

**WATER INDEPENDANCE AGREEMENT
BETWEEN
THE WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA
AND WEST BASIN MUNICIPAL WATER DISTRICT
TO EXPAND THE USE OF RECYCLED WATER
AT THE WEST COAST BARRIER**

This Agreement is made and entered into this ____ day of _____, 2008, by and between the Water Replenishment District of Southern California (hereinafter referred to as "Replenishment District") and the West Basin Municipal Water District (hereinafter referred to as "West Basin").

RECITALS

- A. Replenishment District is a Water Replenishment District formed pursuant to the Water Replenishment Act, Division 18 of the Water Code, Sections 60000 et seq.
- B. West Basin is a Municipal Water District formed pursuant to the Municipal Water District law of 1911, Division 20 of the Water Code, Sections 71000 et seq.
- C. Replenishment District is specifically authorized to buy water for purposes of replenishing the groundwater supplies within the Replenishment District.
- D. West Basin operates the Edward C. Little Water Recycling Facility in El Segundo, CA, hereinafter referred to as "ECL Recycling Facility",.
- E. West Basin is authorized to sell or otherwise put to beneficial use recycled water produced by the ECL Recycling Facility.
- F. Los Angeles County Department of Public Works (DPW) owns, operates and maintains a series of injection wells known as the West Coast Basin Project, hereinafter referred to as "WCB", for purposes of preventing seawater intrusion into the West Coast Groundwater Basin. By agreement with DPW, Replenishment District orders and pays for water delivered to the WCB.
- G. The recycled water currently produced by West Basin at the ECL Recycling Facility is suitable for a number of uses, including, but not limited to, groundwater replenishment and WCB injection.
- H. Replenishment District and West Basin desire to provide for the long term use of recycled water for groundwater recharge, thereby fulfilling their joint responsibilities for the conservation of natural resources.
- I. The Replenishment District and West Basin executed an agreement in 2003 for West Basin to provide recycled water for up to 75% (up to 12,500 acre-feet per year) of the total water served to the WCB.

- J. West Basin provides additional imported potable water to meet the demand for injection water at WCB.
- K. Replenishment District wishes to purchase from West Basin and West Basin wishes to sell to Replenishment District, additional recycled water produced at the ECL Recycling Facility for injection at the WCB, up to a maximum of 17,500 AFY.
- L. Additional facilities, hereinafter called the "Phase V Expansion", will be designed and constructed at the ECL Recycling Facility in order for West Basin to meet its obligations under this agreement.

NOW, THEREFORE, it is hereby agreed by and between the parties hereto as follows:

1) **Term of Agreement**

- A) Commencement - This Agreement shall commence on the first day of the month following approval by both Boards of Directors of the Replenishment District and West Basin.
- B) End of Term - The Term of this Agreement shall be twenty-five (25) years from the first day of the month next following the date of first delivery of recycled water from the Phase V Expansion, and may be extended upon agreement of the parties. The parties agree to meet and confer to negotiate a possible extension of this Agreement at least six (6) months prior to expiration of this Agreement.
- C) Supersede Prior Agreement - As of the first day of the month next following the date of first delivery of recycled water from the Phase V Expansion, the 2003 Agreement between Replenishment District and West Basin described above in Recital "I" shall be deemed terminated by mutual consent of the Parties.

2) **Management Coordinating Committee**

- A) Replenishment District and West Basin shall each designate one or more individuals [limit to staff members?] to participate in a Management Coordinating Committee (Committee), to coordinate design and construction of the Phase V Expansion and to annually review operating costs for recycled water production for the barriers.
- B) During design and construction of the Phase V Expansion facilities, the Committee shall meet at least monthly. Replenishment District shall review and provide input to consultant and contractor selections, design issues, designs, regulatory permits, construction bids, schedules, change orders and quarterly reports. West Basin shall administer all contracts and prepare quarterly reports. Quarterly reports will be presented to the Boards of Directors of the Replenishment District and West Basin.
- C) Once the Phase V Expansion is operational, the Committee will annually prepare and present a Water Independence Network (WIN) Report to the Boards of Directors of the Replenishment District and West Basin. The WIN Report will outline the WCB barrier demands and amounts of various water sources used at the barriers for past, current and projected future fiscal years. Barrier operations and condition of the barriers will be addressed. Operational costs to serve recycled water to the barriers from the ECL Recycling Facility for the past, current and projected fiscal years will be reported.

