

**AGREEMENT CONCERNING MANAGEMENT  
OF THE PIPES AND RECHE GROUNDWATER SUB BASINS  
OF THE AMES VALLEY GROUNDWATER BASIN**

This Agreement ("the Agreement" hereinafter) is made and entered into by and among Bighorn Desert View Water Agency ("BDV" hereinafter), County of San Bernardino Special District County Service Area No. 70 Zone W-1 Landers ("W-1" hereinafter), County of San Bernardino Special District County Service Area No. 70 Zone W-4 Pioneertown ("W-4" hereinafter), Hi-Desert Water District ("Hi-Desert" hereinafter) and Mojave Water Agency ("MWA" hereinafter) who are collectively referred to herein as "Parties" and individually referred to herein as a "Party."

**A. Recitals**

(i) Bighorn Desert View Water Agency is a public entity organized and operating pursuant to the provisions of the Bighorn Desert View Water Agency Law, California Water Code Appendix, Sections 112-1 *et. seq.*

(ii) Hi-Desert Water District is a County Water District organized and operating pursuant to the provisions of the County Water District Law, California Water Code Sections 30,000 *et. seq.*

(iii) Mojave Water Agency is a public entity organized and operating pursuant to the provisions of the Mojave Water Agency Law, California Water Code Appendix Sections 97-1 *et. seq.*

(iv) County of San Bernardino Service Area 70 W-1 Landers is a public entity governed by the San Bernardino County Board of Supervisors pursuant to the provisions of California Government Code Sections 25210 *et. seq.*

(v) County of San Bernardino Service Area 70 W-4 Pioneertown is a public entity governed by the San Bernardino County Board of Supervisors pursuant to the provisions of California Government Code Sections 25210 *et. seq.*

(vi) BDV and Hi-Desert entered into an agreement entitled "Ames Valley Water Basin Agreement" effective January 10, 1991 ("the Original Agreement" hereinafter) which was the result of a CEQA complaint against Hi-Desert by a predecessor agency, Desert View Water District.

(vii) The Original Agreement provided for the settlement of a lawsuit protesting the adequacy of an environmental impact report through the entry of a Judgment by which a water production well referred to as the Section 24 Well (Main Stream Well) and other water production facilities owned and operated by Hi-Desert would be governed, the groundwater basin monitored and the water supplies therein protected.

(viii) That Judgment, dated June 3, 1991 was entered in Riverside County Superior Court Case 211504 ("the Judgment" hereinafter).

(ix) The Original Agreement was amended twice, as of August 12, 1993 and then as of February 3, 1997 and the Judgment was amended pursuant to a Court order dated November 8, 2001.

(x) The groundwater basin referred to in the Original Agreement and the Judgment as Ames Valley Water Basin now is commonly referred to as the Pipes and Reche Groundwater Sub-basins and, together with that area commonly referred to as Pioneertown, is referred to herein as "the Basin." The boundaries of the Basin are described in Exhibit A and depicted on Exhibit B hereto. With BDV overlying most of the Basin, the Parties hereto have conducted studies which indicate the Basin is overdrafted and that storage space is available, including the calculation of water available perennially in the Basin due to natural supplies, a calculation of the water produced from the Basin from calendar year 2004 through calendar year 2008, and the feasibility of a project by which MWA would import state project water to the Basin and percolate it into the Basin on property owned and managed by the Bureau of Land Management within the Sphere of Influence of and leased by BDV, thereby supplementing the local water supply. For purposes of applicable environmental laws, BDV is named the lead project proponent for this project known and referred to as the Ames/Reche Spreading Grounds and Recovery Program. In furtherance of this Agreement and the Ames/Reche Spreading Grounds and Recovery Program, the Ames/Reche Groundwater Management Plan has been developed to provide a basis for long-term management of groundwater resources.

