

# SOLANO COUNTY WATER AGENCY



## MEMORANDUM

Agenda Item No. 7

**TO:** Board of Directors

**FROM:** David B. Okita, General Manager

**DATE:** March 10, 2011

**SUBJECT:** March General Manager's Report

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December was a robust month for water supply in California, including Solano County. January was a big bust. The first two weeks of February were dry, but the last two weeks were good for water supply. The beginning of March is nice and wet. In summary, this will be at least a good water year. Last year was an average year, but was preceded by three dry years. As of March 1 Lake Berryessa storage increased 162,812 acre feet from the low point in November. We are better off than we were in 2010, but not by too much.

Our State Water Project allocation for 2011 is 60%, up from the December 50% allocation. We may see an increase in allocation later this month.

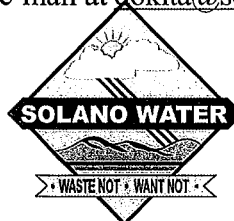
As promised at the last Board meeting, staff is going to be presenting more Solano Project issues this year. While there certainly is a lot going on with Delta issues but we must not forget that the Solano Project is our most important water supply. Last month I presented to the Board our progress in dealing with riparian water users on Lower Putah Creek. This month I will present an overview of potential issues facing the Solano Project. Later this year we will have a presentation on the activities of the Lower Putah Creek Coordinating Committee. We will cover other Solano Project topics as time allows.

The SCWA office will be moving during the week of March 14. We may be out of communication for a while on the move date, but we expect everything to go smoothly. The April Board meeting will be at the new office building in Vacaville. SID warns that since they are moving the day after the March 10 Board meeting, the SID office will be in a pre-move state, but that will not impact our ability to have the March meeting there.

If you have any questions please contact me at 455-1103 or by e-mail at [dokita@scwa2.com](mailto:dokita@scwa2.com).

Mar.2011.lt7.mem

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Time Period Covered: February 2011

**REPORT OF CONSTRUCTION CHANGE ORDERS  
AND CONTRACTS APPROVED BY GENERAL  
MANAGER UNDER DELEGATED AUTHORITY**

**Construction Contract Change Orders (15% of original project costs or \$50,000, whichever is less)**

Change Order #8 – Lister Construction, Putah Diversion Office - \$5,947.16 – insulation and wall framing

**Construction Contracts (\$30,000 and less)**

**Professional Service Agreements (\$30,000 and less)**

**Non-Professional Service Agreements (\$30,000 and less)**

**Construction contracts resulting from informal bids authorized by SCWA Ordinance**

Note: Cumulative change orders or amendments resulting in exceeding the dollar limit need Board approval.

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# SOLANO COUNTY WATER AGENCY



## MEMORANDUM

Agenda Item No. 8

**TO:** Board of Directors

**FROM:** David B. Okita, General Manager

**DATE:** March 10, 2011

**SUBJECT:** Delta Report

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Things have been relatively quiet on Delta matters. The Bay Delta Conservation Plan (BDCP) has been dealing with internal issues out of the public eye. The Delta Stewardship Council released the first draft (of seven) of their important Delta Plan, but it was by design, incomplete. The new State Administration is now involved in water matters, but have not yet shown that they will be taking a different direction from the last Administration on water matters.

This update will be short. I expect that BDCP will re-emerge from their hiatus sometime this month or early April and we can re-start our engagement with them on the issues impacting Solano County. We will probably be able to give a more in-depth report on where Delta issues are heading by next month.

If you have any questions please contact me at 455-1103 or by e-mail at [dokita@scwa2.com](mailto:dokita@scwa2.com).

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# SOLANO COUNTY WATER AGENCY



## MEMORANDUM

Agenda Item No. 9

**TO:** Board of Directors

**FROM:** David B. Okita, General Manager

**DATE:** March 10, 2011

**SUBJECT:** Solano Project Report

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A major turning point in the history of the Solano Project was the legal settlement reached in 2000 that resolved the instream flow dispute on Lower Putah Creek. This was preceded by ten years of litigation. During this time period we also reached settlement with water users upstream of Lake Berryessa to limit their future water development.

The last ten years since the 2000 Settlement Agreement have gone very well with “peace on the Creek”. The settlement created and funded the Lower Putah Creek Coordinating Committee (LPCCC). The LPCCC has done a wonderful job in obtaining millions of dollars of grant funds to do stream restoration and has developed an excellent relationship with most of the landowners along the Creek.

However, the 2000 Settlement Agreement did not cover all threats to the Solano Project water supply. Putah Creek drains to the Yolo Bypass. In recent years the Yolo Bypass is becoming acknowledged as a valuable habitat area for aquatic species including salmon and steelhead. Putah Creek has been identified as potential habitat for salmon and steelhead and this could have water supply implications for the Solano Project even with the existence of the 2000 Settlement Agreement. Additionally, with the concern about the Delta, waterways tributary to the Delta are being looked at for potential flow contributions to supply more water to the Delta. Putah Creek is tributary to the Delta.

These issues, and others that may come up in the future, could impact the water supply from the Solano Project. We need to be aware of these threats and be active in any discussions that may impact the Solano Project.

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Staff will present a recent history of the Solano Project water supply, discuss these potential threats and what staff is doing to address these risks. At future Board meetings we can explore other areas of interest regarding the Solano Project in more depth.

If you have any questions please contact me at 455-1103 or by e-mail at [dokita@scwa2.com](mailto:dokita@scwa2.com).

