

**SETTLEMENT AGREEMENT**  
**Relating to the Diversion of Water From the Santa Ana River System**  
**(the "Seven Oaks Accord")**  
**July 21, 2004**

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## SETTLEMENT AGREEMENT

### Relating to the Diversion of Water from the Santa Ana River System

This Settlement Agreement Relating to the Diversion of Water From the Santa Ana River (“**Agreement**”) is entered into this 21st day of July, 2004 (“Effective Date”) by and among: San Bernardino Valley Municipal Water District (“**Muni**”) and Western Municipal Water District of Riverside County (“**Western**”) (collectively, Muni and Western are referred to as the “**Applicants**”); the City of Redlands (“**Redlands**”); East Valley Water District (“**East Valley**”); and Bear Valley Mutual Water Company, Lugonia Water Company, North Fork Water Company and Redlands Water Company (“**Bear Valley**”), (collectively, Redlands, East Valley and Bear Valley are referred to as the “**Water Users**”). Each of the parties to this Agreement is referred to herein as a “**Party**” and the parties are collectively referred to herein as the “**Parties.**”

#### Recitals

Applicants have filed with the State Water Resources Control Board (“**SWRCB**”) Application Nos. 31165 and 31370 (collectively, the “**Applications**”) to appropriate water from the Santa Ana River for direct diversion and/or storage. Water Users have filed protests against the Applications alleging infringement of Water Users’ senior water rights and adverse impacts on the environment. The Parties wish to resolve these protests without the need for a lengthy and expensive water rights hearing.

Agreements

1. *Withdrawal of Protests Presently Pending Before the SWRCB.*
  - a. *Withdrawal of Protests.* Within twenty business days after the date on which Water Users receive a draft environmental impact report on the Applications for public review, Water Users shall each send to the SWRCB, via certified mail with a copy to Applicants, a letter withdrawing their respective protests against the Applications. Said letters shall be in the form provided in Exhibit A and incorporated herein by reference. Applicants shall provide Water Users with notice of the release of the draft environmental impact report via facsimile transmission upon its release.
  - b. *Support for Applications.* Water Users shall, simultaneously with the withdrawal of their respective protests to the Applications, also each send, via certified mail with a copy to Applicants, letters to the SWRCB supporting the issuance of permits to Applicants for the diversion and storage of the full quantities of water from the Santa Ana River identified in the Applications. Such letters shall be in the form provided in Exhibit B and incorporated herein by reference. Water Users shall also, upon written request by Applicants, send similar letters to local, state and federal agencies supporting the issuance of all other permits or regulatory approvals that may be necessary for Applicants to implement their plans to divert water from the Santa Ana River, including seasonal water conservation at Seven Oaks Dam and Reservoir, as reflected in the Applications. A list of all permits/approvals that Applicants presently believe may be required to implement the Applications is included in Exhibit B and incorporated herein by reference. Applicants shall update this list annually if additional permits/approvals become necessary to implement the plans identified in the Applications and Water Users agree not to object to such additional permits/approvals that may be needed to implement the Applications.

- c. *Incorporation of Settlement in Applications.* Applicants shall, within twenty business days of the date on which Applicants issue a draft environmental impact report on the Applications for public review, amend the Applications to incorporate the terms of this Agreement therein and request the SWRCB to incorporate the terms of this Agreement in any permits issued to Applicants.
2. *Effect of Agreement.* Paragraphs 3 to 11 of this Agreement shall not take effect unless and until: (i) the Parties complete the review and analysis, if any, that may be required by the terms of the California Environmental Quality Act of the potential physical change in the environment of implementing those provisions and (ii) the SWRCB approves the Applications, in whole or in part, and issues water rights permits to Applicants pursuant thereto. In the event that the SWRCB denies the Applications in their entirety, paragraphs 3 to 11 of this Agreement shall immediately be deemed null and void and no Party shall be bound thereby. In the event that the SWRCB approves the Applications by the issuance of permits which contain terms or provisions that are inconsistent with the terms or provisions of this Agreement, the Parties shall implement the terms or provisions of this Agreement to the extent legally permissible.
3. *Diversions from the Santa Ana River*
  - a. *Diversions by Water Users.* Subject to the conditions contained in subparagraphs 3(a)(1) to 3(a)(7) below, any rights granted Applicants by the SWRCB to divert water from the Santa Ana River shall be subject to the prior right of Water Users to divert up to the first 88 cfs of the natural flow of the Santa Ana River and Applicants shall not, during the term of this Agreement, object to, nor challenge by way of any administrative proceeding, judicial proceeding or otherwise, Water Users' combined diversion of up to the first 88 cfs of the natural flow of the Santa Ana River, as defined in paragraph 3(a)(7) below. Such diversion may include, without limitation, Water Users' diversion of water at rates sufficient to:

(i) equal the present and future treatment capacity of the Hinckley Treatment Plant or other water treatment plants used to deliver water for municipal and industrial purposes within Water Users' respective service areas, (ii) meet the irrigation demand from agricultural areas within Water Users' respective service areas, and (iii) satisfy other permitted uses of water as described in paragraphs 3(a)(1) and 3(a)(6) below. Nothing in this Agreement shall be interpreted to allow Water Users, under any circumstances, to divert water other than the first 88 cfs of the natural flow of the Santa Ana River.

- (1) *"Run of the River" Basis for Diversions.* All diversions by Water Users from the Santa Ana River must be made on a "run of the river" basis (i.e., diversions for immediate delivery for beneficial use without storage of any kind, either above or below ground) for delivery within Water Users' combined service areas, *provided, however,* that Water Users may spread a portion of the natural flow of the Santa Ana River as provided in paragraph 4 below and may store a portion of the natural flow of the Santa Ana River as provided in paragraph 3(a)(6) below.
- (2) *Natural Flow of the Santa Ana River.* The "natural flow of the Santa Ana River" is defined for purposes of this Agreement as the flow of the Santa Ana River in the Southern California Edison Company power conduit as measured downstream of Seven Oaks Dam, and the river pickup located downstream from Seven Oaks Dam and upstream from the afterbay of Southern California Edison Santa Ana River Powerhouse No. 3, less: (1) any releases from Bear Valley's Lake Account, and/or (2) any releases or spills from Big Bear Municipal Water District's Lake Account, as those accounts are defined in the 1977 judgment in *Big Bear Municipal Water District v. North Fork Water Company et al.* (San



Bernardino County Superior Court No. 165493) dated February 4, 1977, a copy of which is attached hereto as Exhibit C and incorporated herein by reference (the “**1977 Judgment**”). Water Users may divert up to the full 88 cfs using the combination of the Southern California Edison power conduit and the river pickup located downstream from Seven Oaks Dam and upstream from the afterbay of Southern California Edison Santa Ana River Powerhouse No. 3. The facilities described in this subparagraph are depicted in the map attached hereto as Exhibit D and incorporated herein by reference. If Southern California Edison sells or otherwise disposes of the power conduit system, Water User’s right to divert the first 88 cfs of the natural flow of the Santa Ana River shall remain unaffected.

- (3) *Water Users’ Service Areas.* The Water Users’ combined service areas are defined more precisely in Exhibit E, which is attached hereto and incorporated herein by reference.
- (4) *Water Users’ Points of Diversion.* Nothing in this Agreement is intended to prevent the Water Users from diverting water from points of diversion that they each respectively use at present. A list of such points of diversion is attached as Exhibit F and incorporated herein by reference. Water Users agree that Applicants may divert the water that is the subject of the Applications from Water Users’ points of diversion, *provided* that Applicants may only divert water from Water Users’ points of diversion during those times when there is diversion capacity available at those points of diversion which is excess to the needs of Water Users. Water Users shall execute the necessary documents, if any, to evidence full permission to Applicants to

divert water from Water Users' points of diversion, subject to the above restriction.

- (5) *Cooperative Water Project Agreement Credits.* Nothing in this Agreement is to be construed as precluding Water Users from delivering water in a manner that generates Deferred Exchange Water Credits under the terms of the Santa Ana River-Mill Creek Cooperative Water Project Agreement (the "Cooperative Water Project Agreement").
  - (6) *Permitted Surface Storage.* Nothing in this Agreement shall: (i) preclude Bear Valley from storing water to the extent needed for system surface storage in the Mentone Reservoir at its present location to meet the needs/demands of its shareholders or (ii) preclude Bear Valley's shareholders from storing water in Crafton Reservoir at its present location to meet the needs/demands of its shareholders. Nothing in this Agreement is intended to interfere with Redlands' and East Valley's regulatory storage of potable water above ground prior to delivery of that water to retail or wholesale customers.
  - (7) *No Rights to Seven Oaks Reservoir.* Nothing in this Agreement shall be construed as granting Water Users any right to water that is conserved at Seven Oaks Reservoir or as granting Water Users any right to store water at Seven Oaks Reservoir; provided, however, Water Users may divert, at the Bear Valley River Pickup, up to 88 cfs of the natural flow of the Santa Ana River that is temporarily detained behind Seven Oaks Dam.
- b. *Applicants' Diversion Rights.* Water Users shall not object to Applicants' diversion, pursuant to a permit or license issued by the SWRCB, of all water in the Santa Ana River in excess of the actual combined diversions

of Water Users, which, pursuant to paragraph 3(a) above, shall not exceed 88 cfs. Water Users shall have no claims to or rights in the water diverted by Applicants provided that nothing in this Agreement is to be construed as prohibiting Water Users from participating in programs developed or implemented by Applicants on the same terms and conditions as other water purveyors in the San Bernardino Valley.

4. *Groundwater Spreading Program.* Applicants, after consultation with Water Users, shall develop and manage a groundwater spreading program that is intended to maintain groundwater levels at the wells specified in Exhibit G at relatively constant levels, in spite of the inevitable fluctuations due to hydrologic variation. The groundwater spreading program shall identify target water level ranges in the specified wells and shall be subject to the requirement that such spreading not worsen the problem of high groundwater levels in the Pressure Zone. The determination of whether a particular action will worsen groundwater levels in the Pressure Zone shall be made using the integrated surface and groundwater models used by Applicants in the environmental impact report for the Applications, as those models may be refined in the future.
  - a. *Development and Implementation of Program.* Applicants shall adopt such an integrated management program within five years of the date on which the SWRCB grants Applicants a permit to divert water from the Santa Ana River. Water Users agree to limit spreading in the San Bernardino Basin Area so as to conform to an annual management plan adopted by Applicants that is consistent with the terms of this Agreement.
  - b. *Spreading by Water Users.* As part of the groundwater spreading program developed by Applicants, Bear Valley may, in lieu of a portion of its share of the 88 cfs of direct diversions of the natural flow of the Santa Ana River described in paragraph 3(a) above, divert up to a maximum collective total of 9 cfs for spreading at either the South Airport spreading basins and/or at the West Mill Creek spreading grounds. These spreading

grounds are shown on the map depicted in Exhibit H and incorporated herein by reference. The other Water Users, including but not limited to Redlands and East Valley, will also be able to participate in the spreading program by spreading a portion of their respective shares of the natural flows of the Santa Ana River within the 88 cfs limit described in paragraph 3(a) at the locations specified in Exhibit H. The maximum total spreading that may be done by all Water Users, in all locations at any given time, may not exceed a rate of 20 cfs, provided that such spreading shall not worsen high groundwater levels in the Pressure Zone as defined in paragraph 4 above. All spreading by Water Users is intended to be operated on a "put and take" basis with extractions occurring within one year of the date spread and Water Users shall report all spreading to Applicants on an annual basis for inclusion in the Watermaster's report pursuant to the *Western Judgment* identified in paragraph 7(c) below.

5. *Service of Water by Water Users.* In accordance with all applicable provisions of law, Water Users shall only deliver surface water or groundwater:
  - a. within Water Users' respective Service Areas as identified in Exhibit E, as modified from time to time in accordance with applicable law;
  - b. on a retail basis in areas outside Water Users' respective Service Areas where a Water User provides such service on a 365 day/year basis; or
  - c. on a non-retail basis outside Water Users' respective Service Areas and within the San Bernardino Basin Area, *provided that* if a Water User wishes to provide water on a non-retail basis outside its Service Area and within the San Bernardino Basin Area, it shall provide Applicants with at least 30 days' written notice of such proposed non-retail service. If Applicants do not object in writing to such proposed non-retail service within 15 days from the date of the notice, the Water User may proceed with such non-retail service of water. If Applicants object to such

proposed non-retail service, Applicants and the Water User shall promptly meet to consider whether the provision of non-retail water service would reduce or interfere with the diversion of water by Applicants. If the integrated groundwater/surface water model referred to in paragraph 4 above shows that the proposal for non-retail service would not have any impacts on the location, timing, quantity, spreading or other characteristic of Applicants' diversions, then the Water User may implement the proposal. In all other cases, the proposal for non-retail service shall only be implemented with the prior written consent of Applicants, which shall not be unreasonably withheld or unduly delayed.

6. *Banking and Exchanges.*

- a. *By Water Users.* Save in cases of emergencies, water diverted by Water Users may only be wheeled, banked, exchanged or transferred, directly or indirectly, in lieu or otherwise in the manner allowed by the Cooperative Water Project Agreement.
- b. *By Applicants.* Water Users acknowledge that Applicants intend to bank and/or exchange substantial quantities of native Santa Ana River water for water imported from the State Water Project or other sources of imported or native water pursuant to a comprehensive program for water banking and/or exchanges in the San Bernardino Valley and elsewhere in Southern California that includes, but is not limited to, the groundwater spreading plan described in paragraph 4 above, and that is not inconsistent with the terms of this Agreement.
- c. *Pursuant to Applicants' Program.* Water Users acknowledge that Applicants intend to develop a comprehensive program for water banking and/or exchanges in the San Bernardino Valley and elsewhere in Southern California that includes, but is not limited to, the groundwater spreading plan described in paragraph 4 above. Water Users may participate in such

comprehensive water banking/exchange program on the same terms as other water purveyors.

- d. *Definition of Emergency.* For purposes of this Agreement, the term “**emergency**” shall be defined as provided in California Code of Regulations, title 14, section 15359.
  
7. *State Project Water.* Applicants reserve the right to store State Water Project water in Seven Oaks Reservoir, either in conjunction with or separately from, the storage of conserved water from the Santa Ana River system. Water Users will not object to such storage of State Water Project water in Seven Oaks Reservoir to the extent that such storage is not inconsistent with the terms of this Agreement.
  
8. *Water Subject to Agreement.* This Agreement addresses the Parties’ use of raw water (including surface water, non-contaminated groundwater and groundwater treated to remove contaminants) and potable water. Nothing in this Agreement shall be construed to regulate the Parties’ use of recycled municipal wastewater.
  
9. *Relationship to Other Agreements and Judgments.*
  - a. *Cooperative Water Project Agreement.* Nothing in this Agreement is intended to modify the rights of the Parties under the Cooperative Water Project Agreement.
  
  - b. *Agreements Among Water Users.* Nothing in this Agreement is intended to modify the rights of Water Users among themselves.
  
  - c. *Judgments.* Nothing in this Agreement is intended to modify the rights of the Parties under the terms of the 1977 Judgment or the judgments in *Orange County Water District v. City of Chino et al.* (Orange County Superior Court, Case No. 117628, April 17, 1969) and *Western Municipal Water District of Riverside County v. East San Bernardino County Water District et al.* (Riverside County Superior Court Case No. 78426, April 17, 1969).

10. *No Admissions.* Nothing in this Agreement shall be construed as an admission by any Party regarding any subject matter of this Agreement, including but not limited to the water rights of the Parties. The Parties agree that Evidence Code sections 1152 and 1154 render this Agreement inadmissible as evidence against any of the Parties in any adjudicative proceeding, except a proceeding to enforce or interpret the terms or conditions of this Agreement and/or the terms or conditions of a permit or permits issued to Applicants by the SWRCB pursuant to the Applications. In particular, nothing in this Agreement shall be construed as an admission by Applicants relating to the priority, nature, quantity or other characteristic of the water rights claimed by Water Users or a waiver of any contentions by Applicants relating to Water Users' claimed water rights.
11. *Preservation of Rights.* The Parties agree that this Agreement is in settlement of water right disputes and preserves all rights of the Parties as they may exist as of the Effective Date of this Agreement. Nothing in this Agreement is to be construed as altering the priorities or entitlements of Water Users among themselves to water from the Santa Ana River.
12. *Administration of Agreement*
  - a. *Recordation of Agreement.* Applicants shall, within ten days of the Effective Date of this Agreement, cause this Agreement to be recorded in the Official Records of the County of San Bernardino. Applicants shall provide Water Users with recorded copies of this Agreement promptly upon the receipt of such copies from the County of San Bernardino.
  - b. *Books and Records.* Each Party shall have access to and the right to examine any of the other Party's pertinent books, documents, papers or other records (including, without limitation, records contained on electronic media) relating to the performance of that Party's obligations pursuant to this Agreement. The Parties shall each retain all such books, documents, papers or other records to facilitate such review. Access to

each Party's books and records shall be during normal business hours only. Nothing in this paragraph shall be construed to operate as a waiver of any applicable privileges.

