

ENTRY PERMIT

This Entry Permit is dated as of _____, 20__, and is made by _____ (“**Property Owner**”) and the Borrego Valley Groundwater Basin Watermaster (“**Watermaster**”) appointed under that certain Borrego Springs Subbasin Stipulated Judgment entered in _____ v. _____, San Diego County Superior Court Case No. _____, dated _____, 20__ (“**Stipulated Judgment**”). Where appropriate, Property Owner and Watermaster are referred to collectively as “Parties” and individually as “Party.” References to a Party include, bind, and inure to the benefit of that Party’s Boardmembers, officers, agents, employees, success in interest and assigns.

RECITALS

A. Property Owner is the owner of that certain real property commonly known as Assessor’s Parcel Number(s) _____ within the County of San Diego, depicted on Exhibit “A” attached hereto and incorporated herein by reference (“**Property**”).

B. Property Owner is a party to the Stipulated Judgment. The Stipulated Judgment contemplates [*specify purpose for entry, i.e., regular water quality monitoring of certain wells under the approved water quality monitoring plan attached hereto as Exhibit “B” and incorporated herein by reference (“**Water Quality Monitoring Plan**”)*]. Watermaster has requested that Property Owner provide access to [*specify location on property, i.e., the well(s) (“**Well(s)**”) located on the portion of the Property referenced as the “**Well Site**”*] on Exhibit “A” so that Watermaster may [*specify activities, i.e., take water quality samples from the Well(s) under the Water Quality Monitoring Plan*] pursuant to the terms of this Permit (the “**Activities**”).

C. The Property is used by Property Owner for residential, commercial or other business purposes, including but not limited to extensive agricultural business uses. Unrestricted entry by Watermaster could interfere with those uses and expose Property Owner, and Property Owner’s agents, employees and invitees, Watermaster’s employees and contractors, and others on the Property to risk of injury.

D. Property Owner desires to allow Watermaster to enter onto the [*specify location on property, i.e., Well Site*] as necessary for Watermaster to access the [*specify what is being monitored, i.e., Well(s)*] and carry out the Activities pursuant to the terms of this Permit.

TERMS

This Entry Permit is issued subject to the following terms and conditions:

1. Purpose and Scope.

(a) For the Term of this Permit, as defined in Section 2 below, Property Owner hereby provides Watermaster a limited, non-exclusive license to enter onto the [**Well Site**], under the terms and conditions set forth in this Entry Permit, solely in order to carry out the Activities.

(b) Only Watermaster's employees and contractors covered by Watermaster's or such contractors' comprehensive liability insurance, automobile insurance and workers compensation insurance consistent with the requirements of Section 7 below are permitted to enter the Well Site and conduct the Activities.

(c) Watermaster shall not enter onto the [Well Site] other than as necessary to conduct the Activities and shall not enter onto any other portion of the Property. Watermaster's request to enter onto any other portions of the Property in connection with Activities shall be considered by the Property Owner on a case by case basis and shall be subject to a new written entry permit agreement with Property Owner.

(d) Each entry shall be limited to the hours between _____ a.m. and _____ p.m., Monday through Friday, excluding holidays, unless otherwise agreed to in advance and in writing by Property Owner.

(e) At the sole election of Property Owner, Property Owner or its representative may accompany Watermaster in any or all of the Activities. Upon Property Owner's request, Watermaster shall provide a split sample to Property Owner or its representative without cost to the Property Owner. Property Owner shall have no responsibility or obligation whatsoever in connection with the Activities, except as provided in Section 6 below.

(f) If the Activities include any survey, test or other investigation, Watermaster shall provide Property Owner a copy of the results of the Activities within ten (10) calendar days after the draft results are first made available to Watermaster and prior to their publication, without cost to the Property Owner.

(g) Failure to comply with the terms and conditions contained herein shall be cause for immediate termination of this Entry Permit.

2. Term of this Entry Permit.

(a) The term of this Entry Permit shall commence upon its full execution by the Parties (the "*Effective Date*") and shall remain in effect through _____, 20____ (the "*Termination Date*").

