



SPECIAL

BOARD OF DIRECTORS MEETING

May 4, 2017

6:00 p.m.

**City of Ontario – Council Chambers
303 E. "B" Street, Ontario, CA**

SPECIAL BOARD MEETING OF THE BOARD OF DIRECTORS CHINO BASIN DESALTER AUTHORITY

May 4, 2017
6:00 p.m.

Council Chambers, of the City of Ontario
303 E. "B" Street, Ontario, CA

*All documents available for public review are on file with the Authority's secretary located at
2151 S. Haven Avenue, Suite 202, Ontario, CA 91761.*

AGENDA

Call to Order

Flag Salute

Public Comment: Members of the public may address the Board at this time on any non-agenda matter. *Please complete a Comment Card and give it to the Secretary. Comments are limited to three (3) minutes per individual. State your name and address for the record before making your presentation. This request is optional, but very helpful for the follow-up process.*

Under the provisions of the Brown Act, the CDA Board is prohibited from taking action on oral requests. However, Board Members may respond briefly or refer the communication to staff. The CDA Board may also request the Secretary to calendar an item related to your communication at a future CDA Board meeting.

ACTION ITEMS

Prior to action of the CDA Board, any member of the audience will have the opportunity to address the CDA Board on any item listed on the agenda, including those on any consent calendar. Please submit a comment card to the secretary with the agenda item number noted.

- 1. MINUTES OF APRIL 6, 2017 REGULAR BOARD MEETING**
- 2. PHASE 3 EXPANSION: CLARIFIER SOLIDS TRANSPORT AND MANAGEMENT AGREEMENT FOR NURSERY PRODUCTS, INC.**
Report by: Cindy Miller, Phase 3 Expansion Program Manager

Staff Recommendation:

1. Approve a contract award to Nursery Products, Inc. for transport and disposal of clarifier solids at the rate of \$61.00 per wet ton.
2. Authorize the General Manager/CEO to finalize and execute the agreement.

3. RECONCILIATION OF THE ALLOCATION OF COSTS FOR FISCAL YEAR 2015/16
Report by: Jose Garcia, CDA Principal Accountant

Staff Recommendation:

1. Approve the reconciliation of the allocation of costs for fiscal year 2015/16 per the attached Exhibit A;
2. Approve the refund of the overpayment to each member Agency except Western MWD:

Staff Comments:

- (i) Deputy CDA General Counsel, Allison Burns
- (ii) CDA CFO/Treasurer, Michael Chung
- (iii) CDA General Manager/CEO, Curtis Paxton

CLOSED SESSION

The Authority may adjourn to a Closed Session to consider litigation matters, personnel matters, or other matters as provided for in the Ralph M. Brown Act (Section 54950 et seq., of the Government Code).

**4. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:
SIGNIFICANT EXPOSURE TO LITIGATION PURSUANT TO GOVERNMENT CODE
SECTION 54956.9(D)(2)**

(TWO POTENTIAL CASES)

**5. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:
CONSIDERATION OF INITIATION OF LITIGATION PURSUANT TO GOVERNMENT
CODE SECTION 54956.9(D)(4)**

(ONE POTENTIAL CASE)

**6. CONFERENCE WITH LEGAL COUNSEL – GOVERNMENT CODE SECTION
54956.9(D)(1) EXISTING LITIGATION: VIDO ARTUKOVICH AND SON V. CHINO
BASIN DESALTER AUTHORITY, SAN BERNARDINO COUNTY SUPERIOR
COURT CASE NO. CIVDS1621162**

Directors Comments:

ADJOURNMENT – To the Special Meeting on June 1, 2017

Declaration of Posting

I, Casey Costa, Executive Assistant to the Chino Basin Desalter Authority, hereby certifies that a copy of this agenda has been posted by 6:00 p.m. at 2151 S. Haven Avenue, Ontario, CA on Monday, May 1, 2017.

Casey Costa
Executive Assistant



Board of Directors Meeting

Agenda Item

No. 1

REGULAR MEETING OF THE
BOARD OF DIRECTORS OF THE
CHINO BASIN DESALTER AUTHORITY

MINUTES
April 6, 2017

The Regular Meeting of the Board of Directors of the Chino Basin Desalter Authority was held at the City of Ontario, 303 E. "B" Street, Ontario, CA, on the above date. The meeting was called to order at 6:00 p.m. by Peter Rogers, City of Chino Hills.

