpd/ac	1,078
Park	2.0	100%	2.0	2,155 gpd/ac	4,310
Total					34,638 gpd (0.035 mgd)

5.1 Demand Management (Water Conservation)

Demand management, or water conservation is a critical part of the Otay WD 2010 UWMP and its long term strategy for meeting water supply needs of the Otay WD customers. Water

conservation, is frequently the lowest cost resource available to any water agency. The goals of the Otay WD water conservation programs are to:

- Reduce the demand for more expensive, imported water.
- Demonstrate continued commitment to the Best Management Practices (BMP).
- Ensure a reliable water supply.

The Otay WD is signatory to the Memorandum of Understanding (MOU) Regarding Urban Water Conservation in California, which created the California Urban Water Conservation Council (CUWCC) in 1991 in an effort to reduce California's long-term water demands. Water conservation programs are developed and implemented on the premise that water conservation increases the water supply by reducing the demand on available supply, which is vital to the optimal utilization of a region's water supply resources. The Otay WD participates in many water conservation programs designed and typically operated on a shared cost participation program basis among the Water Authority, MWD, and their member agencies. The demands shown in Tables 2 and 3 take into account implementation of water conservation measures within Otay WD.

As one of the first signatories to the MOU Regarding Urban Water Conservation in California, the Otay WD has made BMP implementation for water conservation the cornerstone of its conservation programs and a key element in its water resource management strategy. As a member of the Water Authority, Otay WD also benefits from regional programs performed on behalf of its member agencies. The BMP programs implemented by Otay WD and regional BMP programs implemented by the Water Authority that benefit all their member agencies are addressed in the Otay WD 2010 UWMP. In partnership with the Water Authority, the County of San Diego, City of San Diego, City of Chula Vista, and developers, the Otay WD water conservation efforts are expected to grow and expand. The resulting savings directly relate to additional available water in the San Diego County region for beneficial use within the Water Authority service area, including the Otay WD.

Additional conservation or water use efficiency measures or programs practiced by the Otay WD include the following:

- Supervisory Control and Data Acquisition System

The Otay WD implemented and has operated for many years a Supervisor Control and Data Acquisition (SCADA) system to control, monitor, and collect data regarding the operation of the water system. The major facilities that have SCADA capabilities are the water flow control supply sources, transmission network, pumping stations, and water storage reservoirs. The SCADA system allows for many and varied useful functions. Some of these functions provide for operating personnel to monitor the water supply source flow rates, reservoir levels, turn on or off pumping units, etc. The SCADA system aids in the prevention of water reservoir overflow events and increases energy efficiency.

- Water Conservation Ordinance

California Water Code Sections 375 et seq. permit public entities which supply water at retail to adopt and enforce a water conservation program to reduce the quantity of water used by the people therein for the purpose of conserving water supplies of such public entity. The Otay WD Board of Directors established a comprehensive water conservation program pursuant to California Water Code Sections 375 et seq., based upon the need to conserve water supplies and to avoid or minimize the effects of any future shortage. A water shortage could exist based upon the occurrence of one or more of the following conditions:

1. A general water supply shortage due to increased demand or limited supplies.
2. Distribution or storage facilities of the Water Authority or other agencies become inadequate.
3. A major failure of the supply, storage, and distribution facilities of MWD, Water Authority, and/or Otay WD.

The Otay WD water conservation ordinance finds and determines that the conditions prevailing in the San Diego County area require that the available water resources be put to maximum beneficial use to the extent to which they are capable, and that the waste or unreasonable use, or unreasonable method of use, of water be prevented and that the conservation of such water be encouraged with a view to the maximum reasonable and beneficial use thereof in the interests of the people of the Otay WD and for the public welfare.

Otay WD is currently engaged in a number of conservation and water use efficiency activities. Listed below are the current programs that are either on-going or were recently concluded:

- Residential Water Surveys: 1,349 completed since 1994
- Large Landscape Surveys: 194 completed since 1990
- Cash for Water Smart Plants Landscape Retrofit Program: over 217,600 square feet of turf grass replaced with water wise plants since 2003
- Rotating Nozzles Rebated: 3,170
- Residential Weather-Based Irrigation Controller (WBIC) Incentive Program: 231 distributed or rebated since 2004
- Residential High Efficiency Clothes Washers: 7,187 rebates since 1994
- Residential ULFT/HET Rebate Program: 22,376 rebates provided between 1991-2010
- Outreach Efforts to Otay WD Customers - the Otay WD promotes its conservation programs through staffing outreach events, bill inserts, articles in the Otay WD's quarterly customer Pipeline newsletter, direct mailings to Otay WD customers, the Otay WD's webpage and through the Water Authority's marketing efforts.
- School Education Programs- the Otay WD funds school tours of the Water Conservation Garden, co-funds Splash Labs, provides classroom water themed kits,

maintains a library of school age appropriate water themed books, DVDs, and videos, and runs both a school poster contest and a water themed photo contest.

- Water efficiency in new construction through Cal Green and the Model Water Efficient Landscape Ordinance
- Focus on Commercial/Institutional/Industrial through Promoting MWD's Save a Buck (Commercial) Program in conjunction with the Otay WD's own Commercial Process Improvement Program

As a signatory to the MOU Regarding Urban Water Conservation in California, the Otay WD is required to submit biannual reports that detail the implementation of current water conservation practices. The Otay WD voluntarily agreed to implement the fourteen water conservation BMP's beginning in 1992. The Otay WD submits its report to the CUWCC every two years. The Otay WD BMP Reports for 2005 to 2010, as well as the BMP Coverage Report for 1999-2010, are included in the Otay WD 2010 UWMP.

The Planning Area 12 Freeway Commercial project will implement the CUWCC Best Management Practices for water conservation such as installation of ultra low flow toilets, development of a water conservation plan, and potential beneficial use of recycled water, all of which are typical requirements of development projects within the City of Chula Vista.

Section 6 - Existing and Projected Supplies

The Otay WD currently does not have an independent raw or potable water supply source. The Otay WD is a member public agency of the Water Authority. The Water Authority is a member public agency of MWD. The statutory relationships between the Water Authority and its member agencies, and MWD and its member agencies, respectively, establish the scope of the Otay WD entitlement to water from these two agencies.

The Water Authority currently supplies Otay WD with 100 percent of its potable water, through two delivery pipelines, referred to as Pipeline No. 4 and the Helix Flume. The Water Authority in turn, currently purchases the majority of its water from MWD. Due to the Otay WD reliance on these two agencies, this WSA&V Report includes referenced documents that contain information on the existing and projected supplies, supply programs, and related projects of the Water Authority and MWD. The Otay WD, Water Authority, and MWD are actively pursuing programs and projects to diversify their water supply resources.

The description of local recycled water supplies available to the Otay WD is also discussed below.

6.1 Metropolitan Water District of Southern California 2005 Regional Urban Water Management Plan

In November 2010, MWD adopted its 2010 Regional Urban Water Management Plan (RUWMP). The 2010 RUWMP provides MWD's member agencies, retail water utilities, cities, and counties within its service area with, among other things, a detailed evaluation of the supplies necessary to meet future demands, and an evaluation of reasonable and practical efficient water uses, recycling, and conservation activities. During the preparation of the 2010 RUWMP, MWD also utilized the current SANDAG regional growth forecast in calculating regional water demands for the Water Authority service area.

6.1.1 Availability of Sufficient Supplies and Plans for Acquiring Additional Supplies

MWD is a wholesale supplier of water to its member public agencies and obtains its supplies from two primary sources: the Colorado River, via the Colorado River Aqueduct (CRA), which it owns and operates, and Northern California, via the State Water Project (SWP). The 2010 RUWMP documents the availability of these existing supplies and additional supplies necessary to meet future demands.

6.1.1.1 MWD Supplies

MWD's Integrated Resources Plan (IRP) identifies a mix of resources (imported and local) that, when implemented, will provide 100 percent reliability for full-service demands through the attainment of regional targets set for conservation, local supplies, State Water Project supplies, Colorado River supplies, groundwater banking, and water transfers. The 2010 update to the IRP (2010 IRP Update) includes a planning buffer supply intended to mitigate against the risks associated with implementation of local and imported supply programs. The planning buffer identifies an additional increment of water that could potentially be developed if other supplies are not implemented as planned. As part of implementation of the planning buffer, MWD periodically evaluates supply development to ensure that the region is not under or over-developing supplies. Managed properly, the planning buffer will help ensure that the southern California region, including San Diego County, will have adequate supplies to meet future demands.

In November 2010, MWD adopted its 2010 RUWMP in accordance with state law. The resource targets included in the preceding 2010 IRP Update serve as the foundation for the planning assumptions used in the 2010 RUWMP. MWD's 2010 RUWMP contains a water supply reliability assessment that includes a detailed evaluation of the supplies necessary to meet demands over a 25-year period in average, single dry year, and multiple dry year periods. As part of this process, MWD also uses the current SANDAG regional growth forecast in calculating regional water demands for the Water Authority's service area.

As stated in MWD's 2010 RUWMP, that plan may be used as a source document for meeting the requirements of SB 610 and SB 221 until the next scheduled update is completed in 2015. The 2005 RUWMP includes a "Justifications for Supply Projections" in Appendix A.3, that provides detailed documentation of the planning, legal, financial, and regulatory basis for including each source of supply in the plan. A copy of MWD's 2010 RUWMP can be found on the World Wide Web at the following site address:

http://www.mwdh2o.com/mwdh2o/pages/yourwater/RUWMP/RUWMP_2010.pdf

Water supply agencies throughout California continue to face climatological, environmental, legal, and other challenges that impact water source supply conditions, such as the court rulings regarding the Sacramento-San Joaquin Delta and the current western states drought conditions. Challenges such as these essentially always will be present. The regional water supply agencies, the Water Authority and MWD, along with Otay WD nevertheless fully intend to have sufficient, reliable supplies to serve demands.

6.1.2 Metropolitan Capital Investment Plan

As part of MWD's annual budget approval process, a Capital Investment Plan is prepared. The cost, purpose, justification, status, progress, etc. of MWD's infrastructure projects to deliver existing and future supplies are documented in the Capital Investment Plan. The financing of these projects is addressed as part of the annual budget approval process.

MWD's Capital Investment Plan includes a series of projects identified from MWD studies of projected water needs, which, when considered along with operational demands on aging facilities and new water quality regulations, identify the capital projects needed to maintain infrastructure reliability and water quality standards, improve efficiency, and provide future cost savings. All projects within the Capital Investment Plan are evaluated against an objective set of criteria to ensure they are aligned with the MWD's goals of supply reliability and quality.

6.2 San Diego County Water Authority Regional Water Supplies

The Water Authority has adopted plans and is taking specific actions to develop adequate water supplies to help meet existing and future water demands within the San Diego region. This section contains details on the supplies being developed by the Water Authority. A summary of recent actions pertaining to development of these supplies includes:

- In accordance with the Urban Water Management Planning Act, the Water Authority adopted their 2010 UWMP in June 2011. The updated Water Authority 2010 UWMP identifies a diverse mix of local and imported water supplies to meet future demands. A copy of the updated Water Authority 2010 UWMP can be found on the internet at <http://www.sdcwa.org/2010-urban-water-management-plan>

- Deliveries of conserved agricultural water from the Imperial Irrigation District (IID) to San Diego County have increased annually since 2003, with 70,000 ac-ft of deliveries in Fiscal Year (FY) 2010. These quantities will increase annually to 200,000 ac-ft/yr by 2021, and then remain fixed for the duration of the transfer agreement.
- As part of the October 2003 Quantification Settlement Agreement (QSA), the Water Authority was assigned MWD's rights to 77,700 ac-ft/yr of conserved water from the All-American Canal (AAC) and Coachella Canal (CC) lining projects. Deliveries of this conserved water from the CC reached the region in 2007 and deliveries from the AAC reached the region in 2010. Expected supplies from the canal lining projects are considered verifiable Water Authority supplies.

Through implementation of the Water Authority and member agency planned supply projects, along with reliable imported water supplies from MWD, the region anticipates having adequate supplies to meet existing and future water demands.

To ensure sufficient supplies to meet projected growth in the San Diego region, the Water Authority uses the SANDAG most recent regional growth forecast in calculating regional water demands. The SANDAG regional growth forecast is based on the plans and policies of the land-use jurisdictions with San Diego County. The existing and future demands of the member agencies are included in the Water Authority's projections.

6.2.1 Availability of Sufficient Supplies and Plans for Acquiring Additional Supplies

The Water Authority currently obtains imported supplies from MWD, conserved water from the AAC and CC lining projects, and an increasing amount of conserved agricultural water from IID. Of the twenty-seven member agencies that purchase water supplies from MWD, the Water Authority is MWD's largest customer.

Section 135 of MWD's Act defines the preferential right to water for each of its member agencies. As calculated by MWD, the Water Authority's preferential right as of December 11, 2012 is 17.22 percent of MWD's supply, while the Water Authority accounted for approximately 25 percent of MWD's total revenue. Under preferential rights, MWD could allocate water without regard to historic water purchases or dependence on MWD. The Water Authority and its member agencies are taking measures to reduce dependence on MWD through development of additional supplies and a water supply portfolio that would not be jeopardized by a preferential rights allocation. MWD has stated, consistent with Section 4202 of its Administrative Code that it is prepared to provide the Water Authority's service area with adequate supplies of water to meet expanding and increasing needs in the years ahead. When and as additional water resources are required to meet increasing needs, MWD stated it will be prepared to deliver such supplies. In Section ES-5 of their 2010 RUWMP, MWD

states that MWD has supply capacities that would be sufficient to meet expected demands from 2015 through 2035. MWD has plans for supply implementation and continued development of a diversified resource mix including programs in the Colorado River Aqueduct, State Water Project, Central Valley Transfers, local resource projects, and in-region storage that enables the region to meet its water supply needs.

The Water Authority has made large investments in MWD’s facilities and will continue to include imported supplies from MWD in the future resource mix. As discussed in the Water Authority’s 2010 UWMP, the Water Authority and its member agencies are planning to diversify the San Diego regions supply portfolio and reduce purchases from MWD.

As part of the Water Authority’s diversification efforts, the Water Authority is now taking delivery of conserved agricultural water from IID and water saved from the AAC and CC lining projects. The CC lining project is complete and the Water Authority has essentially completed construction of the AAC lining project. Table 6 summarizes the Water Authority’s supply sources with detailed information included in the sections to follow. Deliveries from MWD are also included in Table 6, which is further discussed in Section 6.1 above. The Water Authority’s member agencies provided the verifiable local supply targets for groundwater, groundwater recovery, recycled water, and surface water, which are discussed in more detail in Section 5 of the Water Authority’s 2010 UWMP.

Table 6
Projected Verifiable Water Supplies – Water Authority Service Area
 Normal Year (AF)

Water Supply Sources	2015	2020	2025	2030	2035
Water Authority Supplies (2)					
MWD Supplies	358,189	230,601	259,694	293,239	323,838
Water Authority/IID Transfer	100,000	190,000	200,000	200,000	200,000
AAC and CC Lining Projects	80,200	80,200	80,200	80,200	80,200
Proposed Regional Seawater Desalination (1)	0	56,000	56,000	56,000	56,000
Member Agency Supplies					
Surface Water	48,206	47,940	47,878	47,542	47,289
Water Recycling	38,660	43,728	46,603	48,278	49,998
Groundwater	11,710	11,100	12,100	12,840	12,840
Groundwater Recovery	10,320	15,520	15,520	15,520	15,520
Total Projected Supplies	647,285	675,089	717,995	753,619	785,685

Source: Water Authority 2010 Urban Water Management Plan – Table 9-1.

Note 1: On November 29, 2012, the Water Authority approved a water purchase agreement with Poseidon for 48,000 AFY with the right to purchase up to 56,000 AFY

Note 2: The Water Authority’s 2010 WWMP includes water use associated with accelerated forecasted development including the Planning Area 12 Freeway Commercial and the 173 AFY additional demand.

Section 5 of the Water Authority's 2010 UWMP also includes a discussion on the local supply target for seawater desalination. Seawater desalination supplies represent a significant future local resource in the Water Authority's service area.

The Carlsbad Desalination Project (Project) is a fully-permitted seawater desalination plant and conveyance pipeline designed to provide a highly reliable local supply of up to 56,000 AF per year for the region. In 2020, the Project would account for approximately 8% of the total projected regional supply and 30% of all locally generated water in San Diego County. If the project becomes operational in 2016, it will more than double the amount of local supplies developed in the region since 1991. The desalination plant itself will be fully financed, built, and operated by Poseidon. The Water Authority will purchase water from the plant under a water purchase agreement. The new pipeline connecting the desalination plant with the Water Authority's Second Aqueduct will be owned and operated by the Water Authority, but responsibility for design and construction will reside with Poseidon through a separate Design-Build Agreement. The Water Authority will be responsible for aqueduct improvements, including the relining and rehabilitation of Pipeline 3 to accept desalinated water under higher operating pressures, modifications to the San Marcos Vent that allows the flow of water between Pipelines 3 and 4, and improvements at the Twin Oaks Valley Water Treatment Plant necessary to integrate desalinated water into the Water Authority's system for optimal distribution to member agencies.

On July 22, 2010, the Board approved a Term Sheet between the Water Authority and Poseidon Resources that outlined the key terms and conditions that would be detailed and incorporated in a comprehensive Water Purchase Agreement (WPA). Beginning in October 2011 and under the direction of the Board's Carlsbad Desalination Project Advisory Group, staff began developing and negotiating with Poseidon a WPA consistent with the July 22, 2010 Board approved Term Sheet. The July 2010 Term Sheet also identified specific conditions precedent to Board consideration of the WPA. On November 29, 2012, the Water Authority Board adopted a resolution approving the Water Purchase Agreement (WPA).

The Water Authority's existing and planned supplies from the IID transfer and canal lining projects are considered "drought-proof" supplies and should be available at the yields shown in Table 6 in normal water year supply and demand assessment. Single dry year and multiple dry year scenarios are discussed in more detail in Section 9 of the Water Authority's 2010 UWMP.

As part of preparation of a written water supply assessment and/or verification report, an agency's shortage contingency analysis should be considered in determining sufficiency of supply. Section 11 of the Water Authority's 2010 UWMP contains a detailed shortage contingency analysis that addresses a regional catastrophic shortage situation and drought management. The analysis demonstrates that the Water Authority and its member agencies, through the Emergency Response Plan, Emergency Storage Project, and Drought Management Plan (DMP) are taking actions to prepare for and appropriately handle an interruption of water supplies. The DMP, adopted in May 2006, provides the Water Authority

and its member agencies with a series of potential actions to take when faced with a shortage of imported water supplies from MWD due to prolonged drought or other supply shortfall conditions. The actions will help the region avoid or minimize the impacts of shortages and ensure an equitable allocation of supplies throughout the San Diego region.

6.2.1.1 Water Authority-Imperial Irrigation District Water Conservation and Transfer Agreement

The QSA was signed in October 2003, and resolves long-standing disputes regarding priority and use of Colorado River water and creates a baseline for implementing water transfers. With approval of the QSA, the Water Authority and IID were able to implement their Water Conservation and Transfer Agreement. This agreement not only provides reliability for the San Diego region, but also assists California in reducing its use of Colorado River water to its legal allocation.

On April 29, 1998, the Water Authority signed a historic agreement with IID for the long-term transfer of conserved Colorado River water to San Diego County. The Water Authority-IID Water Conservation and Transfer Agreement (Transfer Agreement) is the largest agriculture-to-urban water transfer in United States history. Colorado River water will be conserved by Imperial Valley farmers who voluntarily participate in the program and then transferred to the Water Authority for use in San Diego County.

Implementation Status

On October 10, 2003, the Water Authority and IID executed an amendment to the original 1998 Transfer Agreement. This amendment modified certain aspects of the 1998 Agreement to be consistent with the terms and conditions of the QSA and related agreements. It also modified other aspects of the agreement to lessen the environmental impacts of the transfer of conserved water. The amendment was expressly contingent on the approval and implementation of the QSA, which was also executed on October 10, 2003.

On November 5, 2003, IID filed a complaint in Imperial County Superior Court seeking validation of 13 contracts associated with the Transfer Agreement and the QSA. Imperial County and various private parties filed additional suits in Superior Court, alleging violations of the California Environmental Quality Act (CEQA), the California Water Code, and other laws related to the approval of the QSA, the water transfer, and related agreements. The lawsuits were coordinated for trial. The IID, Coachella Valley Water District, MWD, the Water Authority, and state are defending these suits and coordinating to seek validation of the contracts. In January 2010, a California Superior Court judge ruled that the QSA and 11 related agreements were invalid, because one of the agreements created an open-ended financial obligation for the state, in violation of California's constitution. The QSA parties appealed this decision and are continuing to seek validation of the contracts. The appeal is currently pending in the Third District Court of Appeal. A stay of the trial court judgment has been issued during the appeal. Implementation of the transfer provisions is proceeding during litigation.

Expected Supply

Deliveries into San Diego County from the transfer began in 2003 with an initial transfer of 10,000 AFY. The Water Authority received increasing amounts of transfer water each year, according to a water delivery schedule contained in the transfer agreement. In 2012, the Water Authority will receive 90,000 AFY. The quantities will increase annually to 200,000 AFY by 2021 then remain fixed for the duration of the transfer agreement. The initial term of the Transfer Agreement is 45 years, with a provision that either agency may extend the agreement for an additional 30-year term.

During dry years, when water availability is low, the conserved water will be transferred under the IID Colorado River rights, which are among the most senior in the Lower Colorado River Basin. Without the protection of these rights, the Water Authority could suffer delivery cutbacks. In recognition for the value of such reliability, the 1998 contract required the Water Authority to pay a premium on transfer water under defined regional shortage circumstances. The shortage premium period duration is the period of consecutive days during which any of the following exist: 1) a Water Authority shortage; 2) a shortage condition for the Lower Colorado River as declared by the Secretary; and 3) a Critical Year. Under terms of the October 2003 amendment, the shortage premium will not be included in the cost formula until Agreement Year 16.

Transportation

The Water Authority entered into a water exchange agreement with MWD on October 10, 2003, to transport the Water Authority-IID transfer water from the Colorado River to San Diego County. Under the exchange agreement, MWD will take delivery of the transfer water through its Colorado River Aqueduct. In exchange, MWD will deliver to the Water Authority a like quantity and quality of water. The Water Authority will pay MWD's applicable wheeling rate for each acre-foot of exchange water delivered. According to the water exchange agreement, MWD will make delivery of the transfer water for 35 years, unless the Water Authority elects to extend the agreement another 10 years for a total of 45 years.

Cost/Financing

The costs associated with the transfer are financed through the Water Authority's rates and charges. In the agreement between the Water Authority and IID, the price for the transfer water started at \$258 per acre-foot and increased by a set amount for the first seven years. In December 2009, the Water Authority and IID executed a fifth amendment to the water transfer agreement that sets the price per acre-foot for transfer water for calendar years 2010 through 2015, beginning at \$405 per acre-foot in 2010 and increasing to \$624 per acre-foot in 2015. For calendar years 2016 through 2034, the unit price will be adjusted using an agreed-upon index. The amendment also required the Water Authority to pay IID \$6 million at the end of calendar year 2009 and another \$50 million on or before October 1, 2010, provided that a transfer

stoppage is not in effect as a result of a court order in the QSA coordinated cases. Beginning in 2035, either the Water Authority or IID can, if certain criteria are met, elect a market rate price through a formula described in the water transfer agreement.

The October 2003 exchange agreement between MWD and the Water Authority set the initial cost to transport the conserved water at \$253 per acre-foot. Thereafter, the price is set to be equal to the charge or charges set by MWD's Board of Directors pursuant to applicable laws and regulation, and generally applicable to the conveyance of water by MWD on behalf of its member agencies. The transportation charge in 2010 was \$314 per acre-foot.

The Water Authority is providing \$10 million to help offset potential socioeconomic impacts associated with temporary land fallowing. IID will credit the Water Authority for these funds during years 16 through 45. In 2007, the Water Authority prepaid IID an additional \$10 million for future deliveries of water. IID will credit the Water Authority for this up-front payment during years 16 through 30.

As part of implementation of the QSA and water transfer, the Water Authority also entered into an environmental cost sharing agreement. Under this agreement the Water Authority is contributing a total of \$64 million to fund environmental mitigation projects and the Salton Sea Restoration Fund.

Written Contracts or Other Proof

The supply and costs associated with the transfer are based primarily on the following documents:

Agreement for Transfer of Conserved Water by and between IID and the Water Authority (April 29, 1998). This Agreement provides for a market-based transaction in which the Water Authority would pay IID a unit price for agricultural water conserved by IID and transferred to the Water Authority.

Revised Fourth Amendment to Agreement between IID and the Water Authority for Transfer of Conserved Water (October 10, 2003). Consistent with the executed Quantification Settlement Agreement (QSA) and related agreements, the amendments restructure the agreement and modify it to minimize the environmental impacts of the transfer of conserved water to the Water Authority.

Amended and Restated Agreement between MWD and Water Authority for the Exchange of Water (October 10, 2003). This agreement was executed pursuant to the QSA and provides for delivery of the transfer water to the Water Authority.

Environmental Cost Sharing, Funding, and Habitat Conservation Plan Development Agreement among IID, Coachella Valley Water District (CVWD), and Water Authority (October 10, 2003). This Agreement provides for the specified allocation of QSA-related

environmental review, mitigation, and litigation costs for the term of the QSA, and for development of a Habitat Conservation Plan.

Quantification Settlement Agreement Joint Powers Authority Creation and Funding Agreement (October 10, 2003). The purpose of this agreement is to create and fund the QSA Joint Powers Authority and to establish the limits of the funding obligation of CVWD, IID, and Water Authority for environmental mitigation and Salton Sea restoration pursuant to SB 654 (Machado).

Fifth Amendment to Agreement Between Imperial Irrigation District and San Diego County Water Authority for Transfer of Conserved Water (December 21, 2009). This agreement implements a settlement between the Water Authority and IID regarding the base contract price of transferred water.

Federal, State, and Local Permits/Approvals

Federal Endangered Species Act Permit. The U.S. Fish and Wildlife Service (USFWS) issued a Biological Opinion on January 12, 2001, that provides incidental take authorization and certain measures required to offset species impacts on the Colorado River regarding such actions.

State Water Resources Control Board (SWRCB) Petition. SWRCB adopted Water Rights Order 2002-0016 concerning IID and Water Authority's amended joint petition for approval of a long-term transfer of conserved water from IID to the Water Authority and to change the point of diversion, place of use, and purpose of use under Permit 7643.

Environmental Impact Report (EIR) for Conservation and Transfer Agreement. As lead agency, IID certified the Final EIR for the Conservation and Transfer Agreement on June 28, 2002.

