

Hingtgen, Robert J

From: Bennett, Jim
Sent: Thursday, January 22, 2015 10:52 AM
To: Donna Tisdale
Cc: Gungle, Ashley; Fogg, Mindy; Hingtgen, Robert J
Subject: RE: Soite-PVMWC form?
Attachments: 2014-04-07-Rough Acres-Pine Valley water supply contract.pdf

Good Morning Donna,

There is no project facility availability form for water from Pine Valley Mutual Water Company. This is a water company to water company transaction. Attached is a copy of the agreement for the supply of water between Pine Valley Mutual Water Company and Rough Acres Water Company. We'll update the Administrative Record with this document if it isn't already posted. I'll let you know the link to the Administrative Record as soon as I receive confirmation on its location.

Additionally, I should receive information hopefully later today with construction water use numbers for the Desert Green project. I'll forward as soon as I receive it.

Thank you,

Jim Bennett, P.G. #7707, C.Hg.#854
Groundwater Geologist

County of San Diego

Planning & Development Services
5510 Overland Avenue, Third Floor, San Diego, CA 92123
Phone: 858-694-3820 Fax: 858-694-3373
PDS Website <http://www.sdcountry.ca.gov/pds/index.html>

From: Donna Tisdale [<mailto:tisdale.donna@gmail.com>]
Sent: Tuesday, January 20, 2015 8:54 AM
To: Bennett, Jim; Gungle, Ashley; Fogg, Mindy; Hingtgen, Robert J
Subject: Soite-PVMWC form?

Hello Jim

I have searched the Soitec project Administrative Record but have not been able to track down the signed **Project Facility Availability Form - Water** from Pine Valley Mutual Water Company.

Please send a pdf version and a link to where it is posted.

Also, a reminder of my Jan 15th e-mail request to you to provide the construction water use numbers that Soitec provided from "recent project" that I assume is the Desert Green Solar project in Borrego Springs.

Thank you

Donna

AGREEMENT FOR THE SUPPLY OF WATER
BY AND BETWEEN
PINE VALLEY MUTUAL WATER COMPANY AND
ROUGH ACRES WATER COMPANY, INC.

This AGREEMENT FOR THE SUPPLY OF WATER (Water Supply Agreement) is made by and between PINE VALLEY MUTUAL WATER COMPANY (Pine Valley), a California non-profit corporation, and ROUGH ACRES WATER COMPANY, INC. (Rough Acres), a California Corporation. Pine Valley and Rough Acres are collectively referred to herein as the Parties and each singularly as a Party.

RECITALS

- A. Pine Valley is a California non-profit corporation, qualifying as a mutual water company within the meaning of California Corporations Code section 14300(b).
- B. Pine Valley is currently providing water service to lands within its boundaries in San Diego County.
- C. Rough Acres is a California Corporation, qualifying as a mutual water company within the meaning of California Corporations Code section 14300(b).
- D. Rough Acres is currently providing water service to lands within its boundaries in San Diego County.
- E. As mutual water companies, each Party may sell water to any other mutual water company, pursuant to authority provided in California Corporations Code section 14300(a).
- F. The Parties desire to enter into a bilateral agreement whereby one Party may request the sale and delivery of Surplus Water from the other Party.
- G. Both Parties desire to enter into this Water Supply Agreement in order to provide for additional water supply security for both Parties for a defined term.

NOW, THEREFORE, in exchange for the mutual consideration contained herein, the Parties agree as follows:

1. Recitals. The recitals contained herein are an integral part of this Water Supply Agreement and shall be incorporated herein.

2. Definitions.

2.1 "Surplus Water" is defined as the amount of water to be determined by each Party to be excess, with reasonable reserve, which is available for sale by that Party to the other Party.

2.2 "Requesting Party" is defined as the Party asking that a certain quantity of Surplus Water be made available to it for purchase from the other Party.

2.3 "Supplying Party" is defined as the Party providing a certain quantity of Surplus Water to the other Party in response to a Call.

2.4 "Call" is defined as a request by one Party that a certain quantity of Surplus Water from the other Party be made available to it for purchase. A Call shall be for any length of time not exceeding a month ("Call Period")

3. Supply and Conveyance of Surplus Water.

3.1 Each Party may make a Call on the other Party at any time during the Term of this Water Supply Agreement.

3.2 The Requesting Party making a Call shall deliver its request for a statement of availability of Surplus Water for a specified Call Period no less than ten (10) business days prior to the date on which the Requesting Party is requesting delivery of the Surplus Water. Upon receipt of a request for a statement of availability of Surplus Water, the Supplying Party shall provide such a statement of availability no less than five (5) business days thereafter.

3.3 Determining whether any Surplus Water is available during the Call Period is within the sole discretion of the General Manager of the Party receiving the Call and a determination may be made that Surplus Water is available for less than the entire Call Period.