(xi) BDV, W-1, W-4 and Hi-Desert all wish to increase the amount of water available in the Basin and to make the Basin a more reliable source of water to be served to residents and businesses and each of those Parties desires to modify its common law water rights to reflect the rights afforded to them herein and in the Restated and Amended Judgment referred to herein.

(xii) The purposes of the Agreement are to provide the settlement of basic pumping allocation disputes and to establish mechanisms to bring the Basin demand and supply into operational balance.

(xiii) In order to implement the Agreement, the Parties shall enter into a Stipulation to Enter an Amended and Restated Judgment which supersedes the Judgment and which embodies the terms and conditions of this Agreement. W-1, W-4 and MWA will seek to intervene as Parties in the case and join in a joint motion of all Parties hereto for the entry of the Amended and Restated Judgment.

## **B. Agreement**

NOW, THEREFORE, the Parties hereto agree as follows:

1. Upon the Recharge Facilities described in paragraph 3 below being fully operative, the Parties will enter promptly into a Stipulation for Entry of an Amended and Restated Judgment embodying the terms and conditions of this Agreement including, but not limited to, an injunction prohibiting the production of water from the Basin by any Party which

is not based on production rights articulated herein, and take any and all actions necessary to support the Court's entering said Amended and Restated Judgment. W-1, W-4 and MWA shall at the same time move to intervene as Parties to that Amended and Restated Judgment.

2. There hereby is established for BDV, W-1, W-4 and Hi-Desert the following water production allowances ("Annual Baseline Amounts" hereinafter) based upon a methodology agreed to by the Parties. The Annual Baseline Amounts are based upon amounts produced from the Basin by the Parties from calendar year 2004 through calendar year 2008, as verified by meter readings or energy usage data:

<u>Party</u>	<u>Annual Baseline Amount</u>
CSA 70 I.Z. W-1 (Landers)	267 Acre Feet
CSA 70 I.Z. W-4 (Pioneer Town)	35 Acre Feet
Hi-Desert Water District	703 Acre Feet
Bighorn Desert View Water Agency	641 Acre Feet

Commencing upon entry of the Amended and Restated Judgment referred to above, each Party shall have the right to produce native water from the Basin in each fiscal year (July 1 - June 30) equal to its Annual Baseline Amount, prorated for any partial fiscal year on a 365 day year basis, subject to the terms and provisions hereof. Any Party withdrawing less than its Annual Baseline Amount in any fiscal year may carryover its right to produce that unproduced amount for the next two fiscal years. The first water produced at any time by any Party shall be deemed to be water credited to the Party which has been carried over for two fiscal years and the next water produced by that Party shall be deemed to be water credited to that Party which has been carried over for one fiscal year. Any Annual Baseline Amount not produced by that Party, or any transferee of that right, for more than said two fiscal years shall be deemed to be abandoned and the right to produce it knowingly and intentionally waived and relinquished. No Party or other person or entity shall have the right to produce such abandoned carryover which shall serve to provide protection against over production of Basin water. Further, the Parties hereto hereby waive and relinquish any right they might assert to produce return flows emanating from state project water percolated into the Basin on their account.

3. MWA will employ its best efforts to construct at its sole cost, and then to own, maintain and operate recharge facilities ("the Recharge Facilities" hereinafter) on that land leased by BDV described and depicted on Exhibit C hereto. Such facilities are to include pipeline and ancillary structures and equipment necessary to connect those Recharge Facilities to MWA's Morongo Pipeline, all as described in "Bighorn Desert View Water Agency (BDVWA) Mitigated Negative Declaration for Water Infrastructure Restoration Program (WIRP): Ames/Reche Groundwater Storage and Recovery Program; and Pipeline Installation/Replacement Program and the Ames/Reche Groundwater Management Plan." MWA must comply with all the Mitigation Monitoring Provisions of the Mitigated Negative Declaration, all stipulations placed on the project's constructions, operations and maintenance activities under permits obtained from United States Fish and Wildlife Service, California Fish and Game, Army Corps of Engineers and other permits identified or obtained as part of the project. The Recharge