(b) Watermaster's entry and the Activities must cease on the Termination Date.

(c) The Parties' rights and obligations under Sections 4, 6, 7, 8, 9, 10, 11, 18 and 19 below shall survive the termination of this Entry Permit and continue in effect until all claims against the Property Owner, Watermaster and the Property related to this Entry Permit are absolutely barred by the applicable statutes of limitation.

3. Notice of Entry.

(a) Watermaster shall notify Property Owner by telephone _____ and email _____, at least seventy-two (72) hours prior to each entry onto the [Well Site]. The notice shall contain all of the following information:

- 1) The date, time and duration of the entry;
- 2) The Watermaster personnel who will be conducting the Activities during the entry; and
- 3) Watermaster's certification that the Watermaster personnel who will be conducting the Activities have been provided with a copy of this Entry Permit and are covered by Watermaster's comprehensive liability insurance, automobile insurance and workers compensation insurance.

4. Government Permits and Authorizations.

Watermaster shall comply with all Applicable Legal Requirements (defined in Section 10 below) and shall be solely responsible for and obtain at its expense all governmental permits and authorizations required by all Applicable Authorities (defined in Section 10 below) for Watermaster to perform the Activities and the restoration of the Property pursuant to this Entry Permit.

5. Non-Interference with Property Owner's Use of Property.

(a) Watermaster shall not modify the Property or the [Well(s)] without the Property Owner's prior written consent. No ground disturbances are permitted without the Property Owner's prior written consent.

(b) Watermaster's entry upon and use of the [Well Site] shall at all times be subject to the rights of Property Owner to use the Property and the [Well(s)] located thereon. Watermaster shall not interfere with or disrupt the residential, agricultural, commercial or other business activities on the Property, and shall not endanger the health, safety or welfare of the Property Owner or Property Owner's agents, employees, invitees, or Watermaster's employees or contractors, or others on the Property.

6. Assumption of Risk, Release and Indemnity.

(a) Watermaster assumes all risk of loss, damage and injury to itself, its employees and contractors which in any manner may arise out of entry upon or use of the Property under this Entry Permit. Property Owner shall not have any liability to Watermaster, its employees or contractors or to any insurer, by way of subrogation or otherwise, on account of any loss, damage or injury to Watermaster's property, or to Watermaster's employees or contractors, regardless of whether such loss or damage is caused by any negligence of Property Owner or Watermaster, unless Watermaster affirmatively demonstrates that Property Owner acted with willful misconduct, and that such willful misconduct is the proximate cause of such loss, damage or injury. Any award of damages following such a showing of willful misconduct shall be limited to the actual amount of the monetary injury. If any dispute is not resolved following compliance with the dispute resolution procedures specified in Section VII.A of the

Judgment, either Party may seek declaratory relief, specific performance and/or monetary damages for willful misconduct in accordance with the procedures set forth in Section VII.A of the Judgment, but no other remedies in law or equity.

(b) Watermaster shall keep the Property free of mechanic's liens and claims resulting from or in any way related to Watermaster's entry onto the property or the Activities. Watermaster shall defend Property Owner and the Property against, and indemnify and hold Property Owner and the Property harmless from all liens, claims, loses, liabilities and expenses asserted against or incurred by the Property Owner or the Property and caused by Watermaster's entry or the Activities or in any way related to such entry or Activities, including the actual expense of legal representation whether by special counsel or by Property Owner's attorneys, and expert witness fees, arising out of or resulting from injury to or death of any person, or damage to any property or damage to any other interest of Property Owner, including, but not limited to, suit alleging noncompliance with any applicable Legal Requirements by Watermaster. Watermaster's duty to defend as described above shall arise immediately upon the making of any claim, the assertion of any cause of action, the initiation of any regulatory proceeding or other action against Property Owner, and shall not be dependent upon a finding of any wrongdoing or fault on the part of Watermaster. The Parties' rights and obligations under this Section 6 shall survive termination of this Entry Permit and shall continue until all claims against Property Owner, Watermaster, and the Property are absolutely barred by the applicable statutes of limitation.