U. S. Fish and Wildlife Service Draft Biological Opinion and Incidental Take Statement on the Bureau of Reclamation's Voluntary Fish and Wildlife Conservation Measures and Associated Conservation Agreements with the California Water Agencies (12/18/02). The U. S. Fish and Wildlife Service issued the biological opinion/incidental take statement for water transfer activities involving the Bureau of Reclamation and associated with IID/other California water agencies' actions on listed species in the Imperial Valley and Salton Sea (per the June 28, 2002 EIR).

Addendum to EIR for Conservation and Transfer Agreement. IID as lead agency and Water Authority as responsible agency approved addendum to EIR in October 2003.

Environmental Impact Statement (EIS) for Conservation and Transfer Agreement. Bureau of Reclamation issued a Record of Decision on the EIS in October 2003.

CA Department of Fish and Game California Endangered Species Act Incidental Take Permit #2081-2003-024-006). The California Department of Fish and Game issued this permit

(10/22/04) for potential take effects on state-listed/fully protected species associated with IID/other California water agencies' actions on listed species in the Imperial Valley and Salton Sea (per the June 28, 2002 EIR).

California Endangered Species Act (CESA) Permit. A CESA permit was issued by California Department of Fish and Game (CDFG) on April 4, 2005, providing incidental take authorization for potential species impacts on the Colorado River.

6.2.1.2 All-American Canal and Coachella Canal Lining Projects

As part of the QSA and related contracts, the Water Authority was assigned MWD's rights to 77,700 ac-ft/yr of conserved water from projects that will line the All-American Canal (AAC) and Coachella Canal (CC). The projects will reduce the loss of water that currently occurs through seepage, and the conserved water will be delivered to the Water Authority. This conserved water will provide the San Diego region with an additional 8.5 million acre-feet over the 110-year life of the agreement.

Implementation Status

The CC lining project began in November 2004 and was completed in 2006. Deliveries of conserved water to the Water Authority began in 2007. The project constructed a 37-mile parallel canal adjacent to the CC. The AAC lining project was begun in 2005 and was completed in 2010. The lining project constructed a concrete-lined canal parallel to 24 miles of the existing AAC from Pilot Knob to Drop 3.

In July 2005, a lawsuit (*CDEM v United States*, Case No. CV-S-05-0870-KJD-PAL) was filed in the U. S. District Court for the District of Nevada on behalf of U.S. and Mexican groups challenging the lining of the AAC. The lawsuit, which names the Secretary of the Interior as a defendant, claims that seepage water from the canal belongs to water users in Mexico. California water agencies note that the seepage water is actually part of California's Colorado River allocation and not part of Mexico's allocation. The plaintiffs also allege a failure by the United States to comply with environmental laws. Federal officials have stated that they intend to vigorously defend the case.

Expected Supply

The AAC lining project makes 67,700 AF of Colorado River water per year available for allocation to the Water Authority and San Luis Rey Indian water rights settlement parties. The CC lining project makes 26,000 AF of Colorado River water each year available for allocation. The 2003 Allocation Agreement provides for 16,000 AFY of conserved canal lining water to be allocated to the San Luis Rey Indian Water Rights Settlement Parties. The remaining amount, 77,700 AFY, is to be available to the Water Authority, with up to an additional 4,850 AFY available to the Water Authority depending on environmental requirements from the CC lining project. For planning purposes, the Water Authority

assumes that 2,500 AF of the 4,850 AF will be available each year for delivery, for a total of 80,200 AFY of that supply. According to the Allocation Agreement, IID has call rights to a portion (5,000 AFY) of the conserved water upon termination of the QSA for the remainder of the 110 years of the Allocation Agreement and upon satisfying certain conditions. The term of the QSA is for up to 75 years.

Transportation

The October 10, 2003, Exchange Agreement between the Water Authority and MWD also provides for the delivery of the conserved water from the canal lining projects. The Water Authority will pay MWD's applicable wheeling rate for each acre-foot of exchange water delivered. In the Agreement, MWD will deliver the canal lining water for the term of the Allocation Agreement (110 years).

Cost/Financing

Under California Water Code Section 12560 et seq., the Water Authority received \$200 million in state funds for construction of the canal lining projects. In addition, \$20 million was made available from Proposition 50 and \$36 million from Proposition 84. The Water Authority was responsible for additional expenses above the funds provided by the state.

The rate to be paid to transport the canal lining water will be equal to the charge or charges set by MWD's Board of Directors pursuant to applicable law and regulation and generally applicable to the conveyance of water by MWD on behalf of its member agencies.

In accordance with the Allocation Agreement, the Water Authority will also be responsible for a portion of the net additional Operation, Maintenance, and Repair (OM&R) costs for the lined canals. Any costs associated with the lining projects as proposed, are to be financed through the Water Authority's rates and charges.

Written Contracts or Other Proof

The expected supply and costs associated with the lining projects are based primarily on the following documents:

U.S. Public Law 100-675 (1988). Authorized the Department of the Interior to reduce seepage from the existing earthen AAC and CC. The law provides that conserved water will be made available to specified California contracting water agencies according to established priorities.

California Department of Water Resources - MWD Funding Agreement (2001). Reimburse MWD for project work necessary to construct the lining of the CC in an amount not to exceed \$74 million. Modified by First Amendment (2004) to replace MWD with the Authority. Modified by Second Amendment (2004) to increase funding amount to \$83.65 million, with addition of funds from Proposition 50.

California Department of Water Resources - IID Funding Agreement (2001). Reimburse IID for project work necessary to construct a lined AAC in an amount not to exceed \$126 million.

MWD - CVWD Assignment and Delegation of Design Obligations Agreement (2002). Assigns design of the CC lining project to CVWD.

MWD - CVWD Financial Arrangements Agreement for Design Obligations (2002). Obligates MWD to advance funds to CVWD to cover costs for CC lining project design and CVWD to invoice MWD to permit the Department of Water Resources to be billed for work completed.

Allocation Agreement among the United States of America, The MWD Water District of Southern California, Coachella Valley Water District, Imperial Irrigation District, San Diego County Water Authority, the La Jolla, Pala, Pauma, Rincon, and San Pasqual Bands of Mission Indians, the San Luis Rey River Indian Water Authority, the City of Escondido, and Vista Irrigation District (October 10, 2003). This agreement includes assignment of MWD's rights and interest in delivery of 77,700 AF of Colorado River water previously intended to be delivered to MWD to the Water Authority. Allocates water from the AAC and CC lining projects for at least 110 years to the Water Authority, the San Luis Rey Indian Water Rights Settlement Parties, and IID, if it exercises its call rights.

Amended and Restated Agreement between MWD and Water Authority for the Exchange of Water (October 10, 2003). This agreement was executed pursuant to the QSA and provides for delivery of the conserved canal lining water to the Water Authority.

Agreement between MWD and Water Authority regarding Assignment of Agreements related to the AAC and CC Lining Projects. This agreement was executed in April 2004 and assigns MWD's rights to the Water Authority for agreements that had been executed to facilitate funding and construction of the AAC and CC lining projects.

Assignment and Delegation of Construction Obligations for the Coachella Canal Lining Project under the Department of Water Resources Funding Agreement No. 4600001474 from the San Diego County Water Authority to the Coachella Valley Water District, dated September 8, 2004.

Agreement Regarding the Financial Arrangements between the San Diego County Water Authority and Coachella Valley Water District for the Construction Obligations for the Coachella Canal Lining Project, dated September 8, 2004.

Agreement No. 04-XX-30-W0429 Among the United States Bureau of Reclamation, the Coachella Valley Water District, and the San Diego County Water Authority for the Construction of the Coachella Canal Lining Project Pursuant to Title II of Public Law 100-675, dated October 19, 2004.

California Water Code Section 12560 et seq. This Water Code Section provides for \$200 million to be appropriated to the Department of Water Resources to help fund the canal lining projects in furtherance of implementing California's Colorado River Water Use Plan.

California Water Code Section 79567. This Water Code Section identifies \$20 million as available for appropriation by the California Legislature from the Water Security, Clean Drinking Water, Coastal, and Beach Protection Fund of 2002 (Proposition 50) to DWR for grants for canal lining and related projects necessary to reduce Colorado River water use. According to the Allocation Agreement, it is the intention of the agencies that those funds will be available for use by the Water Authority, IID, or CVWD for the AAC and CC lining projects.

California Public Resources Code Section 75050(b)(1). This section identifies up to \$36 million as available for water conservation projects that implement the Allocation Agreement as defined in the Quantification Settlement Agreement.

Federal, State, and Local Permits/Approvals

AAC Lining Project Final EIS/EIR (March 1994). A final EIR/EIS analyzing the potential impacts of lining the AAC was completed by the Bureau of Reclamation (Reclamation) in March 1994. A Record of Decision was signed by Reclamation in July 1994, implementing the preferred alternative for lining the AAC. A re-examination and analysis of these environmental compliance documents by Reclamation in November 1999 determined that these documents continued to meet the requirements of the NEPA and the CEQA and would be valid in the future.

CC Lining Project Final EIS/EIR (April 2001). The final EIR/EIS for the CC lining project was completed in 2001. Reclamation signed the Record of Decision in April 2002. An amended Record of Decision has also been signed to take into account revisions to the project description.

Mitigation, Monitoring, and Reporting Program for Coachella Canal Lining Project, SCH #1990020408; prepared by Coachella Valley Water District, May 16, 2001.

Environmental Commitment Plan for the Coachella Canal Lining Project, approved by the US Bureau of Reclamation (Boulder City, NV) on March 4, 2003.

Environmental Commitment Plan and Addendum to the All-American Canal Lining Project EIS/EIR California State Clearinghouse Number SCH 90010472 (June 2004, prepared by IID).

Addendum to Final EIS/EIR and Amendment to Environmental Commitment Plan for the All-American Canal Lining Project (approved June 27, 2006, by IID Board of Directors).

6.2.1.3 Carlsbad Seawater Desalination Project

Development of seawater desalination in San Diego County will assist the region in diversifying its water resources, reduce dependence on imported supplies, and provide a new drought-proof, locally treated water supply. The Carlsbad Desalination Project is a fully-permitted seawater desalination plant and conveyance pipeline currently being developed by Poseidon, a private investor-owned company that develops water and wastewater infrastructure. The project, located at the Encina Power Station in Carlsbad, has been in development since 1998 and was incorporated into the Water Authority's 2003 Water Facilities Master Plan and the 2010 UWMP. The Carlsbad Desalination Project has obtained all required permits and environmental clearances and, when completed, will provide a highly reliable local supply of 48,000 to 56,000 AFY for the region.

Implementation Status

The Project has obtained all required permits and environmental clearances, including the following:

- National Pollutant Discharge Elimination System (NPDES) Discharge Permit (Regional Water Quality Control Board)
- Conditional Drinking Water Permit (California Department of Health Services)
- State Lands Commission Lease (State Lands Commission)
- Coastal Development Permit (California Coastal Commission)

IDE Technologies, a worldwide leader in the design, construction, and operation of desalination plants, was selected by Poseidon to be the desalination process contractor for the Project.

On July 22, 2010, the Board approved a Term Sheet between the Water Authority and Poseidon Resources that outlined the key terms and conditions that would be detailed and incorporated in a comprehensive Water Purchase Agreement (WPA). Beginning in October 2011 and under the direction of the Board's Carlsbad Desalination Project Advisory Group, staff began developing and negotiating with Poseidon a WPA consistent with the July 22, 2010 Board approved Term Sheet. The July 2010 Term Sheet also identified specific conditions precedent to Board consideration of the WPA.

On November 29, 2012, the Water Authority Board adopted a resolution approving the Design-Build Agreement between the Water Authority and Poseidon. The Design-Build Agreement establishes the commercial and technical terms for implementation of the desalination product pipeline improvements. These improvements consist of an approximate 10-mile long, 54-inch diameter conveyance pipeline connecting the Desalination Plant to the Water Authority's Second Aqueduct. The pipeline will generally be constructed within

improved streets in commercial and industrial areas in the cities of Carlsbad, Vista, and San Marcos. The Water Authority will own the Project Water Pipeline Improvements upon execution of the Design-Build Agreement, and upon completion and acceptance of construction, the Water Authority will assume operational control of all pipeline improvements.

Expected Supply

When completed, the Project will provide a highly reliable local supply of 48,000 to 56,000 AFY of supply for the region, available in both normal and dry hydrologic conditions. In 2020, the Project would account for approximately 8% of the total projected regional supply and 30% of all locally generated water in San Diego County. When the project becomes operational in 2016, it will more than double the amount of local supplies developed in the region since 1991.

Transportation

On November 29, 2012, the Water Authority Board adopted a resolution approving the Design-Build Agreement between the Water Authority and Poseidon. The Design-Build Agreement establishes the commercial and technical terms for implementation of the desalination product pipeline improvements. These improvements consist of an approximate 10-mile long, 54-inch diameter conveyance pipeline connecting the Desalination Plant to the Water Authority's Second Aqueduct. The pipeline will generally be constructed within improved streets in commercial and industrial areas in the cities of Carlsbad, Vista, and San Marcos. The Water Authority will own the Project Water Pipeline Improvements upon execution of the Design-Build Agreement, and upon completion and acceptance of construction, the Water Authority will assume operational control of all pipeline improvements.

The Water Authority will be responsible for aqueduct improvements, including the relining and rehabilitation of Pipeline 3 to accept desalinated water under higher operating pressures, modifications to the San Marcos Vent that allows the flow of water between Pipelines 3 and 4, and improvements at the Twin Oaks Valley Water Treatment Plant necessary to integrate desalinated water into the Water Authority's system for optimal distribution to member agencies.

Cost/Financing

The plant and the offsite pipeline will be financed through tax exempt government bonds issued for the Water Authority by the California Pollution Control Financing Authority (CPCFA). On November 29, 2012, the Water Authority Board adopted a resolution approving agreements to accomplish tax exempt project financing through the CPCFA.

A preliminary September 2012 unit cost estimate was \$2,300/AF. The Water Authority's water purchase costs will be financed through Water Authority rates and charges. Poseidon is financing the capital cost of the Project with a combination of private equity and tax-exempt Private Activity Bonds.

Written Contracts or Other Proof

The expected supply and costs associated with the Carlsbad Desalination Project are based primarily on the following documents:

Development Agreement between City of Carlsbad and Poseidon (October 2009). A Development Agreement between Carlsbad and Poseidon was executed on October 5, 2009

Agreement of Term Sheet between the Water Authority and Poseidon Resources (July 2010). The Water Authority approved the Term Sheet at its July 2010 Board Meeting. The Term Sheet outlines the terms and conditions of a future Water Purchase Agreement with Poseidon and allocates the resources to prepare the draft Water Purchase Agreement.

Federal, State, and Local Permits/Approvals

Carlsbad Desalination Project Final EIR

The City of Carlsbad, acting as lead agency for Carlsbad Seawater Desalination Plant and appurtenant facilities proposed by Poseidon (the "Project") prepared an Environmental Impact Report for the Project in compliance with the California Environmental Quality Act ("CEQA"), which the City of Carlsbad certified on June 13, 2006.

<http://www.sdcwa.org/rwfmp-peir>

The City of Carlsbad prepared an Addendum to the Carlsbad EIR ("Addendum") which was adopted on September 15, 2009, and reflects minor and immaterial design modifications to the Project site plan, appurtenant facilities, and water delivery pipeline network.

The environmental documents and permits are found at the following link:

<http://www.carlsbad-desal.com/EIR.asp>

The Water Authority, as a Responsible Agency under CEQA, adopted a resolution on November 29, 2012 approving a Second Addendum to the Carlsbad Precise Development Plan and Desalination Plant Final EIR and First Addendum that evaluates the environmental impacts of several proposed facility modifications that are necessary to allow for operational flexibility and efficiency in receiving and delivering desalination product water. These modifications include: a realignment of a portion of the approved desalination pipeline, the addition of chemical injection at the approved San Marcos Aqueduct Connection site, the relining of a portion of Pipeline 3, the addition of a pipeline and expanded flow control facility at Twin Oaks Valley Water Treatment Plant and a replacement of the San Marcos Vent on Pipeline 4. Impacts associated with the proposed modifications would not result in a

new significant impact or substantial increase in the severity of impacts previously evaluated in the Carlsbad FEIR or the First Addendum. There are no substantial changes to the circumstances under which the project will be undertaken, and no new information of substantial importance that was not known and could not have been known when the FEIR was certified and the First Addendum was approved, and that have since been identified. Therefore, the Second Addendum satisfies the CEQA requirements for the proposed project modifications.

Regional Water Facilities Master Plan EIR

On November 20, 2003, the Water Authority Board of Directors adopted Resolution No. 2003-34 certifying the Final Program Environmental Impact Report (State Clearinghouse No. 2003021052) for the Water Authority's Regional Water Facilities Master Plan Project (the "Master Plan EIR"), which evaluated, among other things, potential growth inducing impacts associated with new water supplies to the region including, but not limited to, up to 150 million gallons per day (mgd) of new supplies from seawater desalination. This certification included a 50 mgd plant located in the City of Carlsbad.

The environmental documents and permits are found at the following link:

<http://www.sdcwa.org/rwfmp-peir>

Sub regional Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP)

On December 8, 2010, the Board adopted Resolution No. 2010-18 certifying a Final Environmental Impact Report/Environmental Impact Statement for the San Diego County Water Authority Subregional Natural Community Conservation Plan/Habitat Conservation Plan (State Clearinghouse No. 2003121012) (the "Habitat Conservation Plan EIR/EIS"), which Plan was implemented on December 28, 2011.

The environmental documents and permits are found at the following link:

<http://www.sdcwa.org/nccp-hcp>

Twin Oaks Valley Water Treatment Plant EIR

On September 8, 2005, the Board adopted Resolution No. 2005-31 certifying a Final Environmental Impact Report for the Twin Oaks Valley Water Treatment Plant Project (State Clearinghouse No. 20040071034) (the "Twin Oaks EIR"), which project was constructed as a 100 mgd submerged membrane water treatment facility, including treated water holding tanks and distribution pipelines and other facilities, consistent with the conditions and mitigation measures included in the Twin Oaks EIR.

<http://www.sdcwa.org/twin-oaks-valley-treatment-plant-final-eir>

2010 Urban Water Management Plan

<http://www.sdcwa.org/2010-urban-water-management-plan>

Drinking Water Permit (October 2006). The California Department of Health Services approved the Conditional Drinking Water Permit on October 19, 2006.

Coastal Development Permit

The Project is fully permitted, with the California Coastal Commission issuing the following permits: Coastal Development Permit No. E-06-013, Energy Minimization and Greenhouse Gas Reduction Plan (December 2008), Marine Life Mitigation Plan (December 2008), Erosion Control Plan (November 2009), Landscaping Plan (September 2009), Lighting Plan (August 2009), Construction Plan (September 2009), and Water Pollution Control Plan (September 2009); the California Department of Public Health issuing Conceptual Approval Letter dated October 19, 2006; the California Regional Water Quality Control Board issuing NPDES Permit No. CA0109223 and Notice of Intent to Discharge for Storm Water Associated with Construction Activities (WDID #9 37C361181); the City of Carlsbad issuing Redevelopment Permit RP 05-12(A), Specific Plan 144 with Amendment 144(J) SP 144(J), Habitat Management Plan Permit Amendment HMP 05-08(A), Precise Development Plan PDP 00-02(B), Mitigation Monitoring and Reporting Program for EIR 03-05(A), Development Agreement DA 05-01(A), Standard Urban Storm Water Mitigation Program (September 2009), and Coastal Development Permit 04-41; the State of California State Lands Commission issuing an Amendment of Lease PRC 8727.1 (August 2008).

The environmental documents and permits are found at the following link:

<http://www.sdcwa.org/carlsbad-desalination-project-approved-permits-and-plans>

State Lands Commission Lease Application (Amendment of Lease PRC 8727.1 August 2008). Amends lease of land by Cabrillo Power I LLC (Cabrillo) from the State Lands Commission for the lands where the project will be constructed. Cabrillo and Poseidon entered into agreement on July 1, 2003, authorizing Poseidon to use those lands to construct the project.

6.2.2 Water Authority Capital Improvement Program and Financial Information

The Water Authority's Capital Improvement Program (CIP) can trace its beginnings to a report approved by the Board in 1989 entitled, The Water Distribution Plan, and a Capital Improvement Program through the Year 2010. The Water Distribution Plan included ten projects designed to increase the capacity of the aqueduct system, increase the yield from existing water treatment plants, obtain additional supplies from MWD, and increase the reliability and flexibility of the aqueduct system. Since that time the Water Authority has made numerous additions to the list of projects included in its CIP as the region's infrastructure needs and water supply outlook have changed.

The current list of projects included in the CIP is based on the results of planning studies, including the 2005 UWMP and the 2002 Regional Water Facilities Master Plan. These CIP projects, which are most recently described in the Water Authority's Adopted Multi-Year Budget, include projects valued at \$3.50 billion. These CIP projects are designed to meet projected water supply and delivery needs of the member agencies through 2035. The

projects include a mix of new facilities that will add capacity to existing conveyance, storage, and treatment facilities, as well as repair and replace aging infrastructure:

- Asset Management – The primary components of the asset management projects include relining and replacing existing pipelines and updating and replacing metering facilities.
- New Facilities – These projects will expand the capacity of the aqueduct system, complete the projects required under the Quantification Settlement Agreement (QSA), and evaluate new supply opportunities.
- Emergency Storage Project – Projects remaining to be completed under the ongoing ESP include the San Vicente Dam Raise, the Lake Hodges projects, and a new pump station to extend ESP supplies to the northern reaches of the Water Authority service area.
- Other Projects – This category includes out-of-region groundwater storage, increased local water treatment plant capacity, and projects that mitigate environmental impacts of the CIP.

The Water Authority Board of Directors is provided a semi-annual and annual report on the status of development of the CIP projects. As described in the Water Authority's biennial budget, a combination of long and short term debt and cash (pay-as-you-go) will provide funding for capital improvements. Additional information is included in the Water Authority's biennial budget, which also contains selected financial information and summarizes the Water Authority's investment policy.

6.3 Otay Water District

The Otay WD 2010 Water Resources Master Plan Update and the 2010 Urban Water Management Plan contain comparisons of projected supply and demands through the year 2035. Projected potable water resources to meet planned demands as documented were planned to be supplied entirely with imported water received from the Water Authority. Recycled water resources to meet projected demands are planned to be supplied from local wastewater treatment plants. The Otay WD currently has no local supply of raw water, potable water, or groundwater resources.

The development and/or acquisition of potential groundwater, recycled water market expansion, and seawater desalination supplies by the Otay WD have evolved and are planned to occur in response to the regional water supply issues. These water supply projects are in addition to those identified as sustainable supplies in the current Water Authority and MWD UWMP, IRP, Master Plans, and other planning documents. These new additional water supply projects are not currently developed and are in various stages of the planning process. These local and regional water supply projects will allow for less reliance upon imported water and are considered a new water supply resource for the Otay WD.

The Otay WD expansion of the market areas for the use of recycled water within the watersheds upstream of the Sweetwater Reservoir, Otay Mesa, and the Lower Otay Reservoir will increase recycled water use and thus require less dependence on imported water for irrigation purposes.

The supply forecasts contained within this WSA&V Report do consider development and/or acquisition of potential groundwater, recycled water market expansion, and seawater desalination supplies by the Otay WD.

6.3.1 Availability of Sufficient Supplies and Plans for Acquiring Additional Supplies

The availability of sufficient potable water supplies and plans for acquiring additional potable water supplies to serve existing and future demands of the Otay WD is founded upon the preceding discussions regarding MWD's and the Water Authority's water supply resources and water supplies to be acquired by the Otay WD. Historic imported water deliveries from the Water Authority to Otay WD and recycled water deliveries from the Otay WD Ralph W. Chapman Water Reclamation Facility (RWCWRF) are shown in Table 7. Since the year 2000 through mid May 2007, recycled water demand has exceeded the recycled water supply capability typically in the summer months. The RWCWRF is limited to a maximum production of about 1,300 ac-ft/yr. The recycled water supply shortfall had been met by supplementing with potable water into the recycled water storage system as needed by adding potable water supplied by the Water Authority. On May 18, 2007 an additional source of recycled water supply from the City of San Diego's South Bay Water Reclamation Plant (SBWRP) became available. The supply of recycled water from the SBWRP is a result of essentially completing construction and commencement of operations of the transmission, storage, and pump station systems necessary to link the SBWRP recycled water supply source to the existing Otay WD recycled water system.

**Table 7
 Historic Imported and Local Water Supplies
 Otay Water District**

Calendar Year	Imported Water (AF)	Recycled Water (AF)	Total (AF)
1980	12,558	0	12,558
1985	14,529	0	14,529
1990	23,200	0	23,200
1995	20,922	614	21,536
2000	29,901	948	30,849
2005	37,678	1,227	38,905
2010	29,270	4,090	33,270
2011	30,158	3,880	34,038
2012	31,268	4,155	35,423
2013	31,844	4,390	36,234
2014	33,409	4,595	38,004

Source: Otay Water District operational records.

6.3.1.1 Imported and Regional Supplies

The availability of sufficient imported and regional potable water supplies to serve existing and planned uses within Otay WD is demonstrated in the above discussion on MWD and the Water Authority’s water supply reliability. The County Water Authority Act, Section 5 subdivision 11, states that the Water Authority “as far as practicable, shall provide each of its member agencies with adequate supplies of water to meet their expanding and increasing needs.” The Water Authority provides between 75 to 95 percent of the total supplies used by its 24 member agencies, depending on local weather and supply conditions. In calendar year 2010 the supply to Otay WD was 29,270 AF of supply from the Water Authority. An additional 4,090 AF of recycled water was supplied from the City of San Diego and from the District’s Ralph W. Chapman Water Reclamation Facility. The demand for potable water within the Otay WD is expected to increase to about 77,177 AF by 2035 as per the Otay WD 2010 UWMP.

Potable Water System Facilities

The Otay WD continues to pursue diversification of its water supply resources to increase reliability and flexibility. The Otay WD also continues to plan, design, and construct potable water system facilities to obtain these supplies and to distribute potable water to meet customer demands. The Otay WD has successfully negotiated two water supply

diversification agreements that enhance reliability and flexibility, which are briefly described as follows.