Facilities are designed for a capacity of approximately 1,500 acre feet per year. MWA shall complete the Recharge Facilities so that those facilities are fully operative no later than September 1, 2012. If the Recharge Facilities are not fully operative on or before September 1, 2012, any Party hereto may terminate the Agreement by written notice provided to each Party hereto on or before November 1, 2012. In light of the Parties' extensive time and effort to formulate this Agreement and to complete regulatory approvals for and completion of the Recharge Facilities, the Parties shall attempt in good faith to agree to a new date if construction of the Recharge Facilities is substantially complete but the facilities are not fully operative by September 1, 2012. Each party hereto agrees to support the completion of the Recharge Facilities and not to impede in any way the implementation of the recharge process through the completion and operation of the Recharge Facilities.

4. Subject to the provisions of paragraph 6 hereof, BDV, W-1, W-4 and Hi-Desert may purchase state project water from MWA to be percolated into the Basin at the Recharge Facilities and later withdrawn from the Basin by the purchasing entity. MWA shall maintain storage accounts reflecting the amount of water in storage in the Basin by each other Party due to state project water percolated in the Basin on its behalf by MWA. Amounts withdrawn above a Party's Annual Baseline Amount must be based on water then credited in that Party's storage account. State project water purchases are not subject to the maximum two year carryover imposed on the production of Annual Baseline Amounts. No Party shall produce water from the basin not based upon either the Party's available Annual Baseline Amount or water present in its storage account except pursuant to an order of the Court obtained in accordance with the procedure referred to below. No person or entity not a Party to this Agreement shall store or be allowed to store water in the Basin.

A party may by written motion seek an order of the Court which provides that it may produce water from the Basin in excess of water based upon its Annual Baseline Amount, carryover rights or stored water in its account provided that the following criteria are met:

A. The hearing of the motion must be upon at least 90 days' written notice provided to the other parties hereto; and

B. At a minimum, the moving party shall provide substantial evidence demonstrating that it has exhausted all reasonably available means to meet its demands based on water rights allocated hereunder, including, but not limited to, seeking in writing to purchase or lease other parties' production rights at reasonable prices.

5. Subject to the provisions of paragraph 6 hereof, MWA may percolate state project water into the Basin for its own account for subsequent sale, production and use in any location within MWA's physical boundaries so long as such activity does not substantially impair or inhibit any other Party's use of the Basin as a source of water for its residents and businesses.

6. Five percent (5%) of all state project water percolated into the Basin at the Recharge Facilities pursuant to orders from and for the banked credit of Hi-Desert, W-1 or W-4 shall be credited to the BDV storage account in consideration of the use of the groundwater sub basin principally overlain and leased by BDV as the site of the Recharge Facilities without regard to which Party hereto other than BDV has purchased or owns the right to such water when

so percolated. The Parties also recognize that BDV production results in return flows to the Basin to a degree substantially greater than the other Parties. For example, if MWA percolates 100 acre feet of water into the Basin through use of the Recharge Facilities to be credited to the storage account of W-1, W-4 or Hi-Desert, five acre feet of that water shall be credited to the BDV storage account and 95 acre feet of that water shall be credited to the storage account of the other Party which purchased the state project water.

7. Water production rights as specified herein may be transferred from any Party hereto to any other Party hereto permanently or for any delineated period of time. The execution of this Agreement does not constitute a transfer of any water right from one party to another. A transfer of rights carried over by a Party as provided in paragraph 2 hereof shall not extend the two year period in which those rights must be exercised.

8. MWA shall offer water available for storage and later extraction through the Recharge Facilities to the other three Parties hereto whenever such water is made available to MWA from time to time in the following proportionate percentages which are in accord with the Parties' proportionate pipeline capacity rights delineated in existing agreements binding on the parties here and said percentages shall remain in effect throughout the term of said Agreement, to be renegotiated in good faith concerning that period subsequent to the term of said Agreement:

BDV -	13%
Hi-Desert -	85.5%
W-1 -	1.5%

MWA shall offer and provide water hereunder in accordance with MWA's applicable ordinances and policies in effect at the time when any such offer and provision of water occurs.