Directors Present:

Peter Rogers, City of Chino Hills, Chair
Greg Newton, City of Norco, Vice Chair
S.R. "Al" Lopez, Western Municipal Water District, Secretary
Tom Haughey, City of Chino
Jim Bowman, City of Ontario
Steven Elie, Inland Empire Utilities Agency
Betty Anderson, Jurupa Community Services District
J. Arnold Rodriguez, Santa Ana River Water Company, Vice Chair

Directors Absent:

None

Others Present:

Curtis Paxton, CDA General Manager/CEO
Allison Burns, CDA Deputy General Counsel
Todd Minten, CDA Operations Manager
Jose Garcia, CDA Principal Accountant
Casey Costa, CDA Executive Assistant
Dave Crosley, City of Chino
Tom O'Neill, City of Ontario
Ben Armel, Jurupa Community Services District
Robert Tock, Jurupa Community Services District
Derek Kawaii, Western Municipal Water District
Joseph Blum, Butier Engineering, Inc.
Cindy Miller, Phase 3 Program Manager/South Archibald Plume Program Manager

SWEARING IN OF NEW BOARD MEMBER

The Oath of Office was administered to Steven Elie/Inland Empire Utilities Agency

FLAG SALUTE

The Pledge of Allegiance was led by Director Elie/Inland Empire Utilities Agency

PUBLIC COMMENT ON NON-AGENDA ITEMS

There were no comments oral or written from the public.

CONSENT CALENDAR ITEMS

Consent Calendar items are expected to be routine and non-controversial to be acted upon by the Board at one time without discussion. If any Board member, staff member, or interested person requests that an item be removed from the Consent Calendar, it will be moved to the first item on the Action Items.

1. **MINUTES OF MARCH 2, 2017 SPECIAL BOARD MEETING**
2. **TREASURER'S FINANCIAL AFFAIRS REPORT FOR QUARTER ENDED DECEMBER 2016**
Report by: Michael Chung, CDA CFO/Treasurer
3. **TREASURER'S REPORT ON GENERAL DISBURSEMENTS FOR THE QUARTER ENDED DECEMBER 2016**
Report by: Michael Chung, CDA CFO/Treasurer
4. **BUDGET VARIANCE FOR THE QUARTER ENDED DECEMBER 2016**
Report by: Michael Chung, CDA CFO/Treasurer
5. **INVESTMENT REPORT FOR THE QUARTER ENDED DECEMBER 2016**
Report by: Michael Chung, CDA CFO/Treasurer

Motion: *It was moved by Director Newton/Norco and seconded by Director Bowman/Ontario to approve Consent Items 1-5.*

Motion carried:

Ayes: T. Haughey/Chino, P. Rogers/Chino Hills, G. Newton/Norco, J. Bowman/Ontario, B. Anderson/JCSD, J.A. Rodriguez/SARWC, S.R. Lopez/WMWD

Noes: None

Absent: None

Abstained: None

ACTION ITEMS

6. **PHASE 3 EXPANSION: AMENDMENT NO. 5 TO BUTIER ENGINEERING'S CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES CONTRACT FOR THE PHASE 3 EXPANSION PROJECT, CONCENTRATE REDUCTION FACILITY**
Report by: Cindy Miller, Phase 3 Expansion Program Manager

Staff Recommendation:

1. Approve Amendment #5 to the Construction Management, Surveying and Material Testing master services contract with Butier Engineering in the not-to-exceed amount of \$179,805.

2. Authorize the General Manager/CEO to execute Amendment #5 in the amount of \$179,805 and approve authorized expenditures up to a not-to-exceed total of \$10,226,088.

Program Manager Miller reviewed staff's recommendation to approve an amendment to the Construction Management and Inspection Services Contract with Butier Engineering to continue to oversee construction and assist with the Concentrate Reduction Facility 7-day performance testing, through the completion date of April 30, 2017. A budget for support through June 2017 has also been included, to defend a potential delay claim by the Contractor, that would be utilized only if needed.

Director Newton/Norco questioned the causes of the deficiencies that were discovered during the testing of components prior to start of the 7-day performance testing of the Concentrate Reduction Facility. Program Manager Miller answered that items may be due to design or construction issues, but have yet to be determined and are being worked through to find a resolution.

Motion: *It was moved by Director Haughey/Chino and seconded by Director Anderson/JCSD to approve Action Item 6.*

Motion carried:

Ayes: *T. Haughey/Chino, P. Rogers/Chino Hills, G. Newton/Norco, J. Bowman/Ontario, B. Anderson/JCSD, J.A. Rodriguez/SARWC, S.R. Lopez/MMWD*

Noes: *None*

Absent: *None*

Abstained: *None*

INFORMATION ITEMS

Information items are non-action items presented to the Board for their information.

7. QUARTERLY DESALTER EXPANSION REPORT Report By: Cindy Miller, Phase 3 Expansion Program Manager

Program Manager Miller presented the Chino Desalter Phase 3 Expansion Report. She reported on projects in construction - Concentrate Reduction Facility, Chino I & II Intertie Pipeline Project, equipping of Wells II-10 and II-11, Chino I Desalter Reliability Project, and Chino II Pre-Engineered Metal Storage Building which is running ahead of schedule and should be completed by the end of the month. There is one project in design, the Santa Ana River Crossing HDD Design.

