

AGREEMENT

BETWEEN

Santa Ana Watershed Project Authority

AND

Bureau of Reclamation, Department of the Interior

for the

SANTA ANA WATERSHED BASIN STUDY

**THIS AGREEMENT** for the Santa Ana Watershed Basin Study (Study) is made and entered into this 16<sup>th</sup> day of November 2010, by the Santa Ana Watershed Project Authority (SAWPA) and the United States Department of the Interior, Bureau of Reclamation (Reclamation) Southern California Area Office (SCAO), hereinafter collectively referred to as the "**Partners.**"

**I. Purpose of the Agreement:**

The Partners agree to work collaboratively to perform the Study. This Agreement establishes the terms for funding the Study and the terms and conditions that will help guide the performance of the Study.

**II. Definitions:**

- A. Reclamation means the United States Department of the Interior, Bureau of Reclamation.
- B. LC Region means the Lower Colorado Region of the Bureau of Reclamation.
- C. SCAO means the Southern California Area Office, Bureau of Reclamation.
- D. SAWPA means the Santa Ana Watershed Project Authority and any member agency or partner that contributes monetary value or in-kind services during the course of this Study.
- E. Partners means Reclamation and SAWPA, also referred collectively as parties.
- F. Parties mean either Reclamation or SAWPA.
- G. Stakeholder means any entity that is not Reclamation or a SAWPA agency that may provide input, data, comments, or participate in the public involvement process related to the Study. Reclamation and SAWPA may invite Stakeholders to Study-related meetings where their input and expertise is desired.

- H. Confidential Information means trade secrets or commercial or financial information that is privileged or confidential under the meaning of 5 U.S.C. §552(b)(4). However, this Agreement and the documents that are shared pursuant to this Agreement must comply with relevant Freedom of Information Act (FOIA) and State open records act laws.
- I. Term of Agreement means that period set forth under Section X, Article A.
- J. Subject Invention means any invention or discovery, which is or may be patentable under Title 35 of the United States Code, conceived or first actually reduced to practice in the performance of work under this Agreement.
- K. Project Team provides expertise, experience, and knowledge that relate to the Study's scope and objectives. Members include staff from Reclamation's SCAO, LC Region, Technical Services Center (TSC), and SAWPA, the OWOW Pillars workgroups and staffs from other entities who may be contracted to provide specific information, knowledge, and support.
- L. Pillars are the key workgroups with expertise and/or familiarity in water resources and natural resources that help focus specific challenges in the OWOW Plan Update process.
- M. Dream Team is members consisting of high level water resources visionaries appointed by SAWPA's Board to support the OWOW Plan Update process. They brainstorm new cross jurisdictional proposals to achieve a shared vision of multi-benefit integrated multipurpose highly functioning Santa Ana River Watershed.

### **III. Purpose of the Study**

SAWPA proposes a Basin Plan study in partnership with the Bureau of Reclamation to complete the One Water-One Watershed (OWOW) Plan Update and to assure that impacts and adaptation to climate change, increasing energy demands, and water quality/water supply needs are met for the future. This approach incorporates:

- 1- Past and present regional and local planning studies within the Santa Ana Watershed;
- 2- A new and innovative "bottom up" approach to regional water resources management planning in a more integrated and collaborative approach;
- 3- Advances in the science and technology of new climate change and greenhouse emissions modeling, adaptation planning on a watershed basin basis; and,
- 4- Expands collaborative outreach to all major water uses and stakeholders in the watershed basin.

SWAPA acknowledges that Reclamation may utilize this Study to meet portions of the Secure Water Act (42U.S.C. §10363).

