

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

3301 Laurel Canyon Road  
Santa Barbara, CA 93105

---

Monday, March 8, 2010

*Start Time*  
2:30 p.m.

**AGENDA**

1. **COMB CALL TO ORDER, ROLL CALL** (COMB Board of Directors.) (*1 minute*).
2. **PUBLIC COMMENT** (Public may address the Board on any subject matter not on the agenda and within the Board's jurisdiction. See "Notice to the Public" below.) (*5 minutes*)
3. **CONSIDER APPROVAL OF AN MOU BETWEEN COMB AND SANTA YNEZ RIVER WATER CONSERVATIONS DISTRICT, 1D NO. 1 TO LIMIT ACTIVITIES DURING ORGANIZATIONAL RESTRUCTURING**
4. **CONSIDER APPROVAL OF A PORTION OF FY 2008-09 UNEXPENDED FUNDS FOR AECOM TO REBID THE 2<sup>ND</sup> PIPELINE PROJECT AND CARRY OUT RELATED PROJECT MANAGEMENT, ENVIRONMENTAL MONITORING, AND RIGHT OF WAY SERVICES**
5. **COMB ADJOURNMENT**

NOTICE TO PUBLIC

**Public Comment:** Any member of the public may address the Board on any subject within the jurisdiction of the Board that is not scheduled for a public hearing before the Board. 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" forms 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 at least 48 hours 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 54954.1 and .2 of the Government Code.]

## CACHUMA OPERATION AND MAINTENANCE BOARD

### MEMORANDUM

DATE: March 8, 2010

TO: Board of Directors

FROM: Kate Rees, General Manager

RE: **MEMORANDUM OF UNDERSTANDING BETWEEN SANTA YNEZ RIVER WATER CONSERVATION DISTRICT, IMPROVEMENT DISTRICT NO. 1 AND CACHUMA OPERATION AND MAINTENANCE BOARD TO LIMIT ACTIVITIES DURING ORGANIZATIONAL RESTRUCTURING**

---

#### RECOMMENDATION:

Approve a Memorandum of Understanding Between Santa Ynez River Water Conservation District, Improvement District No. 1 and Cachuma Operation and Maintenance Board to Limit Activities During Organizational Restructuring (2010 MOU)

#### DISCUSSION:

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 (COMB JPA) contains a provision that requires a unanimous consent by the COMB Board and ratification by resolution by all parties to the Agreement for the issuance of bonds, notes, letters of credit or other indebtedness in excess of \$1,000,000.

On January 19, 2010, the Santa Ynez River Water Conservation District, ID No. 1 withheld its approval of the COMB bond issuance for \$11.4 million to fund the construction of the 2<sup>nd</sup> Pipeline Project, unless the COMB Board agreed to amend its JPA to preclude COMB from carrying out any fish project or fish related activity in the Lower Santa Ynez River, and from any activity related to the water rights of the downstream interests. This action effectively stopped COMB from issuing the bond or constructing the 2<sup>nd</sup> Pipeline Project.

At the February 22, 2010 COMB Board meeting, the Board considered a conceptual proposal by ID No. 1 to enter into a standstill agreement whereby ID No. 1 would approve the COMB bond and the 2<sup>nd</sup> Pipeline Project if COMB would agree not to do any work in the Santa Ynez River until such time as the responsibilities for implementing actions related to the Biological Opinion, the Santa Ynez River fisheries program, and the Cachuma water rights hearing had been determined. These issues have been the key discussion points in reorganization talks

ITEM # 3  
PAGE 1

among CCRB, COMB and ID No. 1 since 2005, and have not been resolved. The COMB Board would not agree to an indefinite time period for a standstill agreement, but did indicate it would agree to finite term to July 1, 2010. This limited time period was unacceptable to ID No. 1. Consequently, approval of a bond for the 2<sup>nd</sup> Pipeline Project did not receive a unanimous vote.

However, ID No. 1 then provided COMB with a draft Memorandum of Understanding (formalizing the proposed standstill agreement) suggesting a finite term to December 31, 2010, in exchange for ID No. 1's approval of the COMB bond and 2<sup>nd</sup> Pipeline Project. The ID No. 1 Board discussed the MOU at length at a special meeting on March 1, 2010, indicating they had no desire to obstruct the 2<sup>nd</sup> Pipeline Project, and therefore wanted to find a way to come to agreement with COMB. Two of the COMB Directors, your General Manager, and several Member Unit representatives attended that meeting, and suggested several changes to the draft MOU. ID No. 1 agreed to them all. ID No. 1 then unanimously approved the MOU in substantially the same form, approved the bond indemnification agreement, and approved the COMB bond by resolution. Mr. Dahlstrom hand delivered the signed documents to COMB the following day.

The 2010 MOU approved by ID No. 1 is enclosed for the Board's consideration.

#### **COMB General Counsel Review**

The MOU has been reviewed by COMB's General Counsel, and he has suggested the following changes. This clarification is needed because the project will not be completed by December 31, 2010. The term of the agreement will not change regarding the Limitation of Activities and Organizational Restructuring.

***At section 3 (Second Pipeline Project).** After the word "Project" in 4th line, add the phrase: "until construction is complete . . ."*

***At the end of Section 4 (Term).** Continue the sentence: ". . ., except as to the agreements provided in sSection 3 of this Agreement which shall continue until construction of the Second Pipeline is completed."*

#### **City of Santa Barbara and Montecito Water District Review**

Both the City and MWD have expressed appreciation for ID No. 1's efforts to continue to find a way to support and approve the 2<sup>nd</sup> Pipeline Project, and for its agreement to a finite term to resolve the reorganization issues. It is staff's understanding that the City and MWD can accept the MOU as approved by ID No. 1 with no further changes.