She reviewed activities scheduled for the next three months, which includes start-up and close out of construction contracts for the Concentrate Reduction Facility and Chino I Desalter Reliability Project, Chino I/II Raw Intertie, Pre-Engineered Metal Storage Building and equipping of Wells II-10 and II-11. Design activities will continue for the

Santa Ana River HDD Crossing, including the geotechnical investigation, pilot bore and final design completion.

She reported on total project cost estimate of \$149.5 million and grant funding totaling \$76.9 million, for a net Capital Cost of \$72.6 million. She noted that a grant proposal to U.S. Bureau of Reclamation in the amount of \$5.25 Million has been submitted and reported that she received confirmation today that the State Water Resources Control Board Prop 50 grant in the amount of \$1.8 million has approved the grant. There were no questions or comments.

8. QUARTERLY SOUTH ARCHIBALD PLUME REPORT
Report By: Cindy Miller, South Archibald Plume Program Manager

Program Manager Miller reviewed the project. The Regional Water Quality Control Board approved the Cleanup and Abatement Order (CAO) for the project on September 23, 2016 and CDA received authorization from IEUA and RP-1 parties to fund the design and construction services. Deposits from IEUA total \$8.68 million; expenses through March total \$160,424. Anticipated project completion is anticipated to be July 2019, in accordance with CAO deadlines.

She reported on activities for the next three months, which include the alignment study, which Webb Associates has substantially completed, Well II-12 property acquisition and the Raw Water Pipeline Construction. She reviewed the total project cost estimate of \$22.59 million, with estimated costs to the RP-1 parties of \$18.20 million, The difference between the two figures represents facilities that are part of the original Expansion Project. She reported grant funding is currently \$10.18 million. Director Haughey/Chino questioned how far north proposed Well II-12 will be moved from the original location. Program Manager Miller replied that it will be moved approximately 3,000 feet to one mile away and explained that the plume was not taken into consideration when the original location was determined. There were no further questions or comments.

9. QUARTERLY OPERATIONS REPORT
Report By: Todd Minten, Operations Manager

Operations Manager Minten presented the Quarterly Operations Report for the period December 2017 through February 2017. He reported on the status of water deliveries to member agencies through February 2017, at 102.8% of entitlement deliveries, with anticipation of 100% of entitlement delivered at fiscal year-end.

He reported that water quality goals have been met, and reported on desalter production, brine line discharge, and scheduled and unscheduled production interruptions. He reported that the pump for Well I-6 is being rebuilt and well will be rehabilitated in April. All other wells are operational. There were no comments or questions.

Staff Comments:

- (i) CDA Deputy General Counsel Allison Burns had no comments.
- (ii) CDA CFO/Treasurer, Michael Chung was not present

- (iii) CDA General Manager/CEO, Curtis Paxton had no comments.

CLOSED SESSION

The Authority may adjourn to a Closed Session to consider litigation matters, personnel matters, or other matters as provided for in the Ralph M. Brown Act (Section 54950 et seq., of the Government Code).

**10. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:
SIGNIFICANT EXPOSURE TO LITIGATION PURSUANT TO GOVERNMENT CODE
SECTION 54956.9(D)(2)**

(TWO POTENTIAL CASES)

**11. CONFERENCE WITH LEGAL COUNSEL – GOVERNMENT CODE SECTION
54956.9(D)(1) EXISTING LITIGATION: VIDO ARTUKOVICH AND SON V. CHINO
BASIN DESALTER AUTHORITY, SAN BERNARDINO COUNTY SUPERIOR COURT
CASE NO. CIVDS1621162**

The Board recessed into Closed Session at 6:28 p.m. and reconvened at 6:40 p.m.

Deputy General Counsel Burns reported that the Board gave direction to staff and legal counsel. There was no reportable action.

DIRECTOR COMMENTS

ADJOURNMENT – There being no further business to come before the Board, the meeting was adjourned at 6:40 p.m.

Secretary of the Board of Directors
/cc



Board of Directors Meeting

Agenda Item

No. 2



SUBJECT: CLARIFIER SOLIDS TRANSPORT AND MANAGEMENT AGREEMENT FOR NURSERY PRODUCTS, INC.

RECOMMENDATION:

Staff recommends that the Board:

- 1. Approve a contract award to Nursery Products, Inc. for transport and disposal of clarifier solids at the rate of \$61.00 per wet ton.
2. Authorize the General Manager/CEO to finalize and execute the agreement.

BACKGROUND:

Nursery Products has been providing transport and management services of the CRF clarifier solids under a temporary purchase order agreement during start-up procedures at the Concentrate Reduction Facility. The proposed agreement shall provide for a 3-year period of ongoing transportation, loading, sampling, composting, land applying, land filling, or any other legal and approved method of managing Clarifier Solids generated from the treatment of reverse osmosis concentrate generated at the CRF. "Clarifier Solids" are settled solids from the pellet softening/clarifier process which (i) contain 14-30% total solids, (ii) meet Table 3 pollutant concentrations required under 40 CFR part 503, (iii) do not constitute a hazardous waste under applicable laws, (iv) do not contain polychlorinated biphenyls in amounts equal to or greater than 50 mg per kg on a dry weight basis, and (v) do not contain any radioactive isotopes in amounts that are regulated under applicable law. Nursery Products shall comply with all applicable laws and shall maintain insurance as necessary to perform these services.

