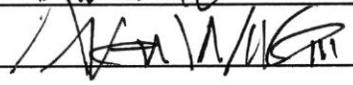


AGENDA STAFF REPORT
ADENDUM TO THE REGULAR BOARD MEETING OF
OCTOBER 15, 2018

FROM: General Manager 
BY: General Manager 
FOR: **ACTION** Direction Information

AQUA CALIENTE BAND OF CAHUILLA INDIANS – MISSION SPRINGS
WATER DISTRICT MEMORANDUM OF UNDERSTANDING

STAFF RECOMMENDATION

Authorize the General Manager to approve a Memorandum of Understanding (MOU) between the Agua Caliente Band of Cahuilla Indians (ACBCI) and the Mission Springs Water District (MSWD).

SUMMARY

The ACBCI and MSWD are proposing this draft MOU to formalize a commitment to work together to create a partnership that will accomplish multiple objectives. These objectives include but are not limited to, conservation, environmental protection and stewardship, improving the quality of our water supply and any other objective that will achieve conscientious, inclusive and fair management of our water supply.

The first step established by this MOU is to develop a feasibility study to explore potential solutions for creating alternative water supplies, enhancing the reliability of our supplies, and determining how to best distribute the water to accomplish cost effective and beneficial water management.

ANALYSIS

This MOU formalizes our mutual commitment to development of a feasibility study and to explore ways to work in partnership to achieve the goals set out in the MOU.

FISCAL IMPACT & STRATEGIC PLAN IMPLEMENTATION

This MOU does not immediately commit the Board to any financial expenditure or service. All financial commitments will come back to the board for approval.

ATTACHMENT

ACBCI/MSWD DRAFT MOU

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE AGUA CALIENTE BAND OF CAHUILLA INDIANS
AND
THE MISSION SPRINGS WATER DISTRICT**

I. PARTIES

This Memorandum of Understanding (MOU) is made and entered into by and between the Agua Caliente Band of Cahuilla Indians (“Tribe”), a federally recognized Indian Tribe, and the Mission Springs Water District (“District”) a county water district. The parties may collectively be referred to herein as the “Parties,” and individually as a “Party.”

II. BACKGROUND AND PURPOSE

The Tribe is a federally recognized Indian tribe, sovereign nation and local government of the Agua Caliente Reservation (“Reservation”) whose boundaries are within the Coachella Valley, primarily within the County of Riverside, California.

The Tribal Council is the legally recognized and organized governing body of the Tribe with the authority under its Constitution and Bylaws to enter into this MOU with the District.

The District is a County Water District and public agency of the State of California, organized under Water Code Section 30000 *et seq.* The District manages, maintains, protects and delivers water resources to residents and businesses within its jurisdictional boundaries, which include approximately 136 square miles of land in the greater Desert Hot Springs area and unincorporated areas of the County of Riverside, California.

The boundaries of the Reservation and the District proximate but are separate and do not overlap. The Tribe has adjudicated water rights to surface and percolating water in the Whitewater River as well as federally reserved groundwater rights within its Reservation boundaries, which are the subject of pending federal court litigation involving local water agencies operating within the Coachella Valley, not including the District.

The Tribe does not currently maintain a water delivery system and is not a water purveyor within the Reservation or elsewhere, despite its significant water resources. The District is a water purveyor with extensive facilities and expertise in water management, service and supply.

The Tribe and the District share mutual interests and goals, which include ensuring the sustainability of water quality and availability for beneficial use within their respective boundaries, as well as promoting educational programs encouraging water awareness and conservation, fairness and inclusiveness in local control, and efficiencies and economy of service.

Through their collaborative efforts, the Tribe and District are committed to a long term, mutually supportive and beneficial relationship, which may include but would not be limited to,

cooperative agreements, grants, contracts, pooled resources and pooled expertise to carry on the collaborative work envisioned by this MOU, as appropriate and to the extent permitted by applicable law.

The Tribe and District further desire to explore the potential for creating a long-term plan for the development, beneficial use and conservation of their water resources and to that end, wish to enter into a cooperative agreement whereby they will jointly select and equally share the cost of a consultant, which will be retained by the Tribe, to prepare a study regarding the feasibility of pooling their expertise and resources with the goal of providing superior, economical water service within the Reservation and the District.

The Parties recognize that pooling their mutual interests, water entitlements and expertise will ultimately provide economic diversity, increase employment opportunities and improve the quality of life for Tribal members, while at the same time benefiting residents of the District by providing a secure source of high quality, economical water supply.

