

Board of Directors
Andy Morris, President
Judy Guglielmana, Vice President
W. Ben Wicke, Treasurer
Harvey R. Ryan, Director
Phil Williams, Director



General Manager
John D. Vega
District Secretary
Terese Quintanar
Legal Counsel
Best Best & Krieger

Our Mission...

EVMWD will provide reliable, cost-effective, high quality water and wastewater services that are dedicated to the people we serve.

August 13, 2014

Canyon Lake Property Owners Association
Attention: David Eilers, President, Board of Directors
31512 Railroad Canyon Road
Canyon Lake, CA 92587

**SUBJECT: RAILROAD CANYON RESERVOIR LEASE AGREEMENT;
DRAFT FIFTH AMENDMENT**

Dear Mr. Eilers:

Thank you for your letter dated July 31, 2014, on behalf of the Canyon Lake Property Owners Association ("CLPOA") following up on recent discussions between the CLPOA and the Elsinore Valley Municipal Water District ("EVMWD") regarding the Railroad Canyon Reservoir Lease Agreement (Lease). It is my understanding that your letter was written in response to Attorney John Brown's letter of May 30, 2014, which included a suggested draft 5th Amendment to the Lease.

EVMWD would be happy to discuss further the CIS Payment Base, adjustment of the CIS Payment Base by changes in the Consumer Price Index ("CPI"), in which CLPOA suggests reciprocity with respect to decreases as well as increases, and the terms of indemnification including apportionment of liability arising from the operation of the reservoir. It is my understanding that EVMWD's General Manager and the CLPOA's General Manager have also had several discussions about the "floor or base" minimum rental value to be inserted into the Fifth Amendment and that Mr. Vega has made it clear to Mr. Mitchell in a letter dated April 11, 2014, of what EVMWD considers to be the appropriate base rental. EVMWD would be happy to continue discussing that issue as well.

At this time, I do not feel the need to appoint an ad hoc committee to negotiate the above-referenced changes. I would, however, suggest a meeting between Mr. Vega, EVMWD's General Manager, EVMWD's legal counsel, Mr. Mitchell, CLPOA's General Manager and legal counsel to continue discussion on the three issues noted above.

Sincerely,

Andy Morris
Board President

cc: John D. Vega, EVMWD General Manager

G:\ADMIN\1-2014 CORRESPONDENCE\14201GH.DOCX

CLPOA Lake Lease Calculation Back-Up Information

💧 FY 2014 Lease - \$1,455,545

💧 MWD Untreated Rate Projection

<u>CY</u>	
2015	-1.9%
2016	2.1%
2017	3.2%
2018	3.9%
2019	5.2%
2020	6.4%
2021	5.5%
2022	5.1%
2023	5.4%
2024	5.4%

