

MEMORANDUM

TO: Water Resources Committee
Agenda Item No. 2

FROM: Jim Ciampa

DATE: July 23, 2026

SUBJECT: Consideration and Possible Approval of Water Supply Agreement with Western Hills Water District and Authorizing the General Manager to Execute that Agreement

Issue:

Consider approval of the Water Supply Agreement with Western Hills Water District, subject to any final revisions approved by the General Manager and General Counsel, and to authorize the General Manager to execute that agreement.

Recommended Motion:

Approval of the Water Supply Agreement between Kern County Water Agency and Western Hills Water District, subject to any final revisions approved by the General Manager and General Counsel, and authorization of the General Manager to execute that agreement.

Discussion:

Agency entered into a Contract to Transfer Water with Western Hills Water District (Western Hills) in 2000. Unfortunately, Western Hills' service area did not develop as was anticipated and that led to various failures of Western Hills to pay monies owed to the Agency over the years. In recent years, the Agency has negotiated with Western Hills to either amend the 2000 contract or to enter into a new agreement.

The negotiations with Western Hills have led to a new Water Supply Agreement, which is being considered for approval at today's meeting. The salient terms of that agreement include:

- Termination of the 2000 contract (including Western Hills' entitlement to up to 8,000 acre-feet of water each year and Western Hills' associated payment obligation), with only the continuation of the various agreements with the Department of Water Resources entered into under that prior contract.
- Agency to make available to Western Hills up to 1,500 acre-feet of water each year (as determined by the SWP final allocation) to meet Western Hills' customer demands.
- Payment provisions tied to Agency's costs based on a formula that depends on SWP allocation (higher per unit cost in low allocation years and lower per unit cost in high allocation years).

- Payment to the Agency of annual administrative fee of \$37,500, with escalation clause; and energy charge of \$250 per acre-foot delivered in dry years (less than 35% SWP allocation).
- Ability for Western Hills to receive credit for water not taken in wet years and ability for Western Hills to bank water it cannot take (banking arrangement is for Western Hills to determine).
- For limited period (five years, subject to one-year extension for dry year), the Agency will provide a backstop of water to Western Hills if SWP allocation is not sufficient to meet Western Hills' demand.
- An option for additional water (up to an additional 1,000 acre-feet) is provided for five years in case development of the Western Hills area occurs; annual option fee of \$50,000 to be paid to the Agency.
- Water currently banked by Western Hills (4,791 acre-feet) to be transferred to Agency.
- Western Hills is restricted to use of the water within its service area and is prohibited from transferring or assigning the water supplied by the Agency or rights under the Agreement without the Agency's consent.
- Mutual general releases of the parties as to any prior obligations, including as to the monies Western Hills owes the Agency.
- Suspension and termination provisions are included.

The newly negotiated Water Supply Agreement between Kern County Water Agency and Western Hills Water District is provided as Attachment 1. Agency staff have reviewed the agreement and recommend its approval subject to any final revisions approved by the General Manager and General Counsel.

WATER SUPPLY AGREEMENT

This Water Supply Agreement (“Agreement”) is entered into and effective as of the 1st day of August, 2026 (“Effective Date”) by and between KERN COUNTY WATER AGENCY, a special act water agency (“Agency”), and WESTERN HILLS WATER DISTRICT, a California water district formed under Division 13 of the California Water Code (“Western Hills”) with reference to the facts set forth below. Agency and Western Hills may be referred to herein individually as a “Party” or jointly as the “Parties.”

RECITALS

A. WHEREAS, the Agency and Western Hills entered into the “Contract to Transfer Water” dated June 5, 2000 (the “2000 Contract”) which set forth the Parties’ respective rights and obligations with respect to up to 8,000 acre-feet of water the Agency committed to deliver to Western Hills in accordance with the terms of that contract; and

B. WHEREAS, the 2000 Contract was based upon the assumption that Western Hills’ service area would experience significant growth over future years; and

C. WHEREAS, due to a variety of circumstances, the anticipated growth did not occur, and due also to the actions of prior developers of the Diablo Grande community and for other reasons beyond the control of Western Hills, the 2000 Contract resulted in significant debts of Western Hills to the Agency that accrued; and

D. WHEREAS, over the past few years, the Agency and Western Hills have discussed various alternatives to the 2000 Contract and have reached tentative agreement to replace the 2000 Contract as specified herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Termination of 2000 Contract. Except as expressly set forth herein, the 2000 Contract is deemed terminated as of the Effective Date of this Agreement, and neither Party shall have any further obligation under that contract.

2. Continuation of DWR Agreements. The following agreements with the Department of Water Resources (“DWR”), which are appended as exhibits as specified to the 2000 Contract shall be appended as new exhibits to this Agreement and shall continue in full force and effect: (a) Agreement between the Department of Water Resources of the State of California, Kern County Water Agency and Western Hills Water District for Construction, Operation, and Maintenance of the Western Hills Turnout - a Permanent Turnout within the California Aqueduct Right-of-Way – Exhibit B to 2000 Contract (“Turnout Agreement”, attached hereto as Exhibit B); (b) Point of Delivery Agreement between Department of Water Resources, State of California, and the Kern County Water Agency – Exhibit C to 2000 Contract (“Point of

Delivery Agreement”, attached hereto as Exhibit C); and (c) Agreement among the Department of Water Resources of the State of California, Kern County Water Agency and Western Hills Water District for Reimbursement of DWR’s Costs related to the Transfer of Kern County Local Water to Western Hills Water District – Exhibit D to 2000 Contract (attached hereto as Exhibit D).

3. Supply of Water to Western Hills. For the period commencing on the Effective Date and continuing through December 31, 2026, the Agency shall continue to provide water to Western Hills in accordance with the terms and conditions of the 2000 Contract and Western Hills will continue to make monthly payments of \$30,000 to the Agency. Commencing on January 1, 2027, the Agency will provide water to Western Hills in accordance with the provisions set forth below. The provision of such water to Western Hills does not provide Western Hills any rights under the Agency’s State Water Project Water Supply Contract, except as expressly provided in this Agreement. Except as otherwise set forth herein, all water to be delivered under this Agreement will be delivered to the Western Hills turnout in Reach 2A of the California Aqueduct (the Point of Delivery, or “POD”) in accordance with the terms of the Point of Delivery Agreement attached hereto as Exhibit C.

A. Annual Water Supply. The Agency will make available to Western Hills an annual contract quantity of up to one thousand five hundred (1,500) acre-feet of water (“Annual Contract Quantity”) per Year (for purposes of this Agreement, “Year” shall mean the period between January 1 and December 31 of each calendar year).