- c. *Disputes.* The Parties recognize that there may be disputes regarding the obligations of the Parties or the interpretation of this Agreement. The Parties agree that they may attempt to resolve disputes as follows:
- (1) *Statement Describing Alleged Violation of Agreement.* A Party or Parties alleging a violation of this Agreement (the "**Initiating Party(ies)**") shall provide a written statement describing all facts that it believes constitute a violation of this Agreement to the Party(ies) alleged to have violated the terms of this Agreement (the "**Responding Party(ies)**").
  - (2) *Response to Statement of Alleged Violation.* The Responding Party(ies) shall have sixty days from the date of the written statement to prepare a written response to the allegation of a violation of this Agreement and serve that response on the Initiating Party(ies) or to cure the alleged violation to the reasonable satisfaction of the Initiating Party(ies). The Initiating Party(ies) and the Responding Party(ies) shall then meet within thirty days of the date of the response to attempt to resolve the dispute amicably.
  - (3) *Mediation of Dispute.* If the Initiating Party(ies) and the Responding Party(ies) cannot resolve the dispute within ninety days of the date of the written response, they shall engage a mediator, experienced in water-related disputes, to attempt to resolve the dispute. Each Party shall ensure that it is represented at the mediation by a Director or Trustee. These representatives of the Initiating Party(ies) and the Responding Party(ies) may consult



with staff and/or technical consultants during the mediation and such staff and/or technical consultants may be present during the mediation. The costs of the mediator shall be divided evenly between the Initiating Party(ies) and the Responding Party(ies).

(4) *Reservation of Rights.* Nothing in this paragraph 12 shall require a Party to comply with the dispute resolution process contained herein and each Party retains and may exercise at any time all legal and equitable rights and remedies it may have to enforce the terms of this Agreement; provided, that prior to commencing litigation, a Party shall provide at least five calendar days' written notice of its intent to sue to all Parties.

13. *Implementation of Agreement.* This Agreement shall become effective upon its approval by Muni, Western, Redlands, Bear Valley Mutual Water Company, and East Valley. Other Parties identified above shall have 90 days from the Effective Date to execute this Agreement.
14. *Environmental Impact Report.* Applicants shall include thresholds of significance and mitigation measures in substantially the form set forth in Exhibit I in their environmental impact report for the Applications.
15. *General Provisions.*
  - a. *Authority.* Each signatory of this Agreement represents that s/he is authorized to execute this Agreement on behalf of the Party for which s/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 a 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 conflicts of law rules. Any 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 San Bernardino, California.

- d. *Headings.* The paragraph headings used in this Agreement are intended for convenience only and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the Parties to this Agreement.
- e. *Construction and Interpretation.* This Agreement has been arrived at through negotiations and each Party has had a full and fair opportunity to revise the terms of this Agreement. 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.
- f. *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 this Agreement.
- g. *Partial Invalidity.* If, after the date of execution of this Agreement, any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable. However, in lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
- h. *Successors and Assigns.* This Agreement shall be binding on and inure to the benefit of the successors and assigns of the respective Parties to this Agreement. No Party may assign its interests in or obligations under this

Agreement without the written consent of the other Parties, which consent shall not be unreasonably withheld or delayed.

- i. *Waivers.* Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement and forbearance to enforce one or more of the remedies provided in this Agreement shall not be deemed to be a waiver of that remedy.
- j. *Attorneys' Fees and Costs.* The prevailing Party in any litigation or other action to enforce or interpret this 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.
- k. *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.
- l. *Compliance with Law.* In performing their respective obligations under this Agreement, the Parties shall comply with and conform to all applicable laws, rules, regulations and ordinances.
- m. *Third Party Beneficiaries.* This Agreement shall not create any right or interest in any non-Party or in any member of the public as a third party beneficiary.
- n. *Counterparts.* This 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.
- o. *Notices.* All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing unless provided otherwise in this Agreement and shall be deemed to have been duly given

and received on: (i) the date of service if served personally or served by facsimile transmission on the Party to whom notice is to be given at the address(es) provided below, (ii) on the first day after mailing, if mailed by Federal Express, U.S. Express Mail, or other similar overnight courier service, postage prepaid, and addressed as provided below, or (iii) on the third day after mailing if mailed to the Party to whom notice is to be given by first class mail, registered or certified, postage prepaid, addressed as follows:

BEAR VALLEY MUTUAL WATER COMPANY:

Bear Valley Mutual Water Company  
101 E. Olive Avenue  
Redlands, CA 92373  
(909) 793-4901  
(909) 793-7073 (FAX)  
Attn: General Manager

CITY OF REDLANDS:

City of Redlands  
35 Cajon Street  
Redlands, CA 92373  
(909) 798-7533  
(909) 798-7535 (FAX)  
Attn: Director of Public Utilities

EAST VALLEY WATER DISTRICT:

East Valley Water District  
1155 Del Rosa Avenue  
P.O. Box 3427  
San Bernardino, CA 92413  
(909) 885-4900  
(909) 889-5732 (FAX)  
Attn: General Manager

LUGONIA WATER COMPANY:

Lugonia Water Company  
101 E. Olive Avenue  
Redlands, CA 92373  
(909) 793-4901  
(909) 793-7073 (FAX)  
Attn: General Manager

NORTH FORK WATER COMPANY

North Fork Water Company  
1155 Del Rosa Avenue  
P.O. Box 3427  
San Bernardino, CA 92413  
(909) 885-4900  
(909) 889-5732 (FAX)  
Attn: General Manager

REDLANDS WATER COMPANY

Redlands Water Company  
101 E. Olive Avenue  
Redlands, CA 92373  
(909) 793-4901  
(909) 793-7073 (FAX)  
Attn: General Manager

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT:

San Bernardino Valley Municipal Water District  
1350 S. "E" Street (92408-2725)  
P. O. Box 5906 (92412-5906)  
San Bernardino, CA  
(909) 387-9222  
(909) 387-9247 (FAX)  
Attn: General Manager

WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY:

Western Municipal Water District of Riverside County  
450 Alessandro Boulevard  
Riverside, CA 92508  
(909) 789-5000  
(909) 780-3837 (FAX)  
Attn: General Manager

**BEAR VALLEY MUTUAL WATER COMPANY**

By: \_\_\_\_\_  
Robert A. Hinze  
President, Board of Directors

**Attest:**

By: \_\_\_\_\_  
Charlotte L. Van Eck  
Secretary

**CITY OF REDLANDS**

By: \_\_\_\_\_  
Susan Pepler  
Mayor

**EAST VALLEY WATER DISTRICT**

By: \_\_\_\_\_  
George E. (Skip) Wilson  
President, Board of Directors

**LUGONIA WATER COMPANY**

By: \_\_\_\_\_  
David B. Knight  
President

**Attest:**

By: \_\_\_\_\_  
Charlotte Van Eck  
Secretary

**NORTH FORK WATER COMPANY**

By: \_\_\_\_\_  
Arnold Wright  
President, Board of Directors

**REDLANDS WATER COMPANY**

By: \_\_\_\_\_  
Joseph P. Buoye  
President, Board of Directors

**Attest:**

By: \_\_\_\_\_  
Charlotte L. Van Eck  
Secretary

**SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**

By: \_\_\_\_\_  
Patrick Milligan  
President, Board of Directors

**WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY**

By: \_\_\_\_\_  
Wayne Holcomb  
President, Board of Directors

## List of Exhibits

<u>Exhibit</u>	<u>Title</u>
A	Form of Letter to the State Water Resources Control Board From Water Users Withdrawing Water Users' Protests
B	Form of Letter to the State Water Resources Control Board From Water Users Supporting the Issuance of Permits to Applicants (includes list of permits)
C	Judgment in <i>Big Bear Municipal Water District v. North Fork Water Company et al.</i> (San Bernardino Superior Court, No. 165493, February 4, 1977).
D	Map of Santa Ana River Facilities
E	Water Users' Service Areas
F	Water Users' Points of Diversion
G	SBBA Index Wells
H	Map of Water Users' Spreading Grounds
I	Thresholds of Significance and Mitigation Measures to be Included in Applicants' EIR



**EXHIBIT A**

Arthur G. Baggett, Jr.  
Chairman  
State Water Resources Control Board  
1101 I Street  
Sacramento, California 95814

Re: Withdrawal of Protest by \_\_\_\_\_  
Application Nos. 31165 and 31370  
Santa Ana River, San Bernardino County

Dear Chairman Baggett:

\_\_\_\_\_ (“Protestant”) has filed protests against Application Nos. 31165 and 31370 which have been filed with the State Water Resources Control Board (the “SWRCB”) by San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County (“Applicants”). Protestant and Applicants have now approved a settlement agreement that resolves all of the matters that were the subjects of Protestant’s objections to Application Nos. 31165 and 31370. Protestant, accordingly, hereby withdraws its protests to Application Nos. 31165 and 31370. A copy of that executed settlement agreement is enclosed with this letter.

Please feel free to call if you or your staff have questions regarding this withdrawal of protests.

Very truly yours,

**EXHIBIT B**

Arthur G. Baggett, Jr.  
Chairman  
State Water Resources Control Board  
1101 I Street  
Sacramento, California 95814

Re: Letter of Support by \_\_\_\_\_  
Application Nos. 31165 and 31370  
Santa Ana River, San Bernardino County

Dear Chairman Baggett:

\_\_\_\_\_ (“Protestant”) has filed protests against Application Nos. 31165 and 31370 (collectively, the “Applications”) which have been filed with the State Water Resources Control Board (“SWRCB”) by San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County (collectively, “Applicants”). Protestant and Applicants have now approved and executed a settlement agreement that resolves all of the matters that were the subjects of Protestant’s objections to the Applications.

Protestant hereby supports the SWRCB’s issuance of permits to Applicants for the diversion and storage of the full quantities of water from the Santa Ana River identified in the Applications. Protestant also supports the issuance of all other permits or other regulatory approvals that may be necessary for Applicants to implement their plans to divert water from the Santa Ana River, including seasonal water conservation at Seven Oaks Dam and Reservoir, as reflected in the Applications.

Please feel free to call if you or your staff have questions regarding this letter in support of the Applications.

Very truly yours,

**Permits Potentially Required for Water Conservation at Seven Oaks Dam**

The following is a list of permits that may, depending upon site-specific circumstances, be required in order for the Applicants to implement their plans for seasonal water conservation at Seven Oaks Dam. Applicants will identify necessary permits after the completion of the Final EIR on seasonal water conservation.

<i>Agency</i>	<i>Permits/Approvals</i>
U.S. Army Corps of Engineers	<ul style="list-style-type: none"> <li>• Approval for any physical alterations to Seven Oaks Dam and its operations, including seasonal water conservation</li> <li>• Approval for new pipelines to connect to facilities of Seven Oaks Dam</li> <li>• Permits/approvals per Section 404 of the Clean Water Act (for the discharge of dredged and fill material into waters of the United States)</li> <li>• Permits/approvals per Section 10 of the Rivers and Harbors Act (for construction in waterways)</li> <li>• Compliance with the National Environmental Policy Act (in conjunction with other Federal agencies)</li> </ul>
U.S. Fish and Wildlife Service	<ul style="list-style-type: none"> <li>• Permits/approvals per the Federal Endangered Species Act, Fish &amp; Wildlife Coordination Act, Migratory Bird Treaty Act and similar statutes (including, if needed, incidental take permits)</li> </ul>
U.S. Forest Service	<ul style="list-style-type: none"> <li>• Access agreements/permits for construction within the San Bernardino National Forest and other compliance with applicable Forest Plan(s)</li> <li>• Special use permit for water conservation at Seven Oaks Dam</li> </ul>
California State Water Resources Control Board	<ul style="list-style-type: none"> <li>• Approval of Muni/Western water rights applications 31165 and 31370</li> <li>• Clean Water Act Section 401 certification for all federal permits</li> </ul>
Santa Ana Regional Water Quality Control Board	<ul style="list-style-type: none"> <li>• Clean Water Act Section 401 certification for water quality/stormwater runoff during construction</li> <li>• National Pollutant Discharge Elimination System (NPDES) permit for ongoing pipeline cleaning and maintenance activities</li> </ul>
California Department of Fish and Game	<ul style="list-style-type: none"> <li>• Section 2081 and other permits per the California Endangered Species Act, the Fully Protected Species Act, the Natural Communities Conservation Program Act, and similar statutes (including, if needed, incidental take permits)</li> <li>• Section 1602 Streambed Alteration Agreement</li> <li>• Compliance with Section 5937 and similar statutes requiring that fish be kept in good condition below a dam or reservoir</li> </ul>

<i>Agency</i>	<i>Permits/Approvals</i>
State Historic Preservation Officer	<ul style="list-style-type: none"> <li>• Consultation per Section 106 of the National Historic Preservation Act</li> </ul>
South Coast Air Quality Control Board	<ul style="list-style-type: none"> <li>• Permit to Construct</li> <li>• Approval of the fugitive dust emissions plan</li> </ul>
County of San Bernardino	<ul style="list-style-type: none"> <li>• Road Encroachment and Closure permit</li> <li>• Flood Control Right-of-Way (for construction in the floodplain)</li> <li>• Soil Erosion and Sediment Control Permit</li> </ul>
City of Highland	<ul style="list-style-type: none"> <li>• Grading permits</li> <li>• Road encroachment and closure permits</li> </ul>
City of Rialto	<ul style="list-style-type: none"> <li>• Grading permits</li> <li>• Road encroachment and closure permits</li> </ul>
San Bernardino Flood Control District, Orange County Flood Control District, and Riverside County Flood Control and Water Conservation District (Local Sponsors of Seven Oaks Dam)	<ul style="list-style-type: none"> <li>• Encroachment permits and access agreements</li> <li>• Agreement(s) to implement seasonal water conservation at Seven Oaks Dam</li> </ul>
Metropolitan Water District of Southern California	<ul style="list-style-type: none"> <li>• Encroachment permits and access agreements</li> <li>• Exchange agreement (Attachment 5 to Coordinated Operating Agreement for Conveyance Facilities and State Water Project Supplies)</li> </ul>

**EXHIBIT C**

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Original Filed

FEB 7 1977

V. Dennis Wardle  
County Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO

BIG BEAR MUNICIPAL WATER )  
DISTRICT, )  
 )  
Plaintiff )  
 )  
v. )  
 )  
NORTH FORK WATER COMPANY )  
et al., )  
 )  
Defendants )

No. 165493

JUDGMENT

This action having been pending on appeal from a prior judgment of this Court, and the parties having stipulated to a form of judgment disposing of the issues raised by the complaint, and the Court of Appeal, pursuant to stipulation, having remanded the case for proceedings in accordance with said Stipulation for Judgment, and good cause appearing

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I. DEFINITIONS AND EXHIBITS

1. Definitions. As used in this judgment, the following terms shall have the meanings herein set forth:

(a) Basin Make-up Water. -Water provided by District to

RONALD B. STARK  
ATTORNEY AT LAW  
21 BUSINESS CENTER  
DOWNE



1 replace water lost to San Bernardino Basin by reason of  
2 operations under terms of the physical solution herein.

3 (b) Bear Creek. That certain tributary of the Santa  
4 Ana River rising in Upper Bear Creek Watershed and flowing  
5 past the Dam and down to the confluence of said creek and  
6 river, all as shown on Exhibit "A".

7 (c) Confluence. The point at which Bear Creek joins  
8 the Santa Ana River, as shown on Exhibit "A".

9 (d) Conservation District. San Bernardino Valley Water  
10 Conservation District.

11 (e) Dam. The multiple-arch concrete dam constructed in  
12 1911 at the location shown on Exhibit "A".

13 (f) District. Big Bear Municipal Water District.

14 (g) Division Box. The structure at the discharge from  
15 Power Plant No. 3, where Mutual divides the flow from the  
16 Edison Conduit between the North Fork and Redlands Canals.

17 (h) Edison. Southern California Edison Company.

18 (i) Edison Diversion. The works and facilities of  
19 Edison at the Confluence used to divert water into the  
20 Edison Conduit.

21 (j) Edison Conduit. The canal, pipeline and tunnels  
22 extending from the Edison Diversion, through Power Plants  
23 Nos. 1, 2 and 3 to the High Line and Division Box.

24 (k) Fiscal Year. July 1 to June 30, following.

25 (l) In Lieu Water. Water which is to be provided  
26 pursuant to the Physical Solution to Mutual by District,  
27 without cost to Mutual, in lieu of releases of Lake water.

28 (m) Lake. Big Bear Lake, being the body of water

1 impounded by the Dam.

2 (n) Lake Storage Right. The right of Mutual to use the  
3 full storage capacity of the Lake for storage of water  
4 diverted at the Dam, pursuant to Mutual's appropriative  
5 right, which storage right was expressly reserved by Mutual  
6 in its conveyance of the Lake Properties to Bear Valley  
7 Mutual Water Company Partial Liquidation Trust.

8 (o) Hill Creek Exchange. The Santa Ana River-Hill  
9 Creek Cooperative Water Project Agreement, dated May 3, 1976,  
10 as amended from time to time.

11 (p) Mouth of the Canyon. The location at which the  
12 Santa Ana River passes from its mountain canyon onto the  
13 alluvial valley overlying San Bernardino Basin, as shown on  
14 Exhibits "A" and "C".

15 (q) Mutual. Bear Valley Mutual Water Company.

16 (r) Mutual's Lake Water Operations. The calculated,  
17 hypothetical account of operation of the lake under condi-  
18 tions of In Lieu Water deliveries pursuant to the physical  
19 solution herein, which account shall be maintained by Water-  
20 master in accordance with Watermaster Criteria.

21 (s) North Fork Agreement. That certain agreement dated  
22 May 23, 1885, between Bear Valley Land and Water Company and  
23 North Fork Water Company, attached as Exhibit "E".