Services shall be provided for a per ton fee as calculated below:

- 1. The Price Per Ton is \$61.00 per wet ton.
a. The Price Per Ton is calculated by combining the Gate Rate of [\$36.00] and the Transportation Rate of [\$25.00].
b. The CPI Adjustment Formula for the Price Per Ton is:
New Price = (Price Adjustment) x (First Year Contract Price)
Price Adjustment = 1 + ((Current CPI-Base CPI)/(Base CPI))
Base CPI = CPI for 2017

Once the CPI is available, the unit price adjustment shall take effect retroactively, where applicable, as of the dates specified above for price adjustments.

Based upon the foregoing, it is recommended that the Board authorize an agreement with Nursery Products at the rate of \$61.00 per wet ton.

This item was reviewed/approved by the Sponsor Group on March 28, 2017, the Technical Advisory Committee on April 11, 2017, and the Finance Committee on April 20, 2017

IMPACT ON BUDGET:

Total project costs for transportation and management of clarifier solids will be assessed at the completion of start-up, when the rate of solids volume production can be accurately determined.

Prepared by: Curtis D. Paxton, CDA General Manager/CEO

Page 2 of 2

Board of Directors: Approved Continued Denied

CDA GM/CEO Acknowledgement: _____ **Date:** _____

**CONTRACT SERVICES AGREEMENT
FOR THE TRANSPORTATION AND BENEFICIAL REUSE OR DISPOSAL OF
CLARIFIER SOLIDS**

This Contract Services Agreement ("Agreement") is made and entered into by and between Chino Basin Desalter Authority ("CDA") and Nursery Products, LLC ("Nursery Products"), which are at times referred to herein collectively as the "Parties" and individually as a "Party". This Agreement is dated for reference purposes as of _____, 2017.

RECITALS

- A. CDA is a generator of Clarifier Solids from the treatment of reverse osmosis concentrate generated from ground water source water at the Chino II Desalter facility located at 11202 Harrel Street in Mira Loma, California.
- B. For purposes of this Agreement, the term "Clarifier Solids" shall mean settled solids from the pellet softening/clarifier process which (i) contain 14-60 % total solids, (ii) meet Table 3 pollutant concentrations required under 40 CFR part 503, (iii) do not constitute a hazardous waste under applicable laws, (iv) do not contain polychlorinated biphenyls in amounts equal to or greater than 50 mg per kg on a dry weight basis, and (v) do not contain any radioactive isotopes in amounts that are regulated under applicable law.
- C. Nursery Products provides services for the transportation and processing of Clarifier Solids, including, but not limited to, loading, transportation, recycling, reuse, and/or disposal thereof, and further described in **Appendix A** (the "Services").
- D. CDA desires to secure the Services from Nursery Products on the terms and conditions set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. **Term.** This Agreement shall have an initial term of three (3) years (the "Initial Term"). At the end of the Initial Term, this Agreement may be renewed for additional terms as mutually agreed in writing by both Parties ("Renewal Term(s)"). Subject to any amendments made in accordance with the provisions of this Agreement, all of the terms and conditions set forth herein shall apply during the Initial Term and any Renewal Term(s). **Both Parties have the right to terminate this Agreement for any reason with 45 days written notice.**
- 2. **Nursery Products' Services.** Nursery Products shall provide the Services for any and all of CDA's Clarifier Solids. The beneficial reuse, recycling and/or disposal of the Clarifier Solids shall be conducted at the Hawes Composting Facility. Nursery Products shall provide CDA with an invoice for the Services rendered every two weeks.

3. **Nursery Products' Compliance.** Nursery Products shall comply with all applicable laws, including, but not limited to, the following laws and best management practices:
- a. Process the Clarifier Solids to Class A standards under 40 CFR, Part 503. All land application of CDA's Clarifier Solids shall comply with 40 CFR Part 503, as well as all state and local regulations in existence from time to time.
 - b. Maintain at all times during the term of this Agreement such permits, approvals, and agreements in accordance with all applicable laws, necessary to utilize the designated site(s) for the processing, reuse and/or disposal of Clarifier Solids.
 - c. Comply with applicable laws in connection with the hauling, treatment, marketing and/or disposal of the Clarifier Solids and otherwise in connection with each and every obligation imposed on Nursery Products by this Agreement.
 - d. Provide, at its sole cost and expense, all labor and materials, proper supervision to its employees, insurance, tools, equipment, licenses, taxes, transportation, surveys, testing, field engineering, other professional services and any other items which may be required or deemed necessary by Nursery Products to perform its obligations hereunder in a diligent and efficient manner using workmanlike and professional skill and attention.
 - e. Provide reports to CDA within fifteen (15) calendar days from the end of the month and on an annual, cumulative basis. Reports shall comply with all legal requirements, including, CDA's National Pollutant Discharge Elimination System ("NPDES") Permit and shall include information regarding, but not limited to:
 - i. Number of loads transported, wet tons hauled, and destination.
 - ii. Such other information as will reasonably allow CDA and Nursery Products to fulfill their respective recordkeeping and reporting requirements under applicable legal requirements, including any reports furnished by Nursery Productions to federal, state, local, or Native American regulatory and/or governing agencies.
 - iii. Nursery Products warrants and represents that it has the current version of CDA's NPDES Permit, and that it knows the contents thereof, and CDA will supply and Nursery Products will review any amendments or successors thereto.