Within 60 days of MWA extending any such offer, each Party shall accept or reject the offer extended to it in whole or in part in writing provided to MWA. Any acceptance tendered shall include provision of the funds necessary to complete the transaction. Any amount rejected by a Party shall be offered to the Party or Parties which wholly accepted the prior amount or amounts offered to it and to W-4. Any such subsequent offer of amounts original offered to another Party must be accepted within 60 days of MWA extending the offer and any such acceptance tendered shall include provision of the funds necessary to complete the transaction.

9. MWA shall administer a monitoring program to ensure protection of the Basin as a water supply for the Parties hereto and their end users at MWA's sole cost and expense. The monitoring program will utilize the wells identified in Exhibit C hereto at a minimum. At MWA's direction, additional wells may be added to or removed from the program to provide a more accurate depiction of the state of the Basin as to maintenance of supplies and water quality. MWA's staff will take groundwater level measurement and samples for quality testing on a schedule and in accordance with protocols reasonably satisfactory to and approved in writing by the other Parties' general managers.

10. BDV, W-1, W-4 and Hi-Desert agree to provide to MWA each year no later than July 10, the meter readings, electrical records and any available data reflecting the production of

water from the Basin from all of the entities' wells for the immediately prior 12 months (July 1 - June 30). On or before the following September 1, MWA shall provide to the other Parties a report which compiles all water production, water quality and Basin well elevation data for the immediately previous fiscal year (June 30 - July 1). Every five years, the MWA report shall make recommendations on the Parties' ability to produce their Annual Baseline Amounts during the then current fiscal year and any other recommendations for actions which MWA believes are required to protect the Basin water supply based on the Ames/Reche Groundwater Management Plan. If necessary, to ensure maintenance of Basin elevations at acceptable levels and still allow withdrawals, and with the unanimous agreement of the general managers of BDV, W-1, W-4 and Hi-Desert, the Annual Baseline Amount for each such Party may be reduced by the same percentage. The first determination on such potential reduction shall occur within 90 days of MWA issuing its first report required hereunder.

11. Each Party shall indemnify, hold harmless and assume the defense of the other Parties, their officers, agents, employees, and elective boards, and that Party shall pay all court costs and reasonable attorneys fees relating thereto, in any action, with respect to a claim, loss, damage or injury, asserted by a third Party against any Party entitled to indemnification under this Agreement, and arising out of a negligent act, error or omission, or willful misconduct, of an employee or agent of the Party whose actions under this Judgment gave rise to such third Party claim.

12. Any notice, tender or delivery to be given hereunder by any Party to another Party or Parties shall be effected by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed communicated as of mailing or in case of personal delivery, as of actual receipt. Mailed notices shall be addressed as set forth below, but each Party may change its address by written notice in accordance with this paragraph 11.

To: Hi-Desert Water District  
55439 29 Palms Hwy.  
Yucca Valley, CA 92284  
Attention: General Manager

To: Bighorn-Desert View Water Agency  
622 S. Jemez Trail  
Yucca Valley, CA 92284  
Attention: General Manager

To: County of San Bernardino Special District  
County Service Area No. 70  
12402 Industrial Blvd., Building D, Suite 6  
Victorville, CA  
Attention: General Manager

To: Mojave Water Agency  
13846 Conference Center Drive  
Apple Valley, CA 92307  
Attention: General Manager

13. Full jurisdiction, power and authority shall be retained and reserved by the Court for the purpose of enabling the Court, upon application of any Party hereto by motion and upon at least thirty (30) days notice thereof, after hearing thereon, to make such further or supplemental orders or directions as may be necessary or appropriate for the construction, enforcement or implementation of this Agreement, and the Judgment entered based on this Agreement, including independent review of any decision presented to the General Managers of BDV, W-1, W-4 and Hi-Desert required in paragraph 10 of this Agreement which is not unanimously approved. The responding and/or defending Party who is determined to be the prevailing Party in any such hearing shall be entitled to recover as costs upon the conclusion of such hearing all attorneys fees or other costs actually incurred in connection with resolving the dispute by the making of such motion and the hearing thereon.

