



EXEMPTION REPORT

Government Code Section 56133(e) – Proof of Exemption Status

June 21, 2019

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Executive Summary

This Exemption Report has been prepared by the Mission Resource Conservation District ("the District" or MRCD) to document that many of the contracts and provision of technical services outside MRCD's boundaries began before January 1, 2001 and have continued to the present. Consequently, these activities are exempt from the purview of Section 56133 pursuant to 56133(e)(4).

Finding the old contracts and other evidence of continuing activity took many weeks of digging through old records and talking to agencies served. It also involved discussion with Mission staff, past and present and development of written statements to corroborate the provision of services. As a result of that effort, however, a record of continuous provision of services has emerged.

What that record indicates is that MRCD has provided the following technical services within the territory of Greater San Diego RCD and other agencies beginning prior to January 1, 2001:

1. Agricultural Irrigation Audit and Water Management Services
2. Landscape Irrigation Audit and Water Management Services
3. Noxious Arundo Weed Removal Services in sensitive watersheds (Habitat Units)

This evidence supports a determination that these programs are exempt from the requirements of Government Code Section 56133.

Agriculture Water Management Programs

Mission has been providing agricultural water management technical assistance services in San Diego County under a program operated by the San Diego County Water Authority (SDCWA) since at least 1990. The earliest contract we could find dates to 1990. (Ex A-10) It describes the scope of the program as follows:

"Agricultural irrigation system evaluations, (ag audits) have been conducted throughout California for most of the 1980's. One of the first mobile labs to provide this service was in San Diego. The Mission Resource Conservation District (RCD) in cooperation with the USDA Soil Conservation Service (SCS), California Dept. of Water Resources (DWR) and San Diego County Water Authority (SDCWA) provide to growers in north San Diego County a free evaluation that includes recommendations for improving overall irrigation efficiency. Currently, the RCD has one full time program offering both agricultural and turf audits. The new program will of for another full-time team to satisfy the demand for agricultural audits. The SDCWA and three of its member agencies, Rainbow MWD, Valley Center MWD and Fallbrook POD are offering their financial support for this additional team. ..."

The proposed 5 year program will concentrate on evaluating irrigation systems in avocado groves, citrus orchards, nurseries, as well as other agricultural operations.

(Ex A-10, Sept 1, 1990 Contract SDCWA , Appendix A Project Description, pg 1)

It is apparent from this description that Mission has been conducting these irrigation system evaluations for a considerable period prior even before the 1990 contract. The contract indicates that such audits would be conducted within the jurisdictional boundaries of SDCWA member agencies Rainbow MWD, Valley Center MWD and Fallbrook PUD. The boundaries of these agencies extend beyond the boundaries of Mission so even at this point, these services were clearly being provided outside Mission's boundaries.

In 1995, the contract was amended with a revised project description. The revised project description authorizes Mission to provide agricultural irrigations system audits to any "agricultural operations in San Diego County". (Ex A-10, Second Amendment to Agricultural Irrigation System Evaluation" With Mission Resource Conservation District, 1995, Revised Scope of Work, pg 5). Thereafter the contract was successively extended. In a 1998 a new contract was entered into for the provision of agricultural irrigations system audits and additional enhanced services. The contract explicitly stated that Mission was obligated to provide such services to, among others, "avocado and citrus groves and other agricultural operations with a minimum of two acres of agriculture in the service area of the Authority." (Ex A-12, Agreement For Services Between San Diego County Water Authority And Mission Resource Conservation District, July 29, 1998, pg 17)

Exhibit A contains a listing of the Agricultural Water management contracts with SDCWA.

We were unable to locate some of the actual contracts and contract extensions of the SDCWA contracts. However Exhibits A-15/A-16 to this report are a print out of SDCWA's database listing of such contracts. The annual District Audits (some of which are attached to the LAFCo report as Exhibits 13-17) detail the agricultural water management program expenditures and activities since 2000. These documents clearly evidence the continuation of the agricultural irrigations system water management program in the territory of SDCWA after 2000.¹

The continuation of these programs to the present is further confirmed by the declaration of Judy Mitchell attached as Ex E to this Supplemental Report. She was the Executive Director of Mission from 1991 to 2018. She testifies that the Agricultural Water Management contracts with SDCWA continued uninterrupted after 2000 through 2018. The services continue to the present, though a new grant and contract for 2020 and beyond are pending.