#### **Goleta Water District Review**

GWD held a special meeting on March 3, 2010 to consider the proposed MOU. After substantial discussion, the GWD Board also expressed appreciation that ID No. 1 had suggested approval of an MOU in order to move forward with the 2<sup>nd</sup> Pipeline Project. However, the GWD Board had some concerns, and suggested the following additions to the MOU.

***New Section 4. Indemnification Agreements.** For the purposes of this agreement, the phrase in paragraph 3 "such action does not adversely affect ID No. 1's Indemnification Agreement" shall mean that the action to be taken by ID No. 1 will not increase or alter ID No. 1's obligations to fund or finance the project or impair the obligation of the City of Santa Barbara, Goleta Water District or Montecito Water District under its respective indemnification agreements of ID No. 1.*

**New Section 5. Representation at COMB.** *It is agreed that the refusal or failure of ID No. 1 to give instructions to its COMB representative consistent with the provisions of paragraph 3 of this agreement shall be a breach of this agreement. It is further agreed that the failure of the ID No. 1 representative to vote as instructed by ID No.1 shall be deemed to be a breach by ID No. 1 of this agreement unless within 5 days of a request to cure the default, ID No. 1, does in fact replace its non-complying representative [only one request to cure shall be required.*

**New Section 6. Remedies.** *If ID No. 1 shall be found by a court to have unreasonably withheld its approval or consent, COMB or the City of Santa Barbara, Goleta Water District and Montecito Water District either jointly or individually may seek damages resulting from the breach of this agreement by ID No. 1 including but not limited to the damages arising from the delay, termination or other interruption of the completion of the construction project, increased costs of materials and labor, penalties claimed by contractors, interest, court costs and similar charges and counsel fees actually incurred by the plaintiffs. In addition, any of the agencies may seek injunctive relief compelling ID No. 1 to comply with this agreement.*

A tracked version of the 2010 MOU with the proposed changes by Mr. Hair and by GWD is also enclosed for your consideration.

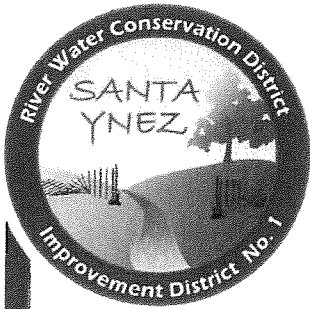
Respectfully submitted,



Kate Rees  
General Manager

Kr.comb/admin/board memos/030310\_COMB-ID1 2010 MOU.mmo

ITEM # 3  
PAGE 3



February 26, 2010

Das Williams, President  
Douglas Morgan, Director  
Lauren Hanson, Director  
Bob Lieberknecht, Director

**Cachuma Operations and Maintenance Board**

3301 Laurel Canyon Road  
Santa Barbara, CA 93105

**TRUSTEES:**

DIVISION 1  
LOS OLIVOS  
Harlan J. Burchardi

DIVISION 2  
SOLVANG  
Jeff P. Clay

DIVISION 3  
SOLVANG  
Lee F. Bettencourt

DIVISION 4  
SANTA YNEZ  
Harry F. Poor

TRUSTEE-AT-LARGE  
Matthew Loudon

MANAGER/SECRETARY  
Chris Dahlstrom

BROWNSTEIN HYATT  
FARBER SCHRECK, LLP  
General Counsel

Re: COMB Bond and COMB Activities in the Santa Ynez River

Dear President and Directors,

As you are aware, several members of the Board of Trustees of the Santa Ynez River Water Conservation District, Improvement District No. 1, ("ID No. 1") attended the Cachuma Operations and Maintenance Board ("COMB") February 22, 2010 Board of Directors' meeting. The ID No. 1 Trustees were very troubled in the manner in which, with all due respect, ID No.1's Board members and management were treated at the meeting. The rhetoric of certain COMB members before the public and media was unnecessary and counter-productive especially in light of attempting to find a solution to the current impasse. That said, the purpose of this letter is to clarify some of the matters discussed at the meeting and propose a solution that ID No. 1 believes will allow the COMB Second Pipeline Project ("Project") and related bond funding ("Bond") to move forward on a timely basis while respecting ID No. 1's concerns.

During the meeting, ID No.1 was accused of holding the Project hostage, something that was simply untrue and unnecessary. ID No. 1's issue with COMB undertaking fish projects dates back to the beginning of last year when COMB, over the objection of ID No. 1, undertook construction of the El Jaro Creek Cross Creek Ranch Fish Project – a tributary project identified in the Biological Opinion related to the USBR water rights permits for continuing operation of the Cachuma Project. Since that time, COMB has increased its fish related activities in the Santa Ynez River, including discussions with the County of Santa Barbara for an agreement regarding maintenance of the bridge at the Quiota Creek Crossing No. 6<sup>1</sup> and involvement with a project at

<sup>1</sup> According to CCRB's September 22, 2008 meeting minutes, CCRB solicited bids for the Quiota Project and awarded the contract to Shock Contracting Corporation. The status of the project construction was reported during and recorded in the subsequent CCRB meeting minutes. The agendas and minutes for the COMB and CCRB meetings do not reflect any agreement between COMB and CCRB for COMB to undertake the Quiota Project.

Meadowlark<sup>2</sup>. Even as late as the February 22<sup>nd</sup> COMB Board meeting, COMB staff agendized a notice of completion for the El Jaro Creek Rancho San Julian Project, a project that was completed by the Cachuma Conservation and Release Board (“CCRB”) in 2008.