Mar.2011.It9.mem

**ACTION OF  
SOLANO COUNTY WATER AGENCY**

**DATE:** March 10, 2011

**SUBJECT:** Lease for Warehouse Space

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RECOMMENDATION:

Authorize Chairman to execute a long term lease with the Solano Irrigation District for 902 square feet of warehouse space that is part of the new SID warehouse on Piper Drive in Vacaville adjacent to the new SID/SCWA office building.

FINANCIAL IMPACT:

One-time payment of \$142,173 plus minor annual costs for utilities and maintenance. Funding for this project is included in the current year Administration budget.

BACKGROUND:

On January 14, 2010, the Board approved agreements with Solano Irrigation District for the purchase of shared office space in a building in Vacaville. SID has also purchased an adjacent warehouse building. Approximately 902 square feet (out of 75,000 square feet total) has been allocated to SCWA for storage of equipment.

Since this is a small portion of the total building staff recommends that a simple lease agreement be entered into with SID rather than the complicated ownership agreement we entered into for the office space. The lease will be a one-time payment equivalent to the SCWA share of land and construction costs with a proportionate share of monthly utility and maintenance costs.

Funding has been included in the capital budget in the current fiscal year for the warehouse.

Recommended By:   
David B. Okita, General Manager

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Approved as Recommended       Other (see below)

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Modification to Recommendation and/or other actions:

I, David B. Okita, General Manager and Secretary to the Solano County Water Agency, do hereby certify that the foregoing action was regularly introduced, passed and adopted by said Board of Directors at a regular meeting thereof held on March 10, 2011 by the following vote.

Ayes:

Noes:

Abstain:

Absent:

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David B. Okita  
General Manager & Secretary to the  
Solano County Water Agency

1 LEASE  
2  
3

4 Lessor: SOLANO IRRIGATION DISTRICT  
5 Lessee: SOLANO COUNTY WATER AGENCY  
6 Term: January 1, 2011 through December 31, 2110  
7 Leased Premises: Portion of 1090 Piper Drive, Vacaville, California  
8  
9

10 THIS AGREEMENT OF LEASE made as of the 1<sup>st</sup> day of January, 2011 by and between  
11 SOLANO IRRIGATION DISTRICT, an irrigation district formed and existing under the laws of  
12 the State of California (hereinafter called "Lessor"), and SOLANO COUNTY WATER  
13 AGENCY, a Special Act District established under the California Water Code and formed and  
14 existing under the laws of the State of California (hereinafter referred to as "Lessee"), who do  
15 agree for full and adequate consideration, the receipt of which and the adequacy of which is  
16 hereby stipulated to, as follows:  
17

18 W I T N E S S E T H

19 In consideration of the Agreement contained herein, Lessor does hereby lease the  
20 hereinbelow described real property and improvements and fixtures to Lessee, and Lessee does  
21 hereby rent, hire, and take said properties from Lessor, and Lessor and Lessee do hereby agree as  
22 follows:

1. Leased Premises: The real property which is the subject of this Lease is a portion of that certain property in the City of Vacaville, County of Solano, State of California, more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein and specifically described as follows.

A. Lessee shall have the exclusive right to possession and occupancy of that

area of the interior of the existing building located at 1090 Piper Drive, Vacaville, California, shown on Exhibit B attached hereto designated as "SCWA Designated Area" and consisting of approximately 902 square feet, which Lessee may utilize during the term of this Lease for the purposes of storage, marshaling and assembly of equipment, supplies, and tools, and for water testing, recording and testing of water, and other activities reasonably associated with Lessee's activities or equipment and personal property reasonably used in the conduct of Lessee's activities. Lessee shall not bring upon or store upon the premises subject to the exclusive use of Lessee described or depicted in Exhibit B any flammable or toxic substances without the prior written permission of Lessor. If Lessor shall consent in writing to toxic or flammable materials of Lessee being brought upon the Lease Premises, any flammable or toxic materials of Lessee shall be stored and housed in areas designated by Lessor used in common with Lessor for storage of similar materials, and only in accordance with all regulations, laws, and the reasonable procedures established by Lessee and Lessor.

B. Lessee shall have a non-exclusive right and license appurtenant to the Leased Premises shown on Exhibit B, and also to utilize the hallways, bathrooms, and lunch rooms shown on Exhibit B in accordance with the Rules and Regulations established by Lessor and Lessee as provided in Paragraph 13 below. The use of this non-exclusive right and license of those areas shall be conducted in such a fashion that it does not unreasonably burden or prevent use by Lessor, its agents, employees or independent contractors. Lessee shall have a right to connect to and use the utilities and the communication lines to 810 Vaca Valley Parkway and connections to outside utilities, at its cost.

C. Lessee shall have a non-exclusive right to bring upon the real property and

park in designated areas outside of the building located on the real property described in Exhibit A located at 1090 Piper Drive; however, no parking beyond the hours set in the Rules and Regulations or overnight parking of vehicles or equipment shall occur by Lessee or its employees or invitees. Vehicles utilizing this non-exclusive right shall be of a size and parked in areas where the vehicles will not block or impair clearance and travel for other vehicles.

2. Term: The term of this Lease shall be for ninety-nine (99) years, commencing as of the first day of January, 2011, and ending on the 31<sup>st</sup> day of December, 2110.

3. Rental: The rental for the Premises for the entire term shall be Seventy-One Thousand Two Hundred Twenty Three dollars (\$71,223.00), payable in advance. In the event rent is to be reimbursed for early termination as provided herein, rent shall be reimbursed on a straight line prorated share based on number of years of lease remaining divided by 99 years.

