



# AGENDA

**Please turn off all cell phones while meeting is in progress.**

STALLION SPRINGS COMMUNITY SERVICES DISTRICT  
27800 STALLION SPRINGS DRIVE, TEHACHAPI, CA 93561

BOARD OF DIRECTORS SPECIAL BOARD MEETING  
TUESDAY, OCTOBER 15, 2019

## **CLOSED SESSION @ 5:30 pm**

- 1) Conference with Real Property Negotiation: Government Code §54956.8- Proposed Negotiaor for SSCSD-David Aranda General Manager.  
Property Description APN: 448-051-33-4, 448-051-34-2 and 448-052-33-2. Discussion on Terms, price and conditions of sale.
- 2) Personnel: Governement Code §54957-Public Employee discipline and dismissal.

## **OPEN SESSION**

**@ 6:00 pm (or immediately following closed session)**

BOARD OF DIRECTORS REGULAR BOARD MEETING  
TUESDAY, OCTOBER 15, 2019

- 1) **Flag Salute**
- 2) **Call to Order**
- 3) **Roll Call:**

Directors present:

Directors absent:

- 4) **Reserved for President's Comments and Addendum.**
- 5) **PUBLIC PRESENTATIONS** – This portion of the meeting is reserved for persons desiring to address the Board on any matter not on this agenda and over which this Board has jurisdiction. "Please be advised however, the Brown Act prohibits action on items that are not listed on the Agenda, or properly added to the Agenda under the provisions of the Brown Act. The Board may set such items for consideration at some future Board meeting." Speakers are limited to three (3) minutes. PLEASE STEP TO THE PODIUM TO MAKE

YOUR PRESENTATION. STATE YOUR NAME AND ADDRESS FOR THE RECORD,  
before making your presentation. Thank you.

- 6) **BOARD MEMBER ITEMS** – This portion of the meeting is reserved for Directors to present to the Board and to the public, information, announcements and items that have come to their attention. No formal action will be taken. A Board member may request that an item be placed, for consideration, at a future Board meeting.
- 7) Presentation by Tom Neisler General Manager for TCCWD in regard to Tehachapi Cummings Valley Adjudication and Water Banking.
- 8) Approval of Resolution No. 2019-23, a Resolution supporting the Amended and reinstated judgement and Board approval to authorize the Board President to sign the stipulation for entry of Amended and Reinstated Judgement of the Cummings Valley Water Basin.
- 9) Approval to enter into a Legal Services Agreement with Todd. E. Robins of Robins Borghei, LLP. In regard to 1,2,3 TCP.
- 10) Approval to have Ruetters & Schuler to perform a traffic speed study on the roads noted in the scope of service proposal at a cost not to exceed \$5,000.
- 11) Discussion regarding Yellow Starthistle.
- 12) Approval of the September 17, 2019 Regular Board Meeting Minutes.  
  
\*\* Due to outstanding circumstances Agenda items 13 & 14 will be presented at the November Board Meeting.\*\*
- 13) Approval of Checks and the CalPERS Retirement Payments.
- 14) Financial Reports.
- 15) Police Report.
- 16) General Manager's Report.
- 17) Motion to adjourn.

**ADA compliance statement:** In compliance with the Americans with Disability Act, if you need special assistance to participate in this meeting, please contact the General Manager, David Aranda, at 661-822-3268. Notification 48 hours prior to the meeting will enable the District to make reasonable arrangements to ensure accessibility to this meeting.

Posted October 11, 2019



# STALLION SPRINGS COMMUNITY SERVICES DISTRICT

27800 STALLION SPRINGS DRIVE, TEHACHAPI, CA 93561  
(661) 822-3268, FAX (661) 822-1878, [sscsd@stallionspringscsd.com](mailto:sscsd@stallionspringscsd.com)

## **AGENDA SUPPORTING INFORMATION**

### Agenda #7

- Subject:** Presentation by Tom Neisler General Manager for TCCWD in regard to the proposed Cummings Valley Adjudication and the Five Year Water Banking Program.
- Submitted by:** David Aranda, General Manager
- Meeting Date:** October 15, 2019
- Background:** Mr. Neisler, General Manager for TCCWD is going to help the Board and other interested parties better understand the proposed adjudication of the Cummings Valley Water Basin and better understand the five year water banking program that Stallion Springs C.S.D. agreed to in the M & I Agreement. He will have a power point presentation on Tuesday.
- Recommendation:** None. This is an informational item.