💧 CPI Projection

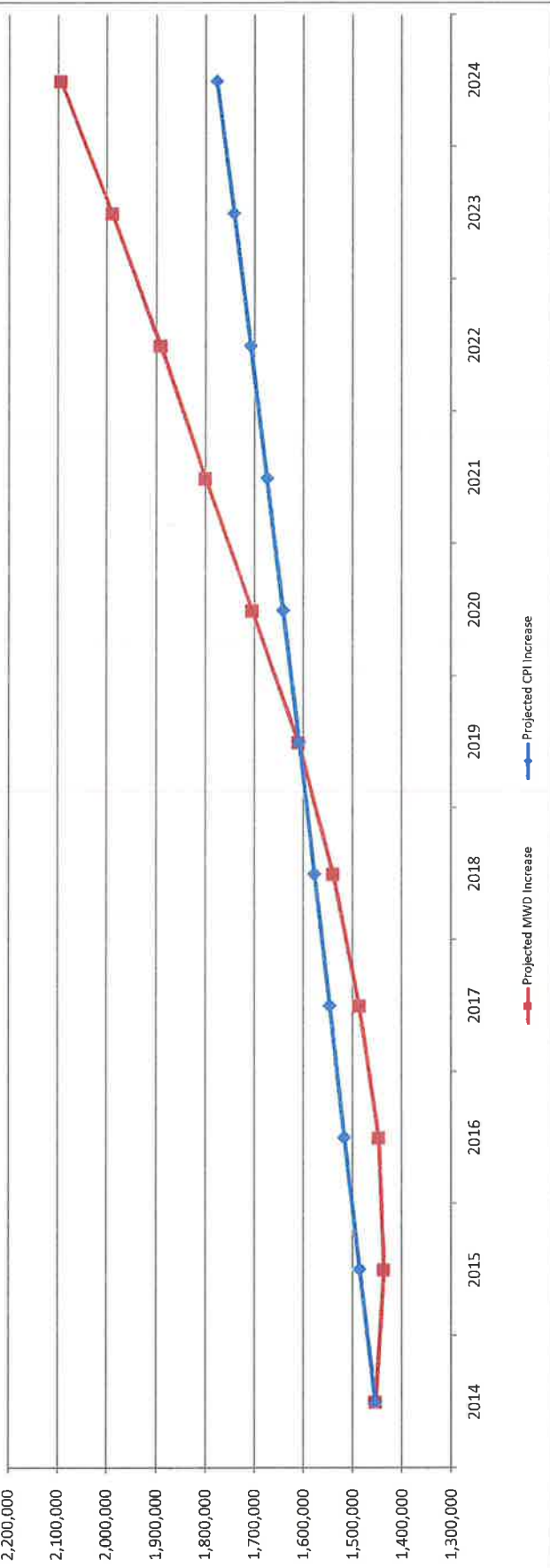
CA Dept of Finance forecast

<u>CY</u>	<u>Rate</u>
2015	2.16%
2016	2.12%

Congressional Budget Office

2017	1.90%
2018	2.00%
2019	2.00%
2020	2.00%
2021	2.00%
2022	2.00%
2023	2.00%

Canyon Lake Lease Comparison - Projected



Note - MWD Projections Based on MWD's Projected Untreated Water Cost
 - CPI after 2013 based on CA Dept of Finance forecast thru 2016 & Congressional Budget Office thru 2023
 - Information Updated April 2014



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Indian Wells
(760) 568-2611

Irvine
(949) 263-2600

Los Angeles
(213) 617-8100

Riverside
(951) 686-1450

2855 E. Guasti Road, Suite 400, Ontario, CA 91761
Phone: (909) 989-8584 | Fax: (909) 944-1441 | www.bbklaw.com

Sacramento
(916) 325-4000

San Diego
(619) 525-1300

Walnut Creek
(925) 977-3300

Washington, DC
(202) 785-0600

John E. Brown
(909) 483-6640
john.brown@bbklaw.com
File No. 02335.0273A

EVMWD
RECEIVED

May 30, 2014

JUN 02 2014

ADMINISTRATION
DEPARTMENT

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGE

VIA U.S. MAIL

John Schatz, Esq.
PO Box 7775
Laguna Niguel, CA 92607-7775

Re: Fifth Amendment to Railroad Canyon Reservoir Lease Agreement

Dear John:

As General Counsel for the Elsinore Valley Municipal Water District, I have been asked by the District's General Manager John Vega, to update you regarding the District's ongoing discussions with the Canyon Laker Property Owners Association ("CLPOA") concerning a proposed Fifth Amendment to the Railroad Canyon Reservoir Lease Agreement ("Fifth Amendment"). In recent months, Mr. Vega has had periodic discussions with the General Manger of the CLPOA, Chris Mitchell, regarding the proposed Fifth Amendment.

The District requested that my office prepare the enclosed Fifth Amendment based upon the discussions between Mr. Vega and Chris Mitchell and to forward to you the enclosed draft for your review. As you will note, we have left the rental amount blank in the enclosed template to facilitate future discussions. We understand that Mr. Vega and Mr. Mitchell have had several discussions about the "floor or base" minimum rental value to be inserted into the Fifth Amendment and that Mr. Vega has made it clear to Mr. Mitchell what the District considers to be the appropriate base rental.



