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December 21, 2006

Groundwater Management
Agreement

**Rancho California Water District
and
Pechanga Band of Luiseño Mission Indians**

COPY

1
2 “*Annual Energy Index*” means the percentage determined by dividing: (a) the electrical
3 energy costs, expressed in cost per kilowatt hour, incurred by RCWD for electric energy it
4 purchases for groundwater pumping in the Contract Year just prior to the Contract Year for which
5 the Annual Energy Index is being calculated, by (b) the electrical energy costs, expressed in cost
6 per kilowatt hour, incurred by RCWD for electric energy it purchases for groundwater pumping
7 in the Contract Year that is two Contract Years prior to the Contract Year for which the Annual
8 Energy Index is being calculated.

9
10 “*Annual Entitlement*” has the meaning set forth in Section 2.1.

11
12 “*Contract Year*” means a calendar year; provided that the first Contract Year after
13 execution of this Agreement shall be for the period from the date of execution through the end of
14 the next calendar year and the last Contract Year shall expire upon expiration of the Term.

15
16 “*Decision*” has the meaning set forth in Section 3.4.

17
18 “*Delivered Groundwater*” has the meaning set forth in Section 2.3.

19
20 “*Delivered Groundwater Charge*” has the meaning set forth in Section 2.3.4.

21
22 “*Delivered Groundwater Facilities*” means those facilities required for RCWD to
23 transport and deliver Delivered Groundwater to Pechanga, as specified in Exhibit A.

24
25 “*Delivered Groundwater Facilities Site*” means any area on which the Delivered
26 Groundwater Facilities will be located, including reasonable lay down areas, as delineated in
27 Exhibit B.

28
29 “*Delivery Point*” means any point or points at which Delivered Groundwater is delivered
30 to Pechanga under this Agreement. The initial Delivery Point shall be as specified in Exhibit A.

31
32 “*Dispute*” has the meaning set forth in Section 6.1.

33
34 “*Effective Date*” has the meaning set forth in the first paragraph of this Agreement.

35
36 “*Excess Pumping*”, with respect to any Year, means the amount of groundwater by which
37 the sum of the RCWD Annual Usage and the Pechanga Annual Usage inadvertently exceeds
38 either the Provisional Safe Yield or the Safe Yield in effect for the relevant Year, as the case may
39 be.

40
41 “*Exhibit*” means an exhibit to this Agreement, each of which is hereby incorporated
42 herein by this reference.

43
44 “*Groundwater Records*” has the meaning set forth in Section 4.3.

45
46 “*Groundwater Reports*” has the meaning set forth in Section 4.1.

1
2 “*Mediation Procedures*” has the meaning set forth in Section 6.2.

3
4 “*Month*” means a calendar Month.

5
6 “*MWD*” has the meaning set forth in Section 2.3.9.

7
8 “*Party*” means, individually, Pechanga and RCWD, and “*Parties*” means both of them.

9
10 “*Pechanga*” has the meaning set forth in the first paragraph of this Agreement.

11
12 “*Pechanga Annual Usage*”, with respect to any Year, means the sum of (a) the amount of
13 groundwater pumped by Pechanga from the Basin during such Year, plus (b) the amount of
14 Delivered Groundwater delivered to Pechanga by RCWD pursuant to this Agreement during
15 such Year.

16
17 “*Pechanga Excess Pumping*”, with respect to any Year, means the amount of water by
18 which the Pechanga Annual Usage during such Year exceeds Pechanga’s Annual Entitlement for
19 such Year.

20
21 “*Provisional Safe Yield*” means three thousand (3,000) AFY, an amount of groundwater
22 pumping deemed by the Parties on the Effective Date to be a conservative estimate of the Safe
23 Yield.

24
25 “*RCWD*” has the meaning set forth in the first paragraph of this Agreement.

26
27 “*RCWD Annual Usage*”, with respect to any Year, means the remainder of (a) the total
28 amount of groundwater pumped by RCWD from the Basin during such Year, *minus* (b) the
29 amount of Delivered Groundwater delivered to Pechanga by RCWD pursuant to this Agreement
30 during such Year.

31
32 “*RCWD Excess Pumping*”, with respect to any Year, means the amount of water by
33 which the RCWD Annual Usage during such Year exceeds RCWD’s Annual Entitlement for such
34 Year.

35
36 “*RCWD Facility Requirements*” means the document entitled “Rancho California Water
37 District Water System Facility Requirements”, dated August 1, 1991, a copy of which is attached
38 as Exhibit E.

39
40 “*Representative*” has the meaning set forth in Section 3.1.

41
42 “*Reservation*” means the reservation of the Pechanga Band of Luiseño Mission Indians,
43 as delineated in Exhibit C.

44
45 “*Right of Way*” means RCWD’s easements and rights of way on which the Delivered
46 Groundwater Facilities Site will be located, as delineated in Exhibit B.

1
2 “*Safe Yield*” means the best professional estimate, following a comprehensive review and
3 analysis of the best available groundwater, hydrologic and climatic data for the Basin, of the
4 amount of groundwater available for pumping from the Basin in any given Year without causing
5 an undesirable result.

6
7 “*Section*” means a section or subsection of this Agreement.
8

9 “*Technical Committee*” means the committee of technical experts appointed by the
10 Parties pursuant to Section 3.1.

11
12 “*Term*” has the meaning set forth in Section 9.1.