# STALLION SPRINGS COMMUNITY SERVICES DISTRICT

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## AGENDA SUPPORTING INFORMATION

Agenda #8

**Subject:** Approval of Resolution No. 2019-23, A Resolution supporting the Amended and restated judgement and Board approval to authorize the Board President to sign the stipulation for entry of Amended and Reinstated Judgement of the Cummings Valley Water Basin.

**Submitted by:** David Aranda, General Manager

**Meeting Date:** October 15, 2019

**Background:** The Water Master, Tehachapi Cummings County Water District has been working on reinstating the adjudication of the Cummings Valley Water Basin for a number of years now. The approval by the court of the adjudication of the Water Basin will allow the Water Master to better control the amount of water all parties use that can draw out of the Cummings Valley basin.

While this judgement will place a limited amount of water upon Stallion Springs, it overall protects Stallion Springs from other agencies over drafting the basin and leaving no water for our community.

**Recommendation:** Approve Resolution No. 2019-23 and direct the Board President to sign the stipulation for entry of the Amended and Restated Judgement of the Cummings Valley Water Basin.

**BEFORE THE BOARD OF DIRECTORS OF THE  
STALLION SPRINGS COMMUNITY SERVICES DISTRICT**

Resolution No. 2019-23

**A RESOLUTION OF THE OF THE BOARD OF DIRECTORS OF THE  
STALLION SPRINGS COMMUNITY SERVICES DISTRICT SUPPORTING THE  
TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT'S PROPOSED  
AMENDED AND RESTATED JUDGEMENT AND PHYSICAL SOLUTION  
FOR THE CUMMINGS BASIN AND AUTHORIZING THE BOARD PRESIDENT  
ED GORDON TO EXECUTE A STIPULATION FOR ENTRY OF AMENDED  
AND RESTATED JUDGEMENT AND PHYSICAL SOLUTION AND  
[PROPOSED] ORDER JOINING STIPULATING PARTIES AS DEFENDANTS.**

**WHEREAS**, the Stallion Springs Community Services District owns land overlying the Cummings Basin and relies on the Cummings Basin as a source of groundwater for extraction and delivery to its customers for domestic uses; and

**WHEREAS**, as a conjunctive use customer of the Tehachapi-Cummings County Water District (TCCWD) pursuant to a Term M&I Agreement between the District and TCCWD, the District purchases State Water Project water from TCCWD and takes delivery of such water by pumping recharge water stored by TCCWD in the Cummings Basin; and

**WHEREAS**, the Court entered Judgment on March 6, 1972 ("Judgment"), which was reversed in part by the Fifth District Court of Appeal in 1975, determined that the safe yield of the Cummings Basin was 4,090 acre-feet per year (AFY), appointed TCCWD as water master and reserved continuing jurisdiction for all purposes; and

**WHEREAS**, TCCWD, with financial cooperation from the agricultural and municipal/industrial pumpers in the Cummings Basin, including the District, contracted with Fugro Consultants, Inc. to update the Cummings Basin Groundwater Model, which was completed in 2015; and

**WHEREAS**, Fugro's updated computer model is based on a 33-year history (1981-2013), and Fugro estimated the natural safe yield of the Cummings Basin to be 2,990 AFY, which is 27% less than the adjudicated safe yield of 4,090 AFY embodied in the Judgment; and

**WHEREAS**, if extractions of groundwater from the Cummings Basin exceed 2,990 AFY, the basin will eventually become depleted, jeopardizing the District's water supply; and