- The Otay WD entered into an agreement with the City of San Diego, known as the Otay Water Treatment Plant (WTP) Agreement. The Otay WTP Agreement provides for raw water purchase from the Water Authority and treatment by the City of San Diego at their Otay WTP for delivery to Otay WD. The supply system link to implement the Otay WTP Agreement to access the regions raw water supply system and the local water treatment plant became fully operational in August 2005. This supply link consists of the typical storage, transmission, pumping, flow measurement, and appurtenances to receive and transport the treated water to the Otay WD system. The City of San Diego obligation to supply 10 mgd of treated water under the Otay WTP Agreement is contingent upon there being available 10 mgd of surplus treatment capacity in the Otay WTP until such time as Otay WD pays the City of San Diego to expand the Otay WTP to meet the Otay WD future needs. In the event that the City of San Diego's surplus is projected to be less than 10 mgd the City of San Diego will consider and not unreasonably refuse the expansion of the Otay WTP to meet the Otay WD future needs. The Otay WTP existing rated capacity is 40 mgd with an actual effective capacity of approximately 34 mgd. The City of San Diego's typical demand for treated water from the Otay WTP is approximately 20 mgd. It is at the City of San Diego's discretion to utilize either imported raw water delivered by the Water Authority Pipeline No. 3 or local water stored in Lower Otay Reservoir for treatment to supply the Otay WD demand.
- The Otay WD entered into an agreement with the Water Authority, known as the East County Regional Treated Water Improvement Program (ECRTWIP Agreement). The ECRTWIP Agreement provides for transmission of raw water to the Helix WD R. M. Levy WTP for treatment and delivery to Otay WD. The supply system link to implement the ECRTWIP Agreement is complete allowing access to the regions raw water supply system and the local water treatment plant. This supply link consists of the typical transmission, pumping, storage, flow control, and appurtenances to receive and transport the potable water from the R. M. Levy WTP to Otay WD. The Otay WD is required to take a minimum of 10,000 AFY of treated water from the R.M. Levy WTP supplied from the regions raw water system.

Cost and Financing

The capital improvement costs associated with water supply and delivery are financed through the Otay WD water meter capacity fee, New Water Supply Fee, and user rate structures. The Otay WD potable water sales revenue are used to pay for the wholesale cost of the treated water supply and the operating and maintenance expenses of the potable water system facilities.

Written Agreements, Contracts, or Other Proof

The supply and cost associated with deliveries of treated water from the Otay WTP and the R.M. Levy WTP is based on the following documents.

Agreement for the Purchase of Treated Water from the Otay Water Treatment Plant between the City of San Diego and the Otay Water District. The Otay WD entered into an agreement dated January 11, 1999 with the City of San Diego that provides for 10 mgd of surplus treated water to the Otay WD from the existing Otay WTP capacity. The agreement allows for the purchase of treated water on an as available basis from the Otay WTP. The Otay WD pays the Water Authority at the prevailing raw water rate for raw water and pays the City of San Diego at a rate equal to the actual cost of treatment to potable water standards.

Agreement between the San Diego County Water Authority and Otay Water District Regarding Implementation of the East County Regional Treated Water Improvement Program. The ECRTWIP Agreement requires the purchase of at least 10,000 AFY of potable water from the Helix WD R.M. Levy WTP at the prevailing Water Authority treated water rate. The ECRTWIP Agreement is dated April 27, 2006.

Agreement between the San Diego County Water Authority and Otay Water District for Design, Construction, Operation, and Maintenance of the Otay 14 Flow Control Facility Modification. The Otay WD entered into the Otay 14 Flow Control Facility Modification Agreement dated January 24, 2007 with the Water Authority to increase the physical capacity of the Otay 14 Flow Control Facility. The Water Authority and Otay WD to 50% share the capital cost to expand its capacity from 8 mgd to 16 mgd.

Federal, State, and Local Permits/Approvals

The Otay WD acquired all the permits for the construction of the pipeline and pump station associated with the Otay WTP supply source and for the 640-1 and 640-2 water storage reservoirs project associated with the ECRTWIP Agreement through the typical planning, environmental approval, design, and construction processes.

The transmission main project constructed about 26,000 feet of a 36-inch diameter steel pipeline from the Otay 14 Flow Control Facility to the 640-1 and 640-2 Reservoirs project. The Otay 14 Flow Control Facility modification increased the capacity of the existing systems from 8 mgd to 16 mgd. CEQA documentation is complete for both projects. Construction of both of these projects was completed October 2010.

The City of San Diego and the Helix Water District are required to meet all applicable federal, state, and local health and water quality requirements for the potable water produced at the Otay WTP and the R.M. Levy WTP respectively.

6.3.1.2 Recycled Water Supplies

Wastewater collection, treatment, and disposal services provided by the Otay WD is limited to a relatively small area within what is known as the Jamacha Basin, located within the Middle Sweetwater River Basin watershed upstream of the Sweetwater Reservoir and downstream of Loveland Reservoir. Water recycling is defined as the treatment and disinfection of municipal wastewater to provide a water supply suitable for non-potable reuse. The Otay WD owns and operates the Ralph W. Chapman Water Reclamation Facility, which produces recycled water treated to a tertiary level for landscape irrigation purposes. The recycled water market area of the Otay WD is located primarily within the eastern area of the City of Chula Vista and on the Otay Mesa. The Otay WD distributes recycled water to a substantial market area that includes but is not limited to the U.S. Olympic Training Center, the EastLake Golf Course, and other development projects.

The Otay WD projects that annual average demands for recycled water will increase to 8,000 AFY by 2035. About 1,300 AFY of supply is generated by the RWCWRF, with the remainder planned to be supplied to Otay WD by the City of San Diego's SBWRP.

North District Recycled Water Concept

The Otay WD is a recognized leader in the use of recycled water for irrigation and other commercial uses. The Otay WD continues the quest to investigate all viable opportunities to expand the successful recycled water program into areas that are not currently served. One of these areas is in the portion of the service area designated as the North District, located within the Middle Sweetwater River Basin watershed upstream of the Sweetwater River. The close proximity of the recycled water markets in the North District to the Otay WD's source of recycled water, the RWCWRF, means that the distribution system to serve this area could be constructed relatively cost effectively. This makes the North District a logical location for the expansion of the Otay WD's recycled water system and market area.

The purpose of the North District Recycled Water System Development Project, Phase I Concept Study, is to identify the feasibility of using recycled water in the North District and to investigate and assess any limitations or constraints to its use. The Phase I study components of the North District Recycled Water Concept encompassed the preparation of six technical memorandums including the project definition, a discussion of the regulatory process, a discussion of the protection of the watershed that would be affected by recycled water use in the North District, identification of stakeholders, public outreach, and an implementation plan.

Several opportunities that could be realized with the implementation of the use of recycled water in the North District were identified. These include a reduction of demand on the potable water system and maximizing recycled water resources which in turn minimizes treated wastewater discharges to the local ocean outfall. Other opportunities are a possible partnership with Sweetwater Authority to monitor any benefits and impacts of increased

recycled water use in the watershed and stakeholder outreach to resolve any water quality concerns and to retain consumer confidence. Also identified were two major constraints associated with the North District Recycled Water System Development Project. One constraint is the water quality objectives for the Middle Sweetwater Basin that will affect the effluent limitations for the recycled water produced at the RWCWRF. At this time, the effluent limit that is of concern is total nitrogen. An examination as to how the treatment process might be modified to enhance nitrogen removal and an action plan is being developed. The other major constraint is the cost of the infrastructure needed to convey and store recycled water in the North District. These costs are estimated to be in the range of \$14 to \$15 million dollars.

There are two additional phases proposed for the North District Recycled Water System Development Project. Phase II would include further investigation of the issues identified in Phase I as requiring further study. These include stakeholder outreach, regulatory issues, and facility planning. The third phase of the effort would include the facility planning, permitting, environmental compliance, design, and construction of the improvements necessary for delivery of recycled water to the North District markets.

The estimated amount of imported water saved at full implementation of the North District Recycled Water System Development Project is 1,200 ac-ft/yr. This saved imported water could then be used to offset new potable water demands.

Recycled Water System Facilities

The Otay WD has and continues to construct recycled water storage, pumping, transmission, and distribution facilities to meet projected recycled water market demands. For nearly 20 years, millions of dollars of capital improvements have been constructed. The supply link consisting of a transmission main, storage reservoir, and a pump station to receive and transport the recycled water from the City of San Diego's SBWRP are complete and recycled water deliveries began on May 18, 2007.

Cost and Financing

The capital improvement costs associated with the recycled water supply and distribution systems are financed through the Otay WD water meter capacity fee and user rate structures. The Otay WD recycled water sales revenue, along with MWD and the Water Authority's recycled water sales incentive programs are used to help offset the costs for the wholesale purchase and production of the recycled water supply, the operating and maintenance expenses, and the capital costs of the recycled water system facilities.

Written Agreements, Contracts, or Other Proof

The supply and cost associated with deliveries of recycled water from the SBWRP is based on the following document.

Agreement between the Otay Water District and the City of San Diego for Purchase of Reclaimed Water from the South Bay Water Reclamation Plant. The agreement provides for the purchase of at least 6,721 ac-ft per year of recycled water from the SBWRP at an initial price of \$350 per acre-foot. The Otay WD Board of Directors approved the final agreement on June 4, 2003 and the San Diego City Council approved the final agreement on October 20, 2003.

Federal, State, and Local Permits/Approvals

The Otay WD has in place an agreement with MWD for their recycled water sales incentive program for supplies from the RWCWRF and the SBWRP. Also, the Otay WD has in place an agreement with the Water Authority for their recycled water sales incentive program for supplies from the RWCWRF and the SBWRP. The Water Authority sales incentive agreement was approved by Water Authority on July 26, 2007 and by Otay WD on August 1, 2007. All permits for the construction of the recycled water facilities to receive, store, and pump the SBWRP supply have been acquired through the typical planning, environmental approval, design, and construction processes.

The California Regional Water Quality Control Board San Diego Region (RWQCB) “Master Reclamation Permit for Otay Water District Ralph W. Chapman Reclamation Facility” was adopted on May 9, 2007 (Order No. R9-2007-0038). This order establishes master reclamation requirements for the production, distribution, and use of recycled water in the Otay WD service area. The order includes the use of tertiary treated water produced and received from the City of San Diego’s SBWRP. Recycled water received from and produced by the SBWRP is regulated by Regional Board Order No. 2000-203 and addenda. The City of San Diego is required to meet all applicable federal, state, and local health and water quality requirements for the recycled water produced at the SBWRP and delivered to Otay WD in conformance with Order No. 2000-203.

6.3.1.3 Potential Groundwater Supplies

The Otay WD 2010 UWMP, the WRMP Update, and the Otay WD March 2007 Integrated Water Resources Plan (2007 IRP) both contain a description of the development of potential groundwater supplies. Over the past several years, Otay WD has studied numerous potential groundwater supply options that have shown, through groundwater monitoring well activities, poor quality water and/or insufficient yield from the basins at a cost effective level. The Otay WD has a few capital improvement program projects to continue the quest to develop potential groundwater resources. Local Otay WD groundwater supply development is currently considered as a viable water supply resource to meet projected demands.

The development and/or acquisition of potential groundwater supply projects by the Otay WD has been resurrected and evolved in response to the regional water supply issues related to water source supply conditions. Local ground water supply projects will allow for less reliance upon imported water, achieve a level of independence of the regional wholesale water agencies, and diversify the Otay WD's water supply portfolio consistent the Otay WD 2007 IRP.

In recognition of the need to develop sufficient alternative water supplies, the Otay WD has taken the appropriate next steps towards development of production groundwater well projects.

There are groundwater well projects that the Otay WD is pursuing to develop as new local water supplies. They are known as the Middle Sweetwater River Basin Groundwater Well, and the Otay Mesa Lot 7 Groundwater Well.

Middle Sweetwater River Basin Groundwater Well

The Middle Sweetwater River Basin Groundwater Well is an additional water supply project that was thoroughly studied and documented in the 1990s. The Middle Sweetwater River Basin is located within the Sweetwater River watershed and that reach of the river extends from Sweetwater Reservoir to the upstream Loveland Reservoir. The next step in development of the Middle Sweetwater River Basin Groundwater Well is the implementation of a pilot well project. The ultimate objective of the Otay WD is to develop a groundwater well production system within the Middle Sweetwater River Basin capable of producing a sustainable yield of potable water as a local supply.

The purpose of the Middle Sweetwater River Basin Groundwater Well Pilot project is to identify the feasibility of developing a groundwater resource production system and then determine and assess any limitations or constraints that may arise. The Middle Sweetwater River Basin Groundwater Well Pilot Project will accomplish six primary goals:

- Update project setting
- Update applicable project alternatives analysis
- Prepare groundwater well pilot project implementation plan
- Construct and test pilot monitoring and extraction wells
- Provide recommendations regarding costs and feasibility to develop a groundwater well production system within the Middle Sweetwater River Basin capable of producing a sustainable yield of potable water
- Prepare groundwater well production project implementation plan and scope of work

The groundwater conjunctive use concept is described as the extraction of the quantity of water from the groundwater basin that was placed there by customers of the Otay Water District, Helix Water District, and Padre Dam Municipal Water District by means of their use of imported treated water that contributed to the overall volume of groundwater within the

basin. An estimated quantity was developed to be approximately 12.5 percent of the total consumption of the Otay WD customers within that basin, as measured by water meters. In the 1994-1995 period, the quantity of water that was returned to the groundwater basin by Otay WD customers was estimated to be 810 AFY. Currently, that 12.5 percent quantity could be on the order of 1,000 AFY. A future scope of work will need to address this concept while considering further development of the groundwater basin as an additional supply resource. If it is deemed that a Middle Sweetwater River Basin Groundwater Well Production Project is viable then the consultant will develop and provide a groundwater well production project implementation plan, cost estimate, and related scope of work.

Further development of the groundwater basin to enhance the total groundwater production could be accomplished by the Otay WD by means of additional extraction of water from the basin that is placed there by means of either injection and/or spreading basins using imported untreated water as the resource supply. The existing La Mesa Sweetwater Extension Pipeline, owned by the Water Authority, once converted to an untreated water delivery system, could be the conveyance system to transport untreated water for groundwater recharge in support of this conjunctive use concept. These two distinct water resource supply conjunctive use concepts will be addressed so they may coexist and to allow for their development as separate phases.

The scope of work to complete Middle Sweetwater River Basin Groundwater Well Pilot Project consists of many major tasks and is to address the groundwater supply concepts outlined above. It is anticipated that the cost for the entire scope of work, will be on the order of \$2,000,000, which includes a contingency and may take up to one and a half years to complete.

The primary desired outcome of the Middle Sweetwater River Basin Groundwater Well Pilot Project is for the engineering consultant to determine and make recommendations if it is financially prudent and physically feasible to develop a Phase I groundwater well production system within the Middle Sweetwater River Basin capable of producing a sustainable yield of up to 1,500 ac-ft/yr of potable water for the Otay WD. If it is deemed that a Middle Sweetwater River Basin Groundwater Well Production Project is viable then the consultant will develop and provide a groundwater well production project implementation plan and related scope of work.

Otay Mesa Lot 7 Groundwater Well

In early 2001 the Otay WD was approached by a landowner representative about possible interest in purchasing an existing well or alternatively, acquiring groundwater supplied from the well located on Otay Mesa. The landowner, National Enterprises, Inc., reportedly stated that the well could produce 3,200 AFY with little or no treatment required prior to introducing the water into the Otay WD potable water system or alternatively, the recycled water system. In March 2001 authorization to proceed with testing of the Otay Mesa Lot 7 Groundwater

Well was obtained and the Otay WD proceeded with the investigation of this potential groundwater supply opportunity.

The May 2001 Geoscience Support Services, Inc. completed for the Otay WD the preparation of a report entitled, "Otay Mesa Lot 7 Well Investigation," to assess the Otay Mesa Lot 7 Well. The scope of work included a geohydrologic evaluation of the well, analyses of the water quality samples, management and review of the well video log, and documentation of well pump testing. The primary findings, as documented in the report, formed the basis of the following recommendations:

- For the existing well to be use as a potable water supply resource, a sanitary seal must be installed in accordance with the CDPH guidelines.
- Drawdown in the well must be limited to avoid the possibility of collapsing the casing.
- Recover from drawdown from pumping is slow and extraction would need to be terminated for up to 2 days to allow for groundwater level recovery.
- The well water would need to be treated and/or blended with potable water prior to introduction into the potable water distribution system.

The existing Otay Mesa Lot 7 Well, based upon the above findings, was determined not to be a reliable municipal supply of potable water and that better water quality and quantity perhaps could be discovered deeper or at an alternative location within the San Diego Formation.

The Otay WD may still continue to pursue the Otay Mesa groundwater well opportunity with due consideration of the recommendations of the existing report. Based on the recommendations of the investigation report, a groundwater well production facility at Otay Mesa Lot 7 could realistically extract approximately 300 AFY.

6.3.1.4 Otay Water District Desalination Project

The Otay WD is currently investigating the feasibility of purchasing desalinated water from a seawater reverse osmosis plant that is planned to be located in Rosarito, Mexico, known as the Otay Mesa Desalinated Water Conveyance System (Desalination) project. The treatment facility is intended to be designed, constructed, and operated in Mexico by a third party. The Otay WD's draft Desalination Feasibility Study, prepared in 2008, discusses the likely issues to be considered in terms of water treatment and monitoring, potential conveyance options within the United States from the international border to potential delivery points, and environmental, institutional, and permitting considerations for the Otay WD to import the Desalination project product water as a new local water supply resource.

While the treatment facility for the Desalination project will likely not be designed or operated by the Otay WD as the lead agency, it is important that the Otay WD maintain involvement with the planning, design, and construction of the facility to ensure that the implemented processes provide a product water of acceptable quality for distribution and use

within the Otay WD's system as well as in other regional agencies' systems that may use the product water, i.e. City of San Diego, the Water Authority, etc. A seawater reverse osmosis treatment plant removes constituents of concern from the seawater, producing a water quality that far exceeds established United States and California drinking water regulations for most parameters, however, a two-pass treatment system may be required to meet acceptable concentrations of boron and chlorides, similar to the levels seen within the existing Otay WD supply sources. The Desalination Feasibility Study addresses product water quality that is considered acceptable for public health and distribution.

The Otay WD, or any other potential participating agencies, will be required to get approval from the CDPH in order to use the desalinated seawater as a water source. Several alternative approaches are identified for getting this approval. These alternatives vary in their cost and their likelihood of meeting CDPH approval.

The Rosarito Desalination Facility Conveyance and Disinfection System Project report addresses two supply targets for the desalinated water (i.e. local and regional). The local alternative assumes that only Otay WD would participate and receive desalinated water, while the regional alternative assumes that other regional and/or local agencies would also participated in the Rosarito project.

On November 3, 2010, the Otay WD authorized the General Manager to enter into an agreement with AECOM for the engineering design, environmental documentation, and the permitting for the construction of the conveyance pipeline, pump station, and disinfection facility to be constructed within the Otay WD. The supply target is assumed to be 50 mgd while the ultimate capacity of the plant will be 100 mgd.

The Otay WD is proceeding with negotiations among the parties to establish water supply resource acquisition terms through development of a Principles of Understanding document.

6.3.2 Otay WD Capital Improvement Program

The Otay WD plans, designs, constructs, and operates water system facilities to acquire sufficient supplies and to meet projected ultimate demands placed upon the potable and recycled water systems. In addition, the Otay WD forecasts needs and plans for water supply requirements to meet projected demands at ultimate build out. The necessary water facilities and water supply projects are implemented and constructed when development activities proceed and require service to achieve timely and adequate cost effective water service.

New water facilities that are required to accommodate the forecasted growth within the entire Otay WD service area are defined and described within the Otay WD WRMP Update . These facilities are incorporated into the annual Otay WD Six Year Capital Improvement Program (CIP) for implementation when required to support development activities. As major development plans are formulated and precede through the land use jurisdictional agency approval processes, Otay WD prepares water system requirements specifically for the proposed

development project consistent with the Otay WD WRMP Update. These requirements document, define, and describe all the potable water and recycled water system facilities to be constructed to provide an acceptable and adequate level of service to the proposed land uses, as well as the financial responsibility of the facilities required for service. The Otay WD funds the facilities identified as CIP projects. Established water meter capacity fees and user rates are collected to fund the CIP project facilities. The developer funds all other required water system facilities to provide water service to their project.

Section 7 – Conclusion: Availability of Sufficient Supplies

The Planning Area 12 Freeway Commercial Project is currently located within the jurisdictions of the Otay WD, Water Authority, and MWD. To obtain permanent imported water supply service, land areas are required to be within the jurisdictions of the Otay WD, Water Authority, and MWD to utilize imported water supply.

The Water Authority and MWD have an established process that ensures supplies are being planned to meet future growth. Any annexations and revisions to established land use plans are captured in the San Diego Association of Governments (SANDAG) updated forecasts for land use planning, demographics, and economic projections. SANDAG serves as the regional, intergovernmental planning agency that develops and provides forecast information. The Water Authority and MWD update their demand forecasts and supply needs based on the most recent SANDAG forecast approximately every five years to coincide with preparation of their urban water management plans. Prior to the next forecast update, local jurisdictions with land use authority may require water supply assessment and/or verification reports for proposed land developments that are not within the Otay WD, Water Authority, or MWD jurisdictions (i.e. pending or proposed annexations) or that have revised land use plans with either lower or higher development intensities than reflected in the existing growth forecasts. Proposed land areas with pending or proposed annexations, or revised land use plans, typically result in creating higher demand and supply requirements than previously anticipated. The Otay WD, Water Authority, and MWD next demand forecast and supply requirements and associated planning documents would then capture any increase or decrease in demands and required supplies as a result of annexations or revised land use planning decisions.

MWD's Integrated Resources Plan (IRP) identifies a mix of resources (imported and local) that, when implemented, will provide 100 percent reliability for full-service demands through the attainment of regional targets set for conservation, local supplies, State Water Project supplies, Colorado River supplies, groundwater banking, and water transfers. The 2010 update to the IRP includes a planning buffer supply intended to mitigate against the risks associated with implementation of local and imported supply programs and for the risk that future demands could be higher than projected. The planning buffer identifies an additional increment of water that could potentially be developed when needed and if other supplies are

not fully implemented as planned. As part of implementation of the planning buffer, MWD periodically evaluates supply development, supply conditions, and projected demands to ensure that the region is not under or over developing supplies. Managed properly, the planning buffer will help ensure that the southern California region, including San Diego County, will have adequate water supplies to meet long-term future demands.

In Section ES-5 of their 2010 RUWMP, MWD states that MWD has supply capacities that would be sufficient to meet expected demands from 2015 through 2035. MWD has plans for supply implementation and continued development of a diversified resource mix including programs in the Colorado River Aqueduct, State Water Project, Central Valley Transfers, local resource projects, and in-region storage that enables the region to meet its water supply needs. MWD's 2010 RUWMP identifies potential reserve supplies in the supply capability analysis (Tables 2-9, 2-10, and 2-11), which could be available to meet the unanticipated demands.

The County Water Authority Act, Section 5 subdivision 11, states that the Water Authority "as far as practicable, shall provide each of its member agencies with adequate supplies of water to meet their expanding and increasing needs."

As part of preparation of a written water supply assessment report, an agency's shortage contingency analysis should be considered in determining sufficiency of supply. Section 11 of the Water Authority's 2010 Updated UWMP contains a detailed shortage contingency analysis that addresses a regional catastrophic shortage situation and drought management. The analysis demonstrates that the Water Authority and its member agencies, through the Emergency Response Plan, Emergency Storage Project, Carlsbad Desalination Project, and Drought Management Plan (DMP) are taking actions to prepare for and appropriately handle an interruption of water supplies. The DMP, adopted in May 2006, provides the Water Authority and its member agencies with a series of potential actions to take when faced with a shortage of imported water supplies from MWD due to prolonged drought or other supply shortfall conditions. The actions will help the region avoid or minimize the impacts of shortages and ensure an equitable allocation of supplies.

The WSA&V Report identifies and describes the processes by which water demand projections for the proposed Planning Area 12 Freeway Commercial Project will be fully included in the water demand and supply forecasts of the Urban Water Management Plans and other water resources planning documents of the Water Authority and MWD. Water supplies necessary to serve the demands of the proposed Planning Area 12 Freeway Commercial Project, along with existing and other projected future users, as well as the actions necessary and status to develop these supplies, have been identified in the Planning Area 12 Freeway Commercial WSA&V Report and will be included in the future water supply planning documents of the Water Authority and MWD.

This WSA&V Report includes, among other information, an identification of existing water supply entitlements, water rights, water service contracts, water supply projects, or

agreements relevant to the identified water supply needs for the proposed Planning Area 12 Freeway Commercial Project. This WSA&V Report assesses, demonstrates, and documents that sufficient water supplies are planned for and are intended to be available over a 20-year planning horizon, under normal conditions and in single and multiple dry years to meet the projected demand of the proposed Planning Area 12 Freeway Commercial Project and the existing and other planned development projects to be served by the Otay WD.

Table 8 presents the forecasted balance of water demands and required supplies for the Otay WD service area under average or normal year conditions. The total actual demand for FY 2010 was 33,270 acre feet. The demand for FY 2010 is 5,635 acre feet lower than the demand in FY 2005 of 38,905 acre feet. The drop in demand is a result of the unit price of water, the conservation efforts of users as a result of the prolonged drought, and the economy.

Table 9 presents the forecasted balance of water demands and supplies for the Otay WD service area under single dry year conditions. Table 9 presents the forecasted balance of water demands and supplies for the Otay WD service area under multiple dry year conditions for the three year period ending in 2018. The multiple dry year conditions for periods ending in 2023, 2028, and 2033 are provided in the Otay Water District 2010 UWMP. The projected potable demand and supply requirements shown the Tables 8 and 9 are from the Otay Water District 2010 UWMP. Hot, dry weather may generate urban water demands that are about 6.4 percent greater than normal. This percentage was utilized to generate the dry year demands shown in Table 9. The recycled water supplies are assumed to experience no reduction in a dry year.

Table 8
Projected Balance of Water Demands and Supplies Normal Year Conditions (AF)

Description	FY 2015	FY 2020	FY 2025	FY 2030	FY 2035
Demands					
Otay WD Demands	44,883	53,768	63,811	70,669	77,171
Previous Water Authority Accelerated Forecasted Growth Demands	570	570	570	570	570
PA 12 Freeway Comm. Demands	173	173	173	173	173
Additional Conservation Target	0	(7,447)	(13,996)	(17,895)	(20,557)
Total Demand	45,626	47,064	50,558	53,517	57,357
Supplies					
Water Authority Supply	40,483	41,321	44,015	45,974	48,614
Water Authority Accelerated Forecast Growth Increment	743	743	743	743	743
Recycled Water Supply	4,400	5,000	5,800	6,800	8,000
Total Supply	45,626	47,064	50,558	53,517	57,357
Supply Surplus/(Deficit)	0	0	0	0	0
The 743 (570+173) AFY increase in demand is accounted for through the Accelerated Forecasted Growth demand increment of the Water Authority's 2010 UWMP.					

