

**TELECONFERENCE\***  
**GOVT. CODE SECTION 54953 (b)**

**SPECIAL MEETING**  
**OF THE**  
**CACHUMA OPERATION AND MAINTENANCE BOARD**  
at Cachuma Operation and Maintenance Board Office

**3301 Laurel Canyon Road**  
**Santa Barbara, California 93105**

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**Wednesday, April 16, 2014**

*Start Time*  
**2:00 P.M.**

**AGENDA**

**NOTICE:** This Meeting shall include teleconferencing as authorized and in accordance with Government Code section 54953 (b). The teleconferencing will take place at the COMB Board room at 3301 Laurel Canyon Road, Santa Barbara, CA 93105 and at 118 3<sup>RD</sup> Street, SE, Washington D.C. 20003. This agenda will be posted at the teleconferencing locations, which will be accessible to the public.

*Note: This is a special meeting of the Governing Board called in accordance with Government Code Section 54956. Other than the listed agenda items, no other business will be conducted by the Governing Board.*

1. **COMB CALL TO ORDER, ROLL CALL** (COMB Board of Directors.)
2. **PUBLIC COMMENT** (In accordance with Government Code Section 54954.3, every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.)
3. **EMERGENCY PUMPING FACILITY PROJECT (EPFP)**
  - a. Action: Recommend approval by motion and roll call vote of the Board:  
Budget Augmentation for FY 2013-14
  - b. Action: Recommend approval by motion and roll call vote of the Board:  
COMB/ID#1 Indemnification Agreement
  - c. Action: Recommend approval by Resolution No. 576 and roll call vote of the Board:  
Selection of Contractor; Approval of Contract; Authorization of Project Expenditure in excess of \$1m; Authorize General Manager to issue Notice To Proceed to Contractor for Phase One (design and site mobilization); Authorize General Manager to issue Notice To Proceed to Contractor for Phase Two (construction, operation and maintenance) contingent upon ratification of project expenditure by all Member Units; and Authorize General Manager to execute and deliver all documents, obtain all permits, file any environmental documents and undertake appropriate actions necessary to properly complete the processing and execution of the Contract Agreement and the implementation of the Emergency Project.

Receive information regarding ratification of project expenditure but not limited to the following:

- d. Member Units' Resolution to Ratify Project Expenditure

Receive information regarding permit status but not limited to the following:

- e. Permit status

**4. FUNDING OPTIONS FOR EMERGENCY PUMPING FACILITY PROJECT**

Receive information regarding funding options but not limited to the following:

- a. Bank of Santa Barbara
- b. I-Bank

**5. COMB ADJOURNMENT**

NOTICE TO PUBLIC

**Public Comment:** Any member of the public may address the Board on any item in the noticed agenda, as set forth in Item 2. The total time for this item will be limited by the President of the Board. If you wish to address the Board under this item, please complete and deliver to the Secretary of the Board before the meeting is convened, a "Request to Speak" form including a description of the subject you wish to address.

**Americans with Disabilities Act:** In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Cachuma Operation and Maintenance Board office at (805) 687-4011 prior to the meeting to enable the Board to make reasonable arrangements.

[This Agenda was Posted at 3301 Laurel Canyon Road, Santa Barbara, CA  
at Santa Barbara City Hall, Santa Barbara, CA and at Member District Offices and Noticed and Delivered in Accordance  
with Section 54956 of the Government Code.]

# CACHUMA OPERATION & MAINTENANCE BOARD

## BOARD MEMORANDUM

Date:	April 16, 2014
Submitted by:	Janet Gingras
Approved by:	Randall Ward

**SUBJECT:** Fiscal Year 2013-14 Budget Augmentation for Emergency Pumping Facility Project

**SUMMARY:**

In December 2013, the Board approved a partial advancement of \$300,000 from the South Coast Member Units' (SCMU's) regular 4<sup>th</sup> Quarter assessments to create the Drought Contingency Reserve Fund. This reserve fund was established to pay for those costs attributable to drought contingency planning activities. Because of the continued drought, activities related to previous planning have progressed to the implementation stage. Therefore, activities necessary to cause the development of the Emergency Pumping Facility Project (EPFP) are in progress.

At this time, I request Board approval of a FY 2013-14 budget augmentation in the amount of \$300,000 to formalize the previous collection of the advancement of 4<sup>th</sup> quarter assessments. As a reminder, those funds were Board approved for the following use:

- Project Planning – \$190,000
- Project Management - \$ 60,000
- Environmental / Legal - \$ 50,000

In addition, I am requesting \$604,000 be added to the 2013-14 fiscal year budget. These funds will be utilized for the following:

- Consulting Project Management fees - \$50,000
- Phase I - Contractor designs, mobilization and site preparation - \$350,000
- Evaluation of North Portal Tower Gates, Stems and Guides - \$54,000
- Purchase of Stem Guide Components - \$150,000

The table below provides allocation detail of the requested special assessment from the SCMU's.

<b>SOUTH COAST MEMBER UNIT ALLOCATION</b>	<b>Percentage</b>	<b>Total</b>
Goleta Water District	40.42%	\$ 365,397
City of Santa Barbara	35.88%	\$ 324,355
Carpinteria Valley Water District	12.20%	\$ 110,288
Montecito Water District	11.50%	\$ 103,960
<b>TOTAL</b>	<b>100.00%</b>	<b>\$ 904,000</b>

Contractor proposals for the Emergency Pumping Facility Project have been received and evaluated. This budget augmentation intends to fund those costs that occur prior to the end of the 2013-14 fiscal year. Longer term financing options for the remaining amount necessary to support the implementation of the EPFP will be presented to the Member Units prior to seeking Board approval.

**FISCAL IMPACT:**

Increase FY 2013-14 Budget in the amount of \$904,000.

**LEGAL CONCURRENCE:**

N/A

**ENVIRONMENTAL COMPLIANCE:**

EPFP will require compliance with the California Environmental Quality Act. The EPFP will require specified permit approvals.

**COMMITTEE STATUS:**

The Ad Hoc Drought Contingency Committee has been briefed on this item.

**RECOMMENDATION:**

Board approve the Fiscal Year 2013-14 Budget Augmentation in the amount of \$904,000 for funding necessary for the Emergency Pumping Facility Project.

**LIST OF EXHIBITS:**

N/A

# CACHUMA OPERATION & MAINTENANCE BOARD

## BOARD MEMORANDUM

Date:	April 16, 2014
Submitted by:	Randall Ward

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**SUBJECT:** Approval of Indemnification Agreement for Emergency Pumping Facility Project (EPFP)

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**SUMMARY:**

Submitted for Board review and approval is the Indemnification Agreement between Cachuma Operation and Maintenance Board and the Santa Ynez River Water Conservation District, ID No. 1. This agreement outlines the terms whereby SYRWCD ID No. 1 will not be held responsible or obligated in any way for the EPFP contractual obligations. The Agreement indemnifies ID No. 1 from any liability associated with the acceptance of the selected contractor, award of the construction contract, and payment for the construction of the Emergency Pumping Facility Project.

**FISCAL IMPACTS:**

N/A

**LEGAL CONCURRENCE:**

Legal counsel has reviewed the Indemnification Agreement.

**ENVIRONMENTAL COMPLIANCE:**

N/A.

**COMMITTEE STATUS:**

The Ad Hoc Drought Contingency Committee reviewed the Indemnification Agreement at the committee meeting held on April 9, 2014 and recommends approval.

**RECOMMENDATION:**

Staff recommends the Board approve the Indemnification Agreement between COMB and the Santa Ynez River Water Conservation District, ID No. 1.

**LIST OF EXHIBITS:**

- A. Indemnification Agreement

**CACHUMA OPERATION AND MAINTENANCE BOARD  
DROUGHT EMERGENCY PUMPING FACILITY PROJECT  
INDEMNIFICATION AGREEMENT FOR  
SANTA YNEZ RIVER WATER CONSERVATION DISTRICT,  
IMPROVEMENT DISTRICT NO. 1**

**This Indemnification Agreement** ("Agreement") is entered into this \_\_\_ day of April, 2014 by and between the Cachuma Operation and Maintenance Board, a joint powers agency ("COMB") and the Santa Ynez River Water Conservation District, Improvement District No. 1 ("ID No.1"), with reference to the following facts:

RECITALS

A. COMB intends to undertake a Drought Emergency Pumping Facility Project ("Emergency Project" or "Project"). The Emergency Project consists of maintenance and repair operations to, among other things, install a floating platform-mounted system to pipe water from Lake Cachuma to the existing lake inlet tower, and to re-establish service of an existing water entry gate (Gate 5) on the inlet tower. The purpose of the Emergency Project is to ensure the conveyance of Cachuma Lake Project water ("Project Water") to the Tecolote Tunnel/South Coast Conduit and thence to the South Coast Member Agencies (defined below) for distribution to their customers on the south coast of Santa Barbara County. ~~The parties acknowledge that the estimated cost of the Project will be in excess of One Million Dollars (\$1,000,000).~~

B. The 1996 Amended and Restated Agreement for the Establishment of a Board of Control to Operate and Maintain the Cachuma Project-Cachuma Operation and Maintenance Board, dated May 23, 1996 ("Amended and Restated Agreement"), as amended by an Amendment to the Amended and Restated Agreement made effective September 16, 2003 (collectively, the "Joint Powers Agreement") provides that each COMB member agency's obligation for Cachuma Project operation and maintenance costs is expressly limited only to the appropriation and contribution of such funds as may be assessed pursuant to the Joint Powers Agreement or as the parties thereto may agree.