COMB’s continued involvement in fish projects is a significant concern to ID No. 1 as it should be to the other member agencies of COMB. If Nordman Cormany Hair & Compton’s opinion is correct, which ID No.1’s position that it is not, then the City of Santa Barbara and the Montecito Water District could also have their water rights affected by a majority vote<sup>3</sup>. In other words, a majority of the other member agencies of COMB could vote to carry out fish related projects in the upper Santa Ynez River, just as COMB has starting carrying out such projects on the lower Santa Ynez River. This is the exact situation which concerns ID No. 1.

Over the last month or so, there have been significant discussions and exchange of letters concerning whether COMB has the power to carryout fish related activities and, if so, whether approval of those activities require unanimous consent of the COMB Board. Unfortunately, these exchanges have not resolved or brought clarity or consensus to this issue. As a result, ID No. 1 initially proposed to resolve this matter through an amendment to the JPA but later realized that discussions concerning an amendment, including the necessary approval from each member agency, would require significant time to accomplish. As a result, at the February 22<sup>nd</sup> COMB Board meeting, ID No. 1 proposed an alternate and much simpler solution to address its concern that would allow the Bond issuance and the Project to move forward without further delay<sup>4</sup>. The solution was simple; COMB and ID No. 1 would enter into an agreement where COMB would agree not to undertake any fish related activities until the Member Units could reach a mutually acceptable solution to carrying out the fish related activities.

This proposed solution was rejected by COMB claiming that ID No. 1 would essentially block the other member agencies from being able to carry out the fish projects enumerated in the Biological Opinion. Something that is simply untrue and quite frankly would not be in the best interest of ID No. 1 or the other Cachuma Project Member Units. As articulated by the ID No. 1 General Manager during the recent COMB Board meeting, each of the Member Units has a vested interest in the Bureau of Reclamation complying with the requirements of the Biological Opinion and working cooperatively through the “Applicant Status” participation with USBR during the Section 7 reconsultation. This cooperation is essential in order to best position each of Cachuma Project Member Units for phase two of the continued State Board hearing concerning the Cachuma Water Rights permits held by the Bureau of Reclamation. If the Cachuma Project Member Units do not work cooperatively to assist USBR in complying with the Biological Opinion, and if we are fragmented before the State Water Board, the result could

---

<sup>2</sup> This project was never brought to the COMB Board due to discussions at a COMB Operations Committee meeting but only after staff undertook significant activities without Board approval.

<sup>3</sup> This of course assumes that COMB has the authority to carryout the provisions of the Renewal Master Contract related to the Cachuma Member Units rather than just renewals of that contract (see Brownstein Hyatt Farber Schreck, LLP February 11, 2010 Memorandum)

<sup>4</sup> COMB has been working on the Project and related bond issuance since last summer, a period of over 7 or 8 months, which was the result of working out arrangements with the South Coast Member Agencies, which time frame pales in comparison to any delay needed to address ID No. 1’s concerns. During this time, it should be noted, that ID No. 1 has spent considerable time, effort and money to be cooperative and supportive of the Project.

easily cause adverse impacts to our Cachuma Project contractual water rights and other significant agreements that are before the State Water Board such as the Settlement Agreement.

ID No. 1 understands that CCRB may have a limited existence given the notices of withdrawal of Carpinteria Valley Water District and Montecito Water District from CCRB as well as statements made by the City of Santa Barbara's COMB representative for the total withdrawal of all the south coast members from CCRB. As you know, CCRB and ID No.1 have partnered in the fish enhancement projects and monitoring programs under the Biological Opinion as well as some projects outside the BiOp and related studies over the past 13 years. These efforts continue currently with report preparation for USBR submittal to NMFS and fisheries project design. However, at this point, ID No. 1 is unaware of any fish related construction projects that are pending or need to be carried out this calendar year. Further, even if such projects were necessary, they could still be carried out by CCRB and ID No.1 or any of the Member Units individually. Prior to any termination of the existence of CCRB, the Member Units will still need this vehicle, for all of the reasons stated above, to continue to carry out the other activities in the Biological Opinion, as well as any additional or changed requirements occurring as a result of reconsultation. Each of the Cachuma Project Member Units has a mutual vested interest to make sure this happens.

At the COMB meeting, the ID No. 1 proposal appeared to be an option that might be considered worthwhile by the COMB Board except for President Williams. His stated rationale was that ID No. 1 could essentially hold future fish projects hostage unless it agreed and that there was no assurance that ID No. 1 would negotiate in good faith to reorganize COMB and CCRB as represented by his recollection of the past experience. However, even if reorganization was not successful, the Member Units would not be precluded from carrying out fish projects, only precluded from carrying them out through COMB, unless there was unanimous agreement.

Therefore, ID No. 1's proposal presented at the COMB Board meeting is simple and straight forward. It enables ID No. 1 to approve the Bond and the Project while protecting water rights and the integrity of CCRB and ID No.1's agreements at no risk to COMB. It also avoids the City of Santa Barbara, Goleta Water District and the Montecito Water District incurring significant time and money to carryout the Project via the City. This proposal also provides a reasonable but limited time frame to work toward a resolution for an organizational restructuring; something that ID No.1 understood was a concern of COMB. In order to assist in your individual review of the ID No. 1 proposal in detail, a copy of a draft 2010 Memorandum of Understanding ("2010 MOU") is attached for your consideration. Representatives of ID No. 1 are prepared to meet with any of the Cachuma Project Member Units or other COMB representatives to discuss this proposal and, the ID No. 1 Board will be holding a special meeting on Monday March 1, 2010 to approve the 2010 MOU and the related Bond and Project documents.

