Note from CEC Staff:
This is a complete version of the MOU that was also included in AFC Volume II, Appendix N.1 – Exhibit 2, but was missing pages 3, 5 and 7.

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MEMORANDUM OF UNDERSTANDING
by and between the
CALIFORNIA DEPARTMENT OF FISH AND GAME
and the
VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY
regarding the
DISCHARGE TO THE MOJAVE RIVER TRANSITION ZONE

This Memorandum of Understanding ("MOU") is made and entered into on JUNE 27, 2003, by and between the California Department of Fish and Game ("DFG") and the Victor Valley Wastewater Reclamation Authority ("VVWRA").

RECITALS

1. On July 2, 2002, VVWRA submitted an application to the California Regional Water Quality Control Board – Lahontan Region ("Lahontan") for a master water recycling permit under California Water Code Section 13523.1, in order to use up to 1,680 acre feet per year of recycled water for irrigation of the Westwinds Golf Course at the Southern California Logistics Airport ("SCLA"), that otherwise currently requires the use of potable groundwater supplies from the underlying Mojave River alluvial aquifer.

2. On August 27, 2002, DFG submitted a letter to Lahontan objecting to VVWRA's application for a permit for the proposed project to use recycled water for irrigation at SCLA.

3. On March 24, 2003, and again on May 22, 2003, representatives of DFG and VVWRA met to discuss reaching a mutual agreement to address DFG's concerns.

4. On June 11, 2003, Lahontan approved Lahontan Board Order No. R6V-2003-028 (WDID No. 6B360207001) Water Recycling Requirements For Victor Valley Wastewater Reclamation Authority (VVWRA) and City of Victorville; Westwinds Golf Course.

5. In April 2003, VVWRA circulated and published a Notice of Preparation (NOP) of a Program Environmental Impact Report for VVWRA's Subregional Reclamation Facilities Project ("Subregional Reclamation Facilities Project").

6. VVWRA and DFG recognize that the Subregional Reclamation Facilities Project could intercept some influent wastewater flow that would otherwise go to VVWRA's existing regional treatment plant located at 20111 Shay Road, Victorville, California (the "Shay Road Plant"), and that future influent wastewater flows to the Shay Road Plant may increase more slowly due to the construction and operation of the Subregional Reclamation Facilities Project. The Parties also acknowledge that implementation and operation of any subregional plant under the Subregional Reclamation Facilities Project is not expected to decrease recycled water discharges from the Shay Road Plant below 9,000 acre feet annually, and not less than 24.7 acre feet per day.

7. DFG is a party to the Stipulated Judgment in the Mojave Adjudication (*City of Barstow, et al. v. City of Adelanto, et al.*; Riverside County Superior Court, Case No. 208568, commonly referred to as the "Mojave Adjudication"); VVWRA is not a party to the Mojave Adjudication.

8. Recognizing Lahontan's adoption of Board Order No. R6V-2003-028 (WDID No. 6B360207001), and VVWRA's development of the Subregional Reclamation Facilities Project, VVWRA and DFG desire to enter into this MOU to cooperatively address their respective concerns regarding VVWRA's current and future discharges to the Mojave River Transition Zone.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and conditions contained herein, the parties agree as follows:

1. **Recitals Incorporated.** The Parties agree that the foregoing Recitals are true and correct and are incorporated herein by reference.

2. **Lahontan Board Order No. R6V-2003-028.** DFG agrees that it will not appeal or otherwise challenge Lahontan Board Order No. R6V-2003-028 (WDID No. 6B360207001) Water Recycling Requirements for Victor Valley Wastewater Reclamation Authority (VVWRA) and City of Victorville; Westwinds Golf Course.

3. **VVWRA Discharges to the Mojave River at the Transition Zone.** VVWRA will continue to discharge 9,000 acre feet annually and not less than 24.7 acre-feet per day[1] of "available recycled water" at its existing permitted points of discharge at VVWRA's Shay Road Plant.[2] "Available recycled water" means the daily influent wastewater flow to the Shay Road Plant, less any flows removed for sewage and solids processing, and less any flows used for recycling on-site at VVWRA, and less any flows used for irrigation of the 9-hole Westwinds Golf Course as approved by Lahontan Board Order No. R6V-2003-028 (WDID No. 6B360207001). In addition, VVWRA will also discharge at its existing permitted points of discharge not less than twenty percent (20%) of the amount of recycled water resulting from any increases in the amount of daily influent wastewater flow to VVWRA's Shay Road Plant after the effective date of this MOU. VVWRA's performance of the obligations under this section are subject to the following conditions:

   A. If, due to construction of a subregional facility under the Subregional Reclamation Facilities Project, the amount of daily influent wastewater flow to the Shay Road Plant is reduced below that required to provide 9,000 acre feet of discharge to the Mojave River, VVWRA shall only be required to discharge the remaining amount of "available recycled water";

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[1] The "24.7 acre feet per day" requirement will be based upon a 48 hour running average.

[2] VVWRA's existing permitted points of discharge refer to both VVWRA's direct surface discharges to the Mojave River, and to discharges to VVWRA's percolation ponds.

provided, however, that if these circumstances occur, the Parties will promptly meet and confer in good faith to attempt to mutually determine options to lessen any potential adverse impacts to the Transition Zone including, but not limited to, alternatives for increasing recycled water discharges in order to produce, in combination with the base flow measured at the Lower Narrows gage, a total of at least 15,000 acre feet annually to the Transition Zone.

B. VVWRA shall have no obligation to maintain the discharges required under this section to the extent VVWRA is enjoined or otherwise prohibited from discharging such amounts by a court or regulatory agency.