13
14 “*Watermaster*” means the Santa Margarita Watermaster, appointed in the case of United
15 States v. Fallbrook Public Utility District, et al., CIV No. 1247-SD-T.

16
17 “*Wolf Valley Groundwater Basin*” or “*Basin*” means that groundwater located beneath
18 Wolf Valley as more definitely depicted in Exhibit D.

19
20 “*Year*” means a calendar year, unless otherwise provided.

21
22 **2. Annual Entitlements from the Basin**

23
24 **2.1 Annual Entitlement.** The combined amount of groundwater pumped from the
25 Basin by the Parties in any Year shall not exceed the Safe Yield. Subject to Section 2.2, each
26 Party shall be entitled to pump no more than fifty percent (50%) of the Safe Yield in any given
27 Year (for each Party, its “*Annual Entitlement*”). For purposes of calculating each Party’s
28 respective Annual Entitlement, the Safe Yield shall be calculated as follows:

29
30 **2.1.1** For any Year prior to the Year in which the Safe Yield initially is
31 determined by Decision of the Technical Committee, the Safe Yield shall be the Provisional Safe
32 Yield.

33
34 **2.1.2** For the Year during which the Safe Yield is initially determined by the
35 Technical Committee, and for any Year thereafter, the Safe Yield shall be the Safe Yield as last
36 determined by Decision of the Technical Committee in accordance with their responsibilities
37 specified in Sections 3.5.1 and 3.5.2 and notified to the Parties.

38
39 **2.2 Temporary RCWD Right to Pump Unused Pechanga Annual Entitlement.**
40 RCWD initially shall have the right, in addition to RCWD’s Annual Entitlement for the relevant
41 Year, to pump groundwater from the Basin in an amount equal to the positive remainder of (a)
42 three thousand (3,000) AFY *minus* (b) the sum of the Pechanga Annual Usage as reported for the
43 prior Year plus any RCWD Excess Pumping for the prior Year; provided, however, that such
44 right shall exist only until the Year following the first Year during which reported Pechanga
45 Annual Usage equals or exceeds one thousand five hundred (1,500) AFY. For any Year during
46 which the additional pumping amounts are available to RCWD pursuant to this Section 2.2, any

1 reference to RCWD's Annual Entitlement herein shall be deemed to include such additional
2 amounts with respect to such Year.

3
4 **2.3 Delivered Groundwater.** In lieu of actually pumping groundwater itself from
5 the Basin, Pechanga may request RCWD to pump its Annual Entitlement, or any portion thereof,
6 and deliver such water directly to Pechanga, pursuant to Water Code sections 1810 *et seq.*
7 ("*Delivered Groundwater*"). Any amount of Delivered Groundwater shall not exceed and shall
8 be subtracted from Pechanga's Annual Entitlement, and shall not be charged against RCWD's
9 Annual Entitlement. With respect to Delivered Groundwater, the following shall apply:

10
11 **2.3.1** Delivered Groundwater initially shall be delivered by RCWD to Pechanga
12 at the Delivery Point specified in Exhibit A. Pechanga shall have the right at any time to
13 designate other Delivery Points on the Reservation for purposes of delivery and receipt of
14 Delivered Groundwater, subject to the following –

15
16 (a) Any new facilities constructed for purposes of any new Delivery Point
17 shall be Delivered Groundwater Facilities for purposes of this Agreement, all other defined terms
18 herein which relate to Delivered Groundwater Facilities shall be construed as referring to such
19 new facilities, and Exhibit A and Exhibit B shall be modified or supplemented as required to
20 reflect the scope and siting of, and any known additional approvals required for, the new
21 Delivered Groundwater Facilities.

22
23 (b) This Agreement shall govern Pechanga's and RCWD's rights and
24 obligations with respect to construction and use of such new Delivered Groundwater Facilities.
25 Without limitation of the foregoing, Pechanga shall be responsible for all Delivered Groundwater
26 Facilities Costs incurred with respect to any new Delivered Groundwater Facilities required to be
27 constructed for purposes of establishing any new Delivery Point. Any new Delivered
28 Groundwater Facilities shall be constructed and installed in compliance with the RCWD Facility
29 Requirements, as they may have been amended at the time of such construction and installation.

30
31 (c) Pechanga, with RCWD's cooperation and assistance, shall obtain any
32 approvals required for construction, ownership and operation of new Delivered Groundwater
33 Facilities required for establishment of a new Delivery Point.

34
35 **2.3.2** RCWD's obligation to deliver Delivered Groundwater to Pechanga
36 pursuant to this Section 2.3 shall not commence until the Delivered Groundwater Facilities have
37 been completed and accepted by RCWD in accordance with Section 5.1.

38
39 **2.3.3** All Delivered Groundwater shall meet the same water quality standards
40 applicable to any delivery of water by RCWD to any customer similarly situated to Pechanga.

41
42 **2.3.4** For each acre foot of Delivered Groundwater actually delivered to
43 Pechanga, Pechanga shall pay to RCWD an amount (the "*Delivered Groundwater Charge*"),
44 being the sum of a fixed component and a variable component, determined as follows:
45

1 (a) During the first Contract Year, the fixed component amount shall be
2 \$56.00. Commencing in the second Contract Year, and in each Contract Year thereafter, the fixed
3 component shall be adjusted by a percentage amount equal to the percentage change in the U.S.
4 Department of Labor, Bureau of Labor Statistics Consumer Price Index for the previous calendar
5 year.