3.4 Upon receipt of a Call from a Requesting Party, the other Party shall make reasonable efforts to make its Surplus Water available to the Requesting Party for purchase for the Call Period, provided, however, that each Party has the right, in its sole discretion, to make available for sale, or to decline to sell, its Surplus Water to the Requesting Party.

3.5 If Surplus Water is available for sale, the respective General Managers of the Parties shall mutually agree on all relevant and necessary terms to effectuate the sale and delivery of Surplus Water from the Supplying Party to the Requesting Party, including, but not limited to:

(a) The total amount of Surplus Water available for purchase and delivery;

(b) The daily amount of Surplus Water available for purchase and delivery;

(c) The location at which the Surplus Water will be made available to the Requesting Party; and

(d) The Call Period for which the Surplus Water will be made available to the Requesting Party.

4. Water Rates and Charges. The Requesting Party shall pay the Supplying Party for Surplus Water delivered to the Requesting Party in an amount equal to the cost incurred by the Supplying Party to provide the Surplus Water. This cost shall be calculated based on the amount the Supplying Party charges its customers, as of that date, for the provision of water for the specific use to which the Requesting Party will put the Surplus Water, plus any actual additional costs associated with the sale and delivery of the Surplus Water that are incurred by the Supplying Party, including, but not limited to, allocated administrative and fixed costs.

5. Payment.

5.1 Upon delivery of Surplus Water, the Supplying Party shall provide an invoice to the Requesting Party for the amount due for the Surplus Water in accordance with its normal billing practices. Each invoice shall provide information on the calculation of the costs incurred by the Supplying Party for provision of the Surplus Water. In the event the Parties agree to the ongoing supply of Surplus Water or multiple deliveries of Surplus Water over a defined period of time, the Supplying Party may provide one or more periodic invoices to the Requesting Party for payment of Surplus Water delivered as of the invoice date.

5.2 The Requesting Party shall pay an invoice for Surplus Water within thirty (30) days of receipt of the invoice from the Supplying Party. Unpaid amounts will become delinquent after the due date. A late payment charge in the amount of seven percent (7%) of the invoice shall be added to any late payment.

5.3 Rough Acres will pay all costs associated with the preparation and approval of this Water Supply Agreement, including reasonable third-party costs incurred by Pine Valley.

6. Authority to Request and Provide Surplus Water.

6.1 The General Manager of each Party may make a Call for Surplus Water from the other Party without further action or approval on the part of the Requesting Party's Board of Directors.

6.2 The General Manager of each Party is authorized to sell Surplus Water to the Requesting Party without further action or approval on the part of the Supplying Party's Board of Directors.

7. Water Quality. The Parties acknowledge that any Surplus Water supplied pursuant to this Water Supply Agreement is non-potable as applicable provisions of the California Water Code define that term. The Supplying Party does not guarantee in any respect, nor assume any responsibility for the chemical, bacterial, or other quality of Surplus Water made available to the Requesting Party, nor does the Supplying Party guarantee in any respect or assume any responsibility for the compatibility of the delivered Surplus Water for water treatment.

8. Water Shortages.

8.1 The Parties understand that the availability of Surplus Water may be diminished as a result of conditions of shortage in either Party's water supply. Furthermore, each Party understands that the other Party's ability to provide Surplus Water may also be diminished should the other Party become subject to (i) adverse conditions beyond the other Party's control; (ii) judicial decrees; or (iii) state or federal legislation affecting the availability of water to the other Party. Where the Parties have agreed to a specific sale and delivery of Surplus Water under this Water Supply Agreement, the Supplying Party will use commercially reasonable means to guard against any reduction, or interruption of the delivery of its Surplus Water to the Requesting Party.

8.2 If there is a reduction or interruption of delivery of Surplus Water as a result of causes beyond the control of the Supplying Party or because of action by the Supplying Party to meet the aforementioned legal obligations, no liability shall accrue against the Supplying Party or any of its directors, officers, agents or employees for any damage, direct or indirect, arising therefrom.

9. No Water Rights Conferred. Nothing in this Water Supply Agreement shall result in the Requesting Party possessing or gaining any right or interest, either in law or equity, in the water rights held by the Supplying Party, including, but not limited to, any right to any amount of water extracted by the Supplying Party from underground strata.
10. Relationship of the Parties. Nothing set forth in this Water Supply Agreement shall be deemed or construed by Pine Valley, Rough Acres, or third parties to create any relationship of principal and agent, partnership, joint venture, or any other association between the Parties.
11. Indemnification.

11.1 Related to the supply of Surplus Water by Pine Valley to Rough Acres, Rough Acres shall defend, hold harmless and indemnify Pine Valley from

any and all claims, damages, liabilities, injuries (to persons or property), costs and expenses (including attorney's fees), whether direct or indirect, contingent or consequential, caused by or arising from Pine Valley's supply of Surplus Water under this Water Supply Agreement, except for any damage or claim of damage arising out of willful misconduct or negligence of Pine Valley or any of its officers, employees, agents, or assigns.