Table 9 presents the forecasted balance of water demands and supplies for the Otay WD service area under single dry year and multiple dry year conditions as from the Otay WD 2010 UWMP.

Table 9
Projected Balance of Water Demands and Supplies
Single Dry and Multiple Dry Year Conditions (acre feet)

	Normal Year	Single Dry Year	Multiple Dry Years		
	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Demands					
Otay WD Demands	37,176	41,566	43,614	46,385	50,291
Total Demand	37,176	41,566	43,614	46,385	50,291
Supplies					
Water Authority Supply	33,268	37,535	39,460	42,108	45,891
Recycled Water Supply	3,908	4,031	4,154	4,277	4,400
Total Supply	37,176	41,566	43,614	46,385	50,291
Supply Surplus/(Deficit)	0	0	0	0	0
District Demand totals with SBX7-7 conservation target achievement plus single dry year increase as shown. The Water Authority could implement its DMP. In this instances, the Water Authority may have to allocate supply shortages based on it equitable allocation methodology in its DMP.					

Dry year demands assumed to generate a 6.4% increase in demand over normal conditions for each year in addition to new demand growth.

Table 9 also presents the forecasted balance of water demands and supplies for the Otay WD service area under multiple dry year conditions for the three year period ending in 2015.

In evaluating the availability of sufficient water supply, the Planning Area 12 Freeway Commercial Project development proponents will be required to participate in the development of alternative water supply project(s). This can be achieved through payment of the New Water Supply Fee adopted by the Otay WD Board in May 2010. These water supply projects are in addition to those identified as sustainable supplies in the current Water Authority and MWD UWMP, IRP, Master Plans, and other planning documents. These new water supply projects are in response to the regional water supply issues related to climatological, environmental, legal, and other challenges that impact water source supply conditions, such as the court rulings regarding the Sacramento-San Joaquin Delta and the current ongoing western states drought conditions. These new additional water supply projects are not currently developed and are in various stages of the planning process. The Otay WD water supply development program includes but is not limited to projects such as the Middle Sweetwater River Basin Groundwater Well project, the North District Recycled Water Supply Concept, and the Otay WD Desalination project. The Water Authority and MWD's next forecasts and supply planning documents would capture any increase in water supplies resulting from any new water resources developed by the Otay WD.

The Otay WD acknowledges the ever-present challenge of balancing water supply with demand and the inherent need to possess a flexible and adaptable water supply implementation strategy that can be relied upon during normal and dry weather conditions. The responsible regional water supply agencies have and will continue to adapt their resource plans and strategies to meet climate, environmental, and legal challenges so that they may continue to provide water supplies to their service areas. The regional water suppliers along with Otay WD fully intend to maintain sufficient reliable supplies through the 20-year planning horizon under normal, single, and multiple dry year conditions to meet projected demand of the Planning Area 12 Freeway Commercial Project, along with existing and other planned development projects within the Otay WD service area.

This WSA&V Report assesses, demonstrates, and documents that sufficient water supplies are planned for and are intended to be acquired, as well as the actions necessary and status to develop these supplies, to meet projected water demands of the Planning Area 12 Freeway Commercial Project as well as existing and other reasonably foreseeable planned development projects within the Otay WD for a 20-year planning horizon, in normal and in single and multiple dry years.

Source Documents

City of Chula Vista, Otay Ranch Planning Area 12 Freeway Commercial SB 610 and SB 221 Compliance request letter received February 25, 2015.

City of Chula Vista, "Otay Ranch General Development Plan/Sub-regional Plan, The Otay Ranch Joint Planning Project," October 1993 amended June 1996.

County of San Diego, "East Otay Mesa Specific Plan Area," adopted July 27, 1994.

Otay Water District, "2010 Water Resources Master Plan Update," Revised 2013.

Atkins and Otay Water District, "Otay Water District 2010 Urban Water Management Plan," June 2011.

Camp Dresser & McKee, Inc., "Otay Water District Integrated Water Resources Plan," March 2007

San Diego County Water Authority, "Urban Water Management Plan 2005 Update," November 2005 amended May 2007.

MWD Water District of Southern California, "Regional Urban Water Management Plan," November 2005.

Dexter Wilson Engineering, Inc., "Otay Ranch Planning Area 12 Freeway Commercial SAMP Amendment " memorandum, February 8, 2015.

Camp Dresser & McKee, Inc., "Rosarito Desalination Facility Conveyance and Disinfection System Project," June 21, 2010.

PBS&J, "Draft Otay Water District North District Recycled Water System Development Project, Phase I Concept Study," December 2008.

NBS Lowry, "Middle Sweetwater River System Study Water Resources Audit," June 1991.

Michael R. Welch, "Middle Sweetwater River System Study Alternatives Evaluation," May 1993.

Michael R. Welch, "Middle Sweetwater River Basin Conjunctive Use Alternatives," September 1994.

Geoscience Support Services, Inc., "Otay Mesa Lot 7 Well Investigation," May 2001.

Boyle Engineering Corporation, "Groundwater Treatment Feasibility Study Ranch del Ray Well Site," September 1996.

Agreement for the Purchase of Treated Water from the Otay Water Treatment Plant between the City of San Diego and the Otay Water District.

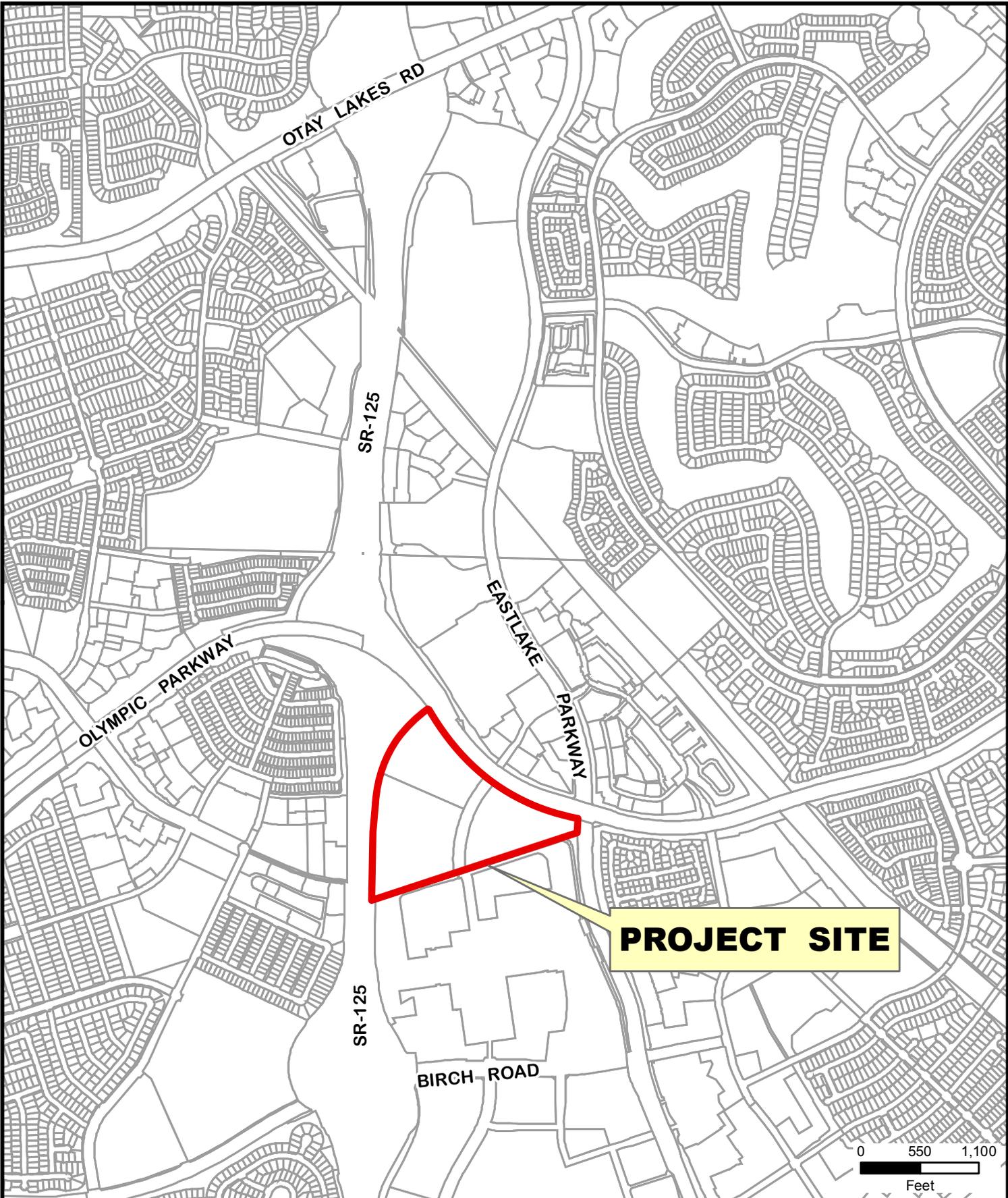
Agreement between the San Diego County Water Authority and Otay Water District regarding Implementation of the East County Regional Treated Water Improvement Program.

Agreement between the San Diego County Water Authority and Otay Water District for Design, Construction, Operation, and Maintenance of the Otay 14 Flow Control Facility Modification.

Agreement between the Otay Water District and the City of San Diego for Purchase of Reclaimed Water from the South Bay Water Reclamation Plant.

Appendix A

Planning Area 12 Freeway Commercial Regional Location Map



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OTAY WATER DISTRICT

PA-12 FREEWAY COMMERCIAL VICINITY MAP



WO D0933

Appendix B

Otay Ranch Planning Area 12 Freeway Commercial Proposed Development Plan



OTAY WATER DISTRICT

PA-12 FREEWAY COMMERCIAL

LAND USE MAP

WO D0933



Otay Water District Board of Directors Meeting

April 1, 2015

Water Supply Assessment & Verification Report Update for the Otay Ranch Planning Area 12 Freeway Commercial Project SB 610 & SB 221 Compliance



BACKGROUND

Senate Bills 610 and 221 became effective on January 1, 2002.

Primary Intent: Improve the link between water supply availability and land use decisions.

- **SB 610 requires a Water Supply Assessment (WSA) to be included in the CEQA documents for a project.**
- **SB 221 requires a Water Supply Assessment & Verification (WSA&V), also included in the CEQA documents.**
- **Board approval required for submittal of the WSA&V Report to the City of Chula Vista.**

Otay Ranch Planning Area 12 Freeway Commercial Project

Total Water Demand
233 AFY Potable / 38.8 AFY Recycled



- **28.7 acres developed of the 34.5 acre site**
- **Two hotels – 310 units**
- **650 multi-family residential dwellings**
- **25,000 sq.ft. of commercial/retail**
- **Park**

Changes since the 2013 WSA&V

- Potable water demand has increased to 233 AFY, 46 AFY higher than 2013 report.
- Recycled water demand has increased to 38.8 AFY, 20.3 AFY higher than 2013 report.
- Land Use has changed.

Land Use Description	WSA&V (May 2013)		WSA&V (Feb 2015)	
	Area (acres)	Dwelling Units	Area (acres)	Dwelling Units
Multi-Family Residential		448		650
Hotel (2)		257		310
Commercial	14.5		4.0	
Park	1.0		2.0	

WSA&V Report

- **Acknowledges the challenges for regional and local water supply agencies in meeting demands and that a diversified portfolio is needed to serve existing and future needs.**
- **The Report documents planned water supply projects and the actions necessary to develop the supplies.**
- **Description of how water supply is planned and available for the project and for existing and future development over a 20-year planning horizon, under normal and in single-dry and multiple-dry years.**

Water Supply Projects

Otay Water District Planned Water Supply Projects

Project	Supply (AF)
Rosarito Ocean Desalination Project	20,000-50,000
Otay Mesa Lot 7 Groundwater Well	300

Water Authority Supplies

Project	2015	2020	2025	2030-2035
IID Water Transfer	100,000	190,000	200,000	200,000
ACC and CC Lining	80,200	80,200	80,200	80,200
Carlsbad Desalination	0	56,000	56,000	56,000
Total:	180,200	326,200	336,200	336,200

Otay Water District

Projected Balance of Supply and Demand

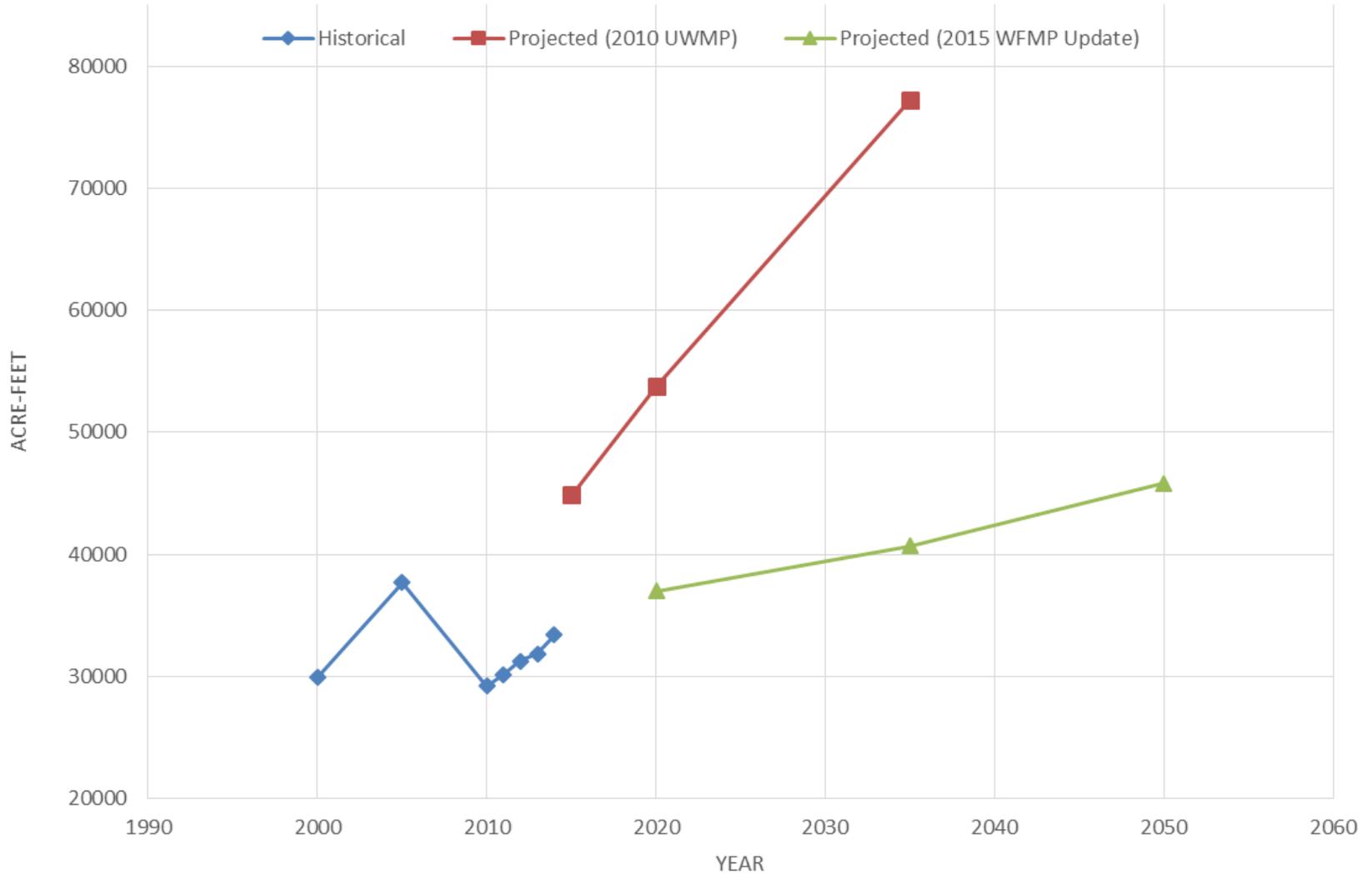
Description	FY 2015	FY 2020	FY 2025	FY 2030	FY 2035
Demands					
Otay WD Demands	44,883	53,768	63,811	70,669	77,171
Univ. Villages Demands	41	41	41	41	41
Village 2 Demands	529	529	529	529	529
Freeway Commercial Demands	173	173	173	173	173
Additional Conservation Target	0	(7,447)	(13,996)	(17,895)	(20,557)
Total Demand	45,626	47,064	50,558	53,517	57,357
Supplies*					
Water Authority Supply	40,483	41,321	44,015	45,974	48,614
Water Authority Accel. Forecast Growth Increment	743	743	743	743	743
Recycled Water Supply	4,400	5,000	5,800	6,800	8,000
Total Supply	45,626	47,064	50,558	53,517	57,357
Supply Surplus/(Deficit)	0	0	0	0	0

The 743 (173+529+41) AFY increase in demand is accounted for through the Accelerated Forecasted Growth demand increment of the Water Authority's 2010 UWMP.

*Rosarito Desalination Project not included, will be added to future supplies when a Water Purchase Agreement is approved by the OWD Board.

Source: Table 7 of the Otay Ranch Resort Village WSA&V Report.

PROJECTED & HISTORICAL POTABLE WATER FISCAL YEAR DEMANDS



CONCLUSION

- **Water demand and supply forecasts are included in the planning documents of Metropolitan Water District of Southern California, San Diego County Water Authority, and the Otay Water District.**
- **Actions necessary to develop the identified water supplies are documented.**
- **The Otay Ranch Planning Area 12 Freeway Commercial Project SB 610 & SB 221 WSA&V Report documents that sufficient water supplies are planned for and available over the next 20 years.**
- **The Board has met the intent of the SB 610 and SB 221 statutes.**

STAFF RECOMMENDATION

That the Board of Directors approve Senate Bills 610 & 221 updated Water Supply Assessment & Verification Report dated February 2015 for the Otay Ranch Planning Area 12 Freeway Commercial Project





QUESTIONS?

AGENDA ITEM 4



STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	April 1, 2015
SUBMITTED BY:	Kevin Cameron Associate Engineer	PROJECT:	P2542-001103
	Bob Kennedy Engineering Manager	DIV. NO.:	5
APPROVED BY:	<input checked="" type="checkbox"/> Rod Posada, Chief, Engineering <input checked="" type="checkbox"/> German Alvarez, Assistant General Manager <input checked="" type="checkbox"/> Mark Watton, General Manager		
SUBJECT:	Award of a Construction Contract to Abhe & Svoboda, Inc. for the 850-3 Reservoir Interior Coating Project		

GENERAL MANAGER'S RECOMMENDATION:

That the Otay Water District (District) Board of Directors (Board) award a construction contract to Abhe & Svoboda, Inc. (A & S) and to authorize the General Manager to execute a construction contract with A & S for the 850-3 Reservoir Interior Coating Project in an amount not-to-exceed \$366,720 (see Exhibit A for Project location).

COMMITTEE ACTION:

Please see Attachment A.

PURPOSE:

To obtain Board authorization for the General Manager to enter into a construction contract with A & S for the 850-3 Reservoir Interior Coating Project in an amount not-to-exceed \$366,720.

ANALYSIS:

In May 2012, the exterior coating of the 850-3 (3.0 MG) Reservoir was replaced by Advanced Industrial Services, Inc. (AIS). As part of the contract, AIS upgraded the cathodic anodes and made repairs to the roof's center vent. While the reservoir was out of service, the District's corrosion consultant, V & A Consulting Engineers (V & A), inspected the interior coating. V & A identified that the coating on the interior floor and portions of the roof were in need of replacement within the next 2-3 years. V & A indicated that the premature failure of the floor was due to delamination, which appears to be related to workmanship rather than material failure. To avoid having the reservoir out of service for an extended period of time during the summer months, Staff elected to create a separate CIP for the interior coating work.

The 850-3 Reservoir's interior coating was last replaced in 2004 by Techno Coatings, Inc. (Techno Coatings). Typically, the coating will last an average of 15 years. The coating process was inspected by Jim Isom & Associates (JIA). JIA was retained by the District as a full-time third party coating inspector to verify and document the surface preparation and coating processes.

JIA's inspection reports are not detailed and appear incomplete. The interior coating is comprised of a three (3) coat system. The manufacturer sets a maximum coating thickness for each coat. The reports from JIA document the thicknesses of the first and second coats, but they did not show the thickness of the third coat, or the overall coating thickness, as required in the specifications. In 2012, V & A measured thicknesses in the failed portion at 60 mils, which is excessive for these types of applications.

Staff reviewed all the documentation and it appears that the coating was improperly applied by the contractor, then accepted by the District's hired coating inspector. Unfortunately, JIA's business license was suspended in 2005. A google search for the company did not return any results. JIA has not performed any work for the District since 2004. Techno Coatings is still in business, and has bid on previous District projects, although unsuccessfully. Staff discussed the issue with the District's Legal Counsel, and they are evaluating the District's options.

In the time since 2004, Staff has been proactive in obtaining a better understanding of the coating process and specifications. The third party coating inspector's certification requirements were increased from a Certified Coating Inspector (CCI) Level I to a CCI Level III. Also, the District's Inspectors have become more familiar with the coating requirements, and are able to do high level QA/QC on both the contractor's and the inspector's work. They are also

scheduled to take a six day training course to become CCI Level I certified.

In addition to the increased inspection requirements, the District has also had two (2) corrosion engineering firms and two (2) well-respected coating inspection firms independently review the reservoir coating specifications and provide comments. Those comments were incorporated into the specifications, and the District has had good success with reservoir coating projects over the past 5 years.

The 850-3 Reservoir Interior Coating project's specifications were completed in-house, and the Project was advertised on January 7, 2015 on the District's website and several other publications including the San Diego Daily Transcript. A Pre-Bid Meeting was held on January 15, 2015 which was attended by four (4) contractors. Three (3) addenda were sent out to all bidders and plan houses to address questions and clarifications to the contract documents during the bidding period. Bids were publicly opened on January 28, 2015, with the following results:

	CONTRACTOR	TOTAL BID AMOUNT
1	Abhe & Svoboda, Inc. Jordan, MN	\$366,720
2	Advanced Industrial Services, Inc. Los Alamitos, CA	\$366,900
3	Blastco, Inc. Downey, CA	\$384,919
4	Simpson Sandblasting & Special Coating, Inc. Fontana, CA	\$389,760
5	Paso Robles Tank, Inc. Laguna Hills, CA	\$408,000
6	Cor-Ray Painting Santa Fe Springs, CA	\$437,000

The Engineer's Estimate is \$370,000.

Staff reviewed the submitted bids for conformance with the contract requirements and determined that A & S was the lowest responsive and responsible bidder. A & S holds a Class A, General Engineering Contractor's License and a Class C-33, Painting and Decorating Contractor's License, which meets the contract document's requirements, and is valid through March 31, 2017. A & S also holds a current QP-1 certification from the Society for Protective Coatings, which is also a requirement.

Staff received a letter from the Painters & Allied Trades Compliance (PATC) committee that claimed A & S was a non-responsible bidder (see Exhibit B). The letter states that A & S had previously violated State Labor Codes, and received several safety violations on past projects. Staff forwarded the letter to A & S, and requested a response. A & S responded to the claims (see Exhibit C), and noted that PATC has sent similar letters in the past when A & S has been the low bidder, most recently for the County of Los Angeles' Department of Public Works (see Exhibit D). As stated in the County of Los Angeles' Staff Report to the County Supervisors and A & S's response, A & S agreed to a no-fault settlement in 2011 with the State of California Department of Industrial Relations, Division of Apprenticeship Standards, in the amount of \$3,500. A & S's Occupational Health and Safety Act (OSHA) records show very minor fines which happened over five (5) years ago, and \$1.3 million in restitution being withheld which occurred in the mid-1990's. This happened in Connecticut where A & S was awarded three (3) contracts to paint bridges, and based on their own research, paid what they thought were appropriate prevailing wages. Ultimately, the United States Department of Labor (DOL) determined certain classifications were entitled to higher hourly rates. The \$1.3 million was not a penalty as alleged in the PATC's letter.

Three (3) references were contacted and all indicated a good performance record on similar projects. An internet background search of the company was performed and revealed an article from *Construction Today* which described A & S as a forty two (42) year old company with four (4) offices across the nation. The article described some of the other agencies A & S has worked with including the Army Corps of Engineers, the Bureau of Reclamation, and the Department of the Navy. A highlighted project in the article was a \$41 million dollar steel repair and recoating of a bridge in Rhode Island (see Exhibit E for the article). No outstanding issues were revealed with this company during the internet search.

Staff also contacted the County of Los Angeles' Project Manager for the San Gabriel Dam Penstock Coating Project, as noted in the County of Los Angeles' Staff Report. A & S is still completing this work, and the Project Manager stated A & S has done an excellent job up to this point, and the job is on schedule and on budget.

Staff has verified that the bid bond provided by A & S is valid. Staff will also verify that A & S' Performance Bond and Labor and Materials Bond are valid prior to execution of the contract.

FISCAL IMPACT: Joe Beachem, Chief Financial Officer

The total budget for CIP P2542, as approved in the FY 2015 budget, is \$480,000. Total expenditures, plus outstanding commitments and forecast, are \$474,568. See Attachment B for the budget detail.

Based on a review of the financial budget, the Project Manager anticipates that the budget is sufficient to support the Project.

Finance has determined that 100% of the funding is available from the Replacement Fund.

STRATEGIC GOAL:

This Project supports the District's Mission statement, "To provide high value water and wastewater services to the customers of the Otay Water District in a professional, effective, and efficient manner" and the General Manager's Vision, "A District that is at the forefront in innovations to provide water services at affordable rates, with a reputation for outstanding customer service."

LEGAL IMPACT:

None.

KC/BK:jf

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- Attachments:
- Attachment A - Committee Action
 - Attachment B - Budget Detail
 - Exhibit A - Location Map
 - Exhibit B - Painters & Allied Trades Compliance Letter
 - Exhibit C - Response Letter from Abhe & Svoboda
 - Exhibit D - Painters and Allied Trades Compliance complaint and Staff Report to the County of Los Angeles Supervisors
 - Exhibit E - Article from *Construction Today*



ATTACHMENT A

SUBJECT/PROJECT: P2542-001103	Award of a Construction Contract to Abhe & Svoboda, Inc. for the 850-3 Reservoir Interior Coating Project
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COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee (Committee) reviewed this item at a meeting held on March 12, 2015. The Committee supported Staff's recommendation.