B. Annual State Water Project Allocation – Annual Deliverable Volume. To determine the amount of the Annual Contract Quantity available for delivery each year to Western Hills, the maximum Annual Contract Quantity of 1,500 acre-feet will be multiplied by the State Water Project Table A allocation determined by DWR as of May 1 of each Year (the “SWP Allocation”) to provide the “Deliverable Volume” available for delivery to Western Hills for the current Year. In any year in which the SWP Allocation exceeds thirty-five percent (35%), Western Hills may elect to deliver any portion of the Deliverable Volume that exceeds Western Hills’ scheduled demand, under arrangements made by Western Hills, to a third party for future return to Western Hills to meet its dry-year demand.

C. Return Water. In any year in which the SWP Allocation exceeds thirty-five percent (35%), Western Hills may elect to return to the Agency any portion of the Deliverable Volume in excess of five hundred twenty-five (525) acre-feet (“Return Water”), subject to the credit provisions set forth in Section 4(D). Western Hills shall make that election within fifteen (15) days following the Final Notice specified in Section 5(B), below. The final volume of water purchased (“Purchase Water”) in each Year shall be the Deliverable Volume less any Return Water.

D. Additional Water Supplies – Supplemental Dry-Year Supplies. For a period of five (5) years from the Effective Date (the “Program Period”), the Agency will cause to be delivered to Western Hills, in addition to any Deliverable Volume delivered under Section B above, an additional volume of water as requested by Western Hills as necessary to meet Western Hills’ demand within its service area if the Deliverable Volume is insufficient to meet that

demand, up to six hundred fifty (650) acre-feet in total deliveries to Western Hills per Year (that additional amount of water is referred to as the “Demand Coverage”). For the avoidance of doubt, in any Year, the sum of Deliverable Volume delivered under Section (3)B and Demand Coverage delivered under this Section (3)D shall not exceed 650 acre-feet, and Demand Coverage is available only to the extent Section (3)B deliveries are insufficient to meet that demand. Demand Coverage shall be subject to the scheduling, point-of-delivery and conveyance-cost provisions applicable to Purchase Water, as specified in Section 5, below.

E. Additional Water Supplies – Dry-Year Reserve. In each Year during the Program Period in which the SWP Allocation is fifty percent (50%) or higher, Western Hills may purchase from the Agency up to an additional one thousand two hundred (1,200) acre-feet of water at the then applicable price for Purchase Water determined under Section 4(A), below, in addition to and separate from any Purchase Water taken under Section (3)B, above, and any Demand Coverage delivered under Section (3)D (the “Dry-Year Reserve”), to enable Western Hills to develop a dry-year program for its service area. The Dry-Year Reserve shall be subject to the scheduling, point-of-delivery and conveyance-cost provisions applicable to Purchase Water, as provided in Section 5, below; provided, that Western Hills may direct delivery to a third party under arrangements made separate and apart from this Agreement for banking and future return to Western Hills. If no Year during the Program Period has a SWP Allocation that is fifty percent (50%) or higher, the Program Period shall be automatically extended by one (1) additional Year, which may be extended upon mutual agreement of the Parties. This extension is applicable to developing a Dry-Year Reserve pursuant this Section 3(E) only.

4. Price and Payment Terms.

A. Unit Price. The unit price for each acre-foot of water provided under Section 3 (“Unit Price”) shall be calculated pursuant to the methodology attached as Exhibit A (the “Pricing Formula”), which shall include all allocable State Water Project costs the Agency incurs, DWR transportation charges and Reach 2A conveyance costs necessary to deliver water to the Western Hills POD.

B. Energy Charge – Demand Coverage and Dry-Year Reserve. The Unit Price payable for Demand Coverage and/or Dry-Year Reserve water delivered under Sections 3(D) and 3(E), respectively, shall include an additional energy charge of two hundred fifty dollars (\$250.00) per acre-foot (“Energy Charge”) for any Year in which the SWP Allocation is less than thirty-five percent (35%). No energy charge shall apply for any year in which the SWP Allocation is thirty-five percent (35%) or greater. Commencing with the Year beginning January 1, 2028, the Energy Charge shall be subject to annual increase based on the greater of the Consumer Price Index (“CPI”) or three percent (3%) as specified in Section C, below, with respect to the Admin Fee.

C. Administrative Fee. Western Hills shall pay an annual administrative fee to the Agency (“Admin Fee”) equal to 1,500 acre-feet multiplied by \$25 per acre-foot, to total \$37,500 annually. The Admin Fee will be billed by the Agency on the Initial Invoice as set forth in Section 4(F)(i), below. The Admin Fee shall increase annually by the greater of (i) the annual increase in the CPI year-over-year for the 12-month from October to October; or (ii) three

percent (3%). The CPI shall mean the CPI for All Urban Consumers (CPI-U) in the West region, or its successor index.

D. Return Water Credit. For any Return Water that Western Hills returns to the Agency pursuant to Section 3(C), Western Hills will receive a credit to be applied to the Final Reconciliation Invoice for that Year based on the applicable Unit Price multiplied by the quantity of Return Water. Credits shall not accrue interest. Except for any credits expressly permitted under this section, no credits, offsets, re-bills or adjustments shall apply.

E. Unit Price Objections. The Agency's calculation of the Unit Price shall be final and binding absent manifest error. Any objection to that calculation must be submitted in writing within thirty (30) days of any invoice provided under Section 4(F), below, or shall be deemed waived. Western Hills' payment obligations under this Section 4 shall not be reduced based upon scheduling decisions, demand fluctuations, hydrologic conditions, regulatory constraints, storage limitations or other downstream factors.

F. Invoicing. The Agency shall issue three invoices annually to Western Hills with respect to the water provided under this Agreement, as set forth below. All undisputed amounts shall be due and payable within thirty (30) days of the date of the invoice and shall accrue interest at ten percent (10%) per annum if not paid within that thirty (30) day period.

(i) Initial Invoice. The Agency will issue Western Hills the Initial Invoice on or about January 20 of each Year for fifty percent (50%) of the Annual Contract Quantity (as adjusted by the State Water Project Table A allocation announced by DWR as of December 1 of the prior year) multiplied by the estimated Unit Price for that year (as determined by that State Water Project Table A allocation announced by DWR as of December 1 of each year), plus the Admin Fee and, for so long as is applicable, the Option Fee under Section 21.