BEST BEST & KRIEGER
ATTORNEYS AT LAW

John Schatz, Esq.
May 30, 2014
Page 2

It is my expectation that Mr. Vega will follow up with Mr. Mitchell regarding the enclosed when Mr. Vega returns to the office on June 9. In the meantime, feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'John E. Brown', with a long horizontal flourish extending to the left.

John E. Brown
of BEST BEST & KRIEGER LLP
General Counsel to Elsinore Valley Municipal
Water District

Enclosure - Fifth Amendment

cc: John Vega, General Manager, Elsinore Valley Municipal Water District

**FIFTH AMENDMENT
TO
RAILROAD CANYON RESERVOIR
LEASE AGREEMENT
AND INCORPORATION OF
LEASE (SECTION 26, T5S, R4W, SBBM OF RAILROAD CANYON RESERVOIR)**

This FIFTH AMENDMENT TO RAILROAD CANYON RESERVOIR LEASE AGREEMENT AND INCORPORATION OF LEASE (SECTION 26, T5S, R4W, SBBM OF RAILROAD CANYON RESERVOIR) ("Fifth Amendment") is effective as of [INSERT DATE] ("Effective Date") and are by and between ELSINORE VALLEY MUNICIPAL WATER DISTRICT, a California municipal water district and successor in interest to Temescal Water Company, ("Lessor") and CANYON LAKE PROPERTY OWNERS ASSOCIATION, a California corporation, ("Lessee"). Lessor and Lessee are sometimes hereinafter individually referred to as a "Party" or collectively as the "Parties."

WITNESSETH:

WHEREAS, Lessor (as successor in interest) and Lessee (as assignee) are parties to that certain Railroad Canyon Reservoir Lease Agreement ("Lease Agreement"), dated February 12, 1968, as amended on November 1, 1969 ("First Amendment"), November 30, 1970 ("Second Amendment"), August 1, 1974 ("Third Amendment"), and January 17, 1989 ("Fourth Amendment"); and

WHEREAS, by way of the Lease Agreement, Lessor leased to Lessee certain rights to that certain water storage reservoir known as Railroad Canyon Reservoir (Canyon Lake) owned by Lessor for certain rental amounts and upon certain terms and conditions set forth therein; and

WHEREAS, by way of the First Amendment and Second Amendment, the Parties made amendments and clarifications to the Lease Agreement; and

WHEREAS, by way of the Third Amendment, the Parties agreed that Lessee's rights to Railroad Canyon Reservoir did not include the portion of such Reservoir that is northerly of the southerly boundary of Section 26, T5S, R4W, SBBM. Concurrently with the Third Amendment, the Parties executed a separate lease dated August 1, 1974 whereby Lessor leased certain rights in the portion of the Railroad Canyon Reservoir that is northerly of the southerly boundary of Section 26, T5S, R4W, SBBM to Lessee subject to certain terms and conditions ("Lease for Additional Reservoir Portion"); and

WHEREAS, by way of the Fourth Amendment, the Parties amended certain terms of the Lease Agreement only; and

WHEREAS, as set forth in the Lease Agreement and in the Second Amendment, the term of the Lease Agreement is currently set to expire on December 31, 2022 and Lessee has the option to extend the term of the Lease Agreement for an additional forty-four (44) years to December 31, 2066. As set forth in the Lease for Additional Reservoir Portion, the term of the Lease for Additional Reservoir Portion is currently set to expire on December 31, 2022; and

WHEREAS, on or about May 8, 2009, the Parties entered into a Memorandum of Understanding wherein they agreed that (1) Lessee's payment of rent under the Lease Agreement was paid in full through August 31, 2009, (2) to jointly waive all claims for over or underpayment of such rent through August 31, 2009, and (3) on certain terms concerning how such rent under the Lease Agreement would be invoiced by Lessor and paid by Lessee going forward; and

WHEREAS, the Parties desire to make a further amendment to said Lease Agreement and to incorporate the terms of said Lease for Additional Portion fully into the Lease Agreement, as set forth herein.