She further states that Greater San Diego RCD (GSDRCD) has been fully aware of these Mission activities within their boundaries and that the previous executive director and Board were fully supportive of Mission's resource conservation work. This is evidenced by the 2009 MOU between Mission and GSDRCD (Exhibit A-17) which explicitly acknowledged and supported Mission's agricultural water management activities within GSDRCD's boundaries.

¹ In addition to the listed contracts, the files at Mission and SDCWA, and other grant agencies contain massive amounts of documentation generated over the decades as part of Mission's programs. These documents while not specifically identified in this report are available should there be any need to further corroborate the continuing nature of Mission's out of agency activities.

All of these facts demonstrate that Mission's program to provide agricultural irrigation system audit and management services within the territory of SDCWA began long before January 1, 2001 and have continued to the present. These activities outside Mission's boundaries are therefore explicitly "grandfathered" and are not subject to the requirement of LAFCo approval under Government Code Section 56133(e).

Landscape Water Management Programs

Early on it was recognized by the State (Department of Water Resources) and Federal Government Soil Conservation Service (now the National Resource Conservation Service) that there were other major non-agricultural water consumers in San Diego County that could benefit from professional water system audits and water conservation recommendations. Initially these were referred to as "large turf" irrigation water audits. Because Mission was already providing such services to agricultural operations, it was logical that Mission be asked to expand such services to such large non-agricultural water users.

Mission has been providing non-agricultural irrigation water audits and recommendations (which it refers to as "Landscape Water Management Services") since at least 1990, under contracts with SDCWA. The 1990 contract (Ex B-1) authorized Mission to do "large turf" water audits and recommendations on a pilot project basis within the boundaries of SDCWA. The contract's term ran for 18 months from date of commencement of operations. A new contract was entered into with SDCWA in 1993 for the 1993-94 FY (Ex B-2). This contract explicitly stated that Mission was contracting with the State of California to provide the services, supervised by SDCWA and that services would be provided within the territory of SDCWA and its member agencies.

The contract was reentered into every year thereafter and that program gradually grew in scope over the 1990's and into the 2000's. A listing of some of the Landscape Management contracts is set forth in Exhibit B. Only a few of the Landscape Management contracts after 2000 could be located. The contracts for 2009-2012 show up in the SDCWA contract database (Ex B-5) and the annual audit reports also evidence those activities. Judy Mitchell's declaration (Ex D) confirms that new contracts and extensions occurred throughout the 1990's to the present and there is a wealth of documentation in District files showing the continuation of the landscape water management program with SDCWA from 2001 to the present.²

Consequently, this program, like the District's Agricultural Water Management Program is "grandfathered" under Government Code Section 56133(e) and is not subject to the requirements of Section 56133.

Noxious Weed Removal Program

Mission has been conducting *Arundo* (*Arundo donax*) and other invasive plant species removal programs in watersheds in Northern San Diego County since the mid 1990's. (See Ex C-34 2018

² We are continuing to look for contracts related to Landscape Water Management Programs, and will supplement this report with those contracts identified if and when they are located.

MRCO EMP Invasive Species Management Application pg 1) Such invasive plant removal is important as Arundo crowds out willows and other native species, changes streambed characteristics to the detriment of wildlife and is highly flammable, creating increased fire risk. It is rated by SANDAG in its 2012 "Management Priorities for Invasive Non-native Plants--A Strategy for Regional Implementation" as one of the highest priority invasive plant species needing control.³

Mission's Arundo weed removal programs have been funded under a variety of grants through a number of different agencies over the 20 plus year life of the program. State agencies funding programs include the California Dept of Fish and Game and State of California Wildlife Conservation Board. Federal Agencies funding the programs include the Army Corps of Engineers, United State Fish and Wildlife Service, and U.S. Department of Agriculture, Natural Resource Conservation Service. Local agencies have also been involved in funding including the San Diego Association of Governments (SANDAG) and San Dieguito River JPA.