7. Insurance.

(a) Scope of Insurance. Watermaster shall, prior to any entry onto the Property, acquire and keep in full force and effect comprehensive liability insurance with a combined single limit coverage limit of not less than Two Million Dollars (\$2,000,000.00) covering bodily injury, personal injury, death and property damage liability per occurrence and in the aggregate, insuring the Property Owner against any and all liability with respect to or arising out of the entry or Activities. No policies issued on a "claims made" basis will be acceptable and no policies will have any deductible provision in excess of five percent (5%) of the total coverage maintained by the Watermaster. Watermaster shall also obtain and maintain all automobile and workers compensation insurance required by law with respect to the Activities. Watermaster shall provide the Property Owner with a certificate evidencing such coverage prior to Watermaster's entry onto the Property.

(b) Policy Form. All such liability insurance policies shall name the Property Owner as an additional insured. All public liability, property damage, and other casualty policies shall be written as primary policies and any insurance carried by the additional insureds on such policies shall not be contributing with such policies. All policies of insurance under this Entry Permit shall be issued by reputable insurance companies with general policy holder's ratings of not less than A-, and which are qualified to do business in California.

(c) Blanket Policies. Notwithstanding anything to the contrary contained in this Section 7, Watermaster's obligation to carry insurance may be satisfied by coverage under a so-called blanket policy of insurance, provided, that the requirements set forth in this Section 7 are otherwise satisfied.

(d) Failure by Watermaster to Maintain Insurance. If Watermaster fails to secure and maintain insurance policies complying with the provisions of this Section 7, then the Property Owner may secure the appropriate insurance policy or policies, and Watermaster shall pay, upon demand, the cost of same to the Property Owner, plus a service fee equal to fifteen percent (15%) of the total annual premium cost of the policy or policies.

8. Remedies.

(a) If the Property suffers any damage by reason of the acts or omissions of Watermaster, Watermaster shall be solely responsible for restoring the Property to its condition existing immediately prior to the occurrence of such damage to the satisfaction of the Property Owner, and shall compensate the Property Owner for any damages caused by reason of the acts or omissions of Watermaster, including but not limited to the market value of any crops damaged or destroyed by Watermaster.

(b) Watermaster shall be liable to Property Owner for all damage to any person or property which in any manner may be caused by Watermaster. Property Owner's remedies for any such damage shall include, without limitation:

1) requiring that Watermaster immediately pay for the cost of repair and other losses to Property Owner (including without limitation, consequential damages) caused by Watermaster; and

2) requiring that Watermaster restore any damaged property, including without limitation the Property Owner's [Wells], to a condition as near as reasonably possible to that which existed immediately prior to Watermaster's entry. If Property Owner elects to require that Watermaster make such repairs and restoration and Watermaster does not timely perform such repairs and restoration, then Watermaster shall be liable to Property Owner for the cost of restoring the damaged property to such condition, and shall further be liable to Property Owner for all damages (including, without limitation, consequential damage) resulting from Watermaster's activities on the Property, and any and all associated costs Property Owner incurs in its related restoration/repair activities.

9. Removal of Materials.

(a) Watermaster hereby warrants and represents that it will not cause the presence, use, storage or disposal of any Hazardous Substances (defined in Section 10 below) on or about the Property without the prior written consent of Property Owner. Excluded from this provision are substances necessary to carry out the Activities, provided that said substances are labeled, packaged, stored, contained, handled, managed, transported, documented and disposed of by Watermaster in full compliance with all Applicable Legal Requirements.

(b) Any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the Applicable Legal Requirements that Watermaster releases to the Property must be removed and properly disposed of by Watermaster in compliance with the Applicable Legal Requirements and all negative impacts remediated at the sole expense of Watermaster. Said remediation shall restore the Property to the condition existing immediately prior to the Effective Date of this Entry Permit.