NOW, THEREFORE, in consideration of the recitals set forth above and the covenants and agreements set forth below, and for other valuable consideration, the receipt of which is hereby acknowledged by the Parties, the Parties agree as follows:

FIFTH AMENDMENT

A. Rescission of Third Amendment and Lease for Additional Reservoir Portion; Incorporation of Same into Lease Agreement. The Parties agree and acknowledge that it is their intent to hereby rescind the Third Agreement, which solely proclaimed that the Lease Agreement did not include any right or rights for Lessee to use any portion of said Railroad Canyon Reservoir that is northerly of the southerly boundary of Section 26, T5S, R4W, SBBM ("Section 26"), and the Lease for Additional Reservoir Portion (as defined herein), which set forth the terms and conditions for Lessee's use of Section 26 of said Reservoir, in full. The Parties acknowledge and agree that Lessee shall be entitled to use Section 26 and that the terms and conditions of such use shall be governed in every respect by the Lease Agreement as amended, including by the terms of this Fifth Amendment. Lessor shall have no obligation to maintain the water level of such Reservoir in Section 26 at any level, or to maintain any water therein, at any time during the Lease Agreement. At any time during the term of the Lease Agreement, Lessor may install fences or other access control devices in said Section 26 along the 1400 foot elevation contour and/or along a line 1,000 feet outbound from said reservoir shoreline which is deemed to be, for the purposes of this paragraph, at the 1375 foot elevation contour. The purpose of such fences or other devices shall be to prevent all unauthorized entry to the reservoir or its immediately adjacent areas.

B. Exercise of Option to Renew. CLPOA hereby exercises its option to renew the Lease Agreement, as amended (including this Fifth Amendment), as such option is set forth in Section 2 of the Second Amendment to extend the term of the Lease Agreement, as such term is set forth in Section 1 of the Lease Agreement. Specifically, CLPOA expressly exercises its option to extend the term of the Lease Agreement, as amended, for an additional forty-four (44) years on the same terms and conditions as are in the Lease Agreement, as amended and including the amendments set forth herein. By this exercise of the term extension option, the term of the Lease Agreement is hereby extended and shall expire on December 31, 2066.

C. Base Rental. Subdivision (4) of subsection (a) (entitled Base Rental) of section 2 (entitled Rental) of the Lease Agreement is hereby deleted. As of the effective date of this Fifth Amendment, Lessee shall no longer owe Lessor any Base Rental amount for payments due after

the effective date of this Fifth Amendment. The terms of this paragraph shall not impact any obligation of Lessee to pay the Base Rental that accrued prior to the effective date of this Fifth Amendment.

D. Cost Increase Sum Calculation per Consumer Price Index. Subsection (c) of Section 2 of the Lease Agreement, as amended, is hereby deleted in its entirety and replaced with the following:

“(c) Cost Increase Sum

Lessee shall pay to Lessor on an annual basis additional amounts to be known as the “Cost Increase Sum”, or “CIS”. The parties intend that the CIS to be paid for the 2013-14 period as hereafter provided shall be a base amount to be paid for the annual cost increase, and that each year after the 2013-2014 period, the CIS shall be adjusted to reflect a cost of living increase factor. The Cost Increase Sum shall be determined as follows:

1. On or before September 1, 2014, Lessor and Lessee agree that Lessee shall pay Lessor [INSERT DOLLAR AMOUNT IN WORDS (IN NUMBERS)] and that such amount shall be the Cost Increase Sum due for the period September 1, 2013 through August 31, 2014 (the “2013-14 CIS Payment”). The 2013-14 Payment amount shall be referred to hereafter as the “CIS Payment Base”.

2. Beginning on September 1, 2014, and for each twelve month period thereafter for the remaining term of this Lease, the CIS shall be adjusted by adding to the CIS Payment Base a cost of living adjustment to be calculated as provided hereafter. The intent of the parties is that the increases in the CIS based upon a cost of living adjustment shall be cumulative.