A listing of the Arundo contracts is set forth in Exhibit C. Also attached as Exhibit E is a letter from ecologist, Jason Giessow whose firm has worked with the Arundo removal program for years. The contracts and Mr. Giessow's letter document a District program of weed removal projects both within and outside the District boundaries that started before 2001 and has continued to the present. As those indicate, the Arundo removal program consists of initial major work removing stands of Arundo in a designated habitat unit. This is followed up by annual or periodic retreatment to insure that the Arundo does not get reestablished. The controlled areas have gradually been expanded over time as additional funding becomes available. Such expansion is essential to the program to remove Arundo from the region as the greater the area of control, the less retreatment is necessary to prevent reestablishment. (See the 2012 SANDAG Report which includes this as part of its strategy for control of Arundo)

As further explained in detail in Judy Mitchell's Declaration (Ex D) , Mission's role in these Arundo removal programs outside the District boundaries is limited. Because of its special expertise in these programs, Mission is designated as the lead funding agency charged with supervision and coordination of the other local co-sponsoring agencies. The actual work on the ground is done by the local co-sponsor organizations such as such as the San Elijo Lagoon Conservancy and San Dieguito River Valley Conservancy and private contractors. Almost all of Mission's work on these programs is done at the District office in Fallbrook and it receives but a small percentage of the funding for its administrative oversight.

The evidence shows a program that has been in operation outside District boundaries before 2001 and has continued to the present. While the areas of treatment have varied and expanded over time, they are all part of an integrated regional program to control Arundo infestation in the sensitive habitats of San Diego County. Further, Mission's actual staff services for the program are primarily administrative in nature and occur within its own district boundaries.

³ This report is available on the SANDAG website at https://www.sandiegocounty.gov/content/dam/sdc/awm/docs/CBI_Strategic%20Plan9-10-12s.pdf

Conclusion

Government Code Section 56133 requires that agencies contracting to provide services outside their district boundaries (“extended services”) obtain Local Agency Formation Commission approval and meet certain statutory requirements. Subsection 56133(e) lists certain types of contracts which are exempted from these requirements. One of these is subsection (4) which states: “An extended service that a city or district was providing on or before January 1, 2001.”

The above analysis of the contracts, Judy Mitchell’s declaration and other evidence of Mission operations outside its boundaries, persuasively demonstrates that these programs commenced before January 1, 2001 and have continued to the present. Therefore a determination may properly be made that these programs are exempt from the requirements of Section 56133 and are not subject to LAFCo approval pursuant to that section.

EXHIBIT A

AGRICULTURAL WATER MANAGEMENT SERVICES

Exhibit	Date/Term of Document	Contract w/ Who & Document Type
A-1	1976.01.22	MOU with Army Corp.
A-2	1976.02.04	Correspondence from Dept. of the Navy regarding watershed protection re San Luis Rey
A-3	1979	MOU with US Dept. of Agriculture
A-4	1979	MOU with USDA indefinite duration
A-5	1979.08.29	Correspondence from Dept. of Agriculture regarding MRCD conservation
A-6	1983.05.26	Agreement with CARCO regarding Mobile Irrigation Lab (1983)
A-7	1985.02.26	MRCD Correspondence to Office of Water Conservation regarding contract for Mobile Irrigation Lab
A-8	1985.02.29	MRCD Board Resolution establishing Mobile Irrigation Lab
A-9	1985.04.05	DWR Agreement re Mobile Irrigation Lab
A-10	1990- 1998	SDCWA Contracts for Ag Irrigation Eva! and CIMIS
A-11	1998 – 2000	SDCWA CIMIS Contract & amendments
A-12	1998 -2000	SDCWA Contract for Ag Water Management
A-13	1999	Renewed MOU with USDA indefinite duration
A-14	1999	SDCWA AG Water Management Plan with MRCD
A-15	2001-2004	Listing of Missing Water Conservation Audit Contracts
A-16	2004-2007	MISSING Ag Water Management Contracts after 2000 listing
A-17	2009	MOU WITH GREATER SD RCD Water Management
A-18	2011	Carlsbad WN& SDJPA Agreement Irrigation for Services pursuant to 2010 grant
A-19	2012	NRCS Grant Agreement 68-9104-17-096 Water
A-20	2015-2018	SDCWA Ag Water Management Contract
A-21	2016-2017	TEAM RCD MOU Irrigation Audit

EXHIBIT B LANDSCAPE WATER MANAGEMENT SERVICES

Exhibit	Date/Term of Document	Contract w/ Who & Document Type
B-1	1990-1995	SDCWA Landscape Water Management Contract
B-2	1993-1994	SDCWA Landscape Water Management Contracts
B-3	1994-1995	SDCWA Landscape water Management Contract
B-4	1996-1998	SDCWA Landscape Water Management Contract
B-5	2009-2012	Listing of missing Landscape Water Management Contract
B-6	2015-2017	SDCWA Landscape Water Management
B-7	2017	MWDOC SmartTimer Install Monitoring

We are continuing to look for contracts related to Landscape Water Management Programs, and will supplement this table with those contracts identified if and when they are located.