As stated in prior correspondence, ID No. 1 hopes that we can resolve this matter quickly so that we can return to addressing more important matters facing our respective agencies.

Sincerely,



Lee Bettencourt  
Trustee, Santa Ynez River Water Conservation District, Improvement District No. 1

Attachment

Cc: Board of Trustees, SYRWCD, ID No. 1  
Helene Schneider, Mayor City of Santa Barbara  
Bill Rosen, President Goleta Water District  
Richard Shaikewitz, President Montecito Water District  
Fred Lemere, President Carpinteria Valley Water District  
Kate Rees, COMB General Manager  
Tom Mosby, General Manager Montecito Water District  
Charles Hamilton, General Manager Carpinteria Valley Water District  
John McInnes, General Manager Goleta Water District  
Rebecca Bjork, Water Resource Manager City of Santa Barbara  
Chris Dahlstrom, General Manager, SYRWCD, ID No. 1  
Gary M. Kvistad, Brownstein Hyatt Farber Schreck, LLP



EXHIBIT C

MEMORANDUM OF UNDERSTANDING BETWEEN SANTA YNEZ RIVER WATER  
CONSERVATION DISTRICT, IMPROVEMENT DISTRICT NO.1 AND CACHUMA  
OPERATION AND MAINTENANCE BOARD TO LIMIT ACTIVITIES DURING  
ORGANIZATIONAL RESTRUCTURING

This Memorandum of Understanding ("2010 MOU") is entered into this \_\_\_\_\_ day of March, 2010, by and between the Cachuma Operation and Maintenance Board, a joint powers authority ("COMB") and the Santa Ynez River Water Conservation District, Improvement District No. 1 ("ID No. 1"), with reference to the following facts and intentions:

A. The member agencies of COMB consist of the five public agencies ("Member Units") holding contracts with the Bureau of Reclamation through County of Santa Barbara;

B. The activities to carryout and implement the fisheries requirements of the Cachuma Project Biological Opinion for Southern Steelhead Trout ("Biological Opinion") have been performed jointly by Cachuma Conservation Release Board ("CCRB") and ID No. 1 pursuant to the 2001 Memorandum of Understanding to Support Implementation of the National Marine Fisheries Service Biological Opinion ("2001 MOU");

C. Recently, there have been disagreements between ID No.1 and COMB regarding fisheries activities and project related to the Santa Ynez River;

D. A dispute has arisen between ID No. 1 and COMB whether COMB has the authority to represent the Cachuma Member Units in activities related to: the Biological Opinion and Lower Santa Ynez River Fish Management Plan; Reconsultation of the Biological Opinion; and, implementation of fish related projects and conducting fisheries activities in the Santa Ynez River and, if so, whether such projects and activities require the unanimous consent of the COMB Board of Directors (collectively "the Dispute"); and,

E. COMB and ID No. 1 have agreed to set aside the Dispute until such time as an agreement can be reach concerning the organizational restructuring of CCRB and COMB pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE, the parties agree as follows:**

1. **Limitation of Activities.** COMB agrees not to perform any activities related to: the hearings before the State Water Resources Control Board concerning the Cachuma water rights permits held by the Bureau of Reclamation; the Biological Opinion and Lower Santa Ynez River Fish Management Plan including, but not limited to, performing research, preparing studies and reports, construction of projects and entering into

agreements with landowners or other agencies; and, Reconsultation of the Biological Opinion, unless approved by unanimous vote of the COMB Board of Directors. Notwithstanding, CCRB, ID No. 1 or the Member Units, individually, shall still be entitled to carryout such activities.

2. **Organizational Restructuring.** ID No. 1 and COMB agree to work cooperatively and in good faith with COMB and the south coast member agencies (who are also the sole member agencies of CCRB) to reorganize COMB and CCRB to enable the Member Units to efficiently and effectively carryout responsibilities and activities related to the Cachuma Project including, but not limited to, the Biological Opinion, the Lower Santa Ynez River Fish Management Plan, reconsultation with respect to the Biological Opinion, and the hearings before the State Water Resources Control Board concerning the Cachuma water rights permits held by the Bureau of Reclamation.

3. **Second Pipeline Project.** ID No. 1 agrees to ratify and authorizes its COMB Board Representative to approve the COMB Bond and the Second Pipeline Project and agrees not to unreasonably withhold approval or consent of subsequent modifications to the Second Pipeline Project provided such action does not adversely affect ID No.1's Indemnification Agreement.

4. **Term.** This Agreement shall terminate on December 31, 2010 unless terminated earlier or extended by mutual agreement of the parties.

5. **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.

6. **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.

7. **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.

8. **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.

9. **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.

10. **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.