4. **Nursery Products' Insurance.** Nursery Products shall obtain and maintain during the life of this Agreement, at its sole expense, the following liability insurance coverage with the corresponding minimum limits:

General Liability	\$2,000,000 each occurrence
Automobile Liability	\$1,000,000 each occurrence
Bodily Injury	\$1,000,000 each person
Property Damage	\$1,000,000 each occurrence
Employer's Liability	\$1,000,000 each occurrence
Pollution Legal Liability Policy	\$2,500,000 each occurrence

- a. The General Liability policy shall include coverage for Completed Operations and Contractual Liability.
 - a. Nursery Products shall demonstrate to CDA that it carries Workers Compensation Insurance in accordance with legal requirements.
 - b. Each insurance policy above shall name CDA as an additional insured and expressly provide that it shall be primary and noncontributory with any of CDA's insurance policies.
 - c. All liability insurance policies shall bear an endorsement or shall have an attached rider whereby it is provided that it shall not be cancelled or amended without thirty {30} calendar days prior written notice to CDA by certified mail with return receipt requested.
 - d. Coverage shall be by an insurer admitted in California which has at least an "A" Policy Holder's Rating in accordance with the current A.M. Best's Key Rating Guide.
 - e. Nursery Products shall provide CDA with evidence of coverage upon request by CDA.
 - f. All insurance required under this Agreement shall be in addition to Nursery Product's obligation to indemnify and hold harmless CDA.
5. **CDA Payment.** CDA shall pay Nursery Products for the Services at the annual price per ton designated in **Appendix B** hereto (the "Price Per Ton"), as such attachment may be amended from time to time. CDA shall make payment within forty-five (45) calendar days of receiving an invoice from Nursery Products.
6. **Price Amendments.**
- a. Changes in Law. If the costs incurred by Nursery Products to provide the Services increase by more than ten {10%} percent as a result of a change in law, Nursery Products shall have the right to reasonably and in good faith petition CDA to raise the Price Per Ton within thirty (30) calendar days of the price change becoming known to Nursery Products. If the Parties are unable to agree on the additional cost to be paid by CDA within fifteen (15) calendar days of receipt of the petition by the respondent Party, the Parties shall proceed with dispute resolution pursuant to Section 11 below.
 - b. Fuel and Utility Price Adjustments. If the costs incurred by Nursery Products for (i) diesel or other fuel used in transportation of the Clarifier Solids to the Hawes Composting Facility or (ii) any other utility such as electricity, water, and sewer charges increase or decrease by more than 10 percent (10%), each Party shall have the right to reasonably and in good faith petition the other within thirty (30) calendar days of the price change becoming known to the petitioning Party to adjust the Price Per Ton upward or downward as applicable. Any agreement to such an increase in cost will be made at the discretion of the CDA's Board of Directors and any agreement to a decrease in cost will be made at the discretion of Nursery Products' President. The baseline for increases shall be \$3.00/gallon for fuel and \$0.115/kW for electricity.
 - c. CPI Adjustments. The Price Per Ton shall be subject to adjustment based on the Consumer Price Index established by the United States Department of Commerce, Bureau of Labor Statistics, for the Riverside County region ("CPI") with the CPI for

January, 2017 being the base index. Beginning on the one year anniversary of the opening date of the Hawes Composting Facility and again on each anniversary of such date thereafter, the Price Per Ton shall be adjusted using the CPI formula set forth in **Appendix B**.

7. **Indemnification and Defense.** Each Party shall indemnify and hold harmless the other and the other's officers, directors, employees and agents against any and all claims, liability, loss, damages, causes of action (whether legal, equitable or administrative) and costs for defense and investigation thereof, including, but not limited to, reasonable fees attorneys' fees, court costs and expert fees, sustained or incurred as a proximate result of the acts or omissions of the indemnifying Party in the course of performing this Agreement, provided, however, that upon the filing of any claim or complaint with the indemnified Party, the indemnifying Party shall have the right to settle, compromise, or defend the same. Each Party's indemnification obligations under this section are conditioned upon the indemnified Party: (i) promptly notifying the indemnifying Party of any claim in writing; (ii) cooperating with the indemnifying Party in the defense of the claim; and (iii) granting the indemnifying Party sole control of the defense or settlement of the claim.