6
7 (b) During the first Contract Year, the variable component amount shall be
8 \$129.00. Commencing in the second Contract Year, and in each Contract Year thereafter, the
9 variable component shall equal the well production costs set by RCWD for customers in Pressure
10 Zone 1305.

11
12 2.3.5 RCWD shall deliver a statement to Pechanga with respect to Delivered
13 Groundwater by the tenth (10th) business day of each Month. With respect to Delivered
14 Groundwater delivered during the preceding Month, the statement shall set forth (i) the amount of
15 Delivered Groundwater, and (ii) the aggregate Delivered Groundwater Charge. Each statement
16 shall be accompanied by such information as is necessary to enable Pechanga reasonably to
17 determine the accuracy of the statement.

18
19 2.3.6 Payments by Pechanga of amounts rightfully payable to RCWD as set forth
20 in a statement rendered pursuant to Section 2.3.5 will be made to RCWD no later than fifteen (15)
21 business days after delivery of the relevant statement. Payment shall be made by wire transfer to
22 such bank account as may be designated in writing from time to time by RCWD, or by such other
23 means as is mutually acceptable to the Parties.

24
25 2.3.7 In the event either Party discovers a discrepancy with respect to any
26 statement, such Party shall promptly advise the other Party of such discrepancy. Adjustments for
27 such discrepancies will be reflected on the next statement issued following verification of such
28 discrepancy, but in no event, except in cases of fraud, will an adjustment be made for discrepancies
29 discovered more than thirty-six (36) Months following the date of issuance of the relevant invoice.

30
31 2.3.8 Subject to the provisions of Section 2.3.9:

32
33 (a) Following commencement of deliveries of Delivered Groundwater and until
34 termination of this Agreement as provided in Section 9.1, RCWD shall not have the right
35 unilaterally to interrupt, suspend or terminate deliveries of Delivered Groundwater to Pechanga in
36 the absence of a final arbitral award issued in accordance with Article 6 permitting such
37 interruption, suspension or termination.

38
39 (b) Notwithstanding the provisions of Section 2.3.8(a), RCWD shall have the
40 right to interrupt deliveries of Delivered Groundwater to the extent required to address emergencies
41 involving, or to undertake repairs or maintenance to, the Delivered Groundwater Facilities or other
42 facilities on RCWD's system. RCWD shall notify Pechanga (i) in advance, promptly following the
43 scheduling of any repairs or maintenance that will cause an interruption of deliveries, and (ii) as
44 soon as reasonably possible following an emergency that has caused an interruption of deliveries.

45

1 **2.3.9** In the event that RCWD receives written notice from Metropolitan Water
2 District of Southern California (“*MWD*”) objecting to RCWD’s delivery of Delivered Groundwater
3 to Pechanga as being in violation of *MWD*’s statutory authority and its rules and regulations, the
4 following provisions shall apply:
5

6 (a) RCWD shall provide a copy of such written notice to Pechanga and shall
7 cooperate with Pechanga in an effort to resolve the issue with *MWD*, including taking any
8 procedural steps permitted under *MWD*’s rules and regulations to appeal, protest or otherwise
9 address the objection of *MWD*.
10

11 (b) Pechanga reserves the right at all times to litigate the right of RCWD to
12 continue delivering Delivered Groundwater under the terms of this Agreement. RCWD (i) will not
13 take any action that may prejudice any right of Pechanga to challenge a determination of *MWD* that
14 RCWD’s delivery of Delivered Groundwater under this Agreement is in violation of *MWD*’s
15 statutory obligations or rules and regulations, and (ii) will comply with any final judgment affirming
16 RCWD’s right to deliver Delivered Groundwater to Pechanga under this Agreement.
17

18 (c) RCWD shall continue deliveries of Delivered Groundwater hereunder
19 unless and until the earlier of (i) its having received Pechanga’s written notification that
20 Pechanga will not challenge (or will not continue to challenge) *MWD*’s determination, or (ii) in
21 the event Pechanga does challenge such determination, issuance of a final judicial determination
22 (following completion of all appeals or expiration of the time for filing appeals) that RCWD
23 does not have the right to continue deliveries of Delivered Groundwater in accordance with this
24 Agreement.
25

26 (d) In the event deliveries of Delivered Groundwater are discontinued pursuant
27 to Section 2.3.9(c):
28

29 (i) Pechanga shall have the right to take Groundwater directly from an
30 RCWD well, upon payment of the costs of connecting thereto; and
31

32 (ii) provisions of this Agreement will be amended as required to
33 accommodate implementation of such Groundwater source.
34

35 **2.4 Pechanga Annual Estimate of Pumping.**
36

37 **2.4.1** During the Term, Pechanga shall cause to be prepared and delivered to
38 RCWD by January 31 of each Year, a good-faith estimate of:
39

40 (a) the amount of groundwater that Pechanga anticipates it will pump during
41 the then current Year; and,
42

43 (b) the amount of Delivered Groundwater that Pechanga anticipates it will
44 need delivered by RCWD during the then current Year.
45

1 2.4.2 Pechanga shall have no liability to RCWD related to the development by
2 Pechanga or the use by RCWD of such estimates. RCWD shall be entitled to rely on such
3 estimates of Pechanga for purposes of estimating the amount of groundwater from the Basin that
4 is available for RCWD Annual Usage during such Year. Any RCWD Excess Pumping or
5 Pechanga Excess Pumping resulting from reliance on such estimates shall be subject only to
6 reconciliation pursuant to Section 2.5 and without reference to Pechanga's estimates provided
7 pursuant to Section 2.4.1 with respect to the relevant Year.
8