Background:

SAWPA, first formed as a planning agency in 1968, was reformed in 1972 with the mission to plan and build facilities to protect the water quality and enhance water supply within the Santa Ana River Watershed. SAWPA is a joint powers authority comprised of five member agencies: Eastern Municipal Water District (EMWD); Inland Empire Utilities Agency (IEUA); Orange County Water District (OCWD); San Bernardino Valley Municipal Water District (SBVMWD); and Western Municipal Water District (WMWD). These five agencies cover the vast majority of the watershed. Population within the Santa Ana River Watershed is increasing significantly, and the watershed is among the fastest growing regions in the State. This urban growth has put enormous pressure on the region's water supply, water-quality, and environmental/recreation resources.

With these increasing pressures on available resources, new approaches to water resources planning have commenced. In 2008, SAWPA working with over 350 water, wastewater and groundwater management, flood control, environmental and other non-governmental organizations, commenced an update to its Integrated Water Resources Management (IRWM) plan. However, unlike in previous plans, the stakeholders have taken on a key role of actually preparing and writing the plan now called the OWOW Plan. Under this innovative water resources planning process, stakeholders were organized by SAWPA into ten separate workgroups or pillars centered around specific water resource management areas. These pillar groups consist of approximately 10 to 60 volunteers depending on the topic and interest level. The volunteers included participants from local agencies, special districts, nonprofit organizations, university officials, and private citizens. The pillars were led by a volunteer chair that had expertise in that specific water resource strategy. These pillars focused their efforts on water resources management strategies that evaluated existing resource needs, projected impacts from continued growth and other factors, and recommended strategies to deal the needs. Thereafter, these needs were integrated with the other pillars to assure that multi-beneficial, multijurisdictional approaches were proposed to deal with these growing crises. In this fashion, a truly innovative planning process was created that exercised new avenues of watershed systems thinking that promoted collaboration across jurisdictional boundaries, and created a new vision or water ethic rather than only solving localized problems.

**IV. Study Approach, Expected Outcomes and Deliverables**

- A. The Study will be technically oriented, incorporating information from the latest science, engineering technology, climate models, and innovations. The level of analysis of the strategies and options will be similar to an appraisal-level study. The Study will take a collaborative approach and foster Stakeholder participation and input throughout the Study.
- B. Management of the Study will be accomplished through the designation of Co-Study Managers.

1. One Co-Study Manager will be designated from Reclamation and one Co-Study Manager will be designated from SAWPA. The Co-Study Managers will comprise the Study Steering Team.
  2. The Project Team will steer and guide the efforts of the Study such that the objectives of the Study are met in an effective, efficient manner, and within the Study's financial and time constraints.
  3. The Project Team will ensure that the tasks that relate to the Study are completed in a cost-effective, timely manner and are technically sound. Members of the Project Team may provide the expertise, experience, and knowledge that relate to the Study's scope and objectives, or may form workgroups of additional Partner staff members or other entities who may be contracted to provide specific information, knowledge, and support. The Co-Study Managers will lead the Project Team.
- C. The primary products of the Study will be interim written reports to be integrated into a final report that will include the following key task elements, they are:
1. Study Management and Data Gathering: Coordinate and manage this planning effort for the OWOW Plan Update to include data collection, report reviews, models, contract management, prepare status and final reports, setting up conference calls, and other essential administrative functions;;
  2. Governance, Outreach, Integration, and Systems Approach: Using an Integrated Regional Water Management Planning process, reach beyond traditional boundaries and engage other water users and stakeholders in this updating the OWOW Plan process, this includes use of the Dream Team, the Pillars, and any needed workgroups;
  3. Watershed Setting: provides any new data, projections examination for all surface and groundwater resources, updates to region populations, socio-economic factors, and changes to internal boundaries like service areas, waste water, flood control measures, and individual water;
  4. Water Resource Management Strategies and Integration: Covers all aspects of water supply and demand, water quality, water recycling, water use efficiency, flood risk management, recreation and open space, waste water and land use, environment and habitat enhancement, outreach effort includes Native American Indian tribes, Disadvantaged Communities, Land Use communities, Climate Change impact evaluation, greenhouse gas release impacts from water related infrastructure, mitigation, and develop adaptation strategies, and identify approaches for environmental justice;
  5. Funding: Provides for a description of funding support for the proposed implementation of projects, the planning program, and the OWOW Plan Update and development;