C. The parties acknowledge that the estimated cost of the Emergency Project will be in excess of One Million Dollars (\$1,000,000) which, pursuant to Section 1.3 of the Joint Powers Agreement, requires unanimous approval member agencies.

D. The parties desire to enter into this Agreement to ensure Governing Board of COMB has determined and agreed that ID No. 1 shall not be obligated to pay or otherwise be responsible or liable for all or any part of the Emergency Project since ID No. 1 does not utilize the Cachuma Lake Intake Structure, Tecolote Tunnel and South Coast Conduit for delivery of Project Water and will not benefit from the Emergency Project.

**AGREEMENT**

The parties agree as follows:

1. **Allocation.**

Notwithstanding any provisions to the contrary in the Joint Powers Agreement, the parties agree that COMB, at the sole and exclusive cost and expense of four (4) of its members, City of Santa Barbara, Goleta Water District, Montecito Water District and Carpinteria Valley Water District ("South Coast Member Agencies"), shall be solely responsible for all of COMB's obligations, debts and liabilities related to the Emergency Project, including, but not limited to, planning, design, permitting, selection of a contractor(s) and award of a contract, construction, ~~operation, maintenance, repair, and replacement.~~ operation, and maintenance.

2. **Indemnification for the Emergency Project.**

To the maximum extent allowed by law, COMB hereby covenants and agrees, at the sole and exclusive cost and expense of its South Coast Member Agencies, to indemnify and hold harmless ID No. 1, its officers, trustees, agents and employees, from and against any and all damages, liabilities, claims, demands, actions, causes of action, reasonable attorneys' and expert witness fees, and all other costs, expenses of any kind or nature that arise out of or in any way relate to the this Agreement or Emergency Project. In the event of a court challenge to the legality or the applicability of this indemnification provision, the parties agree that this indemnification provision shall be interpreted in favor of ID No. 1 and that ID No. 1 shall be afforded the maximum degree of indemnification as may be reasonably inferable from the language of this provision as available at law.

ID No. 1 shall notify COMB of the existence of any claim, demand, or other matter that it reasonably becomes aware of to which COMB's indemnification obligations would apply and shall give COMB a reasonable opportunity to defend the same at COMB's expense with counsel of COMB'S own selection, subject to ID No. 1's reasonable approval. If COMB, within a reasonable time after written notice, fails to defend, ID No. 1 shall have the right, but not the obligation, to undertake the defense of, and compromise a settlement (exercising reasonable business judgment), any claim or other matter on behalf, for the account, and at the risk of COMB.

3. **COMB Obligations.**

Notwithstanding that ID No. 1 is a member agency of COMB, ID No. 1 shall not have any liability or responsibility with respect to COMB's obligations pursuant, or costs related, to this Agreement.

4. **Notices.**

All notices, approvals, acceptances, demands and other communications required or permitted under this Agreement, to be effective, shall be in writing and shall be delivered in person or by U.S. mail (postage prepaid, certified, return receipt requested) or by Federal Express or other similar overnight delivery service to the party to whom the notice is directed at the address of such party as maintained by COMB. Any written communication given by mail shall be deemed delivered two (2) business days after such mailing date and any written communication given by overnight delivery service shall be deemed delivered one (1) business day after the dispatch date. Either party may change its address by giving the other party written notice of its new address as provided above.

5. Other Instruments.

The parties shall, whenever and as often as reasonably requested by the other party, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all documents and instruments as may be necessary, expedient or proper in the reasonable opinion of the requesting party to carry out the intent and purposes of this Agreement, provided that the requesting party shall bear the cost and expense of such further instruments or documents (except that each party shall bear its own attorneys' fees).

6. Construction.

The provisions of this Agreement should be liberally construed to effectuate its purposes. The language of this Agreement shall be construed simply according to its plain meaning. Whenever the context and construction so requires, all words used in the singular shall be deemed to be used in the plural, all masculine shall include the feminine and neuter, and vice versa.

7. Severability.

If any term, provision, covenant or condition of this Agreement shall be or become illegal, null, void or against public policy, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected, impaired or invalidated thereby. The term, provision, covenant or condition that is so invalidated, voided or held to be unenforceable shall be modified or changed by the parties to the extent possible to carry out the intentions and directives stated in this Agreement.

8. Successors and Assigns.

This Agreement shall be binding on and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns.

9. Waiver.

No waiver of any provision or consent to any action shall constitute a waiver of any other provision or consent to any other action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a party to provide a waiver in the future except to the extent specifically stated in writing. Any waiver given by a party shall be null and void if the party requesting such waiver has not provided a full and complete disclosure of all material facts relevant to the waiver requested. No waiver shall be binding unless executed in writing by the party making the waiver.

10. Governing Law.

The validity and interpretation of this Agreement shall be governed by the laws of the State of California without giving effect to the principles of conflict of laws, with venue for all purposes proper only in the County of Santa Barbara, State of California.

11. Counterparts.



This Agreement may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same instrument. However, in making proof hereof, it will be necessary to produce only one copy hereof signed by the party to be charged.

12. Attorneys' Fees.

If any action at law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover actual attorneys' fees and costs which may be determined by the court in the same action or in a separate action brought for that purpose. The attorneys' fees and costs to be awarded shall be made to fully reimburse for all attorneys' fees, paralegal fees, costs and expenses actually incurred in good faith, regardless of the size of the judgment, it being the intention of the parties to fully compensate for all attorneys' fees, paralegal fees, costs and expenses paid or incurred in good faith.

13. Authorizations.

All individuals executing this Agreement and other documents on behalf of the respective parties certify and warrant that they have the capacity and have been duly authorized to so execute the documents on behalf of the entity so indicated.

14. No Third-Party Beneficiaries.

No third party, other than the parties to this Agreement, shall be entitled to claim or enforce any rights under this Agreement.

15. Entire Agreement and Amendment.

This Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature binding except as stated in this Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their right to claim, contest or assert that this Agreement was modified, cancelled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

SANTA YNEZ RIVER WATER  
CONSERVATION DISTRICT,  
IMPROVEMENT DISTRICT NO. 1:

CACHUMA OPERATION AND  
MAINTENANCE BOARD:

\_\_\_\_\_  
President

\_\_\_\_\_  
President

ATTEST:

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Secretary

# CACHUMA OPERATION & MAINTENANCE BOARD

## BOARD MEMORANDUM

Date:	April 16, 2014
Submitted by:	Janet Gingras
Approved by:	Randall Ward

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**SUBJECT:** Emergency Pumping Facility Project: Approval of Resolution No. 576 for Selection of Contractor, Approval of Contract, and Authorization of Project Expenditure

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**SUMMARY:**

The purpose of the Emergency Pumping Facility Project (EPFP) contract is to provide for the pumping of water to the North Portal Intake Tower once the elevation of the lake has declined below the level necessary to operate the existing gravity fed water conveyance system. The recommended Design, Build, Operate and Maintain (DBOM) contract is performance based and requires the EPFP to meet a specified maximum delivery and be operational on a 24/7 basis beginning September 1, 2014, through February 28, 2015 (6 months). The proposal recommended is contingent on the successful negotiation of the contract, including terms and conditions, by the General Manager. Not included in the actions recommended today is the additional funds that would be required if the EPFP is required to operate and/or remain on site in excess of six months.

**CONTRACT INFORMATION:**

Proposals for the EPFP were received on Friday, April 4, 2014 and reviewed by the evaluation committee on Tuesday, April 8, 2014 as outlined in the Request For Proposals (RFP). The evaluation committee reached a unanimous decision to recommend the proposal submitted by Cushman Contracting Corporation. The evaluation committee consisted of representatives of each of the south coast Member Units and an engineer from the County of Santa Barbara.

The proposal consists of a Phase 1 (preliminary/final design, initial mobilization, site preparation, etc.) and Phase 2 (construction, operation and maintenance). Phase 1 will commence upon approval of the contract by the Board of Directors and Phase 2 will commence once ratification is received by all Member Unit Boards and City Council.

**FISCAL IMPACT:**

Set forth in Exhibit C

**LEGAL CONCURRENCE:**

General Counsel developed and reviewed all Contract Documents and affiliated Resolution.

**ENVIRONMENTAL COMPLIANCE:**

EPFP will require compliance with the California Environmental Quality Act. The EPFP will require specified permit approvals.

**COMMITTEE STATUS:**

The Ad Hoc Drought Contingency Planning Committee has reviewed the recommended proposal.

**RECOMMENDATIONS:**

Request the Board of Directors approve Resolution No. 576 for implementation of the Emergency Pumping Facility Project.

