

**DRAINAGE AGREEMENT BETWEEN
THE WEST SIDE IRRIGATION DISTRICT
and
BYRON BETHANY IRRIGATION DISTRICT**

This Agreement is entered into this 12th day of Aug, 1998 between The West Side Irrigation District (hereinafter referred to as "WSID"); and Byron Bethany Irrigation District (hereinafter referred to as "BBID"), both agencies operating under and by virtue of Division 11 of the California Water Code. The undersigned parties agree as follows:

RECITALS

WHEREAS, for many years BBID has operated a spillway, with a diameter of ten (10) inches, hereinafter referred to as "spillway", at the end of the BBID 155 lateral; and

WHEREAS, BBID tail-water is conveyed to the WSID system via a drainage ditch along the east side of private property bearing San Joaquin County A.P.N. 209-080-21, which parallels Mountain House Parkway, formerly known as Patterson Pass Road; and

WHEREAS, BBID tail-water, resulting from operation of the spillway, has entered into the system of WSID in excess of fifteen (15) years ; and

WHEREAS, BBID would like to continue the operation of the spillway to discharge tail-water into the WSID system; and

WHEREAS, WSID has adopted a Sediment Reduction Element, dated February 19, 1997, as part of WSID's Drainage Policy to improve the quality of the drain water entering into the WSID system; and

WHEREAS, WSID is willing to continue this drainage privilege to BBID providing that BBID use it's good faith efforts to comply with the provisions of the Sediment Reduction Element pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, the WSID and BBID agree as follows:

- 1.0 **Provision of Drainage.** WSID hereby grants permission for BBID to continue discharging tail-water into the WSID system for a period of ten (10) years, under the terms and conditions of this Agreement.
- 2.0 **Annual Fee.** BBID shall pay an annual drainage fee of Two-Thousand Dollars (\$2,000). The initial payment of the annual drainage fee shall be paid prior to the execution of this Agreement. The remaining annual payments of the drainage fee shall be paid to WSID on or prior to April 1 of each year. No drainage rights shall be granted by this Agreement in any year until the drainage fee set forth in this Section is paid in full.
- 3.0 **Compliance with Drainage Standards.** BBID agrees to use it's good faith efforts to comply with the provisions of the Sediment Reduction Element and to implement Best Management Practices, attached hereto as Exhibit "A", that will reduce erosion and control sediment loads in the drainage tail-water being discharged into the WSID system.
- 4.0 **Drainage Water Quality.** BBID agrees that only irrigation tail-water of good quality will be discharged into the WSID system. No human or animal sewage or similar waste, reclaimed water or any water with questionable quality will be discharged by BBID into the WSID system, and is not permitted under this Agreement.
- 5.0 **Disposition of Drainage Water.** The WSID agrees to provide drainage service to BBID, such water that is discharged into the WSID system is hereby consigned to the WSID, for WSID to control, regulate, and use to the benefit of WSID without obligation to BBID.
- 6.0 **Indemnification.** BBID shall indemnify and hold the WSID free and harmless from any and all claims, losses, damages, injuries, and liabilities arising from or on account of the WSID's performance or non-performance of its obligations under this Agreement. WSID shall indemnify and hold BBID free and harmless from any and all claims, losses, damages, injuries, and liabilities arising from or on account of BBID's performance or non-performance of its obligations under this Agreement. Neither party shall be liable to the other for a force maejure event.
- 7.0 **Effect of Non-Compliance.** WSID agrees to notify BBID in writing as soon as reasonably possible, if WSID finds BBID is not in compliance, hereinafter referred to as "complaint", with

any of the terms and conditions of the Sediment Reduction Element. A joint review by both parties will be conducted to determine the nature of the complaint, and BBID shall use its good faith efforts to rectify the complaint within thirty (30) days. Should BBID fail to come into compliance with the terms and conditions of the Sediment Reduction Element within thirty (30) days, in the sole determination of WSID, BBID's rights under this Agreement shall terminate upon final written notice from WSID. BBID shall have the right to appeal such termination by WSID pursuant to Section 14 of this Agreement.