NOTE:

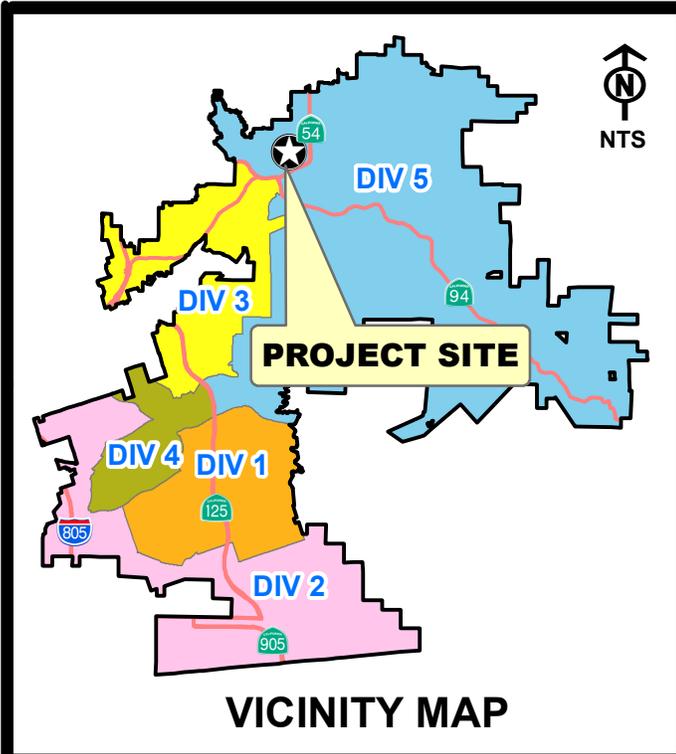
The "Committee Action" is written in anticipation of the Committee moving the item forward for Board approval. This report will be sent to the Board as a Committee approved item, or modified to reflect any discussion or changes as directed from the Committee prior to presentation to the full Board.



ATTACHMENT B – Budget Detail For P2542

SUBJECT/PROJECT: P2542-001103	Award of a Construction Contract to Abhe & Svoboda, Inc. for the 850-3 Reservoir Interior Coating Project
---	---

Otay Water District					Date Updated: 1/27/15
P2542 - 850-3 Reservoir Interior Coating					
<i>Budget</i>	<i>Committed</i>	<i>Expenditures</i>	<i>Outstanding Commitment &</i>	<i>Projected Final Cost</i>	<i>Vendor/Comments</i>
480,000					
Planning					
Standard Salaries	278	278	-	278	
Total Planning	278	278	-	278	
Design					
Standard Salaries	12,000	6,444	5,556	12,000	
Service Contracts	1,234	1,234	-	1,234	MAYER REPROGRAPHICS
Total Design	13,234	7,678	5,556	13,234	
Construction					
Standard Salaries	35,000	-	35,000	35,000	
Construction Contract	366,720	-	366,720	366,720	ABHE & SVOBODA, INC.
Service Contracts	20,000	-	20,000	20,000	HDR-SPECIALTY INSPECTION
	18,000	-	18,000	18,000	CONSTRUCTION MANAGER
Project Closeout	3,000	-	3,000	3,000	CLOSEOUT
Project Contingency	18,336	-	18,336	18,336	5% CONTINGENCY
Total Construction	461,056	-	461,056	461,056	
Grand Total	474,568	7,956	466,612	474,568	



OTAY WATER DISTRICT
850-3 (3.0 MG) RESERVOIR INTERIOR COATING
LOCATION MAP



CIP P2542

P:\WORKING\CIP P2542 850-3 Interior Coating\Staff Reports\Exhibit A.mxd

PAINTERS & ALLIED TRADES
COMPLIANCE ADMINISTRATIVE TRUST
1155 Corporate Center Dr., Monterey Park, CA 91754
Phone: (626) 792-3019 * Fax: (626) 798-0528

EXHIBIT B

February 11, 2015

Mr. Kevin Cameron, Project Manager
Otay Water District Purchasing
2554 Sweetwater Springs Blvd
Spring Valley, CA. 91978

Via Fax: (619) 670-8920

Via Email kcameron@otaywater.gov

Re: Project Name: Otay Water District 850 3 Reservoir Coatings-Storage Tanks
Bidder: Abhe & Svoboda

Dear Mr. Cameron:

Painters and Allied Trades Compliance is a joint labor-management committee that works diligently to insure fairness and compliance by all contractors in the bidding and performance of Public Works projects.

It is our understanding that Abhe & Svoboda ("the Contractor") is a bidder on the project listed above. The purpose of this letter is to inform you why we believe the contractor is a Non-Responsible bidder.

On July 9, 2009 the Division of Industrial Relations Division of Apprenticeship Standards found that the Contractor failed to comply with Labor Code §1777.5 and §1777.7. While no penalty was assessed, the Contractor was warned that "after receipt of this notice, any failure to comply with applicable apprenticeship regulations will be considered a knowing and possible intentional violation." See Exhibit 1. Despite this warning, subsequently, on October 28, 2011 the Contractor paid a \$3,500 fine to settle charges that it violated Labor Code §1777.5. See Exhibit 2.

On August 22, 2014 the Department of Industrial Relations Division of Labor Standards Enforcement found that the Contractor failed to comply with Labor Code §1777.7. The Contractor was assessed a Civil Penalty of \$90,900. See Exhibit 3.

In addition, since July 16, 2008, the Contractor has repeatedly violated the Occupational Health and Safety Act (OSHA) and regulations promulgated under that act. We have attached search results for your records from the OSHA website. Please note that every year from 2008 through the present year, this company has continued to have these violations. See Exhibit 4.

These violations are in addition a reported federal court decision affirming a \$1.3 million penalty against the Contractor for failing to pay its painting employees the wages to which they were entitled under the Davis-Bacon Act. See Exhibit 5.

Furthermore, on August 1, 2013, the Contractor was penalized for a total of \$1,929,000 by the Mackinac Bridge Authority from the State of Michigan. See Exhibit 6.

For these reasons, the Contractor should be considered a Non-Responsible bidder. If you have any questions, please feel free to contact me.

Sincerely,



Monica Sevajian
Case Investigator
monica.sevajian@patcat.org

Enclosure:

- *Letters from Department of Industrial Relations, Division of Apprenticeship Standards; Division of Labor Standards Enforcement, (Exhibit 1, 2, & 3)*
- *OSHA Records (Exhibit 4)*
- *Federal Court Order (Exhibit 5)*
- *Mackinac Bridge Authority Liquidated Damages (Exhibit 6)*

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF APPRENTICESHIP STANDARDS
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Tel: (415) 703-4920
Fax: (415) 703-5477

Arnold Schwarzenegger, Governor
www.dir.ca.gov



ADDRESS REPLY TO:
Dir. of Apprenticeship Standards
P. O. Box 420603
San Francisco, CA 94142-0603

July 9, 2009

Gail Svoboda, RMO
Abhe & Svoboda, Inc.
PO Box 251
Prior Lake, MN. 55372

**RE: Robert B. Diemer Water Treatment Plant West Washwater Tank Refurbishment,
Yorba Linda
DAS Complaint # 2009-0337**

Dear Mr. Svoboda ,

Our review of Division of Apprenticeship Standards (DAS) records raised concerns about your company's compliance with Labor Code § 1777.5 for the work performed on the Robert B. Diemer Water Treatment Plant West Washwater Tank Refurbishment, Yorba Linda, CA.

Given your inability to obtain registered apprentices for the duration of this project, we are taking this opportunity to remind you that as a member of an approved apprenticeship program, you were expected to employ apprentices in the appropriate ratio by the end of the project. (Our files indicate only one request for Dispatch, dated 9/15/08.)

Although we are not assessing penalties for your failure to employ apprentices on this particular job, we are enclosing information which details the requirements of applicable excerpts from the California Labor Code. **This letter with the attachments below will serve as formal notification of your obligations under Labor Code § 1777.5 and 1777.7:**

1. Apprentices on Public Works Summary of Requirements,
2. the Public Contract Award Notification form (DAS 140),
3. Request for Dispatch of Apprentices (form DAS 142),
4. the Training Fund Contribution form (CAC 2).
5. **new requirement (Notice of Change in Regulation 230.1) effective for projects bid July 1, 2009 and later.**

RECEIVED

JUL 14 2009

BY COMPLIANCE

(Our website at <http://www.dir.ca.gov/DAS/PublicWorksForms.htm> also lists this and additional information of interest.)

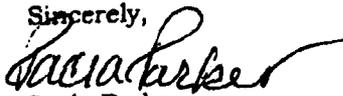
As you become familiar with the enclosed material, you will want to highlight the change to Regulation 230.1, which applies to projects bid July 1, 2009 and after. This change requires the contractor to not only request the dispatch of apprentices in writing at least 72 hours before the date apprentices are needed, but also further pursue dispatch, if apprentices are not dispatched and employed. In such a case, the contractor must request apprentice dispatch from another committee (in craft) in the geographic area and must request from each such committee, either consecutively or simultaneously, until ratios are met or the contractor has requested from all such committees in the geographic area. **(All requests must be in writing and within a timeframe to meet ratio requirements.)**

Penalties for noncompliance with the provisions involving employment of apprentices on public works are assessed when a violation is committed "knowingly." Evidence of a knowing violation includes previous employment of apprentices on public projects, the signing of a contract with a public agency that refers to apprenticeship requirements in the contract documents, or previous notification by DAS of apprenticeship requirements on public works.

After receipt of this notice, any failure to comply with applicable apprenticeship regulations will be considered a knowing and possibly intentional violation. In future investigations of alleged violations on public works projects, the fact of this notice will be considered in determining the seriousness of the violation and imposition of penalties.

If you have questions, please call me at (415) 355- 5472.

Sincerely,



Pacia Parker
Sr. Apprenticeship Consultant

Enclosures

Cc: Bill Quisenberry, Southern California Painting, Drywall Finishers, Floor Layers, & Glaziers JAC Public Works
Don Slider, Metropolitan Water District of Southern California
Gayle Stewart, Painting & Decorating Contractors of America
File

RECEIVED

JUL 14 2009

BY COMPLIANCE

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Apprenticeship Standards
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Tel: (415) 703-4920 Fax: (415) 703-5218

EDMUND G. BROWN, JR., Governor
www.dir.ca.gov

ADDRESS REPLY TO:
Div. of Apprenticeship Standards
P. O. Box 420603
San Francisco, CA 94142-0603



October 28, 2011

David Grant, Area Manager
Abhe & Svoboda, Inc.
880 Tavern Road
Alpine, CA 91901

RE: **Settlement**
Eagle Mountain Pumping Plant
DAS Complaint # 2011-0282

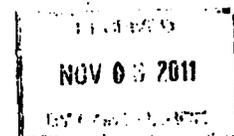
Dear Mr. Grant,

The Division of Apprenticeship Standards has received your check of \$ 3,500.00 in full settlement of Notice of Complaint for the work you performed at Eagle Mountain Pumping Plant. I have enclosed a copy of the fully executed Settlement Agreement. DAS considers this complaint closed.

Sincerely,

A handwritten signature in cursive script that reads "Sarah Chen".

Sarah Chen
Industrial Relations Representative



Cc: Painters & Allied Trades Compliance Administrative Trust
The Metropolitan Water District of Southern California
File

REVISED
SETTLEMENT AGREEMENT

(In the matter of the Complaint filed under Labor Code 1777.5 against Abhe & Svoboda Inc., DAS Complaint # 2011-0282 Eagle Mountain Pumping Plant)

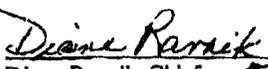
1. **Parties:** (1) The State of California, Department of Industrial Relations, Division of Apprenticeship Standards ("DAS") and (2) Abhe & Svoboda, Inc. have agreed to resolve a dispute over the above noted Public Works Complaints filed with the DAS.
2. **Subject:** On July 5, 2011 DAS received a Complaint from the Painters and Allied Trades Compliance Administrative Trust ("Complaint") alleging that Abhe & Svoboda, Inc. had failed to request dispatch and employ apprentices from all applicable programs in the geographic area and failed to make training contributions as required by Labor Code § 1777.5 in relation to the work performed on the project set forth above. A notice of Complaint was sent on October 7, 2011.
3. **Agreement:** In order to avoid the hazards and uncertainty of litigation and to resolve any and all claims for penalty that DAS may have in connection with this Complaint, Abhe & Svoboda, Inc. agrees to pay \$3,500 which DAS agrees to accept as full satisfaction for any penalties which may be owed in connection with this Complaint.
4. **Waiver:** Abhe & Svoboda, Inc. and DAS enter into this settlement agreement freely and voluntarily. Abhe & Svoboda, Inc. and DAS hereby waive any right of appeal that they now have or hereafter acquire arising out of and by reasons of the dispute settled herein.
5. **Notice:** Notice is hereby given to Abhe & Svoboda, Inc. and Abhe & Svoboda, Inc. acknowledges receipt of such Notice of California Labor Code Section 1777.5 requirements relating to employment of registered apprentices on public works projects. For this purpose, a copy of the Excerpts from the California Labor Code Relating to Apprentices on Public Works, and a copy of the Summary of Requirements, Apprentices on Public Works, are attached hereto and made a part of this Settlement Agreement.

DATE: 10/27/11



David Grant, Area Manager
Abhe & Svoboda, Inc.

DATE: 10/28/2011



Diane Revnik, Chief
Division of Apprenticeship Standards
Department of Industrial Relations

RECEIVED
DAS RECORDS SECTION
SAN FRANCISCO
OCT 28 PM 12:34

Notice of Right to Obtain Review - Formal Hearing

An affected contractor, subcontractor, or responsible officer may obtain review of this Determination of Civil Penalty by transmitting a written request to the office of the Labor Commissioner that appears below within 60 days after service of the Determination of Civil Penalty. In accordance with Labor Code section 1777.7(c)(2), the provisions of Labor Code section 1742 shall apply to the review of this Determination of Civil Penalty. **To obtain a hearing, a written Request for Review must be transmitted to the following address:**

Labor Commissioner, State of California
Determination Review Office
2031 Howe Ave., Suite 100
Sacramento, CA 95825

A Request for Review either shall clearly identify the Determination of Civil Penalty from which review is sought, including the date of the Determination, or it shall include a copy of the Determination as an attachment. **Failure to attach a copy of this Determination to your Request for Review may delay timely processing of your Request for Review.** The Request for Review shall also set forth the basis upon which the Determination is being contested. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the Labor Commissioner's receipt of the written Request for Review.

Failure by a contractor, subcontractor, or responsible officer to submit a timely Request for Review will result in a final order which shall be binding on the contractor, subcontractor, or responsible officer. Labor Code section 1777.7(c)(1).

In accordance with Labor Code section 1742(d) and Labor Code section 1777.1(c)(4), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the State against the person assessed in the amount shown on the certified order.

(continued on next page)

Opportunity for Settlement Meeting

You may request to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding this Determination of Civil Penalty. Such a request must be made in writing and received at the following address within thirty (30) days following the service of this Determination:

Dina Morsi
7718 Meany Avenue
Bakersfield, CA 93308

Requesting a settlement meeting does not extend the 60-day period during which a formal hearing may be requested.

Payment of Penalty

Payment of the assessed penalties must be made by check or money order payable to the Division of Labor Standards Enforcement with a copy of the Determination of Civil Penalty and mailed to:

State of California, Department of Industrial Relations
Division of Labor Standards Enforcement, Cashiering Unit
2031 Howe Avenue, Suite 100
Sacramento, CA 95825-0196

(continued on next page)

Statutory Withholding Obligations

1. Awarding Body Withholding Obligations

In accordance with Labor Code section 1727(a), before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy this Determination of Civil Penalty. The amount required to satisfy this Determination of Civil Penalty shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

The amount which must be withheld and retained by the awarding body pursuant to this Determination of Civil Penalty is:

Total Withholding Amount: \$90,900.00

2. Prime Contractor Withholding Obligations:

In accordance with Labor Code section 1727(b), if the awarding body has not retained sufficient money under the contract to satisfy this Determination of Civil Penalty based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. This amount shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

If this box is checked, the Labor Commissioner hereby requests that the prime contractor withhold the following amount from money due the subcontractor and transfer the money to the awarding body to satisfy this assessment:

Total Withholding Amount: \$90,900.00

Distribution:

Awarding Body
Surety(s) on Bond
Prime Contractor
Subcontractor

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

**CERTIFICATION OF SERVICE BY MAIL
(C.C.P. 1013a) OR CERTIFIED MAIL**

I, Linda Rodriguez, do hereby certify that I am a resident of or employed in the County of
Kern, over 18 years of age, and not a party to the within action, and that I am employed at
and my business address is:

Division of Labor Standards Enforcement
Bureau of Field Enforcement
7718 Meany Avenue
Bakersfield, CA 93308

On August 22, 2014, I served the within: (1) Determination of Civil Penalty - Labor
Code Section 1777.7

by placing a true copy thereof in an envelope addressed as follows:

Caltrans Department of Transportation
2015 E. Shields Ave., #100
Fresno, CA 93720
Camillo Prandini

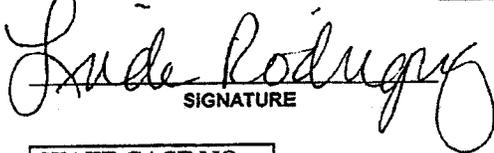
Abhe & Svoboda, Inc
18100 Dairy Lane
Jordan, MN 55372
Gail Stuart Svoboda

and then sealing the envelope and with postage and certified mail fees (if applicable) thereon fully prepaid,
and then depositing it in the United States mail in Bakersfield by:

- Ordinary first class mail
- Certified mail
- Registered mail

I certify under penalty of perjury that the foregoing is true and correct

Executed on August 22, 2014, at Bakersfield, County of Kern, California


SIGNATURE

STATE CASE NO.
44-40863-148

Exhibit 4



**UNITED STATES
DEPARTMENT OF LABOR**

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Establishment	Date Range	Office	State
Abhe	02/11/2008 to 02/11/2015	all	all

Please note that inspections which are known to be incomplete will have the identifying Activity Nr shown in italic. Information for these open cases is especially dynamic, e.g., violations may be added or deleted.

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By Date

	Activity	Opened	RID	St	Type	Sc	SIC	NAICS	Vio	Establishment Name
<input type="checkbox"/>	1 978649.015	05/22/2014	0111100	ME	Prog Related	Complete		238320		Abhe & Svoboda Inc.
<input type="checkbox"/>	2 957993.015	02/06/2014	0215800	NY	Fat/Cat	Partial		238320		Abhe & Svoboda Inc.
<input type="checkbox"/>	3 892791.015	02/15/2013	0112000	CT	Planned	No Insp/Process Inactive		237310		Abhe & Svoboda, Inc.
<input type="checkbox"/>	4 744922.015	11/19/2012	0112300	RI	Referral	Partial		237310		Abhe & Svoboda Inc.
<input type="checkbox"/>	5 704278.015	10/24/2012	0112300	RI	Planned	Complete		237310		Abhe & Svoboda, Inc.
<input type="checkbox"/>	6 480679.015	06/19/2012	0936300	HI	Planned	Complete		237310		Abhe & Svoboda, Inc.
<input type="checkbox"/>	7 313645525	06/05/2012	0950635	CA	Accident	Partial	1731	238210		Abhe & Svoboda
<input type="checkbox"/>	8 316265735	06/01/2012	0951510	HI	Planned	Complete	1629	237990		Abhe & Svoboda Inc
<input type="checkbox"/>	9 315947838	10/20/2011	1054191	OR	Referral	Partial	1721	238320	1	Abhe & Svoboda Inc
<input type="checkbox"/>	10 315177634	08/25/2011	1055340	WA	Planned	Complete	1721	238320	7	Abhe & Svoboda Inc
<input type="checkbox"/>	11 315177584	08/25/2011	1055340	WA	Planned	Complete	1721	238320	18	Abhe & Svoboda Inc
<input type="checkbox"/>	12 314917147	04/07/2011	0112300	RI	Planned	Complete	1622	237310		Abhe & Svoboda Inc.
<input type="checkbox"/>	13 315422691	03/29/2011	1054112	OR	Complaint	Partial	1721	238320	1	Abhe & Svoboda Inc
<input type="checkbox"/>	14 313257230	08/26/2010	0552651	MI	Planned	Partial	1611	237310	2	Abhe & Svoboda Inc
<input type="checkbox"/>	15 313329039	10/07/2009	0552651	MI	Complaint	Partial	1721	238320		Abhe & Svoboda
<input type="checkbox"/>	16 311823645	09/11/2009	0419700	FL	Complaint	Complete	1721	238320		Abhe & Svoboda, Inc.
<input type="checkbox"/>	17 313369266	07/08/2009	0316400	WV	Planned	No Insp/Process Inactive	1721	238320		Abhe & Svoboda
<input type="checkbox"/>	18 310629696	11/26/2008	0112600	MA	Complaint	Partial	1721	238320	2	Abhe & Svoboda Inc.
<input type="checkbox"/>	19 311479463	11/12/2008	0155010	VT	Planned	Complete	1721	237310		Abhe And Svoboda
<input type="checkbox"/>	20 311479158	11/12/2008	0155010	VT	Planned	Complete	1721	238320		Abhe & Svoboda Inc

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Establishment	Date Range	Office	State
Abhe	02/11/2008 to 02/11/2015	all	all

Please note that inspections which are known to be incomplete will have the identifying Activity Nr shown in italic. Information for these open cases is especially dynamic, e.g., violations may be added or deleted.

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By Date

Get Detail Select All Reset

	Activity	Opened	RID	St	Type	Sc	SIC	NAICS	Vio	Establishment Name
<input type="checkbox"/>	21 312426190	07/16/2008	0552700	MN	Referral	Partial	1721	238320		Abhe & Svoboda Inc

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Quick Link Reference

978649.015	957993.015	892791.015	744922.015	704278.015
480679.015	313645525	316265735	315947838	315177584
315177634	314917147	315422691	313257230	313329039
311823645	313369266	310629696	311479463	311479158

Case Status: CLOSED
Inspection: 978649.015 - Abhe & Svoboda Inc.

Inspection Information - Office: Augusta		
Nr: 978649.015	Report ID:0111100	Open Date: 05/22/2014
Abhe & Svoboda Inc. Bldg 29 Pnsy Kittery, ME 03904 SIC: NAICS: 238320/Painting and Wall Covering Contractors Mailing: 18100 Dairy Lane, Jordan, MN 55352		
Inspection Type: Prog Related	Scope: Complete	Advanced Notice: N
Ownership: Private	Safety/Health: Safety	Close Conference: 05/22/2014
Emphasis: L:Eisaof,N:Ctarget		Close Case: 06/27/2014

Case Status: CLOSED

Case Status: CLOSED
Inspection: 957993.015 - Abhe & Svoboda Inc.

Inspection Information - Office: Syracuse		
Nr: 957993.015	Report ID:0215800	Open Date: 02/06/2014
Abhe & Svoboda Inc. 76 Barnhart Island Road Massena, NY 13662 SIC: NAICS: 238320/Painting and Wall Covering Contractors Mailing: 18100 Dairy Lane, Jordan, MN 55352		
Inspection Type: Fat/Cat	Scope: Partial	Advanced Notice: N
Ownership: Private	Safety/Health: Safety	Close Conference: 02/06/2014
		Close Case: 05/29/2014
Related Activity: Type	ID	Safety Health
Accident 871311	Yes	

Case Status: CLOSED

Case Status: CLOSED
Inspection: 892791.015 - Abhe & Svoboda, Inc.

Inspection Information - Office: Hartford		
Nr: 892791.015	Report ID:0112000	Open Date: 02/15/2013
Abhe & Svoboda, Inc. Various Locations Thomaston, CT 06778 SIC:		
		Union Status: NonUnion

NAICS: 237310/ Highway, Street, and Bridge Construction
 Mailing: 17066 Revere Way, Prior Lake, MN 55372

Inspection Type: Planned
 Scope: No Insp/Process Inactive Advanced Notice: N
 Ownership: Private
 Safety/Health: Safety Close Conference: 02/15/2013
 Emphasis: N:Ctarget Close Case: 02/15/2013

Case Status: CLOSED

Case Status: CLOSED
Inspection: 744922.015 - Abhe & Svoboda Inc.

Inspection Information - Office: Providence

Nr: 744922.015 Report ID:0112300 Open Date: 11/19/2012

Abhe & Svoboda Inc.
 Newport Bridge
 Newport, RI 02840 Union Status: Union
 SIC:
 NAICS: 237310/ Highway, Street, and Bridge Construction
 Mailing: 17066 Revere Way, Prior Lake, MN 55372

Inspection Type: Referral
 Scope: Partial Advanced Notice: N
 Ownership: Private
 Safety/Health: Safety Close Conference: 05/13/2013
 Emphasis: L:Fall Close Case: 06/11/2013

Related Activity: Type ID Safety Health
 Referral 671792 Yes

Case Status: CLOSED

Case Status: CLOSED
Inspection: 704278.015 - Abhe & Svoboda, Inc.

Inspection Information - Office: Providence

Nr: 704278.015 Report ID:0112300 Open Date: 10/24/2012

Abhe & Svoboda, Inc.
 Newport Pell Bridge153 Bay View Drive
 Jamestown, RI 02835 Union Status: NonUnion
 SIC:
 NAICS: 237310/ Highway, Street, and Bridge Construction
 Mailing: 17066 Revere Way, Prior Lake, MN 55372

Inspection Type: Planned
 Scope: Complete Advanced Notice: N
 Ownership: Private
 Safety/Health: Safety Close Conference: 10/24/2012
 Emphasis: N:Lead,L:Fall,N:Ctarget Close Case: 12/05/2012

Case Status: CLOSED

Case Status: CLOSED
Inspection: 480679.015 - Abhe & Svoboda, Inc.