24 (t) Prior Right Agreements. Collectively, the North  
25 Fork Agreement and the Sunnyside Agreement, Exhibits "E" and  
26 "F".

27 (u) Prior Right Companies. Collectively, North Fork  
28 Water Company, Lugonia Water Company and Redlands Water

1 Company.

2 (v) San Bernardino Basin. The ground water basin  
3 underlying the San Bernardino Valley above the Bunker Hill  
4 Fault and downstream from the Mouth of the Canyon.

5 (w) Sunnyside Agreement. That certain agreement dated  
6 February 27, 1836, between The Shareholders in South Fork  
7 Ditch of the Santa Ana River, Sunnyside Division, and Bear  
8 Valley Land and Water Company, attached as Exhibit "F".

9 (x) Upper Bear Creek Watershed. The surface drainage  
10 area tributary to the Dam and drained by Bear Creek and its  
11 tributaries, as shown on Exhibit "A".

12 (y) Upper Santa Ana River Watershed. The surface  
13 drainage area tributary to the Edison Diversion on the Santa  
14 Ana River, as shown on Exhibit "A".

15 (z) Watermaster Criteria. The detailed engineering  
16 criteria, set forth in Exhibit "D".

17 Geographical Names, not otherwise defined herein, are used with  
18 reference to their appearance on Exhibits "A", "B" and "C".

19 2. Exhibits. The following exhibits are attached to this  
20 Judgment and by this reference are made a part hereof:

21 "A" -- General Location Map.

22 "B" -- Hydrologic Map of Upper Bear Creek Watershed.

23 "C" -- Map showing diversion facilities and relevant  
24 system of Mutual.

25 "D" -- Watermaster Operating Criteria.

26 "E" -- North Fork Agreement.

27 "F" -- Sunnyside Agreement.

28

1 II. DECLARATIONS

2 A. HYDROLOGY

3 3. Upper Bear Creek Watershed is commonly known as Bear  
4 Valley. Its surrounding mountains rise to elevations of 8500  
5 feet, and the watershed extends down to the Dam at elevation 6743  
6 feet. Said watershed is drained by Bear Creek and its tributaries.  
7 Immediately easterly of Upper Bear Creek Watershed is the water-  
8 shed of Baldwin Lake. The dominant geographic feature in Upper  
9 Bear Creek Watershed is the Lake, which has existed continuously  
10 since 1883. Surrounding the Lake are several mountain communi-  
11 ties, the largest of which is Big Bear Village, situate on the  
12 southerly border of the Lake. Easterly of Big Bear Village and  
13 within Baldwin Lake Watershed is Big Bear City. Domestic water  
14 service in Upper Bear Creek Watershed is provided by Southern  
15 California Water Company, a public utility, Big Bear City Community  
16 Services District, and through individual domestic wells. All of  
17 the privately-held lands in Upper Bear Creek Watershed lie within  
18 the boundaries of District.

19 4. Early Santa Ana River Diversions. The earliest appropri-  
20 ations of water from the Santa Ana River commence in 1856 from the  
21 Santa Ana River as it traversed San Bernardino Basin. Two succes-  
22 sor diversions developed by progressive moving of canal and  
23 diversion facilities upstream to the Mouth of the Canyon, from  
24 which the North Fork Canal distributed water northwesterly into  
25 San Bernardino Basin and the Sunnyside Ditch distributed water  
26 southwesterly to the vicinity of Redlands. Above these canals  
27 there subsequently developed ancillary facilities to serve higher  
28 ground through the Edwards Canal and High Line, respectively. The

1 North Fork and Sunnyside diversions had established and claimed  
2 rights to substantially the entire surface flow of the Santa Ana  
3 River at the Mouth of the Canyon by 1883, when the predecessors of  
4 Mutual undertook to build the original dam at the Lake. In order  
5 to preserve the prior appropriative rights of the North Fork and  
6 Sunnyside diversions, Mutual's predecessors entered into the Prior  
7 Right Agreements, which agreements are still in effect.

8       5. Mutual's Diversion Practices. Mutual has multiple  
9 sources of supply, but its major, historic source is and has been  
10 stream flow from the Santa Ana River at the Edison Diversion, the  
11 supplementing of flows between the Edison Diversion and Mouth of  
12 the Canyon, and releases by Edison onto the High Line and to the  
13 Division Box. From the end of the Edison Conduit delivery is made  
14 through the Edwards and North Fork Canals and the Redlands Canal  
15 and High Line to satisfy the rights of Prior Right Companies and  
16 to meet the needs of Mutual's irrigation shareholders. The  
17 diversion facilities utilized by Mutual are shown on Exhibit "C".

18       6. District's Water Supply. District and its inhabitants  
19 rely entirely upon the precipitation and runoff within Upper Bear  
20 Creek Watershed for their water supplies for direct use and for  
21 recharge of the several small ground water basins in said water-  
22 shed. District does not have physical, or economically-feasible,  
23 access to significant supplies of supplemental nontributary  
24 sources of water. Although some inhabitants of District have  
25 riparian, overlying and appropriative rights to waters of Upper  
26 Bear Creek Watershed, neither District nor its inhabitants have  
27 any rights to water in storage in the Lake, or the right to store  
28 water in the Lake except to the extent that there is surplus

1 storage capacity in the Lake not utilized by Mutual.

2 B. DECLARATION OF RIGHTS

3 7. Mutual. Mutual is the owner of an appropriative right,  
4 with the priorities of 1883 and 1909, to divert at the Dam and  
5 store in the Lake for subsequent release and beneficial use within  
6 Mutual's service area of all of the flow of Bear Creek at the Dam  
7 and Lake. Said diversion shall be at such rate as may be reason-  
8 ably necessary to meet the requirements of Mutual's stockholders,  
9 not exceeding 65,000 acre feet in any ten (10) year period, as  
10 determined by the Board of Directors of Mutual in its sole discre-  
11 tion. Said rights have become prescriptive in nature as to all  
12 water right claimants downstream from the Dam, excepting only the  
13 rights of Prior Right Companies.

14 8. Prior Right Companies. Prior Right Companies, as the  
15 successors to the earliest diversion rights at the Mouth of the  
16 Canyon, are the owners of the prior appropriative rights confirmed  
17 by the Prior Right Agreements, which contractual rights constitute  
18 a burden and charge upon the said appropriative right of Mutual.  
19 The exact nature, scope and extent of the rights of prior right  
20 companies are set forth in said Prior Right Agreements (Exhibits  
21 "E" and "F"), and said agreements are hereby confirmed and shall  
22 remain otherwise unimpaired by the declarations and determination  
23 of this Judgment.

24 9. Conservation District. Conservation District owns an  
25 appropriative right to divert and spread storm flows of the Santa  
26 Ana River at and below the Mouth of the Canyon, for the benefit of  
27 water right claimants within Conservation District. Said rights  
28 are derived from and based upon

1 License No. 2831, Permit No. 2488 [8300 acre feet] and  
2 License No. 2832, Permit No. 2593 [2100 acre feet],  
3 issued by the Division of Water Rights of the California Water  
4 Resources Control Board, and from a prior statutory filing by  
5 Conservation District's predecessors dated October 6, 1911.

6 10. San Bernardino Basin Producers within the boundaries of  
7 Conservation District have rights in and to the safe yield of said  
8 San Bernardino Basin. Said safe yield is dependent, in part, on  
9 the flow of the river at the Mouth of the Canyon and return flows  
10 from applied water delivered by Mutual to its stockholders for use  
11 overlying the Basin. Both of said sources have historically  
12 included, from time to time, waters released from Upper Bear Creek  
13 Watershed through or over the Dam.

14 11. District. District owns the Dam and reservoir behind  
15 it, subject to the right of Mutual to store water in the Lake,  
16 pursuant to its appropriative right. To the extent that, at any  
17 time, there is surplus storage capacity in the reservoir not  
18 utilized by Mutual, District has the right to store water therein,  
19 including water acquired by reason of operation of the physical  
20 solution herein decreed or from any source or sources other than  
21 the surface flow of Bear Creek and its tributaries, or from non-  
22 tributary streams provided such non-tributary water has been  
23 diverted into the Lake by Mutual.

24  
25 III. INJUNCTIONS

26  
27 12. Against District. District, its officers, agents and  
28 employees are hereby ENJOINED AND RESTRAINED from interfering with

1 the release of water from the Lake to meet the requirements of  
2 Mutual, except in compliance with the physical solution herein-  
3 after decreed.

4 IV. CONTINUING JURISDICTION

5  
6 13. Continuing Jurisdiction. Full jurisdiction, power and  
7 authority are retained and reserved to the Court for the purpose  
8 of enabling the Court, upon application of any party by motion and  
9 upon 30 days' notice hereof, and after hearing thereon, to make  
10 such further and supplemental orders or directions as may be  
11 necessary or appropriate for interpretation, enforcement or carry-  
12 ing out this Judgment. The Court may award attorneys' fees to the  
13 prevailing party in any further proceedings, pursuant to this  
14 paragraph.

15 V. WATERMASTER

16  
17 A. APPOINTMENT AND COMPOSITION

18 14. Watermaster Committee. The Court will appoint a Water-  
19 master Committee, by subsequent order, in accordance with the  
20 following procedure:

21 (a) Nominations. On or before sixty (60) days after  
22 entry of judgment herein, nominations shall be submitted by  
23 a separate pleading filed herein. For said purpose, one  
24 nominee each shall be submitted by District, Mutual and  
25 Conservation District.

26 (b) Appointment. The three nominees, if acceptable to  
27 the Court, will thereupon be appointed by such subsequent  
28 order.



1 (c) Term. Watermaster representatives shall serve for  
2 terms of five (5) years, unless sooner removed by the Court  
3 on its own motion or at the request of the party nominating  
4 any such Watermaster representative.

5 (d) Watermaster Action. Said Watermaster members,  
6 acting as a committee, shall be and constitute the Water-  
7 master, for purposes of administering the provisions of this  
8 Judgment and subsequent orders of the Court. Action of a  
9 majority of Watermaster members shall constitute action of  
10 Watermaster.

11 B. POWERS AND DUTIES

12 15. Powers and Duties. Subject to the continuing super-  
13 vision and control of the Court, Watermaster shall have and may  
14 exercise the express powers, and shall perform the duties, as  
15 provided in this Judgment or hereafter ordered or authorized by  
16 the Court in the exercise of the Court's continuing jurisdiction.

17 16. Rules and Regulations. Watermaster shall make and adopt  
18 appropriate rules and regulations for conduct of Watermaster  
19 affairs, including meeting schedules and procedures. Said rules  
20 and regulations shall be submitted to and approved by the Court.  
21 Thereafter, Watermaster may amend said rules from time to time,  
22 upon notice to all parties and with the approval of the Court. A  
23 copy of said rules and regulations, and of any amendments thereof,  
24 shall be mailed to each party.

25 17. Studies. Watermaster shall undertake such studies and  
26 investigations and collect and maintain such hydrologic and other  
27 data and records as are necessary to implement the Physical  
28 Solution herein.

1 18. Accounting. Watermaster shall make calculations and  
2 maintain accounts to reflect both actual operation of Big Bear  
3 Lake and Mutual's Lake Water Operations. Said accounts shall be  
4 maintained in accordance with Watermaster Criteria.

5 19. Watermaster Expenses. Each party shall pay the costs  
6 and expenses of the representative of such party on Watermaster.  
7 The obligation for and cost of making measurements and accumula-  
8 ting basic data shall be assumed and paid as follows:

9 (a) At and upstream from Dam -- District.

10 (b) Downstream from Dam -- Mutual and Conservation  
11 District, in shares to be agreed upon from time  
12 to time.

13 New or additional measurements, relevant hydrologic studies or  
14 other activities of Watermaster involving significant cost shall  
15 be paid pursuant to unanimous agreement entered into before such  
16 costs are incurred. In the absence of agreement, the Court will,  
17 by subsequent order, allocate any necessary common Watermaster  
18 expenses.

19 20. Reports. Watermaster shall prepare, serve on all  
20 parties and file with the Court an annual report on or before  
21 April 1 of each year, which shall set forth the accounting for  
22 water under the Physical Solution, and a report on all significant  
23 Watermaster activity during the preceding calendar year.

24 21. Review Procedures. All actions, decisions or rules of  
25 Watermaster shall be subject to review by the Court on its own  
26 motion or on timely motion by any party or Watermaster member, as  
27 follows:

28 (a) Effective Date of Watermaster Action. Any action,

1 decision or rule of Watermaster shall be deemed to have  
2 occurred or been enacted on the date on which written notice  
3 thereof is mailed. Mailing of copies of approved Watermaster  
4 minutes to the parties shall constitute such notice to all  
5 parties.

6 (b) Noticed Motion. Any party or Watermaster member  
7 may, by a regularly noticed motion, apply to the Court for  
8 review of any Watermaster's action, decision or rule.  
9 Notice of such motion shall be mailed to Watermaster and to  
10 all parties. Unless otherwise ordered by the Court, such  
11 motion shall not operate to stay the effect of such Water-  
12 master action, decision or rule.

13 (c) Time for Motion. Notice of motion to review any  
14 Watermaster action, decision or rule shall be served and  
15 filed within ninety (90) days after such Watermaster action,  
16 decision or rule.

17 (d) De Novo Nature of Proceedings. Upon the filing of  
18 any such motion, the Court shall require the moving party to  
19 notify the parties and Watermaster of a date for taking  
20 evidence and argument. On the date so designated, the Court  
21 will review de novo the question at issue. Watermaster's  
22 findings or decision, if any, may be received in evidence at  
23 said hearing, but shall not constitute presumptive or prima  
24 facie proof of any fact in issue.

25 (e) Decision. The decision of the Court in such  
26 proceeding shall be an appealable supplemental order in this  
27 case. When the same is final, it shall be binding upon the  
28 Watermaster and all parties.

1  
2 VI. PHYSICAL SOLUTION  
3

4 23. Need For Physical Solution. There exists a need for  
5 additional water for recreational and wildlife enhancement pur-  
6 poses within District. There is not an economically feasible  
7 source of supplemental water available to meet the needs of  
8 District and its inhabitants for such purposes. Any such use by  
9 District of the waters in storage in the Lake will be junior to  
10 the declared rights of Mutual and other defendants herein. Supp-  
11 lemental sources of water may, from time to time, be available  
12 within defendants' areas of use (other than Edison), but are more  
13 expensive than waters which might be diverted from storage in the  
14 Lake. In order to assure the maximum beneficial use of waters of  
15 the State, in accordance with the mandate Article X Section 2 of  
16 the Constitution, it is appropriate that the Court adopt a phys-  
17 ical solution herein.

18 24. General Plan of Operation. In general terms, the  
19 physical solution hereafter decreed will provide for retention of  
20 waters of Bear Creek in the Lake by reason of delivery of In Lieu  
21 Water to Mutual's system. The costs of In Lieu Water and Basin  
22 Make-up Water shall be borne solely by District as consideration  
23 for the right to retain an equivalent quantity of stored water in  
24 the Lake for District's account.

25 25. District's Right to Provide In Lieu Water. District  
26 shall have the right to provide In Lieu Water to Mutual, at Dis-  
27 trict's sole expense, to be delivered into Mutual's system at  
28 locations designated by Mutual, as a condition of retaining in the

1 Lake water which would otherwise be required by Mutual for its  
2 use. Such In Lieu Water may be provided from any one or more of  
3 the following sources, or any other source usable for Mutual's  
4 purposes, and of comparable quality to waters released or subject  
5 to release from the Lake:

- 6 (a) Wells in San Bernardino Basin owned by Mutual.  
7 (b) Third party wells or other sources, which are  
8 available under contract, lease or other arrangements with  
9 Mutual.  
10 (c) Exchange water under the Mill Creek Exchange.  
11 (d) State Project Water.

12 Provided, that Watermaster shall determine whether production of  
13 ground water pursuant to subparagraphs (a) or (b) hereof will have  
14 an unreasonable and adverse effect on water levels in any adjacent  
15 wells. In the event of such finding, Watermaster may prohibit use  
16 of such well or wells for production of In Lieu Water until  
17 Watermaster determines that such adverse effect is eliminated.

18 Provided, moreover:

19 (e) High Line Obligation. Because of the requirements  
20 by Mutual for delivery of water through its High Line and to  
21 the Edwards Canal, it is necessary that a minimum of 12 cfs  
22 be diverted into the Edison Conduit from all sources, in-  
23 cluding Santa Ana River and Bear Creek water at the Edison  
24 Diversion, canyon wells and surface inflow between the Edison  
25 Diversion and the Mouth of the Canyon. To the extent that  
26 said supplies fall below 12 cfs at the forebay of Edison  
27 Power House No. 3, being the start of the High Line, District  
28 shall release water to make up any deficiency therein from

1 water in storage in the Lake. Said High Line obligation  
2 shall supersede District's In Lieu Water right unless and  
3 until In Lieu Water can be provided by District to meet said  
4 High Line requirements from other sources.

5 (f) Dry Year Releases. In the event, by reason of  
6 natural disaster or extreme drought, or otherwise, Mutual is  
7 unable to meet its obligation under the Prior Right Agree-  
8 ments to Prior Right Companies, and there exists water in  
9 storage in the Lake which is not otherwise available to  
10 Mutual, District shall make such releases as are necessary to  
11 enable Mutual to meet said Prior Right obligations. In such  
12 event, District shall acquire a right to replacement of such  
13 quantities in the Lake for its account from the next natural  
14 inflow to the Lake, which would otherwise be credited to  
15 Mutual.