3.1 If any taxes, assessments or charges are levied against the real property and improvements described in Exhibit A by any governmental entities, those charges shall be paid by Lessor and Lessee in the Proportions.

3.2 Annual Payments. In addition to the rental amount, Lessee shall pay (1) its Proportion of the fire insurance, premise liability coverage for the whole premises and landscaping, utility costs, standby charges and use charges for electricity, natural gas or propane, and other similar utility and communication capacity or service charges. Telephone or similar charges which are billed directly to the parties based on their respective usage shall not be subject to the Proportions; and (2) its Proportion of the costs of repair, replacement and reconstruction of the roof, exterior walls, exterior doors, pavement, fencing, security systems, exterior facing windows, HVAC systems, overhead doors, and of utility facilities such as power,

telephone, sewer, fiber optic, microwave, digital or similar communication means to the Premises or similar services utilized and enjoyed by Lessee, except that if the Lease Premises designated for the exclusive use of Lessee shall not have the benefit of any portion of the HVAC service, the costs of that system shall not be paid by Lessee in the Proportions. Lessor shall annually provide an accounting of those costs and expenses and shall bill Lessee annually for those costs. Lessee shall pay the amounts billed within thirty (30) days of billing.

3.3 Payment for Improvement and Fixture Costs. Concurrent with execution of this Lease, Lessee shall pay as additional rental for the term the sum of Seventy Thousand Nine Hundred Fifty dollars (\$70,950.00), being a one-time payment for the estimated costs of the fixtures and improvements described in Exhibit C and C-1. These improvements and fixture costs shall not be subject to a present value calculation and shall be subject to the adjustments described in Paragraph 6 below.

3.4 As used in this Lease Agreement, the phrase “the Proportions” or “its Proportion” shall mean that Lessor shall bear ninety-eight percent (98%) of the cost and Lessee shall bear two percent (2%) of the cost.

4. Use of Premises: The above-described Premises are leased for the purpose of conducting the services and activities to support the performance by Lessee of its duties in regard to administering water resources and facilities related to water resources within areas of the County of Solano. Lessee promises and agrees that Lessee will, during the entire term hereof, not use, or permit to be used, such Premises or any part thereof in such manner as will cause any cancellation of any insurance policy covering said building or the remainder of the Lease Premises; nor shall Lessee sell, keep, use, or permit to be sold, kept, or used in or about said

Premises any article which may be prohibited in the standard form of fire insurance policies.

Lessee shall, at Lessee's sole cost and expense, comply with any and all requirements, pertaining to said Premises, of any insurance organization or company, necessary for the maintenance of reasonable fire and public liability insurance, covering said building and appurtenances.

4.1 Lessor's Continued Occupancy and Use of Portion of the Premises. This joint occupancy and use by Lessor and Lessee shall be conducted in a reasonable manner so as not to prevent the enjoyment of the use of the Premises by Lessee or Lessor.

5. Compliance with the Law: Lessee agrees that Lessee will not use or permit said Premises to be used for any unlawful purpose, nor will Lessee disturb Lessor's use of the building of which these Premises are a part or surrounding premises, and Lessee will, at Lessee's own expense, promptly observe and comply with all laws, orders, regulations, rules, ordinances, and requirements of federal, state, county and city governments, or other lawful governmental bodies, or any of their departments, bureaus, or offices, and will affect all alterations or other requirements exacted, directed, or deemed necessary on account of Lessee's use of said Premises; and agrees to pay, at Lessee's own cost and expense, all claims, fines, penalties, and damages that may in any manner arise out of, or be imposed because of, the failure of Lessee to comply with this covenant, and will indemnify and save Lessor harmless from any damage, injury, loss, or claim, lawfully imposed or recovered by reason of any breach of this agreement by Lessee.

6. Condition of Premises: Lessee and Lessor have approved the improvements and fixtures described and depicted on Exhibit C for the interior area to be occupied by Lessee exclusively and improvements requested by Lessee for areas which will be subject to joint use.

Lessor agrees to provide for the installation and construction of those improvements and to complete the installation and construction by March 14, 2011 for occupancy by Lessee. The rental amounts payable by Lessee includes the estimated costs of those improvements to the Lessee's exclusive space shown on Exhibit B as "SCWA Designated Space", which improvements are shown on Exhibit C and the estimated costs of those improvements are shown on Exhibit C-1. If Lessee desires to make changes in the improvement plans after the execution of this lease agreement and approval of Exhibit C and C-1 and Lessor shall agree to those changes reasonably requested, the cost differential in providing for the changes shall be agreed to between the parties as part of the written approval of the changes and the credit to or further charge to be payable by Lessee shall be specified and or paid at the time of that approval.

6.1 Increases or Decreases in Estimated Cost of Improvements. If due to causes beyond the reasonable control of Lessor or changes agreed to between the Lessor and Lessee in writing, the estimated costs of performing the work and improvements described in Exhibit C and C-1 shall, as to any item of work or materials, exceed an increase or decrease of greater than 15% of the estimated cost, including the costs of Lessor's overhead in supervising and administering the work, an adjustment in the total amount payable by Lessee shall be made upon termination of the work and conclusion of the accounting of charges and expenses incurred. Lessee shall be billed for any excess or credited for any reduction in cost of each category of improvement described in Exhibit D-1 in excess of fifteen percent (15%). The fifteen percent (15%) variance shall not be billed or credited to Lessee. Lessee agrees that by entering and taking possession of the Lease Premises, the Lease Premises are in reasonable order, condition, and repair, and that Lessee has inspected the Lease Premises and accepts them in the "as-is"

condition. On the last day of the term hereof, or on any sooner termination of this Lease, Lessee will peaceably and quietly surrender and yield up said Premises to Lessor with all appurtenances and fixtures in good order, condition, and repair, reasonable use, wear, tear, and damage by the elements excepted.