Inspection Information - Office: &Nbsp;

Nr: 480679.015 Report ID:0936300 Open Date: 06/19/2012

Abhe & Svoboda, Inc.
 Pearl Harbor - S-1058
 Pearl Harbor, HI 96860 Union Status: NonUnion
 SIC:
 NAICS: 237310/ Highway, Street, and Bridge Construction
 Mailing: 17066 Revere Way, Po Box 251, Prior Lake, MN 55372

Inspection Type: Planned
 Scope: Complete Advanced Notice: N
 Ownership: Private
 Safety/Health: Safety Close Conference: 06/19/2012

Emphasis: L:Hicon

Close Case: 08/27/2012

Case Status: CLOSED

Inspection: 313645525 - Abhe & Svoboda

Inspection Information - Office: Ca Torrance

Nr: 313645525 Report ID:0950635 Open Date: 06/05/2012

Abhe & Svoboda
 3171 N Gaffey St
 San Pedro, CA 90731 Union Status: NonUnion
 SIC: 1731/Electrical Work
 NAICS: 238210/Electrical Contractors
 Mailing: 880 Tavern Rd, Alpine, CA 91901

Inspection Type: Accident
 Scope: Partial Advanced Notice: N
 Ownership: Private
 Safety/Health: Safety Close Conference: 11/28/2012
 Planning Guide: Safety-Construction Close Case: 11/30/2012
 Emphasis: S:Construction (Cship)

Related Activity: Type ID Safety Health
 Accident 362460677

Accident Investigation Summary

Summary Nr: 202531109 Event: 06/05/2012 Employee Is Killed At Work Site, Possible Heart Attack

At 3:20 p.m. on June 4, 2012, Employee #1 was part of a team working to repair and replace the lining of underground fuel tanks. The team was scraping and sandblasting the interior lining of the concrete tanks. This work was occurring at a military base in San Pedro, CA. The tank the team was working on had a capacity of two million gallons of marine grade diesel fuel. Employee #1 was working at grade level, assuring that the sand blast pot was kept full. He had complained the night before that he did not feel well. On the morning of the incident, he complained that he still did not feel well. His foreman, Employee #2, asked if he would like to return to his motel room. He refused, and after lunch he stated that he was feeling a little better. At approximately 3:00 p.m., his partner, Employee #3, went to get some more sand. Upon his return, he found Employee #1 lying face down with his hands at his sides and legs straight out. Employee #1 was unresponsive and did not have a pulse. Another team member, Employee #4, initiated CPR until paramedics arrived. Ultimately, Employee #1 was pronounced dead by the paramedics. His surface injuries indicated that he had fallen on his face. He had trauma to his nose and left eyebrow from the fall. The investigation report cites a possible heart attack. The coroner subsequently determined that this fatality was due to a chronic medical condition. This incident was reported to the Torrance office of Cal/OSHA by the Los Angeles Fire Department at 4:00 p.m. on June 5, 2012. A Cal/OSHA investigator responded immediately and arrived on site at 4:20 p.m. Because the site is a military base, an opening conference was held with the base commander and a foreman for the employer. Both gave permission to continue the inspection. The employer, ABHE & Svoboda Inc., Alpine, CA, is a contractor specializing in custom paint coatings.

Keywords: construction, tank cleaning, sand pot, maintenance, heart attack, fall, forehead, nose

	Inspection	Degree	Nature	Occupation
1	313645525	Fatality	Other	Construction laborers

Inspection: 316265735 - Abhe & Svoboda Inc

Inspection Information - Office: Hawaii

Nr: 316265735 Report ID:0951510 Open Date: 06/01/2012

Abhe & Svoboda Inc
 91-161 Olai St
 Kapolei, HI 96707 Union Status: NonUnion
 SIC: 1629/Heavy Construction, Not Elsewhere Classified
 NAICS: 237990/Other Heavy and Civil Engineering Construction

Inspection Type: Planned
 Scope: Complete Advanced Notice: N
 Ownership: Private
 Safety/Health: Health Close Conference: 06/01/2012
 Planning Guide: Health-Construction Close Case: 06/01/2012

Inspection: 315947838 - Abhe & Svoboda Inc

Inspection Information - Office: Or Health 1-Portland			
Nr: 315947838	Report ID:1054191	Open Date: 10/20/2011	
Abhe & Svoboda Inc Astoria Bridge 422 Gateway Ave Ste 220 Astoria, OR 97103 SIC: 1721/Painting and Paper Hanging NAICS: 238320/Painting and Wall Covering Contractors			
Inspection Type: Referral Scope: Partial Ownership: Private Safety/Health: Health Planning Guide: Health-Construction Emphasis: N:Lead		Advanced Notice: N Close Conference: 02/22/2012 Close Case: 06/25/2012	
Related Activity: Type ID Safety Health Referral 202997367 Yes			

Violation Summary						
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	1					1
Current Violations	1					1
Initial Penalty	105					105
Current Penalty	105					105
FTA Amount						

Violation Items										
#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	<u>01001A</u>	Serious	19260407 B	03/09/2012	10/20/2011	\$105	\$105	\$0	03/27/2012 W - Empr	Withdraw
2.	<u>01001B</u>	Serious	19260152 C03	03/09/2012	04/09/2012	\$0	\$0	\$0	03/27/2012 W - Empr	Withdraw
3.	<u>01001C</u>	Serious	19260152 D02	03/09/2012	04/09/2012	\$0	\$0	\$0	03/27/2012 W - Empr	Withdraw

Inspection: 315177584 - Abhe & Svoboda Inc

Inspection Information - Office: Washington Region 4			
Nr: 315177584	Report ID:1055340	Open Date: 08/25/2011	
Abhe & Svoboda Inc Washington Side Astoria Bridge Chinook, WA 98614 SIC: 1721/Painting and Paper Hanging NAICS: 238320/Painting and Wall Covering Contractors Mailing: Po Box 251, Prior Lake, MN 55372			
Inspection Type: Planned Scope: Complete Ownership: Private Safety/Health: Health Emphasis: L:Constr		Advanced Notice: N Close Conference: 02/14/2012 Close Case: 12/24/2013	

Violation Summary						
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	16	1			6	23
Current Violations	9				9	18
Initial Penalty	24305.55	15000				39305.55
Current Penalty	27750					27750
FTA Amount						

Violation Items										
#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	<u>01001A</u>	Serious	155176090101	02/24/2012	08/02/2013	\$7000	\$15000	\$0	03/08/2012 F - Formal	Settlement
2.	<u>01001B</u>	Serious	155176090103	02/24/2012	08/02/2013	\$0	\$0	\$0	03/08/2012 F - Formal	Settlement
3.	<u>02001A</u>	Other	155176090205 01	02/24/2012	08/02/2013	\$0	\$1500	\$0	03/08/2012 F - Formal	Settlement
4.	<u>02001B</u>	Other	1551761303 A	02/24/2012	08/25/2011	\$0	\$0	\$0	03/08/2012 F - Formal	Settlement
Deleted 5.	<u>02001C</u>	Serious	1551760902 C 02	02/24/2012	03/28/2012	\$0	\$0	\$0	03/08/2012 F - Formal	Settlement
6.	<u>02002A</u>	Other	155176090205 02	02/24/2012	08/02/2013	\$0	\$1500	\$0	03/08/2012 F - Formal	Settlement
7.	<u>02002B</u>	Other	1551761501	02/24/2012	08/02/2013	\$0	\$0	\$0	03/08/2012 F - Formal	Settlement
Deleted 8.	<u>02003A</u>	Serious	1551761105	02/24/2012	03/08/2012	\$0	\$1500	\$0	03/08/2012 F - Formal	Settlement
Deleted 9.	<u>02003B</u>	Serious	84218010	02/24/2012	08/25/2011	\$0	\$0	\$0	03/08/2012 F - Formal	Settlement
10.	<u>02004</u>	Serious	155176110202	02/24/2012	08/02/2013	\$4611	\$1500	\$0	03/08/2012 F - Formal	Settlement

Deleted 11.	02005	Serious	1551761502 H	02/24/2012 08/25/2011	\$0	\$2250	\$0	03/08/2012 F - Formal Settlement
Deleted 12.	02006A	Serious	8421500501 A	02/24/2012 08/25/2011	\$0	\$1500	\$0	03/08/2012 F - Formal Settlement
Deleted 13.	02006B	Serious	8421500501 B	02/24/2012 08/25/2011	\$0	\$0	\$0	03/08/2012 F - Formal Settlement
Deleted 14.	02006C	Serious	8421500502	02/24/2012 08/25/2011	\$0	\$0	\$0	03/08/2012 F - Formal Settlement
15.	02007	Serious	84213005	02/24/2012 08/25/2011	\$2306	\$1500	\$0	03/08/2012 F - Formal Settlement
16.	02008	Serious	8422001002	02/24/2012 08/25/2011	\$2306	\$500	\$0	03/08/2012 F - Formal Settlement
17.	02009	Other	8421800502	02/24/2012 08/25/2011	\$0	\$1500	\$0	03/08/2012 F - Formal Settlement
18.	02010	Serious	842120050205	02/24/2012 08/02/2013	\$2306	\$1500	\$0	03/08/2012 F - Formal Settlement
19.	02011	Serious	8421701504	02/24/2012 08/25/2011	\$2306	\$1500	\$0	03/08/2012 F - Formal Settlement
Deleted 20.	02012	Serious	1551761705	02/24/2012 03/08/2012	\$0	\$1500	\$0	03/08/2012 F - Formal Settlement
Deleted 21.	02013	Serious	1551761902 C	02/24/2012 03/08/2012	\$0	\$1500	\$0	03/08/2012 F - Formal Settlement
22.	02014	Serious	1550036002 D	02/24/2012 08/25/2011	\$2306	\$1500	\$0	03/08/2012 F - Formal Settlement
23.	02015	Serious	81720035	02/24/2012 03/08/2012	\$2306	\$1250	\$0	03/08/2012 F - Formal Settlement
24.	02016A	Serious	1551761502 H	07/12/2013 07/12/2013	\$2306	\$2306	\$0	F - Formal Settlement
25.	02016B	Serious	8421500501 A	07/12/2013 07/12/2013	\$0	\$0	\$0	F - Formal Settlement
26.	02016C	Serious	8421500501 B	07/12/2013 07/12/2013	\$0	\$0	\$0	F - Formal Settlement
27.	02016D	Serious	8421500502	07/12/2013 07/12/2013	\$0	\$0	\$0	F - Formal Settlement
28.	03001	Other	1550002011	02/24/2012 08/25/2011	\$0	\$0	\$0	03/08/2012 F - Formal Settlement
29.	03002	Other	1550014002 B	02/24/2012 08/25/2011	\$0	\$0	\$0	03/08/2012 F - Formal Settlement
30.	03003	Other	155176110205	02/24/2012 08/02/2013	\$0	\$0	\$0	03/08/2012 F - Formal Settlement
31.	03004	Other	842120100204	02/24/2012 08/02/2013	\$0	\$0	\$0	03/08/2012 F - Formal Settlement
32.	03005	Other	8421201002 E	02/24/2012 08/25/2011	\$0	\$0	\$0	03/08/2012 F - Formal Settlement
33.	03006	Other	81720015	02/24/2012 03/08/2012	\$0	\$0	\$0	03/08/2012 F - Formal Settlement

Inspection: 315177634 - Abhe & Svoboda Inc

Inspection Information - Office: Washington Region 4

Nr: 315177634	Report ID:1055340	Open Date: 08/25/2011
Abhe & Svoboda Inc Washington Side Astoria Bridge Chinook, WA 98164 SIC: 1721/Painting and Paper Hanging NAICS: 238320/Painting and Wall Covering Contractors Mailing: 17066 Revere Way Po Box 251, Prior Lake, MN 55372		
Inspection Type: Planned	Scope: Complete	Advanced Notice: N
Ownership: Private	Safety/Health: Safety	Close Conference: 10/25/2011
Emphasis: L:Constr		Close Case: 01/07/2013
Union Status: NonUnion		

Violation Summary

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	8			7		15
Current Violations	3			4		7
Initial Penalty	17700					17700
Current Penalty	3500					3500
FTA Amount:						

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001	Serious	87440006	11/16/2011	11/20/2011	\$1500	\$2700	\$0	12/07/2011 F - Formal Settlement	
Deleted 2.	01002	Other	155003300604	11/16/2011	11/20/2011	\$0	\$2700	\$0	12/07/2011 F - Formal Settlement	
Deleted 3.	01003	Serious	1550033001 A	11/16/2011	08/25/2011	\$0	\$1800	\$0	12/07/2011 F - Formal Settlement	
4.	01004	Serious	155245100201 17	11/16/2011	11/20/2011	\$1500	\$1800	\$0	12/07/2011 F - Formal Settlement	
5.	01005	Serious	87430020	11/16/2011	11/20/2011	\$500	\$2700	\$0	12/07/2011 F - Formal Settlement	
Deleted 6.	01006	Serious	155003300605	11/16/2011	11/20/2011	\$0	\$2700	\$0	12/07/2011 F - Formal Settlement	
Deleted 7.	01007	Serious	1555560012	11/16/2011	11/20/2011	\$0	\$2700	\$0	12/07/2011 F - Formal Settlement	
Deleted 8.	01008	Serious	87420034	11/16/2011	11/20/2011	\$0	\$600	\$0	12/07/2011 F - Formal Settlement	
9.	02001	Other	155001400402	11/16/2011	11/20/2011	\$0	\$0	\$0	12/07/2011 F - Formal Settlement	
10.	02002	Other	1550026003 G	11/16/2011	08/25/2011	\$0	\$0	\$0	12/07/2011 F - Formal Settlement	
Deleted 11.	02003	Other	1550033005 A	11/16/2011	08/25/2011	\$0	\$0	\$0	12/07/2011 F - Formal Settlement	
Deleted 12.	02004	Other	155003300201	11/16/2011	11/29/2011	\$0	\$0	\$0	12/07/2011 F - Formal Settlement	
Deleted 13.	02005	Other	024294230302	11/16/2011	11/24/2011	\$0	\$0	\$0	12/07/2011 F - Formal Settlement	
14.	02006	Other	155001400404	11/16/2011	11/20/2011	\$0	\$0	\$0	12/07/2011 F - Formal Settlement	
15.	02007	Other	155003300604	11/16/2011	12/14/2012	\$0	\$0	\$0	-	

Inspection: 314917147 - Abhe & Svoboda Inc.

Inspection Information - Office: Providence

Nr: 314917147 Report ID:0112300 Open Date: 04/07/2011

Abhe & Svoboda Inc.
Newport Bridge
Newport, RI 02840 Union Status: NonUnion
SIC: 1622/Bridge, Tunnel, and Elevated Highway Construction
NAICS: 237310/ Highway, Street, and Bridge Construction
Mailing: 17066 Revere Way, Prior Lake, MN 55372

Inspection Type: Planned
Scope: Complete Advanced Notice: N
Ownership: Private
Safety/Health: Safety Close Conference: 04/07/2011
Planning Guide: Safety-Construction Close Case: 05/04/2011

Inspection: 315422691 - Abhe & Svoboda Inc

Inspection Information - Office: Or Safety 2-Portland

Nr: 315422691 Report ID:1054112 Open Date: 03/29/2011

Abhe & Svoboda Inc
Astoria Bridge
Astoria, OR 97103 Union Status: NonUnion
SIC: 1721/Painting and Paper Hanging
NAICS: 238320/Painting and Wall Covering Contractors
Mailing: National Registered Agents Inc 325 13th St Ne Ste, Salem, OR 97301

Inspection Type: Complaint
Scope: Partial Advanced Notice: N
Ownership: Private
Safety/Health: Safety Close Conference: 04/25/2011
Planning Guide: Safety-Construction Close Case: 09/29/2011

Related Activity: Type ID Safety Health
Complaint 208254938 Yes

Violation Summary

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	1					1
Current Violations	1					1
Initial Penalty	450					450
Current Penalty	450					450
FTA Amount						

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001	Serious	701076003 A	06/01/2011	06/11/2011	\$450	\$450	\$0	06/30/2011	L - State Settlement

Inspection: 313257230 - Abhe & Svoboda Inc

Inspection Information - Office: Michigan Safety Cnst

Nr: 313257230 Report ID:0552651 Open Date: 08/26/2010

Abhe & Svoboda Inc
I 76 Mackinaw Bridge
St Ignace, MI 49781 Union Status: NonUnion
SIC: 1611/Highway and Street Construction, Except Elevated Highways
NAICS: 237310/ Highway, Street, and Bridge Construction
Mailing: 17066 Revere Way, Prior Lake, MN 55372

Inspection Type: Planned
Scope: Partial Advanced Notice: N
Ownership: Private
Safety/Health: Safety Close Conference: 08/26/2010
Planning Guide: Safety-Construction Close Case: 12/09/2010
Emphasis: S:Construction

Violation Summary

Serious	Willful	Repeat	Other	Unclass	Total

Initial Violations				2		2
Current Violations				2		2
Initial Penalty						
Current Penalty						
FTA Amount						

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001	Other	4084012102	09/23/2010	09/28/2010	\$0	\$0	\$0		-
2.	01002	Other	40841123	09/23/2010	09/28/2010	\$0	\$0	\$0		-

Inspection: 313329039 - Abhe & Svoboda

Inspection Information - Office: Michigan Safety Crst

Nr: 313329039	Report ID:0552651	Open Date: 10/07/2009
Abhe & Svoboda N415 I 75 St Ignace, MI 49781 SIC: 1721/Painting and Paper Hanging NAICS: 238320/Painting and Wall Covering Contractors Mailing: 17066 Revere Way, Prior Lake, MN 55372		
Inspection Type: Complaint Scope: Partial Ownership: Private Safety/Health: Safety Planning Guide: Safety-Construction Emphasis: S:Construction		
Advanced Notice: N Close Conference: 10/07/2009 Close Case: 10/07/2009		
Related Activity: Type	ID	Safety Health
Complaint 206371809 Yes		

Inspection: 311823645 - Abhe & Svoboda, Inc.

Inspection Information - Office: Jacksonville

Nr: 311823645	Report ID:0419700	Open Date: 09/11/2009
Abhe & Svoboda, Inc. 8904 Dames Point Road Jacksonville, FL 32226 SIC: 1721/Painting and Paper Hanging NAICS: 238320/Painting and Wall Covering Contractors Mailing: 17066 Revere Way, Prior Lake, MN 55372		
Inspection Type: Complaint Scope: Complete Ownership: Private Safety/Health: Safety L:Fall,S:Commercial Emphasis: Constr,S:Fall From Height,S:Struck-By		
Advanced Notice: N Close Conference: 09/11/2009 Close Case: 10/07/2009		
Related Activity: Type	ID	Safety Health
Complaint 207372327 Yes		

Inspection: 313369266 - Abhe & Svoboda

Inspection Information - Office: Charleston

Nr: 313369266	Report ID:0316400	Open Date: 07/08/2009
Abhe & Svoboda I-79 Kenton Meadows Bridge Frametown, WV 26623 SIC: 1721/Painting and Paper Hanging NAICS: 238320/Painting and Wall Covering Contractors Mailing: 79 Brownstone Ave, Portland, CT 06480		
Inspection Type: Planned Scope: No Insp/Process Inactive Ownership: Private		
Advanced Notice: N		

Safety/Health: Safety
 Planning Guide: Safety-Construction
 Emphasis: L:Bridge

Close Conference: 07/08/2009
 Close Case: 07/08/2009

Inspection: 310629696 - Abhe & Svoboda Inc.

Inspection Information - Office: Springfield

Nr: 310629696 Report ID:0112600 Open Date: 11/26/2008

Abhe & Svoboda Inc.
 213 Royal Street
 Chicopee, MA 01020 Union Status: NonUnion
 SIC: 1721/Painting and Paper Hanging
 NAICS: 238320/Painting and Wall Covering Contractors
 Mailing: 17066 Revere Way, Po Box 251, Prior Lake, MN 55372

Inspection Type: Complaint
 Scope: Partial Advanced Notice: N
 Ownership: Private
 Safety/Health: Health Close Conference: 12/18/2008
 L:Constrep,L:Fall,N:Lead,S:Commercial
 Emphasis: Constr,S:Fall From Close Case: 01/30/2009
 Height,S:Lead,S:Noise

Related Activity: Type ID Safety Health
 Complaint 206124711 Yes Yes

Violation Summary

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	2					2
Current Violations	1			1		2
Initial Penalty	2750					2750
Current Penalty	1925					1925
FTA Amount						

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001	Other	19100134 C01	12/29/2008	01/02/2009	\$0	\$825	\$0		I - Informal Settlement
2.	01002	Serious	19100134 I07	12/29/2008	01/02/2009	\$1925	\$1925	\$0		I - Informal Settlement

Inspection: 311479463 - Abhe And Svoboda

Inspection Information - Office: Vermont

Nr: 311479463 Report ID:0155010 Open Date: 11/12/2008

Abhe And Svoboda
 5733 Vt Rt 14
 Sharon, VT 05065 Union Status: NonUnion
 SIC: 1721/Painting and Paper Hanging
 NAICS: 237310/ Highway, Street, and Bridge Construction
 Mailing: 17066 Revere Way, Prior Lake, MN 55372

Inspection Type: Planned
 Scope: Complete Advanced Notice: N
 Ownership: Private
 Safety/Health: Safety Close Conference: 11/12/2008
 Planning Guide: Safety-Construction Close Case: 12/04/2008
 Emphasis: L:Fall

Inspection: 311479158 - Abhe & Svoboda Inc

Inspection Information - Office: Vermont

Nr: 311479158 Report ID:0155010 Open Date: 11/12/2008

Abhe & Svoboda Inc
 5733 Vt Route 14 At Sharon Bridge
 Sharon, VT 05065 Union Status: NonUnion
 SIC: 1721/Painting and Paper Hanging
 NAICS: 238320/Painting and Wall Covering Contractors

Mailing: 17066 Revere Way, Prior Lake, MN 55372

Inspection Type: Planned	Advanced Notice: N
Scope: Complete	
Ownership: Private	
Safety/Health: Health	Close Conference: 11/12/2008
Planning Guide: Health-Construction	Close Case: 09/01/2010
Emphasis: S:Lead,S:Site Specific Targeting	

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UNITED STATES DEPARTMENT OF LABOR

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Inspection: 312426190 - Abhe & Svoboda Inc

Inspection Information - Office: Minnesota										
Nr: 312426190	Report ID:0552700	Open Date: 07/16/2008								
Abhe & Svoboda Inc 17066 Revere Way Prior Lake, MN 55372		Union Status: NonUnion								
SIC: 1721/Painting and Paper Hanging NAICS: 238320/Painting and Wall Covering Contractors										
Inspection Type: Referral Scope: Partial Ownership: Private Safety/Health: Health Emphasis: S:Lead		Advanced Notice: N Close Conference: 07/16/2008 Close Case: 07/22/2008								
<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; font-size: 0.7em;">Related Activity: Type</th> <th style="font-size: 0.7em;">ID</th> <th style="font-size: 0.7em;">Safety</th> <th style="font-size: 0.7em;">Health</th> </tr> </thead> <tbody> <tr> <td style="font-size: 0.7em;">Referral</td> <td style="font-size: 0.7em;">200514727</td> <td style="font-size: 0.7em;"></td> <td style="font-size: 0.7em;">Yes</td> </tr> </tbody> </table>			Related Activity: Type	ID	Safety	Health	Referral	200514727		Yes
Related Activity: Type	ID	Safety	Health							
Referral	200514727		Yes							

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

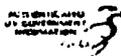
ABHE & SVOGODA, INC.,	:	
	:	
Plaintiff,	:	
	:	
V.	:	Civil Action No. 04-1973 (JR)
	:	
ELAINE CHAO, Secretary, U.S.	:	
Department of Labor,	:	
	:	
Defendant.	:	

MEMORANDUM

Plaintiff Abhe and Svogoda, Inc. (A & S), a construction company, seeks judicial review of a decision by the Labor Department's Administrative Review Board (Board) in a dispute arising under the Federal-Aid Highways Act, 23 U.S.C. § 101, et seq., and the Davis-Bacon Act, 40 U.S.C. § 3141, et seq. I previously dismissed three of the four counts of plaintiff's complaint. The remaining count alleges that the plaintiff lacked fair warning of the rule on which the Board based its decision. The parties have filed cross-motions for summary judgment [16, 18]. For the reasons discussed below, the government's motion for summary judgment [16] will be **granted**, and the plaintiff's motion for summary judgment [18] will be **denied**.

1. Background

In 1994 and 1995, A & S entered into three contracts with the Connecticut Department of Transportation to clean and



paint bridges. The projects received federal funds, and were accordingly subject to the prevailing wage determinations of the Davis-Bacon Act. After conducting its own research on Connecticut practices, A & S paid painter's rates to employees who actually painted the bridges, but paid only the lower carpenter's rates or laborer's rates to employees who performed tasks associated with bridge painting (e.g., decontamination showering, waste cleanup). In 1996, when the Administrator of the Wage and Hour Division was notified of this practice, he launched an investigation. After surveying the local area practices, the Administrator determined that all workers on the bridge cleaning and painting jobs should have been paid painters' rates, and that A & S had thus underpaid certain employees. To cover back wages, DOL withheld \$1.3 million in contract payments from A & S -- the amount of the underpayments by A & S and three of its subcontractors. An administrative law judge upheld the Administrator's decision. The Board affirmed the ALJ's decision and, on October 15, 2004, denied A & S's motion for reconsideration.

2. Analysis

As a general principle, parties to government contracts are obliged to know all applicable legal principles. See ATC Petroleum, Inc. v. Sanders, 860 F. 2d 1104, 1111-12 (D.C. Cir. 1988) ("[P]arties dealing with the government are expected to know

the law."). Before this court, and in all the adjudications below, the government has relied heavily on what it believes to be a "longstanding principle" established by Fry Brothers, 123 WAB No. 76-06 (June 14, 1977). Davis-Bacon wage determinations list only job classifications and their corresponding minimum wage and fringe benefit rates; they do not contain job descriptions. Fry Brothers stated that the job content -- or task lists -- for classifications in Davis-Bacon wage determinations must be based on locally prevailing practices, and that, where union rates prevail, the proper classification of duties under the wage determination is established by the area practice of union contractors signatory to the relevant collective bargaining agreement. As the Board explained:

[If] a construction contractor who is now bound by the classifications of work at which the majority of employees in the area are working is free to classify or reclassify, grade or subgrade traditional craft work as he wishes, such a contractor can, with respect to wage rates, take almost any job away from the group of contractors and the employees who work for them who have established the locality wage standard. There will be little left to the Davis-Bacon Act.... Such a contractor could change his own practice according to what he believed each employee was worth for the work he was doing.

Id. at 17. In Connecticut, according to the government, all bridge-related work was included in the job content of the local painters' unions. Therefore all workers on the bridge projects should have been paid at painters' wage rates.

A & S asserts, however, that it did not have fair warning of the government's reliance on Fry Brothers, and that Fry Brothers was not published in any official publication prior to the award of the covered contracts to A & S. Nor, they argue, was the decision incorporated by reference anywhere in the published bid specifications, wage determinations, or regulations that were available to A & S at the time of the bidding and award of the contracts at issue. Fry Brothers, plaintiff contends, is a classic example of the "secret law" frowned upon by the Court of Appeals. See, e.g., Gates & Fox Co. v. Occupational Safety & Health Review, 790 F. 2d 154, 156 (D.C. Cir. 1986) ("An employer ... is entitled to fair notice in dealing with his government. ... [S]tatutes and regulations which allow monetary penalties against those who violate them ... must give an employer fair warning of the conduct it prohibits or requires."). The withholding of funds without fair notice, A & S asserts, is a due process violation.