- 8.0 **WSID Right to Terminate.** If rules, regulations, or enforcement activities of any Federal or State agency empowered to enforce water quality regulations make it impossible or impracticable, in the sole determination of WSID, to permit continued drainage, the WSID reserves the right to terminate this Agreement on a thirty (30)- day written notice.
- 9.0 **Non-exclusive Remedy.** The use by either party of any remedy for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.
- 10.0 **No Waiver.** Any waiver at any time by either party of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.
- 11.0 **No Assignment.** Assignment of this Agreement is prohibited without first receiving the written consent of all parties hereto. Any assignment made in violation of this Section shall be void. Should approval for assignment be obtained, this Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the parties hereto.
- 12.0 **Notices.** All notices that are required either expressly or by implication to be given by any party to the other under this Agreement shall be signed for the WSID and for BBID by such officers as they may, from time to time, authorize in writing to so act. Any notices to parties required by this Agreement shall be delivered or mailed, United States first-class postage prepaid, addressed as follows:

WSID: The West Side Irrigation District
1320 Tracy Boulevard

14.3 **Powers of Arbitrator.** The arbitrator appointed pursuant to Paragraph 14.2 shall set a date within thirty (30) days of his appointment to meet with the parties and review all aspects of the issue in contention. The arbitrator shall receive and consider any documents or other written evidence submitted by the parties together with any oral presentation of information by either of both of these parties. The arbitrator shall be entitled to conduct an inquiry into the facts of the dispute or require further information of either or both of the parties. The arbitrator shall render a decision in writing within ten (10) days of receipt of all information deemed necessary to the decision.

14.4 **Determination.** The arbitrator's determination may provide for mechanisms of enforcement and terms of compliance. The arbitrator may direct the preparation, execution, and recordation of any agreement or conveyance resulting from the determination. The arbitrator may determine issues involving adjustment of contractual obligations based on changed circumstances and appropriate limits of insurance coverage. The arbitrator may award to the prevailing party, attorney's fees, expert and consultant fees and costs reasonably incurred in pursuing the arbitration or may divide such fees and costs between the parties. Unless appealed, as set forth in Paragraph 14.5 below, the arbitrator's decision shall be binding and enforceable against the parties.

14.5 **Contest of Award.** If either party to the arbitration wishes to contest the decision of the arbitrator, that party may do so, only under the following conditions:

- a) The notice of intent to appeal the arbitration decision must be made within thirty (30) days of receipt of that decision.
- b) The parties agree that the appellate panel shall award the prevailing party all costs of the appeal including any experts, attorney fees, consultants, or other expenses deemed necessary by the appellate panel.
- c) The party seeking the appeal shall abide by the original arbitration decisions including all payments required thereunder, unless doing so would create an irrevocable situation or condition making further arbitration moot. In this case, the party seeking appeal shall pay any

P.O. Box 177
Tracy, California 95378-0177

BBID: Byron-Bethany Irrigation District
3944 Main Street
P.O. Box 160
Byron, CA 94514-0160

Either party may amend its address for notice by sending notice to the other party.

13.0 **Integrated Agreement.** This is an integrated Agreement and contains all of the terms, considerations, understanding and promises of the parties. It shall be read as whole.

14.0 **Arbitration.** In the event of a dispute between the parties as to any right, alleged right, obligation or alleged obligation under this Agreement, the parties shall make a good faith effort to resolve the dispute. In the event that a resolution of the dispute cannot be reached despite these efforts, either party may declare an impasse and its intent to submit the matter to arbitration as provided in this section. Notice of such impasse shall be given in writing to the other and shall include a description of the disputed issue or issues, a description of the possible solutions or resolutions to the dispute and the course of action or solution advocated by the party declaring the impasse.

14.1 **Impasse Notice.** The party receiving the notice of impasse described in Paragraph 14.0 shall respond in writing within twenty-one (21) days. Said response shall contain that party's response to the issues raised and the responding party's proposed resolution to the impasse. The parties shall then meet within ten (10) days and attempt to resolve the impasse.

14.2 **Arbitrator Selection.** In the event that the impasse is not resolved, the parties shall jointly appoint a mutually agreeable arbitrator who is a licensed civil engineer with experience and expertise in the area in dispute. The arbitrator shall be selected within thirty (30) days and in the event that the parties cannot do so, application may be made, by either or both parties, to the San Joaquin Superior Court to appoint an arbitrator meeting these qualifications.

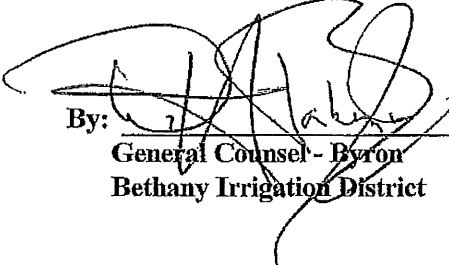
money awarded by the arbitrator and abide by as much of the decision as possible without creating an irrevocable condition.