**WHEREAS**, as reflected in TCCWD's reports to the Court as water master, estimated annual pumping of groundwater from the Cummings Basin during the period of 2013 through 2018 has ranged from 3,287 acre feet (AF) to 3,629 AF; and

**WHEREAS**, the Judgment is outdated in that it only forbids total annual extractions exceeding 4,090 AFY, and should be updated to recognize that the natural safe yield is 2,990 AFY so that extractions in excess of that amount may be prevented; and

**WHEREAS**, TCCWD has prepared a proposed Amended and Restated Judgment and Physical Solution for the Cummings Basin that:

- a. Adjusts the natural safe yield to 2,990 AFY;
  - b. Provides for a periodic (every eight years) redetermination of the natural safe yield;
  - c. Sets forth a process for the water master to allocate annually and equitably the natural safe yield among the overlying owners, taking into account the types of uses and the quantities of water needed by each overlying owner;
  - d. Requires metering of all extraction wells, with most wells being required to have meters by 2021 and wells for single-family residential wells extracting less than 2 AFY being required to be metered by 2025;
  - e. Requires monthly and annual reporting to the water master of all extractions and uses of groundwater;
  - f. Provides the water master with certain duties and powers to manage the basin and for an administrative assessment for the water master's costs of carrying out its duties under the Amended Judgment; and
  - g. Sets forth a process for appealing water master decisions to the Court;
- and

**WHEREAS**, the District is not a party to the action filed by TCCWD; and

**WHEREAS**, due to the District's status as an overlying owner and a conjunctive use customer, TCCWD has asked the District to execute a Stipulation for Entry of Amended and Restated Judgment and Physical Solution and [Proposed] Order Joining Stipulating Parties as Defendants.

IT IS HEREBY FOUND, DETERMINED AND RESOLVED by the Board of Directors of Stallion Springs Community District as follows:

That the District supports the Tehachapi-Cummings County Water District's proposed Amended and Restated Judgment and Physical Solution, and the Board President, Ed Gordon is authorized to execute the proposed Stipulation for Entry of Amended and Restated Judgment and Physical Solution and [Proposed] Order Joining Stipulating Parties as Defendants on behalf of the District.

PASSED, APPROVED AND ADOPTED by the Board of Directors of the Stallion Springs Community Services District this 15th day of October 2019, on the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Ed Gordon, President  
Board of Directors

ATTEST:

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Vanessa Stevens, Secretary  
Board of Directors

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**SIGNATURE PAGE TO**  
**STIPULATION FOR ENTRY OF AMENDED AND RESTATED JUDGMENT AND PHYSICAL**  
**SOLUTION AND [PROPOSED] ORDER JOINING STIPULATING PARTIES AS DEFENDANTS**

1. This signature page is intended to be attached to the Stipulation for Entry of Amended and Restated Judgment and Physical Solution and [Proposed] Order Joining Stipulating Parties as Defendants entered into by and between Tehachapi-Cummings County Water District and various stipulating Overlying Owners, District Conjunctive Use Customers, and other Extractors in the matter of *Tehachapi-Cummings County Water District v. Frank Armstrong, et al.*, Kern County Superior Court case number 97209.

2. The undersigned has read the Stipulation referenced above and, by signing below, agrees to its terms.

**For Individuals**

Dated: \_\_\_\_\_, 2019                      Signature: \_\_\_\_\_  
Name: \_\_\_\_\_

**For Entities**

Dated: \_\_\_\_\_, 2019                      Entity Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



1 Robert G. Kuhs, SBN 160291  
2 Bernard C. Barmann, Jr., SBN 149890  
3 KUHS & PARKER  
4 P. O. Box 2205  
5 1200 Truxtun Avenue, Suite 200  
6 Bakersfield, CA 93303  
7 Telephone: (661) 322-4004  
8 Facsimile: (661) 322-2906  
9 E-Mail: rgkuhs@kuhsparserlaw.com  
10 bbarmann@kuhsparserlaw.com

**Exempt from filing fee  
per Govt. Code, § 6103**

11 Attorney for Tehachapi-Cummings County Water District

12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF KERN

14 TEHACHAPI-CUMMINGS COUNTY  
15 WATER DISTRICT, a body corporate and  
16 politic,

17 Plaintiff,

18 vs.