11.2 If sued as a result of its supply of Surplus Water to Rough Acres under this Water Supply Agreement, Pine Valley shall present the complaint to Rough Acres within a reasonable time and Rough Acres shall promptly enter into a mutual defense agreement with Pine Valley whereby Rough Acres agrees to cover all litigation costs, including attorneys' fees and costs associated with defending the suit. Rough Acres shall hire a law firm acceptable to both parties to represent Pine Valley in any litigation.

11.3 Related to the supply of Surplus Water by Rough Acres to Pine Valley, Pine Valley shall defend, hold harmless and indemnify Rough Acres from any and all claims, damages, liabilities, injuries (to persons or property), costs and expenses (including attorney's fees), whether direct or indirect, contingent or consequential, caused by or arising from Rough Acres' supply of Surplus Water under this Water Supply Agreement, except for any damage or claim of damage arising out of willful misconduct or negligence of Rough Acres or any of its officers, employees, agents, or assigns.

11.4 If sued as a result of its supply of Surplus Water to Pine Valley under this Water Supply Agreement, Rough Acres shall present the complaint to Pine Valley within a reasonable time and Pine Valley shall promptly enter into a mutual defense agreement with Rough Acres whereby Pine Valley agrees to cover all litigation costs, including attorneys' fees and costs associated with defending the suit. Pine Valley shall hire a law firm acceptable to both parties to represent Rough Acres in any litigation.

12. **Assignment.** The Parties shall not assign, sell, or otherwise transfer any interest under this Water Supply Agreement without receiving the prior written consent of the other Party, which consent shall not be unreasonably withheld.
13. **Severability.** If any term, provision, covenant or condition of this Water Supply Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
14. **Amendment.** This Water Supply Agreement may be amended only by a written instrument duly executed by both Parties.
15. **Waiver.** The waiver or failure to declare a breach of this Water Supply Agreement as a result of a violation of any term or provision set forth in this

Agreement shall not constitute a waiver of that term or condition and shall not provide the basis for a claim of estoppel.

16. Notices. All notices required under this Water Supply Agreement shall be in writing, and shall be delivered by personal delivery, U.S. mail, overnight delivery, facsimile, or electronic mail, and shall be addressed to the following persons:

Pine Valley: General Manager
Pine Valley Mutual Water Company
28857-B Old Highway 80
P.O. Box 148
Pine Valley, CA 91962-0148
619-473-1030 (fax)
PVMWC@juno.com

With a copy to: Michael Van Horne
Attorney at Law
600 W. Broadway, Suite 800
San Diego, CA 92101
619-232-6828 (fax)
mvanhorne@hechtsolberg.com

Rough Acres: John Gibson
General Manager
Rough Acres Water Company, Inc.
C/O Hamann Companies
1000 Pioneer Way
El Cajon, CA 92020
619-440-8914 (fax)
John@hamannco.com

With a copy to: William Fischbeck
Fischbeck & Oberndorfer PC
5464 Grossmont Center Dr., Third Fl.
La Mesa, CA 91942
(619) 464-6471 (fax)
wlf@LaMesaLaw.com

17. Term.

17.1 Term of Agreement. This Water Supply Agreement shall be effective upon its execution by both Parties (Effective Date) and shall terminate five years from the Effective Date (Term).

17.2 **Agreement to Renew.** In the event either Party wishes to renew this Water Supply Agreement beyond the Term, the Party shall submit a request for renewal in writing to the other Party no later than thirty days prior to the date this Agreement expires. The Water Supply Agreement is renewable only upon the written, mutual consent of both Parties.

18. **Future Agreements.** The Parties agree to cooperate in good faith in negotiating and executing any agreement that may be necessary in the furtherance of this Water Supply Agreement.
19. **Termination.** Any Party may terminate this Water Supply Agreement upon prior written notice. Notice shall be provided a minimum of ninety days prior to termination.
20. **Integration.** This Water Supply Agreement supersedes any term sheet previously negotiated or agreed to by the Parties.
21. **Governing Law.** This Water Supply Agreement shall be interpreted pursuant to the laws of the State of California.
22. **Counterparts.** This Water Supply Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties to this Water Supply Agreement have duly executed this Water Supply Agreement on the date set forth opposite their signatures.

Authorized and approved for signature on:

4-7-2014, 2013

PINE VALLEY MUTUAL WATER
COMPANY

By: 
Ron Cuevas, President

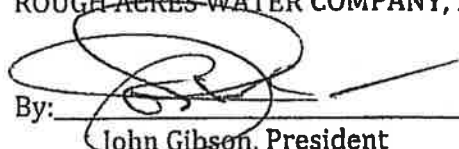
By: 
Robert Novak, Secretary

[SIGNATURES CONTINUED ON NEXT PAGE]

Authorized and approved for signature on:

1-31-14, 2013

ROUGH ACRES WATER COMPANY, INC.

By: 

John Gibson, President