Operational costs shall include operations, maintenance, research, administration and other costs necessary to produce recycled water to the barriers. Replenishment District shall provide review and input and West Basin shall administer the production of the report.

3) Phase V Expansion Facilities for Production and Delivery of Recycled Water.

- A) West Basin will design, construct, own, operate and maintain such facilities as necessary to meet the recycled water demand for the WCB. These facilities shall be referred to as Phase V Expansion Facilities and shall include an expansion at the ECL Recycling Facility as described in the conceptual design report attached as Exhibit A, which is herein approved by Replenishment District and West Basin. [already approved?] Estimated capital cost of the Phase V Expansion Facilities is \$xx,xxx,xxx. Changes to the conceptual design report during design or construction are anticipated and will be made as needed to allow West Basin to satisfy its obligations under this agreement. The Phase V Expansion facilities shall be completed in a manner not to disrupt ongoing recycling operations.
- B) Completion of the Phase V Expansion Facilities is expected in 2011 and the parties expect delivery of recycled water will commence immediately afterward.
- C) Upon completion of the Phase V Expansion Facilities, and in consideration for payments by Replenishment District as set forth below in Section 7, Replenishment District shall own a capacity interest in the Phase V Expansion Facilities.

4) Quantity of Water Available to Replenishment District.

- A) Upon completion of the Phase V Expansion facilities, West Basin shall make available to Replenishment District and Replenishment District agrees to purchase up to 17,500 AFY of recycled water produced at the ECL Recycling Facility for the WCB.
- B) If recycled water produced by the ECL Recycling Facility exceeds an amount which regulatory agencies, with jurisdiction by law, determine may be reasonably used at the WCB, Replenishment District shall not be obligated to take delivery, nor pay for such water and West Basin may deliver such recycled water to third parties.
- C) West Basin agrees to deliver recycled water from the ECL Recycling Facility to the WCB at such times and in such quantities as set forth herein, consistent with existing agreements between Replenishment District and DPW.
- D) The parties recognize factors beyond their control, such as natural disasters and other acts of God, could cause operational difficulties at the ECL Recycling Facility, WCB. In such events, the parties may agree to temporarily suspend delivery of recycled water to the WCB. The parties shall use their best efforts to re-establish delivery of recycled water to the WCB in accordance with the terms of this Agreement.
- E) West Basin agrees to repair, replace or remediate damage to WCB facilities substantially caused by the recycled water delivered by West Basin in accordance with agreements between DPW and West Basin. [What agreements?]

5) Quality of Water to be Purchased by Replenishment District.

- A) West Basin shall use its best efforts to provide the highest quality recycled water from the Water Recycling Facility, and further agrees recycled water delivered to Replenishment District at the WCB shall conform to the requirements established from time to time by regulatory agencies with jurisdiction over the ECL Recycling Facility, and the WCB.

6) Financing of Capital Improvements

- i) West Basin will finance the Phase V Expansion Facilities for the production and delivery of recycled water to the WCB water injection barriers.
- ii) West Basin will provide Replenishment District a "Notice to Fund" four months prior to letting any bond issuance for the Phase V Expansion Facilities. Within three months of receiving the Notice to Fund, Replenishment District has the option of prefunding any portion of the estimated total cost up to 50% with a corresponding reduction in the Fixed Monthly Capital Recovery Charge.
- iii) In the event Replenishment District decides to pre-fund, Replenishment District shall transfer said funds to West Basin who shall deposit funds into a separate account that shall be used only for Phase V Expansion Facilities capital costs. A full accounting of all expenditures from the separate account will be provided to the Management Coordinating Committee on a monthly basis.
- iv) All records of the separate account balances and expenditures shall be kept for two years beyond completion of the Phase V Expansion Facilities. Replenishment District has the right to audit the account at its own expense.