(ii) Second Invoice. The Agency will issue Western Hills the Second Invoice on or about July 1 of each Year for the remaining estimated balance of the Unit Price determined for that year multiplied by the Purchase Water volume and any payments for Demand Coverage or Dry-Year Reserve water, as adjusted for the SWP Allocation.

(iii) Final Reconciliation Invoice. On or before March 31 of each Year or as soon as possible thereafter upon receipt of all delivery and variable invoicing information from DWR, the Agency shall issue Western Hills the Final Reconciliation Invoice reflecting charges for all Purchase Water, Demand Coverage and Dry-Year Reserve water and any applicable credits for the prior Year, to the extent not previously invoiced. Western Hills will pay any underpayment reflected on the Final Reconciliation Invoice within thirty (30) days from the date of the Final Reconciliation Invoice. Any overpayments shall be credited against the next Initial Invoice amount. Any applicable credits or overpayments shall not accrue interest.

5. Scheduling and Delivery.

A. By December 10 of each Year, the Agency will notify Western Hills of the initial, anticipated Deliverable Water volume, and will coordinate with Western Hills on a proposed delivery schedule for the upcoming Year.

B. By May 10 of each Year, the Agency shall notify Western Hills of the final Deliverable Volume as determined by the SWP Allocation for that Year (the “Final Notice”).

C. Within fifteen (15) days following Final Notice, Western Hills shall confirm the quantity of Purchase Water it elects to schedule for delivery through the end of the Year. If Western Hills fails to schedule water or fails to take full delivery of the requested amount of water, Western Hills will not be relieved of its payment obligations under Section 4, above and will be required to pay for the amount of water it had previously confirmed.

D. All deliveries of water to Western Hills are contingent on DWR’s physical capability to deliver the water to the POD. The Agency shall not be liable for any damages, direct or indirect, resulting from delays or interruptions in deliveries of water to Western Hills caused by events beyond its reasonable control, including regulatory constraints, facility limitations, legal mandates, hydrologic conditions or reduced water availability. In no event shall the Agency be liable for indirect, incidental, special, punitive or consequential damages.

E. The Agency shall have no obligation to procure replacement water, although the Agency agrees to cooperate in good faith to support any effort by Western Hills to obtain and arrange the delivery of any replacement, dry year or banked water supplies in accordance with the provisions of this Agreement. Any water not scheduled or delivered to Western Hills or otherwise transferred under the provisions of Section 3 shall remain the property of the Agency.

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

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

H. The Agency shall bear costs and charges to acquire the water being delivered under this Agreement and to deliver the water to the POD. Western Hills shall bear all costs of conveyance to and from the POD to its service area.

6. Water Sources. The Agency may satisfy its obligation to make Purchase Water and any other water to be provided to Western Hills under this Agreement available from any lawful source available to the Agency, including without limitation State Water Project supplies,

transferred water, exchanged water, banked water or other supplies acquired by the Agency, in its sole discretion and consistent with its contractual and legal obligations. Western Hills acknowledges that no representation or warranty is made regarding the specific source, character, priority or continuity of any particular water supply except as expressly provided herein with respect to the Agency's obligations, and nothing herein shall be construed as transferring, dedicating, or impairing any underlying water right, contract entitlement or priority of the Agency.

7. Service Area Limitation. Purchase Water shall be used solely within Western Hills' legally established service area as it exists on the Effective Date, as shown on Exhibit E hereto, unless otherwise approved in advance in writing by the Agency, in its sole and absolute discretion. The POD shall not be changed nor shall any of the water to be delivered to the Western Hills Turnout be sold, used or otherwise disposed of by Western Hills for use outside of Western Hills' service area as shown in Exhibit E. The Agency may bring an action for injunction to enforce the requirement that the water to be delivered to the Western Hills Turnout is not sold, used or otherwise disposed of by Western Hills for use outside of Western Hills service area as shown in Exhibit E.

8. Transfer Restriction. Western Hills shall not transfer, assign, exchange, resell or otherwise convey Purchase Water or any Dry-Year Reserve water under Section 3, or any right thereto, to any third party or for use outside its service area without the prior written consent of the Agency, which consent shall not be unreasonably withheld. Any approved transfer shall be subject to such terms and conditions as the Agency may reasonably impose, including cost recovery and compliance with applicable law.

9. Mutual Cooperation. The Parties agree to reasonably cooperate with each other to accomplish the purposes of this Agreement and, will from time to time, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered such further instruments, including documents of transfer, certifications, and opinions as may reasonably be required for carrying out the intention of or facilitating the performance of this Agreement. In the event either Party requires support for actions outside the scope of this Agreement, the Party providing such support shall have the right to charge the other Party for such actions at the supporting Party's actual cost, including staff time, materials, and any third-party expenses reasonably incurred. Any such costs shall be payable within thirty (30) days after the date of invoice setting forth such costs and providing substantiation of those costs.

10. Regulatory Approvals. Each Party shall obtain, at its sole cost, all approvals necessary for its respective obligations and shall reasonably cooperate with the other. Western Hills will be the lead agency for purposes of compliance with the California Environmental Quality Act ("CEQA"). Western Hills will reimburse the Agency for any costs the Agency incurs in connection with any CEQA process necessitated by this Agreement.

11. Covenant regarding Rates, etc. Western Hills shall ensure that it levies rates, fees, charges and/or assessments in amounts sufficient to meet its financial obligations under this Agreement. The Agency shall have the right, upon at least seventy-two (72) hours' written notice to inspect Western Hills' books and records in the event of any payment dispute between the Parties.

12. Consideration to Agency.

A. As consideration for the obligations the Agency is undertaking under this Agreement, and in full satisfaction of all amounts Western Hills owes to the Agency as of the effective date of this Agreement, other than costs for any water delivered in calendar year 2026 in accordance with the first paragraph of Section 3, above, (the “Outstanding Obligations”), in addition to the cancellation of the 2000 Contract, Western Hills hereby irrevocably transfers to the Agency its right to receive up to 8,000 acre-feet of water per year as set forth in the 2000 Contract. Western Hills also transfers to the Agency all water Western Hills has banked with the Westside Districts under Western Hills’ banking agreement with those districts (subject to the Westside Districts’ written consent to the assignment of that water), consisting of approximately 4,791 acre-feet of water (the “Transferred Water”). The Agency and Western Hills hereby acknowledge, understand, and agree that Western Hills will obtain written consent from the Westside Districts authorizing the transfer of the Transferred Water to the Agency. The Agency and Western Hills hereby further acknowledge, understand, and agree that the Westside Districts have requested that attainment of such consent by Western Hills shall be a condition precedent to the transfer of the Transferred Water to the Agency. The Agency shall use all reasonable efforts to assist and cooperate with Western Hills in obtaining such consent. Finally, the Agency and Western Hills hereby acknowledge, understand, and agree that Western Hills’ existing banking agreement with the Westside Districts may be immediately terminated through a separate agreement as a result of the Agency and Western Hills’ execution of this Agreement and Western Hills’ transfer of the Transferred Water to the Agency. The Parties acknowledge that the Transferred Water constitutes full and adequate consideration for the Outstanding Obligations.