6. Data Management and Plan Performance/Monitoring: Addresses data management and plan performance and monitoring needs;
7. Plan Strategies, Project Review, and Implementation: Identifies expanded approaches to evaluate and compare benefits that would accrue in the watershed through integration of water resource management strategies, implementing California Water Plan program preferences, indentifying approaches for integrated regional water management planning;
8. Draft and Final OWOW Updated Plan Report: includes all interim reports from Tasks 1 through 8. The draft and final reports will contain end results from the analyses performed during this Study and documentation of the results; and
9. California Environmental Quality Act (CEQA) Compliance and Plan Adoption: Ensure CEQA is integrated in the OWOW Plan Update, and present to SAWPA Governance for approval and adoption.

## **V. Plan of Study**

The Plan of Study (POS) is attached hereto and incorporated herein as Exhibit B. All Parties acknowledge that as the Study progresses, additional detailed tasks and sub-tasks may be determined by the Project Team and approved by the Steering Team. If the Project Team determines that substantial changes or modifications to the (POS) are necessary, the Parties may amend Exhibit B by mutual written agreement.

## **VI. Study Cost and Funding**

- A. The total estimated cost of this Study is \$2,528,000 and will be cost-shared between Reclamation and the SAWPA (\$1 million from Reclamation, \$1,528,000 from SAWPA). SAWPA will contribute \$1,528,000, to be provided as cash or a combination of cash and in-kind services.
- B. No later than December 30, 2010, SAWPA shall contribute to this study with in-kind services; and no later than October 30, 2011 \$75,000 in cash will be provided to Reclamation. In addition, by the expiration date of this Agreement, SAWPA will contribute the balance of their financial obligation (\$1,528,000) as cash and/or in-kind services by performing concurrent studies which shall provide information and data integral to this Study's objective. All cash funds contributed will be transferred to Reclamation and deposited within a designated account.
- C. In the event that any funds advanced to Reclamation by SAWPA are not required to complete the work under the Study, such excess funds shall be returned by Reclamation to the Partner without interest, upon completion of the work defined by the Study; provided, however, that in the event the Parties agree on additional

work consistent with the direction of this Agreement, such excess funds may be retained by Reclamation.

## **VII. Authorities**

- A. Nothing in this Agreement alters the statutory authorities or any other authorities of Reclamation or SAWPA. This Agreement is intended to facilitate cooperative efforts for mutual provision of services and support and technical assistance by both Parties in the conduct of meeting the objectives and scope of the Study. This Agreement does not supersede or void existing agreements between Reclamation and SAWPA.
- B. Reclamation's authority to enter into this Agreement:
  - 1. Reclamation Act of June 17, 1902 (Ch. 1093, 32 Stat. 388; 43 U.S.C. §372, et seq.) and acts amendatory thereof and supplementary thereto.
  - 2. The Sundry Civil Expenses Appropriations Act, March 4, 1921, 43 U.S.C. §395 (Contributed Funds Act).
- C. SAWPA's authority to enter into this Agreement:
  - 1. The Santa Ana Watershed Project Authority (SAWPA) is a public agency and a Joint Powers Authority formed by the following member agencies: Eastern Municipal Water District, Inland Empire Utilities Agency, Orange County Water District, San Bernardino Valley Municipal Water District, and Western Municipal Water District;
  - 2. SAWPA has the legal authority to construct, operate, maintain and rehabilitate projects for irrigation, municipal, and industrial water supplies pursuant to Amendment No. 1 to the Joint Exercise of Powers Agreement Creating the Santa Ana Watershed Project Authority;
  - 3. SAWPA has legal authority to enter into agreement and participate as a full partner with Reclamation under the WaterSMART's Basin Study Program.