16 26. Basin Make-up Water. District's lake stabilization  
17 operations by exercise of its in lieu right may have some adverse  
18 impact on the supplies of water to the San Bernardino Basin.

19 27. Procedures for In Lieu Water. In the operation of  
20 District's In Lieu right, the following procedures shall be  
21 followed:

22 (a) District's Election to Provide In Lieu Water.  
23 District shall, on or before April 15 of each year, notify  
24 Mutual of District's intent to provide In Lieu Water during  
25 the following fiscal year, and shall designate the maximum  
26 amount it is prepared to so provide. District may, during  
27 any year, on ninety (90) day written notice, amend or modify  
28 the amount of In Lieu Water so specified.

1 (b) Mutual's Order. At such time as Mutual's board,  
2 its sole discretion, may determine that it requires the  
3 release of water from the Lake for the use of Mutual and the  
4 Prior Right Companies, Mutual shall notify District and, to  
5 the extent that District has indicated an intent to provide  
6 In Lieu Water, Mutual shall reasonably cooperate with, and  
7 give assistance to District in obtaining water from In Lieu  
8 Water sources. Any Lake water required by Mutual and not  
9 supplied by In Lieu Water shall be provided by District by  
10 Lake releases on at least 12 hours' notice by Mutual.

11 (c) Costs. Costs of In Lieu Water obtained by Mutual  
12 on behalf of District shall include all actual operating,  
13 maintenance and administrative costs attributable, in good  
14 accounting practice, to the acquisition of such In Lieu  
15 Water. Said costs shall also include pump tax applicable to  
16 such water, if any. In the event any well, pump, motor,  
17 booster pump or pipeline of Mutual used for production or  
18 delivery of In Lieu Water is required to be replaced at a  
19 time when such facility is being used for the production or  
20 delivery of In Lieu Water, District shall advance the cost of  
21 replacing such item; provided, however, that at the end of  
22 ten years after the completion of such replacement Mutual  
23 will reimburse District that percentage of the cost of such  
24 replacement which the number of hours said facility has been  
25 used by Mutual for its account during such ten-year period  
26 bears to the total number of hours such facility has been  
27 used during the ten-year period, plus interest on such amount  
28 at the rate of six percent (6%) per annum. In the event an

1 such facility is being used by Mutual for its own account at  
2 the time of such replacement, Mutual shall pay such replace-  
3 ment cost and shall be reimbursed by District in the same  
4 manner as provided above. All such replacement facilities  
5 shall be and remain the property of Mutual.

6 (d) Payment. Any costs incurred by Mutual with re-  
7 lation to In Lieu Water deliveries shall be paid by District  
8 within thirty (30) days of receipt of approved billing  
9 therefor. All bills for such In Lieu Water shall be sub-  
10 mitted to and approved by Watermaster, provided, however,  
11 that Watermaster may, if it deems it to be appropriate,  
12 require District to maintain on deposit reasonable sums to  
13 insure advance payment of current costs in order to relieve  
14 Mutual of any financial burden in connection with said  
15 In Lieu Water.

16 28. Procedure for Basin Make-up Water. Watermaster shall  
17 annually calculate the net amount of these various adjustments.  
18 District shall be obligated to periodically balance any resulting  
19 net deficiencies in recharge to the San Bernardino Basin as  
20 Watermaster shall determine. Balancing of any deficiency in said  
21 account shall occur at least once in each ten (10) year period,  
22 the time of delivery within said period to be at the option of  
23 District; provided, that in no event shall such negative impact be  
24 allowed to exceed 15,000 acre feet; provided, further, that if the  
25 net deficiency exceeds 10,000 acre feet, District shall reduce the  
26 net deficiency to at least 10,000 acre feet within the succeeding  
27 two (2) years; provided, however, that District shall, at the  
28 election of Conservation District on or before January 1, 1981,



1 reimburse Conservation District for the cost of up to 10,000 acre  
2 feet of replenishment water, at not to exceed the Mill Creek Ex-  
3 change price to members. Such payment shall result in an equiva-  
4 lent credit to District's account for Basin Make-up Water. To  
5 the extent practical, recharge will be directed to the sub-basins  
6 of San Bernardino Basin proportionally to the pattern of extrac-  
7 tion of In Lieu Water hereunder.

8 29. Accounting. Watermaster shall maintain three basic  
9 accounts, in accordance with Watermaster Operating Criteria, as  
10 follows:

11 (a) District's Lake Water Operation. A detailed  
12 account to reflect actual operation of the Lake by District  
13 shall be maintained.

14 (b) Mutual's Lake Water Operations. In addition, a  
15 corollary account shall be maintained to simulate the effect  
16 of Mutual's operations with regard to Lake water under the In  
17 Lieu Water operations.

18 (c) Basin Make-up Account. An account of District's  
19 annual and cumulative obligation for Basin Make-up Water  
20 shall also be maintained.

21 30. District's Obligation to Maintain Dam. Pursuant to  
22 District's stipulation and agreement, District shall perpetually  
23 maintain and protect the Dam and Lake to preserve and maintain the  
24 existing usable storage capacity of the Lake and shall comply with  
25 all dam safety regulations of the State of California or other  
26 appropriate public authority. No excavation or filling of the  
27 Lake or any part thereof shall be done within 500 feet of the Dam,  
28 except as necessary for repair, maintenance or replacement of the

1 Dam.

2 31. District to Hold Mutual Harmless. District shall hold  
3 Mutual free and harmless from any and all liability, cost or ex-  
4 pense (including attorney's fees) arising from District's opera-  
5 tion of the Lake pursuant to the Lake Surface Rights, and shall  
6 cause Mutual to be named as an additional insured on any public  
7 liability insurance policies which District may obtain covering  
8 its operation of the Lake.

9 32. Physical Solution Agreement. That certain "Physical  
10 Solution Agreement" heretofore entered into between District,  
11 Mutual and Conservation District on December 23, 1976, is super-  
12 seded by this Judgment.

13 33. Costs. No party shall recover any costs in this pro-  
14 ceeding from any other party.

15 DATED: ~~January~~ FEBRUARY 4, 1977.

16  
17 JOSEPH B. CAMPBELL  
18 Judge

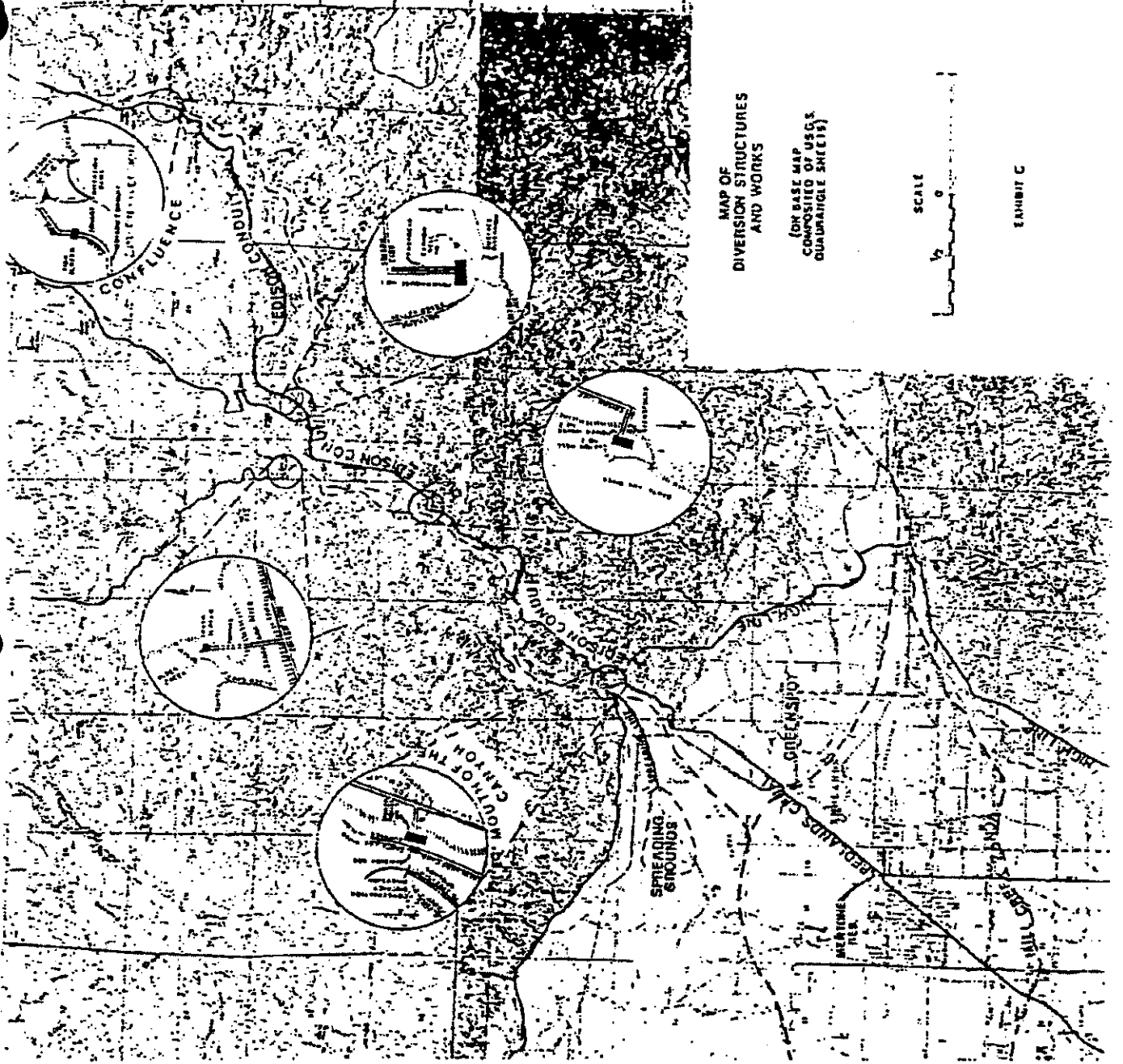


EXHIBIT "D"

WATERMASTER OPERATING  
CRITERIA

The following operating criteria shall guide and bind Watermaster in administering the provisions of this Physical Solution Agreement:

1. Basic Data. Watermaster shall accumulate basic data in the form of measurements or estimates of the following flows or hydrologic facts which Watermaster may determine to be necessary to maintenance of accounts required by the physical solution. In the accumulation of such data, Watermaster shall observe the following criteria:

(a) Lake Elevations. Monthly readings shall be taken on or about the first of each month of the elevation of the lake surface as shown on the gage located at the Dam.

(b) Lake Evaporation. Evaporation stations shall be strategically located in the vicinity of the lake and average monthly rates of evaporation shall be calculated therefrom.

(c) Precipitation. Average total rainfall in Upper Bear Creek Watershed shall be derived from weighted analysis of rainfall stations to be designated or established by Watermaster.

(d) Surface Flows.

(1) Natural Tributary Inflow to Lake. All

measurable or observable surface inflow to the lake from Upper Bear Creek Watershed shall be measured or estimated, directly or indirectly, and aggregated monthly.

(2) Non-tributary Diversions to Lake.

Mutual currently causes waters of Siberia Creek Watershed to be diverted from Bluff Lake into Lake, and flood flows of Van Dusen Creek in Baldwin Lake Watershed to be similarly diverted. Such diversions of non-tributary waters, together with any additional such diversions shall be measured or calculated monthly and credited to the party causing such diversion. In the event Mutual desires to cease or abandon either its Bluff Lake or Van Dusen diversions, and District maintains or enlarges such flows at District's expense, such flows shall be credited to District's account in calculating water in storage vis-a-vis Mutual. In such event, accounting for such flows, for purposes of Basin Make-up Water obligations, shall depend upon whether the waters diverted are naturally tributary to the Santa Ana River or not.

(3) Dam Releases. All intentional releases of water through the Dam shall be continuously measured and recorded.

(4) Dam Spills. Any spills of water over the Dam shall be measured or estimated and recorded monthly.

(5) Dam Leakage. All leakage through the dam shall be measured or estimated and a correlation between leakage and lake elevation shall be developed if possible.

(6) Santa Ana River at the Confluence with Bear Creek shall be calculated.

(7) Bear Creek at the Confluence with Santa Ana River shall be calculated.

(8) Santa Ana River at the Mouth of the Canyon shall be measured and average daily flows recorded. (This is currently being maintained by U.S.G.S.)

(e) Canyon Subsurface Diversions. Average subsurface diversions at Canyon Wells #1 and #2 shall be recorded monthly.

(f) Diversions at Mouth of the Canyon. Monthly quantities diverted at the Mouth of the Canyon shall be separately measured and recorded for diversions to

- (1) High Line
- (2) Redlands Canal
- (3) North Fork Canal
- (4) Edwards Canal
- (5) Conservation District Spreading Grounds.
- (6) Amount not diverted.

(g) In Lieu Water Deliveries shall be separately recorded as to place of delivery into Mutual's system, monthly quantity and type of source, i.e., whether from

- (1) Mutual's wells
- (2) Third party wells
- (3) Exchange Water, or
- (4) Direct Delivery of State Project Water.

(h) New Water Use by Mutual's Shareholders in Upper Santa Ana River Watershed, by reason of location of additional shares in said area, shall be accumulated monthly and recorded.

(i) Additional Points of Measurement as determined from time to time to be necessary, in the opinion of Watermaster.

2. Determinations and Calculations. Based upon the foregoing basic data, Watermaster shall make the following determinations and calculations:

(a) Net Monthly Lake Inflow shall be determined, together with its components of:

(1) Natural inflow and precipitation on the Lake, plus

(2) Diverted non-tributary inflows by reason of

[a] Mutual's activity (i.e., Van Dusen Creek and Bluff Lake),

[b] District's activity (such as,

but not limited to, proposed Rathbone reclamation operation), less

(3) Export from Upper Bear Creek Watershed (i.e., BBANA project).

(b) Monthly Evaporation shall be calculated for both

- (1) Actual lake operations, and
- (2) Mutual's Lake Water Operation.

(c) Monthly Releases shall be accumulated for both

- (1) Actual lake operations, and
- (2) In Lieu Water deliveries.

(d) Spills and Leakage shall be accumulated for

- (1) Actual lake operations, and
- (2) Mutual's Lake Water Operation.

(e) Monthly Change in Storage shall be calculated for

- (1) Actual lake operations, and
- (2) Mutual's Lake Water Operation.

(f) Area and Capacity Curve will be developed for the Lake under current conditions.

### 3. Accounts.

(a) Mutual's Water In Storage shall be determined as follows for each month:

Beginning storage

+ Total Inflow

- Import from Non-tributary sources by District

EXHIBIT "D"



- Pumped groundwater introduced into Lake  
+ Net Sewage Export from Upper Bear Creek  
Watershed

- In Lieu Water delivered
- Releases or uses by Mutual
- Spill chargeable to Mutual account
- Leakage chargeable to Mutual operation
- Evaporation charged to Mutual operation
- = Mutual's month-end water in storage.

(b) District's Water in Storage. Any water actually in storage in excess of Mutual's water in storage, as calculated above, shall be for the account of District. So long as District has water in storage, all spills from the Lake shall be deemed District water.

(c) Basin Make-Up Water Account. Accounting for Basin Make-up Water Deficiency or Credit shall be pursuant to the following:

$$[(.50) (R_d) + (.51) (S_d) + (.50) (P_d)] - [(.50) (R_m) + (.51) (S_m)] = \text{Deficiency or Credit.}$$

Wherein:

$R_m$  = Releases which would have been made under Mutual Operation.

$S_m$  = Spill which would have occurred under Mutual Operation.

$R_d$  = Releases actually made under District Operation.

$S_d$  = Spill which actually occurred under District Operation.

$P_d$  = In lieu water purchased by District from San Bernardino Valley MWD or the Management Committee of the Mill Creek Exchange and delivered under District Operation to Mutual for service area requirements.

4. Supplemental Inflow to Lake and Export from Upper Bear Creek Watershed. In accounting for water in storage in the Lake to Mutual's account and calculating District's obligation for Basin make-up water, the effect of certain existing and potential diversion and export practices must be accommodated.

(a) Supplemental Inflow. Whether inflow to the Lake is supplemented from surface streams, production of ground water, diversion of reclaimed water or otherwise, it shall be credited to the water-in-storage account of Mutual or District, in accordance with which party causes such inflow to be so supplemented. In the event an existing diversion by Mutual is enlarged or expanded by District, at its sole expense, an allocation of resulting flows shall be made by Watermaster.

Such supplemented inflow shall be accounted for in the calculation of District's Basin Make-up Water obligation depending upon whether the source of any such surface water was tributary or non-tributary to the Santa Ana River.

(b) Export from Upper Bear Creek Watershed. Conservation District has entered into an agreement with Big Bear Area Regional Wastewater Agency, County

Service Area No. 53, and the Big Bear Lake Sanitation District relating to the export of wastewater from the Santa Ana Watershed by said agencies. The agreement terminates on June 30, 1985.

In the event gross export from Upper Bear Creek Watershed to any area not tributary to the Santa Ana River exceeds gross import to the Santa Ana River Watershed within Upper Bear Creek Watershed, calculated inflow to the Lake shall be increased each year, beginning with the calendar year 1986 by the amount by which such gross export exceeds imports. If gross import exceeds gross export, said excess shall be credited against District's Basin Make-up Water obligation.