B. Western Hills represents and warrants that it has good and marketable title to the up to 8,000 AF of water referenced in the 2000 Contract, free of liens, claims or encumbrances, and further represents that it will request and facilitate the transfer of the Transferred Water to the Agency upon full execution of this Agreement.

13. Mutual Releases.

A. In consideration of the covenants, agreements and undertakings of the Parties under this Agreement, as of the Effective Date, each Party, on behalf of itself and its respective directors, officers, employees, member agencies, successors and assigns (collectively, “Releasers”) hereby releases, waives and forever discharges the other Party and its respective directors, officers, employees, member agencies, successors and permitted assigns (collectively, “Releasees”) of and from any and all actions, causes of action, suits, losses, liabilities, rights, debts, dues, sums of money, accounts, obligations, costs, expenses, liens, covenants, contracts, agreements, promises, damages, judgments, claims and demands, of every kind and nature whatsoever, whether now known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, in law or equity (collectively, “Claims”), which any of such Releasers ever had, now have, or hereafter can, shall or may have against any of such Releasees for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of time through the date of this Agreement arising out of or relating to the Agreement, including the 2000 Contract.

B. Each Releasor understands that it may later discover Claims or facts that may be different from, or in addition to, those that it or any other Releasor now knows or believes to exist regarding the subject matter of the release contained in this Section 13, and which, if known at the time of signing this Agreement, may have materially affected this Agreement and such Party's decision to enter into it and grant the release contained in this Section 13. Nevertheless, the Releasors intend to fully, finally and forever settle and release all Claims that now exist, may exist or previously existed, as set out in the release contained in this Section 13, whether known or unknown, foreseen or unforeseen or suspected or unsuspected, and the release given herein is and will remain in effect as a complete release, notwithstanding the discovery or existence of such additional or different facts. The Releasors hereby waive any right or Claim that might arise as a result of such different or additional Claims or facts. The Releasors have been made aware of, and understand, the provisions of California Civil Code Section 1542 ("Section 1542"), which provides: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." The Releasors expressly, knowingly and intentionally waive any and all rights, benefits and protections of Section 1542 and of any other state or federal statute or common law principle limiting the scope of a general release.

14. Indemnification. Each Party shall indemnify, defend, protect, hold harmless and release the other, its directors, officers, agents and employees, from and against any and all third party claims, losses, proceedings, damages, causes of action, liability, costs or expense (including reasonable attorneys' fees) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party or its agents, employees, contractors, subcontractors or invitees; except to the extent such claim, loss, proceeding, damage, cause of action, liability, cost or expense results from the grossly negligent or willful acts or omissions of the part to be indemnified.

15. Term. The Agreement shall commence on the Effective Date and shall continue through the expiration date of the Agency's State Water Project Water Supply Contract, as it may be extended.

16. Suspension. In the event of any default by Western Hills in the payment of any money required to be paid to the Agency hereunder, or in any other obligations under this Agreement, the Agency in its discretion may suspend delivery of water to Western Hills during the period when Western Hills is delinquent in its payment for or obligations due to the Agency under the terms of this Agreement; provided, that (a) the Agency has given Western Hills not less than four (4) months' prior written notice of any such default and provided Western Hills a reasonable time to cure such default, and (b) during any such period of delinquency or suspension Western Hills shall remain obligated to make all payments required under this Agreement. Action taken pursuant to this section shall not deprive the Agency of or limit any remedy provided by this Agreement or by law for the recovery of money due or which may become due under this Agreement and all remedies available to the Agreement are cumulative.

17. Termination.

A. Western Hills may terminate this Agreement upon at least ninety (90) days' prior written notice to the Agency.

B. In the event Western Hills breaches this Agreement, in addition to the suspension set forth in Section 16, and subject to the dispute resolution procedure in Section 20, the Agency may terminate this Agreement if Western Hills fails to pay all monies due under this Agreement for a period of six (6) months after receipt of written notice from the Agency regarding Western Hills' failure to pay.

18. Representations and Warranties. The Parties, as indicated herein below, represent and warrant that as of the date of this Agreement:

A. The Agency represents and warrants that it has a legal right to the water to be supplied to Western Hills under this Agreement with full authority to provide such water and such water will be free and clear of any such claims during the term of this Agreement.

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

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

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

E. The Agency represents and warrants that to the best of its knowledge there are no proceedings pending, threatened or in process that would limit the Agency's ability to deliver water to Western Hills under this Agreement.

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

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

H. Western Hills warrants that it will not file any claims or lawsuits against the Agency or the State for any shortages in such water supplies resulting from any actions beyond the control of the Agency or the State of California and that it will defend, hold harmless and indemnify the Agency and the State from and against any claims, suits or judgments brought by others claiming damages of any kind, including, but not limited to loss of property or life, resulting from any such shortages pursuant to this Agreement.

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

A. The Parties shall take no action that adversely affects or limits Western Hills' use of the water to be provided hereunder, provided Western Hills is not in default of any of its obligations under this Agreement.

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

20. Dispute Resolution. If a dispute arises as to the construction, interpretation or implementation of any portion of this Agreement or any matters that arise in connection with this Agreement, the Parties shall meet and confer in person in an attempt to resolve that dispute within thirty (30) days of a Party giving the other Party written notice of the dispute. If the Parties cannot resolve the dispute through that meet and confer process, the Parties shall proceed to mediation of the dispute in front of an independent, neutral mediator agreed to by the Parties, unless they both agree to waive that mediation. If the Parties cannot agree upon a mediator, the mediation service selected shall choose the mediator. The Parties shall equally divide and pay the mediation costs. If mediation does not resolve the dispute, either Party may commence litigation with respect to the dispute.

21. Option for Additional Water.

A. In addition to the other water to be provided to Western Hills under this Agreement, the Agency grants Western Hills an option to increase the Annual Contract Quantity by up to an additional 1,000 AF in the aggregate ("Option Water"). The option shall take effect on January 1, 2027 and shall be valid for the (5) Years from that date. The Option term may be extended, subject to mutual agreement by the Parties.

