

FORM OF AGREEMENT APPROVED
BY BOARD OF DIRECTORS *6-2-16*
MEETING, April 22, 1964

RECORDING
REQUESTED BY
& MAIL TO

Buena Vista Water Storage Dist.
756
3032
Buttner Miller
Calif.

Resolution No. _____

KERN RIVER STORAGE AND USE OF WATER AGREEMENT

THIS AGREEMENT made as of the 14th day of October

1964, by and among BUENA VISTA WATER STORAGE DISTRICT, duly organized and existing under the California Water Storage District Law, (herein called "DISTRICT"), BUENA VISTA ASSOCIATES INCORPORATED, duly organized and existing under and by virtue of the laws of the State of California, (herein called "Associates"), and MILLER & LUX INCORPORATED, duly organized and existing under and by virtue of the laws of the State of Nevada, (herein called "MILLER & LUX").

WITNESSETH :

WHEREAS:

(A) District and North Kern Water Storage District, Tulare Lake Basin Water Storage District, and Hacienda Water District are parties to a certain contract with the United State of America entitled "Contract among the United States of America and North Kern Water Storage District, Buena Vista Water Storage District, Tulare Lake Basin, Water Storage District, and Hacienda Water District" dated contemporaneously herewith and hereafter called "Contract with the United States," a copy of which contract is attached hereto and marked Exhibit A; and

(B) District is a party to a certain contract with North Kern Water Storage District, Tulare Lake Basin Water Storage District, and Hacienda Water District, entitled "Kern River Water Rights and Storage Agreement," dated December 31, 1962, a copy of which contract is attached hereto and marked Exhibit B; and

(C) Each of said last mentioned agreements was entered into for the purpose of enabling the parties thereto, and others represented

by them as specified in said agreements, to use Isabella Dam and Reservoir on the Kern River for conservation and regulation purposes, and District, in view of the existing controversies between it and Associates and Miller & Lux, hereinafter mentioned, would not enter into either of said agreements without the execution of this agreement, and

(D) Associates and Miller & Lux are the owners of certain lands commonly called Buena Vista Lake land and situated within the boundaries of District and being part of Division No. 1 thereof and more particularly described in Exhibit C hereof. District is leasing for water storage purposes some of the said lands of Associates and Miller & Lux under a lease agreement dated July 15, 1936, and terminating in 1968, a copy of which lease agreement is attached hereto and marked Exhibit D; and

(E) The lands of Associates and Miller & Lux described in Exhibit C hereof have heretofore been divided into three compartments, commonly called cells, for the storage of water by the construction of an East-West Levee and a North-South Levee, each presently at a maximum permissible height, under existing contracts of approximately 295 U. S. G. S. datum. The cell situated in the northwest portion of said land is known as Cell No. 1, and with water held to a safe elevation of 292 U. S. G. S. datum has a storage capacity of approximately 18,000 acre feet. The cell situated in the northeast portion of said land is known as Cell No. 2 and with water held to a safe elevation of 292 U. S. G. S. datum has a storage capacity of approximately 12,600 acre feet. The cell situated in the southerly portion of said land, being all the land southerly of the East-West Levee, is known and identified as Cell No. 3. Said cells and other physical features are delineated on a plat attached hereto and marked Exhibit E; and

(F) District, Miller & Lux and Associates are the owners of

water reaching Second Point of Measurement on Kern River (being in Section 24, T. 30. S., R. 25 E., M. D. B. & M) as successors in interest to the parties of the First Part to the Miller-Haggin Contract and agreement dated the 28th day of July, 1888 and recorded in Book Vol 2, Contracts and Agreements, page 40, Records of Kern County, which contract and agreement has been supplemented and modified from time to time and District, Associates, and Miller & Lux have applications to appropriate water of said river pursuant to state law; and