C. VVWRA's discharge to the Mojave River need not be more than is necessary to produce, in combination with the base flow measured at the Lower Narrows gage, a total of 15,000 acre feet annually. The parties agree to use the Mojave Basin Area Watermaster's Annual Report of base flow for the prior water year to potentially adjust VVWRA's then current year discharge. If the combined flows at the Lower Narrows gage, as reported by the Watermaster, exceeds 15,000 acre feet for the prior water year, then during the course of: (i) the 12-month period immediately following the date that the Watermaster submits its Annual Report to the Riverside County Superior Court: or (ii) the period of time between such submittal and the Watermaster's next submittal of its Annual Report, whichever period is shorter, VVWRA may decrease its discharge by an amount equal to the prior water year's combined flow exceedance over 15,000 acre feet; provided, however, that any such decreases must be averaged as evenly as practicable on a daily basis over that period; provided, further that, if there are three consecutive water years where base flows, in combination with discharges from the Shay Road Plant, reach at least 15,000 acre feet annually, the parties will promptly meet and confer in good faith to discuss the terms of this MOU, and to determine

whether a decrease or cessation of the discharges to the Mojave River , as required under this section, is appropriate.

4. **VVWRA Potential Future Subregional Reclamation Projects.** DFG recognizes and acknowledges that VVWRA is currently studying the development and implementation of subregional reclamation facilities that could accept, treat, and recycle a portion of existing and future influent wastewater flows that would otherwise be received at VVWRA's Shay Road Plant, and that such subregional reclamation facilities may not be at locations adjacent to the Mojave River and may not have discharges to the Mojave River Transition Zone. The parties recognize that the construction or operation of the subregional reclamation facilities may require a permit from DFG pursuant to the California Endangered Species Act or other applicable law, and that DFG reserves all of its rights, authority and obligations thereunder; provided, however, that DFG will not oppose, challenge, withhold or otherwise protest any necessary governmental approval of the Subregional Reclamation Facilities Project, including any necessary approval from DFG, based on an allegation of potentially inadequate discharges from VVWRA's Shay Road Plant or a subregional plant to the Mojave River.

5. **Studies of the Riparian Habitat in the Mojave River Transition Zone.** DFG and VVWRA mutually agree to participate cooperatively with the Mojave Water Agency (MWA) in the collection and sharing of information regarding the condition of the riparian habitat located in the Mojave River Transition Zone. The terms and conditions of these cooperative efforts will be determined by a separate written instrument to be mutually agreed to by VVWRA, MWA, and DFG. The results of the studies may be used to determine the relative condition of fish, wildlife, and other instream beneficial uses in the Mojave River Transition Zone. While DFG agrees to cooperate, as provided above, DFG is not hereby obligating any resources to this effort, but will cooperate with VVWRA to the extent practicable.

6. **Term.** This MOU shall be effective from the date first written above, and shall continue unless modified or terminated by mutual agreement of the parties, or terminated pursuant to a judicial proceeding brought by either or both parties.

7. **Construction and Interpretation.** It is agreed and acknowledged by the parties that this MOU has been arrived at through negotiation, and that each party has had a full and fair opportunity to revise the terms of the MOU. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this MOU.

8. **Severability.** The invalidity, illegality, or unenforceability of any provision of this MOU shall not render the other provisions unenforceable, invalid, or illegal.

9. **Governing Law.** This MOU shall be interpreted and enforced pursuant to the laws of the State of California.

10. **Modifications.** This MOU can only be modified by a written instrument executed by both parties.

11. **Entire MOU.** This MOU contains the entire understanding of the parties related to their interests, obligations, and rights in connection with the subject matter set forth herein. All prior communications, negotiations, stipulations, and understandings, whether oral or written, are of no force or effect, and are superseded, except as referred herein.

12. **Assigns and Successors.** This MOU shall be binding upon, and inure to the benefit of, the assigns or successors-in-interest of the parties herein.

13. **No Third Party Beneficiary.** The parties to this MOU do not intend to create any third party beneficiaries to this MOU, and expressly deny the creation of any third party beneficiary rights hereunder toward any person or entity.

14. **Time.** Time is of the essence in the performance of each and every term of this MOU.

15. **Waiver.** The waiver or failure to declare a breach as a result of the violation of any term of this MOU shall not constitute a waiver of that term or condition, and shall not provide the basis for a claim of estoppel, forgiveness, or waiver by any party to that term or condition.

16. **Captions.** The paragraph captions in this MOU are for convenience only and shall not be used in construing the MOU.

17. **Additional Documents.** Each party agrees to make, execute, and deliver any and all documents and to join in any application or other action reasonably required to implement this MOU.

18. **Notice.** Any and all communications and/or notices in connection with this MOU shall be hand delivered or sent by United States first class mail, postage prepaid, and addressed as follows:

To: VVWRA

Daniel Gallagher
VVWRA General Manager
20111 Shay Road
Victorville, CA 92394
(760) 246-8638
(760) 246-5440 (fax)

To: DFG

Curt Taucher
Regional Manager
Eastern Sierra -- Inland Desert Region
California Department of Fish & Game
330 Golden Shore, Suite 210
Long Beach, CA 90802
(562) 590-5113
(562) 590-5192 (fax)

The parties may change the foregoing addresses by providing written notice in compliance with this paragraph.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the day and year first written above.

VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY

By_____ Dated: 6/27/03

Daniel P. Gallagher
VVWRA General Manager

CALIFORNIA DEPARTMENT OF FISH AND GAME

By_____ Dated: 7/7/03

Curt Taucher
Regional Manager, Eastern Sierra – Inland Desert Region

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