8. **Force Majeure.** Neither Party shall be liable to the other hereto or deemed in breach or default hereunder if and to the extent its performance hereunder is prevented by reason of force majeure, which term means an occurrence that is beyond the control of the Party and could not have been avoided by exercising due care ("Force Majeure Event"). A Force Majeure Event shall include, but not be limited to, acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics or other similar occurrences.
 - a. The Party prevented from carrying out its obligations hereunder shall (i) give notice to the other Party of the Force Majeure Event immediately upon it being foreseen by, or becoming known to, the affected Party and (ii) endeavor to continue to perform its obligations under the Agreement so far as reasonably practicable.
 - b. If the Force Majeure Event exists for thirty (30) calendar days or more, the President of Nursery and the General Manager/CEO of CDA shall meet face-to-face or over the phone to attempt to resolve the matter and carryout the intent of this Agreement. If no resolution is agreed to during the foregoing meeting, either Party may terminate this agreement thirty (30) calendar days after the meeting by giving notice in writing in accordance with Section 12. Said notice shall be effective 24 hours after receipt.

9. **Default.** CDA shall have the right to suspend shipments of Clarifier Solids upon ten (10) business days' notice to Nursery Products, and may terminate this Agreement if any material breach by Nursery Products remains uncured for a period of thirty (30) calendar days after written notice to Nursery Products, served in accordance with Section 12, specifying the nature of such breach. Should Nursery Products fail to cure its default with in thirty (30) calendar days after receipt of said written notice, or such longer time as may be reasonably allowed, CDA may declare this Agreement terminated.

10. **Dispute Resolution.** Within thirty (30) calendar days of the identification of any dispute arising out of this Agreement, the Parties shall attempt in good faith to resolve the dispute by having the President of Nursery and the General Manager/CEO of CDA shall meet face-to-face or over the phone to attempt to resolve the dispute ("Dispute Meeting"). If practical, the Parties shall continue services and payments required by this Agreement during the period of dispute negotiations. If no resolution arises from the foregoing meeting, such dispute may, if the Parties mutually agree to arbitrate, be settled by binding arbitration conducted in Riverside, California and administered by JAMS. If the Parties do not mutually agree to binding arbitration within fifteen (15) calendar days of the Dispute Meeting, either Party may pursue all remedies available to it under law, including, but not limited to, filing an action in the Superior Court of Riverside County.

11. **Notice.** Any legal notice, payment, or instrument required or permitted to be given hereunder shall be deemed received upon signed receipt personal delivery or seventy two (72) hours after deposit in any United States Post Office, registered or certified, postage prepaid and addressed to the Party for whom intended, as follows:

To CDA: Curtis Paxton, General Manager/CEO
Chino Basin Desalter Authority
2151 South Haven Avenue, Suite 202
Ontario, CA 91761

To Nursery Synagro Technologies, Inc.
Products: 435 Williams Court
Baltimore, Maryland USA 21220
Attn: General
Counsel f ax:
443.489.9148

12. **Entire Agreement.** This agreement represents the entire understanding between the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder.

13. **Modification; Waiver.** This Agreement may not be altered, amended or modified in any respect except by writing duly executed by the Party to be charged. No waiver shall be deemed given unless in writing, and one waiver shall not constitute a subsequent waiver.

14. **Litigation Costs.** In any action between the Parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing Party in such an action shall be entitled, in addition to damages, injunctive relief, or any other relief to which it might be entitled, reasonable costs and expenses including, but not limited to, litigation costs, reasonable attorneys' fees, expert fees, and court costs.

15. **Governing Law.** The provisions of this Agreement shall be interpreted and enforced in accordance with the laws of the State of California. Any action arising from this Agreement shall be brought in a state or federal court in the County of Riverside, State of California.
16. **Non-Assignability.** The Parties shall not assign, transfer, or convey their rights under this Agreement.
17. **Authority to Execute.** Each of the persons signing below on behalf of a Party specifically represents and acknowledges that he or she has been authorized to do so by the Party on whose behalf he or she has executed this Agreement.
18. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original and together constitute the same agreement, whether each Party executes a separate counterpart.
19. **Effective Date.** This Agreement shall be effective for all purposes immediately upon the execution hereof by all Parties, and the effective date shall be the date of the last signature hereon.

[Signature Line On Following Page]

IN WITNESS WHEREOF, this agreement has been executed in the name of Nursery Products and CDA, by agents duly authorized, effective as of the day and year of the last signature hereto.