14. If a dispute arises regarding breach or enforcement of the provisions of this Agreement, the responding and/or defending Party who is determined to be the prevailing Party therein shall be entitled to recover all attorneys fees or other costs actually incurred in connection with resolving the dispute.

15. This is an entire Agreement and supersedes all prior agreements oral or written between any of the Parties, and their agents, on the same subject matter, and cannot be amended unless in writing, with specific reference hereto by the Parties authorized to be charged. Failure by any Party to enforce any provisions shall not constitute a waiver of said Party's right to enforce subsequent violation of the same or any other provisions.

16. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

17. If any section, clause or phrase of this Agreement is for any reason held to be unconstitutional or unlawful, such a decision shall not affect the validity of the remaining portions of this Agreement.

18. The persons executing this Agreement on behalf of the Parties hereto represent and warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party and to bind that Party, including its members, agents and assigns, and (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement.

19. This Agreement may be executed in multiple counterparts, each of which shall be considered an original but all of which shall constitute one agreement.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date stated below opposite the name of each such Party.

BIGHORN DESERT VIEW WATER AGENCY

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

COUNTY OF SAN BERNARDINO SPECIAL DISTRICT  
COUNTY SERVICE AREA 70 IMPROVEMENT ZONE W-1

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

COUNTY OF SAN BERNARDINO SPECIAL DISTRICT  
COUNTY SERVICE AREA 70 IMPROVEMENT ZONE W-4

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

HI-DESERT WATER DISTRICT

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

MOJAVE WATER AGENCY

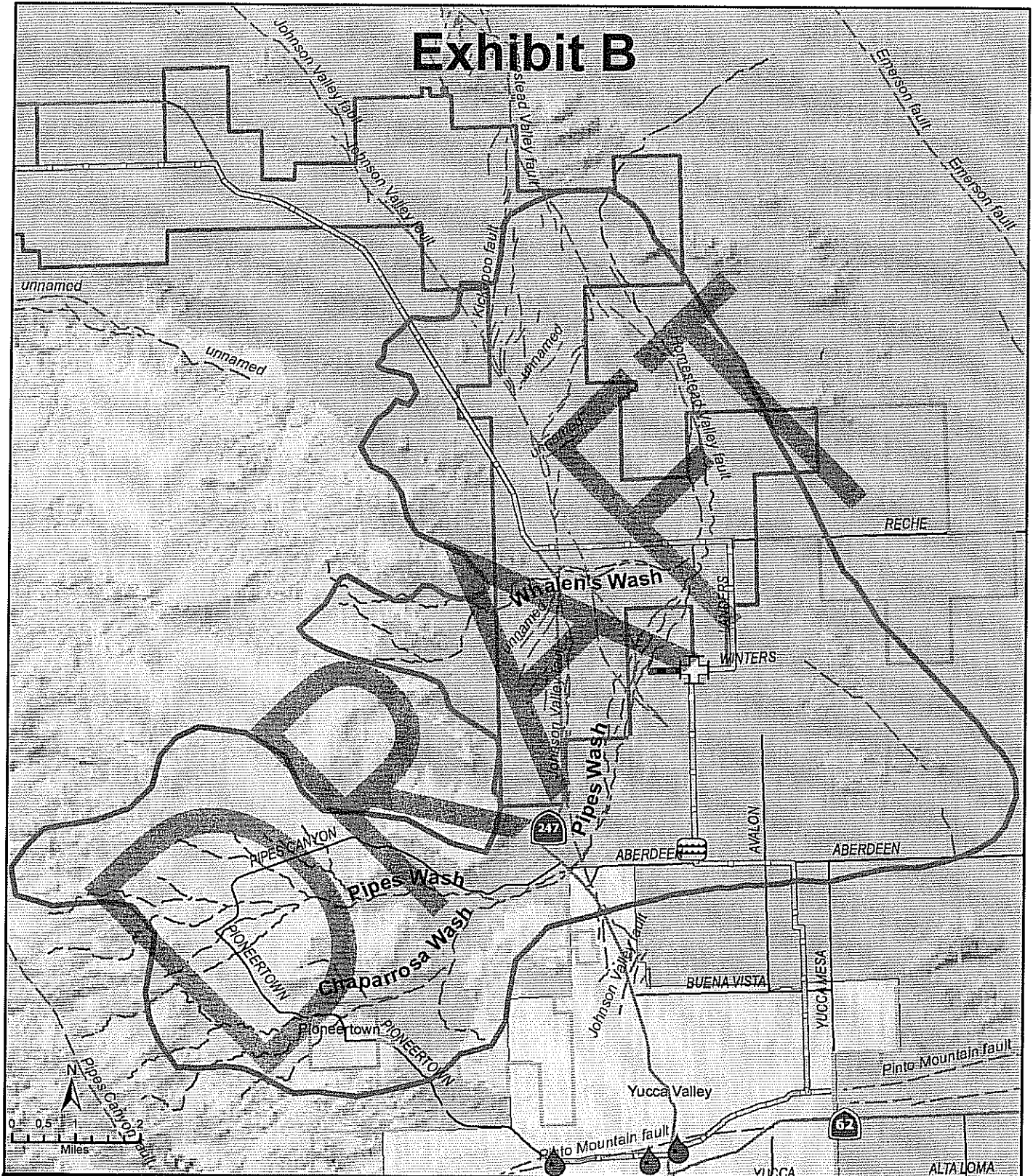
Dated: \_\_\_\_\_ By: \_\_\_\_\_  
By: \_\_\_\_\_

