

COPY

CONTRACT TO TRANSFER WATER

This Agreement is made as of the 5th day of June 2000, by and between the Kern County Water Agency ("Agency"), and the Western Hills Water District ("Western Hills"), both being public agencies in the State of California, duly organized, existing and acting pursuant to the laws thereof.

RECITALS

- A. Western Hills is seeking a supply of water for use within its service area on the west side of the Central Valley in Stanislaus County. Western Hills' service area for this water is shown on Exhibit A, attached hereto and incorporated herein by reference.
- B. On June 10, 1998, Western Hills entered into an Agreement to Purchase Berrenda Mesa Water District State Water Project ("SWP") Entitlement ("Berrenda Mesa Agreement"), which includes the purchase of 8,000 acre feet per year from Berrenda Mesa Water District's ("Berrenda Mesa") entitlement under its March 9, 1967 water supply agreement with the Agency, as amended, including Berrenda Mesa's rights to delivery capacity in the California Aqueduct to Reaches 10 and 31. The Berrenda Mesa Agreement was entered into pursuant to Article 53 of the November 15, 1963 Water Supply Contract between the Agency and the California Department of Water Resources ("DWR"), as amended ("Agency SWP Water Supply Contract"). As of the date of this Agreement, Western Hills had made payments in the amount of \$2,080,000 to Berrenda Mesa under the Berrenda Mesa Agreement
- C. The Agency is willing to provide to Western Hills a comparable, alternative water supply instead of the water supply Western Hills was to receive under the Berrenda Mesa Agreement, which alternative water supply is described in this Agreement.
- D. The Agency has banked non SWP water in the Pioneer Groundwater Banking and Recovery Project ("Pioneer Project") in Kern County and plans to continue banking additional supplies of water in that and other groundwater banking projects in Kern County ("Agency Local Water").

E. The Agency is willing to sell and Western Hills desires to purchase up to 8,000 acre-feet annually of the Agency Local Water and have the Agency exchange it for an equal amount of the Agency's SWP entitlement water to be delivered at the Western Hills Turnout by DWR pursuant to the terms and conditions of this Agreement and the other agreements attached hereto as exhibits. The Western Hills Turnout is on Reach 2A, Milepost 42.9 of the California Aqueduct, as shown on Exhibit A.

F. The Agency, DWR and Western Hills have negotiated an agreement (the "Turnout Agreement") for construction, operation and maintenance of the Western Hills Turnout, which they intend to execute at or about the time the Agency and Western Hills execute this Agreement. A copy of the Turnout Agreement is attached to this Agreement as Exhibit B.

G. The Agency and DWR have negotiated an agreement (the "Point of Delivery Agreement") under which DWR agrees to deliver a portion of Agency SWP entitlement under the Agency SWP Water Supply Contract for delivery to Western Hills at the Western Hills Turnout, which they intend to execute at or about the time the Agency and Western Hills execute this Agreement. A copy of the Point of Delivery Agreement is attached to this Agreement as Exhibit C.

H. The Agency, Western Hills and DWR have negotiated an agreement (the "Reimbursement Agreement") for reimbursement of certain costs incurred by DWR with respect to preparation of the Turnout Agreement and the Point of Delivery Agreement, which they intend to execute at or about the time the Agency and Western Hills execute this Agreement. A copy of the Reimbursement Agreement is attached to this Agreement as Exhibit D.

I. The Agency (as lead agency) and Western Hills (as a responsible agency) have prepared and approved an environment document prepared under the California Environmental Quality Act ("CEQA") for the sale of water under this Agreement.

AGREEMENT

The Agency and Western Hills agree as follows:

ARTICLE 1. DEFINITIONS.

The definitions set forth in the Recitals to this Agreement are incorporated by reference. When used in this Agreement, the following terms shall have the meanings hereinafter set forth:

- A. "CEQA" means the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.*
- B. "Close of Escrow" or "Closing Date" means the date two weeks after the date on which all applicable conditions precedent to this Agreement are completed to the Agency's and Western Hills' satisfaction or waived by the party that benefits from the condition precedent.
- C. "Effective Date" means the date this Agreement becomes effective, which shall be deemed to be May 23, 2000.
- D. "Escrow Agent" means Fidelity National Title Company in its Modesto, California office.
- E. "Pioneer Project Participation Agreement" means the agreement for recharging and withdrawing water in the Pioneer Project among the Agency and various of its member units, dated January 1, 1997, and including all extensions and renewals thereof.
- F. "Purchase Price" means either \$8,000,000 (i.e., \$1,000 per acre foot) to be paid to the Agency by Western Hills to acquire the Western Hills Entitlement Water or Western Hills assignment to the Agency of the 8,000 acre-feet which Western Hills purchased from Berrenda Mesa under the Berrenda Mesa Agreement.
- G. "Agency SWP Entitlement Water" means the SWP water provided for in Table A of the Agency SWP Water Supply Contract.
- H. "Western Hills Entitlement Water" means the annual amounts up to 8,000 acre-feet as set forth in Article 8 that Western Hills is entitled to receive from the Agency pursuant to this Agreement, which consists of Agency Local Water that will be exchanged for Agency SWP Entitlement Water.

I. "Year" means the 12-month period from January 1 through December 31, both dates inclusive.

ARTICLE 2. GENERAL PROVISIONS.

Western Hills is acquiring and the Agency is selling to Western Hills the right to receive up to 8,000 acre-feet of Agency Local Water per Year, and the Agency is making this Agency Local Water available to Western Hills by a simultaneous exchange of Agency SWP Entitlement Water to be delivered to Western Hills from the California Aqueduct at the Western Hills Turnout with the Agency foregoing the delivery of the same amount of Agency SWP Entitlement Water to the Agency in Kern County under the Agency SWP Water Supply Contract. Western Hills shall pay the Agency for the Western Hills Entitlement Water the various amounts provided for in this Agreement. The Agency and Western Hills will cooperate with each other in the performance of their respective obligations and in the exercise of their respective rights under this Agreement.

ARTICLE 3. TERM OF AGREEMENT.

The term of this Agreement shall be the same as the term of the Agency SWP Water Supply Contract, and all extensions and renewals thereof.

ARTICLE 4. PURCHASE AND PAYMENT TERMS.

A. **Purchase and Sale.** The Agency hereby sells to Western Hills and Western Hills hereby purchases from the Agency the right to receive up to 8,000 acre-feet per Year of Agency Local Water. The purchase and sale of this water shall be consummated through the escrow opened with the Escrow Agent. Any escrow instructions given the Escrow Agent by the Agency or Western Hills shall be consistent with the terms of this Agreement unless otherwise agreed to by both parties in writing.

B. **Purchase Price.** Western Hills shall pay to the Agency the Purchase Price for the Western Hills Entitlement Water, in addition to the other payments set forth in this Agreement.

C. Annual Payments.

The intent of the Annual Payments to be made by Western Hills hereunder is to pay to the Agency an amount equivalent to what Western Hills would otherwise have paid assuming Western Hills had become a State Water Contractor with a maximum annual entitlement of 8,000 acre-feet of water (2,579 acre-feet from Reach 10A and 5,421 acre-feet from Reach 31) with delivery at Reach 2A (the Western Hills Turnout) under the Berrenda Mesa Agreement. In addition Western Hills agrees to pay the Agency its annual costs for administering this Agreement and the supporting agreements as set forth in subparagraphs C(1)(c) and (d) of this Article.

The payments set forth below represent the basis for charges and the agreed-to payments to be received by the Agency and (other than administration costs and power costs from Banks Pumping Plan to the Western Hills Turnout) bear no relationship to the actual costs incurred by the Agency for providing the Agency Local Water by exchange to the Western Hills Turnout. Furthermore, these payments do not provide Western Hills any rights under the Agency SWP Water Supply Contract other than those specifically provided for under this Agreement and the Turnout Agreement.

The payments and credits set forth hereunder represent the parties' best effort to describe all such payments and credits consistent with the intent provided above and the existing form of the Agency SWP Water Supply Contract. The parties recognize that the payments and credits provided hereunder may require modification to maintain consistency with the payment provisions of the Agency SWP Water Supply Contract as they may be changed from time to time and the intent that Western Hills' annual payments be the same as those of a State Water Contractor with 8,000 acre-feet of annual entitlement (2,579 acre-feet from Reach 10A and 5,491 acre-feet from Reach 31) with deliveries at Reach 2A, the Western Hills Turnout.

(1) Annual Obligations. Each Year commencing January 1, 2001, Western Hills shall also pay to the Agency as its annual obligation for the Western Hills Entitlement Water an amount including, but not limited to, the sum of the following:

(a) An amount equal to DWR's charges to the Agency for the Delta Water Charge and the capital cost and minimum operation, maintenance, power and replacement components of the Transportation Charge for 2,579 acre-feet of Agency SWP Entitlement Water delivered to the Agency in Reach 10 and for 5,491 acre-feet of Agency SWP Entitlement Water delivered to the Agency in Reach 31 of the California Aqueduct as set forth in the statement furnished by DWR in the preceding Year pursuant to the provisions of Article 29(e) of the Agency SWP Water Supply Contract, less the amount of the Delta Water Charge, as set forth in that statement, for the difference between 8,000 acre-feet and the acre-feet set forth for that respective year in Article 8 or as it may be amended.

(b) The estimate by the Agency, of the variable operation, maintenance, power and replacement component and the off-aqueduct power facilities minimum operation, maintenance, power and replacement component of the Transportation Charge to be made to the Agency for the delivery of the SWP water at Western Hills Turnout through Reach 2A of the California Aqueduct, plus

(c) The estimate by the Agency of all costs to be paid to DWR under the Turnout Agreement, the Point of Delivery Agreement and the Reimbursement Agreement.

(d) An amount for each Year to cover the Agency's reasonable costs directly attributable to administering this Agreement, other than its general costs for administering the Agency SWP Water Supply Contract, the Turnout Agreement, the Point of Delivery Agreement, and the Reimbursement Agreement.

(2) Adjustments in Annual Obligations. At the end of each Year, Western Hills's annual payments obligations under subparagraph (1) of this Article shall be recalculated by substituting as soon as possible the actual charges made by DWR to the Agency for the Agency's estimates of these charges and the actual quantities of water delivered to Western Hills for any scheduled quantities used in calculating Western Hills' annual obligation. Any adjustment in Western Hills' payments required to reflect this recalculation shall be made in Western Hills' first semi-annual payment due after this recalculation.

(3) Time of Annual Payments. Western Hills shall pay to the Agency, either within thirty days after receipt by it of a statement from the Agency setting forth Western Hills' annual obligation or on or before January 1 of each Year, whichever is later, sixty percent of its annual obligation. Western Hills shall pay the remainder of such annual obligation on or before July 1 of that Year.

D. Other Payments. Western Hills shall reimburse the Agency for charges that are incurred by the Agency under this Agreement, the Turnout Agreement, the Point of Delivery Agreement and the Reimbursement Agreement, that have not been paid for under paragraph C of this Article within thirty days after receipt of a statement from the Agency.

E. Penalty for Late Payment. Upon every amount of money required to be paid by Western Hills to the Agency pursuant to this Agreement that remains unpaid after it becomes due and payable, interest shall accrue at the rate of one percent per month of the amount delinquent from and after the due date until such amount is paid, and Western Hills hereby agrees to pay such interest.

ARTICLE 5. SUSPENSION OF SERVICE UPON DEFAULT.

Western Hills shall cause to be levied and collected all necessary taxes, assessments and charges and will use all the authority and resources of Western Hills to meet its obligations hereunder, to make in full all payments to be made pursuant to this Agreement on or before the date such payments become due and to meet its other obligations under this Agreement. In the event of any default by Western Hills in the payment of any money required to be paid to the Agency hereunder, or in any other obligations under this Agreement, the Agency in its discretion may suspend delivery of water to Western Hills during the period when Western Hills is delinquent in its payment for or obligations due to the Agency under the terms of this Agreement; provided, that (1) the Agency has given Western Hills not less than four months' prior, written notice of any such default and provided Western Hills a reasonable time to cure such default, and (2) during any such period of delinquency or suspension Western Hills shall remain obligated to make all payments required under this Agreement. Action taken pursuant to this Article shall not

deprive the Agency of or limit any remedy provided by this Agreement or by law for the recovery of money due or which may become due under this Agreement.