9 **2.5 Excess Use of Groundwater.**

10
11 2.5.1 In the event of Excess Pumping during any Year, a determination shall be
12 made of amounts of such Excess Pumping caused respectively by RCWD Excess Pumping and
13 Pechanga Excess Pumping.
14

15 2.5.2 In the event of Pechanga Excess Pumping in any Year, the amount of
16 Pechanga's Annual Entitlement for the next Year shall be reduced by the amount of such
17 Pechanga Excess Pumping.
18

19 2.5.3 In the event of RCWD Excess Pumping in any Year, the amount of
20 RCWD's Annual Entitlement for the next Year shall be reduced by the amount of such RCWD
21 Excess Pumping.
22

23 2.5.4 Section 2.5 is meant to cover unintentional overruns that may occur because of
24 the difficulty in precisely matching pumping to Annual Entitlement. This Section does not allow
25 additional pumping intended to supplement Annual Entitlement in any given year.
26

27 **3. Technical Committee**

28
29 3.1 **Composition.** A committee of technical experts shall be appointed by the Parties
30 to carry out the responsibilities set forth in this Section 3 (the "*Technical Committee*"). The
31 Technical Committee shall be composed of (a) two (2) persons, one (1) each to be appointed by
32 Pechanga and RCWD, each respectively to serve as the appointing Party's voting representative
33 (each a "*Representative*"), and (b) any other persons appointed by either Party to participate in
34 the Technical Committee meetings on such Party's behalf; provided, however, that only the
35 Representative for each Party shall be authorized to present that Party's position or vote on that
36 Party's behalf with respect to any matter on which the Technical Committee may have to decide.
37 Each Representative shall have one (1) vote. In the event that the position of a Technical
38 Committee member shall fall vacant due to the removal or resignation of such member, such
39 vacancy shall be filled promptly by the appointing Party. If a Representative is unable to
40 perform or is prevented from performing his or her duties, the Party having appointed such
41 Representative shall temporarily designate an alternate Representative.
42

43 3.2 **Cooperation.** The Parties and their Representatives shall cooperate in good faith
44 in Technical Committee deliberations and shall supply any information necessary, or requested
45 by the Technical Committee, to facilitate the reaching of agreement and making of Decisions
46 regarding the matters within the responsibility of the Technical Committee as specified in

1 Section 3.5. The Technical Committee shall use all reasonable efforts to reach agreement on the
2 matters within its responsibility under Section 3.5.
3

4 **3.3 Meetings.** The Technical Committee shall hold a minimum of one (1) regular
5 meeting every three (3) Months during the Term, at such time and place as shall be agreed by the
6 Representatives, and at which meeting matters subject to Decision under this Agreement, or
7 matters otherwise referred to the Technical Committee for Decision, shall be considered. Either
8 Party may request that an extraordinary meeting of the Technical Committee be held at any other
9 time, upon notice given to the other Party given at least ten (10) business days prior to such
10 meeting and specifying the matter or matters to be considered. The Parties shall cooperate in
11 good faith to schedule meetings of the Technical Committee at which, at a minimum, both
12 Representatives will be present. Meetings of the Technical Committee shall be chaired
13 alternately by the respective Representatives.
14

15 **3.4 Decisions.** Any approval, recommendation, decision or other action of the
16 Technical Committee (a "*Decision*") shall be by unanimous vote of the voting Representatives.
17 A Decision shall be final if the voting Representatives of both Parties accept such Decision in a
18 written statement signed by such Representatives and delivered to each Party. Such written
19 statement shall include all policies adopted by the Technical Committee and other documentation
20 relevant to the Technical Committee's Decision. In the event that the voting Representatives are
21 unable to reach agreement on any issue on which the Representatives are required to make a
22 Decision, either Party may seek binding arbitration of such issue pursuant to the provisions set
23 forth in Section 6.
24

25 **3.5 Areas of Responsibility.** The Technical Committee shall make Decisions
26 regarding and be responsible for the following:
27

28 **3.5.1** within twenty-four (24) Months following the Effective Date, making an
29 initial determination of the Safe Yield;
30

31 **3.5.2** considering and verifying or re-determining the Safe Yield on a periodic
32 basis, at such times as may be deemed appropriate by the Technical Committee and notifying the
33 Parties in writing of any changes made to the Safe Yield; and
34

35 **3.5.3** any other actions or studies assigned to it upon the joint request of the
36 Parties in writing from time to time.
37

38 **3.6 Costs.** Each Party shall bear the costs and expenses (a) associated with the
39 participation of its respective Representative and other designees attending meetings of or
40 otherwise assisting the Technical Committee, and (b) representing one-half of the costs and
41 expenses incurred by the Technical Committee resulting from the conduct of its affairs and the
42 fulfillment of its obligations under Section 3.5.
43

1 **4. Reporting; Record-Keeping.**
2

3 **4.1 Monthly Groundwater Reports.** During the Term and in accordance with the
4 current reporting policies established by the Technical Committee from time to time, each Party
5 shall cause to be prepared and delivered to the other Party reasonably detailed Monthly reports,
6 based on information available to such Party, regarding quantities of Basin groundwater pumped,
7 delivered, received or used by such Party during the preceding Month and the water levels in
8 wells pumped during the preceding Month ("***Groundwater Reports***"). Each Party shall deliver
9 its Groundwater Report to the other Party on or before the fifteenth (15th) day of the Month
10 following the Month (or partial Month) to which such Groundwater Report relates. Each Party
11 shall provide a copy of each of its reports to the Watermaster for his information. All statements
12 of groundwater amounts pumped from the Basin shall be stated both in the aggregate and
13 separately for each pumping site.
14

15 **4.2 Annual Groundwater Reports.** During the Term each Party shall cause to be
16 prepared and delivered to the other Party and to the Watermaster, by the thirtieth (30th) day of
17 April of each Year, an annual report providing a summary of the information provided in the
18 Groundwater Reports pursuant to Section 4.1 herein for the preceding Year.
19

20 **4.3 Groundwater Records.** During the Term each Party shall maintain accurate
21 books of account and records of its groundwater testing, delivery (including invoicing), pumping
22 or receipt (including records of payment) ("***Groundwater Records***"). Copies of any
23 compilations and of all such Groundwater Records shall be retained for at least three (3) years.
24 All the Groundwater Records shall be the property of the Party that keeps such Groundwater
25 Records. All Groundwater Records of each Party shall be made available to the other Party upon
26 two (2) business days notice, at the place of business of the Party keeping such Groundwater
27 Records, during the Term and for at least three (3) years subsequent to the expiration or
28 termination of this Agreement, for examination, audit, inspection and copying (at no expense to
29 the Party keeping such Groundwater Records) solely for purposes of confirming the due
30 performance of this Agreement and for no commercial purpose.
31

32 **5. Construction of Water Delivery Infrastructure.**
33

34 **5.1 Requirements and Procedures.** Design, engineering, construction, installation
35 and transfer of the Delivered Groundwater Facilities shall be undertaken in accordance with, and
36 be governed by, the RCWD Facility Requirements and such agreements as are entered by the
37 Parties in compliance therewith. Notwithstanding application of the RCWD Facility
38 Requirements, however, the Parties intend that the following provisions shall apply:
39

40 (a) RCWD undertakes to issue a "Notice to Proceed" in accordance with the
41 construction agreement entered pursuant to the RCWD Facility Requirements without undue
42 delay once applicable conditions precedent are met.
43

44 (b) Pechanga may select vendors, suppliers and contractors for procurement, design,
45 engineering, construction and installation of the Delivered Groundwater Facilities in its
46 discretion; provided, however, that the terms of agreements with such contractors are consistent

1 with the RCWD Facility Requirements and, provided, further, that Pechanga shall be primarily
2 responsible to RCWD for the conduct of such contractors while on the Delivered Groundwater
3 Facilities Site or elsewhere on the Right of Way.

4
5 (c) RCWD shall provide, or cause to be provided to, Pechanga and its contractors
6 access to the Right of Way and to the Delivered Groundwater Facilities Site for purposes of
7 completion of the Delivered Groundwater Facilities.

8
9 (d) Each of Pechanga and RCWD shall appoint a representative who has primary
10 responsibility for communications and approvals concerning all matters relating to completion of
11 the Delivered Groundwater Facilities.

12
13 (e) Inspections by RCWD of completed Delivered Groundwater Facilities that must
14 be undertaken to verify compliance with the RCWD Facility Requirements shall be undertaken
15 without undue delay.

16
17 (f) Upon successful completion of inspections verifying compliance of the Delivered
18 Groundwater Facilities with the RCWD Facility Requirements, RCWD shall issue the "Notice of
19 Completion" in accordance with the construction agreement entered pursuant to the RCWD
20 Facility Requirements, and transfer of the Delivered Groundwater Facilities to RCWD shall be
21 completed, without undue delay; provided, however, that subparagraph 5D of the form of Water
22 System Construction Agreement included as "Appendix L" to the RCWD Facility Requirements
23 shall not apply, and Pechanga shall not be required to enter an Agency Agreement with RCWD
24 as a condition to issuance of the "Notice of Completion" or for any other purpose.

25
26 (g) Subject only to the provisions of Section 2.3.1, on and after transfer of the
27 Delivered Groundwater Facilities to RCWD, Pechanga will have no further obligation to RCWD
28 to construct and pay for additional facilities for the delivery of Delivered Groundwater, or to
29 repair, maintain or replace the Delivered Groundwater Facilities.

30
31 **5.2 Interpretation of Documents.** It is intended that the provisions of Section 5.1 be
32 construed in harmony with the RCWD Facility Requirements. In the event of a conflict between
33 the terms of the RCWD Facility Requirements and the provisions of Section 5.1, the provisions
34 of Section 5.1 shall prevail. In any event, the provisions of Article 6 of this Agreement shall
35 apply to any disputes arising between the Parties under or in connection with the RCWD Facility
36 Requirements.

37
38 **6. Dispute Resolution**

39
40 **6.1 Amicable Resolution.** The Parties agree to attempt to resolve all claims,
41 disputes, controversies or other matters in question between the Parties arising out of, or relating
42 to, this Agreement, including the deliberation, action or activity of the Technical Committee
43 ("*Dispute*"), promptly, equitably and in a good faith manner.

44
45 **6.2 Mediation of Technical Committee Disputes.** Notwithstanding any other
46 provision of this Section 6, with respect to any Dispute concerning the determination of Safe

1 Yield by the Technical Committee or any other matter assigned to the Technical Committee by or
2 pursuant to this Agreement, before submitting such Dispute to arbitration, the Parties agree first
3 to try in good faith to settle the dispute by requesting that the Watermaster serve as a mediator to
4 resolve the Dispute by applying the process and rules of the Commercial Mediation Procedures
5 of the American Arbitration Association ("**Mediation Procedures**"). If the Watermaster refuses
6 or is unable to serve as a mediator, the Parties agree that either Party may submit the matter for
7 mediation by the American Arbitration Association pursuant to the Mediation Procedures. If,
8 under the Mediation Procedures, the mediator or either Party terminates the mediation of such
9 Dispute, either Party may submit the Dispute to arbitration pursuant to this Section 6.

10
11 **6.3 Submission to Arbitration.** Either Party may submit any Dispute that cannot be
12 resolved between the Parties to arbitration by written notice to the other Party irrespective of the
13 magnitude thereof, the amount in dispute or whether such Dispute would otherwise be
14 considered justiciable or ripe for resolution by any court or arbitral tribunal. This Agreement and
15 the rights and obligations of the Parties shall remain in full force and effect pending the award in
16 such arbitration proceeding, which award shall determine whether and when termination shall
17 become effective (if applicable).

18
19 **6.4 Notice of Arbitration.** The notice for arbitration shall be given in accordance
20 with Section 9.9 and shall specify with particularity the nature of the Dispute, the particular
21 provisions of this Agreement that are at issue, and the proposed relief sought by the Party
22 seeking arbitration.

23
24 **6.5 Appointment of Arbitrators.** The arbitration shall be conducted before a panel
25 composed of three (3) arbitrators, each of whom shall be a person familiar, by profession or
26 experience, with the issues in controversy. Within fourteen (14) business days after delivery of a
27 notice of arbitration, each Party shall appoint an arbitrator, obtain its appointee's acceptance of
28 such appointment and deliver written notification of such appointment and acceptance to the
29 other Party. If a Party fails or refuses to select an arbitrator after fourteen (14) calendar days, an
30 arbitrator may be chosen on behalf of such Party by the American Arbitration Association
31 ("**AAA**") and in the manner provided in the American Arbitration Association Commercial
32 Arbitration Rules and Procedures ("**AAA Rules and Procedures**"). Within fourteen (14) days of
33 being appointed, the two (2) Party-appointed arbitrators shall jointly appoint the third (who shall
34 be the chairperson), and shall obtain the acceptance of such appointment and deliver written
35 notification of such appointment to the Parties. If a Party fails to appoint its arbitrator within the
36 specified period, or if the two (2) arbitrators appointed fail to appoint the third arbitrator within a
37 period of fourteen (14) business days after appointment of the second arbitrator, then such
38 arbitrator shall be appointed by the AAA pursuant to the AAA Rules and Procedures.

39
40 **6.6 Disqualification of Arbitrator.** No person may serve as an arbitrator if, because
41 of employment or other relationship with the Parties, the nature of the matter to be arbitrated, or
42 otherwise, such person could not serve as a judge in such matter if such person were a judge.

43
44 **6.7 Rules of Arbitration.** Arbitration shall be conducted pursuant to the AAA Rules
45 and Procedures in effect on the Effective Date; provided, however, that any waiver of sovereign
46 immunity shall be governed solely and exclusively by Section 6.16.

1
2 **6.8 Time.** Time is of the essence in the resolution of Disputes pursuant to this
3 Section 6. All deadlines shall be strictly enforced against the Parties.
4

5 **6.9 Submission of Evidence.** Each Party may submit evidence in writing to the
6 arbitrators for their consideration within forty-five (45) calendar days after written notice of the
7 arbitration request has been received.
8

9 **6.10 Arbitral Hearing.** The arbitrators may, in their sole discretion, determine
10 whether a hearing would assist them in rendering a fair and equitable decision. In any event,
11 such hearing, if held, must be held within sixty (60) calendar days after written notice of the
12 arbitration request has been received.
13

14 **6.11 Conduct of Arbitration.** The arbitrators shall comply with and follow to the
15 extent possible the AAA Rules and Procedures with respect to impartiality and independence,
16 and shall render an independent, impartial review of the claim(s) presented, and each arbitrator
17 shall act independently and shall not be either Party's representative. The arbitrators'
18 deliberations are confidential and shall not be disclosed to third parties. Each arbitrator shall be
19 disqualified as a witness, consultant or expert for either Party in any Dispute. No written
20 communication shall be made between the arbitrators and a Party without the other Party
21 receiving a copy, and no oral communications shall take place without the other Party being
22 present.
23

24 **6.12 Arbitral Award.** The arbitrators shall render a reasoned decision and award, by
25 majority vote, no later than ninety (90) calendar days after written notice of the arbitration
26 request has been received.
27

28 **6.13 Arbitral Remedies.** The arbitrators may fashion any legal and equitable
29 remedies that they deem necessary to provide appropriate relief to an aggrieved Party, including
30 damages, injunctive relief and termination of this Agreement; provided, however, that in no
31 event shall either Party be liable for indirect or consequential damages in connection with any
32 breach hereof.
33

34 **6.14 Enforcement of Arbitral Award.** The arbitrators' decision will be final and
35 binding on the Parties, will not be subject to appeal and may be entered as an order in any court
36 of competent jurisdiction in the United States. Each Party agrees to submit to the jurisdiction of
37 any such court for purposes of the enforcement of any such order and for no other purpose. No
38 Party will sue the other except for enforcement of the arbitrators' decision if the other Party is
39 not performing in accordance with the arbitrators' decision. The provisions of this Agreement
40 will be binding on the arbitrators and nothing in this Agreement shall be construed so as to
41 permit the arbitrators to modify this Agreement.
42

43 **6.15 Costs of Arbitration.** The costs of the arbitration shall be shared equally by the
44 Parties, but the Parties shall bear their own costs and attorneys' fees associated with their
45 participation in the arbitration.
46

1 **6.16 Limited Waiver of Sovereign Immunity.** Pechanga hereby provides a strictly
2 limited waiver of its sovereign immunity in any court of competent jurisdiction for the sole and
3 exclusive purpose of enforcement of an arbitration award rendered pursuant to this Section 6.
4 Pechanga does not waive any immunity or other rights it may have under law with respect to
5 claims or causes of action by parties other than RCWD.
6

7 **7. Future Cooperation**
8

9 The Parties shall cooperate in good faith to develop additional potable and non-potable water
10 supplies to satisfy any future needs that Pechanga may have.
11

12 **8. Representations and Warranties**
13

14 **8.1 Representations and Warranties of Pechanga.** Pechanga represents and
15 warrants to RCWD as follows:
16

17 **8.1.1** Its execution, delivery and performance of this Agreement have been duly
18 authorized by all necessary action of the Pechanga Band of Luiseño Mission Indians.
19

20 **8.1.2** It is not a party to any agreement, covenant or other agreement or
21 instrument, or subject to any charter or corporate restriction which could have a material adverse
22 effect on its ability to fulfill any of its responsibilities under this Agreement.
23

24 **8.1.3** This Agreement constitutes a legal, valid, and binding obligation of
25 Pechanga enforceable against it in accordance with its terms.
26

27 **8.1.4** There is no pending or threatened action or proceeding against or affecting
28 Pechanga before any tribunal or governmental authority which may, in any one case or in the
29 aggregate, materially adversely affect the operations, properties, or business of Pechanga or the
30 ability of Pechanga to perform its obligation under this Agreement.
31

32 **8.1.5** Except as set forth in Exhibit F, to the best of Pechanga's knowledge, the
33 validity of this Agreement, the execution and delivery by it of this Agreement and the
34 performance by it of its obligations hereunder will not require any permit, license, certificate,
35 waiver, notice, approval, consent or similar authorization from any federal, state or local
36 judiciary, regulatory or administrative body.
37

38 **8.2 Representations and Warranties of RCWD.** RCWD represents and warrants to
39 Pechanga as follows:
40

41 **8.2.1** Its execution, delivery and performance of this Agreement have been duly
42 authorized by all necessary action of RCWD.
43

44 **8.2.2** With the exception of wells owned and operated by Pechanga, all entities
45 pumping groundwater from the Wolf Valley Groundwater Basin have entered into an Agency
46 Agreement with RCWD and, with the exception of groundwater pumped by Pechanga, no

1 groundwater from the Wolf Valley Groundwater Basin is pumped by any person, partnership,
2 government or private entity other than RCWD.

3
4 **8.2.3** It is not a party to any agreement, covenant or other agreement or
5 instrument, or subject to any charter or corporate restriction which could have a material adverse
6 effect on its ability to fulfill any of its responsibilities under this Agreement.

7
8 **8.2.4** This Agreement constitutes a legal, valid, and binding obligation of
9 RCWD enforceable against it in accordance with its terms.

10
11 **8.2.5** There is no pending or threatened action or proceeding against or affecting
12 the RCWD before any tribunal or governmental authority which may, in any one case or in the
13 aggregate, materially adversely affect the operations, properties, or business of RCWD or the
14 ability of the RCWD to perform its obligation under this Agreement.

15
16 **8.2.6** Except as set forth in Exhibit F, to the best of RCWD's knowledge, the
17 validity of this Agreement, the execution and delivery by it of this Agreement and the
18 performance by it of its obligations hereunder will not require any permit, license, certificate,
19 waiver, notice, approval, consent or similar authorization from any federal, state or local
20 judiciary, regulatory or administrative body.

21
22 **8.3 Breach of Representation or Warranty.** Any representation or warranty made
23 by a Party in this Section 8 that shall prove to have been incorrect in any material respect as of
24 the Effective Date shall be deemed to constitute a material breach of this Agreement by the Party
25 giving such representation or warranty.

26
27 **9. Miscellaneous Provisions**

28
29 **9.1 Term; Termination.** The term of this Agreement (the "*Term*") shall commence
30 on the Effective Date and shall remain in effect for an initial period of twenty five (25) years
31 after the Effective Date, and shall automatically extend for one additional period of twenty five
32 (25) years, unless terminated by a Party as of the end of the initial twenty five (25) year period
33 by notice given to the other Party no less than one (1) year prior to the expiration of the initial
34 twenty five (25) year period. Prior to expiration of the Term, this Agreement may be terminated
35 (i) by mutual agreement of the Parties in a writing signed by both Parties; or (ii) as a result of a
36 material breach of either Party's obligations herein as determined by an arbitral award issued
37 pursuant to Section 6; or (iii) by operation of contract pursuant to Section 9.2.