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

CACHUMA OPERATION AND  
MAINTENANCE BOARD

\_\_\_\_\_  
President

\_\_\_\_\_  
President

ATTEST:

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Secretary

**MEMORANDUM OF UNDERSTANDING BETWEEN SANTA YNEZ RIVER WATER CONSERVATION DISTRICT, IMPROVEMENT DISTRICT NO. 1 AND CACHUMA OPERATION AND MAINTENANCE BOARD TO LIMIT ACTIVITIES DURING ORGANIZATIONAL RESTRUCTURING**

**This Memorandum of Understanding** ("2010 MOU") is entered into this \_\_\_\_\_ day of March, 2010, by and between the Cachuma operation and Maintenance Board, a joint powers authority ("OMB") and the Santa Ynez River Water conservation District, Improvement District No. 1 ("ID No. 1"), with reference to the following facts and intentions:

**A.** The member agencies of COMB consist of the five public agencies ("Member Units") holding contracts with the Bureau of Reclamation through County of Santa Barbara;

**B.** The activities to carryout and implement the fisheries requirements of the Cachuma Project Biological Opinion for Southern Steelhead Trout ("Biological Opinion") have been performed jointly by Cachuma Conservation Release Board ("CCRB") and ID No. 1 pursuant to the 2001 Memorandum of Understanding to Support Implementation of the National Marine Fisheries Service Biological Opinion ("2001 MOU");

**C.** Recently, there have been disagreements between ID No. 1 and COMB regarding fisheries activities and project related to the Santa Ynez River;

**D.** A dispute has arisen between ID No. 1 and COMB whether COMB has the authority to represent the Cachuma Member Units in activities related to: the Biological Opinion and Lower Santa Ynez River Fish Management Plan; Reconsultation of the Biological Opinion; and, implementation of fish related projects and conducting fisheries activities in the Santa Ynez River and, if so, whether such projects and activities require the unanimous consent of the COMB Board of Directors (collectively "the Dispute"); and,

**E.** COMB and Id No. 1 have agreed to set aside the Dispute until such time as an agreement can be reach concerning the organizational restructuring of CCRB and COMB pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE, the parties agree as follows:**

**1. Limitation of activities.** COMB agrees not to perform any activities related to: the hearings before the State Water Resources Control Board concerning the Cachuma water rights permits held by the Bureau of Reclamation; the Biological opinion and Lower Santa Ynez River Fish Management Plan including, but not limited to, performing

research, preparing studies and reports, construction of projects and entering into agreements with landowners or other agencies; and, Reconsultation of the Biological opinion, unless approved by unanimous vote of the COMB Board of Directors. Notwithstanding, CCRB, ID No. 1 or the Member units, individually, shall still be entitled to carryout such activities.

**2. Organizational Restructuring.** ID No. 1 and COMB agree to work cooperatively and in good faith with COMB and the south coast member agencies (who are also the sole member agencies of CCRB) to reorganize COMB and CCRB to enable the Member Units to efficiently and effectively carryout responsibilities and activities related to the Cachuma project including, but not limited to, the Biological opinion, the Lower Santa Ynez River Fish Management Plan, reconsultation with respect to the Biological opinion, and the hearings before the State Water Resources Control Board concerning the Cachuma water rights permits held by the Bureau of Reclamation.

**3. Second Pipeline Project.** ID No. 1 agrees to ratify and authorizes its COMB Board Representative to approve the COMB Bond and the Second Pipeline Project and agrees not to unreasonably withhold approval or consent of subsequent modifications to the Second Pipeline Project until construction is complete provided such action does not adversely affect ID No. 1's Indemnification Agreement.

Comment [MSOffice1]: Bill Hair

4. Indemnification Agreements. For the purposes of this Agreement, the phrase in paragraph 3, "such action does not adversely affect ID No. 1's Indemnification Agreement" shall mean that the action to be taken by ID No. 1 will not increase or alter ID No. 1's obligations to fund or finance the Second Pipeline Project or impair the obligation of the City of Santa Barbara, Goleta Water District or Montecito Water District under their respective indemnification Agreements of ID No. 1.

Comment [MSOffice2]: Goleta Water District

5. Representation at COMB. It is agreed that the refusal or failure of ID No. 1 to give instructions to its COMB representative consistent with paragraph 3 of this Agreement shall be a breach of this Agreement. It is further agreed that the failure of the ID No. 1 representative to vote as instructed by ID No. 1 shall be deemed to be a breach by ID No. 1 of this Agreement unless within five (5) days of a request to cure the default ID No. 1 replaces its non-complying representative. Only one request to cure shall be required.

Comment [MSOffice3]: Goleta Water District

6. Remedies. If ID No. 1 shall be found by a court to have unreasonably withheld its approval or consent, COMB or the City of Santa Barbara, Goleta Water District and Montecito Water District either jointly or individually may seek damages resulting from the breach of this Agreement by ID No. 1, including but not limited to the damages arising from the delay, termination or other interruption of the completion of the Second Pipeline Project, increased costs of materials and labor, penalties claimed by contractors, interest, court costs and similar charges and counsel fees actually incurred by the plaintiffs. In addition, any of the agencies may seek injunctive relief compelling ID No. 1 to comply with this Agreement.

Comment [MSOffice4]: Goleta Water District

7. **Term.** This Agreement shall terminate on December 31, 2010 unless terminated earlier or extended by mutual agreement of the parties, except as to the agreements provided in paragraph 3 which shall continue until construction of the Second Pipeline Project is completed.

Deleted: 4

Comment [MSOffice5]: Bill hair

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.

Deleted: 5

9. **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.

Deleted: 6

10. **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.

Deleted: 7

11. **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.

Deleted: 8

12. **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.

Deleted: 9

13. **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.

Deleted: 10

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

CACHUMA OPERATION AND  
MAINTENANCE BOARD

\_\_\_\_\_  
President

\_\_\_\_\_  
President

ITEM # 3  
PAGE 13

ATTEST:

\_\_\_\_\_  
Secretary

ATTEST:

\_\_\_\_\_  
Secretary

## CACHUMA OPERATION AND MAINTENANCE BOARD

### MEMORANDUM

DATE: March 8, 2010  
TO: Board of Directors  
FROM: Kate Rees, General Manager  
Janet Gingras, Administrative Manager  
RE: **COMB FY 2008-09 UNEXPENDED FUNDS**

---

#### RECOMMENDATION:

1. Approve \$85,800 in FY 2008-09 unexpended funds for AECOM Task Order 18, Amendment 5 for engineering consulting services to rebid the SCC Upper Reach Reliability Project (2<sup>nd</sup> Pipeline Project) and related activities.
2. Return the remaining FY 2008-09 unexpended fund balance of \$376,476 to the Member Units.