**ARTICLE 6. POINTS OF DELIVERY AND USE OF
AGENCY AQUEDUCT CAPACITY.**

A. The Western Hills Entitlement Water will be delivered to Western Hills at the Western Hills Turnout in Reach 2A through an exchange with the Agency in accordance with the terms of the Point of Delivery Agreement.

B. Western Hills and the Agency desire that Western Hills make arrangements for Western Hills to acquire a supplemental water supply for use during a Year in which the full amount of the Western Hills Entitlement is not available for delivery to the Western Hills Turnout. A supplemental water supply for this purpose may be available by (but not limited to) (1) banking in a groundwater bank in Kern County a portion of Western Hills Entitlement Water that exceeds its water delivery requirements at the Western Hills Turnout in a Year, and/or (2) acquiring transfer water from a water bank or other sources. Consistent with the terms of this Agreement, the Agency will assist and cooperate with Western Hills to acquire a supplemental water supply for this purpose, and to exchange Agency SWP Entitlement Water to be delivered to the Western Hills Turnout for an equivalent amount of the supplemental water supply that is acquired, provided that, (1) there are no adverse financial or water supply impacts to the Agency, its member units, or other SWP contractors, (2) Western Hills pays all costs incurred by the Agency in carrying out such arrangements that have been requested by Western Hills, except that, Western Hills will not be charged any additional charge for use of Agency capacity in SWP facilities unless the Agency has incurred such additional charge, and (3) the Agency does not guarantee that arrangements to acquire a supplemental water supply for Western Hills can be made.

ARTICLE 7. SCHEDULING OF DELIVERIES.

Western Hills shall submit to the Agency its desired schedules for the delivery of the Western Hills Entitlement Water to it each Year in the same manner and at the same time as Agency member units are required to submit their water delivery schedules to the Agency. The

maximum delivery to Western Hills in any month shall be 16.8% of the Western Hills Entitlement Water for that Year as set forth in Article 8A. Upon receipt of Western Hills' schedule, the Agency shall review it and, after consultation with Western Hills, shall make such modifications in it as it deems necessary to insure that the amounts, times and rates of delivery will be consistent with the Agency's receipt of SWP water in the California Aqueduct at the Western Hills Turnout.

ARTICLE 8. WESTERN HILLS ENTITLEMENT WATER SCHEDULE.

A. In recognition that Western Hills does not expect to require delivery of or otherwise use the full amount of the Western Hills Entitlement Water during the initial years of this Agreement, the Agency will make the Western Hills Entitlement Water available for delivery within its service area on the following Schedule, subject to the water shortage provisions set forth in this Agreement:

<u>Year</u>	<u>Entitlement Water Schedule</u>
2001	1,200 af
2002	1,800 af
2003	2,400 af
2004	3,000 af
2005	3,600 af
2006	4,200 af
2007	4,800 af
2008	5,300 af
2009	5,900 af
2010	6,500 af
2011	7,100 af
2012	7,700 af
2013-2035	8,000 af

B. On or before July 1 of each Year when Western Hills schedules water deliveries for the following Year, Western Hills may notify the Agency that it is increasing the amount of water

under the Entitlement Water Schedule in A above for the following Year, in which case the amount of water for each succeeding Year under the Entitlement Water Schedule shall be not less than that amount.

ARTICLE 9. WATER SHORTAGES.

A. The Agency will make available for delivery to Western Hills each Year that percentage of that Year's amount shown for that Year in the Entitlement Water Schedule in Article 8 that is equal to the percentage of the Agency SWP Entitlement Water that is allocated to the Agency by DWR that Year.

B. Western Hills acknowledges that the Agency has offered and Western Hills has declined to purchase up to an additional 2,000 acre-feet of Agency Local Water that could be made available in any Year, independent of the SWP allocation and in addition to the amount provided for in paragraph A of this Article for that Year to offset SWP shortages. In declining this offer, Western Hills is fully aware that the supply available under this Agreement is subject to severe shortages due to hydrologic conditions and regulatory actions beyond the control of the Agency and the State. Western Hills holds the Agency and the State free and harmless from any and all causes of action brought as a result of Western Hills' failure to acquire additional water under this Article 9B.

C. All deliveries to Western Hills under this Agreement are contingent on DWR's physical capability to deliver water to the Western Hills Turnout. Neither the Agency nor any of its officers, agents or employees shall be liable for any damages, direct or indirect, arising from any shortages in the amount of water made available to the Agency by DWR for delivery to the Western Hills Turnout, and Western Hills shall defend, hold harmless and indemnify the Agency from any claims for damages or injury resulting from any such shortage. If Western Hills suffers any loss or damage resulting from a breach by DWR under the Point of Delivery Agreement, or if the Agency has other causes of action against DWR relating to its performance or nonperformance under the Point of Delivery Agreement that result in damage or loss to Western Hills, then the Agency will cooperate with Western Hills in pursuing appropriate claims and/or litigation against DWR on behalf of Western Hills, including, but not limited to, claims and

actions by the Agency against DWR in those cases where the Agency, at its sole discretion, determines it is not adverse to the Agency's interest to do so, or, at the Agency's sole discretion, will assign the Agency's rights and causes of action to Western Hills. Western Hills will pay all attorneys' fees and litigation costs relating to any such claim or action by the Agency on behalf of Western Hills.

D. DWR may temporarily discontinue or reduce the amount of Agency SWP Entitlement Water delivered at the Western Hills Turnout in accordance with the provisions of the Turnout Agreement, the Point of Delivery Agreement and the Agency SWP Water Supply Contract. In that event, if requested by Western Hills, the Agency shall use its best efforts to attempt to reschedule (in consultation with Western Hills) the amount of Agency SWP Entitlement Water that was curtailed.

E. Western Hills acknowledges that the location of its turnout, north of San Luis Reservoir causes Western Hills to be vulnerable to impacts if deliveries are curtailed. Western Hills will implement the water shortage contingency plan set forth in Exhibit E, attached hereto and incorporated by this reference, and the Agency will assist and cooperate with Western Hills in implementing the plan. Western Hills will reimburse the Agency for any costs incurred by the Agency in assisting Western Hills in implementing the plan.

ARTICLE 10. ASSIGNMENT OF THE BERRENDIA MESA AGREEMENT

Prior to June 10, 2000 or the Closing Date, whichever is earlier, Western Hills will pay to Berrendia Mesa the balance of the purchase price under the Berrendia Mesa Agreement. Upon the Close of Escrow, Western Hills shall assign all of its rights under the Berrendia Mesa Agreement to the Agency.

ARTICLE 11. NONRESPONSIBILITY OF QUALITY OF WATER

The Agency assumes no responsibility with respect to the quality of the water to be furnished to Western Hills pursuant to the Agreement and the Agency does not warrant the quality of such water.

ARTICLE 12. CLOSE OF ESCROW.

A. Close of Escrow shall occur when: (1) Western Hills delivers to the Escrow Agent the Purchase Price, (2) the Agency has delivered to the Escrow Agent a copy of a fully executed amendment of the March 9, 1967 water supply agreement between the Agency and Berrenda Mesa reducing Berrenda Mesa's annual entitlement under that contract by 8,000 acre feet, (the Berrenda Mesa Amendment"), (3) the Agency and Western Hills have deposited all requisite documents for the water sale duly executed, authorized, and acknowledged, (4) the Agency has delivered to the Escrow Agent an opinion of counsel addressed to Western Hills that this Agreement has been duly authorized, executed, and delivered by the Agency and constitutes the valid and binding obligation of the Agency enforceable against the Agency in accordance with its terms, subject to the effect of any bankruptcy, insolvency, reorganization, moratorium, or other laws or judicial decisions affecting the enforcement of creditors' rights generally, including but not limited to the effect of statutory and other laws or judicial decisions regarding fraudulent conveyances or transfers and preferential transfers; (5) the Agency has delivered to the Escrow Agent a final judgment of validation in an action by the Agency to validate this Agreement; (6) the Agency has delivered to the Escrow Agent a resolution by the Agency's Board of Directors, meeting the requirement of Section 5 of the Kern County Water Agency Act (California Statutes of 1961, Chapter 1003, as amended), containing a finding by the Board that the water to be transferred to Western Hills pursuant to this Agreement will not be needed for use within the Agency; (7) Western Hills has delivered to the Escrow Agent an opinion of counsel addressed to the Agency that this Agreement has been duly authorized, executed, and delivered by Western Hills and constitutes the valid and binding obligation of Western Hills enforceable against Western Hills in accordance with its terms, subject to the effect of any bankruptcy, insolvency, reorganization, moratorium, or other laws or judicial decisions affecting the enforcement of creditors' rights generally, including but not limited to the effect of statutory and other laws or judicial decisions regarding fraudulent conveyances or transfers and preferential transfers; and (8) the Agency has delivered to the Escrow Agent fully executed copies of the Turnout Agreement, Point of Delivery Agreement and the Reimbursement Agreement, provided that, any of the foregoing requirements may be waived in writing by the party that benefits from it; provided, however, that unless extended as provided for in this Agreement, this Agreement shall

terminate 12 months from the Effective Date, and all funds and documents in escrow shall be returned by the Escrow Agent to the party that deposited them. The Agency and Western Hills shall notify by written notice to each other and the Escrow Agent of the intended date for Close of Escrow. All closing costs and fees, including without limitation, any transfer taxes, escrow fees, drafting and notary charges, and recording fees shall be paid by Western Hills through escrow. Each party shall be responsible for attorney's fees of its own counsel.

B. If (a) escrow closes on the Berrenda Mesa Agreement and escrow closes on this Agreement and (b) a lawsuit is filed alleging that Berrenda Mesa lacked the authority to approve and/or perform the Berrenda Mesa Amendment referred to as item (2) in paragraph A above, and there is a final court judgment in such lawsuit voiding in whole or in part the Berrenda Mesa Amendment and related transfer of 8,000 acre-feet per year as beyond Berrenda Mesa's authority, and (c) Berrenda Mesa fails to refund \$8,000,000 to the Agency (as Western Hills' assignee), then Western Hills shall indemnify the Agency from and against any loss attributable to Berrenda Mesa's failure to refund the \$8,000,000 to the Agency. Western Hill's indemnity obligation shall be in an amount equal to the difference between \$8,000,000 and the amount actually refunded by Berrenda Mesa to the Agency. In light of this indemnity obligation, the assignment of the Berrenda Mesa Agreement by Western Hills to the Agency shall reserve in favor of Western Hills any and all rights, claims and causes of action against Berrenda Mesa in the event Berrenda Mesa fails to refund the full \$8,000,000 under the above scenario.

ARTICLE 13. ENVIRONMENTAL REVIEW.

A. Environmental Review. The parties agree to cooperate so as to reduce any overlap in analyzing, mitigating, or studying environmental impacts associated with the actions proposed in this Agreement. The Agency shall serve as lead agency for any required environmental review, other than that covered by the County of Stanislaus' Supplemental Environmental Report.

B. Costs. All costs associated with the environmental review of the actions contemplated in this Agreement shall be allocated between the parties as follows:

- (1) All consulting costs associated with any additional review required of the environmental impacts of the contemplated action within Kern County, including the costs of any lawsuit brought by any interest within Kern County challenging the environmental review, shall be borne by the Agency;
- (2) All costs associated with the review of the environmental impacts of the contemplated action within Western Hills, including the costs of any lawsuit brought by any interest challenging the environmental review and impacts associated with conveyance of water to Western Hills, shall be borne by Western Hills; and
- (3) In the event that any costs do not reasonably fall within categories (1) or (2) of this Article, then the Agency and Western Hills shall share such costs equitably. In the event that the parties cannot agree how to allocate such costs, they shall submit the issue to an impartial arbitrator agreed to by both parties. The decision of the arbitrator as to the allocation of costs shall be final, non-appealable, and binding on the parties.

ARTICLE 14. ESCROW AGENT'S EXCULPATORY PROVISIONS.

- A. Neglect, Misconduct. The Escrow Agent will not be liable for any of its acts or omissions unless the same constitutes negligence or willful misconduct.
- B. Information. The Escrow Agent will have no obligation to inform any party of any other transaction or of facts within the Escrow Agent's knowledge, even though the same concerns water entitlements, provided such matters do not prevent the Escrow Agent's compliance with this Agreement.
- C. Form, Validity, and Authority. The Escrow Agent will not be responsible for (1) the sufficiency or correctness as to form or the validity of any document deposited with the Escrow Agent, (2) the manner of execution of any such deposited document, unless such execution occurs in the Escrow Agent's premises and under its supervision, or (3) the identity, authority, or rights of any person executing any document deposited with the Escrow Agent.