EXHIBIT "E"

THIS MEMORANDUM, made this 23rd day of May, 1935, by and between the Bear Valley Land and Water Company, a corporation party of the first part, and the North Fork Water Company, a corporation, and the undersigned, other than the said two corporations owners of water in the North Fork Ditch of the Santa Ana River, and Cross and Van Louven Ditch, parties of the second part;

WITNESSETH: Parties of the second part are desirous of making an arrangement with the party of the first part whereby the supply of water available to said parties of the second part may be made certain and secure during the months of June, July, August, September, October and November, and are further desirous of increasing the present capacity of the said North Fork Ditch and completing the construction of the same,

NOW THEREFORE, Know all men by these presents;

I.

Parties of the second part agree that all their respective water, water rights and interests over and above the amount or quantity herein stipulated to be furnished and allowed to or attained by the parties of the second part may be perpetually held and enjoyed by the party of the first part for its use, benefit and disposal, subject to the terms and conditions of this agreement, and except as herein limited, it being expressly understood however, that each party of the second part retain the right to sell, convey, transfer, mortgage, pledge or otherwise dispose of his or its respective rights or interests in said water or water rights or in this agreement, subject also to the terms and conditions hereof.

EXHIBIT "E"

## II.

The parties of the first part agree to furnish and deliver to the parties of the second part continuously during the following months of each and every year hereafter the number of inches of water, under a four inch pressure, hereinafter mentioned, as allotted to each of said months respectively, to-wit: June, Five Hundred (500) inches; July, Six Hundred (600) inches; August, Six Hundred (600) inches; September, Five Hundred and fifty (550) inches; October, Four Hundred and fifty (450) inches; November, Four Hundred (400) inches.

It being expressly understood and agreed that at the written request of a majority in interest of the parties of the second part, based upon their respective interests, in said water and water rights the amount to said months as above respectively allotted, may be changed for the current year in which said request is made, in the manner following, to-wit: If it is desired that the allowance as above set forth for any month be lessened, such diminution shall be allowed and the amounts so diminished from any one month shall be added to some other of said months succeeding; provided that the allowance or addition so made shall not increase for any one month the amount of six hundred inches.

## III.

It is understood and agreed that during the months of December, January, February, March, April and May, one-fourth of all the water flowing in the Santa Ana River at the point known as the Divide, (exclusive of water placed therein by parties of the first part) being the only place where the

waters of the North Fork and South Fork Ditches, so called, are divided, shall belong and be delivered to parties of the second part by parties of the first part. It being further understood and agreed that the surplus of all waters so apportioned to parties of the second part which is not required or desired to be used by parties of the second part, may be used by parties of the first part; always providing that parties of the second part shall be the sole judges of whether such surplus water is or is not required by them; all waste

water at the end of the said North Fork Ditch shall belong to party of the first part. *This stricken out by supplemental agreement IV.*

*This stricken out by supplemental agreement*  
It is further understood and agreed that in the event of there being upwards of Thirteen Hundred (1300) inches of water in the said Santa Ana River at the point of "Divida" aforesaid, in its natural flow exclusive of water therein placed by act of parties of the first part during the month of June of any year, then one-half of the surplus of said water shall belong and be delivered by party of the first part to parties of the second part and the division and allotment of surplus shall in no way affect or control the allotment of water hereinbefore specified under Caption II hereof, and shall be considered as and be wholly independent thereof.

Y.

All division or allotment of water under this agreement as between party of the first part and the parties of the second part shall be measured and made at the point on the Santa Ana Canon or River hereinbefore referred to and known as the "Divida".

VI.

Parties of the second part agree within two years from

EXHIBIT "E"

the date hereof to complete the Ditch of the North Fork Water Company by enlarging the same where not already paved and cemented and where not already of such capacity to a size sufficient to carry fifteen hundred (1500) inches of water, and by substantially cementing and paving such portions so to be enlarged aforesaid and to pay one-half of the expense of such enlargement, paving and cementing together with one-half of the expense of maintaining the said ditch when completed as aforesaid, and party of the first part hereby agrees to pay the other half of said expense.

VII.

On the execution of this agreement party of the first part agrees to pay the parties of the second part the sum of Two Thousand (\$2000) Dollars, and on the first day of January, 1888, the further sum of Two Thousand (\$2000) Dollars as a consideration for the half interest in the said North Fork Ditch mentioned. By the North Fork Ditch is meant the main ditch commencing at or near the 'Divide' aforesaid, and extending to Haven corner and as described in Articles of Incorporation of North Fork Ditch Company.

VIII.

It is further understood and agreed that until said ditch shall be enlarged to a capacity of Fifteen Hundred (1500) inches as hereinbefore stated, no greater amount of water shall be allowed to flow into or through said ditch by party of the first part than twelve hundred (1200) inches without the written consent of a majority of the water interests of parties of the second part.

IX.

The capacity of said ditch may be at any time hereafter

increased beyond said fifteen hundred (1500) inches by either party of the first part or parties of the second part, in which event the expense of said enlargement may be borne in equal proportions by the parties hereto, and in that event said parties shall be entitled to share equally in the use and enjoyment of said increased capacity. In the event, however, that either of the parties hereto shall fail or refuse to unite with the other of said parties in effecting said increase of capacity, or in promptly paying one-half of the expenses of making the same, then and in that case the parties so failing or refusing shall not be entitled to the use or enjoyment of said increased capacity or of any of the benefits thereof.

X.

It is understood and agreed that substantially one-half of all water taken from the Santa Ana River aside from that which may be supplied from the Bear Valley Reservoir shall at all times flow in said North Fork Ditch.

XI.

It is further understood and agreed that the party of the first part shall be under no obligation to furnish water to parties of the second part as heretofore provided until on and after June 1st, 1956. And that until said date all the water of said River which parties of the second part have used, or to which they have been entitled prior to the date hereof shall be used as heretofore and in the same proportions irrespective of the allotments mentioned under this agreement.

XII.

Each individual of the parties of the second part agrees



for himself and itself and his and its successors in interest respectively to contribute and pay the proportions of the expense necessary to carry out and fulfill so much of this agreement as is to be carried out, fulfilled or performed by or on the part of the parties of the second part in proportion to the interest or shares of parties of the second part in the said water rights, ditches or privileges owned by each of said parties of the second part in said North Fork Ditch and water right.

For the purpose of equitably adjusting and distributing the division of the expenses aforesaid for the construction and maintenance of said North Fork Ditch among the owners thereof, parties hereto of the second part among themselves, said ditch shall be considered in two sections; one from the divide aforesaid down to and including the head or distributing gate of the Cross Ditch known as section one; and the other from said head or distributing gate of the Cross Ditch to the end of said North Fork Ditch, known as section two,

Those using water or drawing water from any portion of said North Fork Ditch shall pay in proportion to their respective rights or shares in and to said ditch, water or water privileges for the expenses of constructing or repairing of said section one, and those using water in or from section two of said ditch shall pay according to their respective shares or rights in said ditch, water or water privileges for the construction and repair of said section.

XIII.

If at any time the party of the first part shall fail to

comply with the terms and conditions of this agreement in furnishing and delivering water to the parties of the second part or their successors in interest, then it shall forfeit all right, franchises, privileges and interest derived from parties of the second part, under and by virtue of this agreement, and all rights, franchises and privileges or interests hereby conceded to it by said parties of the second part, or created in pursuance of the terms hereof, may be resumed and retained by said parties of the second part, the same as if this agreement had not been made. And all rights and interests of said party of the first part to the said North Fork Ditch shall cease and determine, but a temporary failure or interruption of not more than ten days after said party of the first part has received written notice thereof from said parties of the second part, resulting from unforeseen or unexpected accident not attributable to the negligence or fault of the party of the first part shall not be considered such a failure as to work such forfeiture— it being the intention not to favor or take advantage of mere technical breaches of this agreement, but that the same shall receive a fair and liberal construction to promote substantial justice and fair dealing between the parties hereto.

XIV.

In all matters or things to be acted upon or done or decided by or concerning the affairs, conduct, management or interest of the parties of the second part under this agreement, a majority in interest of said parties of the second part shall control.

XV.

The parties of both parts (that is, each part) are each to have an equal voice in the construction, management and repairs of said ditch, and if they cannot agree in respect to such matters or any of them, then each party shall select a referee to decide such matters of difference; with power to said referees in case of a disagreement between them to select an umpire or third person, and a decision of a majority of said referees so selected shall be binding upon the parties hereto.

XVI.

It is understood and agreed by all the parties hereto that time is of the essence of this agreement — But if from not of God or any unforeseen accident, elemental or otherwise, not attributable to the negligence or default of party of the first part whereby their dam or other works for the supply of water may be temporarily destroyed or injured; then in event that all of the natural flow of the water of the Santa Ana River and its tributaries to which parties of the second part may be entitled independent of this agreement, be permitted by party of the first part to flow down to the "Divide" of the North Fork and South Fork Ditches, — then no damages or forfeiture is to ensue.

XVII.

It is further agreed by party of the first part that in event of said party increasing the capacity of said North Fork Ditch beyond fifteen hundred (1500) inches and conducting a greater amount of water therein than said number of inches any breakage or damage to said ditch or any part thereof shall be caused attributable to said increased flow — then said party of the first part is at its own expense to immediately

repair said ditch and to pay all of said damages.

IN WITNESS WHEREOF, the parties hereto sign their respective names this 23 day of May 1935.

L. C. Waite, A. M. Aplin, Mrs. D. C. Randall, Geo. Miller, Sh. C. Waite, Proxy, C. R. Wilko by W. Jaycock, Proxy, Nelson Jaycock, John Stone by R. F. Cunningham, Proxy, R. F. Cunningham, D. A. Coddington by R. F. Cunningham, Proxy, R. F. Cunningham, Edd Dyer, S. F. Crox by W. F. Crox, L. E. Rice, U. R. and T. S. Ingham,

John Cheny,  
Ed. H. Cheny,  
Seth Marshall

By Their Attorney in Fact

H. M. Willis.

G. W. Beattie, Mrs. Anjelica Beattie by G. W. Beattie, Proxy, H. M. Strong by T. W. Beattie, Att'y in Fact, John W. Downs, A. R. Crier, B. B. Peggandon, C. N. Mattisen, M. Claghorn, L. F. Cran, J. C. Weeks, H. J. Quinn, Christian Kurtz, Mary Ely, F. H. Cavalier,

North Fork Water Company  
By L. C. Waite, President  
G. W. Beattie, Secretary.

(SEAL)

State of California  
County of San Bernardino

SS.

On this 23d day of May, one thousand eight hundred and eighty-five, before me H. Connor, Court Commissioner in and for the said County of San Bernardino, Personally appeared L. C. Waite and G. W. Beattie, known to me to be the President and Secretary respectively of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

(SEAL)

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the said County of San Bernardino, the day and year in this certificate first above written.

H. Conner,  
Court Commissioner.

Near Valley Land and Water Company,

(SEAL)

By J. G. Burt, President.

E. A. Holt, Secretary.

State of California }  
County of San Bernardino }

SS.

On this 23d day of May, one thousand eight hundred and eighty five, before me, H. Conner, Court Commissioner in and for the said County of San Bernardino, personally appeared J. G. Burt, and E. A. Holt, known to me to be the President and Secretary respectively of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

(SEAL)

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in said County of San Bernardino the day and year in this certificate first above written.

H. Conner,  
Court Commissioner.

This supplemental agreement made this 27th day of June 1935 by and between the North Fork Water Company of the one part and the Bear Valley Land and Water Company of the other part, all of San Bernardino County, State of California, with intent to modify and render more definite and certain a certain contract heretofore made between said parties and other owners of the North Fork Water Ditch and right.

WITNESSETH: That it is understood and agreed that section four of said agreement of May 23, 1935, be, and the same is hereby stricken out, cancelled and declared of no force and effect.

It is also understood, covenanted and agreed by the said Bear Valley Land and Water Company to and with the said North Fork Water Company and other owners of and in the North Fork Ditch, not members of said corporation, that during the months of June, July, August and September of each year the parties of the second part in said agreement of May 23, 1935, shall have the right to pass over or draw back any amount of water they may designate from any month to any month of either of their aforesaid months, not exceeding the limit of six hundred inches in any one month and the aggregate amount of water for said four months shall not exceed twenty-two hundred and fifty inches.

The last clause of section three of the agreement of May 23, 1935, in reference to waste water is stricken out.

This agreement is intended to embrace all parties drawing water through the North Fork Ditch, and especially the portion of said water belonging to the Cross and Van Leuven Ditch.

And subject to the modification herein contained all

other provisions of said agreement of May 23rd, 1929, are in full force and effect.

In Witness Whereof, the respective parties hereto have set their hands and seals this day and year first above written.

(SEAL) North Fork Water Company,  
By H. C. Waite, President.  
G. W. Beattie, Secretary.

(SEAL) Bear Valley Land and Water Company,  
By J. S. Burt, President.  
E. A. Holt, Secretary.

State of California,  
County of San Bernardino,

SS:

On this 27th day of June, one thousand eight hundred and eighty-five before me, E. H. Morse, a Notary Public in and for the said County of San Bernardino, personally appeared H. C. Waite and G. W. Beattie, respectively President and Secretary of the North Fork Water Company and J. S. Burt and E. A. Holt respectively President and Secretary of the Bear Valley Land and Water Company, personally known to me to be the persons described in and the respective officers of the corporations that executed the within instrument, and acknowledged to me that such corporations executed the same. In Witness Whereof, I have hereunto set my hand and affixed

my official seal, the day and year in this certificate first above written.

(SEAL) E. H. Morse,  
Notary Public.

This Memorandum, made this 27th day of February, A. D., 1906, between the undersigned of the shareholders in the South Fork Ditch of the Santa Ana River, Sunnyside Division, parties of the first part, and the Bear Valley Land and Water Company, a corporation, party of the second part witnesseth:

Whereas parties of the first part and their co-owners in the said ditch above named are the owners of the right to use all of one half of the flow of the Santa Ana River divided at the point in the mouth of the Santa Ana Canon commonly known as the divide, and are desirous of making an arrangement with party of the second part whereby the supply of water available to parties of the first part, may be made certain and secure during the months of May, June, July, August and September and October.

Now Therefore, know all men by these presents, 1. That parties of the first part agree that all of their respective water rights and interests in such water and ditches hereinbefore mentioned over and above the amount or quantity herein stipulated to be furnished and allowed to or retained by said parties of the first part may be perpetually held and enjoyed by party of the second part for its use, benefit and disposal subject to the terms and conditions of this agreement and except as herein limited; it being expressly understood however that each party of the first part retains the right to sell, convey, transfer, mortgage, pledge or otherwise dispose of his respective right or interests in said water or water rights or in this agreement subject also to the terms and conditions hereof.

II. The party of the second part agrees to furnish and de-  
EXHIBIT "F"



liver to parties of the first part continuously through the following named months of each and every year hereafter the number of inches of water under a four inch pressure hereinafter next mentioned are allotted to each of said months respectively, to-wit:

May	466-2/3	inches.
June	466-2/3	inches.
July	466-2/3	inches.
August	466-2/3	inches.
September	466-2/3	inches.
October	466-2/3	inches.

It being expressly understood and agreed that upon the written request of a majority in interest of the parties of the first part based upon their respective interests in said water and water-rights, the amounts to said months above respectively allotted may be changed for the current year in which said request is made in the manner following, to-wit:

If it be desired that the allowance as above set forth for any of said months be lessened, such a diminution shall be allowed and the amount so diminished from any one month shall be added to some other of said months designated by parties of the first part, provided that the allowance or addition so made shall not increase for any one month the amount to more than six hundred (600) inches, such request to be made in writing to party of second part on or before April 20th of such year.

III. The party of the second part agrees to furnish and deliver to parties of the first part continuously through each of the following named months three hundred (300) inches of

EXHIBIT "F"

water measured under a four (4) inch pressure, to-wit; November, December, January, February, March of each and every year hereafter; provided that in case in any such months in any year it is found that there is flowing in said river at the divide a greater quantity of water than six hundred inches going to parties of the second part by the terms of this contract, then one half of the excess above six hundred inches up to and making a maximum of six hundred inches going to parties of the first part, shall be added to and be furnished to parties of the first part for such three hundred inches for any of such months and on the other hand; if it is found that there is flowing in said river at the divide a less quantity of water than six hundred inches going to parties of the second part by the terms of this contract, then one half of such deficiency shall be deducted from three hundred inches and the remainder only shall be for such months furnished to parties of the first part.

IV. It is understood and agreed that a quantity of water taken from the Santa Ana River aside from that which may be supplied from the Bear Valley reservoir substantially the same as that which has heretofore ordinarily flowed through the ditch of parties of the first part shall at all times hereafter flow through said ditch or such other ditch as may be constructed in lieu thereof.

V. It is further understood and agreed that the party of the second part shall be under no obligation to furnish water to parties of the first part as heretofore provided until on and after June 1st, 1886, and that until said date all the water of said river which parties of the first part have used, or to which they have been entitled prior to the date hereof,

shall be used as heretofore and in the same proportions irrespective of the allotments mentioned under this agreement.

VI. It is further understood and agreed that party of the second part shall bear the whole cost and expense of constructing any ditch, or continuation, extension or enlargement of any ditch that may be built in lieu of addition to or in connection with the whole or any part of the ditch of parties of the first part and shall further keep said ditch in good repair and condition at its own cost and expense.