#### DISCUSSION:

The unexpended fund balance from COMB's FY 08-09 audited financial statements is \$735,795. The attached table reflects the allocated percentages for the unexpended funds in each category according to the member units' contribution of budget revenues. In January 2009, the COMB board approved \$100,000 for AECOM to complete the third phase of the SCC South Reach Reliability Study, which is scheduled to be completed by June 2010. In June 2009, the Board approved \$375,000 for repair and restoration work in the Lauro Reservoir watershed due to damage from the Jesusita Fire. We submitted a claim in the amount of \$543,077 to ACWA/JPIA for re-imbursement on damages sustained from the fire, and have received \$203,235 in insurance money to date. There may be additional insurance reimbursement, but we currently anticipate having about \$464,030 in unexpended funds from FY 08-09.

At the February 3, 2010 Operating Committee meeting, several options for use of the unexpended funds were discussed. The Committee requested that these funds be returned to the Member Units, with the exception of the additional expenses that will be incurred by AECOM for additional work on the 2<sup>nd</sup> Pipeline Project and to rebid the project. A preliminary scope of work was reviewed, and the Committee requested that the scope of work be revised to show a more detailed explanation of the projected tasks and estimated hours with the intention of substantially reducing the scope of work to only what will be required to rebid the project.

ITEM # 4  
PAGE 1



At the March 3, 2010 Operating Committee meeting, Glen Hille of AECOM presented a revised scope of work to complete project management services, the easement and right of way activities, and to rebid the 2<sup>nd</sup> Pipeline Project. AECOM's scope of work is enclosed as well as a spread sheet showing a detailed breakdown of the unexpended funds for FY 2008-09, Board authorizations to date, Member Unit cost distribution, and remaining funds to be returned. The 2<sup>nd</sup> Pipeline Project incorporates enhancements to the existing SCC pipeline and facilities as well as construction of the new pipeline facilities. CVWD's General Manager has indicated that the District will likely pay its normal entitlement share of maintenance and improvements to the existing system. Therefore, the cost breakdown of tasks identifies which of the tasks should be jointly paid and which are designated for new facility work only and paid by the City of Santa Barbara, GWD, and MWD only. The spreadsheet reflects that cost distribution also.

If COMB approves the COMB-ID No. 1 2010 MOU on March 8, 2010, and approves the bond for the 2<sup>nd</sup> Pipeline on March 22<sup>nd</sup>, Mr. Hille will need to resume work on the project and get it out for bid. Therefore, staff and the Operating Committee are recommending that the Board authorize using \$85,800 of the FY 2008-09 unexpended fund balance for this work. It is further recommended that the remaining unexpended funds be returned to the Member Units.

Respectfully submitted,



Kate Rees  
General Manager

Kr.comb/admin/board memos/030310\_Unexpended funds.mmo

ITEM # 4  
PAGE 2

**Cachuma Operation & Maintenance Board  
UNEXPENDED FUNDS DISTRIBUTION - FY 08/09**

	GWD	SB	CVWD	MWD	ID#1	
2nd Pipeline Participants only	46.03%	40.88%	0.00%	13.09%	0.00%	100%
So. Coast MU % of Cachuma Entitlement	40.41%	35.89%	12.20%	11.50%	0.00%	100%
ALL MU % of Cachuma Entitlement	36.25%	32.19%	10.94%	10.31%	10.31%	100%
Unexpended or (Over-expended) FISCAL YEAR 2008-2009						
Operations & Maintenance South Coast Member Units	11,518	4,134	1,405	1,325	0	11,518
General & Administrative All Member Units	43,714	15,064	5,333	4,966	1,484	43,714
Special Projects South Coast Member Units	622,767	223,511	75,978	71,618	0	622,767
IRWMP South Coast Member Units	57,796	20,743	7,051	6,647	0	57,796
<b>Gross Unexpended Funds FY 08/09</b>	<b>\$ 735,795</b>	<b>\$ 263,452</b>	<b>\$ 89,767</b>	<b>\$ 84,555</b>	<b>\$ 1,484</b>	<b>\$ 735,796</b>
07-08 UF South Reach Meter Project (Board approved - not completed in FY 08-09)	(100,000)	(35,890)	(12,200)	(11,500)	0	(100,000)
08-09 Jesusita Fire (Board approved June 2009)	(375,000)	(134,588)	(45,750)	(43,125)	0	(375,000)
Insurance Reimbursement thru 12/09 Net Previously Approved Unexpended Funds	203,235 (271,765)	72,941 (97,537)	24,795 (33,155)	23,372 (31,253)	0	203,235 (271,765)
<b>Net Unexpended Funds 08/09</b>	<b>\$ 464,030</b>	<b>\$ 165,915</b>	<b>\$ 56,612</b>	<b>\$ 53,302</b>	<b>\$ 1,484</b>	<b>\$ 464,030</b>