19 FRANK ARMSTRONG, et al.,

20 Defendants.

Case No.: 97209

**STIPULATION FOR ENTRY OF  
AMENDED AND RESTATED  
JUDGMENT AND PHYSICAL  
SOLUTION AND [PROPOSED] ORDER  
JOINING STIPULATING PARTIES AS  
DEFENDANTS**

Date Action Filed:  
Judgment Entered:

21 **Introduction**

22 1. The parties to this Stipulation and Order for Entry of Amended and Restated  
23 Judgment and Physical Solution ("Stipulation") are plaintiff Tehachapi-Cummings County  
24 Water District ("TCCWD") and the stipulating Overlying Owners, District Conjunctive Use  
25 Customers, and other Extractors that are signatories hereto ("Stipulating Extractors") (together  
26 with TCCWD, the "Stipulating Parties"). The proposed Amended and Restated Judgment and  
27 Physical Solution is attached hereto as **Exhibit 1** and incorporated herein by reference  
28 ("Amended Judgment"). Defined terms in the Amended Judgment shall have the same meaning  
in this Stipulation.

2. In 1966, TCCWD filed this action, alleging that the Cummings Basin had been in  
a state of Overdraft since 1949 and asking the Court, among other things, to adjudicate the

1 groundwater rights of the parties and to enjoin them from Extracting more than the Natural Safe  
2 Yield of the Basin. The Court entered Judgment on March 6, 1972 (“Judgment”). The Judgment,  
3 which was reversed in part by the Fifth District Court of Appeal in 1975, determined that the safe  
4 yield of the Cummings Basin was 4,090 AFY, appointed TCCWD as Watermaster and reserved  
5 continuing jurisdiction for all purposes.

6 3. Each of the Stipulating Extractors (i) is currently Extracting, (ii) intends and  
7 threatens to Extract, or (iii) is an Overlying Owner on whose land groundwater is currently being  
8 Extracted from the Cummings Basin.

9 4. For the reasons stated in the proposed Amended Judgment, the Stipulating Parties  
10 hereby seek to amend the terms of the Judgment. The Amended Judgment, in order to provide  
11 for sustainable management of the Cummings Basin, among other things:

- 12 a. Adjusts the Natural Safe Yield to 2,990 AFY as determined by the 2015  
13 Cummings Basin Groundwater Model;
- 14 b. Provides for the periodic redetermination of the Natural Safe Yield;
- 15 c. Sets forth an equitable process for the Watermaster to allocate annually the  
16 Natural Safe Yield among the Overlying Owners;
- 17 d. Provides for metering of all wells Extracting groundwater from the Cummings  
18 Basin by 2021, except for existing single-family residential wells Extracting  
19 less than 2 AFY which must be metered by 2025;
- 20 e. Requires monthly and annual reporting of Extractions and groundwater use;
- 21 f. Provides the Watermaster with certain duties and powers to manage the  
22 Cummings Basin and for an Administrative Assessment for the Watermaster’s  
23 costs of carrying out its duties under the Amended Judgment; and
- 24 g. Sets forth a process for appealing Watermaster decisions.

25 5. Each Stipulating Party has agreed to this Stipulation without admitting any factual  
26 or legal provisions of this Stipulation or the Amended Judgment.

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**Stipulation**

1  
2           6.     Each of the Stipulating Parties that has not previously appeared in this action  
3 hereby represents that it is an Extractor and appears in the action as a defendant and submits to  
4 the Court’s jurisdiction.

5           7.     Except for Paragraph 6 above, this Stipulation is expressly conditioned, as set  
6 forth in Paragraph 10 below, upon the approval and entry of the Amended Judgment by the  
7 Court.