## EXHIBIT A

Exhibit B depicts the geographical boundaries of the groundwater management area subject to this MOU. The governance boundary is described as a regional area, including the upper watershed and encompassing those portions of the Ames Valley Groundwater Basin (DWR, 2003) that are subject to municipal production and which would benefit from managed control. The Department of Water Resources does not further divide the Ames Valley Basin so the United States Geologic Survey subbasin names and boundaries (as defined by Stamos et al., 2004) have been used to provide additional specificity in the overall basin boundaries to be managed. Those areas that have been directly impacted by past production practices include the Pipes and Reche subbasins, along with the area historically defined as Pioneertown (Lewis, 1972) which comprise portions of the Ames Valley Basin as adopted by DWR in Bulletin 118 on California's groundwater (DWR, 2003). Combining those boundaries with the upper watershed meets the objective of managed control within the geographical boundaries which is intended to secure a safe, reliable and sustainable water supply for current and future users and to protect the entities from overproduction by any one party.

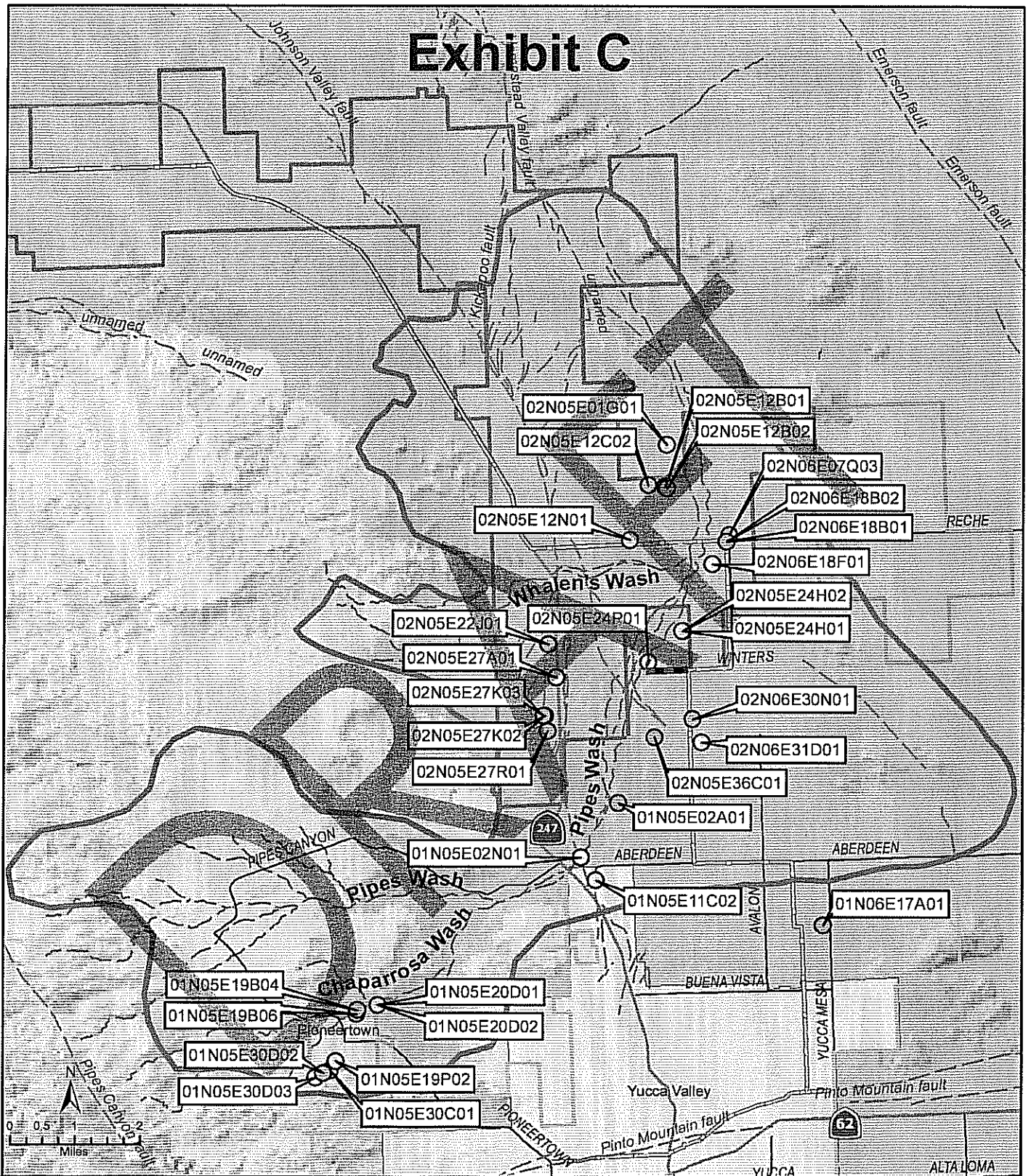
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# Exhibit B



- |                |                                   |                            |
|----------------|-----------------------------------|----------------------------|
| BDVWA Boundary | Proposed Pipeline                 | MWA Pipeline               |
| HDWD Boundary  | Proposed Recharge Site            | Recharge Site              |
| CSA 70 W4      | Proposed Recharge Management Area | MWA Warren Vista Reservoir |
| CSA 70 W1      | Faults (CDMG & Todd Report 2007)  | MWA Turnout                |
|                | Drainage (Census 2000)            |                            |

# Exhibit C



- |                |                                   |                                  |
|----------------|-----------------------------------|----------------------------------|
| BDWWA Boundary | Proposed Pipeline                 | Faults (CDMG & Todd Report 2007) |
| HDWD Boundary  | Proposed Recharge Site            | Drainage (Census 2000)           |
| CSA 70 W4      | Proposed Recharge Management Area | MWA Pipeline                     |
| CSA 70 W1      | Proposed Monitoring Well          | Production Well                  |