(G) Associates and Miller & Lux claim other rights in and to the waters of Kern River, and the use thereof, and the rights of District to store water on said Buena Vista Lake lands after the year 1968 may be uncertain, and the Associates and Miller & Lux desire to free part of their said lands from the burden of storage so that crops can be grown thereon, without risk of inundation, and all the parties hereto in order to avoid litigation desire to resolve certain differences and conflicting claims as to the use of the waters of Kern River, including the times, amounts and manner of storage in Isabella Reservoir, and on said Buena Vista Lake lands, and desire to agree upon the terms upon which each party hereto will assume the repayment obligation to the United States for acquisition of permanent space in Isabella Reservoir as set forth in said Contract with the United States, being Exhibit A hereof; and

(H) The parties hereto have this day compromised and permanently settled all the above-mentioned controversies and desire by this formal document to record the settlement upon which they have agreed;

NOW, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

1. Contract with the United States.

Associates and Miller & Lux authorize and approve the execution

of said contract by District.

2. Kern River Water Rights and Storage Agreement.

Associates and Miller & Lux ratify the execution of said contract by District.

3. Lease Agreement of July 15, 1936.

The aforementioned Lease Agreement of July 15, 1936, being Exhibit D hereof, shall terminate and end as of the date hereof.

4. Payments for Isabella Storage.

Under the contract with the United States the District is obligated to pay the United States the sum of \$1,463,360.00 reduced by application of a portion of the credits due for payment to the United States under interim storage contracts. The net sum which shall be actually due the United States shall be paid out of the proceeds of a District bond issue to be secured by an assessment and lien on only those certain lands within the District owned by Associates, situated in Cell no. 3, and described in Exhibit F attached hereto. Callable bonds shall be issued and interest rate, denomination, and maturity dates and other bond terms not fixed by law shall be mutually agreed upon by the parties hereto. Upon the execution of this agreement the parties shall do all things and take all steps (a) necessary toward the levying of an assessment on the said lands of Associates in an amount equal to the net sum so due the United States and such further sum as may be deemed necessary to defray incidental expenses in connection with said assessment and all proceedings related thereto, and (b) necessary in the issuance and sale of the bonds secured by said assessment. In order to assure the sale of said bonds Miller & Lux shall make an offer to purchase the same, the offer to be made in form and amount to meet legal limitations and requirements provided in the Water Storage District law for the sale and purchase of said bonds, but in any event to be in sufficient amount to yield to District a sum of money equal to said assessment

and expenses incidental to the bond issue. Upon receipt of the proceeds from the sale of said bonds, District shall forthwith pay the same to the United States. Only those lands owned by Associates, situated in Cell No. 3 and described in Exhibit F shall be liable for or chargeable with the cost and expenses incident to levying of said assessment, bond election and issuance and sale of said bonds. It is the understanding and intention of the parties that in future District assessments for maintenance and operation the aforementioned assessment on the said lands of Associates will in nowise be used, and that future maintenance and operation assessments shall continue to be based solely upon assessment No. 1 of said District.

5. Nothing herein in this agreement contained shall be construed as obligating the District to maintain or operate, canals, ditches or drains on said Buena Vista Lake lands for the use of said lands.

6. Future Construction Work.

Contemporaneous with the execution of this agreement the parties hereto agree to make and execute an agreement to be entitled "Kern River Canal Extension Agreement" in form substantially similar to Exhibit G, attached hereto and made a part of this agreement.

7. Payment of Operation, Maintenance and Administrative Costs.

The contract with the United States provides for the annual payment to the United States of an allocable part of operation and maintenance costs of Isabella Reservoir project, together with a payment of a charge for administration, and for a period of 40 years from date hereof all such costs chargeable to the District based on ownership of 32% of storage space, shall be borne and paid 75% by District and 25% by Associates and Miller & Lux, and after the expiration of said 40 year period all such costs

shall be borne and paid by District. It is understood that said 32% space, when not required by District, Miller & Lux or Associates, may pursuant to the terms of the Kern River Water Rights and Storage Agreement be rented to other parties on a temporary basis subject to the payment of a rental charge. All rental income so received by District from such other parties shall first be applied to the annual payments due the United States hereinabove in this paragraph referred to. In the event that such rental income in any calendar year is in excess of such payments so due the United States, the excess shall be deposited by District in a special interest bearing trust account with a National Bank to be mutually agreed upon by the parties hereto, and from time to time District shall, at the request and direction of Associates use principal and interest available in said account for the purpose of calling then outstanding District bonds issued for the purchase of said 32% space in Isabella Reservoir.