7. Waiver: Time is agreed to be the essence of this Agreement, and any waiver by Lessor of the prompt and punctual performance of any term, condition, or covenant hereof shall not be construed to be a waiver of the prompt and punctual performance of the same or any other term, condition, or covenant subsequently when due.

8. Succession: This Lease and each of its terms, subject to the provisions relating to assignments, shall apply to and bind the heirs, successors, executors, administrators, and assigns of the parties hereto, and all parties hereto shall be jointly and severally liable hereunder.

9. Quiet Enjoyment: Lessor covenants with Lessee that upon Lessee's entry into said Premises and Lessee's performance of each of the terms of this Lease on Lessee's part to be performed, Lessee shall have full freedom and use of said Premises in accordance with the terms hereof and quietly enjoy the same without lawful claim on the part of any person.

10. Holding Over: Any holding over after the expiration of the term hereof with the consent of Lessor, express or implied, shall be a tenancy from month to month, terminable only upon thirty (30) days' written notice from either party to the other, upon all of the other terms, conditions, and covenants herein insofar as the same may be applicable.

11. Right of Entry: Lessor, or Lessor's representatives, shall have the right to enter the Lease Premises within business hours at any time during the term of this Lease to protect, inspect, exercise, or investigate any rights of Lessor herein reserved; to inspect the Premises or to

post notices of non-responsibility. Lessor may enter said Lease Premises for the purpose of making any alteration, repair, or improvement to said building, or the Lease Premises, which Lessor deems convenient for the maintenance or preservation thereof. Lessee expressly waives any damage resulting from such entry or from the performance of such alterations or repairs, and such entry shall not be cause for any rebate of rent herein reserved, provided always that the ingress and egress of Lessee or Lessee's customers shall not be unnecessarily hindered, nor shall Lessee's occupancy be otherwise unnecessarily inconvenienced.

12. Rules and Regulations. Lessor and Lessee will meet and discuss rules and regulations in regard to access, times of use, locking procedures, utility use or other use, noise, odors and other practices which may give rise to concerns or frictions in the use of Lessee's leased premises or non-exclusive use areas, and their effect on Lessor's use of the remainder of the Lease Premises. Rules and regulations governing any of such practices may be proposed by each party. If the parties shall agree, those rules and regulations shall be adopted by written agreement and published, and each party shall provide for periodic training of its employees, agents and independent contractors in regard to those rules and regulations. Each party shall diligently enforce the rules and regulations as to its employees, agents, officers and independent contractors. The rules and regulations may provide for financial penalties for repeated or persistent violation of the rules and regulations. If the parties shall not agree as to certain of the rules and regulations or shall fail to agree to enforcement of the rules and regulations or penalties to be assessed, the parties agree that the Arbitration procedure provided herein shall govern the resolution of those matters.

13. Assignment: Lessee shall not assign or hypothecate this Lease nor any right

granted Lessee hereunder, nor sublet or license the demised Premises or any part thereof without the prior written consent of Lessor, which shall not be unreasonably withheld. No consent to any assignment of this Lease or any subletting of said Premises shall be construed to be a waiver of the provision hereof, except only as to the specific instance covered by that consent; nor shall this Lease or any interest herein be assignable by operation of law.

14. Default: In the event of the failure of Lessee to pay rent or any other amount due under the terms of this Lease as herein provided or upon the breach of any other condition, term, or covenant herein contained on the part of Lessee to be kept and performed, each term, condition, and covenant hereof being a material part of the consideration for Lessor's entry into this Lease, Lessor may, at Lessor's option, sixty (60) days after written notice to Lessee to cure said breach and failure of Lessee to cure:

A. Terminate this Lease and thereupon re-enter and take possession thereof, ousting all persons therefrom, and retaining all rental paid in advance by Lessee, and the use and ownership of the improvements and fixtures described in Exhibit C and C-1;

B. Elect not to terminate Lessee's possession of the Premises hereunder, and enforce all of Lessor's rights and remedies, including, but not limited to, the right to recover rent or other charges as they become due.

14.1 Efforts by Lessor to mitigate the damages caused by Lessee's breach of this Lease do not waive Lessor's right to recover damages under this paragraph. Nothing in this paragraph affects the right of Lessor to indemnification prior to the termination of this Lease as provided in paragraph 21 hereof. Any re-entry by Lessor as herein permitted shall be construed to be under Lessee's direction, and Lessee agrees to hold Lessor harmless from all claims or

damage to property or injury to persons caused thereby.

14.2 Any property belonging to Lessee or any person holding by, through, or under Lessee, or otherwise found upon the demised Premises, may be removed therefrom and stored in any public warehouse at the cost of and for the account of Lessee. If Lessee abandons, vacates, or surrenders said Premises or be dispossessed by process of law, any personal property left upon said Premises shall be deemed abandoned at the option of Lessor. The commencement of any action for any remedy herein reserved to Lessor and the prosecution thereof to judgment shall not be deemed an election on the part of Lessor unless and until said judgment is fully satisfied and discharged.