B. Western Hills shall pay an annual, non-refundable option fee of \$50,000 ("Option Fee"), to be paid in connection with the Initial Invoice under Section 4(F)(i) for each option Year. The Option Fee shall not be credited against any future Option Water purchases. Failure to pay the annual Option Fee within fourteen (14) days after written notice from the Agency shall irrevocably terminate Western Hills' option for the Option Water.

C. No later than November 1 of each Year that the option is in effect, Western Hills shall provide written notice of the quantity of Option Water for which it desires to exercise that option, if any. Upon exercise, the Annual Contract Quantity shall permanently increase by the exercised amount for the remainder of the term of this Agreement.

22. Miscellaneous.

A. Interpretation; Successors and Assigns; Amendments. This Agreement has been executed in California and California law shall apply to this Agreement. The captions of paragraphs used in this Agreement are for convenience only. The provisions hereof shall be binding upon and inure to the benefit of the permitted successors and assigns of the Parties. Any amendment or modification of this Agreement must be in writing, signed by the Agency and Western Hills. This Agreement contains the entire agreement of the Parties hereto and supersedes any prior written or oral agreements. All oral or written representations, agreements, arrangements, or understandings relating to the subject matter are fully expressed herein. The parties agree and acknowledge that this Agreement has been mutually reviewed by counsel for the two parties and that the provisions of Civil Code §1654 shall not apply to the interpretation of this Agreement.

B. Time of Essence. Time is of the essence of this Agreement.

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

D. Dependency of Provisions; Waiver. The respective warranties, representations, covenants, agreements, obligations and undertakings of each Party hereunder

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

E. Notices. All notices, approvals, consents or other documents required or permitted under this Agreement shall be in writing, and, except as otherwise provided herein, shall be effective upon personal delivery, delivery by nationally-recognized overnight courier, delivery by e-mail with telephonic or written confirmation of receipt or three days after deposit in the United States mails, registered or certified mail, with first-class postage fully prepaid, addresses as follows:

The Agency: Kern County Water Agency
3200 Rio Mirada Drive
Bakersfield, CA 93302
Attn: General Manager

Western Hills: Western Hills Water District
P. O. Box 655
Patterson, CA 95363
Attn: Board President

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

F. Venue. The Parties agree that, in any action to interpret or enforce this Agreement, venue shall be proper in the counties of Kern or Stanislaus.

G. Counterparts; Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed as original, but all of which together shall constitute one and the same Agreement. The Parties may execute this Agreement by signatures transmitted electronically, including by e-mail, PDF, DocuSign or similar application, and any such electronically transmitted signature shall be as valid as an original signature.

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

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

Kern County Water Agency

Dated: _____, 2026

By _____
Eric Averett, General Manager

Western Hills Water District

Dated: _____, 2026

By _____
Mark Kovich, Board President

APPROVED AS FORM:

James D. Ciampa, General Counsel,
Kern County Water Agency

Colin L. Pearce, Special Counsel,
Western Hills Water District

EXHIBIT A
UNIT PRICE METHODOLOGY

EXHIBIT B
TURNOUT AGREEMENT

State of California
The Resources Agency
DEPARTMENT OF WATER RESOURCES

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

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

RECITALS

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

Western Hills Water District
Turnout Agreement

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

STANDARD PROVISIONS

The STATE, AGENCY and the DISTRICT agree as follows:

1. RIGHTS OF ACCESS The STATE grants to the AGENCY and DISTRICT permission to enter upon the STATE's right of way of the California Aqueduct situated in Stanislaus County, California, to construct, operate and maintain the Western Hills Turnout facility at approximately Milepost 42.90. The right of access is limited to that portion of the STATE's right of way at Milepost 42.90 of the California Aqueduct as is reasonably necessary to construct the facilities. The AGENCY's and the DISTRICT's access shall not interfere with STATE activities in the STATE's right of way. The STATE shall have right of access at all times to the Western Hills Turnout constructed under this Agreement for the purposes of observation, inspection, operation, and maintenance. The AGENCY and DISTRICT shall secure the STATE's prior approval from the Chief of the Delta Field Division at (209) 833-7106, for any physical modifications including normal maintenance that requires entry upon the STATE's right of way. The right of entry shall be limited to that portion of the STATE's property as is reasonably necessary to accomplish the actions provided for in this Agreement.

Western Hills Water District
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2. COSTS The DISTRICT and AGENCY shall pay all costs incurred by the STATE, which in the opinion of the STATE are properly attributable to the work authorized under this Agreement. DISTRICT shall pay the following costs incurred by the STATE during the planning, design and construction of the Western Hills Turnout:

- (a) Costs incurred by the STATE under Section 22 of this Agreement; and
- (b) Costs for inspection of the work and other incidental costs of such inspection, such as travel expenses.

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

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

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

Western Hills Water District
Turnout Agreement

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

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

3. OWNERSHIP, OPERATIONS, AND MAINTENANCE OF FACILITIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRECONSTRUCTION PHASE

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

Western Hills Water District
Turnout Agreement

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

The STATE shall notify the AGENCY and DISTRICT in writing of its approval or disapproval of such drawings, specifications, and data. One print of each drawing and one copy of specifications, and data will be returned to the AGENCY and DISTRICT marked APPROVED FOR CONNECTION TO THE STATE WATER PROJECT," APPROVED AS NOTED FOR CONNECTION TO THE STATE WATER PROJECT" or DISAPPROVED." The DISTRICT shall not commence construction of any facilities on the STATE's right of way for which the drawings, specifications, and data have not been approved by the STATE. The DISTRICT shall also submit for the STATE's approval: a proposed construction schedule, manufacturers' catalogs, data, copies of certificates of competence for construction workmen requiring certificates, materials certificates, and test reports. The DISTRICT shall also submit for the STATE's approval any shop drawings which change or considerably affect items previously approved in the plans and specifications.