UF Reimbursement to ID#1	\$ (1,484)	\$ (1,484)	\$ (1,484)	\$ (1,484)	\$ (1,484)	\$ (1,484)
AECOM Amendment #5 - TO#18 2nd pipeline(4 MU's)	\$ (76,700)	(27,528)	(9,357)	(8,821)	-	(76,700)
AECOM Amendment #5 - TO#18 2nd pipeline(3 MU's)	\$ (9,100)	(3,720)	-	(1,191)	-	(9,100)
<b>Totals for TO#18</b>	<b>\$ (85,800)</b>	<b>\$ (31,247)</b>	<b>\$ (9,357)</b>	<b>\$ (10,012)</b>	<b>\$ -</b>	<b>\$ (85,800)</b>
<b>UF Reimbursements to Member Units</b>	<b>\$ 376,746</b>	<b>\$ 138,388</b>	<b>\$ 47,254</b>	<b>\$ 44,482</b>	<b>\$ 0</b>	<b>\$ 376,746</b>

# Scope of Work – Task Order No. 18 Cachuma Operation and Maintenance Board SCC Upper Reach Project Reconfirmations and Rebid, Amendment 5, Supplemental Authorization 8

## Background and Overview

The Cachuma Operation and Maintenance Board (COMB) proposes to construct the South Coast Conduit Upper Reach Reliability Project, which consists of the installation of over 8,000 feet of 48-inch cement mortar lined and coated welded steel pipe and appurtenances. The project site is located in Glen Annie Canyon, north of the City of Goleta, in Santa Barbara County, California. The project site includes the area between the existing South Coast Conduit (SCC) between the south portal of the Tecolote Tunnel and the Corona del Mar Water Treatment Plant.

The major project elements include:

- 8100± LF of welded steel pipe.
- New south portal concrete diversion structure.
- Modifications to the CDMWTP and adjacent SCC vent.
- Fiber Optic conduit and cable.
- Interface with Goleta Water District for Glen Annie interface, CDMWTP Turnout modifications, and Goleta West Conduit tie-ins.

COMB has retained Boyle / AECOM since 2002 to perform engineering studies, final design and specifications and bid phase work for the South Coast Conduit Upper Reach Reliability Project. After completion of the bid phase services, COMB decided to incorporate certain project refinements into the contract documents and rebid the project. The following tasks are proposed for the rebid period:

### ***Task 5100 – Project Management***

AECOM will complete the following tasks:

- 5110 Services February 15, 2010 to June 2010 (3 hours/week).

### ***Task 5200 – Plan and Specification Updates***

AECOM will complete the following tasks:

- 5210 Incorporate Project Refinements
  - 5211 Lining and Coatings
  - 5212 Implement Easements and Right-of-Way Revisions to 12 existing drawings and create one new drawing.
  - 5213 Revise Bid Tab
- 5220 Compile Reissued for Bid Plans and Specifications. Provide up to twelve (12) hard copies to COMB and COMB's contractors.

### ***Task 5300 – Update Opinion of Probable Construction Cost and Overall Project Cost Summary***

Provide an updated opinion of probable project cost (one updated page from Initial Project Report).

**Task 5400 – Project Schedule Update**

Project an updated project schedule consisting of up to fifteen milestones.

**Task 5500 – Analysis of and Coordination for Environmental Monitoring Options**

**Task 5600 – Meetings**

AECOM will complete the following tasks:

- Four (4) COMB
- One (1) Legal
- Three (3) CIP Coordinating Committee

**Task 5700 – Bid Phase Services**

AECOM will complete the following tasks:

- Advertise
- One (1) Pre-Bid Meeting and Job Walk
- Up to two (2) Addenda
- Bid Analysis

**Task 5800 – Additional Right-of-Way and Easements**

AECOM will complete the following tasks:

- 5810 Legal Descriptions (Penfield & Smith) – Compile up to 10 permanent and/or temporary easements for the 2<sup>nd</sup> Barrel for crossing the two USA properties and the Goleta Water District property.
- 5820 Right-of-Way Document Coordination (Hamner Jewel)
  - The USBR is now requiring COMB to obtain formal permit easements. We suggest a budget allocation of 50 hours to communicate with the USBR and assist in the process to its completion.
  - In addition, we understand that GWD may require COMB to purchase easement rights (permanent and/or temporary) for the 2<sup>nd</sup> Barrel line. As with the USBR parcels, we propose a budget allocation of 50 hours, which is our standard allocation for easement acquisitions per parcel. Since GWD is a participant of COMB, it is unlikely that COMB will need to purchase easement rights from GWD, but processing of an easement deed may be needed.

This budget is conditioned on COMB bearing the cost of any processing fee and acquisition cost required by USBR and/or GWD and does not include the costs of title reports or appraisals.

**Task 5900 – Instrumentation**

5910 Instrumentation

Existing SCADA System for the Cachuma Operation and Maintenance Board (COMB) was commissioned in 2002. The Glen Annie Turnout and Corona Del Mar Turnout facilities will be modified as part of the Second Barrel Project:

5910.1 Sites Visits – Visit project sites to gather required data.

5910.2 Glen Annie Turnout – Modify controls as follows:

- ⊗ Eliminate SCC flow transmitter at the turnout
- ⊗ Provide an empty conduit to future Goleta West magnetic flow meter. The meter will replace two existing mechanical meters.
- ⊗ Modify communication with SCADA for fiber optics communication to/from CDMWTP.

5910.3 Corona Del Mar Turnout – Design new controls to include PLC, new instruments (two flow meters, two level transmitters), and controls of motorized slide gates, as required.

*Assumptions:*

1. Communications to COMB central will remain as leased telephone line from Glen Annie.
2. Design and implementation of COMB SCADA modifications is by others.