**LIST OF EXHIBITS:**

- A. Resolution No. 576
- B. Draft Contract Agreement
- C. Project Budget

**REVISED  
RESOLUTION**

**RESOLUTION NO. 576**

**RESOLUTION OF THE GOVERNING BOARD OF THE CACHUMA OPERATION & MAINTENANCE BOARD APPROVING THE DROUGHT EMERGENCY PUMPING FACILITY PROJECT, AUTHORIZING A CAPITAL EXPENDITURE IN EXCESS OF ONE MILLION DOLLARS FOR THE PROJECT AS PROVIDED HEREIN, SELECTING A CONTRACTOR AND APPROVING A CONTRACT AGREEMENT FOR THE PROJECT AND AUTHORIZING RELATED ACTIONS THERETO**

**WHEREAS**, the Cachuma Operation & Maintenance Board (“COMB”) is a joint powers authority and public entity, organized and existing in the County of Santa Barbara in accordance with Government Code Section 6500 *et seq.*, and operating pursuant to the 1996 Amended and Restated Agreement for the Establishment of a Board of Control to Operate and Maintain the Cachuma Project - Cachuma Operation And Maintenance Board, dated May 23, 1996 (“Amended and Restated Agreement”), as amended by an Amendment to the Amended and Restated Agreement made effective September 16, 2003 (collectively the “Joint Powers Agreement”); and

**WHEREAS**, COMB operates and maintains Cachuma Project facilities pursuant to a Transfer of Operation and Maintenance Contract with the United States Bureau of Reclamation; and

**WHEREAS**, the Member Units of COMB consist of the City of Santa Barbara, the Goleta Water District, the Montecito Water District, the Carpinteria Valley Water District (collectively herein the “South Coast Member Agencies”), and the Santa Ynez River Water Conservation District, Improvement District No. 1 (“ID No. 1”); and

**WHEREAS**, on January 17, 2014 the Governor of the State of California proclaimed a state of emergency due to current drought conditions, and on March 1, 2014, the Governor signed into law emergency drought legislation that finds and declares that California is experiencing an unprecedented dry period and shortage of water for its residents, local governments, agriculture, the environment and other uses; and

**WHEREAS**, there exist severe drought conditions in the South Coast geographic area served by COMB, and should such conditions persist, water levels in Cachuma Lake will continue to diminish and water in the reservoir will not be able to gravity flow to the existing Cachuma Lake inlet tower, which comprises a portion of the Cachuma Project facilities; and

**WHEREAS**, it is necessary for COMB to undertake emergency action to cause and allow the pumping of water through installation of a floating platform mounted system to the existing lake inlet tower, the re-establishment of service of an existing water entry gate, and related actions thereto (the “Emergency Project”), thereby ensuring the continued use of the Cachuma Lake reservoir until reservoir levels return to a normal operating level, and ensuring the continuing conveyance and supply of Cachuma Lake Project water through the intake tower

to the Tecolote Tunnel/South Coast Conduit and then to the South Coast Member Agencies for distribution to their customers and residents; and

**WHEREAS**, the Governing Board desires to approve the Emergency Project; and

**WHEREAS**, the estimated cost of the Emergency Project is in excess of One Million Dollars (\$1,000,000.00) and, pursuant to Section 1.3(h) et seq. of the Joint Powers Agreement, the Governing Board desires to authorize such expenditure and acknowledges that authorization of the subject expenditure for the Emergency Project requires both unanimous consent by the Governing Board, as well as ratification by each and all of COMB's Member Units; and

**WHEREAS**, the Governing Board pursuant to a completed Request For Proposals process desires to select a contractor for the Emergency Project, and to approve a "Design, Build, Operation And Maintenance Project: Emergency Pumping Facilities Project (Installation And Operation)" Agreement between COMB and Cushman Contracting Corporation, that will consist of two phases: Phase One ( design and site mobilization) and Phase Two (construction, operation and maintenance) (hereinafter referred to as the "Contract Agreement");

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF COMB AS FOLLOWS:**

1. The facts set forth in the above recitals and in the documents referenced herein are true and correct, and the Governing Board so finds and determines.

2. The Governing Board approves the Emergency Project, and a capital expenditure of funds for the Emergency Project in excess of One Million Dollars (\$1,000,000.00) and in an amount not to exceed Six Million Dollars (\$6,000,000.00) to be budgeted and paid over two (2) fiscal years from July 1, 2013 through June 30, 2015, with such approval contingent upon both ratification of such expenditure by each and all of the member Units in accordance with Section 1.3(i) of the Joint Powers Agreement and available funding, and upon such contingency, allocated in accordance with the South Coast Member Agencies' respective percentage allocations set forth in the staff memorandum accompanying this agenda item [Goleta Water District, 40.42%; City of Santa Barbara, 35.88%; Carpinteria Valley Water District, 12.20%; and Montecito Water District, 11.50%].

3. The Governing Board selects Cushman Contracting Corporation as the contractor for the Emergency Project, approves the Contract Agreement between COMB and Cushman Contracting Corporation, authorizes the President and Secretary of the Governing Board to execute the Contract Agreement as negotiated by the General Manager, in substantially the form attached hereto as Exhibit A, authorizes the General Manager to issue a Notice To Proceed for Phase One ( design and site mobilization) of the Emergency Project in accordance with the terms and conditions of the Contract Agreement, and authorizes the General Manager to issue a Notice To Proceed for Phase Two (construction, operation and maintenance) of the Emergency Project in accordance with the terms and conditions of the Contract Agreement, including upon ratification of an expenditure in excess of One Million Dollars by each and all of the member Units in accordance with Section 1.3(i) of the Joint Powers Agreement, and

4. COMB's officers and staff, including the General Manager, are hereby authorized and directed to do all things necessary and appropriate (including but not limited to the execution and delivery of documents, the obtaining of necessary permits and filing of environmental documents and any other actions) to complete the processing and execution of the Contract Agreement and the implementation of the Emergency Project.

**PASSED, APPROVED AND ADOPTED** by the Governing Board of the Cachuma Operation And Maintenance Board, this 16<sup>th</sup> day of April 2014, by the following roll call vote:

Ayes: Beebe, Francisco, Morgan, Orozco, Hanson

Nays: None

Abstain:

**APPROVED:**

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President of the Governing Board

**ATTEST:**

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Secretary of the Governing Board

**RESOLUTION NO. 576**

**RESOLUTION OF THE GOVERNING BOARD OF THE CACHUMA OPERATION & MAINTENANCE BOARD APPROVING THE DROUGHT EMERGENCY PUMPING FACILITY PROJECT, AUTHORIZING A CAPITAL EXPENDITURE IN EXCESS OF ONE MILLION DOLLARS FOR THE PROJECT AS PROVIDED HEREIN, SELECTING A CONTRACTOR AND APPROVING A CONTRACT AGREEMENT FOR THE PROJECT AND AUTHORIZING RELATED ACTIONS THERETO**

**WHEREAS**, the Cachuma Operation & Maintenance Board (“COMB”) is a joint powers authority and public entity, organized and existing in the County of Santa Barbara in accordance with Government Code Section 6500 *et seq.*, and operating pursuant to the 1996 Amended and Restated Agreement for the Establishment of a Board of Control to Operate and Maintain the Cachuma Project - Cachuma Operation And Maintenance Board, dated May 23, 1996 (“Amended and Restated Agreement”), as amended by an Amendment to the Amended and Restated Agreement made effective September 16, 2003 (collectively the “Joint Powers Agreement”); and

**WHEREAS**, COMB operates and maintains Cachuma Project facilities pursuant to a Transfer of Operation and Maintenance Contract with the United States Bureau of Reclamation; and

**WHEREAS**, the Member Units of COMB consist of the City of Santa Barbara, the Goleta Water District, the Montecito Water District, the Carpinteria Valley Water District (collectively herein the “South Coast Member Agencies”), and the Santa Ynez River Water Conservation District, Improvement District No. 1 (“ID No. 1”); and

**WHEREAS**, on January 17, 2014 the Governor of the State of California proclaimed a state of emergency due to current drought conditions, and on March 1, 2014, the Governor signed into law emergency drought legislation that finds and declares that California is experiencing an unprecedented dry period and shortage of water for its residents, local governments, agriculture, the environment and other uses; and

**WHEREAS**, there exist severe drought conditions in the South Coast geographic area served by COMB, and should such conditions persist, water levels in Cachuma Lake will continue to diminish and water in the reservoir will not be able to gravity flow to the existing Cachuma Lake inlet tower, which comprises a portion of the Cachuma Project facilities; and

**WHEREAS**, it is necessary for COMB to undertake emergency action to cause and allow the pumping of water through installation of a floating platform mounted system to the existing lake inlet tower, the re-establishment of service of an existing water entry gate, and related actions thereto (the “Emergency Project”), thereby ensuring the continued use of the Cachuma Lake reservoir until reservoir levels return to a normal operating level, and ensuring the continuing conveyance and supply of Cachuma Lake Project water through the intake tower

to the Tecolote Tunnel/South Coast Conduit and then to the South Coast Member Agencies for distribution to their customers and residents; and

**WHEREAS**, the Governing Board desires to approve the Emergency Project; and

**WHEREAS**, the estimated cost of the Emergency Project is in excess of One Million Dollars (\$1,000,000.00) and, pursuant to Section 1.3(h) et seq. of the Joint Powers Agreement, the Governing Board desires to authorize such expenditure and acknowledges that authorization of the subject expenditure for the Emergency Project requires both unanimous consent by the Governing Board, as well as ratification by each and all of COMB's Member Units; and

**WHEREAS**, the Governing Board pursuant to a completed Request For Proposals process desires to select a contractor for the Emergency Project, and to approve a "Design, Build, Operation And Maintenance Project: Emergency Pumping Facilities Project (Installation And Operation)" Agreement between COMB and Cushman Contracting Corporation, that will consist of two phases: Phase One (preliminary/final design, initial mobilization, site preparation, etc.) and Phase Two (construction, operation and maintenance) (hereinafter referred to as the "Contract Agreement");

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF COMB AS FOLLOWS:**

1. The facts set forth in the above recitals and in the documents referenced herein are true and correct, and the Governing Board so finds and determines.

2. The Governing Board approves the Emergency Project, and a capital expenditure of funds for the Emergency Project in excess of One Million Dollars (\$1,000,000.00) and in an amount not to exceed Six Million Dollars (\$6,000,000.00) to be budgeted and paid over two (2) fiscal years from July 1, 2013 through June 30, 2015, with such approval contingent upon both ratification of such expenditure by each of the member Units in accordance with Section 1.3(i) of the Joint Powers Agreement and available funding, and upon such contingency, allocated in accordance with the South Coast Member Agencies' respective percentage allocations set forth in the staff memorandum accompanying this agenda item [Goleta Water District, 40.42%; City of Santa Barbara, 35.88%; Carpinteria Valley Water District, 12.20%; and Montecito Water District, 11.50%].

3. The Governing Board selects Cushman Contracting Corporation as the contractor for the Emergency Project, approves the Contract Agreement between COMB and Cushman Contracting Corporation, authorizes the President and Secretary of the Governing Board to execute the Contract Agreement as negotiated by the General Manager, in substantially the form attached hereto as Exhibit B, authorizes the General Manager to issue a Notice To Proceed for Phase One (preliminary/final design, initial mobilization, site preparation, etc.) of the Emergency Project in accordance with the terms and conditions of the Contract Agreement, and authorizes the General Manager to issue a Notice To Proceed for Phase Two (construction, operation and maintenance) of the Emergency Project in accordance with the terms and conditions of the Contract Agreement, including upon ratification of an expenditure in excess of One Million



Dollars by each and all of the member Units in accordance with Section 1.3(i) of the Joint Powers Agreement, and

4. COMB's officers and staff, including the General Manager, are hereby authorized and directed to do all things necessary and appropriate (including but not limited to the execution and delivery of documents, the obtaining of necessary permits and filing of environmental documents and any other actions) to complete the processing and execution of the Contract Agreement and the implementation of the Emergency Project.

**PASSED, APPROVED AND ADOPTED** by the Governing Board of the Cachuma Operation And Maintenance Board, this 16<sup>th</sup> day of April 2014, by the following roll call vote:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Abstain: \_\_\_\_\_

**APPROVED:**

\_\_\_\_\_  
President of the Governing Board

**ATTEST:**

\_\_\_\_\_  
Secretary of the Governing Board

**CONTRACT AGREEMENT FOR**  
**DESIGN, BUILD, OPERATION AND MAINTENANCE PROJECT:**  
**DROUGHT EMERGENCY PUMPING SYSTEM**  
**(INSTALLATION AND OPERATION)**

**CACHUMA OPERATION & MAINTENANCE BOARD**  
3301 Laurel Canyon Road  
Santa Barbara, CA 93105-2017  
Telephone (805) 687-4011 - FAX (805) 569-5825

THIS AGREEMENT is made this \_\_\_\_\_ day of April \_\_\_\_\_, 2014, by and between the Cachuma Operation and Maintenance Board, a joint powers authority and public entity, organized and existing in the County of Santa Barbara, under and by virtue of the laws of the State of California, hereinafter referred to as COMB or Board, and Cushman Contracting Corporation, hereinafter referred to as Contractor.

The Cachuma Operation and Maintenance Board was formed in 1956 as a California Joint Powers Agency pursuant to an agreement with the United States Bureau of Reclamation. That agreement transferred to the Cachuma member units the responsibility to operate, repair and maintain all Cachuma project facilities, except Bradbury Dam, which the Bureau of Reclamation has continued to operate. The member units of the Board include the following water agencies: Carpinteria Valley Water District, City of Santa Barbara, Goleta Water District, Montecito Water District, and Santa Ynez River Water Conservation District-Improvement District No. 1, hereinafter referred to as Member Units.

The Board is responsible for diversion of water to the south coast of Santa Barbara County through the Tecolote Tunnel, as well as the operation and maintenance of the South Coast Conduit pipeline. The Member Units on the south coast (Carpinteria, Santa Barbara, Goleta and Montecito) all depend on water from the South Coast Conduit for a major portion of their water. The Board coordinates closely with the Bureau of Reclamation and the staffs of Member Units to ensure that water supplies meet the daily demands of these agencies.

The Board and the Contractor, in consideration of the mutual promises, covenants and conditions hereinafter set forth, agree as follows:

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**ARTICLE 1 - THE WORK**

In consideration of payments and agreements to be made by the Board, the Contractor shall perform and complete in a prompt and workmanlike manner the work in the Board's Contract Documents entitled:

**DESIGN, BUILD, OPERATION AND MAINTENANCE PROJECT:**  
**DROUGHT EMERGENCY PUMPING SYSTEM (INSTALLATION AND OPERATION)**

The Work of this Contract is specifically described in the Contract Documents. It is generally described as the design, construction, operation, maintenance, removal, and site restoration of a temporary facility to pump and convey water from a floating platform to the existing inlet tower

at Cachuma Lake in Santa Barbara County (hereinafter referred to as "temporary facility," "facility" or "Project"). It is anticipated that the temporary facility will be in operation for a period of several months to as long as one year or more. COMB's intent is to have the temporary facility in operation on or before September 1, 2014.

The South Coast Conduit is supplied through the Tecolote Tunnel inlet tower located on Cachuma Lake that is located approximately mid-reservoir (hereinafter "inlet tower"). Should drought conditions continue, and there is no significant rainfall, water will not be able to gravity flow to the inlet tower due to diminishing lake levels. The Project is intended to allow water to be pumped from a floating platform to the inlet tower, allowing continued use of the reservoir water until reservoir levels return to a normal operating level. A similar facility was temporarily installed and operated during the drought conditions in the 1990 to 1991 time period. The occasional need for such a facility was envisioned when the reservoir was originally designed.

The Contractor shall perform all work in accordance with, and meet all requirements of, the Contract Documents, and shall furnish at his/her own expense all labor, materials, equipment, tools, transportation, and services necessary therefore, except for such materials, equipment and services (if any) as may be set forth in the Contract Documents to be furnished by the Board.

#### ARTICLE 2 – CONTRACT DOCUMENTS

This document shall become a valid Contract only when accepted by Contractor and subsequently by COMB. The Contract Documents shall include, and the order of precedence for the interpretation of the final, executed Contract is as follows:

- (1) Contract Agreement
- (2) General Terms and Conditions of this Contract
- (3) Contractor's Proposal
- (4) COMB's Request for Proposal ("RFP")

The Contract Documents also include reference documents, including the Contractor's Statement of Qualifications ("SOQ"), COMB's Request for Qualifications, existing record drawings and other background information. These documents are intended to provide context for interpreting the Contract Documents. The Contract Documents and their provisions are incorporated by reference into this Contract Agreement as if set forth in full.

#### ARTICLE 3 - COMMENCEMENT AND COMPLETION

The Work of the Contract shall be separated into two phases, identified as follows:

Phase One: Design and Construction Documents and Site Mobilization

Phase Two: Construction, Operation, Maintenance, Removal and Restoration

The Work to be performed under Phase One of this Contract shall commence on the date specified in the written Notice to Proceed with Phase One. The Board shall issue the written Notice to Proceed with Phase One to Contractor within three (3) days following the Board's acceptance of the Contract Documents, Contractor's bonds and Contractor's insurance certificates. Contractor shall fully complete Phase One, and shall deliver to the Board all design and construction documents for the Work, no later than May 20, 2014.

The Board may exercise its option for performance of the Work under Phase Two by providing a written Notice to Proceed with Phase Two to Contractor not later than 5 days after receipt by the

Board of the all of the design and construction documents for Phase One. The Board and Contractor agree that the commencement of Phase Two is contingent upon and shall proceed only if both of the following two actions occur: (1) unanimous consent of all members of the Board's Governing Board to authorize funding in excess of ONE MILLION DOLLARS (\$1,000,000) for Phase Two pursuant to Section 1.3(h)(iv) of the Board's Joint Powers Agreement; and (2) the ratification of the Board's unanimous authorization of funding for Phase Two by resolution by each and every Member Unit of the Board pursuant to Section 1.3(i) of the Board's Joint Powers Agreement.

If Contractor has complied with all other terms of the Contract and the Board fails to exercise its Option for Phase Two by such calculated date, the Contractor agrees that a time extension will be its sole and complete remedy for any damage or loss incurred as a result of the delay in the Board's exercise of its Option for Phase Two. The Board's option rights under this Article 3 are independent of its termination rights as set forth in the Contract Documents. As such, if the Board opts to not proceed with Phase Two after the completion of Phase One, Contractor's right of recovery is limited to the Contract Price for Phase One.

Contractor shall commence the Work for Phase Two on the date specified in the Notice to Proceed with Phase Two. Contractor shall fully complete construction of the Project, and shall commence operation and maintenance of the Project, no later than September 1, 2014. However, if the Board provides its written Notice to Proceed with Phase Two after the calculated final date for its issuance, the number of days between that calculated final date and the Board's exercise of its Option for Phase Two will be added to establish a revised date for completion of construction of the Project, and these additional days shall be Contractor's sole remedy.

The continued operation and maintenance of the Project during Phase Two shall continue through at least April 1, 2015 and shall conclude when the Board determines in its sole discretion (depending upon rain events, etc.) that the emergency pumping is no longer necessary and/or COMB decides to terminate the Project. The Board shall provide a written Notice of Conclusion to Contractor. Contractor shall have 20 days to remove all materials equipment and to restore the Project Site to the satisfaction of COMB, unless COMB exercises its discretion to purchase some or all of the materials and equipment.

By signing this Agreement, Contractor represents to the Board that: (a) the time allotted for Phase One, for the construction of the Project during Phase Two, and for removal and restoration at the conclusion of Phase Two are reasonable for completion of the Work of the respective Phases; and (b) Contractor will complete the Work within the allotted times.