8. Storage in Isabella Reservoir and in Cells 1 and 2 of Buena Vista Lake.

From and after the date hereof the District shall store its Kern River water, which it elects to store, as follows:

All such water shall be first stored in Isabella Reservoir until space available to District is filled, and then in Cell No. 2 to its safe capacity and then in Cell No. 1 to its safe capacity. Associates and Miller & Lux, acting jointly, however, shall have the right at their option and election to direct District to store such water in Cell No. 2 rather than in Isabella Reservoir. This option and election must be exercised not later than July 1st of each year, and when exercised the water which District elects to store shall be stored in Cell No. 2 to its safe capacity, after which District may store in Isabella Reservoir. The right and option hereinabove granted to Associates and Miller & Lux Incorporated is subject to the following conditions:

(a) District shall not be required to store in Cell No. 2 any waters available for storage solely because District is meeting its irrigation demands wholly or partially through use of an imported water supply.

(b) Nothing herein in this paragraph contained shall be construed as requiring District to release any water from storage in Isabella Reservoir for restorage in Cell No. 2 nor prohibiting District from storing Kern River water in Cell No. 2 after space available to District in Isabella Reservoir is filled, subject to the provisions hereinafter contained in sub-paragraph 8(e) or in paragraph 9 in reference to the option of Associates and Miller & Lux to take and receive such water in lieu of storage in Cell No. 2.

(c) Without the consent of Associates and Miller & Lux District shall not store water in Cell No. 1 unless and until Cell No. 2 and available space in Isabella Reservoir is being used.

(d) At all times Associates and Miller & Lux shall provide a maximum of 4,000 acre feet of storage space for regulatory purposes in Cell No. 2 and as to such space only, District in addition to storing its Kern River water therein, may store any water available to it.

(e) Article 24 of Contract with the United States contains acreage limitation provisions, but it is provided in sub-paragraph (g) of said Article 24 that said article shall be void and of no effect in the event that the laws of the United States did not at the date of the Contract with the United States prohibit the delivery of stored water under said contract to excess lands of a large landowner who has not executed a recordable contract as provided in said Article 24. If the District should be prohibited from delivering water stored by it in Isabella Reservoir to a landowner who owns more than 160 acres in a single ownership and who has not executed a "recordable contract" of the type described in said aforementioned Article 24, then Associates and Miller & Lux expressly agree, irrespective of any other provision of this Agreement, that after the end of the calendar year during which judgment shall become final, District shall at all times have the right to store in Cells 1 and

2 that portion of its Kern River water entitlement which it is unable to deliver to lands ineligible to receive such water by said final judgment. Provided, however, that no such water shall be stored in Cell No. 1 until Cell No. 2 is filled to safe capacity, to the end that Associates and Miller & Lux may at all times make the greatest possible use of said cells for farming purposes consistent with District's use for storage purposes to furnish a regulated supply to lands not entitled to receive water stored in Isabella because of said final judgment; provided, further, that if the District intends to store in Cell No. 2 or Cell No. 1, or both, the water entitlement allocated to land not eligible to receive water stored in Isabella Reservoir, it shall so notify Associates and Miller & Lux prior to any such actual storage. After such notice Associates and Miller & Lux shall have the option of electing to take and receive all or any portion of such water destined for storage for its or their own use, subject to the obligation of returning to the District a quantity of water equal to said amount of optional water less evaporation, seepage and percolation losses if such water had been stored in Cells 1 and 2, taking into account proposed times and rates of withdrawal to meet irrigation requirements. Said quantity of usable water shall be determined by an engineer representing the District and an engineer representing Associates and Miller & Lux. In the event of disagreement, final decision shall be made by an engineer selected by the said two engineers. Such quantity of water shall be returned at the District's desired usable rate of flow, at the Outlet Canal or other points mutually satisfactory, and at such times as shall be requested by the District. Such water returned to the District shall be of a quality suitable for irrigation purposes.