- 14.6 **Appeal.** The appeal of an arbitration decision shall be made to a panel consisting of three (3) arbitrators. Each arbitrator shall be a civil engineer licensed in California. The arbitrator who made the decision being appealed shall not be a member of the panel. Each party to the dispute shall appoint one (1) arbitrator to the panel who shall then appoint a third arbitrator mutually agreeable to them. Each party shall appoint its arbitrator within thirty (30) days of initiation of the notice or appeal. The two (2) arbitrators shall then make their appointment of the third arbitrator within twenty (20) days of the date on which the last arbitrator was appointed by a party. If the two (2) members of the arbitration panel are unable to agree on the selection of a third member, the parties may apply to the Superior Court of San Joaquin County to appoint that arbitrator.
- 14.7 **Powers of Arbitration Panel.** The arbitration panel shall have the right to consult with the original arbitrator, conduct its own inquiry into the facts of the dispute or require further information of either or both of the parties. The panel shall have the right to employ consultants or other experts to assist in rendering its determination. The panel shall render its decision in writing within ten (10) days of receipt of all information it deems necessary to its decision.
- 14.8 **Final Decision.** The decision of the arbitration panel shall be final and binding upon the parties and shall be implemented in accordance with any provisions contained in the arbitration determination. The parties waive the right to commence any court proceeding involving any issue which is subject to arbitration with the exception of a petition to the Superior Court for the purposes of confirming or correcting the arbitration award. In the event court proceedings are necessary to enforce, confirm or correct any decision of the arbitrator or the arbitration panel, the court may award reasonable attorney fees and costs incurred in connection with said action upon a finding that said action was reasonably necessary to enforce, confirm or correct or accomplish the arbitration determination.

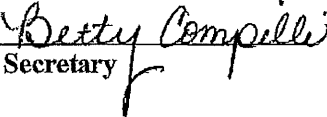
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

Approved as to legal form
and sufficiency:

BYRON BETHANY IRRIGATION DISTRICT

By: 
General Counsel - Byron
Bethany Irrigation District

By: 
General Manager

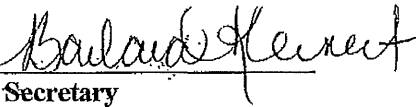
Attest: 
Secretary

Approved as to legal form
and sufficiency:

THE WESTSIDE IRRIGATION DISTRICT

By: 
General Counsel - The
West Side Irrigation District

By: 
President

Attest: 
Secretary

THE WEST SIDE IRRIGATION DISTRICT DRAINAGE POLICY

SEDIMENT REDUCTION ELEMENT

The West Side Irrigation District (herein called District) has been providing drainage services to both the lands inside the District as well as lands outside and upslope of the District boundaries. Drainage has been provided under unwritten, or outdated policies that have been in effect for many years. The water is reused and has proven to have been a good water conservation practice, and has been beneficial to the district and Landowner or Lessee alike (landowners/waterusers or Drainers are used in this Element). But this service has caused considerable problems to the District because of the Total Suspended Solids (TSS) in the water being discharged into District facilities.

The drainage water (tailwater) from the lands outside and upslope of the District is being discharged into the District's Upper Main Canal, which conveys irrigation water to the land within the district that is served by that facility. The lands that are served by the Upper Main Canal discharge their drain water (tailwater) into the Lower Main Canal. The lands served by the Lower Main Canal discharge their drain water into the District's Drainage System. The drainage system was constructed as a multi-purpose system that receives both tail water and sub-surface drainage. Sub-surface, or tile drain water, does not contain sediment and will not be addressed in this element.

The lands outside the district, in most cases, have steeper slopes than the lands inside the district and has caused the most problem. Erosion of the top soil induced by irrigation water and carried by the tailwater to poorly maintained, inadequate or nonexistent sediment basins is discharged into the District's facilities. Some of the soil settles in the canals immediately and some sediment remains in suspension and is deposited downstream. Siltation can also be seen in the waterusers head ditches, which causes problems for them, but to a much lesser extent. The sediment in the canals has to be removed annually, but in some areas it needs to be removed more frequent or the flows in the facility would be seriously restricted. The District spends thousands of dollars per year removing this silt, but a larger problem is disposing of the soil after it has been removed and placed on the District's canal or ditch banks. The canal banks are getting to the point that the removal of additional sediment cannot be accomplished by the use of conventional equipment.