#### ARTICLE 4 - LIQUIDATED DAMAGES

The Board and Contractor recognize that time is of the essence of this Agreement and that the Board and those served by the Member Units who may not have access to a sufficient and expected supply of water will suffer financial loss: (a) if the Work, or any phase of the Work, is not completed within the times specified herein, plus any extensions thereof allowed in accordance with the strict terms of the Contract Documents; or (b) if any unplanned Project failure or outage occurs during the period of operation and maintenance of the Project. The parties also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the Board and its Member Units if the Work, or any phase of the Work, is not completed on time or does not reliably perform. The Board and Contractor agree that if the Work, or any phase of the Work, is not completed within the times specified in this Agreement, or if the Project fails to perform, the Board's damages would be extremely difficult or impracticable to determine and that said amounts indicated below are reasonable estimates of and reasonable sums for such damages.

Accordingly, instead of requiring any such proof, the Board and the Contractor agree that as liquidated damages for delay (but not as penalty) the Contractor shall pay the Board the sum of \$25,000.00 for each calendar day that expires after the construction deadlines specified herein and the Project is not operational and performing as specified in the Contract Documents. The parties agree that assessment of liquidated damages is valid and appropriate in accordance with California Government Code Section 53069.85.

The Board may deduct any liquidated damages due from Contractor from any amounts otherwise due to Contractor under the Contract Documents. This provision shall not limit any right or remedy of the Board in the event of any other default of Contractor other than failing to complete the Work within the completion times specified in this Agreement.

**ARTICLE 5 - CONTRACT PRICES**

Subject to the provisions of the Contract Documents, the Board shall pay to Contractor, for the performance of the Work of Phase One, the total sum of \$350,000, as further specified in the table below. If the Board exercises its option for Phase Two, the Board shall pay to Contractor, for the performance of the Work of Phase Two, in the following amounts:

Phase One Pay Item	Phase One Amount
1. Preliminary Design	\$100,000
2. 75% Plans	\$50,000
3. Final Plans	\$50,000
4. <u>Construction Mobilization</u>	\$150,000
Phase Two Pay Item	Phase Two Amount
5. Power Line Extension (optional item)	N/A (By COMB via PG&E)
6. Pumping Platform Construction	\$606,000
7. Pipeline Construction	\$287,000
8. Tower Connection Construction	\$336,000
9. Electrical Construction	\$388,000
10. Controls, Instrumentation and Communications	\$118,000
11. Facility Start-up	\$ 45,000
12. Monthly Operations, September 2014 through February 2015 (Initial Site)	\$298,000/mo
12a. Monthly Operations, March 2015 through April 2016 (Initial Site)	\$98,000/mo
13. Monthly Operational Standby	\$51,000
14. *Facility Relocation (optional item)	\$629,000
15. Monthly Operations, April 1, 2015 and later	\$124,000
16. Pumping Platform Purchase (optional item)	\$724,000
17. Guaranteed wire-to-water efficiency	See Table 3, Contractor Technical Proposal
18. **Demobilization, Alternative 1	Initial Site                      Site 2

	\$161,000	\$241,000
19. **Demobilization, Alternative 2	Initial Site	Site 2
	\$139,000	\$219,650
20. ***Pipeline Abandonment (optional item)	\$150,900	\$150,900
21. Record Drawings	\$ 17,250	\$ 17,250

\* Power line and transformer by COMBS via PG&E 1000' from pump station location. Need 90 days notice to procure pipe and install.

\*\* Does not include custom box at Gate #5 Tower. Blind flange to be installed by Contractor.

\*\*\* Only one 36" line left @ 3,500 lf

In addition to the foregoing sums, and subject to compliance with all conditions of the Contract and Contract Documents, the Board shall pay to Contractor, as a bonus for early completion of the Project's construction, the sum of \$2,000 for each calendar day, up to a maximum of 20 days, prior to September 1, 2014 on which the Project is fully constructed and operational.

#### ARTICLE 6 - PAYMENT PROCEDURES

The Contractor shall submit an application for payment to the Board for each calendar month after issuance of the Notice to Proceed for Phase One and any Notice to Proceed that may be issued for Phase Two. COMB shall pay Contractor within thirty (30) days after receipt of Contractor's invoice(s), with the exception of a five percent (5%) retention during Phase One and the construction portion of Phase Two, and the retention of any disputed amount(s), which may be withheld until resolution of the dispute.

Contractor's invoices shall itemize all work for which payment is sought and all amounts previously retained by the Board. Payment of the five percent (5%) retained during Phase One shall be made upon the satisfactory completion of Phase One. Payment for the five percent (5%) retained during the construction phase of Phase Two shall be made following the satisfactory completion of construction and upon the successful commencement of the operation and maintenance of the Project. ~~Payments for uncompleted work shall be based on the percentage of work completed, in accordance with the foregoing table of prices, which sets forth completed values.~~

If there exists or may exist a claim against Contractor arising out of the negligence or intentional acts of Contractor or Contractor's material breach of any provision of this Contract, then COMB may withhold payment of any amount payable to Contractor which is directly related to such negligence or breach. No payment made pursuant to this Contract shall be conclusive evidence of Contractor's performance of the Contract, either wholly or in part, and no payment shall be construed to be an acceptance by COMB of Contractor's work.

The Board may, but is not required to, pay Contractor more frequently than monthly.

#### ARTICLE 7 - CONTRACTOR'S COVENANTS AND REPRESENTATIONS

Without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in the Contract Documents, or implied by operation of law, the Contractor makes the following covenants and representations to COMB:

7.1 Contractor and all of its Design Professionals and subcontractors are properly certificated, licensed and qualified to perform the Work required by the Contract Documents.

7.2 Contractor accepts the relationship of trust and confidence with the Board established by the Contract Documents. Contractor will cooperate with the Board.

7.3 Contractor and its Design Professionals have carefully examined the Project Site and the adjacent areas, have suitably investigated the nature and location of the Work and have satisfied themselves as to the general and local conditions which will be applicable, including but not limited to: (1) conditions related to site access and to the transportation, disposal, handling and storage of materials; (2) the availability of labor, water, power and roads; (3) normal weather conditions; (4) observable physical conditions at the site and existing site conditions including: size, utility capacities and connection options of external utilities; (5) the surface conditions of the ground and (6) the character and availability of the equipment and facilities which will be needed prior to and during the performance of the Work.

7.4 Contractor and its Design Professionals have carefully reviewed the Contract Documents, including all exhibits. Contractor acknowledges that the Contract Documents establish the scope, level of quality, intent and the procedures for the Project. Contractor agrees that: (1) it will manage, coordinate and fully complete the design; (2) it will cause its Design Professionals to describe and depict the final design for the Project, which shall be approved by the Board, in Construction Documents which will include all information required by the building trades to complete the construction (other than such details customarily developed by others during construction); (3) it will manage and timely construct, operate, maintain and remove the Project, together with restoration of the Project Site; and (4) its Work, services, materials, operations, equipment and labor shall perform in compliance with this Contract at all levels of Cachuma Lake, and shall provide a water flow of 45 million gallons per day into the inlet tower as specified in the Contract Documents, in consideration for the Board's payments of the Contract Prices.

7.5 Contractor and its Design Professionals have reviewed the timetable set forth in the Contract Documents and agree that the design, construction, operation, maintenance, removal and restoral tasks and milestones are reasonable and feasible. Contractor also agrees that time is of the essence for the performance of the Work.

7.6 Contractor agrees that all Construction Documents will be complete, coordinated, and accurate.

7.7 Contractor agrees that all materials, equipment and furnishings incorporated into or used in the Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents) and free of liens, claims and security interests of third parties. If required by the Board, Contractor will furnish satisfactory evidence as to the kind and quality of the materials, equipment and furnishings.

7.8 Contractor agrees that the Work will be of good quality, free of defects and will conform with the requirements of the Contract Documents. Work not conforming to the requirements of the Contract Documents, including substitutions in design or construction not specifically approved or authorized by the Board in advance, may be considered defective.

7.9 Contractor agrees to correct any error(s), omission(s), or deficiencies in the Design Documents, Construction Documents and/or the Work at no additional cost to COMB; however, this provision in no way limits the liability of Contractor.

## ARTICLE 8 - NOTICES

Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the Notice.

#### ARTICLE 9 - NO ASSIGNMENT

No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and, unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. Any assignment of money shall be subject to all proper withholdings in favor of Board and to all deductions provided for in the Contract Documents. All money withheld, whether assigned or not, shall be subject to being used by the Board for completion of the Work, should the Contractor be in default.

The Board and the Contractor each binds itself, and its partners, officers, directors, employees, successors, assigns, and legal representatives to the other party hereto, and their partners, officers, directors, employees, successors, assigns, and legal representatives in respect of all covenants, agreements, and obligations contained in the Contract Documents.

#### ARTICLE 10 - PREVAILING WAGES/LABOR CODE COMPLIANCE

The general prevailing rates of per diem wages and general prevailing rate for holiday and overtime work in the locality in which the work is to be performed have been determined by the Board. The general prevailing rates of per diem wages are hereby incorporated herein and made a part hereof. The Contractor agrees that he, or any subcontractor under him, will pay not less than the foregoing specified prevailing rates of wages to all workmen employed in the execution of the Contract.

Any contractor who is awarded a public works project and intends to use a craft or classification not shown on the general prevailing wage determinations, may be required to pay the wage rate of that craft or classification most closely related to it as shown in the general determinations effective at the time of the call for proposals or bids.