D. Conflicting Instructions. Upon receipt of any conflicting instructions, the Escrow Agent shall immediately notify both parties that there is an apparent conflict in the instructions. The Escrow Agent will have the right to take no further action until otherwise directed, either by the parties' mutual written instructions or a final order or judgment of a court of competent jurisdiction.

E. Interpleader. The Escrow Agent will have the absolute right, at its election, to file an action in interpleader requiring the parties to answer and litigate their several claims and rights among themselves, and the Escrow Agent is authorized to deposit with the clerk of the court all documents and funds held in Escrow. If such action is filed, the parties will jointly and severally pay the Escrow Agent's termination charges and costs and reasonable attorney's fees that the Escrow Agent is required to expend or incur in the interpleader action, the amount thereof to be fixed and judgment therefor to be rendered by the court. Upon the filing of such action, the Escrow Agent will be and become fully released and discharged from all obligations to further perform any obligations imposed by this Agreement.

ARTICLE 15. MISCELLANEOUS.

A. As Is. Subject to the representations and warranties set forth in section B of this Article, Western Hills represents and warrants that Western Hills is purchasing the water provided for in this Agreement "As Is" with respect to the quality of the water transferred under this Agreement and the physical availability of water arising from political, environmental, climatological, physical condition of the aqueduct, and hydrologic conditions.

B. Representations and Warranties. The parties, as indicated herein below, represent and warrant that as of the date of this Agreement and as of Close of Escrow:

(1) The Agency represents and warrants that it has a legal right to the Agency Local Water to be transferred to Western Hills with full authority to transfer such water; and that the Agency Local Water is held free and clear of any liens, encumbrances, or rights of any other party, and that the Agency shall maintain such water free and clear of any such claims during the term of this Agreement.

(2) The Agency represents and warrants that it has full legal authority and capacity to enter into this Agreement, consummate the transactions and conveyances contemplated hereby, and perform according to its terms and conditions. Western Hills represents and warrants that it has full legal authority and capacity to enter into this Agreement, consummate the transactions and conveyances contemplated hereby, and perform according to its terms and conditions;

(3) The Agency represents and warrants that the entry into this Agreement does not create or result in the breach of any other agreement to which the Agency is a party or to which the Agency is otherwise subject or bound. Western Hills represents and warrants that the entry into this Agreement does not create or result in the breach of any other agreement to which Western Hills is a party or to which Western Hills is otherwise subject or bound;

(4) The Agency represents and warrants that the execution and delivery of this Agreement by the Agency has been validly authorized by all requisite action on the part of the Agency. Western Hills represents and warrants that the execution and delivery of this Agreement by Western Hills has been validly authorized by all requisite action on the part of Western Hills;

(5) The Agency represents and warrants that to the best of its knowledge there are no proceedings pending, threatened, or in process that would limit the Agency Local Water or cause a taking of all or any portion thereof in eminent domain or subject Local Agency Water to any assessments, special assessments, or other taxes;

(6) The Agency represents and warrants that except as otherwise set forth in this Agreement, there are no agreements, licenses, commitments, or undertakings respecting the Agency Local Water by which Western Hills would become obligated or liable to any person;

(7) The Agency represents and warrants that no proceedings are pending or threatened in which the Agency may be adjudicated as bankrupt or discharged from any and all of its debts or obligations or granted an extension of time to pay its debts or a reorganization or readjustment of its debts. Western Hills represents and warrants that no proceedings are pending or threatened in which Western Hills may be adjudicated as bankrupt or discharged from any or all of its debts or

obligations or granted an extension of time to pay its debts or a reorganization or readjustment of its debts; and

(8) The Agency represents and warrants that compliance by the Agency with the provisions of this Agreement will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State, or of any department, division, agency, or instrumentality thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, bond, resolution, indenture, contract, agreement, or other instrument to which the Agency is a party or is otherwise subject or bound. Western Hills represents and warrants that compliance by Western Hills with the provisions of this Agreement will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State, or of any department, division, agency, or instrumentality thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, bond, resolution, indenture, contract, agreement, or other instrument to which Western Hills is a party or is otherwise subject or bound.

(9) Western Hills represents and acknowledges that it is aware of the fact that there will undoubtedly be future shortages in the supplies of water available for delivery to it under this Agreement and acknowledges that it declined the additional 2,000 acre-feet offered by the Agency as specified in Article 9B of this Agreement. Western Hills warrants that it will not file any claims or lawsuits against the Agency or the State for any shortages in such water supplies resulting from any actions beyond the control of the Agency or the State of California and that it will defend, hold harmless and indemnify the Agency and the State from and against any claims, suits, or judgements brought by others claiming damages of any kind, including, but not limited to loss of property or life, resulting from any such shortages.

C. Covenants. The Agency and Western Hills covenant and agree as follows:

(1) From and after the closing, the parties shall take no action that adversely affects or limits Western Hills' use of the water transferred hereunder, provided Western Hills is not in default of any of its obligations under this Agreement.

(2) The parties shall cooperate with each other, and, will from time to time, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered such further instruments, including documents of transfer, certifications, and opinions as may reasonably be required for carrying out the intention of or facilitating the performance of this Agreement.

(3) Certain of the rights and obligations of Western Hills in this Agreement are subject to the provisions of the Turnout Agreement, the Point of Delivery Agreement and the Pioneer Project Participation Agreement. Any action of the Agency to terminate or amend any of those agreements in a manner that is adverse to the interests of Western Hills without the prior written consent of Western Hills shall be void and of no force or effect. The Agency and Western Hills shall fully comply with their respective duties under those agreements.

D. Finders. Western Hills and the Agency represent to each other that neither has dealt with any finder, agent, broker, or person with respect to this transaction and that no other finder, agent, broker, or other person is entitled to the payment of a fee, commission, or other compensation with respect thereto. The Agency hereby agrees to indemnify and hold Western Hills harmless from all loss and liability including, without limitation, costs and attorneys' fees in the event any claim is made that is contrary to such representations. Western Hills hereby agrees to indemnify and hold the Agency harmless from all loss and liability including, without limitation, costs and attorneys' fees in the event any claim is made that is contrary to such representation.

E. Interpretation. This Agreement has been executed in California and California law shall apply to this Agreement. The captions of paragraphs used in this Agreement are for convenience only. The provisions hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties. Any amendment or modification of this Agreement must be in writing, signed by the Agency and Western Hills. This Agreement contains the entire agreement of the parties hereto and supersedes any prior written or oral agreements. All oral or written

representations, agreements, arrangements, or understandings relating to the subject matter are fully expressed herein. The parties agree and acknowledge that this Agreement has been mutually reviewed by counsel for the two parties and that the provisions of Civil Code §1654 shall not apply to the interpretation of this Agreement.

F. Time of Essence. Time is of the essence of this Agreement and of the escrow provided for herein.

G. Attorneys' Fees. In the event any party to this Agreement brings any legal or equitable proceedings for enforcement of any of the terms or conditions of this Agreement, or any alleged disputes, breaches, defaults, or misrepresentations in connection with any provision of this Agreement, the prevailing party in such action, or the nondismissing party where the dismissal occurs other than by reason of a settlement, shall be entitled to recover its reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and costs of defense paid or incurred in good faith. The "prevailing party," for purposes of this Agreement, shall be deemed to be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment or as determined by the court, arbitrator, or mediator to whom the dispute is submitted.

H. Additional Documents. From time to time prior to and after the Close of Escrow, each party shall execute and deliver such instruments of transfer and other documents as may be reasonably requested to carry out the purpose and intent of this Agreement.

I. Assignment and Place of Use. This Agreement may be assigned by Western Hills upon written notice to the Agency, provided, however, that the point of delivery of the water to Western Hills shall not be changed nor shall any of the water to be delivered to the Western Hills Turnout be sold, used or otherwise disposed of by Western Hills for use outside of Western Hills' service area as shown in Exhibit A. The Agency may bring an action for injunction to enforce the requirement that the water to be delivered to the Western Hills Turnout is not sold, used or otherwise disposed of by Western Hills for use outside of Western Hills service area as shown in Exhibit A.

J. Dependency and Survival of Provisions. The respective warranties, representations, covenants, agreements, obligations, and undertakings of each party hereunder shall be construed

as dependent upon and given in consideration of those of the other party and shall survive the close of escrow. No waiver by either party of any provisions hereto shall be deemed a waiver of any other provision hereof or of any subsequent breach by either party of the same or any other provision.

K. Notices. All notices, approvals, consents, or other documents required or permitted under this Agreement shall be in writing, and, except as otherwise provided herein, shall be effective upon personal delivery or three days after deposit in the United States mails, registered or certified mail, with first-class postage fully prepaid, addresses as follows:

The Agency: Kern County Water Agency
3200 Rio Mirada Drive
P.O. Box 58
Bakersfield, California 93302-0058
Attention: General Manager

Western Hills: Western Hills Water District
Post Office Box 655
Patterson, CA 95363
Attention: General Manager

or to such other addresses as either party shall, from time to time, specify in the manner provided herein.

L. Venue. The parties agree that, in any action to interpret or enforce this Agreement, venue shall be improper in the counties of Kern or Stanislaus, but the venue shall be proper in the County of Sacramento or any other county in which venue is proper under California law.


M. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed as original, but all of which together shall constitute one and the same Agreement.

N. Opinions and Determinations. Where the terms of this Agreement provide for action to be based upon the opinion, judgment, approval, review or determination of the Agency or Western Hills, such terms are not intended to be and never shall be construed as permitting such opinion, judgment, approval, review or determination to be arbitrary, capricious or unreasonable.


IN WITNESS WHEREOF, the Agency and Western Hills, by execution of counterparts hereof, have approved this Agreement. This Agreement shall be deemed effective on the date first written above.

Dated: June 5, 2000

KERN COUNTY WATER AGENCY

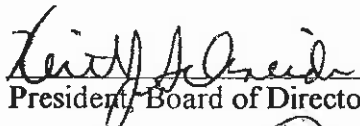
By: 
Vice President, Board of Directors
(for) President, Board of Directors

Attested:

By: 
Secretary, Kern County Water Agency

Dated: June 5, 2000

WESTERN HILLS WATER DISTRICT

By: 
President, Board of Directors

Attested:

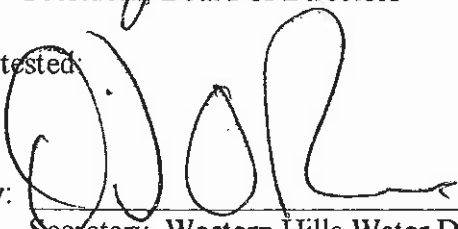
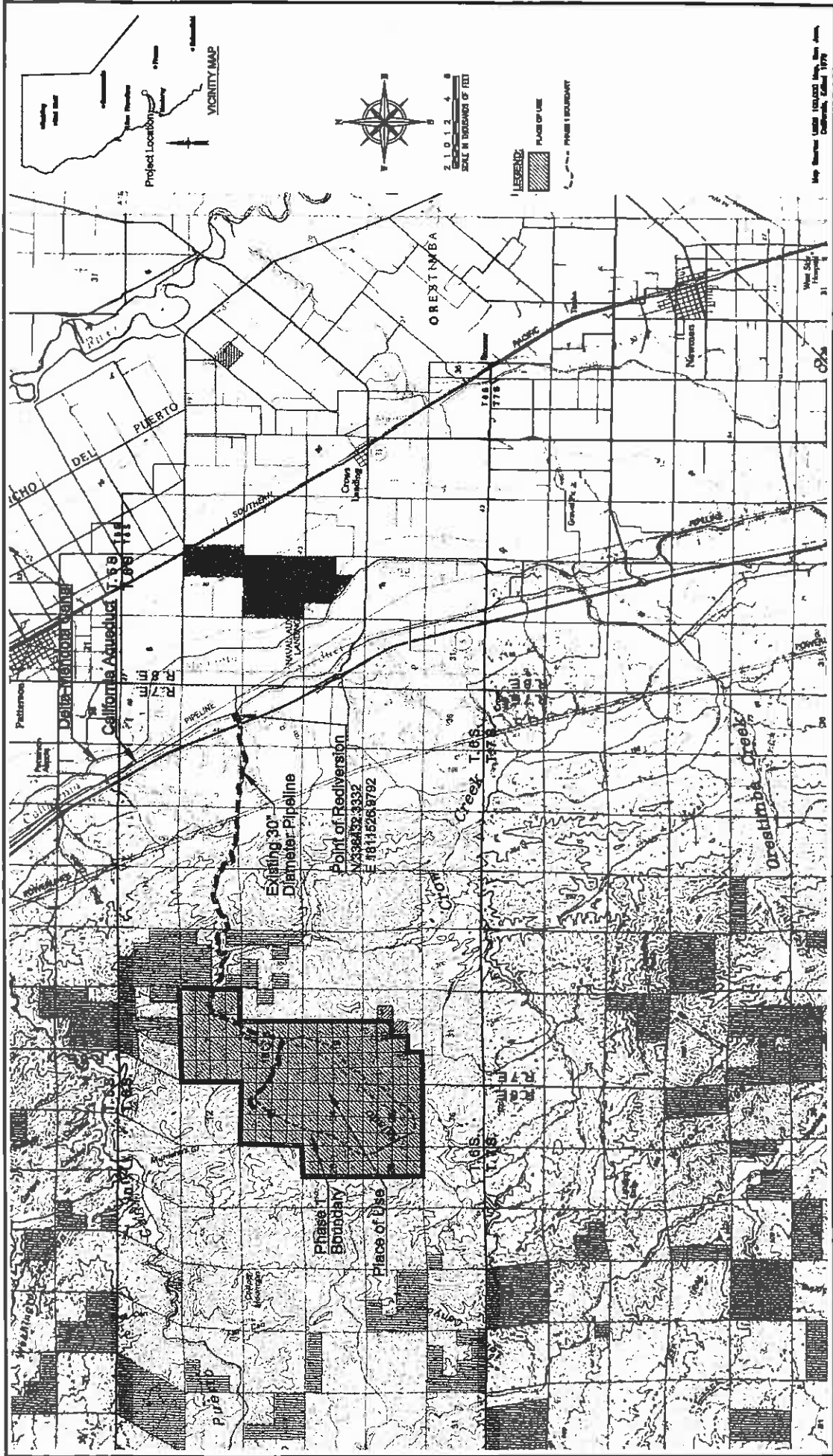
By: 
Secretary, Western Hills Water District

Table of Exhibits

- A. Map of Service Area of Western Hills Water District and Location of Western Hills Turnout on California Aqueduct
- B. Turnout Agreement
- C. Point of Delivery Agreement
- D. Reimbursement Agreement
- E. Water Shortage Contingency Plan

EXHIBIT A

Service Area of Western Hills Water District and Location of Western Hills Turnout on
California Aqueduct



WESTERN HILLS WATER DISTRICT

POINT OF REDIVERSION AND PLACE OF USE

Navigant
CONSULTING ENGINEERS, INC.

NO.	DATE	BY	CHKD.	APP'D.
1	11-1-07			
2	11-1-07			
3	11-1-07			
4	11-1-07			
5	11-1-07			
6	11-1-07			
7	11-1-07			
8	11-1-07			
9	11-1-07			
10	11-1-07			

REDUCED SCALE DRAWING

EXHIBIT B
TURNOUT AGREEMENT

State of California
The Resources Agency
DEPARTMENT OF WATER RESOURCES

AGREEMENT BETWEEN
THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA,
KERN COUNTY WATER AGENCY,
AND
WESTERN HILLS WATER DISTRICT
FOR
CONSTRUCTION, OPERATION, AND MAINTENANCE OF
THE WESTERN HILLS TURNOUT
A PERMANENT TURNOUT WITHIN
THE CALIFORNIA AQUEDUCT RIGHT-OF-WAY

THIS AGREEMENT is made this 8th day of June, 2000,
pursuant to the provisions of the California Water Resources Development Bond Act,
the State Central Valley Project Act, and other applicable laws of the State of California,
between the Department of Water Resources of the State of California, hereinafter
called "STATE", the Kern County Water Agency, hereinafter called "AGENCY" and
Western Hills Water District, a California Water District located in Stanislaus County,
hereinafter called "DISTRICT".

RECITALS

- A. The STATE is authorized to construct and operate facilities for the storage and conveyance of water, certain of which facilities make water available to the AGENCY'S service area.

Western Hills Water District
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- B. The AGENCY has contracted with the STATE for State Water Project water service and other water pursuant to the AGENCY's long-term water supply contract, with supplies to be delivered through the California Aqueduct to the AGENCY's service area.
- C. The AGENCY has contracted with the STATE for the delivery of AGENCY's Local Water to DISTRICT by exchanging the AGENCY's Local Water for a like amount of AGENCY's SWP entitlement water.
- D. The AGENCY and DISTRICT desire to construct a permanent turnout facility at approximately Milepost 42.90 of the California Aqueduct, referred to as the "Western Hills Turnout."
- E. The Western Hills Turnout will consist of a reinforced concrete gravity turnout structure, with a manually operated slide gate, venturi flow meter and meter and miscellaneous appurtenances. The design capacity of the turnout will be 30 cubic-feet-per-second. Exhibit A shows the site plan of the Western Hills Turnout.
- F. The STATE is willing to permit the AGENCY and DISTRICT to construct, on the STATE's right of way, a permanent turnout from the California Aqueduct. Such construction and operation and maintenance is subject to all the terms and conditions of this Agreement.

STANDARD PROVISIONS

The STATE, AGENCY and the DISTRICT agree as follows:

1. RIGHTS OF ACCESS The STATE grants to the AGENCY and DISTRICT permission to enter upon the STATE's right of way of the California Aqueduct situated in Stanislaus County, California, to construct, operate and maintain the Western Hills Turnout facility at approximately Milepost 42.90.

The right of access is limited to that portion of the STATE's right of way at Milepost 42.90 of the California Aqueduct as is reasonably necessary to construct the facilities. The AGENCY's and the DISTRICT's access shall not interfere with STATE activities in the STATE's right of way.

The STATE shall have right of access at all times to the Western Hills Turnout constructed under this Agreement for the purposes of observation, inspection, operation, and maintenance.

The AGENCY and DISTRICT shall secure the STATE's prior approval from the Chief of the Delta Field Division at (209) 833-7106, for any physical modifications including normal maintenance that requires entry upon the STATE's right of way. The right of entry shall be limited to that portion of the STATE's property as is reasonably necessary to accomplish the actions provided for in this Agreement.

Western Hills Water District
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2. COSTS The DISTRICT and AGENCY shall pay all costs incurred by the STATE, which in the opinion of the STATE are properly attributable to the work authorized under this Agreement. DISTRICT shall pay the following costs incurred by the STATE during the planning, design and construction of the Western Hills Turnout:
- (a) Costs incurred by the STATE under Section 22 of this Agreement; and
 - (b) Costs for inspection of the work and other incidental costs of such inspection, such as travel expenses.

The AGENCY shall pay all other costs incurred by the STATE not included in (a) and (b) above but authorized under this Agreement, including the operation and maintenance costs of the Western Hills Turnout.

Not later than 60 days after the date of this Agreement, the STATE will furnish to the DISTRICT an advance billing invoice for costs under (a) and (b) above. Such costs will become due and payable 30 days after the date of the advance billing invoice. Unpaid amounts of such costs will become delinquent after the due date and interest shall accrue thereon at a rate of 1 percent per month from the date the payment was due.

The STATE may furnish interim billing invoices to the DISTRICT, which shall

Western Hills Water District
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become due and payable 30 days after written notice thereof and be subject to the same interest charges as for the advance billing.

A final billing invoice will be furnished to the DISTRICT within 60 days after issuance of the formal statement of acceptance of the Western Hills Turnout described in Section 28 of this Agreement. Based upon such billing, the STATE will either refund any excess payment resulting from the advance and interim billings, or in the event a deficiency results, the DISTRICT will make final payment of STATE costs. Such final payment, if any, will become due and payable within 30 days after written notice thereof and be subject to interest charges as for the advance and interim billings. In the event the DISTRICT does not make full payment of the final billing invoice within 90 days from the date of the final billing invoice, the AGENCY shall be responsible to make payment of any unpaid amounts of such costs remaining and be subject to the interest charges as for the advance billing for the DISTRICT.

3. OWNERSHIP, OPERATIONS, AND MAINTENANCE OF FACILITIES

Upon the issuance of the formal statement of acceptance of the Western Hills Turnout described in Section 28, all facilities constructed, and all

devices and equipment up to and including the meter vault installed within the STATE's right of way under this Agreement shall be owned, operated, and maintained by the STATE. All devices and equipment downstream of the meter vault shall be owned, operated, and maintained by the DISTRICT. The STATE's operation and maintenance activities may include future installation of additional or replacement devices and equipment, and any operation, maintenance, repair, or other activity related to the California Aqueduct or as deemed necessary by the STATE.

4. STATE'S MAINTENANCE AND REPAIRS The STATE may at any time perform or cause the performance of work of any nature by other contractors or its forces at or near the site of the Western Hills Turnout. The AGENCY and DISTRICT shall cooperate jointly and severally with such other contractors or forces, conduct their operations in such manner as not to cause any unnecessary delay or hindrance of the other contractor's work, and adjust and coordinate their work with the other contractors so as to permit proper completion of all work in the area. When the AGENCY's, DISTRICT's, and the STATE's forces or any contractors or subcontractors are performing work on related or adjacent work, or are using the same material sources, storage area, or disposal

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area, the AGENCY and DISTRICT shall be responsible jointly and severally to the STATE's forces and other contractors or subcontractors for any injury, damage, or loss caused by the operations of the AGENCY or DISTRICT, or by their unnecessary delay or hindrance of the STATE's forces or contractor's or subcontractor's work.

5. CONTRACTING OFFICER OF STATE The STATE's contracting officer shall be the Director of Water Resources of the State of California and his successors, or his duly authorized representatives. The contracting officer shall be responsible for all discretionary acts, opinions, judgments, approvals, reviews, and determinations required of the STATE under the terms of this Agreement.
6. AQUEDUCT PROTECTION Protection and maintenance of the integrity of the California Aqueduct shall be the primary concern of all Parties to this Agreement in all activities related to the construction, operation, and maintenance of the Western Hills Turnout. If, in the judgment of the STATE, any occurrence threatens the integrity of the California Aqueduct during the construction, operation and maintenance of the turnout facility, the STATE may order the activity halted immediately and the DISTRICT shall, at its sole cost, restore the site to a condition that the STATE

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determines to be necessary or take other action that the STATE determines to be necessary to protect facilities of the California Aqueduct. The STATE shall have the option to perform any protective work directly with its own resources and to be reimbursed by the AGENCY and the DISTRICT for all costs incurred in doing so.

7. FENCES AND GATES All fences and access gates constructed on the STATE's right of way by the DISTRICT shall be kept in good repair by the DISTRICT. Gates shall be kept closed and locked except when in actual use. The DISTRICT shall provide the STATE with a key to each lockable gate constructed by the DISTRICT. In the event the DISTRICT does not complete the required work under this section, the AGENCY shall be responsible for completing the work.
8. WATER POLLUTION No material capable of water pollution shall be stored or discarded on lands or water covered by this Agreement except within protected areas approved by the STATE. Such material shall be stored in such manner as to prevent its discharge.

Western Hills Water District
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9. REASONABLE CARE The AGENCY and DISTRICT shall exercise reasonable care in performance under this Agreement to make certain the STATE's facilities are not impaired or damaged.
10. REPAIRS The STATE may temporarily discontinue operation of the Western Hills Turnout for the purposes of necessary investigation, inspection, maintenance, repair or replacement of any State Water Project facilities, and the STATE shall notify the DISTRICT as far in advance as possible of any such discontinuance, except in cases of emergency, in which case notice need not be given. The DISTRICT acknowledges (a) that such discontinuance may impact water deliveries through the Western Hills Turnout; (b) that such discontinuance may be of unknown duration and if unabated may cause unforeseeable economic and environmental damage in its service area; (c) that this Agreement confers no right to a water supply from the STATE nor from the State Water Project; and (d) that the agreement between the STATE and the AGENCY that is referred to in Recital C to this Agreement sets forth the terms and conditions for water deliveries by the STATE at the Western Hills Turnout. The AGENCY and DISTRICT shall remedy jointly and severally any actual or threatened impairment or damage to the STATE's facilities, or

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STATE's right of way, caused by their exercise of any of the rights under this Agreement, including any abandoned work and any and all impairment or damage to the STATE, which would not have occurred had such work not been done or facilities not been constructed pursuant to this Agreement. In the event the DISTRICT refuses to undertake such repair or removal, or so elects, the STATE, after giving reasonable notice to the AGENCY, may arrange for the necessary repair or removal and the AGENCY shall reimburse the STATE the full cost of such repair or removal. The STATE may require an advance deposit sufficient to pay the estimated cost of the repair or removal prior to its performance and the AGENCY shall furnish this deposit upon request.

11. NOTICES Unless otherwise provided in the Agreement, all notices that are required either expressly or by implication to be given by any one Party to any or all other Parties under this Agreement shall be signed for the STATE by or on behalf of its contracting officer, and for the AGENCY and DISTRICT by such officer(s) as may, from time to time, be authorized in writing to so act. All such notices shall be deemed to have been given if delivered personally or if enclosed in a properly addressed and stamped

Western Hills Water District
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envelope and deposited with the U.S. Postal Service for delivery by registered or certified mail. Unless otherwise provided for in this Agreement and until formally notified otherwise, all notices shall be addressed to the Parties at their addresses as shown below:

Chief
State Water Project Analysis Office
Department of Water Resources
Post Office Box 942836
Sacramento, CA 94236-0001

General Manager
Kern County Water Agency
Post Office Box 58
Bakersfield, CA 93302-0058

General Manager
Western Hills Water District
Post Office Box 655
Patterson, California 95363

12. LIABILITY The AGENCY and DISTRICT, their agents, employees and contractors, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the STATE. The STATE assumes no liability for the activities of the AGENCY or DISTRICT in performance of this Agreement including any water supply provided at the Western Hills Turnout and uses of data generated at the

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Western Hills Turnout. The AGENCY and DISTRICT are responsible jointly and severally for all liability, including but not limited to personal injury or property damage that may arise out of the facilities constructed or rights exercised pursuant to this Agreement, or which may arise out of the actions of the AGENCY or DISTRICT under this Agreement, excepting only such injury, damage, or loss caused solely by the negligence or willful misconduct of the STATE or its officers or employees. In no event shall the State or any of its officers, agents, or employees be liable for any damage, direct or indirect, arising from shortages in the amount of water to be made available for delivery to the District. To the extent permitted by law, in the event any claim of liability arising out of this Agreement, or out of actions undertaken pursuant to this Agreement, is instituted against the State of California, or any department, officer, or employee thereof, the AGENCY and DISTRICT shall defend, indemnify, and hold each of them harmless from such claim.

13. INSURANCE DURING OPERATION AND MAINTENANCE During the operation and maintenance period on the STATE's right of way under this Agreement, the AGENCY and DISTRICT shall purchase insurance through an insurance carrier to protect the STATE from claims that may arise from

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the AGENCY's or DISTRICT's activities under this Agreement. In the event insurance is not in effect at all times, the STATE may, in addition to any other remedies it may have, terminate this Agreement.

The AGENCY and DISTRICT shall insure the STATE against all claims and liability for which the AGENCY or DISTRICT may be liable for activities arising under this Agreement by having the STATE, and its officers, and employees named as additional insurers in a combined single limit comprehensive liability insurance policy in an amount not less than \$2,000,000. Such policy shall not contain any provision against cross liability between named insurers, but shall include a 45-day notice provision for termination by the insurer of such policy. A certificate of insurance in compliance with the provisions of this section shall be delivered to the STATE upon the STATE's execution of this Agreement. Such insurance coverage shall be in effect at all times during the term of this Agreement and the STATE will not be responsible for any premiums or assessments on the policy. In the event such insurance coverage expires at any time during the term of this Agreement, the AGENCY and DISTRICT shall file with the STATE at least 45 days prior to such date of expiration, a new certificate of insurance evidencing coverage as provided for herein. New certificates of

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insurance shall be subject to approval by the STATE. Such approval shall be conclusively presumed in the absence of written objection by the STATE, received by the AGENCY and DISTRICT within 30 days after the date of filing of this new certificate: Provided, that such certificate may provide for deductible coverage upon agreement of the Parties hereto.

For all activities performed under this Agreement, in which AGENCY or DISTRICT is liable, they shall be liable for the full amount even if the amount of liability exceeds the amount of the insurance policy maximum.

14. OPINIONS AND DETERMINATIONS Where the terms of this Agreement provide for action to be based upon the opinion, judgment, approval, review, or determination of any Party hereto, such terms are not intended to be and never shall be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
15. COMPLIANCE WITH ALL LAWS In exercising their rights under this Agreement, the AGENCY or DISTRICT at their cost shall be responsible for complying with all applicable laws and regulations, including but not limited to the California Environmental Quality Act, the Federal and California Endangered Species Acts, and the Clean Water Act, and for securing any required consent, permit, or order required thereof. The AGENCY and or

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DISTRICT shall provide written proof to the STATE that any such required consent, permit or order was properly obtained. In the event the AGENCY or DISTRICT fails to comply with applicable laws or to secure required permits, the STATE may terminate this Agreement.

16. PRIOR RIGHTS This Agreement is subject to all prior rights contained in unexpired permits, agreements, easements, or other prior rights whether recorded or unrecorded to the real property affected by this Agreement. The AGENCY and DISTRICT shall make their own arrangements with holders of such prior rights.
17. WAIVER OF RIGHTS Any waiver at any time by any Party hereto of its rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any other default or matter.
18. WAIVER OF DAMAGE CLAIMS The AGENCY and DISTRICT agree to waive all claims for possible future damage to facilities constructed pursuant to this Agreement due to the STATE's actions, unless the damage to Western Hills Turnout facilities results from the sole negligence or willful misconduct of the STATE or its officers or employees.

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19. SUCCESSORS AND ASSIGNS OBLIGATED This Agreement and all of its provisions shall apply to and bind the successors and assigns of the Parties hereto.
20. ASSIGNMENT No assignment or transfer of this Agreement or any part hereof, rights hereunder, or interest herein by the AGENCY or DISTRICT shall be valid unless and until the assignment or transfer is approved in writing by the STATE and made subject to such reasonable terms and conditions as the STATE may impose.
21. MAINTENANCE AND INSPECTION OF BOOKS, RECORDS, AND REPORTS During regular office hours, each of the Parties hereto and their duly authorized representatives shall have the right to inspect and make copies of any books, records, and reports of the other Party pertaining to this Agreement or matters related thereto. Each of the Parties hereto shall maintain and make available for such inspection accurate records of all its costs, disbursements, and receipts, water orders, measurements and deliveries with respect to its activities under this Agreement.

PRECONSTRUCTION PHASE

22. DRAWINGS, SPECIFICATIONS AND DATA To satisfy the STATE's requirements for protection of the California Aqueduct and to insure that the flow measurement, control devices and related equipment meet the STATE's accuracy and operational requirements, the DISTRICT shall furnish contract drawings, specifications, data, or calculations as requested by the STATE, and any addenda or any substantial changes to such drawings, specifications, and data to the STATE for approval prior to performance of any work pursuant to this Agreement. All of the DISTRICT's drawings and specifications shall be prepared by a registered professional engineer as defined in Section 6701 of the California Business and Professions Code. Changes must be submitted on drawings in the same manner that the original contract drawings are submitted. Such drawings, specifications, and data shall be submitted in a sequence that will allow their review and approval in an orderly manner. Nine legible copies of each drawing and nine sets of specifications and data shall be furnished to the STATE. Specifications, data, and drawings shall be submitted to:

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Chief, State Water Project Analysis Office
Department of Water Resources
Post Office Box 942836
Sacramento, CA 94236-0001

The STATE shall notify the AGENCY and DISTRICT in writing of its approval or disapproval of such drawings, specifications, and data. One print of each drawing and one copy of specifications, and data will be returned to the AGENCY and DISTRICT marked APPROVED FOR CONNECTION TO THE STATE WATER PROJECT," APPROVED AS NOTED FOR CONNECTION TO THE STATE WATER PROJECT" or DISAPPROVED." The DISTRICT shall not commence construction of any facilities on the STATE's right of way for which the drawings, specifications, and data have not been approved by the STATE.

The DISTRICT shall also submit for the STATE's approval: a proposed construction schedule, manufacturers' catalogs, data, copies of certificates of competence for construction workmen requiring certificates, materials certificates, and test reports. The DISTRICT shall also submit for the STATE's approval any shop drawings which change or considerably affect items previously approved in the plans and specifications.

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Approval of any drawings, specifications, or data shall not subject the STATE to any liability nor shall such action modify the AGENCY's and DISTRICT's liability under Section 12. Upon completion of the facilities to be constructed pursuant to this Agreement and within 90 days of the STATE's written acceptance of the work described in Section 28, the DISTRICT shall furnish to the STATE reproducible prints of as-built drawings for the Western Hills Turnout facilities constructed on the STATE's right of way, including copies of all contract change orders, and manufacturer manuals for operation and maintenance of devices and equipment.

CONSTRUCTION PHASE

23. INSURANCE DURING CONSTRUCTION Throughout the period of construction on the STATE's right of way under this Agreement, and continuing until the STATE's formal statement of acceptance as described in Section 28, the DISTRICT shall insure the STATE against all liability referred to in Section 12 by having the STATE, its officers, and employees named as additional insurers in a combined single limit comprehensive liability insurance policy in an amount not less than \$2,000,000. Such policy shall not contain any provision against cross liability between

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named insurers, but shall include a 30-day written notice provision for termination by the insurer of such policy. The STATE will not be responsible for any premiums or assessments on the policy. Evidence of compliance with this insurance requirement shall be delivered to the STATE before commencing any work on the STATE's right of way under this Agreement. In the event such insurance coverage expires at any time prior to the STATE's formal statement of acceptance, the DISTRICT shall file with the STATE at least 30 days prior to such date of expiration, a new certificate of insurance evidencing coverage as provided for herein. In the event the DISTRICT fails to keep in effect at all times insurance as herein provided, the STATE may, in addition to any other remedies it may have, terminate this Agreement.

24. NOTICE OF ENTRY FOR CONSTRUCTION The DISTRICT shall notify the STATE in writing at least seven days prior to entering upon any portion of STATE's right of way. The DISTRICT's notice shall include the estimated start date of construction, the names and telephone numbers of the DISTRICT's contractors responsible for the construction work, and the

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names and telephone numbers of the DISTRICT's field representatives, who will be available at the site. Notice shall be sent to the following STATE representative:

Chief, Delta Field Division
Department of Water Resources
5280 Bruns Road
Byron, California 94514-1917

If there are any changes in the notice of entry such as dates or names, the DISTRICT shall notify the Chief of the Delta Field Division of the changes at (209) 833-7106, before entering the STATE's right of way under this Agreement.

25. STANDARDS OF CONSTRUCTION All construction within the STATE's right of way shall conform to the STATE's requirements for protection of the California Aqueduct and to requirements for STATE-approved flow measuring devices and shall be performed to the satisfaction of the STATE.
26. WARNING DEVICES The DISTRICT shall furnish, erect and maintain fences, barriers, lights, signs and provide flag-persons or guards as are reasonably necessary to protect persons and property from the construction of the facilities pursuant to this Agreement. Adequate warning shall be provided by the DISTRICT of any dangerous condition to be encountered as

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a result thereof or as a result of any right exercised or duty performed under this Agreement.

27. LOCATION OF CONTROL CABLE At least 7 days prior to starting excavation on the STATE's right of way, the DISTRICT shall contact: (a) Underground Service Alert (USA) at (800) 227-2600 to locate the buried cable(s) and underground facilities in the construction area and (b) the STATE's Delta Field Division's Engineering Branch Field Supervisor at (209) 833-2017. No excavation shall be done until the cable(s) and underground facilities have been located. The STATE may require that the cable(s) be located and exposed by the use of hand held tools. The presence of a STATE representative will be required throughout the cable exposure process. Any cables and underground facilities encountered during construction of the turnout must be shown on the as-built drawings submitted by the DISTRICT.
28. INSPECTION AND ACCEPTANCE All of the construction authorized by this Agreement shall be subject to inspection by the STATE for conformity with the approved drawings and specifications, for protection of the STATE's property and for avoidance of any interference with STATE construction, operation and maintenance of the area. Inspection shall be performed in

such manner as not to delay construction unnecessarily. The STATE will assign an inspector and will furnish his/her name and address to the DISTRICT. Neither the inspection nor the lack of inspection of any portion of such construction, nor the presence or absence of the STATE's inspector during such construction shall waive any of the requirements of the approved drawings and specifications. In the event that construction does not conform to the STATE's requirements, the STATE may notify the DISTRICT to halt construction. The STATE will allow the DISTRICT to resume construction after it has met the STATE's requirements.

After construction and site restoration has been completed, an inspection will be performed by the STATE's representative. If the facilities constructed by the DISTRICT are found to be satisfactory and the DISTRICT has furnished the STATE reproducible prints of the as-built drawings and related documents pursuant to Section 22, a formal statement of acceptance will be forwarded to the AGENCY and DISTRICT. Inspections and acceptance under this Section shall not subject the STATE to any liability nor shall such actions modify or qualify the AGENCY's or DISTRICT's liability under Section 12.

Western Hills Water District
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29. BORROW, WASTE, AND STOCKPILING Only such borrow, waste, and stockpiling will be permitted as shown on drawings and specifications submitted to and approved by the STATE's Delta Field Division's Engineering Branch Supervisor or his/her delegated representative.
30. DRAINAGE If the work herein contemplated interferes with established drainage, the DISTRICT shall provide for alternative drainage during construction, and shall restore existing drainage after completion of each construction phase in the area as directed by the STATE.
31. BACKFILL All backfill shall be moistened as necessary and thoroughly compacted to a relative compaction equal to or greater than that of the material excavated or as otherwise required by the approved drawings or specifications.
32. CLEANUP AFTER CONSTRUCTION Upon completion of any work pursuant to this Agreement, the DISTRICT shall restore the STATE's right of way to a presentable condition as approved by the STATE. In the event the DISTRICT fails to restore the affected site to a presentable condition approved by the STATE, the STATE may do the work or cause the work to be done and the AGENCY and DISTRICT shall reimburse the STATE the full cost of the restoration.

33. FAILURE TO BEGIN CONSTRUCTION--SITE RESTORATION In the event that the DISTRICT fails to begin construction authorized by this Agreement for a continuous period of two years after the STATE's approval of drawings and specifications, or fails, neglects, or refuses to comply with any of the conditions herein, all rights of the AGENCY and DISTRICT described herein shall terminate upon 60 days notice by the STATE. In the event the DISTRICT abandons any of such construction for a continuous period of three months, upon 30 days notice from the STATE, the DISTRICT shall begin to restore the affected site to a condition approved by the STATE. If the DISTRICT fails to restore the affected site to a condition approved by the STATE within 90 days after the notice, the STATE may do the work or cause the work to be done, and the AGENCY shall reimburse the STATE the full cost of the restoration.
34. ACKNOWLEDGMENT DISTRICT acknowledges that this Agreement confers no right to a water supply from the STATE nor from the State Water Project and that the water to be delivered at the turnout is established solely by the terms and conditions of its separate agreement with AGENCY.

Western Hills Water Agency
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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the
date first above written.

Approved as to legal form
and sufficiency:

Susan N. Weber
Chief Counsel
Department of Water Resources

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES
Shawn M. Hamby
Director

WESTERN HILLS WATER DISTRICT

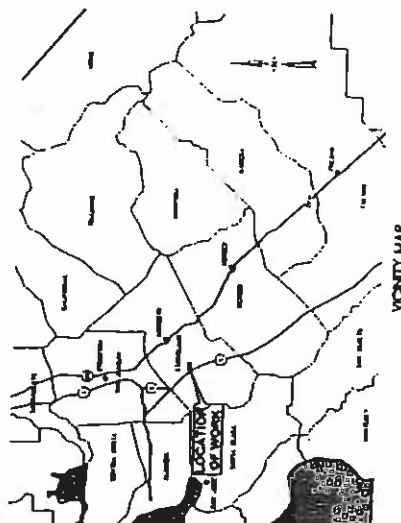
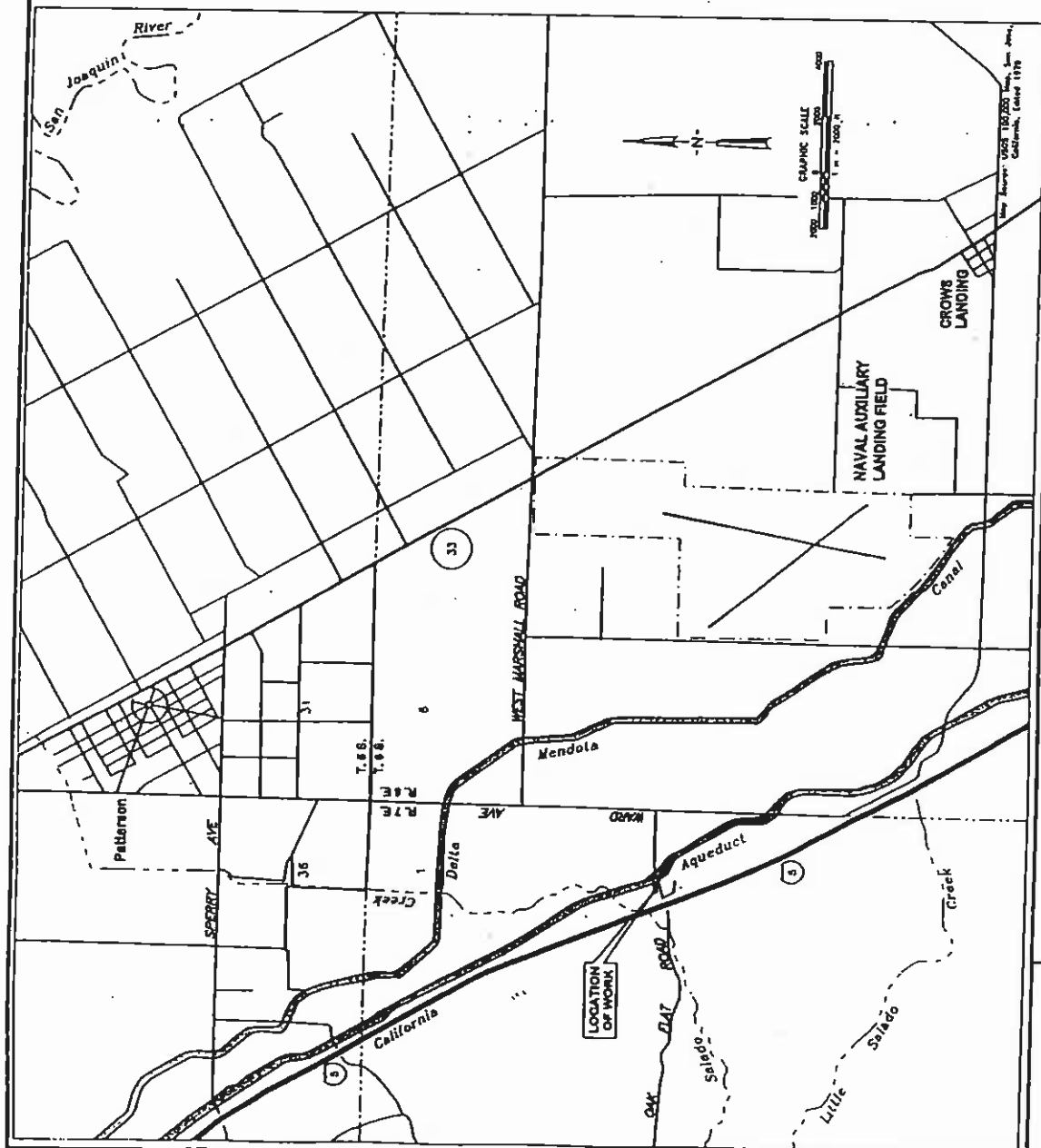
Leith J. Andrade
Name

PRESIDENT
Title

KERN COUNTY WATER AGENCY

Shawn M. Hamby
Name

President
Title



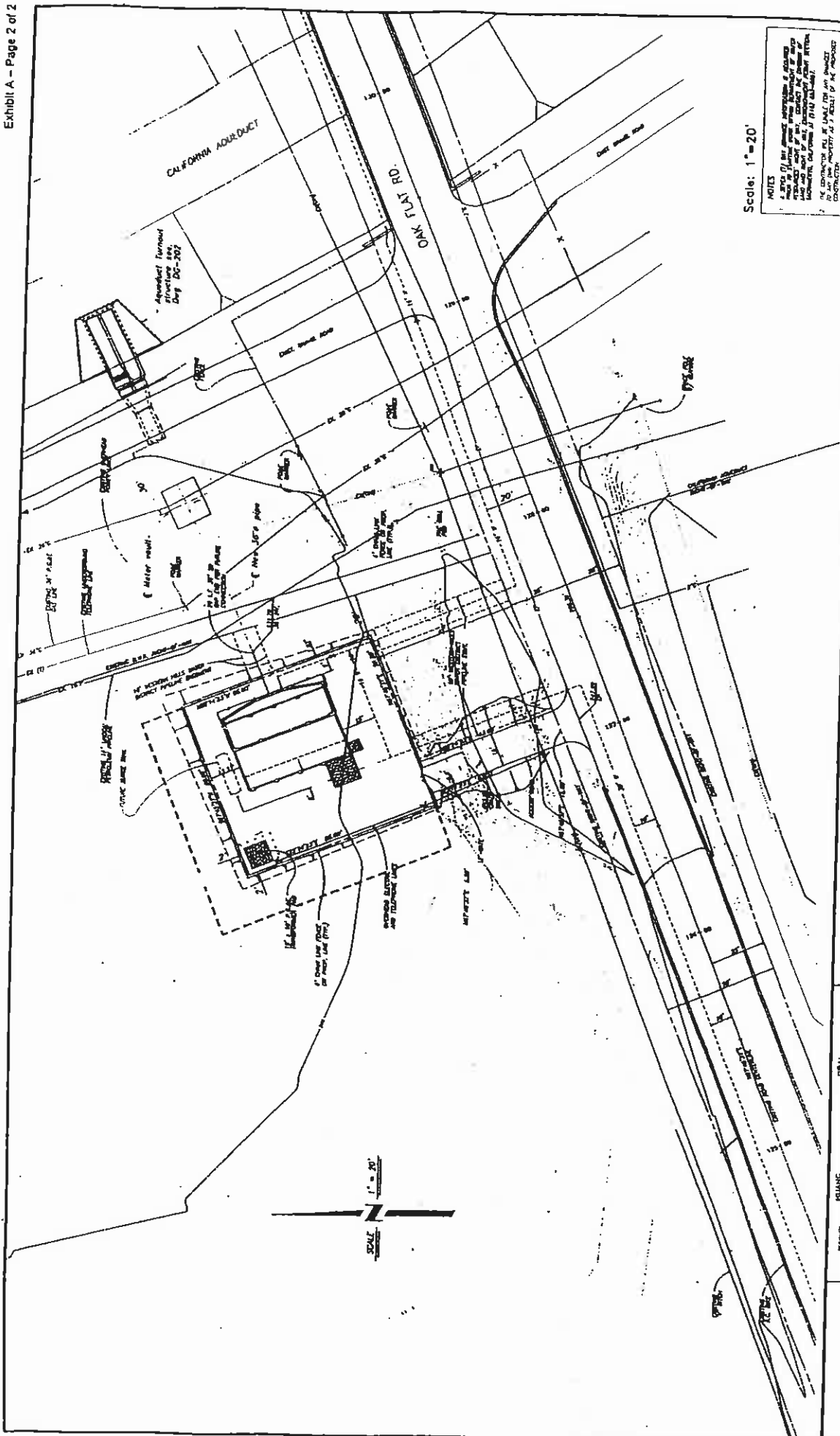
DIABLO GRANDE
STANISLAUS COUNTY, CALIFORNIA
BOOKMAN-EDMONSTON
ENGINEERS & ARCHITECTS
SACRAMENTO, CALIFORNIA

BY	DATE	REVISION	BY	DATE

DIABLO GRANDE AQUEDUCT TURNOUT
STANISLAUS COUNTY, CALIFORNIA

LOCATION OF WORK, VICINITY MAP, DRAWING LIST

DATE
MAY 28, 1999
SHEET
SHEET NO. 1 OF 1
PROJECT NO.
DC-101



Scale: 1" = 20'

NOTES
1. THIS PLAN IS A PART OF THE PROJECT AND SHOULD BE USED IN CONJUNCTION WITH THE PROJECT MANUAL AND THE PROJECT SPECIFICATIONS.
2. THE PROJECT MANUAL AND THE PROJECT SPECIFICATIONS CONTAIN THE COMPLETE REQUIREMENTS FOR THE PROJECT.
3. THE PROJECT MANUAL AND THE PROJECT SPECIFICATIONS CONTAIN THE COMPLETE REQUIREMENTS FOR THE PROJECT.
4. THE PROJECT MANUAL AND THE PROJECT SPECIFICATIONS CONTAIN THE COMPLETE REQUIREMENTS FOR THE PROJECT.

DIABLO GRANDE STANISLAUS COUNTY, CALIFORNIA BOOKMAN-EDMONSTON ENGINEERS, INC. SACRAMENTO, CALIFORNIA		DIABLO GRANDE AQUEDUCT TURNOUT STANISLAUS COUNTY, CALIFORNIA AQUEDUCT TURNOUT SITE PLAN		ISSUE DATE 10-1-2011
DRAWN BY CARTER/MAUR	CHECKED BY SALMON	DATE 10-1-2011	SCALE 1" = 20'	PROJECT NO. DC-201

EXHIBIT C

POINT OF DELIVERY AGREEMENT

State of California
The Resources Agency
DEPARTMENT OF WATER RESOURCES

POINT OF DELIVERY AGREEMENT BETWEEN
DEPARTMENT OF WATER RESOURCES,
STATE OF CALIFORNIA,
AND THE
KERN COUNTY WATER AGENCY

THIS AGREEMENT is made this 8th day of June, 2000,
pursuant to the provisions of the California Water Resources Development Bond Act,
and other applicable laws of the State of California, between the State of California
"Department of Water Resources," herein referred to as the "STATE" and the "Kern
County Water Agency," herein referred to as the "AGENCY," a political subdivision of
the State of California created by an Act of the California State Legislature (Statutes
1961 Ch. 1003, as amended).

RECITALS:

- A. The STATE and the AGENCY have entered into and subsequently amended a
water supply contract, herein referred to as the "Water Supply Contract,"
providing that the STATE will supply certain quantities of water to the AGENCY,
and providing that the AGENCY shall make certain payments to the STATE, and
setting forth the terms and conditions of such supply and such payment; and
- B. The AGENCY has entered into an agreement with "Western Hills Water District,"
a California Water District located in Stanislaus County, herein referred to as

- "WESTERN," to provide a long-term water supply for WESTERN utilizing Local Water from the AGENCY's share of the Pioneer Groundwater Banking Project in Kern County and delivering such water to WESTERN by exchanging it for a portion of the AGENCY's State Water Project (SWP) entitlement water; and
- C. The purpose of this Agreement between the STATE and the AGENCY is to set forth provisions governing the delivery of the AGENCY's Local Water to WESTERN by exchanging the AGENCY's Local Water for a like amount of AGENCY's SWP entitlement delivered to the Western Hills Turnout on the California Aqueduct in Reach 2A; and
- D. The AGENCY's agreement to provide a water supply to WESTERN is an alternative to WESTERN's previously planned purchase of SWP entitlement from the Berrenda Mesa Water District, a member unit of the AGENCY, pursuant to Article 53 of the Water Supply Contract; and
- E. Existing SWP contractors have expressed an interest in purchasing the Berrenda Mesa entitlement and the STATE and the AGENCY wish to assure that these contractors have the opportunity to proceed with such a purchase; and
- F. The AGENCY's agreement to supply WESTERN with a water supply will not increase the AGENCY's demand for project water, and the source of the Local Water provided for this exchange will not be SWP water; and
- G. The transportation facilities required to implement the proposed exchange are included in Table 1 of the Water Supply Contract, and accordingly, the AGENCY participates in the repayment of the reaches required for this exchange; and

- H. Pursuant to Article 15(a) of the AGENCY's Water Supply Contract, the STATE hereby consents to the delivery of AGENCY SWP Table A entitlement water outside the AGENCY's service area under the terms of this Agreement and finds that such delivery will not materially impair the AGENCY's capacity to make payments to the STATE.
- I. The STATE has filed a petition with the State Water Resources Control Board on February 11, 2000 to include WESTERN's service area as described in Exhibit A within the authorized place of use of SWP water.

AGREEMENT

1. DEFINITIONS

- (a) "Entitlement" means the acre-feet amounts listed in Table A of the Water Supply Contract, excluding interruptible water and turnback pool water.
- (b) "Water Supply Contract" means the contract entered into for a long-term supply of water from the California Water Resources Development System between the STATE and the AGENCY, dated November 15, 1963, as amended.
- (c) "Western Hills Turnout" means the turnout proposed to be constructed on Reach 2A, Milepost 42.9 of the California Aqueduct as shown on Exhibit A.
- (d) Definitions and terms contained in the Water Supply Contract apply to this Agreement.

- (e) "Local Water" means local water stored in the Pioneer Groundwater Banking Project, excluding SWP water of all classifications, (eg., entitlement, interruptible, and turnback pool water.)
- (f) "Western Hills Water District" means the California Water District located in Stanislaus County.
- (g) "Pioneer Participation Agreement" means the agreement entered into for recharging and withdrawing water in the Pioneer Groundwater Banking Project among AGENCY and various member units of the AGENCY, dated January 1, 1997, as amended.

2. APPROVAL

The STATE approves delivery of a portion of the AGENCY's SWP Table A entitlement at the Western Hills Turnout on the California Aqueduct to implement the AGENCY's agreement to provide a water supply from the AGENCY's Local Water by exchange for a portion of its entitlement under the terms and conditions of this Agreement.

3. TERM

This Agreement shall be coextensive with the Pioneer Participation Agreement. The AGENCY shall furnish to the STATE copies of all amendments to the Pioneer Participation Agreement within 30 days of execution.

4. USE OF WATER

Water delivered by the STATE under this Agreement shall not be sold, used or otherwise disposed of outside of WESTERN's service area described in Exhibit A attached hereto. If any such water is sold, used or otherwise disposed of outside of Western's service area, upon notification from the STATE, the AGENCY shall seek an injunction or other appropriate remedy to halt any such deliveries and the STATE may reclassify deliveries of State Project water to the AGENCY up to the amount that was delivered outside of WESTERN's service area. The AGENCY shall notify the STATE of any change in WESTERN's service area as described in Exhibit A, including by inclusion or exclusion of lands, partial or total consolidation, merger with another district, or proceeding to dissolve.

5. SCHEDULING, DELIVERY PRIORITY AND USE OF CALIFORNIA
AQUEDUCT CAPACITY

The STATE shall deliver a portion of the AGENCY'S Table A entitlement water to the Western Hills Turnout in accordance with schedules, provided by the AGENCY, which have been reviewed and approved by the STATE pursuant to applicable scheduling provisions of the Water Supply Contract and consistent with the overall operations of the SWP. All deliveries of water shall be subject to applicable provisions of the Water Supply Contract. The STATE shall not be obligated to convey such water at times when such delivery would adversely impact SWP operations or

facilities, or other SWP contractors' water deliveries or costs, as determined by the STATE. The AGENCY shall be responsible for any adverse impacts that may result from deliveries under this Agreement as determined by the STATE.

6. AGENCY'S TABLE A NOT AMENDED

The AGENCY's Table A is not amended by this Agreement.

7. SOURCE OF EXCHANGE WATER

The AGENCY's agreement to supply water to WESTERN does not constitute a sale of its SWP water, and the AGENCY confirms that the source of water for the exchange is local water stored in the AGENCY's share of the Pioneer Groundwater Banking Project, and not SWP water of any classification, including entitlement and interruptible.

8. RECORDS OF EXCHANGE

The AGENCY shall certify to the STATE's State Water Project Analysis Office annually by January 31 the following information for the previous year's delivery:

- (a) The original and intermediate sources of water used for the exchange to WESTERN.
- (b) The groundwater accounting for the Pioneer Groundwater Banking Project.

The STATE will maintain monthly records accounting for the delivery of the AGENCY's SWP Table A entitlement to WESTERN delivered pursuant to this Agreement.

9. ARTICLE 53

The AGENCY shall not contend that this Agreement, or any actions taken in conjunction with its provision of water to WESTERN, constitute performance of the AGENCY's obligation to offer for sale 130,000 acre-feet of its entitlement pursuant to Article 53 of the Water Supply Contract.

10. CHARGES

- (a) Charges for conveyance shall be calculated in the same manner as charges are calculated for the AGENCY's other SWP entitlement water being moved through the same reaches, including charges for SWP power resources (including on-aqueduct, off-aqueduct and any other power) used in the transportation of such water calculated from Bank's Pumping Plant to the Western Hills Turnout. Charges shall be determined in accordance with the provisions of the Water Supply Contract for SWP entitlement deliveries applicable in the year the water is delivered.
- (b) In addition to the charges identified above, the AGENCY agrees to pay any additional identified increased SWP non-power costs, as defined in Article 56(c)(6) of the Water Supply Contract, that the STATE or other SWP contractors would not otherwise incur but for this Agreement or actions undertaken pursuant to this Agreement.
- (c) All charges arising out of this Agreement shall be paid within 60 days after billing and shall be collected in the same manner and on

the same terms and conditions as other charges under the Water Supply Contract.

11. APPROVALS

The delivery of water under this Agreement shall be contingent on and subject to any necessary approvals and shall be governed by the terms and conditions of such approvals and any other applicable regulations.

The AGENCY shall be responsible for complying with all applicable laws and regulations and for securing any required consent, permit, or order.

The AGENCY shall furnish to the STATE copies of all approvals acquired for the actions undertaken pursuant to this Agreement.

12. LIABILITY

If a claim of liability against the STATE, its officers or employees, individually or severally, arises out of this Agreement or any actions taken pursuant to this Agreement or the exchange accomplished by this Agreement, to the extent permitted by law, the AGENCY shall defend, indemnify, and hold the STATE, and any of its officers or employees harmless from any such claim. The AGENCY shall defend against the claim and shall upon the demand of the STATE reimburse the STATE for any costs the STATE incurs in participating in the defense against the claim.

13. NO MODIFICATION OF THE WATER SUPPLY CONTRACT

This Agreement shall be subject to the terms and conditions of the Water Supply Contract and shall not be interpreted to modify the terms or conditions of the Water Supply Contract.

14. WAIVER

No waiver by either party on any provision shall be deemed a waiver of any other provision or of any subsequent breach by either party of the same or any other provisions.

15. ASSIGNMENT OF AGREEMENT

No assignment or transfer of the Agreement or any part hereof, rights hereunder, or interest herein by the AGENCY shall be valid unless and until it is approved by the STATE.

16. THIRD PARTY BENEFICIARIES

No third-party beneficiary is created or intended by this Agreement, and neither party shall contend otherwise.

17. PARAGRAPH HEADINGS

The paragraph headings of this Agreement are for the convenience of the Parties and shall not be considered to limit, expand, or define the contents of the respective paragraphs.

18. TERMS TO BE REASONABLE

Where the terms of this Agreement provide for actions to be based upon the opinion, judgment, approval, review, or determination of any party,

such terms are to be construed as providing that such opinion, judgment, approval, review, or determination be reasonable.

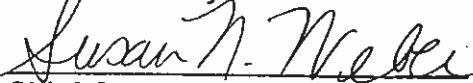
19. SIGNATURE CLAUSE

The signatories represent that they have been appropriately authorized to enter into this Agreement on behalf of the party for whom they sign.

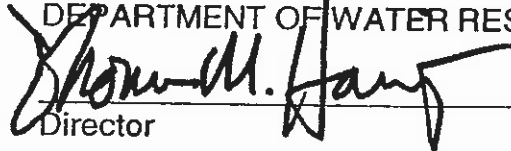
Certified copies of resolutions authorizing the AGENCY to enter into this Agreement shall be delivered to the STATE before implementation of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement.

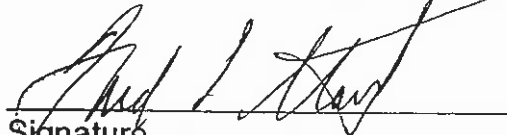
Approved as to legal form
and sufficiency:


Chief Counsel
Department of Water Resources

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES


Director

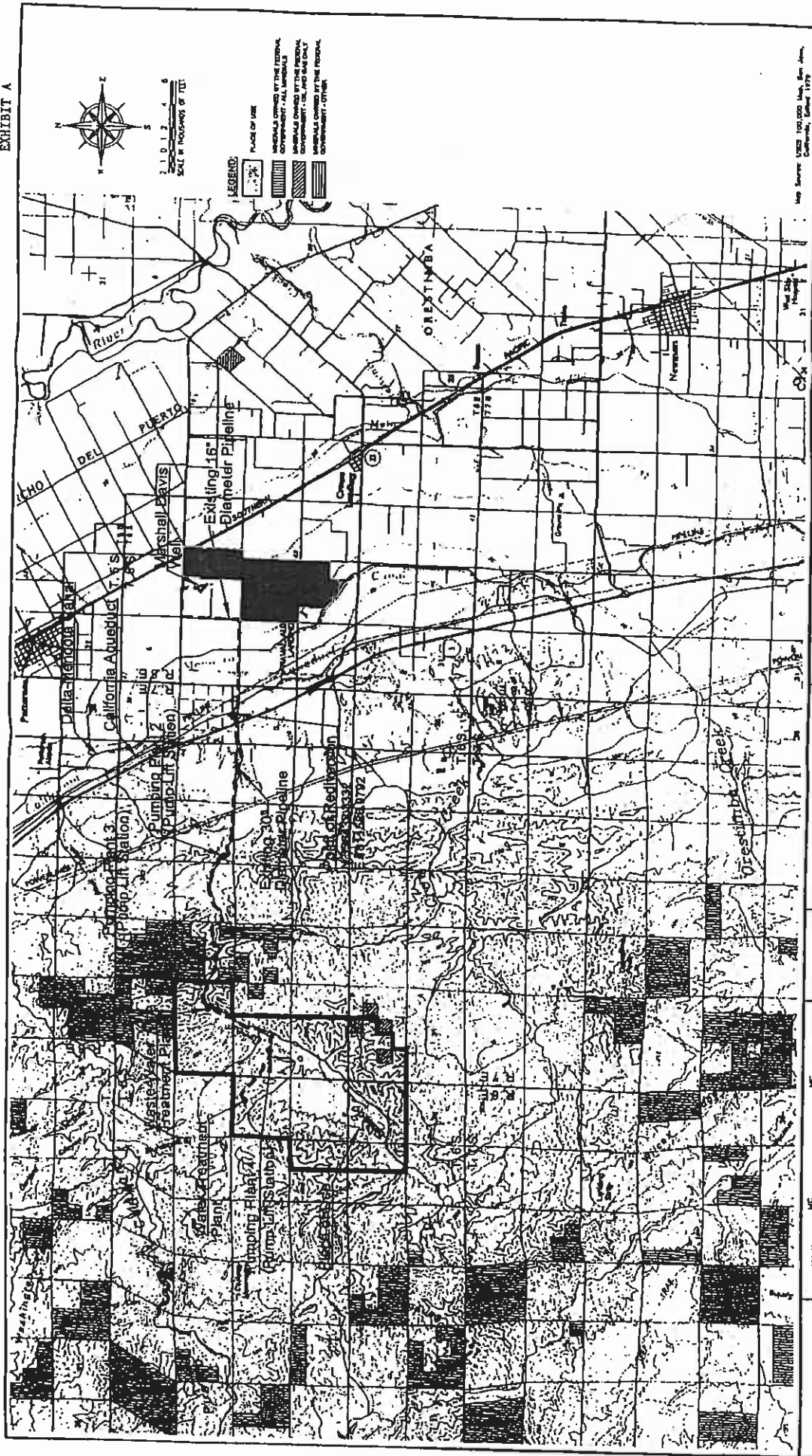
KERN COUNTY WATER AGENCY


Signature

President
Title

May 25, 2000
Date

EXHIBIT A



<p>REDUCED SCALE DRAWING</p>	<p>MC 44-12 MC 44-13 MC 44-14</p>	<p>WESTERN HILLS WATER DISTRICT</p>	<p>POINT OF REDIVERSION AND PLACE OF USE</p>
	<p>MC 44-15 MC 44-16 MC 44-17</p>		
<p>Map Source: USGS 100,000 Map, San Jose, California, Edition 1972</p>			
<p>DATE: 1979</p>			
<p>BY: [Signature]</p>			
<p>SCALE: 1"=1 MILE</p>			
<p>Sheet: C-1</p>			

EXHIBIT D

REIMBURSEMENT AGREEMENT

State of California
The Resources Agency
DEPARTMENT OF WATER RESOURCES

AGREEMENT AMONG
THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF CALIFORNIA,
KERN COUNTY WATER AGENCY
AND
WESTERN HILLS WATER DISTRICT
FOR REIMBURSEMENT OF DWR'S COSTS RELATED TO THE
TRANSFER OF KERN COUNTY LOCAL WATER TO
WESTERN HILLS WATER DISTRICT

THIS AGREEMENT is made this 8th day of June, 2000,
pursuant to the provisions of the California Water Resources Development Bond Act,
the State Central Valley Project Act, and other applicable laws of the State of California,
between the Department of Water Resources of the State of California, here after called
"State", Kern County Water Agency, here after called "Agency", and Western Hills
Water District, here after called "District."

RECITALS:

- A. The State and the Agency have entered into and subsequently amended a long-term Water Supply Contract, providing that the State will supply certain quantities of water to the Agency, and providing that the Agency shall make certain payments to the State, and setting forth the terms and conditions of such supply and such payments.

- B. The Agency has entered into an agreement with the District, a California Water District located in Stanislaus County, to provide a long-term water supply for the District utilizing Local Water from Agency's share of the Pioneer Groundwater Banking Project in Kern County and delivering such water to the District by exchanging it for a portion of the Agency State Water Project entitlement water.
- C. The purpose of this agreement between the State and the Agency is to set forth provisions governing the reimbursement of the State's costs incurred during the development of the agreement between the State and the Agency concerning the delivery of the Agency's Local Water to the District by exchanging the Agency's Local Water for a like amount of Agency's SWP entitlement delivered to Western Hills Turnout on the California Aqueduct in Reach 2A.
- D. The District also desires to construct a permanent turnout facility on the State's California Aqueduct right of way. A separate agreement will be developed to address the reimbursement of the Department's costs during planning, design, construction, and operation and maintenance of the permanent turnout.

AGREEMENT

The State, Agency and District agree as follows:

- 1. Scope of Work. The State agrees to perform, or cause to be performed the following work:
 - (a) Prepare and administer this Agreement and the Point of Delivery Agreement;

- (b) Prepare the Petition for Change of Place of Use to the State Water Resources Control Board for the transfer;
 - (c) Review existing environmental documents completed for the proposed transfer and for the Diablo Grande project and prepare supplemental environmental documents;
2. Costs. The District and Agency shall pay all costs incurred by the State, which in the opinion of the State, are properly attributable to the work authorized under Article 1 of this Agreement. Costs incurred prior to execution of this agreement shall be included. Charges may also include incidental costs related to the work authorized under this Agreement, such as travel expenses and work by private consultants selected by the State to do all or a portion of the work.
- (a) Not later than 30 days after the date of this Agreement, the State will furnish to the District an advance billing invoice for a deposit in the amount of \$25,000 to cover costs of work authorized under Article 1 of this Agreement. Such deposit will become due and payable 30 days after the date of the advance billing invoice. Unpaid deposit amounts will become delinquent after the due date, and interest shall accrue thereon at a rate of 1 percent per month from the billing date until paid.
 - (b) The State may furnish interim billing invoices to the District which shall become due and payable 30 days after written notice thereof and be

subject to interest charges as for the advance billing.

- (c) The State will notify the Agency and District if it appears that the State's costs will exceed \$50,000 under this Agreement.
- (d) A final billing invoice will be furnished to the District within 60 days after either (1) the State's completion of activities as described in Article 1 of this Agreement, or (2) notice of termination of this Agreement by any party pursuant to Article 3 of this Agreement.

Based upon such billing, the State will either refund any excess payment resulting from the advance and interim billings, or in the event a deficiency results, the District will make final payment of State costs. Such final payment, if any, will become due and payable within 30 days after written notice thereof and be subject to interest charges as for the advance and interim billings.

- (e) In the event the District does not make full payment of the final billing invoice within 90 days from the date of the final billing invoice, the Agency shall be responsible to make payment for any unpaid amounts of such costs remaining and be subject to the interest charges as for the advance billing for the District.

3. Term. This Agreement shall become effective upon execution by all Parties and shall terminate upon (1) completion of work by the State authorized under this Agreement, or (2) 30 calendar days' written notice by any party.

This Agreement may be amended upon mutual written agreement of the Parties.

4. Contracting Officer of State. The State's contracting officer shall be the Director and his successors or his duly authorized representatives. The contracting officer shall be responsible for all discretionary acts, opinions, judgments, approvals, reviews, and determinations required of the State under the terms of this Agreement.
5. Opinions and Determinations. Where the terms of this Agreement provide for action to be based upon the opinion, judgment, approval, review, or determination of any party hereto, such terms are not intended to be and never shall be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
6. Notices. All notices that are required either expressly or by implication to be given by any one party to any or all other parties under this Agreement shall be signed for the State by or on behalf of its contracting officer and for the Agency and District by such officer(s) as may, from time to time, be authorized in writing to so act. All such notices shall be deemed to have been given if delivered personally or if enclosed in a properly addressed and stamped envelope and deposited with the U.S. Postal Service for delivery by registered or certified mail. Unless otherwise provided in this Agreement and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown below:

REIMBURSEMENT OF COSTS RELATED TO
THE TRANSFER OF LOCAL WATER TO
WESTERN HILLS WATER DISTRICT

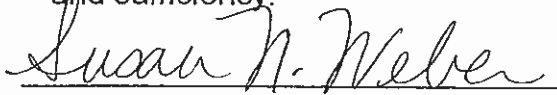
Chief
State Water Project Analysis Office
Department of Water Resources
Post Office Box 942836
Sacramento, California 94236-0001

General Manager
Kern County Water Agency
Post Office Box 58
Bakersfield, California 93302-0058

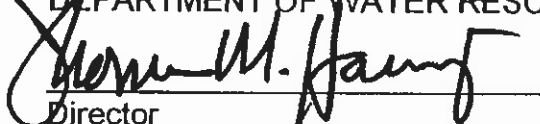
Manager
Western Hills Water District
Post Office Box 655
Patterson, California 95363

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the
date first above written.

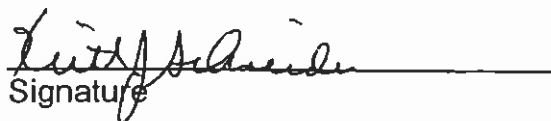
Approved as to legal form
and sufficiency:


Chief Counsel
Department of Water Resources

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES


Director

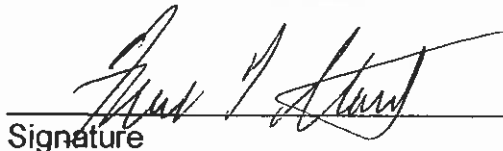
WESTERN HILLS WATER DISTRICT


Signature

PRESIDENT
Title

MAY 31, 2000
Date

KERN COUNTY WATER AGENCY


Signature

President
Title

May 25, 2000
Date

EXHIBIT E

Water Shortage Contingency Plan

Emergency water supplies for Western Hills Water District (WHWD) could be from one of two places. First Stanislaus County conditions on use of water from the Marshall-Davis Farm, which is owned by WHWD, provide that it can be used without quantity or time limits if there is an interruption of the physical capability to deliver water through facilities that supply WHWD. The capability of the existing well is approximately 3,000 gpm. The existing well could be equipped with a larger motor and produce up to 3,500 gpm (7.8 cfs) or 465 acre-feet per month. This would meet all of the potable interior residential and commercial demands in the peak month (95 acre-feet) at buildout of Phase I. There would still be about 370 acre-feet of groundwater and about 90 acre-feet of recycled water for permanent horticulture and vineyards. About 70 percent of the total irrigation demand, 730 acre-feet, could be met. If necessary, because it is anticipated the emergency would be of an extended duration, an additional well could be constructed at Marshall-Davis Farm with additional booster capacity.

An alternative source of emergency water for an extended period would be pumpback from San Luis Reservoir out of O'Neill Forebay. It is considered highly unlikely that there would not be enough water in San Luis Reservoir to provide for pumpback at the same time there would be a problem with water supply from the Delta. With pumpback, a series of pumps would be installed at every other check on the California Aqueduct. This would require pumps at up to three checks, as determined by the Department. With normal maximum water levels in O'Neill Forebay and at the WHWD turnout, the total lift would be about 6.9 feet. The normal minimum level in O'Neill Forebay would be 7.0 feet lower. Temporary pumps would be placed on the California Aqueduct bank downstream of checks with manifold piping to discharge water upstream of the check. Pump and manifold design would be submitted to the Department for approval. Up to three units of pumps and manifolds would be purchased and warehoused by WHWD for emergency installation. Engines for pump drives would be rented when needed.