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

CONSTRUCTION PHASE

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

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

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

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

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

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

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

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

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

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

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

Western Hills Water District
Turnout Agreement

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

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

Western Hills Water Agency
Turnout Agreement

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

Approved as to legal form
and sufficiency:

Susan N. Weber
Chief Counsel
Department of Water Resources

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

Shawn M. Ham
Director

WESTERN HILLS WATER DISTRICT

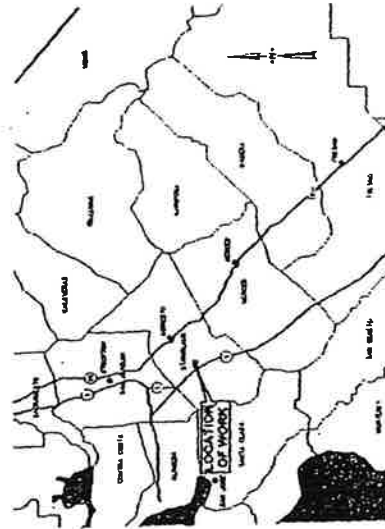
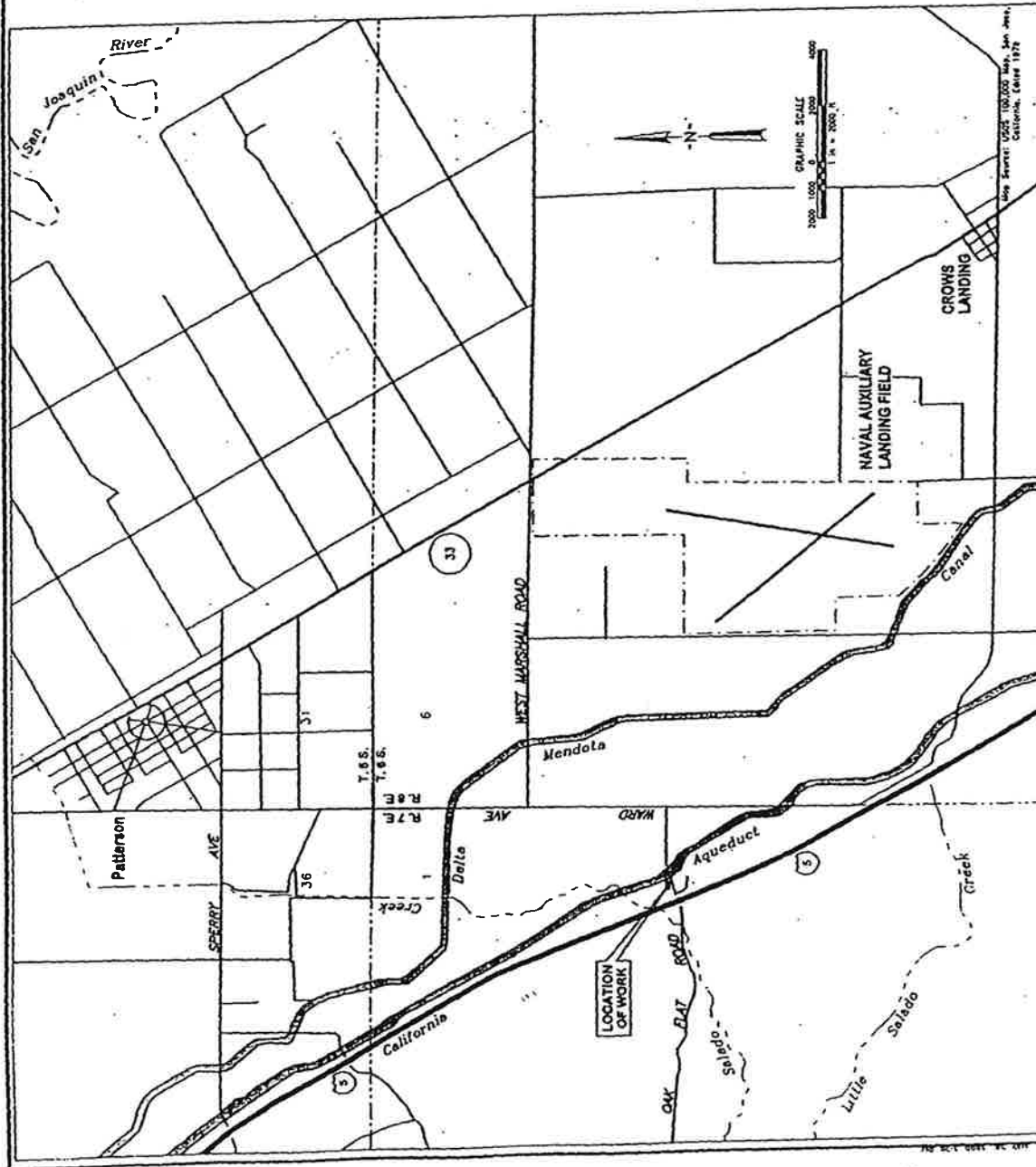
Leidy A. Arreola
Name

PRESIDENT
Title

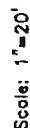
KERN COUNTY WATER AGENCY

Sam Ham
Name

President
Title



DIABLO GRANDE AQUEDUCT TURNOUT STANISLAUS COUNTY, CALIFORNIA		DATE MAY 28, 1999 SCALE GRAPHIC SCALE 1"=100' PROJECT NUMBER DC-101
DIABLO GRANDE STANISLAUS COUNTY, CALIFORNIA		BOOKMAN-EDMONSTON ENGINEERING, INC. SACRAMENTO, CALIFORNIA
DESIGNED BY OBAL DRAWN BY PARKER CHECKED BY OBAL APPROVED BY SALMON	DATE MAY 28, 1999 SCALE GRAPHIC SCALE 1"=100' PROJECT NUMBER DC-101	LOCATION OF WORK, VICINITY MAP, DRAWING LIST



NOTES:

1. A STA (C) OF ADVANCE INVESTIGATION IS REQUIRED PRIOR TO STARTING WORK WHEN CONDUCTED AT NIGHT. RESEARCHERS MUST BE IN CONTACT BY AIRMAIL OF LAND AND ROAD OF THE DOCUMENTATION ABOUT SETTING IN ADVANCE. CUSTOMER AT (111) 443-4447.
2. THE CONTRACTOR WILL BE LIABLE FOR ANY DAMAGES TO ANY NEW PROPERTY AS A RESULT OF THE PROPERTY CONSTRUCTION.