The Contractor further acknowledges the provisions of the California Labor Code applicable to this project. Contractor covenants that it will comply with such provisions. These provisions include, but are not limited to, the levying of penalties for failure to pay prevailing wages (Labor Code Section 1775) or for workmen who are required or permitted to work more than eight hours in one calendar day and forty hours in one calendar week in violation of the Labor Code (Labor Code Section 1813); and the keeping and furnishing of accurate and certified payroll records (Labor Code Section 1776).

#### ARTICLE 11 - INDEMNITY OBLIGATIONS

Promptly upon execution of the Contract, Contractor specifically obligates itself and agrees to protect, hold free and harmless, investigate, defend and indemnify the U.S. Bureau of Reclamation ("Reclamation"), State of California, the County of Santa Barbara (itself and on behalf of the Santa Barbara County Parks and the Cachuma Lake Recreation Area), the Board, its members, and their respective officers, consultants (including the Board's Engineer), directors, officials, employees and agents, from and against any and all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including without limitation attorneys' fees and expert witness fees and costs of litigation, which arise out of or are in any



way connected with Contractor's or its subcontractors' or suppliers' performance of work under this Contract or failure to comply with any of the obligations contained in the Contract. To the fullest extent legally permissible, this indemnity, defense and hold harmless obligation of Contractor shall apply to any and all acts or omissions, whether active or passive, on the part of the Contractor or its agents, employees, representatives, or any subcontractor or any of subcontractor's agents, employees, and representatives, resulting in claim or liability (including but not limited to death or bodily injury to, or damage to property of, Contractor or any subcontractor, person, firm, corporation, or supplier employed by the Contractor or subcontractor upon or in connection with the Work, either directly or by indirect contact), irrespective of whether or not any acts or omissions of any of the parties to be indemnified hereunder may also have been a contributing factor to the liability, except such loss or damage which was caused by the active negligence, sole negligence, or willful misconduct of the indemnitees. This provision shall be construed in accordance with California Civil Code Section 2782 et seq. and notwithstanding any provision to the contrary in the Contract Documents.

In any and all claims against the Board, Reclamation, the County of Santa Barbara, and their consultants, and State of California, and each of their members, trustees, directors, officers, employees and agents by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under Worker's Compensation statutes, disability benefit statutes or other employee benefit statutes, or other insurance policies furnished by Contractor as required herein.

Contractors indemnity obligations as set forth in this Article 11 shall survive the termination, expiration or completion of this Agreement.

#### ARTICLE 12 – PAYMENTS AND PERFORMANCE BONDS

Contractor as part of its Contract Prices, and prior to commencement of work, shall supply to the Board payment and performance bonds (each in the amount of one hundred percent (100%) of the total of all Contract Prices). The payment bond shall meet all requirements of California Civil Code Section 9550 and 9554 and shall be in a form satisfactory to the Board. The performance bond shall be in the form provided in these Contract Documents or as otherwise acceptable to the Board. The bonds provided by the Contractor must be issued by a California admitted surety insurer licensed to do business in the State of California (as set forth in California Code of Civil Procedure Section 995.010 et seq.) and with a current A. M. Best's rating no less than A:VII or equivalent or as otherwise approved by Board.

#### ARTICLE 13 – EARLY TERMINATION OF CONTRACT

The Board, in its sole discretion, (and without affecting any of its other right herein) may subsequently terminate this Contract, without penalty for any reason upon the Board's determination that such termination is in the Board's best interest. If the Board elects to terminate the Contract, then notwithstanding any other provisions in these Contract Documents, such termination and the total compensation payable to the Contractor shall be governed by the following:

(1) The Board's General Manager or designated representative will issue Contractor a written notice specifying that the Contract is terminated. Except as otherwise directed in writing by the Board's General Manager or designated representative, the Contractor shall:

A. Stop all work under the Contract except that specifically directed to be completed prior to

acceptance.

B. Notify all of Contractor's subcontractors and suppliers that the Contract is being terminated and that their contracts and orders are not to be further performed unless otherwise authorized in writing by the Board.

C. Perform work the Board's General Manager or designated representative deems necessary to secure the Project for termination.

D. Remove equipment and plant from the site of the Work, as directed.

E. Take action that is necessary to protect materials from damage.

F. Provide the Board's General Manager or designated representative with an inventory list of all materials previously produced, purchased or ordered from suppliers for use in the Work and not yet used in the Work, including its storage location, and such other information as Board's General Manager or designated representative may request.

G. Dispose of materials not yet used in the Work, as directed by Board's General Manager or designated representative. Contractor shall provide the Board with good title to all materials purchased by the Board hereunder (including materials for which partial payment has been made), and with bills of sale or other indicia of title for the materials.

H. Subject to the Board's General Manager or designated representative's prior written approval, settle all outstanding liabilities and claims arising out of subcontracts or orders for materials terminated hereunder. To the extent directed by the Board's General Manager or designated representative, the Contractor shall assign to the Board all the right, title and interest of the Contractor under such subcontracts or orders referenced herein.

I. Furnish the Board's General Manager or designated representative with any documentation required to be furnished by the Contractor in accordance with the Contract Documents.

J. Take any other actions required by Board's General Manager or designated representative.

(2) Termination of the Contract shall not relieve any surety of its obligations for just claims arising out of the work performed.

(3) The total compensation to be paid to Contractor shall be determined by the Board's General Manager or designated representative on the basis of the following:

A. The reasonable cost to Contractor, without profit, for all work performed under the Contract, including mobilization, demobilization and work done to secure the Project for termination. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by the Contractor, amounts realized by sale of the materials, and for other appropriate credits against the cost of the Work. When in the Board's General Manager or designated representative's opinion the cost of a contract item of work is excessively high due to costs to remedy or replace defective or rejected work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that work in compliance with the requirements of the plans and specifications and the excessive actual cost shall be disallowed.

B. A reasonable allowance for profit on the cost of the work as determined pursuant to subparagraph (A) herein, provided that the Contractor establishes to the satisfaction of the

Board's General Manager or designated representative that it is reasonably probable that the Contractor would have made a profit had the Contract been completed and provided further that the profit allowed shall in no event exceed four percent (4%) of the cost.

C. The reasonable cost to the Contractor of handling material returned to vendor(s), delivered to the site of the Work or disposed of as directed by the Board's General Manager or designated representative.

D. A reasonable allowance for the Contractor's administrative costs in determining the amount payable due to the termination of the Contract.

(4) All records of the Contractor and its subcontractors and suppliers necessary to determine compensation in accordance with these provisions shall be retained and open to inspection or audit by representatives of the Board at all times after issuance of the notice that the Contract will be terminated and for a period of three (3) years thereafter.

(5) After its acceptance of the Work, the Board may make payments on the basis of interim estimates pending issuance of the final estimate when, in the opinion of the Board's General Manager or designated representative, the amount thus paid, together with all amounts previously paid or allowed, will not result in total compensation in excess of that to which the Contractor will be entitled. All payments, including payment of the final estimate, shall be subject to deductions for prior payments and amounts, if any, to be kept or retained under the provisions of the contract.

These provisions shall be included in any subcontracts.

#### ARTICLE 14 – LAWS, REGULATIONS AND PERMITS

Contractor, at its expense, shall give all notices and (unless otherwise provided herein) obtain all permits for the work required by law, and shall comply with all applicable federal, state and local laws, ordinances, rules, regulations, orders and permit conditions pertaining to the conduct of the work, including but not limited to those regarding protection of the environment. Contractor shall be liable for all violations of the law in connection with work furnished by Contractor. If Contractor observes that any drawings or specifications are at variance with any law or ordinance, rule or regulation, he/she shall promptly notify the Board's authorized representative in writing and any necessary changes shall be made by written instruction or change order. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules or regulations and without giving notice to the Board's authorized representative, Contractor shall bear all costs arising therefrom.

#### ARTICLE 15 – SAFETY

Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. Contractor shall designate, in writing, a responsible representative at the worksite whose duty shall be the prevention of accidents, and the maintenance and supervision of safety precautions and programs. This person shall be Contractor's Construction Manager unless otherwise designated in writing by Contractor.

In carrying out its work, Contractor shall at all times exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed, and shall comply with all applicable federal, state and local statutory

and regulatory requirements including California Department of Industrial Relations (Cal/OSHA) regulations; and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act. Safety precautions, as applicable, shall include but shall not be limited to: adequate life protection and lifesaving equipment; first aid; adequate illumination; instructions in accident prevention for all employees, such as the use of machinery guards, safe walkways, scaffolds, fall protection, ladders, bridges, gang planks, confined space procedures, trenching and shoring, and other safety devices; equipment and wearing apparel as are necessary or lawfully required to prevent accidents, injuries, or illnesses; and adequate facilities for the proper inspection and maintenance of all safety measures.

Pursuant to California Labor Code Section 6708, each Contractor and subcontractor shall maintain or make available adequate emergency first aid treatment for its employees, agents and representatives, sufficient to comply with the Federal Occupational Safety & Health Act (P.L. 91-596; OSHA). The names and telephone numbers of at least two medical doctors practicing in the vicinity and the telephone number of the local ambulance service shall be prominently displayed adjacent to telephones.

Safety Measures and Public Convenience - Contractor shall provide for the protection of all persons and property as herein specified. Attention is called to "Construction Safety Orders: and General Safety Orders" of the California State Industrial Accident Commission to which Contractor is required by law to conform.