8           8.     The following facts, considerations, and objectives, among others, provide the  
9 basis for this Stipulation:

- 10                   a.    The Stipulating Parties represent all or a substantial part of the total Extraction  
11                            within the Cummings Basin.
- 12                   b.    For several years total Extractions from the Cummings Basin have exceeded  
13                            the Natural Safe Yield of 2,990 AFY.
- 14                   c.    Protection of the rights of the Stipulating Parties and protection of the public  
15                            interest within the Cummings Basin require the development and imposition  
16                            of a Physical Solution.
- 17                   d.    The Amended Judgment is consistent with and in furtherance of the mandate  
18                            of Article X. Section 2, of the State Constitution and the water policy of the  
19                            State of California.
- 20                   e.    The Amended Judgment is consistent with the water right priorities of all non-  
21                            stipulating parties and treats all objecting parties and all other non-stipulating  
22                            parties equitably.
- 23                   f.    Entry of the Amended Judgment will avoid the time, expense, and uncertainty  
24                            associated with litigation.
- 25                   g.    The Amended Judgment will aid in securing a reliable and cost-effective  
26                            water supply to serve the needs of the Stipulating Parties and other Extractors.

27           9.     The provisions of the Amended Judgment are related, dependent, and not  
28 severable. Each and every term of the Amended Judgment is material to the Stipulating Parties’

1 agreement. If the Court does not approve the Amended Judgment as presented, or if an appellate  
2 court overturns or remands the Amended Judgment entered by the trial court, then this  
3 Stipulation is *void ab initio* with the exception of Paragraphs 6 and 7, which shall survive.

4 10. The Stipulating Parties will cooperate in good faith and take any and all necessary  
5 and appropriate actions to support the Amended Judgment until such time as this Amended  
6 Judgment is entered by the Court, and appeals, if any, are final, including:

7 a. Producing evidentiary testimony and documentation in support thereof;

8 b. Defending the Amended Judgment against non-stipulating parties,

9 including, as appropriate, providing evidence of the Stipulating Parties' Overlying Use.

10 **Court Approval**

11 11. The Stipulating Parties agree that an orderly procedure for obtaining the Court's  
12 approval of the Amended Judgment is a material term to this Stipulation. The Parties agree that a  
13 noticed motion to be filed by TCCWD is an appropriate process for obtaining such approval.

14 **Other Terms**

15 12. The Stipulating Parties agree that this Stipulation shall bind and benefit them and  
16 will be binding upon and benefit all their respective heirs, successors-in-interest, and assigns.

17 13. Upon entry of the Amended Judgment, a copy of the Amended Judgment shall be  
18 recorded in the official records of the County of Kern.

19 14. Each signatory to this Stipulation represents and affirms that he or she is legally  
20 authorized to bind the Stipulating Party on behalf of whom he or she is signing.

21 15. This Stipulation may be executed in counterparts and by means of portable  
22 document format (.pdf), which taken together shall be deemed to constitute one document.

23  
24 Dated: \_\_\_\_\_, 2019

TEHACHAPI-CUMMINGS COUNTY WATER  
DISTRICT

25  
26 By: \_\_\_\_\_  
James Pack, Its President

27  
28 By: \_\_\_\_\_  
Catherine Adams, Its Secretary

1 APPROVED AS TO FORM:

2 Dated: \_\_\_\_\_, 2019

3 KUHS & PARKER

4  
5 By: \_\_\_\_\_

6 Bernard C. Barmann, Jr., counsel for  
7 Tehachapi-Cummings County Water District

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9 **[Additional party signatures are on the attached pages following the form of Order.]**

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**ORDER**

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Based upon the stipulation of the parties and good cause appearing therefore, the Court orders as follows:

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Dated: \_\_\_\_\_, 2019

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\_\_\_\_\_  
Judge of the Superior Court



# STALLION SPRINGS COMMUNITY SERVICES DISTRICT

27800 STALLION SPRINGS DRIVE, TEHACHAPI, CA 93561  
(661) 822-3268, FAX (661) 822-1878, sscsd@stallionspringscsd.com

## AGENDA SUPPORTING INFORMATION

### Agenda #9

**Subject:** Approval to enter into a legal services agreement with Todd E. Robins of Robins Borghei, LLP in regard to 1, 2, 3, TCP.