(c) Watermaster agrees to immediately notify Property Owner when Hazardous Substances have been released on the Property. Watermaster further agrees to properly notify all Applicable Authorities in the event of a release of Hazardous Substances on the Property. If Watermaster discovers any materials suspected to be hazardous in nature in or around the Watermaster's work area during the course of its Activities, it shall halt all Activities until Property Owner, or its agent, can determine the nature of the material and the proper remediation, if any, that is required.

(d) All conditions and stipulations of this Section 9 shall be carried out to the satisfaction of both Property Owner and the California Regional Water Quality Control Board — Colorado River Region.

(e) Failure by Watermaster to comply with any of the above provisions within ninety (90) days of written notification of default shall give Property Owner authority to have said default cured and remediated, and Watermaster agrees to pay Property Owner all direct and indirect costs of said default.

(f) The Parties' rights and obligations under this Section 9 shall survive the termination of this Entry Permit and continue in effect until all claims against the Property Owner, Watermaster and Property related to this Entry Permit are absolutely barred by the applicable statutes of limitation.

10. Defined Terms.

For purposes of this Entry Permit, the following capitalized terms shall be defined as follows:

(a) Applicable Authorities: The Court administering the Stipulated Judgment, County of San Diego and any other applicable federal, state, regional or local governmental or quasi-governmental agency, body or authority having jurisdiction over the Property or the Water Quality Monitoring Plan.

(b) Applicable Legal Requirements: Environmental Laws (as defined below), Stipulated Judgment, and any other statutes, ordinances, rules, codes, requirements, permits, regulations, standards (including any standards or requirements now or hereafter applicable to residential use or development of the Property), judgments, orders, writs, injunctions or decrees or the like, of Applicable Authorities.

(c) Environmental Laws: Any federal, state, regional or local statute, regulation, ordinance, rules, codes, requirements, permits, standards or requirements (including any standards or requirements now or hereafter applicable to residential use or development of the Property), judgments, regulations, orders, writs, injunctions or decrees or the like, relating to environmental conditions on, under or about the Property that could affect use or development of the Property for residential purposes, including, without limitation, soil and groundwater conditions underlying the Property, and environmental conditions pertaining to wetlands, waters of the United States, waters of the State of California, and listed state- or federally-, threatened or endangered species.

(d) Hazardous Materials: Any materials or substances (a) defined as a “hazardous waste,” “extremely hazardous waste” or “restricted hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code; (b) defined as a “hazardous substance” under Section 26316 of the California Health and Safety Code; (c) defined as a “hazardous material,” “hazardous substance” or “hazardous waste” under Section 25501 of the California Health and Safety Code, or under Section 25281 of the California Health and Safety Code; (d) petroleum or any other hydrocarbonic substance or by-product; (e) asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (f) polychlorinated biphenyls; (g) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Administrative Code; (h) designated as a “hazardous substance” pursuant to the Clean Water Act (33 U.S.C. § 1251 et seq.); (i) defined as a hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 6901 et seq.); (j) listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to Section 25249.8(a) of the California Health and Safety Code; or (k) found to be a pollutant, contaminant, toxic or hazardous waste or toxic or hazardous substance by any Applicable Authorities or in any reported decision of a federal or state court, or which may give rise to liability under any federal or state common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court.

11. Successors and Assigns.

Watermaster shall not assign any of its rights under this Entry Permit without the prior written consent of Property Owner, which consent may be withheld for any reason or for no reason. Any assignment by Watermaster of this Entry Permit shall not release Watermaster from its obligations under this Entry Permit without an express release executed by Property Owner.

12. Authorized Signatories.

The individuals executing this Entry Permit represent and warrant that they are authorized to execute this permit entry on behalf of the Party for whom each individual purports to sign and that when executed and delivered to the Parties, this Permit shall be a valid and binding obligation of the Parties.

13. No Business or Agency Relationship.

Property Owner and Watermaster acknowledge and agree that (i) nothing contained in this Entry Permit shall be construed to constitute the Parties as participants in a joint or common undertaking, (ii) nothing contained in this Entry Permit shall create any agency relationship between Property Owner and Watermaster, and (iii) no Party shall have any right or authority to act on behalf of the other Party.

14. No Third Party Beneficiary.

This Entry Permit is not intended for the benefit of any third party and shall not be enforceable by any party who is not a Party.

15. Counterparts.

This Permit may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Entry Permit.

16. Waiver of Covenants and Conditions; No Waiver of Claims.

No covenant, condition, right or remedy under this Entry Permit shall be waived unless the waiver is in writing and signed by the Party claimed to have made the waiver. One waiver shall not be interpreted as a continuing waiver. The waiver by one Party of the performance of any covenant or condition under this Entry Permit shall not invalidate this Entry Permit nor shall it be considered a waiver by it of any other covenant or condition under this Entry Permit. By entering into this Entry Permit, Property Owner does not waive any legal rights with respect to potential claims or causes of action Watermaster has (or may have in the future) against Watermaster or against any other person or entity not a Party to this Entry Permit and all such claims are expressly reserved.

17. Governing Law.

The interpretation and enforcement of this Entry Permit shall be governed by the laws of the State of California. This Entry Permit shall be interpreted to give effect to its fair meaning and shall be construed as though it was prepared by both Parties. This Entry Permit contains the entire agreement of the Parties with respect to Watermaster's entry on and investigation of the Property, and all prior negotiations, documents, and discussions regarding the Watermaster's entry and Activities herein are superseded by this Entry Permit. Section headings in this Entry Permit are for convenience only and shall not be used in interpreting its provisions.

18. Venue.

Any controversy or claim arising out of or relating to this Entry Permit, or the breach thereof, shall be brought in the Court administering the Stipulated Judgment in the manner specified in Section VII.A of the Stipulated Judgment for a party to appeal a decision by the Watermaster Board.

19. Attorney's Fees.

In the event any Party to this Entry Permit initiates proceedings to enforce the terms of this Permit, the Party not substantially prevailing in such proceedings shall pay to the substantially prevailing Party all attorneys' fees incurred by the substantially prevailing Party, together with all costs of such proceeding.

20. Severability.

In the event that any provision of this Entry Permit is deemed unenforceable, the remaining provisions shall remain in full force and effect. In the event any provision of this Entry Permit is so held invalid, the Parties shall promptly renegotiate in good faith new provisions to restore this Entry Permit as nearly as possible to its original intent and effect.

21. Notice.

Unless otherwise specified herein, all notices or other communications between the Parties required or permitted hereunder shall be in writing and personally delivered, or sent by certified United States mail, postage prepaid, return receipt requested, or sent via overnight air courier (example, Federal Express) to the following addresses:

If to Property Owner, to:

Phone: _____
Fax: _____
E-mail: _____

With a copy to:

Phone: _____
Fax: _____
E-mail: _____

If to Watermaster, to:

Phone: _____
Fax: _____
E-mail: _____

With a copy to:

Phone: _____
Fax: _____
E-mail: _____

A notice shall be effective on the date of personal delivery if personally delivered, the next business day after deposit with the overnight air courier, or two (2) business days following the date the notice is postmarked, if mailed via certified mail as set forth above. Either Party may change the address to which notice is to be given to it by giving notice of such change of address in the manner set forth above for giving notice.

22. Watermaster Acceptance.

Watermaster shall indicate its acceptance of the terms and conditions of the permission granted under this Entry Permit by signing in the space provided below and returning the original executed copy of this Entry Permit to Property Owner.

[Signatures on the following page]

DRAFT

IN WITNESS WHEREOF, the Parties have caused this Entry Permit to be executed as of the latest day and year written below.

Dated: _____

WATERMASTER

By: _____

Its: _____

Dated: _____

PROPERTY OWNER

By: _____

Its: _____

DRAFT

EXHIBIT A
PLAT DEPICTING AND DESCRIBING PROPERTY

DRAFT

EXHIBIT B
WATER QUALITY MONITORING PLAN

DRAFT