#### ARTICLE 16 – NO WAIVER

No failure by COMB in asserting any of its rights or remedies as to any default of Contractor shall operate as a waiver of the default, or any subsequent or other default by Contractor, or of any of the Board's rights or remedies. No such delay shall deprive COMB of its right to institute and maintain any actions or proceedings which may be necessary to protect, assert, or enforce any rights or remedies arising out of this Agreement or the performance thereof.

#### ARTICLE 17 – INCORPORATION OF APPLICABLE STATUTORY PROVISIONS

The parties agree that all provisions of law which apply to this Contract Agreement (even if not specifically included or referenced herein) form a part of this Contract Agreement, are incorporated by reference herein as if set forth in full, and that Contractor shall comply with all such provisions.

#### ARTICLE 18 - CHANGES TO LAW

If any changes or modifications to applicable laws governing the Work are not specifically reflected in these Contract Documents, they are hereby deemed adopted and incorporated by reference herein, and shall supersede any provisions herein to the contrary.

**Instructions:** Please sign and return both originals along with the appropriate performance bond, payment bond, and insurance documentation. Upon acceptance by the Cachuma Operation & Maintenance Board, a copy will be signed by its authorized representative and promptly returned to you. Insert below the names of your authorized representatives

IN WITNESS WHEREOF, the BOARD and the CONTRACTOR have caused this Agreement to be executed the day and year first written above.

**CACHUMA OPERATION &  
MAINTENANCE BOARD**

**CONTRACTOR**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

License No.: \_\_\_\_\_

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
Secretary to the Board of Directors

\_\_\_\_\_

Approved as to Form:  
Musick, Peeler and Garrett LLP

Agent for Service of Process:

\_\_\_\_\_  
Attorneys for Board

\_\_\_\_\_

Other authorized representatives:

\_\_\_\_\_

On-site representatives:

\_\_\_\_\_

CACHUMA OPERATION & MAINTENANCE BOARD  
DESIGN, BUILD, OPERATION AND MAINTENANCE PROJECT:  
DROUGHT EMERGENCY PUMPING SYSTEM  
(INSTALLATION AND OPERATION)

Project No.: {    }

## PAYMENT (LABOR AND MATERIALS) BOND

CACHUMA OPERATION & MAINTENANCE BOARD

DESIGN, BUILD, OPERATION AND MAINTENANCE PROJECT:  
DROUGHT EMERGENCY PUMPING SYSTEM (INSTALLATION AND OPERATION)

This Payment (Labor and Materials) Bond is tendered to the Cachuma Operation & Maintenance Board ("Board") in conjunction with the **DESIGN, BUILD, OPERATION AND MAINTENANCE PROJECT: DROUGHT EMERGENCY PUMPING SYSTEM (INSTALLATION AND OPERATION)** project set forth above.

We, the Principal \_\_\_\_\_ and \_\_\_\_\_  
a Surety Corporation, organized and existing under and by virtues of the laws of the State of \_\_\_\_\_ and duly authorized to transact business within the State of California as a surety, are held and firmly bound unto the Board, for the use and benefit of itself and any and all persons, companies, or corporations who perform work or labor or furnish materials, provisions, or other supplies used in, upon, for or about the performance of the above-described work, or who rent or lease persons or machinery for said work to be done, in the sum of \_\_\_\_\_  
(\$\_\_\_\_\_) in lawful money of the United States of America, to be paid to such persons, companies or corporations, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The Board has awarded Principal a contract for the above-described project and the Principal is required by the terms of the contract to furnish a bond for materialmen and laborers involved in the Project; and thus, if said Principal, or any subcontractor or contractors, fail to pay any persons named in Civil Code Section 9100 or for any materials, provisions, provender, or other supplies, or persons or machinery used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind or for amounts due under the Unemployment Insurance Code with respect to such work or labor, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor and its subcontractors pursuant to Unemployment Insurance Code Section 13020, the Surety will pay the same up to an amount not exceeding the sum specified in this bond and in case suit is brought upon this bond, additional, reasonable attorneys' fees to be fixed by the court. This bond shall inure to the benefit of any and all persons entitled to file claims under California Civil Code Section 9100, so as to give a right of action to such persons or his/her assigns in any suit brought upon this bond.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Project or work to be performed hereunder, or the specifications and drawings that accompany same, shall in any way affect its obligations on this bond; and it does hereby waive notice of any such change, extension of time, alterations or addition to the terms of the Contract, to the work or Project, or to the drawings and specifications.

Should the conditions of this bond be fully performed, then this obligation shall be null and void; otherwise it shall be and remain in full force and effect.

CACHUMA OPERATION & MAINTENANCE BOARD  
DESIGN, BUILD, OPERATION AND MAINTENANCE PROJECT:  
DROUGHT EMERGENCY PUMPING SYSTEM  
(INSTALLATION AND OPERATION)

Project No.: {    }

IN WITNESS WHEREOF, this Payment (Labor and Materials) Bond is duly executed by the Principal and Surety above-named on April \_\_\_\_\_, 2014.

PRINCIPAL:

\*SURETY:

\_\_\_\_\_  
NAME OF PRINCIPAL

\_\_\_\_\_  
NAME OF SURETY

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TYPED NAME AND TITLE

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TYPED NAME AND TITLE

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CITY, STATE, ZIP

\_\_\_\_\_  
TELEPHONE

\_\_\_\_\_  
TELEPHONE

\*Power of Attorney Must Be Attached.

Subscribed and sworn to this \_\_\_\_\_ day of April, 2014.

NOTARY PUBLIC \_\_\_\_\_ [SEAL]

CACHUMA OPERATION & MAINTENANCE BOARD  
DESIGN, BUILD, OPERATION AND MAINTENANCE PROJECT:  
DROUGHT EMERGENCY PUMPING SYSTEM  
(INSTALLATION AND OPERATION)

Project No.: {     }

## PERFORMANCE BOND

CACHUMA OPERATION & MAINTENANCE BOARD  
DESIGN, BUILD, OPERATION AND MAINTENANCE PROJECT:  
DROUGHT EMERGENCY PUMPING SYSTEM (INSTALLATION AND OPERATION)

This Performance Bond is tendered to the Cachuma Operation & Maintenance Board ("Board") in conjunction with the **DESIGN, BUILD, OPERATION AND MAINTENANCE PROJECT: DROUGHT EMERGENCY PUMPING SYSTEM (INSTALLATION AND OPERATION)** project set forth above.

We, the Principal \_\_\_\_\_ and \_\_\_\_\_ a Surety Corporation, organizing existing under and by virtue of the laws of the State of \_\_\_\_\_ and duly authorized to transact business within the State of California as a surety, are held and firmly bound unto the Board the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) lawful money of the United States of America, for the payment of which sum we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above-bound Principal, his/her or its heirs, executors, administrators successors or assigns shall abide by, keep and perform the covenants, conditions, requirements, obligations, and provisions of the afore described Project and/or Contract, any alterations thereof, or any regulations or laws pertaining thereto on his/her or their part to be kept and performed at the time in the manner therein specified and if they also indemnify and hold the Board, and its members, officers, agents, employees harmless from all liability, costs, losses, expenses, and attorneys' fees thereon, then this obligation shall become null and void; but otherwise, it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Project or work to be performed hereunder, or the specifications and drawings that accompany same, shall in any way affect its obligations on this bond; and it does hereby waive notice of any such change, extension of time, alterations or addition to the terms of the Contract, to the work or Project, or to the drawings and specifications.

Whenever the Principal shall be, and declared by the Board to be in default under the above agreement, the Surety shall promptly remedy the default, or shall promptly pay the amount of the bond herein.

For the satisfactory completion of this Project and the Contract hereunder, the above obligations shall hold good for a period of one (1) year after the completion of the Project and its acceptance by the Board, during which time if Principal shall fail to make full, complete and satisfactory repair and replacements and totally protect the Board from loss or damage made evident during the period of one (1) year from the date of acceptance of the work and resulting from or caused by defective materials or faulty workmanship, the above obligations shall remain in full force and effect. The obligation of the Surety hereunder shall continue so long as any obligation of the Principal remains.



CACHUMA OPERATION & MAINTENANCE BOARD  
DESIGN, BUILD, OPERATION AND MAINTENANCE PROJECT:  
DROUGHT EMERGENCY PUMPING SYSTEM  
(INSTALLATION AND OPERATION)

Project No.: {    }

IN WITNESS WHEREOF, this Performance Bond is duly executed by the Principal and Surety above-named on April \_\_\_\_\_, 2014.

PRINCIPAL:

\*SURETY:

\_\_\_\_\_  
NAME OF PRINCIPAL

\_\_\_\_\_  
NAME OF SURETY

\_\_\_\_\_  
SIGNATURE

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CITY, STATE, ZIP

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TELEPHONE

\_\_\_\_\_  
TELEPHONE

\*Power of Attorney Must Be Attached.

Subscribed and sworn to this \_\_\_\_\_ day of April, 2014.