7) Purchase and Payment Price of Recycled Water

- A) West Basin shall sell recycled water under this agreement to the Replenishment District and Replenishment District shall purchase the recycled water from West Basin. The payment price under this agreement is comprised of two components; a Fixed Monthly Capital Recovery Charge and a Monthly Commodity Charge. The Fixed Monthly Capital Recovery Charge is based on the capital cost of the Phase V Expansion Facilities and is calculated so that West Basin recovers its costs over 25 years (300 months) in a fixed monthly payment that does not vary. The Replenishment District has the option of prefunding the Capital Costs as set forth above in Section 6, and thus reducing the Fixed Monthly Capital Recovery Charge. The Monthly Commodity Charge is based upon the operational costs of providing the recycled water and is a unit charge based upon the quantity of water purchased each month.

B) Fixed Monthly Capital Recovery Charge:

- i) Beginning the first day of the month next following the first day of delivery of recycled water from the Phase V Expansion Facility, Replenishment District will pay West Basin a Fixed Monthly Capital Recovery Charge consisting of three hundred (300) monthly payments.

- ii) Replenishment District has the option to prepay any portion of this up to 50% with a corresponding reduction in monthly payments as per Section 6 Financing of Capital Improvements above.
- iii) The Fixed Monthly Capital Recovery Charge shall enable West Basin to recover all capital costs incurred for the Phase V Expansion facilities. Capital costs shall include but not be limited to planning, design, construction, construction management, permitting, administration and other costs incurred. The assumed capital of \$ _____ at a weighted cost of capital of _____ factor represents an estimated payment of \$ _____/month based on a _____% interest rate. The actual cost of capital will be re-calculated using an interest rate equal to the Revenue Bond Index in effect as of the date that determines the borrowing cost to the District (projected to be November – December 2009).

The Fixed Monthly Capital Recovery Charge shall be determined when West Basin actually incurs the financing for the project and will be based upon actual costs incurred, not cost estimates. The Fixed Monthly Capital Recovery Charge shall be calculated by applying West Basin's average cost of capital factor to the capital costs. As an example: If capital cost are \$29,000,000 and a West Basin's Capital Recovery factor is 0.009683843, the Fixed Monthly Capital Recovery Charge would be \$280,831.⁴⁵ per month.

C) Monthly Commodity Charge

- i) The Monthly Commodity Charge will be based upon actual recycled water delivery to the WCB. Actual deliveries are expected to be up to 17,500 AFY for the WCB. The charge consists of West Basin's recycled water Barrier Rate. [Do we have a barrier rate?]
 - ii) During the term of this Agreement, the rate to be paid by Replenishment District for recycled water (or use "monthly commodity charge"?) will be determined by the West Basin Board of Directors from time to time based upon recovering actual Operations costs. Operations costs include operations, maintenance, research, orderly capital replacement, administration and other costs incurred in providing the treatment and delivery of recycled water.
 - iii) Any increases in the recycled water Barrier Rate after the date of this Agreement, by West Basin, shall be reasonable and shall not be greater than those charged to other purchasers of similar water from West Basin.
- D) At no time will the combination of the Fixed Monthly Capital Recovery Charge and the Monthly Commodity Charge exceed the price West Basin charges retailers for imported water (MWD Tier 1 rate plus Readiness-To-Serve charge (RTS), reliability Service Charge, and other future MWD charges).
- E) The Replenishment District has the right to review and audit West Basin Operational and Capital costs for recycled water to the WCB during normal business hours with reasonable notice.