DESIGNED BY <u>HUANG</u> CHECKED BY <u>DEAL</u> DRAWN BY <u>GARTENHAUB</u> SUBMITTED BY <u>SALMON</u>		DIABLO GRANDE STANISLAUS COUNTY, CALIFORNIA		DIABLO GRANDE AQUEDUCT TURNOUT STANISLAUS COUNTY, CALIFORNIA		SHEET ISSUE DATE
BOOKMAN-EDMONSTON ENGINEERING, INC. SACRAMENTO, CALIFORNIA		AQUEDUCT TURNOUT SITE PLAN		GENERAL SCALE DC-201		

EXHIBIT C

POINT OF DELIVERY AGREEMENT

State of California
The Resources Agency
DEPARTMENT OF WATER RESOURCES

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

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

RECITALS:

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

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

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

AGREEMENT

1. DEFINITIONS

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

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

2. APPROVAL

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

3. TERM

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

4. USE OF WATER

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

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

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

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

6. AGENCY'S TABLE A NOT AMENDED

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

7. SOURCE OF EXCHANGE WATER

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

8. RECORDS OF EXCHANGE

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

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

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

9. ARTICLE 53

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

10. CHARGES

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

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

11. APPROVALS

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

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

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

12. LIABILITY

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

13. NO MODIFICATION OF THE WATER SUPPLY CONTRACT

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

14. WAIVER

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

15. ASSIGNMENT OF AGREEMENT

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

16. THIRD PARTY BENEFICIARIES

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

17. PARAGRAPH HEADINGS

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

18. TERMS TO BE REASONABLE

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

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

19. SIGNATURE CLAUSE

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

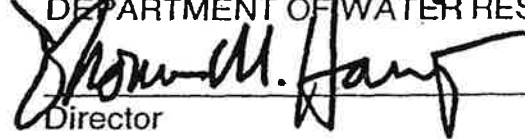
Certified copies of resolutions authorizing the AGENCY to enter into this Agreement shall be delivered to the STATE before implementation of this Agreement.

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

Approved as to legal form
and sufficiency:


Chief Counsel
Department of Water Resources

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES


Director

KERN COUNTY WATER AGENCY


Signature

President
Title

May 25, 2000
Date

EXHIBIT A



- LEGEND:
- PLACE OF USE
 - MINERALS OWNED BY THE FEDERAL GOVERNMENT - ALL MINERALS
 - MINERALS OWNED BY THE FEDERAL GOVERNMENT - OIL AND GAS ONLY
 - MINERALS OWNED BY THE FEDERAL GOVERNMENT - OTHER

Map Source: USGS 100,000 Map, San Jose, California, 1978

REDUCED
NOT
DRAWING

Scale: 1" = 1 Mile

MC GDP MC MC

1978 1978 1978 1978

NAVIGANT

WESTERN HILLS WATER DISTRICT

POINT OF REDIVERSION
AND PLACE OF USE

DATE: 1998

BY: [Signature]

PROJECT: 2002-1-000

REVISION: 001

Sheet 1 of 1

C-1

WESTERN HILLS WATER SUPPLY PROGRAM

(Attachments 1-5)

Original Western Hills Proposal – Purchase of SWP Entitlement

Western Hills Water District, located in Stanislaus County on the west side of the California Aqueduct north of San Luis Reservoir, was formed for the purpose of supplying water to the Diablo Grande Project, a proposed private home development. In 1998, Western Hills entered into a contract with Berrenda Mesa Water District to purchase 8,000 AF of SWP entitlement pursuant to the provisions of the Monterey Amendment that permitted the permanent sale of up to 130,000 AF of SWP agricultural entitlement to SWP Urban Contractors or potentially non-Contractors. Also in 1998, pursuant to the Monterey Amendment, SWP Urban Contractors were given a right of first refusal option to purchase the 8,000 AF under the same terms and conditions and none of the Contractors exercised the option.

In 1999, DWR expressed the following concerns about approving the sale:

- 1) Western Hills WD was really a privately owned development;
- 2) The Western Hills WD service area was located outside the SWP service area;
- 3) The Western Hills WD service area was located north of San Luis Reservoir making it more vulnerable to SWP outages;
- 4) Because of its' location, a backup supply for Western Hills was critically important.

During the later part of 1999, KCWA proposed an alternative water supply for Western Hills that would hopefully satisfy Western Hills and avoid some of the issues concerning DWR.

KCWA/Western Hills Water Supply Program – Purchase of non-SWP Water

In March, 2000, KCWA approved the KCWA/Western Hills Water Supply Program Contract (Attachment 1, KCWA/Western Hills contract), which was a unique water supply alternative whereby Western Hills would pay Berrenda Mesa the agreed to one-time \$1,000/AF purchase price, but Berrenda Mesa would then convey the 8,000 AF of SWP entitlement to KCWA. KCWA would then supply Western Hills with a like amount of pre-1914 Lower River Rights Water banked in KCWA's 25% share of the Pioneer Groundwater Banking Project (Attachment 2, Pioneer Project CEQA documents, Attachment 3, Pioneer Participation Agreement). Western Hills would pay KCWA each year the same amount they would have paid if they had purchased the SWP entitlement.

Source of Supply

The banked pre-1914 Lower River Rights Water used as the source of water to supply Western Hills is high flow Kern River water, much of which was historically used outside of Kern County. After establishing the Western Hills Water Supply Program in 2000, KCWA acquired the Lower River Rights Water in 2001 (See Lower River Rights Acquisition and attachments).

Delivery by Exchange

Physically, KCWA delivers water to Western Hills each year by exchange, whereby up to 8,000 AF of SWP entitlement can be delivered to Western Hills from the California Aqueduct and in exchange, a like amount of previously banked Lower River Rights Water is recovered from the Pioneer Project and delivered locally within KCWA to replace the SWP entitlement exchange water delivered to Western Hills.

Point of Delivery Agreement

In June, 2000, DWR executed the DWR/KCWA Point of Delivery Agreement which provides terms and conditions for the delivery of SWP entitlement exchange water to Western Hills (Attachment 4, DWR/KCWA Point of Delivery Agreement). Since Western Hills is not a SWP Contractor, only DWR and KCWA are parties to the agreement.

Turnout Construction, O&M Agreement

Also in June, 2000, DWR executed the DWR/KCWA/Western Hills Turnout Construction, O&M Agreement which provides terms and conditions for the construction and O&M of the Western Hills Turnout (Attachment 5, DWR/KCWA/Western Hills Turnout Agreement). Since Western Hills would be constructing the new turnout, DWR, KCWA and Western Hills are parties to the agreement.

Backup Supply

Western Hills developed a water shortage contingency plan which is described in the KCWA/Western Hills contract (Attachment 1, Exhibit E, Western Hills Shortage Contingency Plan) and consists of access to groundwater or a plan to acquire water from O'Neill Forebay.

LOWER RIVER RIGHTS WATER ACQUISITION
(Attachments 6-8)

The Lower River Rights Water is a Kern River water right, originally established by the Miller-Haggin Agreement in 1888, and had since been owned and retained by Miller's descendants, currently represented by Nickel Family LLC. Historically, yield from the water right has been extremely variable, occurring in years when runoff from the Kern River is at or exceeds 120% of normal. Typically, yield has occurred in about one out of five years and has exceeded 500,000 AF in some years. The long-term average annual yield has been about 50,000 AF of which, about 40,000 AF was beneficially used and the remaining 10,000 AF was uncontrolled flood water. In addition to the water right itself, there are other rights, including up to 40,000 AF of storage in Lake Isabella that can be utilized under certain terms and conditions. In addition, much of this water has historically been used outside of Kern County, primarily in the Tulare Lake basin located in Kings County. For example, most recently from 1995 through 2000, a total of about 124,000 AF was used outside of Kern County.

Prior to 2000, Nickel Family LLC had offered to permanently transfer the Lower River Right to interests both inside and outside of Kern County, but because of the highly variable nature of the supply, potential buyers had the problem of finding ways to re-regulate the supply in order to justify the purchase price. Unless significant amounts of the supply, when it occurred, could be stored for later use under drier conditions, much of the supply had to be used under very wet conditions, when the value of the water was relatively low. For many years, KCWA had been interested in acquiring the water right for use in Kern County, but had not actively pursued the purchase primarily due to lack of funding, but also due to lack of a well defined program to re-regulate the supply.

As a result of the Monterey Amendment implemented in 1995, KCWA and local districts have been able to significantly expand groundwater banking and recovery facilities with the development of the Kern Water Bank as well as KCWA's Pioneer Project. These two facilities alone have increased the capability to capture and store (by groundwater banking) wet year water, like the Lower River Rights Water, by almost 600,000 AF per year. Additional banking facilities are also being developed by individual districts. Accordingly, by 2000, Kern County now had the physical capability to re-regulate the Lower River Rights Water as well as other sources. What was still needed however, was a source of funds to purchase the Lower River Rights.

In the spring of 2000, KCWA received a \$23,000,000 grant under Proposition 13, the *Safe Drinking Water, Clean Water, Watershed Protection Act*, which was approved by the voters in November, 1999. In September, 2000, KCWA completed the CEQA requirements for use of the \$23,000,000 for the *Kern River Restoration and Water Supply Program*, which included, among other things, acquisition of the Lower River Rights from Nickel Family LLC (Attachment 6, Lower River Rights CEQA documents). In November, 2000, KCWA approved execution of the purchase agreement which provided for a \$10,000,000 one-time payment for the Lower River Rights and a KCWA obligation to provide 10,000 AF per year of re-regulated Lower River Rights Water to Nickel Family LLC, which water could be delivered to the California Aqueduct by exchange and marketed by Nickel Family LLC (Attachment 7, KCWA/Nickel Lower River Rights Purchase Agreement). Delivery of the exchange water from the California Aqueduct to a future buyer(s) is subject to DWR's approval. Additional CEQA addressing the 10,000 AF /YR delivery outside KCWA will be finalized by KCWA in November, 2001, (Attachment 8, Lower River Rights CEQA document).

KCWA/NICKEL/DUKE AVENAL WATER SUPPLY PROGRAM

(Attachments 9-10)

Nickel/Duke Avenal – Purchase of non-SWP Water

Nickel Family LLC has agreed to sell 2,250 AF per year to Duke Energy Avenal, LLC (Duke Avenal) for a water supply for a combined cycle power plant proposed to be built near the City of Avenal (Attachment 9, Nickel/Duke Purchase Agreement). The power plant is to be located within Kings County which is a SWP Contractor. Kings County is supportive of the project and KCWA has agreed to cooperate to obtain DWR approval to deliver the water (Attachment 10, KCWA cooperation letter). Duke Avenal will also enter into an agreement with Kings County that provides terms and conditions for Kings County to deliver the water to Duke Avenal.

Source of Supply

On behalf of Nickel, KCWA would provide up to 2,250 AF/YR of banked pre-1914 Lower River Rights Water for use as the source of water to supply Kings County on behalf of Duke Avenal, which is the same type of high flow Kern River water used to supply Western Hills WD (See Lower River Rights Acquisition and attachments).

Delivery by Exchange

Physically, KCWA would deliver water to Kings County each year by exchange, whereby up to 2,250 AF of SWP entitlement or other exchange water would be delivered to Kings County from the California Aqueduct and in exchange, a like amount of previously banked Lower River Rights Water will be recovered from KCWA's 25% share of the Pioneer Project Banking Facility and delivered locally within KCWA to replace the SWP entitlement or other exchange water delivered to Kings County.

Point of Delivery Agreement

Since Kings County is a SWP Contractor, a Point of Delivery Agreement between DWR, KCWA and Kings County will be needed to provide terms and conditions for the delivery of SWP entitlement or other exchange water to Kings County on behalf of Duke Avenal. This agreement will have provisions similar to the Western Hills POD Agreement with respect to the source of water and delivery by exchange and other provisions similar to POD agreements with SWP Contractors, like MWD, Santa Clara, Alameda, Zone 7, etc.

Turnout Construction, O&M Agreement

Duke Avenal is proposing to use the new turnout which the City of Avenal is proposing to construct. It will be a CVP turnout under an agreement with USBR.

Backup Supply

Duke Avenal has secured the right to acquire access to three nearby wells under an agreement with a local landowner. The groundwater will be piped to the power plant and will be sufficient to temporarily supply 100% of the power plants needs in case of a SWP Aqueduct outage.

EXHIBIT D

REIMBURSEMENT AGREEMENT

State of California
The Resources Agency
DEPARTMENT OF WATER RESOURCES

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

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

RECITALS:

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

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

AGREEMENT

The State, Agency and District agree as follows:

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

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

subject to interest charges as for the advance billing.

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

Based upon such billing, the State will either refund any excess payment resulting from the advance and interim billings, or in the event a deficiency results, the District will make final payment of State costs.

Such final payment, if any, will become due and payable within 30 days after written notice thereof and be subject to interest charges as for the advance and interim billings.

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

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

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

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

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

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

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

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

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

Approved as to legal form
and sufficiency:

Susan H. Weber
Chief Counsel
Department of Water Resources

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

Gene M. Haug
Director

WESTERN HILLS WATER DISTRICT

Keith A. Aside
Signature

PRESIDENT
Title

MAY 31, 2000
Date

KERN COUNTY WATER AGENCY

Mark J. Hunt
Signature

President
Title

May 25, 2000
Date