14.3 In the event Lessor is involuntarily made a party to any litigation concerning this Lease or the demised Premises by reason of any act or omission by Lessee, Lessee promises to indemnify and hold Lessor harmless from all liability, including attorneys' fees incurred by Lessor in such litigation, and in the event Lessor brings an action against Lessee to enforce any of the terms of this Lease, or commences an action under the provisions of the unlawful detainer act for forfeiture of this Lease, or for possession of the Premises, or both,

15. Reimbursement: In the event Lessee fails, neglects, or refuses to perform any covenant, agreement, or condition in this Lease provided by Lessee to be done, kept, or performed, Lessor may, at Lessor's option, sixty (60) days after written notice to Lessee to cure said breach and failure of Lessee to cure, perform such covenant, condition, or agreement and any money expended thereon shall be charged to the account of Lessee, payable on demand, with interest thereon at the legal rate, and the failure of Lessee to so repay Lessor for any money so paid out and expended shall constitute a default under this Lease.

16.

17. Alterations: Lessee shall, at Lessee's sole cost and expense, be permitted to make reasonable alterations to the exclusive use area of the Premises shown on Exhibit B which do not change the functional use of the Premises without Lessor's prior written consent; provided, however, Lessee shall promptly report the nature and extent of such alternations after completion of the same, and Lessee shall indemnify, save, and hold Lessor free and harmless from all costs and other obligations associated with the making of such alterations. Any alterations made shall remain on and be surrendered with the Premises on expiration or termination of the term. Lessee shall not make any changes to or alterations of the commonly used or non-exclusive areas of the property used by Lessee without the written consent of Lessor.

18. Mechanic's Liens: Lessee shall pay all costs for construction done by Lessee or caused to be done by Lessee on the Premises as permitted by this Lease. Lessee shall keep the building, other improvements, and land of which the Premises are a part free and clear of all mechanic's liens resulting from construction done by or for Lessee. Lessee's failure to comply with this covenant shall at Lessor's option be grounds for terminating this Lease.

19. Eminent Domain: If the whole of the leased Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose by a public entity other than Lessee or Lessor, then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding and all rentals shall be paid up to that date and Lessee shall have no claim against Lessor for the value of any unexpired term of this Lease. Except if Lessee shall have prepaid rent, the present value of the prepaid rent paid by Lessee in advance utilizing the interest calculation and compounding assumptions shown on Exhibit D shall be utilized to make that reimbursement. In the event of a partial taking or condemnation which is not extensive enough to render the Premises unsuitable for the business of Lessee and Lessor, then Lessor shall promptly restore the leased Premises to a condition comparable to its condition at the time of such condemnation less the portion lost in the taking, and this Lease shall continue in full force and effect. In the event of any condemnation or taking as hereinabove provided, whether whole or partial, Lessee shall not be entitled to any part of the award, as damages or otherwise, for such condemnation and Lessor is to receive the full amount of such award, Lessee hereby expressly waiving any right or claim to any part thereof, except for the reimbursement of a portion of prepaid rent and the value of any improvements, fixtures or personal property within the Exclusive Occupancy Area shown on Exhibit B. Lessee shall have the right to claim and recover from the condemning authority, but not from Lessor, such compensation as may be separately awarded or recoverable by Lessee in Lessee's own right on account of any and all damage to Lessee's operations by reason of the condemnation and for or on account of any cost or loss to which Lessee might be put in removing Lessee's furniture, fixtures, leasehold improvements, and equipment.

20. Indemnification: Each party shall defend, indemnify and hold the other harmless from and against any liability, damage, loss, cost or expense, including but not limited to attorneys' fees incurred, arising from or in any way with the other party's use or operations in or about the Premises, including, but not limited to, any acts or omissions of the party or the party's agents, servants, employees, independent contractors, licensees and invitees.

21. Insurance: Lessee shall, at Lessee's expense, carry the following types and minimum coverages of insurance:

A. Workers' Compensation Insurance, in compliance with the laws of the State of California; Employers' Liability Insurance with a limit of not less than \$1,000,000; and, where applicable, insurance in compliance with any other statutory obligations pertaining to the compensation of injured employees.

B. Comprehensive General Liability Insurance with respect to Lessee's use and occupancy of the Premises and all operations incidental thereto, with limits of not less than \$2,000,000 for bodily injury for each occurrence, and \$1,000,000 for property damage for each occurrence. Lessor, its officers, directors, employees and independent contractors shall be named as an additional insured under Lessee's Comprehensive General Liability Insurance.

C. Automobile Liability Insurance on all owned, non-owned, hired, or leased automotive equipment used in connection with Lessee's operations in or associated with the Lease Premises in amounts not less than \$2,000,000 for bodily injury liability and \$1,000,000 for property damage liability.

D. For Lessee's Contractors, if any, Workers' Compensation Insurance, in compliance with the laws of the State of California; Employers' Liability Insurance with a limit

of not less than \$1,000,000; and, where applicable, insurance in compliance with any other statutory obligations pertaining to the compensation of injured employees.

E. For Lessee's Contractors, if any, Comprehensive General Liability Insurance with respect to Contractors' performance of the work and all operations incidental thereto, with limits of not less than \$2,000,000 for bodily injury liability each occurrence and \$1,000,000 for property damage liability each occurrence.

F. For Lessee's Contractors, if any, Automobile Liability Insurance on all owned, non-owned, hired, or leased automotive equipment used in connection with Contractors' operations in amounts not less than \$2,000,000 for bodily injury liability and \$2,000,000 for property damage liability.