An agency may choose to establish new principles through rulemaking, but due process requires that, when it does so, it provide notice "which is reasonably calculated to inform all those whose legally protected interest may be affected by the new principle." Mobil Exploration and Producing North America, Inc. v. FERC, 881 F.2d 193, 199 (5th Cir. 1989). In Mobil, however, the new adjudication-based rule that FERC wanted to

enforce had only been published in the original opinion, in two sentences buried in an "otherwise routine" order. Further, that order was available for review only at FERC's offices, on a bulletin board covered with glass, on which only the first page of any order was visible. The important language in the order was not published anywhere except in a commercial reporting service, along with volumes of other routine orders. Under these circumstances, the Fifth Circuit held that FERC had not provided the plaintiff with fair warning of the new rule.

The Fry Brothers decision, however, was not "secret law." Before A & S entered into the relevant contracts in 1993/1994, at least two cases in this court had cited, not just Fry Brothers, but the precise language upon which the government relies today. See Bldg. & Constr. Trades' Dep't v. Donovan, 543 F. Supp. 1282, 1285 (D.D.C. 1982), affirmed in part and reversed in non-relevant part, 712 F.2d 611 (D.C. Cir. 1982); Tele-Sentry Security, Inc. v. Secretary of Labor, 1991 WL 178135 (D.D.C. 1991). Fry Brothers was the heavily cited precedent for a final rule issued by the Department of Labor in 1989. See 54 F.R. 4234 (1989). Further, the Wage Appeals Board, predecessor to the Administrative Review Board, regularly cited Fry Brothers in its opinions between 1977 and 1994. See, e.g., Prime Roofing, Inc., WAB Case No. 92-15, 1993 DOL Wage App. Bd. LEXIS 19 (July 16, 1993); Trataros Construction Corp., WAB Case No. 92-03, 1993 DOL

Wage App. Bd. LEXIS 12 (April 28, 1993). Plaintiff may indeed have been unaware of the rule announced in Fry Brothers, but it is not unreasonable to hold plaintiff responsible for knowing the rule. "There is no grave injustice in holding parties to a reasonable knowledge of the law." ATC Petroleum, 860 F.2d at 1112.

Plaintiff's various other claims of lack of fair warning are either variations of their initial claim, dressed up in different language, or are claims that are more appropriately considered challenges to the Administrator's wage determination in this case. To the extent they are the first, they are addressed above; to the extent they are the second, this court does not have jurisdiction to hear them. See, e.g., Universities Research Ass'n v. Coutu, 450 U.S. 754, 761 n.10 (1981).

* * * * *

An appropriate order accompanies this memorandum.

JAMES ROBERTSON
United States District Judge



STATE OF MICHIGAN
RICK SNYDER, Governor



MACKINAC BRIDGE AUTHORITY

N415 I-75 ST. IGNACE, MICHIGAN 49781 906-643-7600 FAX: 906-643-7668

WILLIAM H. GNODTKE, CHAIRMAN
BARBARA J. BROWN, VICE CHAIR
MURRAY D. WIKOL
PATRICK F. GLEASON
KIRK T. STELDLE, P.E.,
DIRECTOR

R. DAN MUSSER, III
ROBERT C. STRUCK
ANDY DILLON, TREASURER
ROBERT J. SWEENEY, P.E.
EXECUTIVE SECRETARY

August 1, 2013

Mr. Patrick Gleason
5215 North State Road
Davison, Michigan 48423

Subject: Liquidated Damages for Contract 86000 M00215; North Side Span Painting Project

Dear Mr. Gleason:

The total liquidated damages incurred by Abhe & Svoboda for the above referenced project was six hundred forty three days (643) at Three Thousand and 00/100 Dollars (\$3,000.00) per day for a total penalty of One Million Nine Hundred Twenty Nine Thousand and 00/100 Dollars (\$1,929,000.00).

If you have any other questions or need any more information please call me at 906-643-7600.

Sincerely,

Robert J. Sweeney, P.E.
Executive Secretary



EXHIBIT C

CORPORATE OFFICE
18100 DAIRY LANE
JORDAN, MN 55352
(952) 447-6025
(952) 447-1000 FAX

February 19, 2015

Kevin Cameron, Project Manager
Otay Water District
2554 Sweetwater Springs Blvd.
Spring Valley, CA 91978

Project Name: 850-3 Reservoir Interior Coating

Subject: Protest Filed by the Painters & Allied Trades Union Local 36

CALIFORNIA OFFICE
880 TAVERN ROAD
ALPINE, CA 91901
(619) 659-1320
(619) 659-1325 FAX

Dear Kevin,

It is unfortunate the Union has elected to pick and chose which supporting documents they sent as part of their protest. Had they forwarded all of the documentation, it would have become quite evident their protest has no merit. The explanation of the protest allegations are as follows:

Allegation #1

As stated and clearly shown in the attached documents, Abhe & Svoboda, Inc, did comply with Labor Code 1777.5 by sending out its required DAS-140 form informing the Union that we are requesting their assistance in providing painter apprentices for the Eagle Mountain project. A Request for Dispatch of Apprentice Form DAS-142 was sent to them as well and they elected NOT to dispatch any of their apprentices, or even give us the courtesy of a phone call, probably due to the projects remote location in the Riverside County desert, and the short 21 day completion duration. However after the project was completed, they filed a complaint citing failure to utilize apprentices. In an effort to mitigate attorney and administration costs, a settlement agreement was entered into with the Department of Industrial Relations along with a non-admission letter that is also on record, and the issue was closed.

It is unfortunate that same group has now elected to further their agenda and deceptive business practices by disrupting and attempting to delay the award of this project. In addition they are taking advantage of the Public Works contracting procedures by causing it to incur unnecessary legal and administrative fees in determining if the Protest lacks validity. Needless to say, Abhe & Svoboda, Inc. no longer has any dealings with their Local 36 Union or attempts to utilize any of their apprentices. We comply with the Apprenticeship requirements of Labor Code 1777.5 by utilizing apprentices furnished by the Painting and Decorating Contractors of America (PDCA), and Associated Builders and Contractors Inc. (ABC).

Allegation #2

On August 22, 2014, ASI received a Determination of Civil Penalty – Labor Code Section 1777.7 from the Department of Industrial Relations Division of Labor Standards Enforcement for Violation of Labor Code Section 1777.7: Failure to comply with provisions involving employment of apprentices; Failure to employ Laborer apprentices. The period of non-compliance is 9/4/2012 – 7/3/2013, a period of 303 days at \$300/violation.” This notice related to Caltrans project 06-0N0704 - Clean and Paint Existing Bridges Kern & Fresno Counties.

The severity of the Violation was based on an apparent misunderstanding that this was ASI’s third Apprenticeship Violation in the last three years, though ASI is only aware of the Eagle Mountain settlement detailed above. ASI immediately requested an opportunity for settlement meeting as well as a formal hearing with the Labor Commissioner’s Determination Review Office. Our appeal is based on the fact that the vast majority of this project was cleaning and painting of structural steel which has historically been classified as Industrial Painters wage scale. ASI established Laborer wage codes to compensate painters who periodically erected and monitored traffic control systems. The Laborer scale was higher than the Painter scale.

Overall, ASI exceeded the target Apprenticeship ratio to Journeyman hours across all Labor Classifications on site. The case is pending.

Allegation #3

Abhe & Svoboda, Inc. has an excellent safety record and more importantly we have an excellent safety culture. Our National Experience Modifier Rate (EMR), which is what insurance companies utilize to determine the risk of insuring a contractor from a worker's compensation insurance point of view, is 0.63 for the 2014-2015 year. I have attached a description of the EMR and a letter from our insurance broker showing ASI's EMR for the previous four years. As you can see ASI is far below the average for our industry which is 1.00. Not only are we far ahead of our industry competitors, but we are deemed by the insurance company to be less risky than the average contractor who paints and hangs wallpaper on the interior walls of houses and office buildings since we are lumped into that NAICS Code category of trades. We have received outstanding safety reviews from the Department of the Navy, US Army Corps of Engineers, several States' Departments of Transportation, and countless municipalities across the country. ASI has a Corporate Safety Committee which is comprised of our personnel located across the country who are involved in Health and Safety and/or management on our projects. It should also be mentioned that our California Safety and Health Director is the assistant Chairperson for the Corporate Safety Committee and he will be involved in all safety aspects of this project. ASI also has a full time CIH on staff. He has been with the company for more than 6 years and has more experience in this industry and the hazards that are found within it than just about any other CIH in the country.

The Protest alleges that Abhe & Svoboda, Inc. has had OSHA violations every year from 2008 through the present. This is an incorrect statement. We have had OSHA inspections every year which the Union is well aware of since they are ones that prompted them with their unmerited allegations to harass our non-union firm. However on the vast majority of the inspections, our firm has actually been complimented by the OSHA inspector. I was actually told by an OSHA inspector after a jobsite safety inspection that “he wanted me to give the crew a pat on the back, and if all of the jobsites were this tidy and squared away, he would be out of a job.”

I have attached a copy of all OSHA violations during the Past 5 years. It is unfortunate the majority of those citations were on one job in Washington whereas the Union repeatedly called OSHA on us as a harassment tactic. More than half of the citations also resulted in a zero penalty due to their minor nature, and the largest penalty was an administrative failure for not having the lead sampling records readily available for him during the inspection.

Allegation #4

We performed three bridge repair projects for the State of Connecticut Department of Transportation in 1994-1995. There were several tasks of different types of work to be completed including painting. We performed the work using the job classifications that the State of Connecticut advised us to use for each trade task. We completed the work, submitted the certified payroll reports, and the State of Connecticut approved the certified payroll reports and in fact, rated our compliance as above average or excellent. We were audited by the State of Connecticut Department of Labor and they found no mistakes and had no issues with the classifications that were used. After the State of Connecticut was audited by the Federal Department of Labor the auditor determined that the entire job should have been paid at the painter rate. Unfortunately we were caught in the middle and required to pay additional wages to our employees, for the difference of the labor rates even when they were not performing painting activities. There were no penalties assessed.

Allegation #5

On the Mackinac Bridge Painting project in St. Ignace, Michigan, the project was awarded in December 2007 in the harshest part of the winter where painting and proper curing of bridge coating are not possible during the winter months. Michigan DOT delayed the approval of our proposed rigging and scaffolding submittals until July of the following year, more than halfway through the desirable painting season. Unable to work in the winter months, and other owner caused delays that we feel were not the fault of Abhe & Svoboda, Inc, however we were assessed liquidated damages in the amount of \$ 1,929,000. Abhe & Svoboda, Inc. is in the process of appealing this assessment."

Summary

In summary, I would like to point out that ASI does not believe the protest has any legal merit. It is simply a smear campaign by an affiliate of a trade union that wants all non-union contractors to be removed from consideration of award on public works construction projects, thereby jeopardizing and monopolizing the competitive bid process. Abhe & Svoboda, Inc. is in fact the most qualified contractor who submitted a bid on this project and should be awarded the job.

Sincerely,



David Grant
Area Manager

Attachments: 12 pages

Labor Commissioner, State of California Department of Industrial Relations Division of Labor Standards Enforcement 300 Ocean Gate Ste 850 Long Beach, CA 90802 (562) 983-1832 FAX: 562-499-6439	
Abhe & Svoboda, Inc. 17066 Revere Way Prior Lake, MN 55372 Shelly Ramirez	
DATE: October 7, 2011	In Reply Refer to Case No: 40-29372/235

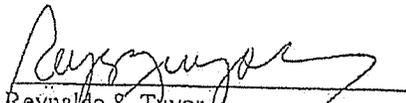
NOTICE OF COMPLAINT CLOSED

PROJECT NAME	Project No.
Eagle Mountain Pumping Plant Delivery Pipe Expansion Joint Repair	0
Prime Contractor	
Abhe & Svoboda, Inc.	
Subcontractor	
N/A	

The complaint against the above-named contractor(s) is being closed for the following reason(s):

- Subject firm has satisfactorily paid all prevailing wages and/or penalties found due.
- The statute of limitations for the Labor Commissioner to prosecute California Public Work Law (Labor Code sections 1720 through 1861) has expired. Information for claimant please note: There are other legal claims which you may still pursue even though the statute of limitations has expired for the Labor Commissioner to enforce the public work provisions of the Labor Code. You may want to review the California Court of Appeals decision in the case of Tippet v Terich (1995), 37 Cal.App.4th 1517, 44 Cal.Rptr.2d 862 and/or consult with an attorney to determine if you may pursue any of the legal actions discussed in the Tippet v Terich decision.
- There is insufficient evidence to confirm California Public Work Law was violated.
- Subject firm was not within the jurisdiction of California Public Work Law on this project.
- Other: _____

STATE LABOR COMMISSIONER

By 
 Reynaldo S. Taylor
 Deputy Labor Commissioner I

Labor Commissioner, State of California Department of Industrial Relations Division of Labor Standards Enforcement 300 Océangate Ste 850 Long Beach, CA 90802 (562) 983-1832 FAX: 562-499-6439	
The Metropolitan Water District of Southern Cali 700 N. Alameda Street Los Angeles, CA 90012 Janice Richardson	
DATE: September 23, 2011	In Reply Refer to Case No: 40-29372/235

RELEASE OF CIVIL WAGE AND PENALTY ASSESSMENT

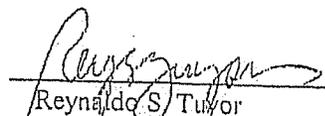
PROJECT NAME		Project No.
Eagle Mountain Pumping Plant Delivery Pipe Expansion Joint Repair		1706.00
Prime Contractor		
Abhe & Svoboda, Inc.		
Subcontractor		
N/A		

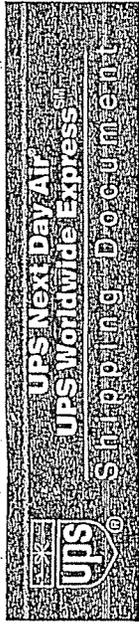
On September 9, 2011, this Division filed a CIVIL WAGE AND PENALTY ASSESSMENT (copy attached) on the above-named Public Work Project in the total amount due of \$18,647.93

Please consider this Notice as a full release of our CIVIL WAGE AND PENALTY ASSESSMENT dated September 9, 2011

Executed on September 23, 2011, at Long Beach, California.

STATE LABOR COMMISSIONER

By 
 Reynaldo S. Tuyor
 Deputy Labor Commissioner I



See instructions on back. Call 1-800-PICK-UPS (800-742-5877) for additional information.

TRACKING NUMBER 1Z 67X 182 22 1009 084 6

SHIPMENT REFERENCE
 SHIPPER'S UPS ACCOUNT NO.
 67X182

REFERENCE NUMBER
 10020 - DAS 1490

NAME
 David Grant Press
 COMPANY
 ABHE & SYOBODA, INC
 STREET ADDRESS
 880 TAVERNARD
 CITY AND STATE
 ALPINE CA 91901

TELEPHONE
 619-659-1320

COMPANY
 Southern Calif. Printers & Drywall
 DEPT./FLR.
 STREET ADDRESS
 2333 N. LAKE AVE. Unit 1
 CITY AND STATE (INCLUDE COUNTRY IF INTERNATIONAL)
 ALTADENA, CA 91001



SHIPPER'S COPY

WEIGHT ENTER "LIT" IF LETTER L 7 R	DIMENSIONAL WEIGHT If Applicable	SHIPPER'S CHARGES	
<input checked="" type="checkbox"/> NEXT DAY AIR	<input type="checkbox"/> EXPRESS (INTL)	FOR WORLDWIDE EXPRESS SHIPMENTS Mark "X" in this box if shipment contains documents only.	DOCUMENTS ONLY
<input type="checkbox"/> SATURDAY PICKUP See instructions.	<input type="checkbox"/> SATURDAY DELIVERY See instructions.	INSURED VALUE Contents are automatically insured for up to \$100,000. For over \$100,000, see instructions.	AMOUNT
<input type="checkbox"/> C.O.D. C.O.D. order must be paid by UPS C.O.D. up to package.	<input type="checkbox"/> AMOUNT	ADDITIONAL HANDLING CHARGE An Additional Handling Charge applies for certain items. See instructions.	AMOUNT
TOTAL CHARGES		BILL TO SHIPPER <input checked="" type="checkbox"/>	
NET/PAID TO PAYEE		BILL RECEIVER PARTY CREDIT CARD Next Day Air/Cher	American Express MasterCard Visa
RECEIVERS / THIRD PARTYS UFS ACCT. NO. OR MAJOR CREDIT CARD NO.		EXPIRATION DATE	
THIRD PARTY'S COMPANY NAME		DATE OF SHIPMENT 12/29/10	
STREET ADDRESS		ZIP CODE	
CITY AND STATE		SIGNATURE X <i>[Signature]</i>	

0101911202609 6/00 MW



Proof of Delivery

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Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number:

1Z67X1822210090846

Service:

UPS Next Day Air®

Shipped/Billed On:

12/29/2010

Delivered On:

12/30/2010 10:11 A.M.

Delivered To:

ALTADENA, CA, US

Signed By:

MARAVILLA

Left At:

Receiver

Thank you for giving us this opportunity to serve you.

Sincerely,

UPS

Tracking results provided by UPS: 01/17/2011 12:38 P.M. ET

[Print This Page](#)

[Close Window](#)

PUBLIC WORKS CONTRACT AWARD INFORMATION

Contract award information must be sent to your Apprenticeship Committee if you are approved to train. If you are not approved to train, you must send the information (which may be this form) to ALL applicable Apprenticeship Committees in your craft or trade in the area of the site of the public work. Go to: <http://www.dir.ca.gov/das/PublicWorksForms.htm> for information about programs in your area and trade. You may also consult your local Division of Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards.

Do not send this form to the Division of Apprenticeship Standards.

NAME OF YOUR COMPANY ABHE & SVOBODA, INC.	CONTRACTOR'S STATE LICENSE NO 506526
MAILING ADDRESS- NUMBER & STREET, CITY, ZIP CODE 880 TAVERN Rd, ALPINE, CA 91901	AREA CODE & TELEPHONE NO. 619-659-1320
NAME & ADDRESS OF PUBLIC WORKS PROJECT EAGLE MOUNTAIN PLANT 15500 KAISER TRUCK Rd. DESERT CENTER, CA 92239	DATE YOUR CONTRACT EXECUTED 9-28-10
	DATE OF EXPECTED OR ACTUAL START OF PROJECT 1-3-11
NAME & ADDRESS OF PUBLIC AGENCY AWARDED CONTRACT METROPOLITAN WATER DISTRICT 700 NORTH ALAMEDA ST. LOS ANGELES, CA 90012	ESTIMATED NUMBER OF JOURNEYMEN HOURS 2,000
	OCCUPATION OF APPRENTICE PAINTER
THIS FORM IS BEING SENT TO: (NAME & ADDRESS OF APPRENTICESHIP PROGRAM(S)) Southern California Painters & Drywall Industries JAC 2333 N. Lake Aveune, Unit I Altadena, CA 91001 Fax No: 626-792-4435	ESTIMATED NUMBER OF APPRENTICE HOURS 400
	APPROXIMATE DATES TO BE EMPLOYED 1-5-11 TO 2-15-11

This is not a request for dispatch of apprentices.

Contractors must make a separate request for actual dispatch, in accordance with Section 230.1(a) California Code of Regulations

Check One Of The Boxes Below

1. We are already approved to train apprentices by the _____ Apprenticeship Committee. We will employ and train under their Standards. Enter name of the Committee
2. We will comply with the standards of. Southern California Painters & Drywall Industries Apprenticeship Committee for the duration of this job only. Enter name of the Committee
3. We will employ and train apprentices in accordance with the California Apprenticeship Council regulations, including § 230.1 (c) which requires that apprentices employed on public projects can only be assigned to perform work of the craft or trade to which the apprentice is registered and that the apprentices must at all times work with or under the direct supervision of journeyman/men.

Signature *David Grant* Date 12/29/10

Typed Name DAVID GRANT

Title Area Manager

State of California - Department of Industrial Relations DIVISION
OF APPRENTICESHIP STANDARDS

COPY

REQUEST FOR DISPATCH OF AN APPRENTICE

Do not send this form to DAS

You may use this form to request dispatch of an apprentice from the Apprenticeship Committee in the craft or trade in the area of the public work. Go to: <http://www.dir.ca.gov/DAS/PublicWorksForms.htm> for information about programs in your area and trade. You may also consult your local Division of Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards.

Date: 12-29-10

To Applicable Apprenticeship Committee: Southern California Painters & Drywall Industries JAC

Address: 2333 N. Lake Ave., Unit I, Altadena, CA 91001

Telephone: (626) 792-3019 Fax: (626) 792-4435

Contractor Requesting Dispatch: ABHE & SVOBODA, INC.

Address: 880 TAVERN RD., ALPINE, CA 91901

Telephone: 619-659-1320 Fax: 619-659-1325

Person making request: DAVID GRANT

Number of Apprentice(s) Needed 1 Craft or Trade PAINTER

Date Apprentice(s) to Report: 1-4-11 (48 hours notice required)

Name of Person to Report to: REX HUFFMAN

Address to Report to: 15500 KAISER TRUCK RD, DESERT CENTER, CA 92239

Time to Report: 7:00 AM

You may use this form, or make a verbal or written request, to ask for the dispatch of an apprentice. Please take note of California Code of Regulations, Title 8, § 230.1 (a) which says in part: *if in response to a written request an Apprenticeship Committee does not dispatch any apprentice to a contractor who has agreed to employ and train apprentices in accordance with either the Apprenticeship Committee's Standards or these regulations within 72 hours of such request (excluding Saturdays, Sundays and holidays) the contractor shall not be considered in violation of this section as a result of failure to employ apprentices ...*



880 TAVERN ROAD
ALPINE, CA 91901
619-659-1320 FAX: 619-659-1325
CONTRACTOR LIC. # 506526

17066 REVERE WAY PO BOX 251
PRIOR LAKE, MN 55372
952-447-6025 FAX: 952-447-1000

October 27, 2011

Department of Industrial Relations
Division of Apprenticeship Standards
455 Golden Gate Ave. 10th Floor
San Francisco, CA 94102

Attention: Karen Belcher

Dear Karen,

Abhe & Svoboda, Inc. and DAS has entered into a settlement agreement on the Complaint filed on July 5, 2011 by the Painters and Allied Trades Compliance Administrative Trust. We do not admit guilt in any way and in fact we feel that we fully complied with the notice requirements to the appropriate apprenticeship committee for the work being performed. A proper 72 hour notice was also sent to the Painters and Allied Trades Apprenticeship committee in which they failed to respond or dispatch any apprentices. It is ironic how they failed to do their job and dispatch any apprentices, and then waited until the project was over to file a complaint. It appears their deceptive practices have a hidden agenda against our open shop firm.

Additionally, your website is confusing and deceiving in determining the appropriate committee in which to send the DAS-140 and 142 forms. For example, when doing an apprenticeship committee search from the "Apprenticeship Search" tab of the website, and entering Riverside, CA Painters, it gives you six committees; however our particular project was "Industrial Painter" which narrows it down to only one. We did in fact send our DAS-140 and 142 forms to that one committee, and have now been penalized for following your own website instructions.

In lieu of incurring litigation costs, we have agreed to settle this matter under protest with a payment of \$3,500 and with an agreement this letter will be posted in our file and become part of our permanent record.

Sincerely,

David Grant
Area Manager



Patricia C. Dunn
Vice President

September 4, 2013

To whom it may concern:

**Re: Workers' Compensation Experience Modification Factor History
Abhe & Svoboda NCCI #910082221
Rating Date: July 1**

Willis of Minnesota
1600 Utica Ave S
Suite 600
Minneapolis
MN 55416
Telephone 763-302-7210
Fax 763-302-7200

Dear Sir or Madam:

The following is a history of Abhe & Svoboda's Workers Compensation Interstate Experience Modification factor:

Workers Compensation Interstate Experience Modification Factor History			
13-14	12-13	11-12	10-11
.68	.74	.97	.93

The experience rating plan is used to tailor the cost of Workers' Compensation Insurance to the actual loss experience of an individual employer. It acts much like a safe driver discount program, by comparing the losses and safety results of an employer to other similarly classified employers in the same state. The result of this comparison is the experience modification factor. Fewer accidents and losses than the average for the employer's industry result in a modification factor lower than 1.00. More accidents and losses than average result in a modification factor greater than 1.00.

As is evident by Abhe & Svoboda's factors (as listed above), they consistently do much better than average in terms of controlling and reducing Workers' Compensation losses and accidents.

I trust you will find all to be in order, however if you have any questions please call me.

Thank you.

Sincerely,

Patricia Dunn

Patricia C. Dunn
Vice President

EXPERIENCE MODIFICATION EXPLAINED

An experience modification, commonly called an "e-mod," is an important factor used to adjust your workers' compensation premium.

What is an experience modification factor?

An experience modifier (e-mod) is a multiplier applied to the premium of a qualifying policy and provides an incentive for loss prevention. The e-mod represents either a credit or debit that is applied to the premium before discounts. If your company's loss experience is more costly on the average than other company's loss experience in your industry, the result is a debit e-mod, or surcharge on premiums. If your company's experience is less costly than the industry average, you will receive a credit e-mod, or discount, on your premium.

Who determines experience ratings?

The National Council on Compensation Insurance (NCCI), based in Florida, computes experience ratings for all businesses and industries in Colorado. The same factors are used to calculate each employer's experience modification regardless of which insurance company provides coverage. The e-mod stays with the business even if the business is sold.

Who qualifies?

All employers whose premium before discounts averages \$4,000 or more a year for a three-year period are eligible for an experience modification rating. Approximately 90 percent of workers' compensation premium dollars come from experience rated policies.

Employers with less than \$4,000 in premium are not experience rated because of their low exposure to claims. Employers who do not qualify for e-mod pay the basic industry rate for their coverage, net of any applicable adjustments from Pinnacol Assurance.

What years are included in e-mod calculations?

E-mods are based on claims costs for a prior three-year period. An interval year is incorporated between the current year being rated and the three-year period. The interval year is the year previous to the current year and is excluded because ultimate claims costs and final premium amounts are not known for that year at the time the e-mod is being calculated.

Claims Costs for 3-Year Period			Interval Year	Rating Year
01/01/2008	01/01/2009	01/01/2010	01/01/2011	01/01/2012
Experience Used →				01/01/2012 mod is calculated and applied.



PINNACOL
ASSURANCE

How is an e-mod calculated?