9. Flood Control Water.

The contract with the United States, Exhibit A hereof, provides that irrigation storage use of Isabella Reservoir is subordinate to the use of

said reservoir by the United States for storage and release of water for flood control purposes. Whenever (a) District waters stored in Isabella Reservoir shall be discharged therefrom to provide space for flood control purposes, or (b) storage space available to District in Isabella Reservoir is filled or (c) Kern River waters originating below Isabella Reservoir are available to District for storage, and District intends to store any such waters in Cell No. 2 or Cell No. 1, or both, it shall so notify Associates and Miller & Lux prior to any such actual storage. After such notice Associates and Miller & Lux shall have the option of electing to take and receive all or any portion of such water destined for storage for its or their own use, subject to the obligation of returning to the District a quantity of water equal to said amount of optional water less evaporation, seepage and percolation losses if such water had been stored in Cells 1 and 2, taking into account proposed times and rates of withdrawal to meet irrigation requirements. Said quantity of usable water shall be determined by an engineer representing Associates and Miller & Lux. In the event of disagreement, final decision shall be made by an engineer selected by the said two engineers. Such quantity of water shall be returned at the District's desired usable rate of flow, at the Outlet Canal or other points mutually satisfactory and at such times as shall be requested by the District. Such water returned to the District shall be of quality suitable for irrigation purposes.

10. Substitute Space.

Whenever and at such times that water is to be stored in either Cells No. 1 or No. 2 in accordance with the preceding sub-paragraphs, District agrees to store in any substituted space provided for by Associates or Miller & Lux, subject to the requirement, however, that such substituted space must assure that the amount of water available to District for irrigation

uses after storage will not be less than that available had water been stored in Cells No. 1 and No. 2, or both, as the case may be, and that withdrawals will be at rates comparable to withdrawals from Cells 1 and 2. The decision of the District's Resident Manager as to suitability of such substituted storage shall be final.

11. District shall have no right to store in Cell No. 3.

From and after the date hereof District agrees not to store and shall have no right to store the waters of Kern River or other waters in Cell No. 3 and hereby releases and relinquishes any easement or right which it may have to make such storage.

12. Associates' right to store and use its Second Point Entitlement under the Miller-Haggin Contract and Agreement.

It is understood that Associates is the present owner of 85% of the 3.956% water right (commonly known as Carmel Water Right) described in that certain agreement dated October 24, 1945 in which District is designated as First Party, and C. E. Houchin and George L. Bradford, copartners doing business under the firm name and style of Carmel Cattle Company, are designated as Second Parties. Associates and other owners of the said water right shall have the right to have the waters yielded by said water right stored in Isabella Reservoir along with District's water and occupying part of the 32% of storage space allocated to irrigation interests, or at its option and election to have such water stored in Cells 1 and 2. The waters yielded by said right may be diverted to and used in accordance with the provisions of said aforementioned agreement of October 24, 1945, or on any land owned, possessed or controlled by Associates or Miller & Lux, and lying southerly of Second Point of Measurement. Any unusual expense in connection with the measurements and/or delivery of such water shall be borne by Associates or Miller & Lux.

13. Miller-Haggin Agreement Obligations.

(a) The Miller-Haggin Agreement provides that certain costs such as the maintenance of the East Levee shall be borne equally by the parties thereto, District, pursuant to the provisions of said Lease Agreement of 1936 (Exhibit D hereof), has been discharging all of the said obligations of the Parties of the First Part to said agreement. From and after the date of this agreement the said obligations shall be borne by the parties hereto as follows:

The Maintenance and operation costs of that portion of the East Levee bordering on Cell No. 3 shall be borne by Associates and Miller & Lux; and the operation and maintenance cost of that portion of the East Levee lying north of Cell No. 3 shall be borne by District.