## TASK COST REPORT

The estimated engineering effort and estimated fee are shown below:

Task	Description	AECOM Level of Effort Manhours (\$)		Sub Consultant
<b>5100</b>	<b>Project Management</b>			
5110	Services 2-15-2010 thru 6-2010 (3 hrs/week)	60	\$ 9,800	
<b>5200</b>	<b>Plan and Specification Updates</b>			
5210	Incorporate Project Refinements			
5211	Lining and Coatings	8	\$ 1,300	
* 5212	Easements and ROW Revisions	40	\$ 6,500	
5213	Revise Bid Tab	4	\$ 700	
5230	Reissue for Bid	24	\$ 3,900	\$ 2,500
<b>5300</b>	<b>Update Opinion of Probable Construction Cost and Overall Project Cost Summary</b>	8	\$ 1,300	
<b>5400</b>	<b>Project Schedule Update</b>	8	\$ 1,300	
<b>5500</b>	<b>Analysis of and Coordination for Environmental Monitoring Options</b>	8	\$ 1,300	
<b>5600</b>	<b>Meetings</b>	40	\$ 6,500	
<b>5700</b>	<b>Bid Phase Services</b>	48	\$ 7,800	\$ 2,000
<b>5800</b>	<b>Right-of-Way and Easements</b>			
* 5810	Legal Descriptions	8	\$ 1,300	\$ 7,300
* 5820	Right-of-Way Document Coordination	8	\$ 1,300	\$ 16,700
<b>5900</b>	<b>Instrumentation</b>			
5910	Instrumentation	88	\$ 14,300	
	<b>Total</b>	<b>352</b>	<b>\$ 57,300</b>	<b>\$ 28,500</b>

\* Costs exclusive to new pipeline (non maintenance).

It is anticipated that an engineering fee of \$85,800 will be required to accomplish the above-referenced engineering tasks based on an average of \$150 per MH and 8.5% for other miscellaneous costs, and \$26,700 for subconsultants. Compensation will be on a time and materials basis consistent with the 2010 Fee Schedule (Exhibit B) attached and our Engineering Services Agreement dated February 22, 1999.

## Project Schedule

Amendment No. 5 has been compiled based on the following milestone schedule assumptions:

Amendment 5 Authorization	March 8, 2010
USBR Comments	March 15, 2010
Funding Approval by COMB	March 22, 2010
Distribute "Issued for Bid Documents"	April 15, 2010
Receive Bids	May 18, 2010
Complete COMB Funding (Bond Sale)	July 15, 2010
Award Construction Contract	July 26, 2010
Issue Notice to Proceed	July 27, 2010

## Supplemental Conditions

### Construction Safety

COMB agrees that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the Project, including safety of all persons and property, and that this requirement shall be made to apply continuously and not be limited to normal working hours. AECOM shall not have control over or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, as these are solely the responsibility of the construction contractor. AECOM shall not have the authority to stop or reject the work of the construction contractor.

### Contractor Indemnification/Additional Insured

Client will require that any Contractor performing work in connection with the project for which AECOM is providing professional services, hold harmless, indemnify and defend Client, AECOM, their consultants, and each of their directors, officers, agents and employees from any and all liability, claims, losses, damage and costs, including attorneys' fees, arising out of or alleged to arise from the Contractor's performance of the work described in the construction contract documents, but not including liability that may be due to the sole negligence of Client, AECOM, their consultants, or their directors, officers, agents and employees.

Client will require the Contractor to provide workers' compensation and commercial general liability insurance, including completed operations and contractual liability, with the latter coverage sufficient to insure the Contractor's indemnity, as above required; and such insurance shall include Client, AECOM, their consultants, and each of their directors, officers, agents and employees as additional insureds.

### Hazardous Materials

In providing its services hereunder, neither AECOM nor its subconsultants shall be responsible for identification, handling, containment, abatement, or in any other respect, for any asbestos or hazardous material if such is present in connection with the project. In the event that CLIENT becomes aware of the presence of asbestos or hazardous material at the jobsite, CLIENT shall be responsible for complying with all applicable federal and state rules and regulations, and shall immediately notify AECOM, who shall then be entitled to cease any of its services that may be affected by such presence, without any liability to AECOM or its subconsultants arising there from.

Cost Estimate

AECOM has no control over the cost of labor, materials, equipment or services furnished by others or over Contractor's methods of determining prices, or other competitive bidding or market conditions, practices or omissions on the site. Any cost estimates provided by the Consultant will be made on the basis of his experience and judgment. Estimates of probable construction costs may vary from actual construction costs.

Re-Use of Documents

Documents, drawings, specifications, and electronic information/data, including computer aided drafting and design ("CADD"), prepared by CONSULTANT pursuant to this agreement are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project. Any use of completed documents for other projects and any use of incomplete documents without specific written authorization from CONSULTANT will be at CLIENT's sole risk and without liability to CONSULTANT.

Right to Rely

Consistent with the professional standard of care and unless specifically provided herein, AECOM shall be entitled to rely upon the accuracy of data and information provided by the COMB or others without independent review or evaluation.



**South Coast Conduit  
Upper Reach Reliability Study  
Re-Bid Schedule Milestones**

March 3, 2010

March 15, 2010	1) Re-bid Authorization 2) Funding Approval 3) AECOM Authorization
April 15, 2010	Reissue Bid Documents
May 1, 2010	ROW and Permit Issues Essentially Complete
May 18, 2010	Receive Bids
July 15, 2010	Bond Sale Complete (money in bank)
July 26, 2010	1) Award Contract (USBR/ROW/Permits Complete)
July 27, 2010	2) Issue NTP
August 2011	2 <sup>nd</sup> Barrel Operations