G. Lessor shall not have liability to Lessee or to any insurer of Lessee for damage, loss or theft to the materials, records or personal property of Lessee upon the Premises or loss of use of the Premises due to damage. Lessee shall maintain insurance at its cost with a subrogation of rights to make claims against Lessor, its directors, officers, agents and independent contractors for any such claims or damages.

H. Lessor shall maintain Fire and Extended Coverage Insurance for the full insurable value of all buildings, fixtures, equipment, and other personal properties, excepting the equipment, records and personal property of Lessee which are located within or part of the Lease Premises. The insurance policy shall waive claims of or rights of subrogation against Lessor and Lessee. The cost

I. If Lessor or Lessee acting as governmental entities are participants in or maintain a self-insurance plan covering the risks described, the self-insurance plan shall be

deemed to be satisfactory in lieu of direct insurance of the risks described provided the self-insurance plan or deductible retention and coverage plan is participated in by other public agencies and has cash reserves of at least \$25,000,000, and any insurance coverage provided by that self-insurance plan is issued by a carrier licensed to issue that type of insurance in California and has an A.M. Best rating of A or Superior.

As evidence of compliance with the above insurance requirements, Lessee shall submit to Lessor Certificates of Insurance. Such Certificates shall stipulate that the insurance certified to will not be materially changed or cancelled by the insurer or any insured thereunder without thirty (30) days' advance written notice to Lessor. The limits of such insurance shall not limit Lessee's obligation to indemnify Lessor as provided in paragraph 20 above.

22. Repairs: Lessee promises, at Lessee's own cost, to keep said demised Premises which are subject to the exclusive occupancy of Lessee in good and substantial order and repair in all respects, including, but not limited to, floors, doors, the interior surface and supports of the roof, vaults, windows, plumbing, gas, water, and sewer piping, electrical fixtures, piping, interior wire conduits, and all other appurtenances in, on, or connected with and used for the benefit or service of the demised Premises so that at all times said Premises and appurtenances shall be in good order, condition, and repair. As to the areas of non-exclusive use by Lessee, Lessee agrees to repair and correct any damage, unusual wear and tear, or breakage caused by the actions of Lessee, its agents, employees, or independent contractors.

23. Utility Charges and Taxes: Lessee covenants and agrees to pay all utility and municipal service charges levied, taxed, or charged against said Premises during the term of this Lease in the Proportions.

24. Destruction: If the leased Premises shall be damaged by fire, the elements, unavoidable accident, or other casualty, but are not thereby rendered untenable in whole or in part, Lessor shall, at Lessor's own expense, cause such damage to be repaired, and the rent shall not be abated. If by reason of such occurrence the Premises, including the improvements and fixtures installed by Lessor, shall be rendered untenable only in part, Lessor shall, at Lessor's own expense, cause the damage to be repaired, and no credit or reimbursement of rental shall occur to Lessee. If the Premises shall be rendered wholly untenable by reason of such occurrence, and Lessor elects to repair the Lease Premises, Lessor shall at its own expense cause such damage to be repaired. If Lessor so elects to repair the premises and Lessee has prepaid rent, Lessee shall be paid on a per-month basis utilizing the formula and present value calculation contained in Exhibit D for the monthly value of the rent for each month Lessee is dispossessed of the premises in excess of three (3) months due to the destruction or damage. In the alternative, Lessor shall have the right, to be exercised by notice in writing delivered to Lessee within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed Premises, and in such event this Lease and the tenancy hereby created shall cease as of the date of the said occurrence, and any prepaid rent to be adjusted as of such date utilizing the present value and interest rate assumptions contained in Exhibit D.

25. Binding Effect: Under no circumstance will this Lease be binding upon the parties until it has been signed by both parties and signed copies delivered to both parties.

26. ARBITRATION THE PARTIES AGREE THAT IF ANY DISPUTE SHOULD ARISE UNDER THE TERMS AND PROVISIONS OF THIS AGREEMENT, EACH PARTY WAIVES ANY RIGHT TO COMMENCE LEGAL ACTION OR ARBITRATION OTHER THAN AS PROVIDED UNDER THE TERMS OF THIS AGREEMENT, AND THIS AGREEMENT SHALL PROVIDE THE SOLE AND EXCLUSIVE REMEDY FOR RESOLUTION OF DISPUTES.

26.1 THE DETERMINATION OF THE ARBITRATOR WILL BE FINAL AND BINDING UPON EACH PARTY AND EACH PARTY SPECIFICALLY WAIVES ANY RIGHT TO CLAIM THAT THE ARBITRATOR HAS EXCEEDED THE SCOPE OF THE ARBITRATION, HAS DISREGARDED EVIDENCE OR PRINCIPLES OF LAW, AND FURTHER WAIVES ANY RIGHT TO DISCLAIM THE QUALIFICATION OR FUNCTION OF THE ARBITRATOR IN ANY MANNER OR FASHION. 27.2

26.2 APPOINTMENT OF THE ARBITRATOR SHALL BE MADE BY MUTUAL AGREEMENT OF THE PARTIES. IF THE PARTIES CANNOT AGREE UPON THE IDENTIFICATION OF THE ARBITRATOR WITHIN THIRTY (30) DAYS FROM THE MAILING OF THE NOTICE OF OBJECTION OR DISPUTE, A PETITION FOR APPOINTMENT OF ARBITRATOR SHALL BE FILED WITH THE SUPERIOR COURT OF THE COUNTY OF SOLANO.