CHINO BASIN DESALTER AUTHORITY

By: _____

Title: _____

Dated: _____

NURSERY PRODUCTS . LLC

By: _____

Title: _____

Dated: _____

ATTEST

By: _____

Title: _____

APPROVED AS TO FORM

STRADLING YOCCA CARLSON & RAUTH

Allison E. Burns, General Counsel

Appendix A

Services

Nursery Products shall provide transportation, loading, sampling, composting, land applying, land filling, or any other legal and approved method of managing Clarifier Solids for either a per ton fee, flat fee, or any other agreed upon method of determining fees.

Appendix B
Price Per Ton

1. The **Price Per Ton** is \$61.00 per wet ton.
 - a. The Price Per Ton is calculated by combining the Gate Rate of [\$36.00] and the Transportation Rate of [\$25.00].
 - b. The CPI Adjustment Formula for the Price Per Ton is:
New Price = (Price Adjustment) x (First Year Contract Price)
Price Adjustment = $1 + ((\text{Current CPI} - \text{Base CPI}) / (\text{Base CPI}))$
Base CPI = CPI for 2017
Once the CPI is available, the unit price adjustment shall take effect retroactively, where applicable, as of the dates specified above for price adjustments.



Board of Directors Meeting

Agenda Item

No. 3



SUBJECT: RECONCILIATION OF THE ALLOCATION OF COSTS FOR FISCAL YEAR 2015/16

RECOMMENDATION:

Staff recommends that the Board:

1. Approve the reconciliation of the allocation of costs for fiscal year 2015/16 per the attached Exhibit A;
2. Approve the refund of the overpayment to each member Agency except Western MWD:

BACKGROUND:

Per the CDA Water Purchase Agreement, each year after the fiscal year ends, the CDA is to perform a reconciliation of the following cost components, namely: 1) Fixed Project Costs; 2) Fixed Operations and Maintenance (O&M) Costs; 3) Variable O&M Costs; and 4) Administration Costs.

ISSUES AND ANALYSIS:

The FY2015/16 budget was prepared using the expected delivery of 30,000 acre feet (af) of water among the CDA member agencies. The budgeted 30,000 af included 5,400 af from the Chino 2 Expansion Project. The actual quantity of water delivered was 25,597.2 af and there was no production coming from the Expansion Phase.

The audited FY2015/16 fixed project costs came to \$10,857,039, while the audited fixed and variable O&M costs totaled \$4,882,673 and \$6,472,381, respectively. The audited administration costs were \$1,021,185. The combined total audited costs for the fiscal year was \$23,233,278 against a total received assessments of \$27,442,108, resulting in an overpayment of \$4,208,830. The total overpayment included a \$448,057 amount pertaining to Western MWD, for which CDA has completed a separate reconciliation of costs as result of no delivered water to Western for the entire FY2015/16. The agreed upon reconciliation with Western has been reviewed and approved by the Technical Advisory Committee.

This recommendation was reviewed and approved by the TAC on March 28, 2017 and the Finance Committee on April 20, 2017.

IMPACT ON BUDGET:

The refunding of the overpayment would reduce the Authority’s reserve balance.

Prepared by: Jose Garcia, CDA Principal Accountant

Board of Directors: Approved Continued Denied

CDA GM/CEO Acknowledgement: _____ **Date:** _____

EXHIBIT A

Project Participant	Project Allotment Prior to Initial Delivery of Expansion Project Water (Acre Feet)	%	Project Allotment After Initial Delivery of Expansion Project Water (Acre Feet)	%
City of Chino	5,000	20.3%	5,000	14.205%
City of Chino Hills	4,200	17.1%	4,200	11.932%
City of Norco	1,000	4.1%	1,000	2.841%
City of Ontario	5,000	20.3%	8,533	24.241%
JCSD	8,200	33.3%	11,733	33.332%
SARWC	1,200	4.9%	1,200	3.409%
Western MWD	-	0.0%	3,534	10.040%
	24,600	100.0%	35,200	100.000%

Source: Exhibit A - current Water Purchase Agreement

CHINO BASIN DESALTER AUTHORITY
Reconciliation of Allocated Costs
Fiscal Year 2015/16