3. The CIS Payment Base shall be adjusted annually during the entire term of this Lease, including any extensions of time thereto, commencing on September 1, 2015 and continuing on September 1 of each calendar year thereafter in accordance with the changes in the Consumer Price Index for All Urban Consumers (CPI-U) (All Items) (the “Index”) in the Los Angeles-Riverside-Orange County, CA Area published monthly by the U.S. Bureau of Labor Statistics (the “Bureau”) (hereinafter “CPI Adjustment”). Each annual CPI Adjustment shall apply during the following calendar year, shall be added to the CIS Payment

Base as part of Lessee's Cost Increase Sum obligation for such year, and shall be calculated in the following manner:

(i) On or before five business days after the release of the unadjusted CPI for the month of July of that year and the 12 months preceding that date, Lessor shall calculate the CPI Adjustment for the CIS Payment due on September 1 of the applicable year, and shall invoice Lessee for the amount of the CIS Payment. The CIS Payment shall be the sum total of the CIS Payment for the prior twelve month period (as previously adjusted for the cost of living increase) plus the increase in the CIS Payment based upon the current twelve month period CPI Adjustment; provided, however, that the annual change shall be a minimum increase of one percent and a maximum increase of four percent. This payment shall be made by Lessee to Lessor on or before September 1 of the applicable year.

(ii) If the Bureau discontinues the publication of the Index, publishes the Index less frequently, or alters the Index in some other manner, the most nearly comparable index or procedure as selected by Lessor will be substituted for the Index.

(iii) In addition to the CIS Payment, on or before September 1 of each year, Lessee shall pay to Lessor any costs to Lessor other than water costs incurred by reason of this Lease during the previous year including but not limited to any increase in taxes by reason of this Lease. Lessor shall invoice such additional costs to Lessee when the CIS Payment is invoiced, and shall provide reasonable documentation of the costs incurred.

(iv) In the event Lessee disputes the amount of said Cost Increase Sum as set forth in this subsection, or any part thereof, Lessee shall have the right to challenge such amount by arbitration pursuant to Section 16, as amended, of this Lease."

E. Indemnification; Hold Harmless; Insurance. The third paragraph of Section 4 of the Lease Agreement beginning "Lessee agrees to indemnify..." is hereby deleted and replaced in its entirety with the following:

"...

Scope of Indemnity. To the fullest extent permitted by law, Lessee shall defend, indemnify and hold Lessor, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including but not limited to wrongful death, in any manner arising out of, pertaining to, or incident to any alleged negligent acts, omissions or willful misconduct of any or all of Lessee, its officials, officers, employees, subconsultants, agents, consultants and contractors or any other person or entity other than Lessor arising out of or in connection with any matter governed by this Lease Agreement or arising out of or in connection to Lessee's exercise of its rights under this Lease Agreement and the exercise of any rights of Lessee under this Lease Agreement by any licensee or invitee of Lessee or any of its members or by any trespasser on the reservoir. Further, and without limiting the foregoing provisions of this paragraph, to the fullest extent permitted by law, Lessee shall defend, indemnify and hold Lessor, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, suits, actions, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including but not limited to wrongful death, in any manner arising out of, pertaining to, or incident to any alleged negligent acts, omissions or willful misconduct of Lessor, its officials, officers, employees, subconsultants, agents, consultants and contractors arising out of or in connection with Lessor's water surface level obligations under Section 3 of this Lease Agreement. Lessee's obligations under this Section shall include the payment of all consequential damages, expert witness fees, attorneys' fees and other related costs and expenses incurred by Lessor.