**Submitted by:** David Aranda, General Manager

**Meeting Date:** October 15, 2019

**Background:** Last year the District sampled C.V. Well #2 and found that it showed a pollutant called 1, 2, 3, TCP. Fortunately, with Board approval the District was able to purchase the Bornt Well, (now called C.V. #3) and that well was able to produce clean potable water to the community this past summer.

The District must have alternative water sources and we cannot be fully reliant on C.V. #3 because of the possibility of a well breakdown with the pump, motor, etc. The Board approved the purchase of a Carbon Filter System that would be connected to C.V. #2 and would filter out the 1, 2, 3 TCP and thus allow the District the option of using that well, if needed.

1, 2, 3 TCP has been found to be a pollutant created by one of two companies, Dow or Shell. A number of water agencies in the San Joaquin Valley have successfully sued one or both of these companies for damages and have been rewarded money to pay for the carbon filter systems and the sampling and other costs associated with the process of providing clean drinking water to the residents these agencies serve.

Mr. Robins has been involved in successfully representing various agencies and has been successful in obtaining judgements in the favor of the water agencies.

The attached legal services agreement is the start of a process in attempting to collect damages for Stallion Springs to recover some of the costs involved in providing C.V. #2 Well to our residents for potable drinking water. As noted in the agreement the Attorney's fees would be on a Contingency Basis.

**Recommendation:** The General Manager is recommending that the Board allow the General Manager, District Engineer and Robins Borghei, LLP to work together in an attempt to collect some if not all of the costs involved in the District providing potable water from the C.V. #2 well that contains 1,2,3, TCP.

**David**

---

**From:** Todd Robins <trobins@rbwaterlaw.com>  
**Sent:** Monday, September 30, 2019 1:09 PM  
**To:** daranda300@gmail.com  
**Subject:** RE: CONFIDENTIAL: Stallion Springs CSD 1,2,3-TCP matter  
**Attachments:** 2019.09.30\_STA\_Stallion Springs Legal Services Agreement\_DRAFT.docx

David,

My apologies, please refer to the attached draft agreement rather than the one attached to my earlier email, which contained an error. Thank you.

Todd

**Todd E. Robins**  
**ROBINS BORGHEI LLP**  
369 Pine Street, Suite 400  
San Francisco, CA 94104  
(415) 848-8850 (office)  
(415) 999-2113 (cell)  
[trobins@rbwaterlaw.com](mailto:trobins@rbwaterlaw.com)

This email and any attachments hereto may contain confidential and/or privileged subject matter. If you have received this communication in error, please delete it immediately.

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**From:** Todd Robins  
**Sent:** Monday, September 30, 2019 12:50 PM  
**To:** daranda300@gmail.com  
**Subject:** CONFIDENTIAL: Stallion Springs CSD 1,2,3-TCP matter

**CONFIDENTIAL & PRIVILEGED ATTORNEY-CLIENT COMMUNICATION**

David,

It was a pleasure speaking with you this morning. I am sorry to hear about the troubles you are facing with 1,2,3-TCP contamination in your CV-2 well. But I am glad that you reached out to me, as it appears that, with our help, you should have a solid opportunity to pursue cost-recovery from the responsible parties.

As we discussed, I have put together a draft proposed legal services agreement that contains our standard terms of representation on a contingency basis in a case of this type. It is attached for your review.

When you have a chance, please send me the contact information for your design engineer so that I can speak with him about the issue and develop a more refined evaluation of the potential damages in this case. Please also, if you can, send me the TCP test results you have for Well CV-2 and any materials the engineer has generated with respect to plans and cost estimates for the treatment plant.

Once I have had a chance to review and gather additional information, let's set up a closed session meeting with your board to discuss this potential litigation and possible retention of my firm.