	Entitlement PER WPA	Entitlem %	Budgeted Commitment	Allocation %	Actual Water Delivered	%	(a) Administration Cost \$	(b) Fixed Project Cost - Debt Service	(d) Fixed Project Cost - Capital	(f) Chino I Reliability Project	(g) Fixed O&M Cost \$	(j) Variable Cost \$	(h) Allocation per Actual Exp	Total Per Budget	(i) Amount Collected by CDA	(h) - (i) Shortage/(over)
JCSD	11,733.0	33.3%	10,000.0	33.3%	8,183.9	33.3%	340,381	2,424,737	406,513	1,225,142	1,627,558	2,153,469	8,177,800	10,097,716	9,826,442	(1,648,642)
Chino	5,000.0	14.2%	5,000.0	16.7%	4,999.9	20.3%	145,059	1,548,972	247,740	472,059	992,413	1,315,648	4,721,891	5,332,563	5,056,413	(334,522)
Ontario	8,533.0	24.2%	6,800.0	22.7%	5,000.0	20.3%	247,545	-	247,740	924,630	992,413	1,315,674	3,728,003	5,177,533	5,084,599	(1,356,596)
Chino Hills	4,200.0	11.9%	4,200.0	14.0%	4,200.8	17.1%	121,848	1,298,753	208,687	394,537	833,627	1,105,377	3,962,829	4,479,876	4,245,918	(283,089)
Santa Ana River Water Co	1,200.0	3.4%	1,200.0	4.0%	1,200.0	4.9%	34,812	375,328	59,677	112,419	238,179	315,762	1,136,177	1,277,067	1,209,916	(73,739)
Norco	1,000.0	2.8%	1,000.0	3.3%	1,012.6	4.1%	29,012	309,794	50,036	94,749	198,483	266,450	948,524	1,067,604	1,012,711	(64,186)
Western MWD (x)	3,534.0	10.0%	1,800.0	6.0%	-	0.0%	102,527	-	-	455,526	-	-	558,053	1,370,523	1,006,110	(448,057)
Total	35,200.0	100.0%	30,000.0	100.0%	24,597.2	100.0%	1,021,185	5,957,584	1,220,393	3,679,062	4,882,673	6,472,381	23,233,278	28,802,882	27,442,108	(4,208,830)
Actual Expenses											4,882,673	6,472,381	12,376,239			
											0.43	0.57				

(a) Administration Cost - based on Entitlement

	Entitlem Per WPA	Entitlem %	Allocated Admin Costs
JCSD	11,733	33.332%	340,381
Chino	5,000	14.205%	145,059
Ontario (a)	8,533	24.241%	247,545
Chino Hills	4,200	11.932%	121,848
Santa Ana	1,200	3.409%	34,812
Norco	1,000	2.841%	29,012
WMWD	3,534	10.040%	102,527
Total	35,200	100.000%	1,021,185

(b) Fixed Project Cost - debt service - based on debt service schedule

	Debt Obligation %	Debt Service 2008 Bonds
JCSD	40.7%	2,421,986
Chino	26.0%	1,547,215
Ontario (a)	0.0%	0
Chino Hills	21.8%	1,297,280
Santa Ana	6.3%	374,902
Norco	5.2%	309,443
WMWD	0.0%	-
Total	100.0%	5,950,825

(d) Fixed Project Cost - capital based on Original Entitlement excluding WMWD

	Allocated Other Expenses	Actual Fixed Proj Cost Debt-related	Entitlement %	Adopted Fixed Proj Cost	Allocation Cost
JCSD	2,751	2,424,737	33.3%	406,513	406,513
Chino	1,757	1,548,972	20.3%	247,740	247,740
Ontario	0	0	20.3%	247,740	247,740
Chino Hills	1,473	1,298,753	17.1%	208,687	208,687
Santa Ana	426	375,328	4.9%	59,677	59,677
Norco	351	309,794	4.1%	50,036	50,036
WMWD	-	-	0.0%	-	-
Total	6,759	5,957,584	100.0%	1,220,393	1,220,393

(g) Fixed O&M - based on WPA excluding WMWD + Phase 3

	Entitlem Per WPA	Fixed O&M %	Allocated Fixed O&M Expenses
JCSD	8,200	33.3%	1,627,558
Chino	5,000	20.3%	992,413
Ontario (a)	5,000	20.3%	992,413
Chino Hills	4,200	17.1%	833,627
Santa Ana	1,200	4.9%	238,179
Norco	1,000	4.1%	198,483
WMWD	-	0.0%	-
Total	24,600	100%	4,882,673

(a) Ontario prepaid its share of debt in August 2004
Debt service for Ontario for its payoff portion is about \$300/af

Actual expenses per annual financials

Fixed and Variable O&M	11,355,054
Administration Costs	1,021,185
	12,376,239
Budgeted non-debt related CIPs	
CIP without Chino I Reliability	1,220,393
Chino I Reliability project	3,679,062
	4,899,455

(f) Fixed Project Cost - non-debt related - Chino I Reliability Project including WMWD based on actual assessments

	Entitlement %	Actual Assessment
JCSD	33.3%	1,225,142
Chino	14.2%	472,059
Ontario	24.3%	924,630
Chino Hills	11.9%	394,537
Santa Ana	3.4%	112,419
Norco	2.9%	94,749
WMWD	10.0%	455,526
Sub-total	100.0%	3,679,062

h=a+b+d+f+g+j

(x) There is a separate settlement made with WMWD covering this period. So, no action is needed for the overpayment in this analysis for WMWD.

(k) For consistency purpose, CDA will round the % of allocation to 3 digits after the decimal under entitlement of 35,200 acre feet

All CDA members except Western contributed to Chino I Reliability project in prior fiscal years and FY2015/16.