(b) The obligation of the Parties of the First Part to said Miller-Haggin Agreement to pay fifty per cent of the taxes levied and assessed against said East Levee shall be assumed and borne by the parties hereto in the ratio determined by the lengths of the East Levee subject to maintenance and operation costs to the respective parties as provided for by sub-paragraph (a) hereof.

(c) Certain other headgates, levees, weirs and structures being part of the Outlet and Inlet channels and appurtenant works are assessed and taxed in whole or part to Associates, and from and after the date hereof said taxes shall be borne and assumed by District. Associates and Miller & Lux will at the request of District convey their interest in said assessed property to District. In the event any taxes are levied and assessed on the other levees within and bounding Cells 1 and 2 the same shall be paid by Associates and Miller & Lux.

(d) All other obligations of the Parties of the First Part under said Miller-Haggin Agreement shall be assumed by District.

(e) Nothing herein contained in this contract shall be deemed

applicable to or as a change or modification of the obligations of Associates and Miller & Lux in reference to the maintenance of the so-called Segregation Line Levee, all as provided for in that certain agreement of January 3, 1956, by and among Kern County Land Company, District, Associates and Miller & Lux.

14. Use of K. C. L. Carrier Canal, and Lined Canal.

Kern County Land Company has constructed a lined canal with a capacity of 1100 cubic feet per second southwesterly from a point in Section 33, Township 29 South, Range 27 East, M. D. B. & M., Kern County Land Company has likewise, improved, cleaned and enlarged its existing series of earthen canals, known as the Carrier Canal System, commencing at a point in the channel of Kern River in Section 13, Township 29 South, Range 27 East, M. D. B. & M., near Calloway Weir and extending southwesterly to a point where it connects with and discharges into the aforementioned lined canal. Such Carrier Canal System now has a capacity of not less than 750 cubic feet per second available for carriage of water for use of District, Associates and Miller & Lux.

In the event that District, Associates, Miller & Lux, Kern County Land Company (and the various entities which it controls) enter into an agreement amending the Miller-Haggin Agreement of July 28, 1888, as amended and supplemented and such amendment contains a provision whereby District agrees that the maximum rate of flow to which it shall be entitled to delivery of its water at Second Point under the said Miller-Haggin Agreement shall be 750 cubic feet per second (except when the anticipated run-off of the Kern River exceeds certain indicated flows) then and in such event District agrees that at all times while such restricted flow limitation is in effect there shall be allocated for Associates and Miller & Lux use (including transportation of Associates so-called Carmel Water Right of 3.956% of

Second Point Water) a minimum of 75 cubic feet per second of carrying capacity in the aforementioned Carrier Canal System and lined canal, provided further that Associates and Miller & Lux shall at all times have the right to use carrying space in said canal in excess of 75 cubic feet per second whenever any such space is not required by District for its own purposes and all transportation costs, if any, in transporting Associates and Miller & Lux's water, shall be borne by them.

15. Space in Isabella not being used by District.

Associates and Miller & Lux shall have the right to use the 32% space in Isabella allocated to District under said Contract with the United States for storage of any waters available to them, at such times and from time to time when District is not utilizing such space, and Associates and Miller & Lux shall likewise have the first call on unused space in Isabella Reservoir available to District under said Kern River Water Rights and Storage Agreement, in so far as such use may be permitted under said contract in reference to use of Isabella Reservoir. Space so allocated and used by Associates or Miller & Lux must be vacated promptly whenever and to the extent that District shall have water available for storage therein unless District is provided in exchange storage in Buena Vista Lake area or elsewhere; provided, however, the net amount of water available for irrigation use will not be less than if the water had been stored in Isabella Reservoir, and that withdrawals will be at comparable rates of flow, with losses, if any, to be determined by District's Resident Manager. Any losses due to less efficient storage substituted shall be made up by Miller & Lux and Associates.