Best,  
Todd

**Todd E. Robins**

 **ROBINS BORGHEI LLP**  
369 Pine Street, Suite 400  
San Francisco, CA 94104  
(415) 848-8850 (office)  
(415) 999-2113 (cell)  
[trobins@rbwaterlaw.com](mailto:trobins@rbwaterlaw.com)

This email and any attachments hereto may contain confidential and/or privileged subject matter. If you have received this communication in error, please delete it immediately.



## LEGAL SERVICES AGREEMENT

1. **IDENTIFICATION OF PARTIES.** This Agreement is made between Robins Borghei LLP (hereafter referred to as “Attorney”) and the Stallion Springs Community Services District (hereafter referred to as “Client”). This Agreement is required by California Business and Professions Code section 6147 and is intended to fulfill the requirements of that section.

2. **LEGAL SERVICES TO BE PROVIDED.** The legal services to be provided by Attorney to Client are as follows: Representation of Client in a civil action in the Superior Court and/or U.S. District Court for property damages and other appropriate relief arising from contamination of the water supplies of one or more special districts owned and/or operated by Client with 1,2,3-trichloropropane (“TCP”) (the “Action”), including any appeals in the Action.

3. **LEGAL SERVICES SPECIFICALLY EXCLUDED.** Unless expressly agreed to in writing, the matters described in paragraph 2 are the only matters that Attorney has agreed to handle. Any additional legal services must be agreed to in writing or are expressly excluded from this agreement. Without limiting the foregoing, Client acknowledges that Attorney is not agreeing to provide any of the following legal services:

A. Proceedings before any administrative or governmental agency, department or board. However, with Client’s permission Attorney may elect to appear at such administrative proceedings to protect Client’s rights in this litigation, without Client being assessed any additional attorney’s fee in connection with such appearance. Attorney acknowledges and agrees that Client has retained separate counsel to represent client before administrative agencies and that any appearance by Attorney before an administrative agency is subject to review and direction by the Client’s separate administrative agency counsel.

- B. Any collection, execution or enforcement proceedings on any judgment.
- C. Defending any legal action(s) against Client commenced by any person, including any counterclaims asserted against Client in the Action.
- D. Defending any claim against Client for unreasonable use of water and/or waste of water.
- E. Defending any action concerning water rights.

If Client wishes to retain Attorney to provide any legal services for additional compensation not provided under this Agreement, a separate written agreement between Attorney and Client will be required.

**4. RETENTION OF FIRM RATHER THAN PARTICULAR ATTORNEYS**

Client is retaining the law firm of Robins Borghei LLP, and attorney services to be provided to Client will not necessarily be performed by any particular attorney.

**5. AUTHORIZED REPRESENTATIVE OF CLIENT.** Client designates its General Manager, David Aranda, or such other person(s) Client designates in writing, as the authorized representative to direct Attorney and to be the primary individuals to communicate with Attorney regarding the subject matter of Attorney's representation of Client under this Agreement. This designation does not preclude communication between Attorney and other representatives of Client.

**6. RESPONSIBILITIES OF ATTORNEY AND CLIENT.** Attorney will perform the legal services called for under this Agreement, keep Client informed of progress and developments, and respond promptly to Client's inquiries and communications. Client will be truthful and cooperative with Attorney and keep Attorney reasonably informed of developments, and pay invoices in a timely manner as provided herein.

7. **ROLE OF CLIENT'S COUNTY COUNSEL.** Attorney shall consult Client's district legal counsel, if any, regarding major litigation decisions, including but not limited to those related to settlement. However, the Parties acknowledge and agree that nothing in this Agreement provides for any compensation to the district legal counsel or his/her office in connection with his or its role in the Action, which is solely between Client and Attorney.

8. **ATTORNEY'S FEES.** The amount Attorney will receive for Attorney's fees for the legal services to be provided under this Agreement will consist of a contingent fee.