Best Management Practices (BMPs) reduce off-farm sediment by two physical processes; reducing erosion or trapping sediment after erosion takes place. Irrigation water management is the first step in not only keeping sediment on the field, but it also conserves water. Combined with other BMPs, such as tailwater tarps, off-farm sediment can be reduced considerably. Proper water management can reduce the size of sediment basin needed, reducing the cost of installation and

BEST MANAGEMENT PRACTICES (BMPs) for lands outside the District

The agreement with the District obligates the Drainer to utilize, or install and correctly maintain specific BMPs to control soil erosion (sediment) from entering the District Upper Main Canal. The District makes no claims to the effectiveness of the practice, or combination of practices to meet the standards established by the District. Some of these practices include:

- Overall irrigation water management.
- Polyacrylamide (PAM) polymer(s).
- Use of tail water ditch tarps when the flow parallels the furrow direction.
- Use of adequately sized sediment basin(s).
- Crop rotation.
- Minimum tillage/cultivating operations.
- Land leveling.
- Installation of a vegetative filter strips.

There may be other BMPs for soil erosion control not listed above, Drainers should consult their farm advisor for the best practice(s) to meet the District tailwater discharge requirement. The District will:

- Do periodic monitoring of TSS to determine if the standards are being met.
- If the standard is not being met, notify the Drainer of the violation and any needed modification(s) required to meet the district standard shall be made immediately.
- If the Drainer fails or refuses to make the necessary modifications within 72 hours of notification, order the Drainer to stop the discharge of drainage water into the District's facility.

LANDOWNERS/WATERUSERS INSIDE THE DISTRICT

In order for Drainers inside the District to continue receiving irrigation service they must implement Best Management Practices sufficient to meet the Sediment Reduction Standards of 300 mg/l.

BEST MANAGEMENT PRACTICES (BMPs) for lands inside District Boundaries.

As a precondition to the receipt of irrigation water, each Drainer will be required to utilize, or install and correctly maintain specific BMPs to control soil erosion (sediment) from entering the District Lower Main Canal, and/or the District's Drainage System. For some of the established BMPs see list above. The District is committed to work with the Drainers in the implementation of appropriate on-farm sediment reduction practices. Meeting the standards set by the District Board of Directors will in any case be the sole responsibility of the Drainer.

TABLE
SEDIMENT REDUCTION PRACTICES DESCRIPTION

| Conservation Practice | Process | Effect |
|--|-------------------------|--|
| Tailwater Tarps (410-Grade Stabilization Structure) | Decrease Slope | Reduces ditch erosion, traps sediment |
| Land Leveling (464-Irrigation Land Leveling) | Decrease Slope | Reduces water velocity and decreases erosion |
| Cutback Stream (449-Irrigation Water Management) | Reduce Runoff | Reduce water flow when water reaches end of furrow |
| Surge Irrigation (449-Irrigation Water Management) | Reduce Runoff | Easier water management, decreases erosion |
| Sprinkler Germination (442-Irrigation System-Sprinkler) | Reduce Water | Easier water management, decreases erosion |
| Drip Irrigation (441-Irrigation System-Trickle) | Reduce Water | Easier water management, decreases erosion |
| Shorten Run (449-Irrigation Water Management) | Reduce Stream Size | Less water needed to reach end of furrow, less erosion |
| Gated Pipe (430-Irrigation Water Conveyance) | Reduce Runoff | Easier water management, decreases erosion |
| Sprinkler Irrigation (442-Irrigation System-Sprinkler) | Reduce Runoff | Easier water management, decreases erosion |
| Filter Strip (393-Filter Strip) | Decrease Water Velocity | Prevents furrow end erosion |
| Cover Crop (340-Cover Crop) | Decrease Water Velocity | Vegetation holds soil together, less erosion |
| Grassed Waterway (412-Grassed Waterway) | Decrease Water Velocity | Vegetation holds soil together, less erosion |
| Conservation Tillage (329-Conservation Tillage) | Decrease Water Velocity | Vegetation holds soil together, less erosion |
| One Less Cultivation (328-Conservation Cropping) | Blinds Soil | Soil not broken up by cultivation, less erosion |
| Sediment Basin (350-Sediment Basin) | Decrease Water Velocity | Traps sediment |