16. Excess Water.

In any year the waters reaching Second Point may be stored or diverted for direct use by Associates or Miller & Lux as against District when and at such times as (a) District is using the 32% of the total Isabella

space then allocated to Irrigation interests or its equivalent as specified under preceding paragraph 15, (b) Cells 1 and 2 or their equivalent are filled, and (c) direct diversion requirements of District have been satisfied. Furthermore, Associates and Miller & Lux shall have as against District, the right to any Kern River waters actually reaching Second Point which are in excess of District's diversion requirements and are not the obligation of Associates or Miller & Lux to provide storage for as herein in this agreement provided.

17. Right to Exchange Water.

District agrees from time to time to accept any good quality irrigation water available to Associates and Miller & Lux in exchange for all or a portion of District's Kern River entitlement or other waters available to District. It is understood that any decision to exchange water as of any particular time will necessarily be based on relevant facts and circumstances existing at the time of proposed exchange. Exchange waters that may be held in Isabella for later release by Associates or Miller & Lux shall bear only incremental transportation losses.

18. Claims and Suits of Third Parties.

The said lands of Associates and Miller & Lux described in Exhibit C, which are located in a basin off the main river channel of Kern River, have been historically used for storage of waters for irrigation purposes, and not for flood control purposes, and the parties hereto have never recognized that any lands or owners of lands have flood control storage easements in said lands, and the parties hereto agree that they have not so recognized any such easements and will not in the future recognize any such easements. It is recognized, however, that flood control easement claims might be made; therefore Associates and Miller & Lux jointly and severally, promise and agree to hold District harmless on account of any damage or claims of damage to the property of any third parties from flooding or otherwise resulting from or claimed to have re-

sulted from the abandonment and/or disuse of Cell No. 3 of Buena Vista Reservoir for storage of Kern River water, and they agree to defend District at their sole expense in any court action based on any such claim or claims of damage.

19. Agreement to Purchase of State Water and Substitution of Kern River Water for State Canal Water.

District proposes to enter into a contract with the Kern County Water Agency for approximately 85,000 acre feet of water to be delivered annually from the Canal to be constructed by the State of California pursuant to The California Water Resources Development Bond Act. Associates and Miller & Lux are to reimburse District for 41.18% of the annual purchase price paid to the Kern County Water Agency, and in return will be entitled to receive at Buena Vista Lake either from the California Canal or District's supply of Kern River water, at District's option, 41.18% of the quantity of water purchased annually by District from the Kern County Water Agency. In the event that District elects to deliver all or a portion of Associates' and Miller & Lux's calculated water supply under the above noted formula from the Kern River, it is understood that it must be at useful times and flow rates for Associates' and Miller & Lux's use in the Buena Vista Lake area, and must not be from water stored in Isabella Reservoir, if such storage would impose acreage limitations on lands in the Buena Vista Lake area where the water would be used. Furthermore, if from time to time District is required to pay to Kern County Water Agency a surcharge for water received because of supplying water to excess lands as the same are defined in contract between the State of California and the Kern County Water Agency, then to the extent that such surcharge is made because of deliveries of water to Associates' or Miller & Lux's lands in the Buena Vista Lake area, the obligation to pay such surcharge

shall be borne by Associates and Miller & Lux.

This paragraph 19 shall be separate from the other provisions of this contract, and the failure of District to contract with said Kern County Water Agency shall not relieve or affect in any manner the obligations of Associates and Miller & Lux under paragraph 4, hereof, or affect the rights and obligations of the parties hereto as to other paragraphs of this agreement.

20. This Agreement shall bind and inure to the benefit of the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate as of the day and year first hereinabove written.

BUENA VISTA WATER STORAGE DISTRICT

By L. J. Freeman
President

By H. John Fisher
Secretary

BUENA VISTA ASSOCIATES INCORPORATED

By Henry M. Burt
Vice - President

By Henry G. Mead
Secretary

MILLER & LUX INCORPORATED

By Henry M. Burt
Vice - President

By Henry G. Mead
Secretary

RECORDED IN OFFICIAL RECORDS OF KERN COUNTY, CALIFORNIA

JAN 13 1965

19 No
Min. Free
Past
3PM

RAY A. VERGAMMEN, County Recorder,