26.3 THE ARBITRATOR'S FEES AND FEES AND COSTS OF PETITIONING FOR THE APPOINTMENT OF THE ARBITRATOR SHALL BE PAID BY ONE OR BOTH PARTIES TO THE ARBITRATION IN ACCORDANCE WITH THE DETERMINATION OF THE ARBITRATOR AS TO THE FAIR APPORTIONMENT OF SUCH FEES AND COSTS. THE ARBITRATOR UPON RENDERING ITS AWARD SHALL DETERMINE THE PARTY THAT PREVAILED BASED UPON WRITTEN STATEMENTS MADE BY EACH PARTY AT THE COMMENCEMENT OF THE ARBITRATION AS TO THE POSITION OF THE PARTIES AND THEIR ALTERNATIVES FOR SETTLING THE MATTER. A STATEMENT OF A PROPOSED SETTLEMENT SHALL NOT BE BINDING UPON ANY PARTY AND SHALL NOT BE CONSIDERED AS EVIDENCE BY THE ARBITRATOR EXCEPT TO THE EXTENT THAT THE ARBITRATOR UPON MAKING ITS SOLE AND INDEPENDENT DETERMINATION SHALL DETERMINE THE PARTY WHICH PREVAILED BASED UPON THE PROPOSALS FOR SETTLEMENT OF THE MATTER MADE BY EACH PARTY AND SHALL DETERMINE THAT THE NON-PREVAILING PARTY SHALL PAY SOME OR ALL OF THE COSTS OF ARBITRATION INCLUDING ANY COSTS INCURRED BY THE ARBITRATOR AND IN EMPLOYING EXPERTS TO ADVISE THE ARBITRATOR IN REGARD TO SPECIFIC SUBJECTS OR QUESTIONS. THE ARBITRATOR MAY FURTHER AWARD THE COST OF ATTORNEYS' FEES OR EXPERT WITNESSES CONSULTED OR EMPLOYED IN THE PREPARATION OR PRESENTATION OF EVIDENCE TO THE ARBITRATOR BY THE PREVAILING PARTY IF, IN THE ARBITRATOR'S DETERMINATION, THE POSITION OF THE NON-PREVAILING PARTY WAS NOT REASONABLY TAKEN OR MAINTAINED OR WAS BASED UPON A FAILURE TO PROPERLY EXCHANGE OR COMMUNICATE INFORMATION WITH THE PREVAILING PARTY IN REGARD TO THE SUBJECT SUBMITTED TO ARBITRATION.

26.4 THE ARBITRATOR'S DETERMINATION MAY FURTHER PROVIDE FOR PROSPECTIVE ENFORCEMENT AND DIRECTIONS FOR THE PARTIES TO COMPLY WITH. UNDER SUCH CIRCUMSTANCES, THE RULINGS OF THE

ARBITRATOR SHALL BE BINDING UPON THE PARTIES AND SHALL BE UNDERTAKEN AND PERFORMED BY EACH OF THE PARTIES UNTIL (A) SUCH TIME AS THE ARBITRATOR'S DIRECTIONS TO THE PARTY SHALL LAPSE BY THEIR TERMS, (B) THE ARBITRATOR SHALL NOTIFY THE PARTIES THAT THOSE TERMS ARE NO LONGER IN FORCE OR EFFECT, OR (C) THE ARBITRATOR SHALL MODIFY THOSE TERMS.

27. Time is of the Essence. Time is of the essence in the performance of this Agreement and of every term and provision thereof.

28. No Other Terms. There are no other terms, conditions, promises, or warranties either implied or explicit or promises other than are contained within the written terms of this Agreement.

29. Binding Upon Heirs. This Agreement and the obligations and benefits provided herein shall be binding upon the heirs, executors, legal representatives and successors of each of the respective parties hereto.

30. Whole and Entire Agreement. This Agreement contains the entire agreement between the parties. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force or effect. Subsequent modifications to this Agreement shall be in writing and signed by all parties.

31. Specific Performance. The parties agree that there is no adequate monetary remedy available in case of breach or default of obligations under this Agreement. Accordingly, the parties agree that specific performance shall be available to enforce any of the obligations under this Agreement and the defaulting or breaching party agrees to support and not contest any effort to obtain any order of specific performance of these obligations.

32. No Waiver or Disclaimer. A failure to utilize or to enforce any term or provision of this Agreement or any facility described in this Agreement shall not constitute a waiver or disclaimer of any interest or right under the terms of this Agreement.

33. Parties to Act in Good Faith. Each of the parties agrees to act in good faith to implement and to allow for the performance of the obligations and the rights specified herein, and each party agrees not to do any act which would impair or make more difficult or impossible the performance of this Agreement and of every right or term thereof.

34. Assignment. The provisions of this Agreement shall apply to and bind the successors and assigns of the respective parties hereto, but no assignment or transfer of this Agreement or any part thereof or interest therein by any party shall be valid unless and until approved in writing by the other party.

35. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

36. Notices. Mailed notices to either party shall be forwarded to the following address by first-class mail and shall be deemed delivered and received five (5) days following their deposit in the United States mail:

If to Lessor: SOLANO IRRIGATION DISTRICT  
Attn: David Mansfield, Manager  
810 Vaca Valley Pkwy, Suite 201, Vacaville, California 95688  
Telephone/facsimile: (707) 448-6847 / fax (707) 448-7347

If to Lessee: SOLANO COUNTY WATER AGENCY  
Attn: David Okita, General Manager  
810 Vaca Valley Pkwy, Suite 203, Vacaville, California 95688  
Telephone/facsimile: (707) 451-6090 / fax (707) 451-6099

37. Interest. If any delinquency shall occur in any payment owed to a party under the terms of this Agreement, interest shall be payable at the rate of ten percent (10%) per annum by the delinquent party.