VII. If at any time party of the second part shall fail to comply with the terms and conditions of this agreement in furnishing and delivering water to the parties of the first part or their successors in interest, in that event, it shall forfeit all rights, franchises, privileges and interests derived from parties of the first part under and by virtue of this agreement and all rights, franchises, and privileges and interests hereby conceded to it by said parties of the first part or created in pursuance of the terms hereof may be resumed and retained by said parties of the first part the same as if this agreement had not been made, and all rights and interests of said party of the second part in the said ditch of parties of the first part shall cease and determine, and further, in the event of such failure on the part of the party of the second part and of the forfeiture hereinbefore provided for in case party of the second part shall have constructed any ditch in lieu of the whole or any portion of the ditch of parties of the first part, or shall have improved or increased the same, then and in that event parties of the first part are hereby granted the right to purchase such now or increased or

improved ditch constructed or to be constructed in lieu of their old ditch or any part thereof as aforesaid, if such purchase seems to them expedient upon the basis and at a price to be fixed as follows; to-wit: Parties of the first part and party of the second part shall each respectively appoint a disinterested person to act as an appraiser and in the event of said appraisers failing to agree, the two appraisers thus appointed shall select a third person to act with them as appraiser, and in the event of their failing to agree upon such third person, the Judge of the Superior Court of the County of San Bernardino may appoint such person, and a decision of the majority of said appraisers shall control in the event that said ditch so proposed to be purchased as aforesaid shall be of a capacity no greater than that required to ~~convey~~ convey two thousand (2000) inches of water measured under a four inch pressure; said appraisers shall view said ditch and determine its actual value at the time of such examination and shall report the result of their determination in the matter in writing within ten (10) days thereafter to the parties hereto or their assigns, and in the event of said ditch being of a capacity to convey more than two thousand (2000) inches of water measured under a four (4) inch pressure then said appraisers in making their estimate shall disregard the excess of capacity over two thousand (2000) inches, and shall appraise said ditch at the price that a ditch with a capacity of no more than two thousand (2000) inches similarly constructed and in like repair would be reasonably worth. And in either event, the parties hereto bind themselves, their heirs, executors, administrators, assigns and successors

EXHIBIT "F"

sors, to abide by the decision of said appraisers or a majority of them in the premises.

In case however, the forfeiture of the right of party of the second part as hereinbefore set forth, parties of the first part do not elect to purchase said ditch as hereinbefore provided, then, and in that event, it is understood and agreed that said parties of the first part shall have and they are hereby granted a perpetual right of way through such ditch for the conveyance of 600 inches of water; the excess over 600 inches of capacity of such ditch to belong to parties of second part.

It is further understood and agreed in regard to the matter of forfeiture <sup>herein before</sup> referred to that a temporary failure or interruption in the performance of the condition and agreements herein stipulated as by party of the second part to be kept and performed if for not more than ten (10) days after party of the second part has received written notice thereof from parties of the first part resulting from unforeseen or unexpected accident not attributable to the negligence or fault of party of the second part shall not be considered such failure as to work such forfeiture; it being the intention of all the parties hereto not to favor or take advantage of mere technical breaches of this agreement, but that the same shall receive a fair and liberal construction to promote substantial justice and fair dealing between the parties hereto.

VIII. In all matters or things to be acted upon or done or decided by or concerning the affairs, conduct, management or interests of parties of the first part under this agreement.

EXHIBIT "F"

A majority in interest of said parties of said parties of the first part shall control.

IX. It is understood and agreed by all the parties hereto that time is of the essence of this agreement; but if from the act of God, or any unforeseen accident elemental or otherwise not attributable to the negligence or default of the party of the second part whereby its dam or other works for the supply of water may be temporarily destroyed or injured, then in the event that all the natural flow of the water of the Santa Ana River and its tributaries to which the parties of the first part may be entitled, independent of this agreement, be permitted by party of the second part to flow down to the divide with the Redlands ditch at the place commonly known as the Sycamore Tree, then no damage shall be claimed or forfeiture ensue.

X. It is further understood and agreed that party of the second part shall permit no trespass upon, nor interference with the right of parties of the first part in or to any of the waters of the Santa Ana River during the time that this contract shall remain in force and that said party of the second part may take such prompt steps by litigation, or otherwise lawfully and which the particular exigency may require to prevent any infringement by third parties upon the rights of parties of the first part, or any of them, in or to any of said water.

And it is further understood and agreed that in the event of the failure of party of the second part to take such necessary steps for the purposes aforesaid parties of the first part hereby reserve to themselves the right to proceed in

EXHIBIT "F"

their own manner and behalf in said matter in such way as to  
 then seems most advisable for the abatement or prosecution of  
 such trespass or interference, anything in this contract to  
 the contrary notwithstanding.

XI. All division or allotment of water under this agreement  
 as between parties of the first part and party of the second  
 part shall be measured and made at the divide, so called, be-  
 tween the ditch of parties of the first part and the Redlands  
 Ditch at or near the point commonly known as the Sycamore Tree

In Witness Whereof the parties hereto have hereunto in-  
 terchangeably set their hands and seals the day and year first  
 above written.

	Shares.	
I. D. B. Stillman,	52	(Seal)
Seal: J. Hayes,	1	(Seal)
T. C. Starr,	1-1/2	(Seal)
A. L. Park,	1	(Seal)
D. B. Alverson,	1	(Seal)
D. M. Balch,	8	(Seal)
E. G. Judson, by his attorney in fact, F. E. Brown,		
F. E. Brown,	10	(Seal)
E. A. Holt,	5-1/2	(Seal)
Mrs. Mary Hopkins,	3	(Seal)
L. G. Haight,	5	(Seal)
James Garrison,	5	(Seal)
Geo. A. Cook,	1-3/4	(Seal)
F. A. Feraud by G. A. Cook, Atty in fact	1	(Seal)
O. J. Abbott by J. C. Reeves, Atty in fact	1-1/2	
<sup>AUGUST</sup> M. S. Kolley,	2-1/2	
Joseph S. Hale,	2	(Seal)

E. F. Hall,	2
J. B. Clover,	2-1/2
Israul Neal,	4-3/4
Redlands Water Company,	50
By David Morey, President	
J. S. Edwards, Secy.	
R. E. Smith,	
Truman Reeves,	1
D. L. Clark,	1
Wm. and E. Leidsenberg,	4-1/2
Wm. B. Reeves and R. A. Reeves,	3
Mrs. Gemlit (May)	1
W. C. Butler,	3-1/2
L. Egler,	1
Ben Barton,	15
D. L. Adams and Julia and T. Adams	4
E. E. Booth,	1/2
C. E. Thompson by E. E. Booth	1/2
Mrs. Jane D. Hale,	1
Lugonia Fruit Packing Co.,	
by Geo. A. Cook, President,	
2nd Congregational Church of San Bernardino at	
Lugonia by Geo. A. Cook, Pres Board Trustees	1/4
Mrs. A. M. Tichenor	3
E. I. Fullerton,	1/2
A. Elliot Paine,	1
Lugonia Fruit Growing and Packing ) Company by Henry W. Robinson, Pres ) 20 and Charles W. Sumner, Treas. )	
A. F. Jones,	1/2



John Aiken Preston,	3
G. W. Chadwick,	1
H. M. Dunham,	1
Chas Frank Day,	1/2
H. Clarence Eddy,	2
Sara Hushey Eddy,	1
Mira Hushey,	1
Charles H. Morse,	2
D. A. Shaw,	11-1/2
L. N. Shaw,	2
E. J. Fallerton,	1
Frank Flakley,	21
Em. R. Tolles,	41-1/2
C. P. Barrows,	3
C. H. Lathrop,	1-1/2
W. V. Camp,	1/4
M. H. <del>Conover</del> <sup>Conover</sup> ,	
G. A. Shaw,	2
William Gregory,	1
Bear Valley Sand and Water Co.	15-7/8

300.5 shares  
of total 375

by Jas. G. Hurt, Pres. (Corporate)  
(Seal)  
A. Holt, Secy.

A full, true and correct copy of the original Recorded  
at the request of J. G. Hurt, Sept. 5th A.D. 1887, at 3:35  
o'clock P.M.

Logaro Allen,  
County Recorder.  
By O. J. Troen, Deputy.

EXHIBIT "F"

STATE OF CALIFORNIA, )  
 ) SS.  
COUNTY OF SAN BERNARDINO.)

I, LEGARE ALLEN, County Recorder of said county, hereby certify the foregoing to be a full, true and correct copy of the Agreement between I. D. R. Stillman, et al, and the Bear Valley Land and Water Company, as recorded in Book I of Agreements, page 315, Records of San Bernardino county.

IN WITNESS WHEREOF, I have herewith set my hand

(Seal) and affixed my official seal this 4th  
day of September, a.d. 1938.

Legare Allen, County Recorder.

By W. H. Minkler, Deputy.

EXHIBIT "F"

7311

Original Filed

FEB 7 1977

V. Dennis Wardle  
County Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO

BIG BEAR MUNICIPAL WATER DISTRICT,

Plaintiff,

v.

NORTH FORK WATER COMPANY,  
et al.,

Defendants.

No. 165493

ORDER APPOINTING WATERMASTER

Paragraph 14 of the Judgment herein provides for the appointment of a Watermaster Committee, consisting of representatives nominated by District, Conservation District and Mutual. Court, having received and filed the nominations by said parties, and good cause appearing,

IT IS HEREBY ORDERED that the following representatives be, and they are hereby appointed for the term and pursuant to the conditions SPECIFIED IN said Paragraph 14 of the Judgment, as the Watermaster Committee for purposes of administration of the Judgment and physical solution pursuant to this Court's continuing jurisdiction and subsequent orders:

1 CLAYSON, ROTHROCK & MANN  
EUGENE A. NAZAREK  
2 601 South Main Street  
Corona, California 91720  
3 Telephone: (714) 737-1910  
4 Attorneys for Plaintiff  
5  
6  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN BERNARDINO  
10

11 BIG BEAR MUNICIPAL WATER )  
DISTRICT, )  
12 )  
13 Plaintiff, )  
14 v. )  
15 NORTH FORK WATER COMPANY, )  
et al., )  
16 Defendants. )  
17

No. 165493

NOTICE OF WITHDRAWAL OF  
SPECIAL COUNSEL FOR PLAINTIFF

18 PLEASE TAKE NOTICE that DONALD D. STARK, special counsel for  
19 Plaintiff herein, hereby withdraws as counsel of record for pur-  
20 poses of the Court's continuing jurisdiction. Co-counsel of record

21 CLAYSON, ROTHROCK & MANN  
EUGENE A. NAZAREK  
22 601 South Main Street  
Corona, California 91720  
23 Telephone: (714) 737-1910

24 who are general counsel for Plaintiff District, will remain as  
25 sole counsel of record for said party.

26 DATED: February 14, 1977.

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28 Donald D. Stark

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PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA        )  
                                  )    ss.  
COUNTY OF ORANGE         )

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within-entitled action; my business address is 2061 Business Center Drive, Irvine, California 92715. On February 15, 1977, I served the within Notice of Withdrawal of Special Counsel for Plaintiff on the Defendants in said action, by placing a true copy in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California, addressed as follows:

Mr. James Edwards  
Surr & Hellyer  
599 Arrowhead Avenue  
San Bernardino, Calif. 92412

Mr. Denslow Green  
Green & Green  
P. O. Box 1018  
Madera, Calif. 93637

Mr. Richard A. Mulligan  
323 Court Street  
San Bernardino, Calif. 92401

Mr. Edwin S. Hales  
Hales & Hales  
Box 188  
Redlands, Calif. 92373

Mr. Edward F. Taylor  
Welebir, Brunick & Taylor  
Box 351  
San Bernardino, Calif. 92402

Mr. Thomas Gilfoy  
Southern California Edison Company  
P. O. Box 800  
Rosemead, California.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on February 15, 1977, at Irvine, California.

  
\_\_\_\_\_  
Judy Patton

IN THE COURT OF APPEAL  
FOURTH APPELLATE DISTRICT, DIVISION TWO  
STATE OF CALIFORNIA

BIG BEAR MUNICIPAL WATER DISTRICT,

Plaintiff and Petitioners,

v.

NORTH FORK WATER COMPANY, et al.,

Defendants and Respondents.

STIPULATION FOR ABANDONMENT AND  
DISMISSAL OF APPEAL

GREEN & GREEN  
P. O. Box 1019  
Madera, California 93637  
(209) 674-5656

Attorneys for Respondent  
North Fork Water Company

HALES & HALES  
P. O. Box 198  
Redlands, California 92373  
(714) 793-5491

Attorneys for Respondent  
Lugonia Water Company

WELEBIR, BRUNICK & TAYLOR  
P. O. Box 351  
San Bernardino, California 92402  
(714) 685-6638

Attorneys for Respondent  
Redlands Water Company

DONALD R. STARR  
2061 Business Center Drive  
Irvine, California 92715  
(714) 752-6971

Attorney for Appellant  
Big Bear Municipal Water District

SURS & HELLYER  
599 Arrowhead Avenue  
San Bernardino, California 92412  
(714) 884-4704

Attorneys for Respondent  
Bear Valley Mutual Water Company

RICHARD A. MULLIGAN  
323 Court Street, Suite 201  
San Bernardino, California 92401  
(714) 684-2191

Attorney for Respondent  
San Bernardino Valley Water  
Conservation District

STIPULATION FOR ABANDONMENT AND

DISMISSAL OF APPEAL

RECITALS:

This action is pending on appeal from judgment entered on an order sustaining a demurrer to the amended complaint, without leave to amend.

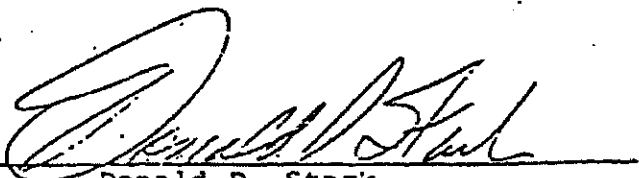
Pending this appeal, the parties have succeeded at negotiating an agreed solution to the several lawsuits and disputes which have heretofore existed between them.

It is the purpose of this stipulation to obtain an order of this Honorable Appellate Court dismissing the appeal and issuing a remittitur forthwith, with each party to bear its own costs on appeal.

STIPULATION:

IT IS HEREBY STIPULATED by and between the parties hereto that the appeal herein is abandoned and dismissed and that this Honorable Appellate Court may enter its order remitting this matter forthwith to the Superior Court of the State of California, for the County of San Bernardino, with each party to bear its own costs on appeal.

Dated: January 19, 1977.

  
Donald D. Stark  
Special Counsel for Big Bear Municipal  
Water District

SURR & HELLYER

By Robert J. Birschbach

Attorneys for Respondent Bear Valley  
Mutual Water Company

GREEN & GREEN

By Dwight Green

Attorneys for Respondent North Fork  
Water Company

HALES & HALES

By Edwin B. Hales

Attorneys for Respondent Lugonia  
Water Company

WELEBIR, BRUNICK & TAYLOR

By Edward Taylor

Attorneys for Respondent Redlands  
Water Company

Richard Hillyer

Attorney for Respondent San Bernardino  
Valley Water Conservation District



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Langdon W. Owen  
2061 Business Center Drive  
Suite 203  
Irvine, California 92715  
(714) 752-9082

Horace P. Hinckley  
101 East Olive Street  
Redlands, California  
(714) 793-4901

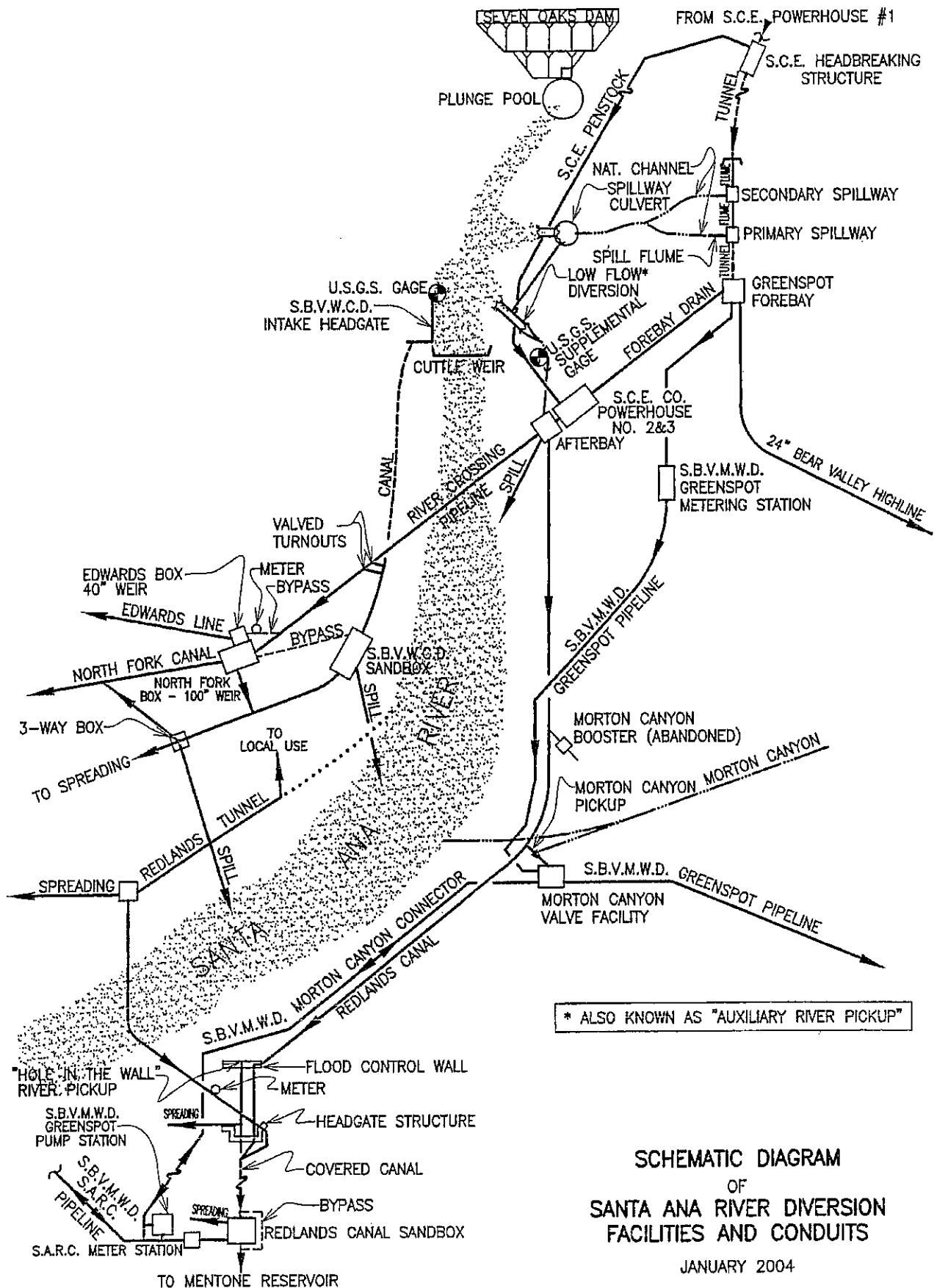
William J. Hiltgen  
303 Brookside Avenue  
Redlands, California 92373  
(714) 793-2503

DATED: February 4, 1977.