## **VIII. Anti-Deficiency Act**

The expenditure or contribution of any funds for the performance of any obligation of any Party under this Agreement shall be contingent upon appropriation or allotment of funds for the payment of such obligation. No liability shall accrue to any Party in case funds are not appropriated or allotted. No provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341.

## **IX. Reports**

- A. Freedom of Information Act (FOIA), 5 U.S.C. §522, Disclosures: The Parties understand and agree that all communications, including this Agreement, may be disclosed to the public in accordance with the FOIA process unless protected under any FOIA exemption. And, similarly, there is a State open records act in California (Code §§ 6250-6276.48) that may require the Parties to disclosure to the public in accordance with State law, unless protected by exemption.
- B. Final Reports: The results of this Agreement and the science, engineering, and technology data that are collected, compiled, and evaluated under this Agreement shall be shared and mutually interchanged by SAWPA and Reclamation. A final report summarizing all data and findings shall be prepared by Reclamation and SAWPA. Reclamation and SAWPA shall have 60 days to review the manuscript prior to submission for publication. The report shall acknowledge this Agreement and the contribution of each Party's personnel and any Stakeholders contributions that are requested by Reclamation and/or SAWPA. The final content of the Report will be determined by Reclamation and SAWPA.

## **X. Term and Termination**

- A. Term: This Agreement shall take effect upon the approval of the Parties and, unless earlier terminated by the Parties, will expire on January 31, 2012, unless amended.
- B. Amendment: If any Party desires to modify this Agreement, all Parties shall confer in good faith to determine the desirability of such modification. Such modification shall not be effective until a written amendment is signed by all Parties.
- C. Withdrawal: Either Party may withdraw from this Agreement at any time, with or without cause, and without incurring liability or obligation to the other Party by providing notice to the other Party at least ninety (90) calendar days prior to withdrawing from this Agreement. Notwithstanding the above, if SAWPA withdraws from this Agreement, SAWPA shall forfeit any funds provided to Reclamation under this Agreement prior to the date of withdrawal.

## **XI. Key Personnel**

- A. Each Party shall designate key personnel for receipt of notices and other purposes under this Agreement ("Key Personnel"). The Key Personnel for each Party are listed in Exhibit A, which is attached hereto and incorporated herein.
- B. Should a Party designate new Key Personnel during the term of this Agreement, the Party shall provide the other Parties with notice of the name of its new

designated Key Personnel in accordance with Section XII.

- C. The Key Personnel are not authorized to change or interpret with authority the terms and conditions of this Agreement.

## **XII. Notices**

Notices, requests, demands, or other communications between the Parties under this Agreement, including copies of any correspondence among the scientific and/or technical representatives of each Party that interpret or may have a bearing on the legal effect of this Agreement's terms and conditions, shall be sent to the Key Personnel listed in Exhibit A. Notice will be sufficiently given for all purposes as follows:

- A. Personal Delivery: When delivered to the recipient, notice is effective upon delivery.
- B. United States Mail: When mailed, postage prepaid, by first class mail, notice is effective three business days after the date the notice is mailed by the sender. When mailed, postage prepaid, by certified mail, return receipt requested, notice is effective on receipt, if a return receipt confirms delivery.
- C. Overnight Delivery: When delivered by an overnight delivery service such as Federal Express, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

## **XIII. General Provisions**

- A. Limitations: This Agreement sets out the Parties' intentions and objectives and does not direct or apply to any person besides SAWPA and Reclamation. This Agreement is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by anyone against the United States, its agencies, its officers, or any person.
- B. Subcontracting Approval: A Party hereto desiring to obtain and use the services of a third party via contract or otherwise shall give prior notice to the other Parties, including details of the contract or other arrangement. This requirement is to assure that confidentiality is not breached and rights in Subject Inventions are not compromised.
- C. Assignment: No Party has the right to assign this Agreement or any of its responsibilities hereunder.
- D. Endorsement: This Agreement and/or the results of the Study funded under this Agreement are not to be construed as an endorsement of the results of the Study by the Federal government or SAWPA, except as may be explicitly stated by an

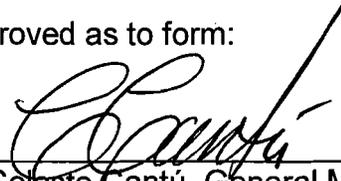
authorized representative of the Federal government or by an authorized representative of SAWPA.