38. Recorded Memorandum. A Memorandum of this Lease shall be recorded in the Official Records of the County of Solano.

39. Attorneys Fees. In the event of any controversy, claim, or dispute relating to this Agreement, or the performance, nonperformance or breach of any of the provisions hereof, whether sounding in contract or in tort, in which a lawsuit is filed and/or the services of an attorney, mediator, arbitrator or other expert are reasonably required, the prevailing party shall be fully compensated for the cost of its participation in such proceedings, including, without limitation, reasonable attorneys' fees, costs and accounting, engineering or experts' fees, and any other professional fees resulting therefrom, in addition to all other amounts awarded by the court, arbitrator or mediator.

LESSOR:

SOLANO IRRIGATION DISTRICT:

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

LESSEE:

SOLANO COUNTY WATER AGENCY:

\_\_\_\_\_  
Chairman

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Secretary

EXHIBIT "A"

Description of real property, 1090 Piper Drive, Vacaville, California:

EXHIBIT B

Drawing showing Exclusive Use Area of Lessee  
SCWA Designated Space



EXHIBIT "C"

Improvements to "SCWA Designated Space"

EXHIBIT "C-1"

Plan for improvements and fixtures to SCWA Designated Area Shown on Exhibit C, and  
itemization by category of estimated expense to Lessor

Recorded at the Request of:

WHEN RECORDED MAIL TO:

PAUL R. MINASIAN  
MINASIAN, SPRUANCE,  
MEITH, SOARES & SEXTON, LLP  
POST OFFICE BOX 1679  
OROVILLE, CALIFORNIA 95965

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN:133-210-620

## MEMORANDUM OF LEASE

THIS MEMORANDUM is made and entered into as of \_\_\_\_\_, 2011 by and between SOLANO IRRIGATION DISTRICT, an irrigation district formed and existing under the laws of the State of California, as owner of that real property described in Exhibit "A" attached hereto and incorporated herein as if set forth in full (hereinafter referred to as "Lessor"), and the SOLANO COUNTY WATER AGENCY, a Special Act District under the California Water Code formed and existing under the laws of the State of California (hereinafter referred to as "Lessee").

**WITNESSETH:** That Lessor has granted to Tenant a lease for a term commencing on January 1, 2011, and continuing to and including December 31, 2109, upon the terms and conditions and for the purposes as set forth in that certain unrecorded Lease between the parties hereto. The Lease applies to a portion of the premises described in Exhibit "A" only.

**LESSOR:**

**SOLANO IRRIGATION DISTRICT:**

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

STATE OF CALIFORNIA            )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2011, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
*Notary Public*

STATE OF CALIFORNIA            )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2011, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
*Notary Public*

**LESSEE:**

**SOLANO COUNTY WATER AGENCY:**

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Clerk

STATE OF CALIFORNIA        )  
COUNTY OF \_\_\_\_\_    )

On \_\_\_\_\_, 2011, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
*Notary Public*

STATE OF CALIFORNIA        )  
COUNTY OF \_\_\_\_\_    )

On \_\_\_\_\_, 2011, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
*Notary Public*

**EXHIBIT "A"**

**Legal Description of the Premises  
APN 133-210-620**

# **INFORMATION ITEMS**

**Solano Water Advisory Commission  
Meeting Minutes  
February 23, 2011**

Present: David Okita and Thomas Pate, Solano County Water Agency; Steve Sawyer, Vacaville; Erik Nugteren, Vallejo; Felix Riesenber, Fairfield; Rick Wood, guest.

The meeting was called to order at 12:45 PM. There was no quorum of the Commission.

1. Approval of Minutes

Minutes of January 26, 2011 were deferred for lack of quorum

2. SCWA General Manager's Report

David Okita reported on the status of BDCP. Parties are still negotiating operational constraints on diversion facilities but have narrowed issues down to one major issue. There are still several other hurdles for BDCP even if they resolve these issues.

David reported that Senator Wolk has authored a bill that is meant to provide some assurances for the Delta if a new Delta facility is built. SB 200 is currently in a placeholder format, taking language from the SB 200 from 1980. The bill is expected to be amended. It is unclear whether the Delta Counties Coalition has agreed to sponsor the bill.

David reported that staff will be making a presentation to the SCWA Board at the next meeting regarding risks to the water supply of the Solano Project.

Thomas reported that he expects to soon get a report from DWR on refurbishment of the Barker Slough pumping plant and the installation of the 10<sup>th</sup> pump.

3. PSC/NBA Maintenance Scheduling

No report.

4. Solano Water Authority Report

No report.

5. Emergency Coordination; Energy Curtailment and Power Outage Issues; PSC Impacts

There was no report.

6. Water Conservation and Recycling Program

Members discussed their approach to meeting the 20% conservation requirement of the new law.

7. Legislative/Initiative/Court Decision Issues Not Discussed Above

Area of Origin lawsuit Trail Setting Conference date is being established.

8. New Business

No new business.

9. Public Comments

There were no public comments.

The next meeting is scheduled for March 23, 2011 at the new SCWA/SID office.

The meeting adjourned at 2:00 PM.