38
39 **9.2 Termination for Dissolution.** This Agreement shall automatically terminate and
40 be of no further force or effect, without further action required by Pechanga, in the event that
41 RCWD, or any regulator, takes any action to: (a) legally dissolve RCWD; (b) discontinue or
42 otherwise cease the operations or functions of RCWD, whether in whole or in part, in the
43 capacity that they are performed by RCWD on the Effective Date; or (c) cause RCWD to fail or
44 be unable to perform its obligations under this Agreement.

45

1 **9.3 Release of Information.** All press releases relating to this Agreement or the
2 implementation of the transactions hereunder, and the method of the release for publication
3 thereof, will be subject to the prior approval of both Parties, which approval shall not be
4 unreasonably withheld.

5
6 **9.4 No Settlement.** This Agreement does not constitute a settlement of any kind
7 between the Parties. Neither Party shall be construed as having made or accepted any admission
8 of any kind in connection with this Agreement.

9
10 **9.5 No Effect on Decree.** Nothing in this Agreement shall be construed to modify,
11 alter or affect the decree in *United States v. Fallbrook Public Utility District, et al.*, CIV No.
12 1247-SD-T.

13
14 **9.6 Assignment.** Neither Party may assign either this Agreement or any of its rights,
15 interests or obligations hereunder without the prior written approval of the other Party, provided,
16 however, that Pechanga may assign this Agreement without the prior consent of RCWD to
17 another tribal entity of the Pechanga Band of Luiseño Mission Indians if the assignee assumes all
18 of Pechanga's obligations under this Agreement and otherwise agrees to be bound by and
19 consents to each of the provisions of this Agreement.

20
21 **9.7 Third Parties.** This Agreement shall not be binding upon, inure to the benefit of
22 or confer rights upon any third parties.

23
24 **9.8 Entire Agreement.** This Agreement, together with the Exhibits, constitutes the
25 entire agreement and understanding of the Parties in respect of the subject matter hereof and
26 supersedes all prior understandings, agreements, statements, contracts or representations by or
27 among the Parties and their agents, written or oral, to the extent they relate in any way to the
28 subject matter hereof.

29
30 **9.9 Notice.** All notices, requests, payments, reports and other communications
31 provided for or permitted to be given or made under this Agreement must be in writing and must
32 be given by personal delivery, or by certified or registered United States mail (postage prepaid,
33 return receipt requested), addressed as follows or addressed to such other address as the Party to
34 receive such notice shall have designated by written notice as required by this Section 9.9.
35 Notice or payment shall be deemed to have been effective and properly delivered or made on the
36 earlier of (a) if given by personal delivery, the date of actual delivery, (b) if sent by certified or
37 registered mail, the first business day that is at least four (4) calendar days after the notice or
38 payment has been deposited in the U.S. mails in accordance with this Section 9.9:

39
40 As to Pechanga:

41
42 Mark Macarro
43 Chairman
44 Pechanga Band of Luiseño Indians
45 P.O. Box 1477
46 Temecula, CA 92593

1 With a copy to:
2
3 John Macarro
4 General Counsel
5 Pechanga Band of Luiseño Indians
6 P.O. Box 1477
7 Temecula, CA 92593
8

9 and to:

10
11 Donald R. Pongrace
12 Akin Gump Strauss Hauer & Feld LLP
13 1333 New Hampshire Avenue, NW
14 Suite 400
15 Washington, DC 20036
16

17 As to RCWD:

18
19 Dr. Brian J. Brady
20 General Manager
21 Rancho California Water District
22 42135 Winchester Road
23 Temecula, CA 92590
24

25 With a copy to:

26
27 Arthur Littleworth
28 Best Best & Krieger LLP
29 3750 University Avenue
30 Riverside, CA 92501
31

32 **9.10 Service of Process.** Any Party may make service on any other Party by sending a
33 copy of the process by certified U.S. mail, as provided under Federal Rules of Procedure 4(d), to
34 the Party to be served at the address and in the manner provided for the giving of notices in
35 Section 9.9.
36

37 **9.11 Construction.** This Agreement has been freely and fairly negotiated among the
38 Parties. If an ambiguity or question of intent or interpretation arises, this Agreement will be
39 construed as if drafted jointly by the Parties and no presumption or burden of proof will arise
40 favoring or disfavoring any Party because of the authorship of any provision of this Agreement.
41 The words "include," "includes," and "including" will be deemed to be followed by "without
42 limitation." The word "person" includes individuals, entities, regulators and other governmental
43 bodies. The words "this Agreement," "herein," "hereof," "hereby," "hereunder," and words of
44 similar import refer to this Agreement as a whole and not to any particular subdivision unless
45 expressly so limited.
46

1 IN WITNESS WHEREOF:

2

3 Rancho California Water District has caused this Groundwater Management Agreement to be
4 executed by its duly authorized representative as of the Effective Date.

5

6 RANCHO CALIFORNIA WATER DISTRICT

7

8

9

10 By: 

11

12 Name: Bennett R. Drake

13

14 Title: President of the Board of Directors

15

16

17 AND *[Tribe Signature Follows]*

1 **IN WITNESS WHEREOF:**

2

3 The Pechanga Band of Luiseño Mission Indians has caused this Groundwater Management
4 Agreement to be executed by its duly authorized representative as of the Effective Date.


5

6 **PECHANGA BAND OF LUISEÑO MISSION INDIANS**

7

8

9

10 By: 

11

12 Name: Mark Macarro

13 Tribal Chairman

14 Title: _____