- E. Disputes: Any dispute arising under this Agreement, which cannot be readily resolved, shall be submitted jointly to the Key Personnel, identified in Exhibit A, Key Personnel. Each Party agrees to seek in good faith to resolve the issue through negotiation or other forms of nonbinding dispute resolution processes mutually acceptable to the Parties. Pending the resolution of any dispute or claim, each Party agrees that performance of all obligations shall be pursued diligently.
- F. Force Majeure: No Party shall be liable for any unforeseeable event beyond its reasonable control not caused by the fault or negligence of such Party:
  - 1. Which causes the Party to be unable to perform its obligations under this Agreement; and
  - 2. Which it has been unable to overcome by the exercise of due diligence.
  - 3. This includes, but is not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strikes, labor dispute, failure or sabotage of any Party's facilities or any order or injunction made by a court or public agency.
- G. Governing Law: The construction, validity, performance, and effect of this entire Agreement shall be governed by the laws applicable to the Government of the United States of America in accordance with applicable Federal Law as interpreted by Federal Courts.
- H. Waiver: The failure of any Party to enforce any term hereof shall not be deemed a waiver of any rights contained herein.
- I. Severability: In the event any provision of this Agreement is determined to be invalid or unenforceable under any controlling law, the invalidity or unenforceability of that provision shall not in any way affect the validity or enforceability of the remaining provisions of this Agreement.
- J. Counterparts: This Agreement may be executed in duplicate and each original shall be equally effective.
- K. Sovereign Immunity: The Parties do not waive their sovereign immunity by entering into this Agreement, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Agreement.
- L. Third Party Beneficiary Rights: The Parties do not intend to create in any other individual or entity the status of third party beneficiary. The rights, duties, and obligations contained in this Agreement shall operate only among the Parties and shall inure solely to the benefit of the Parties to this Agreement.

- M. All contractors shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
- N. Drafting Considerations: Each Party has participated fully in the drafting, review and revision of this Agreement, each of whom is sophisticated in the matters to which this Agreement pertains, and no Party shall be considered to be the sole drafter of this Agreement.
- O. Officials Not To Benefit: No Member of or Delegate to the Congress, or Resident Commissioner, shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.
- P. Entire Agreement: The terms and conditions contained in this Agreement constitute the entire Agreement and understanding by and among the Parties and shall supersede all other communications, negotiations, arrangements and agreements either oral or written, with respect to the subject matter herein.

**IN WITNESS WHEREOF**, the Partners hereto have caused this Agreement to be executed.

Approved as to form: **Santa Ana Watershed Project Authority**

By   
Celeste Cantu, General Manager

11-16-2010  
Date

Approved as to form: **Bureau of Reclamation**

By   
William J. Steele, Area Manager

11-16-2010  
Date

**SANTA ANA WATERSHED BASIN STUDY**

**Key Personnel**

<b>Organization</b>	<b>Primary Contact</b>	<b>Contact Information</b>
SAWPA	Mark Norton	Water Resources & Planning Mgr. 951-354-4221 mnorton@sawpa.org
	Celeste Cantú	General Manager 951-354-4229 ccantu@sawpa.org

**Reclamation Key Personnel**

<b>Region</b>	<b>Primary Contact</b>	<b>Contact Information</b>
SCAO	Bill Steele	Area Manager 951-695-5310 ext. 13 wsteele@usbr.gov
SCAO	Jack Simes	Planning Officer 951-695-5310 ext. 17 JSimes@usbr.gov

**Exhibit B.**

**SANTA ANA WATERSHED BASIN STUDY  
Plan of Study  
for the  
OWOW Plan Update**