Additional Indemnity Obligations. Lessee shall defend, with counsel of Lessor's choosing, and at Lessee's own cost, expense and risk, any and all such aforesaid claims, demands, suits, actions, causes of action or other legal proceedings of every kind that may be brought or instituted against Lessor or its directors, officials, officers, employees, agents or volunteers. Lessee shall pay and satisfy any judgment, award or decree that may be rendered against Lessor or its directors, officials, officers, employees, volunteers and agents as part of any such claim, demands, suits, actions, causes of action or other proceeding. Lessee shall also reimburse Lessor for the cost of any settlement paid by Lessor or its directors, officials, officers, employees, agents or volunteers as part of any such claim, demands, suits, actions, causes of action or other proceeding. Such reimbursement shall include payment for Lessor's attorney's fees and costs, including expert witness fees. Lessee shall reimburse Lessor and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Lessee's obligation to indemnify shall survive expiration or termination of this Lease Agreement, and shall not be restricted to insurance proceeds, if any, received by Lessor, its directors, officials, officers, employees, agents or volunteers.

Insurance. During the entire term of this Lease Agreement, and without diminishing any of Lessee's indemnity obligations, Lessee shall:

Liability Insurance. Lessee shall obtain and maintain commercial general liability insurance insuring against all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, for which Lessee has an obligation to indemnify under this Lease Agreement (collectively, the "Claims"). Such liability insurance coverage shall be at least as broad as the latest version of Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), with a minimum liability limit of Two Million Dollars (\$2,000,000) for any one occurrence and Two Million Dollars (\$2,000,000) aggregate. The general liability policy shall be endorsed to state that: (1) Lessor, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Claims or operations performed by or on behalf of Lessor, including materials, parts or equipment furnished in connection with such work; (2) the insurance coverage shall be primary insurance as respects Lessor, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Lessee's scheduled underlying coverage; (3) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Lessor; and (4) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to Lessor, its directors, officials, officers, employees, agents and volunteers. Any insurance or self-insurance maintained by Lessor, its directors, officials, officers, employees, agents and volunteers shall be excess of Lessee's insurance and shall not be called upon to contribute with it in any way.

Separation of Insureds. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to Lessor, its directors, officials, officers, employees, agents and volunteers.

Deductibles and Self-insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by Lessor. Lessee shall guarantee that, at the option of Lessor, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Lessor, its directors, officials, officers, employees, agents and volunteers; or (2) Lessee shall procure a bond guaranteeing payment of losses and related

investigation costs, claims and administrative and defense expenses.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to Lessor.

Verification of Coverage. Lessee shall furnish Lessor with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to Lessor. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by Lessor if requested. All certificates and endorsements must be received and approved by Lessor before work commences. Lessor reserves the right to require complete, certified copies of all required insurance policies, at any time.

Reporting of Claims. Lessee shall report to Lessor, in addition to Lessee's insurer, any and all insurance claims submitted by Lessee in connection with Lessee's rights under this Lease Agreement.

...”

F. Limitations of Fifth Amendment. Nothing contained herein shall alter or otherwise effect the terms and conditions of the Lease Agreement (as amended) other than as specifically set forth herein. In the event this Fifth Amendment is invalid for any reason whatsoever, all of the original terms and conditions of the Lease Agreement, as amended, shall remain in full force and effect. To the extent anything herein this Fifth Amendment conflicts with the Lease Agreement, as amended, or the Lease for Additional Reservoir Portion, the terms of this Fifth Amendment shall control.

[Signatures on Following Page]

SIGNATURE PAGE TO THE

**FIFTH AMENDMENT
TO
RAILROAD CANYON RESERVOIR
LEASE AGREEMENT**

**AND INCORPORATION OF
LEASE (SECTION 26, T5S, R4W, SBBM OF RAILROAD CANYON RESERVOIR)**

IN WITNESS WHEREOF, the parties hereto have executed this Fifth Amendment on the day and year first above written.

Elsinore Valley Municipal Water District:

Canyon Lake Property Owners Association:

By: _____
John Vega
General Manager

By: _____
David Eilers
Board President

Date: _____

Date: _____

By: _____
Andrew Morris
Board President

By: _____
Eric Spitzer
Secretary

Date: _____

Date: _____

Approved as to Form:

Approved as to Form:

By: _____
John Brown, District Counsel
Best Best & Krieger LLP

By: _____
John Schatz, Counsel for Canyon
Lake Property Owners Association

Date: _____

Date: _____