NOTARY PUBLIC \_\_\_\_\_ [SEAL]

Cachuma Operation & Maintenance Board Emergency Pumping Facility Project				Assessments	
	Budget	Totals	Cummulative Costs	FY 2013-14	FY 2014-15
<b>Initial Drought Contingency Planning</b>					
Project Planning	\$ 190,000				
Project Management	\$ 60,000				
Environmental / Legal	\$ 50,000				
		\$ 300,000		\$ 300,000	
			\$ 300,000		
<b>Contractor - Phase I</b>					
Preliminary Design	\$ 100,000				
75% Plans	\$ 50,000				
Final Plans	\$ 50,000				
Mobilization & Site Preparation	\$ 150,000				
		\$ 350,000		\$ 350,000	
			\$ 650,000		
<b>Consultant - Project Management</b>					
	\$ 200,000			\$ 50,000	\$ 150,000
		\$ 200,000			
			\$ 850,000		
<b>PGE - Electrical Construction</b>					
	\$ 750,000				\$ 750,000
		\$ 750,000			
			\$ 1,600,000		
<b>Gates and Stem Guide Evaluation / Repair</b>					
	\$ 454,000			\$ 204,000	\$ 250,000
		\$ 454,000	\$ 2,054,000		
<b>Contractor - Phase II</b>					
Pumping Platform Construction	\$ 606,000				
Pipeline Construction	\$ 287,000				
Tower Connection Construction	\$ 336,000				
Contractor Electrical Construction	\$ 388,000				
Controls, Instrumentation and Communications	\$ 118,000				
Facility Start-up	\$ 45,000				
		\$ 1,780,000			\$ 1,780,000
			\$ 3,834,000		
<b>Contractor - Monthly Operations</b>					
Contractor Monthly Operations					
September 2014 through February 2015 (\$298,000 / mo - 6 mos)	\$ 1,788,000				
		\$ 1,788,000			\$ 1,788,000
			\$ 5,622,000		
PGE Monthly Costs (\$40,000 / month - 6 mos) est.					
	\$ 240,000				\$ 240,000
		\$ 240,000	\$ 5,862,000	\$ 904,000	\$ 4,958,000

**Continued Operation in Original Site Location**

Contractor Monthly Operations - March 2015 through August 2015 (Initial Site only)(\$98,000 / mo)	\$ 588,000				
		\$ 588,000	\$ 6,450,000		

**If Facility is moved to New Location**

Facility Relocation (optional item)	\$ 629,000				
		\$ 629,000	\$ 6,491,000		
Contractor Monthly Operations - New Location					
April 2015 thru March 2016 (12 mos @ \$124,000/mo)	\$ 1,488,000				
		\$ 1,488,000	\$ 7,979,000		
Pumping Platform Purchase (optional item)					
	\$ 724,000				
Demobilization, Alternative 2					
	\$ 219,650				
Pipeline Abandonment (optional item)					
	\$ 150,900				
Record Drawings					
	\$ 17,250				

Cachuma Operation & Maintenance Board  
Emergency Pumping Facility Project

*FY 2013-14 Budget Augmentation*

SOUTH COAST MEMBER UNIT ALLOCATION		
Goleta Water District	40.42%	\$ 365,397
City of Santa Barbara	35.88%	\$ 324,355
Carpinteria Valley Water District	12.20%	\$ 110,288
Montecito Water District	11.50%	\$ 103,960
<b>TOTAL</b>	<b>100.00%</b>	<b>\$ 904,000</b>

*FY 2014-15 Assessments*

SOUTH COAST MEMBER UNIT ALLOCATION		
Goleta Water District	40.42%	\$ 2,004,024
City of Santa Barbara	35.88%	\$ 1,778,930
Carpinteria Valley Water District	12.20%	\$ 604,876
Montecito Water District	11.50%	\$ 570,170
<b>TOTAL</b>	<b>100.00%</b>	<b>\$ 4,958,000</b>

*1st 6 months of Project Implementation and Operation*

SOUTH COAST MEMBER UNIT ALLOCATION		
Goleta Water District	40.42%	\$ 2,369,420
City of Santa Barbara	35.88%	\$ 2,103,286
Carpinteria Valley Water District	12.20%	\$ 715,164
Montecito Water District	11.50%	\$ 674,130
<b>TOTAL</b>	<b>100.00%</b>	<b>\$ 5,862,000</b>

*2nd 6 months of Operation (\$2,117,000 not included in assessment request)*

SOUTH COAST MEMBER UNIT ALLOCATION		
Goleta Water District	40.42%	\$ 3,225,112
City of Santa Barbara	35.88%	\$ 2,862,865
Carpinteria Valley Water District	12.20%	\$ 973,438
Montecito Water District	11.50%	\$ 917,585
<b>TOTAL</b>	<b>100.00%</b>	<b>\$ 7,979,000</b>

# CACHUMA OPERATION & MAINTENANCE BOARD

## BOARD MEMORANDUM

Date:	April 16, 2014
Submitted by:	Randall Ward

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**SUBJECT:** Emergency Pumping Facility Project: Ratification of Project Expenditure in excess of \$1M by South Coast Member Units

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**SUMMARY:**

The Emergency Pumping Facility Project involves an expenditure exceeding \$1 million dollars. Per section 1.3(h) and (i) of the COMB Joint Powers Agreement, a vote for approval of a project expenditure in excess of \$1M requires unanimous approval by the COMB Board and also necessitates Member Unit ratification by resolution. Attached for your consideration is a draft resolution for presentation to your Board of Directors and City Council. Staff is requesting that each Member Unit place this item on your respective Board or City Council upcoming meeting agendas during April or May 2014.

**FISCAL IMPACTS:**

Increase to the COMB FY 2013-14 and FY 2014-15 Budgets to implement the Emergency Pumping Project.

**LEGAL CONCURRENCE:**

General Counsel developed the resolution for use by the Member Units.

**ENVIRONMENTAL COMPLIANCE:**

N/A

**COMMITTEE STATUS:**

Ad Hoc Drought Contingency Committee has reviewed the draft resolution.

**RECOMMENDATION:**

Staff requests submittal of draft resolution to each Member Unit Board or City Council for ratification of project expenditure.

**LIST OF EXHIBITS:**

1. Draft Board Resolution

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE \_\_\_\_\_ OF THE  
RATIFYING THE CACHUMA OPERATION AND  
MAINTENANCE BOARD'S APPROVAL OF THE DROUGHT EMERGENCY  
PUMPING FACILITY PROJECT AND AUTHORIZING CERTAIN OTHER  
ACTIONS

WHEREAS, the \_\_\_\_\_ (the \_\_\_\_\_) is duly organized and existing under the Constitution and laws of the State of California;

WHEREAS, pursuant to the Ralph M. Brown Act constituting Chapter 9 of Part 1 of Division 2 of Title 5 (commencing with Section 54950) of the California Government Code this meeting was duly noticed;

WHEREAS, the \_\_\_\_\_ is a member agency of the Cachuma Operation and Maintenance Board ("COMB"), which operates pursuant to the 1996 Amended and Restated Agreement for the Establishment of a Board of Control to Operate and Maintain the Cachuma Project Cachuma Operation and Maintenance Board, dated May 23, 1996 ("Amended and Restated Agreement"), as amended by an Amendment to the Amended and Restated Agreement made effective September 16, 2003 (collectively, the "Joint Powers Agreement");

WHEREAS, the \_\_\_\_\_ has determined, in accordance with Section 1.3(i) of the Joint Powers Agreement, to ratify COMB's approval of the Drought Emergency Pumping Facility Project ("Emergency Project" or "Project"), which Project cost will exceed One Million Dollars (\$1,000,000);

WHEREAS, the Project consists of maintenance and repair operations to, among other things, install a floating platform-mounted system to pipe water from Lake Cachuma to the existing lake inlet tower, and to re-establish service of an existing water entry gate (Gate 5) on the inlet tower;

WHEREAS, the purpose of the Project is to ensure the conveyance of Cachuma Lake water to the Tecolote Tunnel/South Coast Conduit and thence to customers on the south coast of Santa Barbara County, including \_\_\_\_\_'s customers;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. Declaration of \_\_\_\_\_. This \_\_\_\_\_ hereby specifically finds and declares that the actions authorized hereby constitute and are with respect to public affairs of the \_\_\_\_\_, and that the statements, findings and determinations of the \_\_\_\_\_ set forth in the preambles above are true and correct.

SECTION 2. Ratification of COMB Approval of the Project. Pursuant to Section 1.3(i) of the Joint Powers Agreement, the \_\_\_\_\_ hereby ratifies COMB's approval of the Project in an amount not to exceed \$ \_\_\_\_\_, to be budgeted and paid over two fiscal year(s) from July 1, 2013 through June 30, 2015.

The \_\_\_\_\_ ratification is further expressly conditioned upon the approval and execution of an indemnification agreement between COMB and the Santa Ynez River Water Conservation District, Improvement District No. 1 ("Improvement District No. 1") with respect to the Project. Improvement District No. 1 shall have no obligation to pay any amount due or percentage share of the Project.

SECTION 3. Conditions. The \_\_\_\_\_ shall have an obligation to pay any amounts due per its Cachuma Project south coast entitlement percentage share of the Project costs:

Goleta Water District:	40.42%
City of Santa Barbara:	35.88%
Montecito Water District:	11.50%
Carpinteria Valley Water District:	12.20%

SECTION 4. Further Actions. The \_\_\_\_\_ of the \_\_\_\_\_ are hereby authorized to do any and all things and to execute and deliver any and all documents, which they may deem necessary or advisable in order to give effect to and comply with the terms and intent of this resolution.

SECTION 5. Effective Date. This resolution shall take effect immediately upon its passage.

Vote on the Resolution by roll call resulted as follows:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

PASSED AND ADOPTED by the \_\_\_\_\_ of the \_\_\_\_\_, this \_\_\_ day of \_\_\_\_\_, 2014.

APPROVED:

\_\_\_\_\_

ATTEST:

\_\_\_\_\_