A. The Contingent Fee

Attorney will receive a contingent fee of thirty-five percent (35%) of any Recovery (including any Cash or non-Cash Recovery, as defined in paragraph 8(b)(i) and (ii)) achieved in or as a result of the Action.

B. Definitions

The term "Recovery" means the sum of: (1) any "Cash Recovery" (as defined in paragraph 8(b)(i)); and (2) any "Non-cash Recovery" (as defined in paragraph 8(b)(ii)) recovered by Client as a result of the Action and/or as a result of Attorney's efforts on Client's behalf pursuant to this Agreement and arising out of or related to the contamination described in paragraph 2 above, before reduction or adjustment for "Advanced Costs" (as defined in paragraph 10 of this Agreement). A "Recovery" may come from any source, including, but not limited to, the adverse parties to the Action and/or their insurance carriers and/or any third party, whether or not a party to the Action.

(i) "Cash Recovery" means, without limitation, the total, then-present value of any monetary payments to be made to Client (whether by settlement, arbitration award, court judgment or other method of distribution) as a result of the Action

and/or as a result of Attorney's efforts on Client's behalf pursuant to this Agreement and arising out of or related to the contamination described in paragraph 2 above, including interest of any kind.

(ii) "Non-cash Recovery" means, without limitation, the fair market value of any property to be delivered to Client, services rendered for Client's benefit, and any other non-cash benefit subject to valuation, including but not limited to injunctive and/or equitable relief, to be conferred on Client as a result of the Action and/or as a result of Attorney's efforts on Client's behalf pursuant to this Agreement and arising out of or related to the contamination described in paragraph 2 above.

C. Calculation of Contingent Fee

- (i) The contingent fee pursuant to paragraphs 8(b)(i) and (ii) is calculated by multiplying the Recovery by the fee percentage as provided in paragraph 8(a).
- (ii) It is possible that payment to the Client by the adverse parties to the Action or their insurance carrier(s) or any third-party may be deferred, as in the case of an annuity, a structured settlement, or periodic payments. In such event, the total Recovery will consist of any initial lump sum payment plus the present value (as of the time of the settlement) of the total of all payments to be received thereafter. The contingent fee is calculated, as described above, by multiplying the total Recovery by the fee percentage as provided in paragraph 8(a). The attorney's fees will be paid out of the initial lump-sum payment if there are sufficient funds to satisfy the attorney's fees. If there are insufficient funds to pay the attorney's fees in full from the initial lump sum payment, the balance owed to Attorney will be paid from subsequent payments to Client

before there is any distribution to Client.

- (iii) Any Cash Recovery obtained shall be directed in the first instance to Attorney and shall be placed and held by Attorney in an interest bearing trust account administered by Attorney (the "Trust Account"). When a Cash Recovery is received by Attorney, Attorney shall notify Client and provide Client with a statement of outstanding fees and unreimbursed Advanced Costs. Funds in the Trust Account shall be released, first, to pay unreimbursed Advanced Costs up to the date of such Recovery, plus interest, and second, to pay any fees that Client owes to Attorney based on such Recovery. The remainder of such funds (if any) shall be distributed to Client.
- (iv) For purposes of calculating the present value of any Cash Recovery or Non-Cash Recovery under this Agreement the discount rate shall be the interest rate of the one-year treasury bill as reported by the United States Federal Reserve in the weekly Federal Reserve Statistical Release closest in time to the date of the Recovery for which the present value is being calculated.

D. Reasonable Fee if Contingent Fee Unenforceable

In the event the contingent fee portion of this Agreement is determined to be unenforceable for any reason or Attorney is prevented from representing Client on a contingent fee basis, Client shall pay a reasonable fee for the services rendered to the extent of any Recovery. The parties shall use best efforts to negotiate a reasonable fee. If they cannot do so, the parties agree to attempt to resolve the dispute through mediation by a mutually agreed upon mediator. If mediation is unsuccessful, the fee shall be determined by arbitration proceedings before the Judicial Arbitration and Mediation Services (JAMS), with any costs of such