JOSEPH B. CAMPBELL

Judge of the Superior Court

**EXHIBIT D**

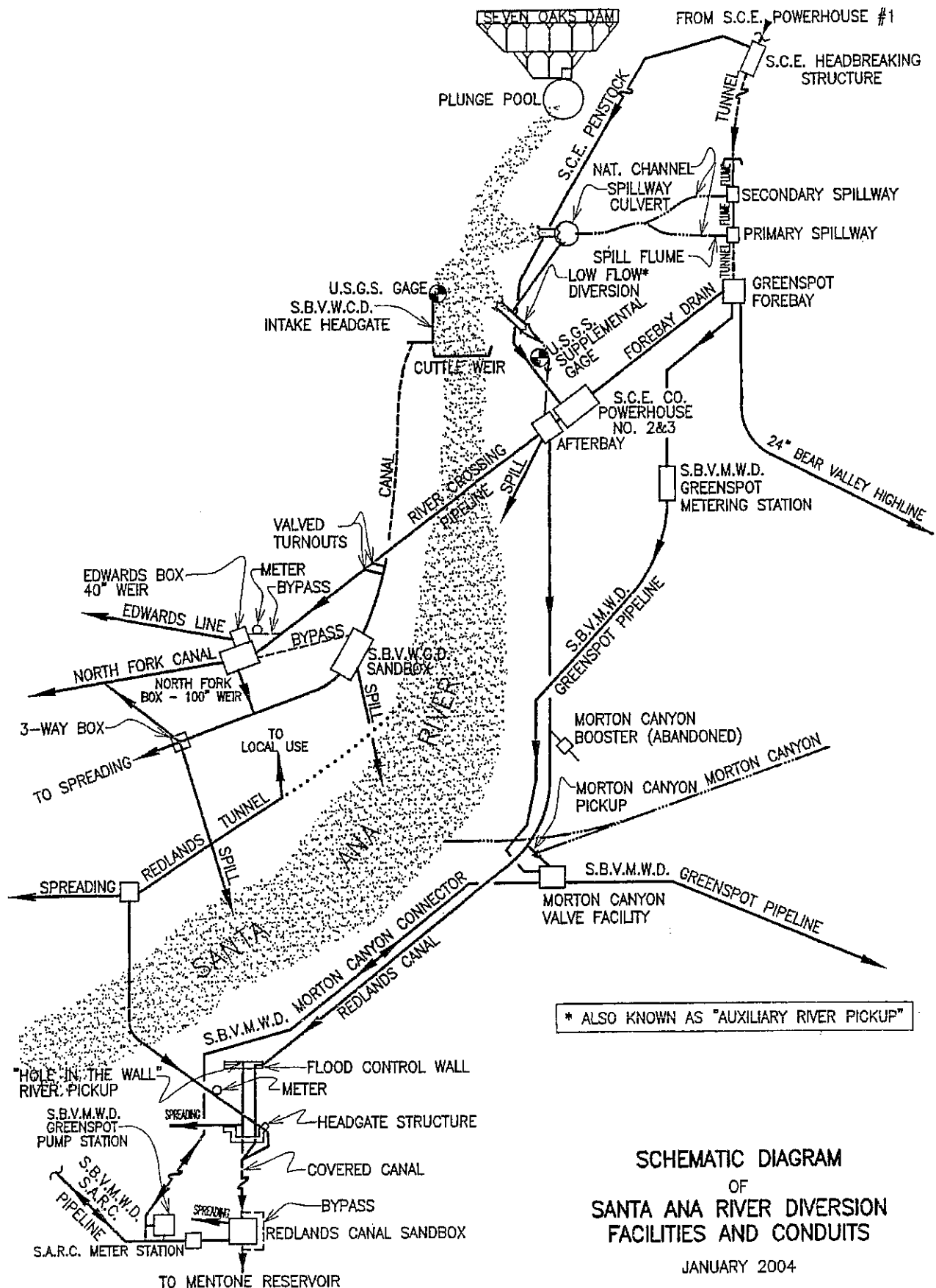


\* ALSO KNOWN AS "AUXILIARY RIVER PICKUP"

**SCHEMATIC DIAGRAM  
OF  
SANTA ANA RIVER DIVERSION  
FACILITIES AND CONDUITS**

JANUARY 2004

**EXHIBIT D**



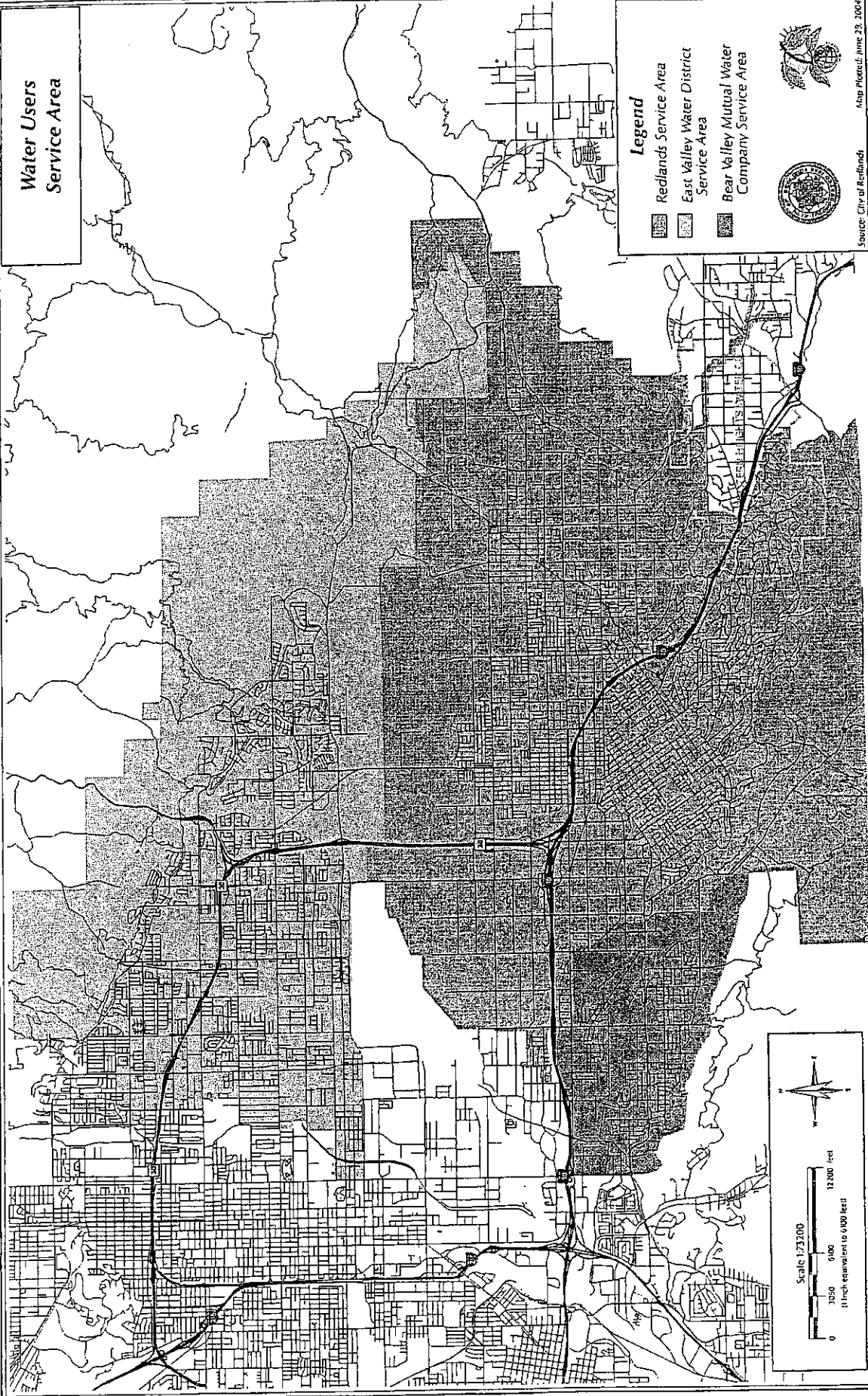
\* ALSO KNOWN AS "AUXILIARY RIVER PICKUP"

**SCHEMATIC DIAGRAM  
OF  
SANTA ANA RIVER DIVERSION  
FACILITIES AND CONDUITS**

JANUARY 2004

**EXHIBIT E**

**Water Users  
Service Area**

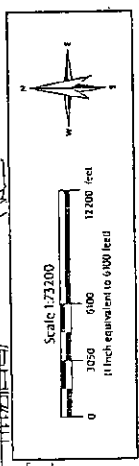


**Legend**

- Redlands Service Area
- East Valley Water District Service Area
- Bear Valley Mutual Water Company Service Area



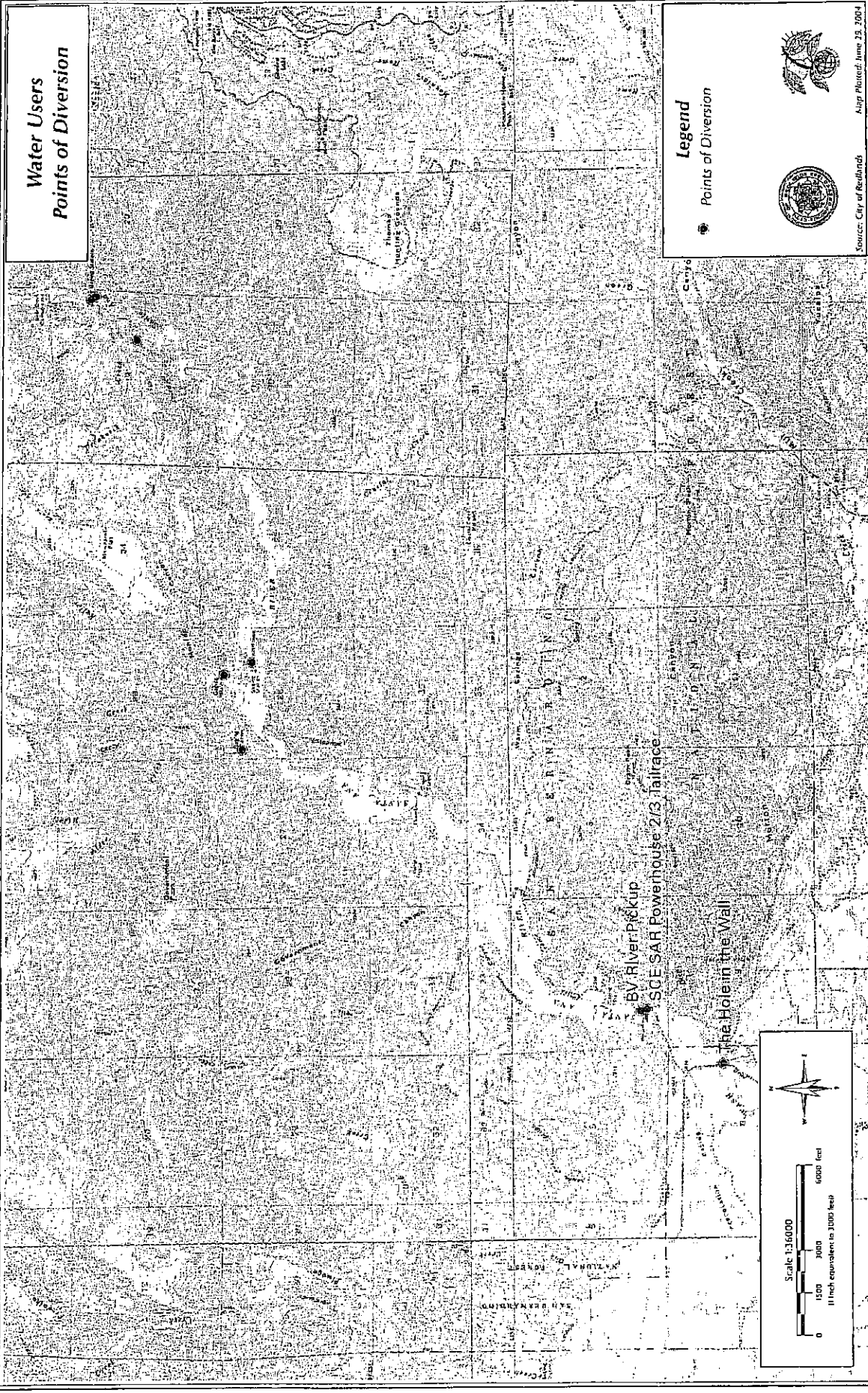
Source: City of Redlands Map Products, June 25, 2004