The effectiveness of this MOU is conditioned upon formal approval by both the Tribal Council and the Board of Directors of the District.

III. SCOPE AND AGREEMENT

The Parties agree to commission a feasibility study (“Feasibility Study”) to determine the various costs and feasibility of combining the Tribe’s confirmed water rights with the District’s expertise in providing water generation and distribution, for the benefit of the Tribe and the District. The Feasibility Study shall identify means for the Tribe and District to work in cooperation to utilize and develop infrastructure to best manage, cost effectively deliver and beneficially use water resources, while promoting conservation and protecting the environment and water quality.

If appropriate, the Feasibility Study shall also address other opportunities that may be identified for the Tribe and the District to cooperate and jointly develop and utilize their water resources for their common benefit.

The consultant shall be qualified and experienced to perform the Feasibility Study as determined by the representatives of the District and the Tribe. The scope of work to be performed by the consultant will be regularly reviewed by the Parties to provide effective oversight, collaboration and coordination of the Study.

The Tribe and District representatives will work together to identify a reasonable target date for completion of the Feasibility Study.

Both the Tribe and the District agree to share data and information in a timely manner with the consultant to facilitate the successful and timely completion of the Feasibility Study.

The cost of the Feasibility Study shall be shared equally by the Tribe and the District and the final version of the Study shall be jointly owned by them.

The Tribe and District respect the sovereignty and political integrity of each other and each desires to have an agreement reflecting a mutually respectful government-to-government relationship.

This MOU shall also serve as an umbrella agreement that sets forth the general terms and conditions under which the Parties will cooperate to secure preparation of the Feasibility Study and plan for the envisioned collaborative and mutually beneficial services, including the means of delivering the least costly, high quality water to consumers of the District and Reservation. Depending on the results and conclusions of the Feasibility Study, the representatives of the Tribe and District will work together to present the Feasibility Study and potential plans to implement its recommendations to the District's Board of Directors and the Tribal Council for approval. Such plans may include, but are not necessarily limited to, promoting the development of other cooperative joint projects for development of water resources and water infrastructure.

IV. RESPONSIBILITIES

The Parties will engage a qualified and experienced consultant to prepare the Feasibility Study and shall execute an engagement letter identifying a not-to-exceed fee for the Feasibility Study.

Each Party shall be responsible for its own expenses incurred in fulfillment of this MOU and the Feasibility Study, unless otherwise agreed to herein or in a separate written agreement. Specific responsibilities for each Party associated with finally implementing the recommendations of the Feasibility Study, and the amount and/or required share of funding, shall be detailed in a separate written agreement approved by the Tribal Council and the District Board of Directors.

By entering into this MOU, the Parties commit to work in good faith to achieve timely consensus on a comprehensive plan for joint development of the Tribe's water resources and service plan, in accordance with the goals and principles in this MOU, and to take all necessary steps to forward those recommendations to the District's Board of Directors and the Tribal Council.

In fulfilling the objectives of this joint effort, the Parties shall also be responsible for the following activities:

Encouraging future cooperative agreements between the Parties to promote their mutual interests including, but not limited to, development and sale of water resources by the Tribe, sharing of data, sharing of technical expertise and such other related programs or activities as the Parties may decide; and

As appropriate, participating in meetings of the Tribal Council and District's Board of Directors as well as related staff meetings and conferences, which will provide a cost-effective opportunity to collaborate regarding the intent of this MOU and working cooperatively together to develop and provide water resources and service for the mutual benefit of the Parties to this MOU.

V. COSTS

Nothing herein will be construed as requiring the Tribe or District to expend funds on behalf of the purposes, objectives, and responsibilities set forth in the MOU, except for sharing equally the cost of the Feasibility Study or as agreed to by the Parties in separate written agreements to the extent permitted by law.

VI. TERM AND EFFECTIVE DATE

The term of this MOU will begin upon its approval and execution by the respective governing bodies of the Tribe and District and will remain in effect for three (3) years following the last signature affixed hereto. This MOU may be terminated at any time by one or more of the Parties upon 30 days' written notice to the other Party. In the event of early termination, the Parties shall remain responsible for their share of the Feasibility Study costs incurred through the termination date.

IN WITNESS WHEREOF, the Parties hereto have caused this Memorandum of Understanding to be executed by their duly authorized representatives as of the dates herein written:

AGUA CALIENTE TRIBE OF CAHUILLA INDIANS

DATED: _____ By: _____

ATTEST:

(Signatures continued on following page)

MISSION SPRINGS WATER DISTRICT

DATED: _____ By: _____

ATTEST:
