

**REMEDiated GROUNDWATER PURCHASE AND SALE AGREEMENT BETWEEN  
CARMICHAEL WATER DISTRICT AND BYRON-BETHANY IRRIGATION DISTRICT**

This Remediated Groundwater Purchase and Sale Agreement ("Agreement") is effective June 4, 2015 by and between Carmichael Water District ("CWD") and Byron-Bethany Irrigation District (BBID). CWD and BBID are referred to herein individually as "Party" and collectively as "Parties."

**RECITALS**

- A. WHEREAS, on April 1, 2015, the Governor of the State of California declared that California's water supplies continue to be severely depleted despite a limited amount of rain and snowfall this winter, with record low snowpack in the Sierra Nevada mountains, decreased water levels in most of California's reservoirs, reduced flows in the state's rivers and shrinking supplies in underground water basins; and
- B. WHEREAS, the Governor further declared that severe drought conditions continue to present urgent challenges including diminished water for agricultural production, and that new expedited actions are needed to reduce the harmful impacts from water shortages and other impacts of the drought; that the magnitude of the severe drought conditions continues to present threats beyond the control of the services, personnel, equipment, and facilities of any single local government and require the combined forces of a mutual aid region or regions to combat; and
- C. WHEREAS, the Governor further declared that conditions of extreme peril to the safety of persons and property continue to exist in California due to water shortage and drought conditions with which local authority is unable to cope and that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay the mitigation of the effects of the drought; and
- D. WHEREAS, in declaring a water shortage emergency and taking other remedial actions, BBID acknowledged the Governor's declared state of emergency by curtailing demands within its service area and seeking additional sources of supply; and
- E. WHEREAS, CWD is party to that certain agreement with Aerojet Rocketdyne, Inc (Aerojet), dated May 1, 2015 whereby Aerojet provides CWD will specified quantities of remediated groundwater for CWD's use; and
- F. WHEREAS, on May 26, 2015, CWD filed a Notice of Exemption for the agreement and transfer with Aerojet; and

- G. WHEREAS, CWD's agreement with Aerojet provides that remediated groundwater not needed for use within CWD's service area may be sold or otherwise transferred to third parties so that the remediated groundwater may be put to full beneficial use; and
- H. WHEREAS, CWD is an irrigation district formed and operating pursuant to Division 11 of the California Water Code (Cal. Water Code §§ 20500, *et seq.*) and is empowered to purchase and sell groundwater as provided for in this Agreement; and
- I. WHEREAS, BBID is an irrigation district formed and operating pursuant to Division 11 of the California Water Code (Cal. Water Code §§ 20500, *et seq.*) and is empowered to purchase and sell groundwater as provided for in this Agreement; and
- J. WHEREAS, BBID holds pre-1914 appropriative water rights from water courses in the California Delta, and the State Water Resources Control Board has indicated that BBID's pre-1914 appropriative water rights would likely be curtailed beginning in June 2015; and
- K. WHEREAS, if BBID's pre-1914 appropriative water rights are curtailed, growers and users within BBID are likely to suffer devastating injuries from the loss of annual and permanent crops, the elimination of numerous agriculture-related jobs, and other significant losses; and
- L. WHEREAS, CWD can make a portion of remediated groundwater CWD receives from Aerojet available to assist in alleviating injuries suffered within BBID's service area; and
- M. WHEREAS, the water supply situation within BBID's service area constitutes an emergency.

#### AGREEMENT

Now, therefore, in consideration of the foregoing Recitals, the mutual covenants and conditions contained herein, and for good and valuable consideration that is hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The foregoing recitals shall be incorporated as material provisions in this Agreement and made a part thereof for all purposes.
2. **Definitions.** The following definitions shall govern this Agreement:

- a. "Remediated Groundwater" means the water that Aerojet makes available to CWD pursuant to the Remediated Groundwater Purchase and Sale Agreement Between Aerojet Rocketdyne, Inc. and Carmichael Water District, dated May 1, 2015.
  - b. "Excess Remediated Groundwater" means that portion of Remediated Groundwater not needed for use within CWD's service area.
3. **Term.** This Agreement is effective as of the date set forth above and expires December 31, 2015.
4. **BBID Water Purchase.** CWD agrees to sell Excess Remediated Groundwater to BBID and BBID agrees to purchase such Excess Remediated Groundwater for BBID's use within BBID's service area, subject to the terms and conditions set forth in this Agreement.
5. **Availability of Excess Remediated Groundwater.** CWD receives an accounting of Remediated Groundwater made available and produced by Aerojet under CWD's agreement with Aerojet. CWD will subtract that amount of Remediated Groundwater actual diverted by CWD, including conveyance losses recognized by CWD, and report the quantity of Excess Remediated Groundwater available to BBID on a weekly basis. BBID is obligated to purchase all Excess Remediated Groundwater made available by CWD under this Agreement.
6. **Excess Remediated Groundwater Point of Delivery and Conveyance.** Excess Remediated Groundwater shall be made available by CWD at Aerojet's discharge of the Remediated Groundwater at Aerojet's groundwater treatment and extraction (GET) point of discharge under its NPDES permit (i.e., point of discharge to a drainage ditch).
7. **Water Rights.** Aerojet warranted to CWD that the Remediated Groundwater originates as percolating groundwater which would not reach or recharge the American River or its tributaries, and is therefore foreign and developed water. In this regard, Aerojet warranted that its actions under its agreement with CWD were consistent with the determinations of the State Water Resources Control Board staff. Aerojet has warranted that it has not abandoned, assigned or transferred to third parties, the Remediated Groundwater that it transferred to CWD under the agreement between Aerojet and CWD. Based upon the warranties provided to CWD by Aerojet, CWD agrees to make the Excess Remediated Groundwater available for sale to BBID.
8. **Indemnifications.** Should any claim arise, CWD and BBID shall work cooperatively to uphold the sale and delivery of Excess Remediated Groundwater under this Agreement. In the Agreement between Aerojet

and CWD, Aerojet agreed to indemnify and hold harmless CWD for such claims as they relate to Aerojet's right to sell the Remediated Groundwater to CWD at the point of delivery. BBID agrees to indemnify and hold CWD harmless for such claims related to BBID's diversion of the Excess Remediated Groundwater.

9. **Payments for Delivered Water.** BBID shall pay CWD \$300.00 per acre-foot of Excess Remediated Groundwater that CWD makes available for BBID at the Point of Delivery. CWD shall invoice BBID on a monthly basis for the Excess Remediated Groundwater that CWD makes available in the prior month. BBID shall remit payment to CWD within 30 days of BBID's receipt of the invoice.
10. **Schedule and Conditions to Delivery of Water.** BBID recognizes and acknowledges that Aerojet's delivery of Remediated Groundwater are sometimes inconsistent and CWD cannot predict precisely how much Excess Remediated Groundwater, if any, will be available on any given day. CWD will provide BBID with a report of Excess Remediated Groundwater made available on a weekly basis and BBID shall have the obligation to ensure it takes only the amount of Excess Remediated Groundwater less any conveyance losses.
11. **Use of Conveyed Groundwater.** BBID may use the Excess Remediated Groundwater for any beneficial purpose.
12. **General Provisions.**
  - a. *Authority.* Each signatory of this Agreement represents that he is authorized to execute this Agreement on behalf of the Party for which he signs. Each Party represents that it has legal authority to enter into this Agreement and to perform all obligations under this Agreement.
  - b. *Amendment.* This Agreement may be amended or modified only by written instrument executed by each of the Parties to this Agreement.
  - c. *Jurisdiction and Venue.* This Agreement shall be governed by and construed in accordance with the laws of the State of California, except for its conflict of law rules. A suit, action or proceeding brought under the scope of this Agreement shall be brought and maintained to the extent allowed by law in the County of Sacramento.
  - d. *Construction and Interpretation.* This Agreement is the result of negotiation and each Party has had full and fair opportunity to revise the terms. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in the construction or interpretation of this Agreement.
  - e. *Entire Agreement.* This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and

- supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of the Agreement.
- f. *Partial Invalidity.* If after the date of execution of this Agreement, any provision of the Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of the Agreement, such provision shall be fully severable.
  - g. *Successors and Assigns.* This Agreement is binding on and shall inure to the benefit of the successors and assigns of the respective Parties. No Party may assign its interests in or obligations under the Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld or delayed.
  - h. *Waivers.* Waiver of any breach or default shall not constitute a continuing waiver or a waiver or any subsequent breach either of the same or of another provision of the Agreement and forbearance to enforce one or more of the remedies provided in the Agreement shall not be deemed to be a waiver of that remedy.
  - i. *Attorneys' Fees and Costs.* The prevailing Party in any litigation or other action to enforce or interpret the Agreement shall be entitled to reasonable attorneys' fees, expert witnesses' fees, costs of suit, and other and necessary disbursements in addition to any other relief deemed appropriate by a court of competent jurisdiction.
  - j. *Necessary Actions.* Each Party agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out the purposes of this Agreement.
  - k. *Compliance with Law.* In performing their respective obligations under the Agreement, the Parties shall comply with and conform to all applicable laws, rules, regulations and ordinances.
  - l. *Third Party Beneficiaries.* The Agreement shall not create any right or interest in any non-Party or in any member of the public as a third-party beneficiary.
  - m. *Counterparts.* The Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
  - n. *Notice.* Any notice, request, tender, demand, deliver, approval, or other communication provided for, required or arising under this Agreement shall be in writing and shall be deemed delivered upon transmission of an electronic mail (email) to each addressee below.

<p>To: Carmichael Water District          Attn: Steve Nugent          steve@carmichaelwd.org</p>	<p>To: Byron-Bethany Irrigation District          Attn: Rick Gilmore          r.gilmore@bbid.org</p>
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The Parties, by the signature of their authorized representatives, hereby agree to the principles set forth in this Agreement.

Carmichael Water District

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Counsel for CWD

Byron Bethany Irrigation District

By:  \_\_\_\_\_

Name: RICK GINDOFF

Title: GENERAL MANAGER

Date: JUNE 4, 2017

Approved as to Form:

\_\_\_\_\_  
Counsel for BBID

The Parties, by the signature of their authorized representatives, hereby agree to the principles set forth in this Agreement.

Carmichael Water District

By: Steve Nugent  
Name: Steve Nugent  
Title: General Manager  
Date: 6/5/2015

Approved as to Form:

\_\_\_\_\_  
Counsel for CWD

Byron Bethany Irrigation District

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Counsel for BBID