**EXHIBIT F**



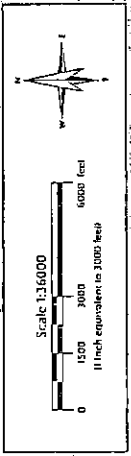
**Water Users  
Points of Diversion**



**Legend**  
Points of Diversion



Source: City of Redlands  
A-isp Photo: June 29, 2004



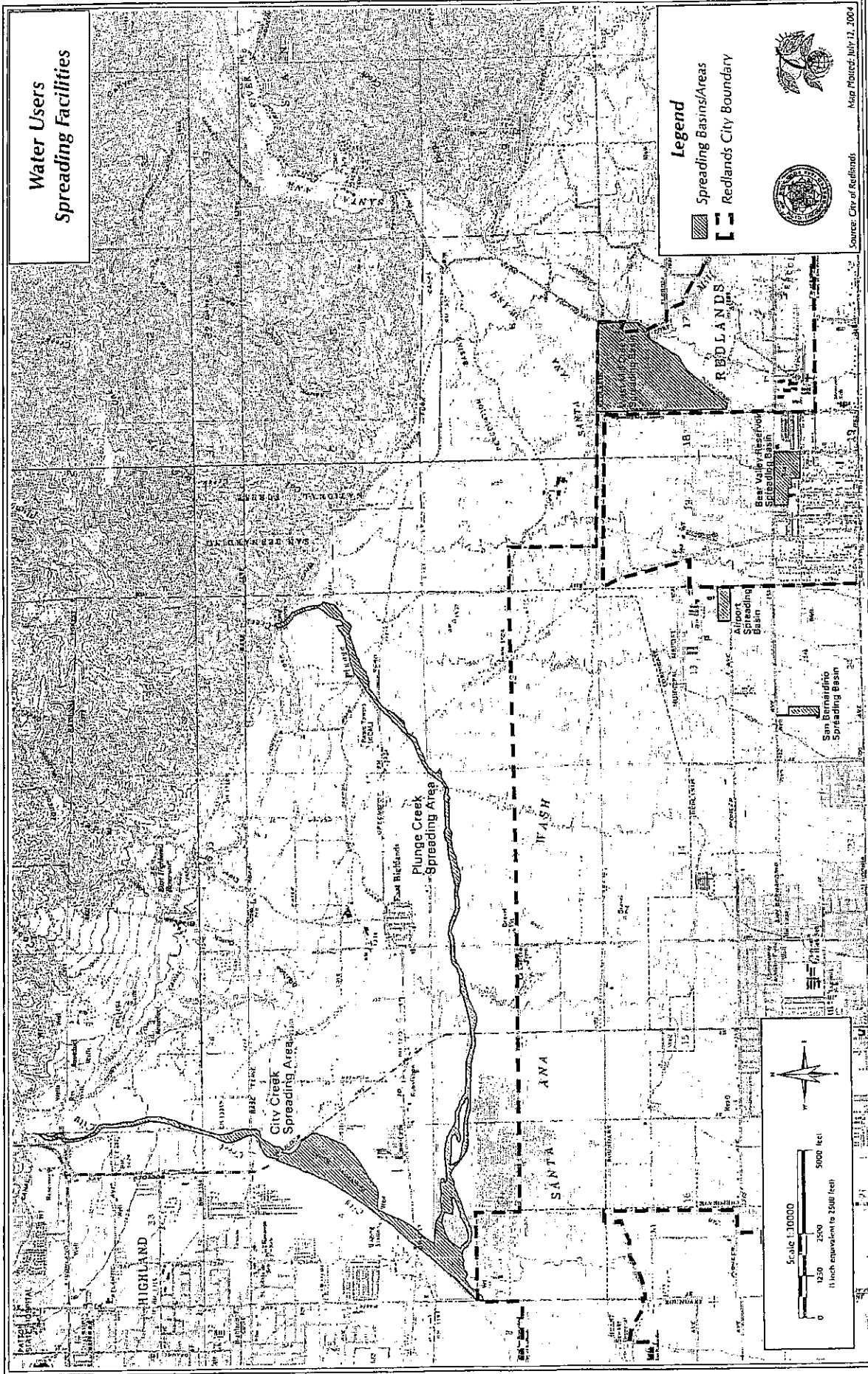
**EXHIBIT G**

## SBBA Index Wells

Well No.	State Well Number	Owner	Well Name
1	02N05W19Q01S	City of San Bernardino MWD	Vincent Well
2	01N04W06H02S	City of San Bernardino MWD	Devil Canyon No. 3
3	01N04W08M01S	City of San Bernardino MWD	Devil Canyon No. 1
4	01N05W03H01S	City of San Bernardino MWD	Cajon Well No. 1
5	01N04W31A01S	City of San Bernardino MWD	Mt. Vernon
6	01N05W06G01S	Fontana Union Water Company	Well 27
7	01N05W07H01S	Fontana Union Water Company	Well 26
8	01N05W22A01S	Fontana Union Water Company	Well 13
9	01N05W36H04S	West Valley Water District	Lord 7
10	01N04W26A02S	East Valley Water District	Well 24A
11	01S04W14P02S	City of Riverside	Raub 1
12	01S04W23Q	Gage Canal Company	Lower Kelly
13	01N04W16E03S	City of San Bernardino MWD	Newmark 3
14	01N04W27A02S	City of San Bernardino MWD	Leroy Street Well
15	01S03W04N01S	East Valley Water District	Well 40
16	01S03W15F01S	City of Redlands	Orange Street Well
17	01S03W21H01S	City of Redlands	Well 32
18	01N03W30J01S	East Valley Water District	Well 62
19	01S02W19A01S	City of Redlands	Agate 2
20	01S03W23A03S	Bear Valley Mutual Water Company	Nelson Street
21	01S03W13M01S	City of Redlands	Airport 2
22	01S03W13Q01S	San Bernardino Valley MWD	San Bernardino Ave. Well
23	01S03W02J02S	East Valley Water District	Well 120
24	01S03W03R04S	East Valley Water District	Well 146A
25	01S02W07R01S	East Valley Water District	Observation Well

**EXHIBIT H**

# Water Users Spreading Facilities

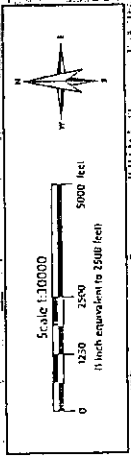


## Legend

- Spreading Basins/Areas
- Redlands City Boundary



Map Printed: July 17, 2004  
Source: City of Redlands



**EXHIBIT I**

**Thresholds of Significance and Mitigation Measures  
To be Included in Applicants' EIR**

1. Threshold of Significance: Reduction in Groundwater Levels at Index Wells Outside the Pressure Zone

A reduction in groundwater levels outside the Pressure Zone is significant if the analysis in this EIR, using the integrated surface water and groundwater model developed by the project proponents, predicts that the project would reduce static groundwater levels at one or more index wells, on average, by more than 10 feet during a repetition of the 39-year base period hydrology, as compared to static water levels in the absence of the project.

2. Threshold of Significance: Increase in Groundwater Levels at Index Wells Within the Pressure Zone

An increase in groundwater levels in the Pressure Zone is significant if the analysis in this EIR, using the integrated surface water and groundwater model developed by the project proponents, predicts that the project would increase static groundwater levels at one or more index wells in the Pressure Zone, on average, by more than 10 feet during a repetition of the 39-year base period hydrology, as compared to static water levels in the absence of the project.

3. Mitigation Measure \_\_\_: Targeted Spreading to Maintain Groundwater Levels

To avoid a significant effect on groundwater levels at one or more index wells located outside the Pressure Zone, the project proponents shall spread sufficient water to maintain static groundwater levels at the affected index wells to reduce this project impact to a less-than-significant level.

4. Mitigation Measure \_\_\_: Limitation on Spreading to Prevent High Groundwater Levels.

To avoid a significant effect on groundwater levels in the Pressure Zone, the project proponents shall curtail their spreading or direct other parties engaged in the spreading of water to replenish the San Bernardino Basin to curtail their spreading to reduce this project impact to a less-than-significant level.

**MEMORANDUM OF UNDERSTANDING TO AFFIRM AND PRESERVE EXISTING  
RIGHTS IN THE SANTA ANA RIVER WATERSHED**

THIS MEMORANDUM OF UNDERSTANDING ("Memorandum") is entered into as of this 16th day of November, 1999, between and among INLAND EMPIRE UTILITIES AGENCY, a municipal water district, ("IEUA"), ORANGE COUNTY WATER DISTRICT ("OCWD"), SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT, a municipal water district, ("SBVMWD"), and WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY, a municipal water district ("WMWD"). IEUA, OCWD, SBVMWD, and WMWD are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

**RECITALS**

A. Orange County Judgment. On April 17, 1969, the Superior Court for the State of California for the County of Orange entered a stipulated judgment in the matter of *Orange County Water District v. City of Chino, et al.*, Orange County Superior Court No. 117628 ("Judgment"). The Judgment imposes a physical solution for the Santa Ana River under which IEUA, SBVMWD, and WMWD are obligated to ensure that certain minimum amounts of Base Flow are delivered annually at Prado and Riverside Narrows. So long as an average annual supply of 42,000 acre-feet of Base Flow is received at Prado for the benefit of OCWD and the Lower Area, the water users and entities in the Upper Area, including IEUA, SBVMWD, and WMWD, have rights to divert, pump, extract, conserve, store, and use all surface and groundwater supplies originating within the Upper Area, without interference or restraint by Lower Area claimants. The base flow obligation under the Judgment carries certain water quality obligations, and in addition the Judgment provides that OCWD is entitled to all storm flows reaching Prado.

B. Declaration of Rights. In addition to the foregoing provisions, the Judgment establishes the following water rights in the Santa Ana River Watershed:

"It is recognized that the physical solution in said Judgment contemplates that Upper Districts and other upstream entities will have full freedom to engage in any activity for water conservation or storage of storm flows above Prado Reservoir and Lower Districts and other downstream entities will be free to engage in any activity for water conservation or storage of storm flows at or below Prado Reservoir." (Section 3 of the Stipulation for Judgment.)

"Water users and other entities in Upper Area have rights in the aggregate, as against all Lower Area claimants, to divert, pump, extract, conserve, store and use all surface and ground water supplies originating within Upper Area without interference or restraint by Lower Area claimants, so long as Lower Area receives the water to which it is entitled under this Judgment and there is compliance with all of its provisions." (Section 4 of the Judgment.)



“Insofar as Lower Area claimants are concerned, Upper Area water users and other entities may engage in unlimited water conservation activities, including spreading, impounding and other methods, in the area above Prado Reservoir, so long as Lower Area receives the water to which it is entitled under the Judgment and there is compliance with all of its provisions. Lower Area water users and other entities may make full conservation use of Prado Dam and reservoir, subject only to flood control use.” (Section 5(a) of the Judgment.)

C. Declaration of Fully Appropriated Stream for the Santa Ana River. On November 16, 1989, the State Water Resources Control Board of the State of California (“State Board”) issued Order WR 89-25 declaring the Santa Ana River Watershed from the Pacific Ocean upstream to be fully appropriated (“Declaration”). The Declaration was based on Decision 1194 which found that no unappropriated water existed in the Santa Ana River Watershed, citing *Orange County Water District v. Riverside*, 188 Cal.App.2d 566 (1961). The State Board has reaffirmed the Declaration in Orders WR 90-2 and WR 91-07. The Declaration precludes the State Board from considering any new appropriative rights applications for the Santa Ana River Watershed, unless the Declaration is modified.

D. OCWD’s Petition and Application. On September 2, 1999, OCWD filed a petition “For an Order Revising the Declaration of Full Appropriation of the Santa Ana River” with the State Board (“OCWD Petition”). The petition requests the State Board to lift the Declaration for the limited purpose of considering OCWD’s Application No. X000206 to appropriate water from the Santa Ana River (“OCWD Application”). The OCWD Petition and Application state that increasing urbanization upstream of Prado has increased the amount of water that reaches Prado, and that OCWD has spent millions of dollars in an effort to impound and conserve these waters for use in the Lower Area. OCWD understands that any action by the State Board on the OCWD Petition and Application cannot, and shall not, establish any right or priority, temporal or otherwise, as against Upper Area water users and entities which is inconsistent with the terms of the Judgment.

E. SBVMWD’s and WMWD’s Joint Petition and Application. On May 31, 1995, SBVMWD and WMWD jointly filed a petition “For an Order Revising the Declaration of Full Appropriation of the Santa Ana River” with the State Board (“Joint Petition”). The petition requests the State Board to lift the Declaration for the limited purpose of considering SBVMWD’s and WMWD’s Application No. X000123 to appropriate water from the Santa Ana River (“Joint Application”). The basis for the Joint Petition and Application is that the newly constructed Seven Oaks Dam on the upper reaches of the Santa Ana River can be used to impound and conserve previously wasted storm flows for use in the Upper Area, and that SBVMWD and WMWD have spent millions of dollars to include construction features in the Dam to facilitate such conservation.

F. Purpose and Form of MOU. Certain questions have arisen as to whether the OCWD Petition and Application or the Joint Petition and Application (collectively the “Petitions and Applications”) may affect the Judgment and the rights and obligations set forth therein. The purpose of this Memorandum is to affirm the Judgment, and the terms and conditions of the agreements

entered into pursuant to the Judgment, and to ensure that the State Board proceedings on the Petitions and Applications, and any outcome thereof, will not adversely impact the rights and obligations set forth in the Judgment. This document is in the form of a memorandum of understanding instead of a contract or stipulation because its purpose is to affirm existing rights under the Judgment and to incorporate the rights in the Petitions and Applications.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and the foregoing recitals incorporated herein, the Parties hereby agree as follows:

### TERMS AND CONDITIONS

1. Affirmation of Declared Rights. The Petitions and Applications are not intended to, and shall not, change or affect the Judgment and its declaration of water rights within the Santa Ana River Watershed, or the terms and conditions of the agreements executed prior to the date of entry of the Judgment as a condition to stipulation to the Judgment.
2. State Board Proceedings. This Memorandum shall be filed in the proceedings of the State Board on the Petitions and Applications to ensure that the State Board proceedings fully honor the Judgment, and to ensure that any outcome of the State Board proceedings is consistent with and preserves the terms and intent of the Judgment. OCWD, SBVMWD, and WMWD hereby consent to a permit condition incorporating the terms and conditions of this Memorandum.
3. OCWD Filings. The OCWD Petition and Application only applies to waters in the Santa Ana River Watershed that reach Prado or originate downstream of Prado in the Lower Area. The OCWD Petition and Application is not intended to, and shall not, change or affect the rights of the water users and entities in the Upper Area to store, conserve, or use all water or reclaimed water that originates in the Upper Area, to withdraw and use all treated wastewater or return flows now discharged to the Santa Ana River, and to otherwise exercise all rights declared under the Judgment, provided the obligations of the upstream entities are met as required under the Judgment. Through the OCWD Petition and Application, OCWD shall not obtain any right as against any Upper Area water user or entity inconsistent with the terms of the Judgment, despite any expenditures made by OCWD to capture and use the flows.
4. Capitalized Terms. Any capitalized term not specifically defined in this Memorandum, shall have the meaning and intent set forth in the Judgment.
5. Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Memorandum.
6. Counterparts. This Memorandum may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

**[SIGNATURES OF THE PARTIES ON NEXT PAGE]**

**INLAND EMPIRE UTILITIES  
AGENCY**

By: John L. Anderson  
President, IEUA Board  
of Directors

**ATTEST:**

By: Anne Dunithwa  
Secretary, IEUA Board  
of Directors

**WESTERN MUNICIPAL WATER  
DISTRICT OF RIVERSIDE  
COUNTY**

By: \_\_\_\_\_  
President, WMWD Board  
of Directors

**ATTEST:**

By: \_\_\_\_\_  
Secretary, WMWD Board  
of Directors

**ORANGE COUNTY WATER  
DISTRICT**

By: \_\_\_\_\_  
President, OCWD Board  
of Directors

**ATTEST:**

By: \_\_\_\_\_  
Secretary, OCWD Board of  
Directors

**SAN BERNARDINO VALLEY  
MUNICIPAL WATER DISTRICT**

By: \_\_\_\_\_  
President, SBVMWD Board  
of Directors

**ATTEST:**

By: \_\_\_\_\_  
Secretary, SBVMWD Board  
of Directors

By *Charles E. ...*  
General Counsel for  
Orange County Water District

**INLAND EMPIRE UTILITIES  
AGENCY**

**ORANGE COUNTY WATER  
DISTRICT**

By: \_\_\_\_\_  
[INSERT NAME]  
President, IEUA Board  
of Directors

By: *Irv Pickler*  
Irv Pickler  
President, OCWD Board  
of Directors

**ATTEST:**

**ATTEST:**

By: \_\_\_\_\_  
[INSERT NAME]  
Secretary, IEUA Board  
of Directors

By: *William R. Mills Jr.*  
William R. Mills Jr., General  
Manager OCWD Board of  
Directors

**WESTERN MUNICIPAL WATER  
DISTRICT OF RIVERSIDE  
COUNTY**

**SAN BERNARDINO VALLEY  
MUNICIPAL WATER DISTRICT**

By: \_\_\_\_\_  
[INSERT NAME]  
President, WMWD Board  
of Directors

By: \_\_\_\_\_  
[INSERT NAME]  
President, SBVMWD Board  
of Directors

**ATTEST:**

**ATTEST:**

By: \_\_\_\_\_  
[INSERT NAME]  
Secretary, WMWD Board  
of Directors

By: \_\_\_\_\_  
[INSERT NAME]  
Secretary, SBVMWD Board  
of Directors

**INLAND EMPIRE UTILITIES  
AGENCY**

**OF THE COUNTY WATER  
DISTRICT**

By: \_\_\_\_\_  
[INSERT NAME]  
President, IEUA Board  
of Directors

By: \_\_\_\_\_  
[INSERT NAME]  
President, OCWD Board  
of Directors

**ATTEST:**

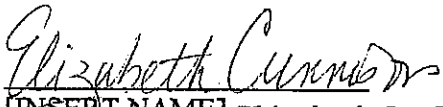
**ATTEST:**

By: \_\_\_\_\_  
[INSERT NAME]  
Secretary, IEUA Board  
of Directors

By: \_\_\_\_\_  
[INSERT NAME]  
Secretary, OCWD Board of  
Directors

**WESTERN MUNICIPAL WATER  
DISTRICT OF RIVERSIDE  
COUNTY**


**SAN BERNARDINO VALLEY  
MUNICIPAL WATER DISTRICT**

By:   
\_\_\_\_\_  
[INSERT NAME] Elizabeth L. Gunnison  
President, WMWD Board  
of Directors

By: \_\_\_\_\_  
[INSERT NAME]  
President, SBVMWD Board  
of Directors

**ATTEST:**

**ATTEST:**

By:   
\_\_\_\_\_  
[INSERT NAME] Donald L. Harriger  
Deputy-Secretary, WMWD Board  
of Directors

By: \_\_\_\_\_  
[INSERT NAME]  
Secretary, SBVMWD Board  
of Directors

**INLAND EMPIRE UTILITIES  
AGENCY**

By: \_\_\_\_\_  
[INSERT NAME]  
President, IEUA Board  
of Directors

**ATTEST:**

By: \_\_\_\_\_  
[INSERT NAME]  
Secretary, IEUA Board  
of Directors

**WESTERN MUNICIPAL WATER  
DISTRICT OF RIVERSIDE  
COUNTY**

By: \_\_\_\_\_  
[INSERT NAME]  
President, WMWD Board  
of Directors

**ATTEST:**

By: \_\_\_\_\_  
[INSERT NAME]  
Secretary, WMWD Board  
of Directors

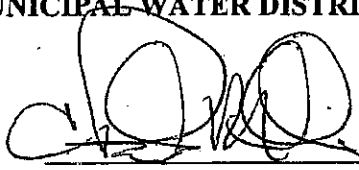
**ORANGE COUNTY WATER  
DISTRICT**

By: \_\_\_\_\_  
[INSERT NAME]  
President, OCWD Board  
of Directors


**ATTEST:**

By: \_\_\_\_\_  
[INSERT NAME]  
Secretary, OCWD Board of  
Directors

**SAN BERNARDINO VALLEY  
MUNICIPAL WATER DISTRICT**

By:   
\_\_\_\_\_  
[INSERT NAME]  
President, SBVMWD Board  
of Directors

**ATTEST:**

By:   
\_\_\_\_\_  
[INSERT NAME]  
Secretary, SBVMWD Board  
of Directors