EXHIBIT C WEED REMOVAL SERVICES

Exhibit	Date/Term of Document	Contract w/ Who & Document Type
C-1	1995-2000	Agreement with Dept. of Fish and Game re Arundo Removal San Luis Rey
C-2	1995-2000	Letter re Arundo removal contract with Dept. of Fish and Game San Luis Rey
C-3	1996	MRCD Board Resolution for State Grant Arundo Removal Santa Margarita
C-4	1998-2000-2013	U.S. Fish & Wildlife - Amendment No. 2 to Original 1995 Contract
C-5	1999.09.12	Correspondence from MRCD regarding In-Lieu Fee Mitigation for Arundo Removal Santa Margarita
C-6	1999-2009	Agreement with U.S. Army Corps re Arundo Removal Santa Margarita
C-7	2000.06.05	2000 Annual Work Plan under In-Lieu Fee Agreement Santa Margarita
C-8	2000.07.12	Correspondence from Dept. of the Interior authorizing for Arundo removal Santa Margarita
C-9	2000.12.11	Dept. of Fish & Game Correspondence and Contract for Arundo removal under Streambed Alteration Agreement 5-217-00
C-10	2000-2005	Arundo Removal Agreement with Dept. of Fish & Game Santa Margarita
C-11	2001.05.01	2000 Annual Monitoring Report under In-Lieu Fee Agreement
C-12	2001.07.25 2001	Annual Work Plan under In-Lieu Fee Agreement
C-13	2002	2002 Annual Work Plan under In-Lieu Fee Agreement
C-14	2002.07.31	2001 Annual Monitoring Report under In-Lieu fee Agreement
C-15	2002.09.09	Dept. of Fish & Game Annual Report re Arundo Removal under Streambed Alteration Agreement R5-2001- 0160
C-16	2004.01.09	In-Lieu Fee Program Budgets outlining Projects (2000-2006) Santa Margarita
C-17	2004.09	Annual Work Plan under In-Lieu Fee Agreement Santa Margarita
C-18	2004.12	2003 Annual Monitoring Report under In-Lieu Fee Agreement
C-19	2005.08.10	Annual Work Plan under In-Lieu Fee Agreement
C-20	2006.06.26	2006 Agreement with WCB re Arundo Removal San Luis Rey Watershed

EXHIBIT C WEED REMOVAL SERVICES

Exhibit	Date/Term of Document	Contract w/ Who & Document Type
C-21	2006.09	2005 Annual Monitoring Report under In-Lieu Fee Agreement
C-22	2006.11 .14	Dept. of Fish & Game Agreement re Arundo Removal with Extensions
C-23	2007.08.01	Correspondence from MWD regarding In-Lieu Fee Mitigation for Arundo removal
C-24	2007.08.15	Correspondence from MWD regarding In-Lieu Fee Mitigation for Arundo removal
C-25	2007.09.04	Proof of Payment from MWD re mitigation for Arundo removal
C-26	2009.01.01	SAN DAG Agreement re Arundo Removal (2009) San Luis Rey and Santa Margarita
C-27	2009.03.16	Dept. of Fish & Game Agreement re Arundo Removal with Extensions
C-28	2010.07.26	2016 SDCWA Agreement re Arundo Removal 4 HU's
C-29	2012.09.07	NRCS Agreement re Arundo Removal
C-30	2013-2015	SANDAG Agreement re Arundo Removal Santa Margarita and San Luis Rey
C-31	2016-2018	SAN DIEGUITO MOU re Arundo Abatement
C-32	2017-2021	SD RIVER CONSERVANCY (WCB) ROE Agreement for Arundo Removal
C-33	2017-2021	WCB Arundo Removal Contract
C-34	2018.01.12	MRCO invasive Species Management Application
C-35	2018-2021	SANDAG GRANT REQUEST Arundo removal
C-36	2018-2028	SAN JUAN CAPISTRANO MOU re Arundo Abatement