- The e-mod is determined by comparing actual losses to expected losses for the experience period based on the employer's industry. In other words, clerical employees are compared only to other clerical employees, etc.
- The number of man-hours worked is used to indicate the employer's audited premium dollars, since an employer with 20 employees would be expected to have more claims than an employer with two employees. For example, a roofing business is only compared to other roofing companies with approximately the same gross premium amount.
- The formula adjusts the actual losses used so that frequency is given greater weight than the severity of an injury or illness. For example, six claims that occur over a three-year period totaling \$20,000 have a greater impact against the e-mod than one claim in three years totaling \$20,000. Again, both industry and business size are considered.
- Claims with zero costs are not included in the experience modification calculation.

How can I lower my e-mod rating?

- A sound safety program, a return-to-work plan and loss prevention procedures will lower your e-mod, and are crucial to helping you effectively manage your workers' compensation costs. The following example compares two companies who perform the same services and employ the same number of workers:

XYZ Company

- The XYZ Company has a strong safety program, a good claims history, and a low e-mod.
- The XYZ Company has an e-mod of .85, which results in a 15 percent discount on their workers' compensation premium compared to other companies in the same industry. Because XYZ has a credit e-mod, the company only pays \$.85 for every dollar of coverage received.

ABC Company

- The ABC Company has an inadequate safety program, a large number of claims/losses, and a high e-mod factor.
- The ABC Company has an e-mod of 1.25. The ABC Company pays 25 percent more for their workers' compensation insurance than other companies in the same industry classification. For every dollar of insurance coverage received, the ABC Company will pay \$1.25.

Cost per \$1 of coverage based on experience modification

XYZ Company



ABC Company



■ E-mod 0.00 0.25 0.50 0.75 1.00 1.25

Understanding how an e-mod is calculated and how it applies to your premium can help you determine if your company's loss prevention efforts are effective or if there are further steps your company can take to lower the e-mod. For more information about e-mods and how to lower your workers' compensation insurance costs, contact your agent or Pinnacol underwriter.

Abhe & Svoboda, Inc.

All Violations (Past 5 Years)

10/20/2011 Oregon

1. Heater for paint storage conex was too close to wall of conex. Moved heater out three feet. \$105.00 penalty.

8/25/2011 Washington

1. Supported scaffold not supported properly. Added additional sill under scaffold. \$1500.00 penalty.
2. Damaged full body harness in service. Inspected all harnesses and removed any questionable equipment. \$1500.00 penalty.
3. Proper number of wire rope clips not used. Added additional clips. \$500.00 penalty.
4. Not enough adequate toilets on bride. Toilets added. \$0.00 penalty
5. No inspection records of fire extinguishers. Provided records. \$0.00 penalty.
6. Toilets not available specifically for Females. Toilets added. \$0.00 penalty.
7. Improper rigging. Rigging corrected. \$0.00 penalty.

8/25/2011 Washington

1. Lead sampling records not available. Lead sampling records provided. \$7000.00 penalty.
2. Full shift monitoring not in place for vacuumers. Monitoring put in place. \$0.00 penalty.
3. Shoe covers not provided. Shoe covers provided. \$0.00 penalty.
4. Lead program not in compliance. Program revised. \$4611.00 penalty.
5. Improper parts on vortex. Correct parts installed. \$2306.00 penalty.
6. Improper hose connections. Connections replaced. \$2306.00 penalty.
7. Worker using respirator with facial hair. Worker removed facial hair. \$0.00 penalty.
8. Respiratory program not in compliance. Program revised. \$2306.00 penalty.
9. Damaged respirator in use. Respirator replaced. \$2306.00 penalty.
10. Airline was over 30 psi when used for cleaning. Pressure reduced. \$2306.00 penalty.
11. Hearing protection not in program compliance. Program revised. \$2306.00 penalty.
12. Improper Lead protective clothing. Proper clothing provided. \$2306.00 penalty.
13. Containers used for oily rags were not covered. Covers installed. \$0.00 penalty.
14. Hand towels not available at wash stations. Towels provided. \$0.00 penalty.
15. Lead program not revised every 6 mos. Program modified. \$0.00 penalty.
16. Fit test records did not have resp. model and size. Info provided. \$0.00 penalty.
17. Fit test records not available. Fit test records provided. \$0.00 penalty.
18. Did not provided two types of hearing protection. Provided two types. \$0.00 penalty.

3/29/2011 Oregon

1. Failed to investigate lost time injury. Conducted investigation. \$450.00 penalty.

8/26/2010 Michigan

1. Employee working in confined space. Removed and retrained employee. \$0.00 penalty.
2. Employee using wrong ladder. Retrained employee. \$0.00 penalty.



STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION

DISTRICT I
1107 Cromwell Avenue
Rocky Hill, Connecticut 06067
Phone (860) 258-4620



February 9, 1998

Mr. Chuck Vyhnalek, Contract Director
Nebraska Department of Roads
P.O. Box 94749, 1500 Nebraska Hwy. 2
Lincoln, Nebraska, 68509-4759

Dear Mr. Vyhnalek:

Subject: State of CT Project No. 82-252
Painting of the Arrigoni Bridge
on The Connecticut River
Letter of Reference

In a letter dated February 3, 1998, Roxane Svoboda from Abhe & Svoboda, Inc., requested a letter of reference concerning Abhe & Svoboda's performance on the above referenced project.

Please be advised that I, Emanuel A. DiMauro, Project Engineer for the CT Department of Transportation, was involved in the administration portion of the subject project.

Abhe & Svoboda, Inc., has shown to be a responsible contractor that is capable of performing superior quality work, as well as a financially secure company with a professional staff that is motivated beyond compare in my experience of twenty years with this Department.

Abhe & Svoboda, Inc., has innovative containment designs and the machinery, tools and personnel to perform the work in accordance with project specifications. The supervisors are knowledgeable in performing their work, and take directives well.

If you feel that a telephone conversation is appropriate, please call me at (860) 258-4620.

Very truly yours,

Emanuel A. DiMauro

Emanuel A. DiMauro
Trans. Engineer III
Bureau of Engineering &
Highway Operations

J89319



COUNTY OF LOS ANGELES

EXHIBIT D

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
<http://dpw.lacounty.gov>

GAIL FARBER, Director

July 11, 2013

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE
REFER TO FILE:

C-1

TO: Each Supervisor

FROM: Gail Farber 
Director of Public Works

SAN GABRIEL DAM PENSTOCK COATING AND VALVE REPAIR CONTRACTOR ABHE & SVOBODA, INC.

Public Works recently advertised a project to repair and rehabilitate the valves and penstocks at San Gabriel Dam. This project is essential to maintain the functionality of the facility. After bids were opened on July 2, 2013, Public Works received the attached protest letter dated July 3, 2013, from Painters and Allied Trades Compliance Administrative Trust (Trust) alleging that the apparent lowest responsible bidder, Abhe & Svoboda, Inc., was potentially a nonresponsible contractor. The protest states that Abhe & Svoboda, Inc., has violated State Labor Codes and received several safety violations.

We acknowledge that the contractor should have reported a labor compliance violation that occurred within the last three years in his/her bid documents. However, as noted in the contract solicitation documents, the County reserves the right to waive minor inconsistencies within the bid document. Abhe & Svoboda, Inc., agreed to a no-fault settlement in 2011 with the State of California Department of Industrial Relations, Division of Apprenticeship Standards, in the amount of \$3,500 for failure to employ apprentices and make training contributions as required. We are not aware of any other State of California violations. Based on this, we have made the determination that Abhe & Svoboda, Inc.'s, failure to disclose these violations does not warrant us finding them nonresponsible.

We reviewed the Occupational Health and Safety Act records that were submitted by the Trust and did not find them to be evidence of an adverse safety record.

The allegation made by the Trust regarding Abhe and Svoboda, Inc., being penalized \$1.3 million by the United States Department of Labor (DOL) was found to be a relatively minor matter. The incident occurred in the mid-1990's when the contractor was awarded three contracts in Connecticut to paint bridges and based on their own research paid what they thought were appropriate prevailing wages. Ultimately, the rates were challenged, and the DOL determined the contractor's workers, for certain

Each Supervisor
July 11, 2013
Page 2

classifications, were entitled to higher hourly rates. The \$1.3 million is the amount withheld by the DOL to make restitution to the affected workers and not a penalty as alleged in the Trust's letter.

We believe that Abhe & Svoboda, Inc., is a responsible contractor, and delaying the award of this project would not serve the public's interest. We intend to award this project to Abhe & Svoboda, Inc., using the authority delegated to the Chief Engineer of the Los Angeles County Flood Control District in our adopt, advertise, and award letter that was approved by the Board on May 21, 2013.

If you have any questions, please call me or your staff may contact Bill Winter, Deputy Director, at (626) 458-4018.

KA:sc

O:\Section\Administration\Board\Each Supervisor\San Gabriel Dam Penstock.doc

Attach.

cc: Chief Executive Office
County Counsel
Executive Office

Painters and Allied Trades Compliance Administrative Trust
1155 Corporate Center Dr., 2nd Floor, Monterey Park, CA 91754
Phone: (626) 792-3019 • Fax: (626) 798-0528

July 3, 2013

Via Certified Mail # 7010 2780 0000 2231 6201
Via Fax: (626) 458-4194

Ms. Gail Farber
Director
County of Los Angeles
Department of Public Works
900 South Fremont Avenue
Alhambra, CA 91802

PROJECT: San Gabriel Dam Penstock Coating & Valve Repair
RE: Bidding Contractor- Abhe & Svoboda Inc

Dear: Ms. Farber:

Painters and Allied Trades Compliance is a joint labor-management committee that works diligently to insure fairness and compliance by all contractors in the bidding and performance of Public Works projects.

It is our understanding that Abhe & Svoboda ("the Contractor") is a bidder on the project listed above. It is our belief that the Contractor is a Non-Responsible bidder. Therefore, we respectfully suggest that no award should be made to the Contractor.

On July 9, 2009 the Division of Industrial Relations Division of Apprenticeship Standards found that the Contractor failed to comply with Labor Code §1777.5 and §1777.7. While no penalty was assessed, the Contractor was warned that "after receipt of this notice, any failure to comply with applicable apprenticeship regulations will be considered a knowing and possible intentional violation. See Exhibit 1. Despite this warning, subsequently, on October 28, 2011 the Contractor paid a \$3,500 fine to settle charges that it violated Labor Code §1777.5. See Exhibit 2.

In addition, since October 24, 2007, the Contractor has repeatedly violated the Occupational Health and Safety Act (OSHA) and regulations promulgated under that act. We have attached search results for your records from OSHA website. Please note that every year from 2008 – 2013, this company has continued to have these violations. See Exhibit 3.

These violations are in addition a reported federal court decision affirming a \$1.3 million penalty against the Contractor for failing to pay its painting employees the wages to which they were entitled under the Davis-Bacon Act. See Exhibit 4.

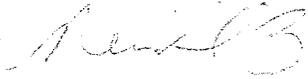
Of course, these are all labor law violations that the Contractor was required to report under the May 21, 2013 memorandum addressed to the Board of Supervisors, which states at page 3 that: "To ensure that the contract is awarded to a responsible contractor with a satisfactory history of performance, bidders are required to report violations of the False Claims Act, criminal convictions, civil litigation, defaulted contract with the County, complaints filed with the Contractor's State License Board, *labor law/payroll violations*, and debarment actions. As provided for in Board Policy No. 5. 140, the information reported by the contractor will be considered before making a recommendation to award." We do not know if the above violations were reported, but we respectfully urge the Board to double-check if they were. If not, that alone may be grounds to find the Contractor is not responsible.

For these reasons, the Contractor should be considered a Non-Responsible bidder.

Painters and Allied Trades Compliance Administrative Trust
1155 Corporate Center Dr., 2nd Floor, Monterey Park, CA 91754
Phone: (626) 792-3019 * Fax: (626) 798-0528

If you have any questions, please feel free to contact me.

Sincerely,



Nidia Henriquez
Case Investigator

Enc: *Letters from Department of Industrial Relations, Division of Apprenticeship Standards, (Exhibit 1&2)*
OSHA Records (Exhibit 3)
Federal Court Order (Exhibit 4)

cc: Board of Supervisors County of Los Angeles:

Mark Ridley-Thomas

Fax: (213) 680-3283

Gloria Molina

Fax: (213) 613-1739

Don Knabe

Fax: (213) 626-6941

Zev Yaroslavsky

Fax: (213) 625-7360

Michael D. Antonovich

Fax: (213) 974-1010

Assistant Directors of Public Works:

Mark Pestrella, PE

E-mail: mpestrella@dpw.lacounty.gov

Jacob Williams, Architect

E-mail: jjwillia@dpw.lacounty.gov

Vincent Harris, Sr. Advisor & Special Assistant

E-mail: vharris@bos.lacounty.org

Abhe & Svoboda Inc.

CT Staff Writer

Search

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Sometimes, the final touch that can help distinguish a structure is the last coat of paint. That addition of color can make it far more memorable, or even help restore an aged structure to its original glory. And that is what Abhe & Svoboda Inc. strives to do in its work.



Based in Prior Lake, Minn., the company is a leader in the coatings industry with a project portfolio that includes towers, bridges and dams. "We also do structural renovations, as far as structural steel and concrete repairs," Project Engineer Ryan Glen says.

Abhe & Svoboda started operations 42 years ago and today also has offices in Kapolei, Hawaii; Alpine, Calif.; Portland, Conn.; and Gaines, Mich. The company's portfolio includes the Indianapolis Motor Speedway; Pearl Harbor; San Diego International Airport, the Black Canyon Dam at Payette River, Idaho; Yaquina Bay Bridge in Newport, Ore.; and Aloha Stadium in Aiea, Hawaii.

The company also has worked in Cuba, Australia, Spain and Guam. "We will essentially work anywhere," Glen says. "We have had the opportunity to bid and work on projects in almost every state."

Although Abhe & Svoboda primarily serves an industrial customer base, the company is not limited to only those clients in its work. Instead, "We [also] work for various federal governmental agencies," Glen explains. "We do a lot of work [for the] Army Corps of Engineers, the Bureau of Reclamation [and] the Department of the Navy."

LOYAL EMPLOYEES

A strong factor in the company's success is its team of experienced workers, Glen says. "We've had a lot of field personnel that have been with us for a long time," he says. "[They like to] travel with us and like working with us."

This includes Glen himself, who has been with Abhe & Svoboda for 15 years. "I like working with the people," he says, adding that he enjoys the fact that the work at the company is not repetitious.

"All of our projects are similar but not the same," he says. "Every project is unique in its own way. There are special designs that have to be done for [a project] to make it work correctly."

For example, on its Tainter Gate Repair project at the Whitney Lake Dam in Texas, the company came up with an access system on the dam so all its equipment was stationary on the shore, eliminating the need to stage equipment from barges.

PROTECTING LANDMARKS

Abhe & Svoboda's current projects include work worth more than \$41 million on the Newport/Pell Bridge for the Rhode Island Turnpike and Bridge Authority. The cable-suspended bridge crosses Narragansett Bay and connects Jamestown to Newport, R.I.

"We're doing steel repairs and protective coatings on the suspended spans of the bridge," Glen explains. "There are two side spans that are roughly 770 feet long and the main span is 1,600 feet long."

The company also is performing abrasive blasting, painting structural steel and suspension cables work. "We're about 25 percent complete on it right now," Glen says. Abhe & Svoboda plans to be finished with the project by October 2012.

It also is rehabilitating 17 dam gates at the Whitney Lake Dam in Clifton, Texas, for the Fort Worth district of the U.S. Army Corps of Engineers. "We are completing abrasive blasting and recoating them," he describes.

In a contract worth more than \$14.5 million, the company also is completing structural steel repairs on the dam. "We're probably about 90 percent complete," Glen says, noting that the company expects to finish work on the project by this September, which is two months ahead of schedule.

One of the keys to finishing the project early, Glen notes, was finding ways to access the dam gates without staging any equipment on the water. Instead, "All of our equipment is staged on land," he says.

"We used special scaffolding systems that we've utilized on our bridge projects," he continues. "We were able to work on multiple gates at a time in order to get the project done in a timely manner."

According to Glen, a key factor to the success of the company's projects is its vendors. In addition, because it uses many vendors repeatedly, Abhe & Svoboda knows exactly what it needs from them to accomplish a project and make it successful, he says.

Abhe & Svoboda's key vendors include Kleen Blast.

ROOM FOR EXPANSION

Abhe & Svoboda plans to grow in select markets. "We want to be able to expand various markets if possible," Glen says. "[But] we're very happy with the markets we're currently in.

"There's always room for expansion if the economy allows it," he asserts. "There are projects available to [us] in various areas, with painting in regards to surface prep and steel renovations. We can tackle a variety of [jobs]."

Contact

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AGENDA ITEM 5



STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	April 1, 2015
SUBMITTED BY:	Kevin Cameron Associate Civil Engineer Bob Kennedy Engineering Manager	PROJECT:	VARIOUS DIV. NO. ALL
APPROVED BY:	<input checked="" type="checkbox"/> Rod Posada, Chief, Engineering <input checked="" type="checkbox"/> German Alvarez, Assistant General Manager <input checked="" type="checkbox"/> Mark Watton, General Manager		
SUBJECT:	Award of As-Needed Geotechnical Services Contract to Ninyo & Moore Geotechnical and Environmental Consultants in an amount not to exceed \$175,000 for Fiscal Years 2015 through 2018		

GENERAL MANAGER'S RECOMMENDATION:

That the Otay Water District (District) Board of Directors (Board) award a professional As-Needed Geotechnical Services contract to Ninyo & Moore Geotechnical and Environmental Consultants (Ninyo & Moore) and to authorize the General Manager to execute an agreement with Ninyo & Moore in an amount not-to-exceed \$175,000 for a period of four (4) fiscal years (FY 2015 through FY 2018), ending June 30, 2018.

COMMITTEE ACTION:

Please see Attachment A.

PURPOSE:

To obtain Board authorization for the General Manager to enter into a professional As-Needed Geotechnical Services agreement with Ninyo & Moore in an amount not-to-exceed \$175,000 for a period of four (4) fiscal years (FY 2015 through FY 2018), ending June 30, 2018.

ANALYSIS:

The District will require the services of a professional geotechnical consultant in support of the District's Capital Improvement Program (CIP) for the next four (4) fiscal years. It is more efficient and cost effective to issue an as-needed contract for geotechnical services which will provide the District with the ability to obtain consulting services in a timely and efficient manner. This concept has also been used in the past for other disciplines such as engineering design, construction management, electrical, and environmental services.

The District will issue task orders to the consultant for specific projects during the contract period. The consultant will then prepare a detailed scope of work, schedule, and fee estimate for each task order assigned under the contract. Upon written task order authorization from the District, the consultant shall then proceed with the project as described in the scope of work.

The anticipated CIP projects that are estimated to require geotechnical services for the duration of this contract are listed below:

CIP	DESCRIPTION	ESTIMATED COST
P2040	1655-1 Reservoir 0.5 MG	\$20,000
P2083	870-2 Pump Station Replacement	\$10,000
P2325	10" to 12" Oversize, 1296 Zone, PB Road-Rolling Hills Hydro PS/PB Bndy	\$5,000
P2453	SR-11 Utility Relocations	\$10,000
P2508	Pipeline Cathodic Protection Replacement Program	\$20,000
P2528	30-Inch Potable Water Pipeline Manifold at 624 Reservoirs	\$20,000
R2116	14" Forcemain Assessment and Repair	\$10,000
R2117	RWCWRF Contact Basin Expansion Project	\$10,000
S2024	Campo Road Sewer Main Replacement	\$15,000
S2033	Sewer System Various Locations Rehabilitation	\$25,000
TOTAL:		\$145,000

The geotechnical scopes of work for the above projects are estimated from preliminary information and past projects. Therefore, staff believes that a \$175,000 cap on the As-Needed Geotechnical Services contract is adequate, while still providing additional capacity for unforeseen support needs by the District.

This As-Needed Geotechnical Services contract does not commit the District to any expenditure until a task order is approved to perform work on a CIP project. The District does not guarantee work to the consultant, nor does the District guarantee that it will expend all of the funds authorized by the contract on professional services.

The District solicited geotechnical services by placing an advertisement on the Otay Water District's website on January 14, 2015 and with various other publications including the San Diego Daily Transcript. Fourteen (14) firms submitted a letter of interest and a statement of qualifications. The Request for Proposal (RFP) for As-Needed Geotechnical Services was sent to all fourteen (14) firms resulting in nine (9) proposals received by February 12, 2015.

- Construction Testing & Engineering, Inc.
- Geocon, Inc.
- Group Delta Consultants
- Kleinfelder
- Koury Engineering
- Leighton Consulting
- MTGL, Inc.
- Ninyo & Moore
- RMA Group

The five (5) firms that chose not to propose are AMEC Foster Wheeler, EEI Geotechnical & Environmental Solutions, Nova Services, Inc., Salem Engineering Group, and Twining, Inc.

In accordance with the District's Policy 21, staff evaluated and scored all written proposals. Ninyo & Moore received the highest score for their services based on their experience, understanding of the scope of work, proposed method to accomplish the work, and their composite hourly rate. Ninyo & Moore was the most qualified consultant with the best overall rating or ranking. A summary of the complete evaluation is shown in Attachment B.

Ninyo & Moore submitted the Company Background Questionnaire as required by the RFP and staff did not find any significant issues. In addition, staff checked their references and performed an internet search on the company. Staff found the references to be excellent and did not find any outstanding issues with the internet search.

Based upon the review of all the hourly composite rates, staff did not negotiate with Ninyo & Moore to lower their proposed rates because their composite rate was the lowest of the nine (9) consultants that submitted proposals.

FISCAL IMPACT:

Joe Beachem, Chief Financial Officer

The funds for this contract will be expended for a variety of projects, as previously noted above. This contract is for as-needed professional services based on the District's need and schedule, and expenditures will not be made until a task order is approved by the District for the consultant's services on a specific CIP project.

Based on a review of the financial budgets, the Project Manager anticipates that the budgets will be sufficient to support the professional as-needed consulting services required for the CIP projects noted above.

The Finance Department has determined that the funds to cover this contract are available as budgeted for these projects.

STRATEGIC GOAL:

This Project supports the District's Mission statement, "To provide high value water and wastewater services to the customers of the Otay Water District in a professional, effective, and efficient manner" and the General Manager's Vision, "A District that is at the forefront in innovations to provide water services at affordable rates, with a reputation for outstanding customer service."

LEGAL IMPACT:

None.

KC/BK:jf

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- Attachments: Attachment A - Committee Action
- Attachment B - Summary of Proposal Rankings



ATTACHMENT A

SUBJECT/PROJECT: Various	Award of As-Needed Geotechnical Services Contract to Ninyo & Moore Geotechnical and Environmental Consultants in an amount not to exceed \$175,000 for Fiscal Years 2015 through 2018
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COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee (Committee) reviewed this item at a meeting held on March 12, 2015. The Committee supported Staff's recommendation.

NOTE:

The "Committee Action" is written in anticipation of the Committee moving the item forward for Board approval. This report will be sent to the Board as a Committee approved item, or modified to reflect any discussion or changes as directed from the Committee prior to presentation to the full Board.



SUBJECT/PROJECT:	Award of As-Needed Geotechnical Services Contract to Ninyo & Moore Geotechnical and Environmental Consultants in an amount not to exceed \$175,000 for Fiscal Years 2015 through 2018
Various	

**ATTACHMENT B
SUMMARY OF PROPOSAL RANKINGS
As-Needed Geotechnical Services**

		WRITTEN							TOTAL SCORE	REFERENCES
		Qualifications of Team	Responsiveness and Project Understanding	Technical and Management Approach	INDIVIDUAL SUBTOTAL - WRITTEN	AVERAGE SUBTOTAL - WRITTEN	Proposed Rates*	Consultant's Commitment to DBE		
MAXIMUM POINTS		30	25	30	85	85	15	Y/N	100	Poor/Good/Excellent
Construction Testing & Engineering, Inc.	Dan Martin	27	23	26	76	76	15	Y	91	
	Steve Beppler	27	23	26	76					
	Lisa Colburn-Boyd	28	23	26	77					
	Mike O'Donnell	28	23	27	78					
	Michael Kerr	26	23	26	75					
Geocon, Inc.	Dan Martin	27	24	27	78	77	6	Y	83	
	Steve Beppler	28	23	27	78					
	Lisa Colburn-Boyd	28	23	27	78					
	Mike O'Donnell	28	23	29	80					
	Michael Kerr	25	23	25	73					
Group Delta Consultants	Dan Martin	26	23	26	75	76	4	Y	80	
	Steve Beppler	26	23	27	76					
	Lisa Colburn-Boyd	27	23	27	77					
	Mike O'Donnell	25	22	26	73					
	Michael Kerr	28	23	26	77					
Kleinfelder	Dan Martin	25	21	25	71	73	4	Y	77	
	Steve Beppler	27	20	25	72					
	Lisa Colburn-Boyd	27	22	24	73					
	Mike O'Donnell	26	20	26	72					
	Michael Kerr	28	24	26	78					
Koury Engineering	Dan Martin	24	20	23	67	70	8	Y	78	
	Steve Beppler	23	22	23	68					
	Lisa Colburn-Boyd	26	20	24	70					
	Mike O'Donnell	26	22	26	74					
	Michael Kerr	24	22	26	72					
Leighton Consulting	Dan Martin	26	22	25	73	76	1	Y	77	
	Steve Beppler	27	23	26	76					
	Lisa Colburn-Boyd	28	24	28	80					
	Mike O'Donnell	28	22	27	77					
	Michael Kerr	26	23	26	75					
MTGL, Inc.	Dan Martin	25	21	25	71	74	14	Y	88	
	Steve Beppler	25	21	25	71					
	Lisa Colburn-Boyd	27	22	26	75					
	Mike O'Donnell	27	23	28	78					
	Michael Kerr	25	22	27	74					
Ninyo & Moore	Dan Martin	27	23	28	78	79	15	Y	94	Excellent
	Steve Beppler	28	23	27	78					
	Lisa Colburn-Boyd	28	23	27	78					
	Mike O'Donnell	29	24	29	82					
	Michael Kerr	27	23	28	78					
RMA Group	Dan Martin	24	22	24	70	74	13	Y	87	
	Steve Beppler	24	19	27	70					
	Lisa Colburn-Boyd	27	23	27	77					
	Mike O'Donnell	27	22	27	76					
	Michael Kerr	26	23	27	76					

RATES SCORING CHART

Firm	CT & E	Geocon	Group Delta	Kleinfelder	Koury Engr.	Leighton	MTGL	Ninyo & Moore	RMA Group
Fee	\$1,810	\$2,417	\$2,515	\$2,505	\$2,258	\$2,727	\$1,865	\$1,794	\$1,958
Score	15	6	4	4	8	1	14	15	13

*Note: Review Panel does not see or consider proposed fee when scoring other categories. The proposed fee is scored by the PM, who is not on the Review Panel.