

- 2

AGREEMENT

THIS AGREEMENT made this 21 day of April, 1967, between the STATE OF CALIFORNIA, acting by and through its Department of Water Resources, hereinafter referred to as the "State", and CONTRA COSTA COUNTY WATER DISTRICT, a public body organized and existing pursuant to Division 12 of the Water Code of the State of California, hereinafter referred to as the "District",

WITNESSETH:

WHEREAS, since 1930 the District and its predecessor, California Water Service Company, have been diverting water from Mallard Slough on Suisun Bay in Contra Costa County pursuant to Water Right Permit to Appropriate Water number 3167 issued on Application number 5941 filed on November 19, 1928. Said diversions have been for direct beneficial use and to storage for later beneficial use within the service area of the Treated Water Division of the District when the water in Mallard Slough had a chloride ion content (mean tidal cycle surface zone) of 100 parts per million or less and was not otherwise polluted to make it unsuitable for treatment for municipal and domestic use (hereinafter referred to as usable river water), and

WHEREAS, the average number of days per water year (October 1 to September 30, hereinafter referred to as "year") that usable river water has been available to the District at said point of diversion is 142 and the median period of said availability is from January 15 to June 5, both days inclusive, and

WHEREAS, during each day usable river water has been and will in the

future be available to the District the quantity thereof has been and will be adequate to meet the water requirements of the District from that point of diversion during such day, and

WHEREAS, in the future the average number of days per year that usable river water will be available to the District will decrease and such decrease will be due in part to the operation of the State Water Resources Development System as defined in Section 12931 of the Water Code, and

WHEREAS, it is contemplated that the Contra Costa Canal, supplemented by the Kellogg Unit or other facilities to be constructed by the Bureau of Reclamation, will meet the District's future water requirements which are not met by usable river water. If such facilities are not constructed by the Bureau of Reclamation, water supply facilities will have to be constructed by another agency or agencies to meet the District's future requirements including a substitute water supply equal to the District's water deficiency entitlement as defined in this agreement;

NOW, THEREFORE, the parties agree as follows:

1. The term of this agreement shall begin on the first day of October, 1967, and shall continue in effect until terminated by either party by written notice to the other party given at least 12 months prior to the effective date of such termination. The effective date of termination shall be the last day of a year (September 30) and no termination shall be effective prior to September 30, 2007.

2. The State shall reimburse the District in the manner hereinafter provided for any decrease in availability to the District of usable river water

in Mallard Slough during the term of this agreement caused by operation of the State Water Resources Development System. Such decrease in availability of usable river water is hereinafter referred to as the District's "water deficiency entitlement".

3. The quantity of the District's water deficiency entitlement shall be determined for each year during the term of this agreement by the formula  $E = \frac{(142 - D)}{3} \frac{(R + P)}{142}$  where E is the District's water deficiency entitlement for such year in acre-feet, D is the number of days during such year that usable river water is available to the District at Mallard Slough, R is the total quantity of water in acre-feet diverted by the District from Mallard Slough from 8:00 A. M. on January 15 to 8:00 A. M. on June 6 and P is the total quantity of water in acre-feet purchased by the District and introduced into its facilities in the vicinity of Chenery Reservoir from 8:00 A. M. on January 15 to 8:00 A. M. on June 6. If in any year D exceeds 142, the District shall have no water deficiency entitlement for such year and the amount of such excess shall offset any water deficiency entitlement of the District for an equal number of days in the next succeeding year or years when D is less than 142.

4. For the purpose of computing the District's water deficiency entitlement, the District will at its expense measure the chloride ion content of water in Mallard Slough at such intervals as shall be reasonably necessary and shall make the results of such measurements available to the State. The State may at its expense verify the accuracy of the District's measurements and any error thus disclosed shall be corrected by the District.

5. Each year during the term of this agreement that the District has a water deficiency entitlement it shall purchase a quantity of substitute water equal thereto from the Contra Costa Canal as supplemented by the Kellogg Unit or other facilities constructed by the Bureau of Reclamation to meet the District's requirement, but if sufficient water is not available to the District from such source it shall purchase said quantity of substitute water from a project or projects constructed by another agency or agencies to meet the District's future water requirements. For the purposes of this agreement, substitute water shall be deemed to have been purchased during the period beginning at 8:00 A. M. on January 15 and ending at 8:00 A. M. on June 6 of such year and the price paid by the District for substitute water shall be deemed to be the average price per acre-foot paid by the District for all untreated water purchased by it for introduction into its facilities in the vicinity of Chenery Reservoir during said period without deduction for any discount, allowance or rebate that may hereafter be made or allowed by the U. S. Bureau of Reclamation in the event the District hereafter undertakes, to any extent to operate and maintain any facilities of the U. S. Bureau of Reclamation not operated and maintained by the District as of the date of this agreement.

6. Each year during the term of this agreement that the District purchases substitute water for its water deficiency entitlement, the State will pay the District an amount of money computed in accordance with the formula  $M = E(Cw + Ce - \$4.90)$  where M is the amount in dollars to be paid by the State, E is the District's water deficiency entitlement for such year determined in

the manner provided in Section 3 hereof, Cw is the amount per acre-foot paid by the District for substitute water delivered to the District as provided in Section 5 hereof, and Ce is the average amount (if any) per acre-foot paid by the District for electric energy to transport substitute water from the point of delivery thereof to the District to the District's facilities in the vicinity of Chenery Reservoir. The State shall pay said amount to the District not later than October 31 of the following year. Such payments are hereby determined to be reasonable costs of the annual maintenance and operation of the State Water Resources Development System and shall be disbursed from the California Water Resources Development Bond Fund pursuant to subsection (b) (1) of Section 12937 of the Water Code.

7. The District, in consideration of the payments by the State herein provided, releases the State from liability for any decrease in the availability to the District of usable river water at Mallard Slough caused by operation of the State Water Resources Development System during the term of this agreement.

8. The obligations of the State herein shall not be affected by any modification or discontinuance of the District's Mallard Slough pumping plant or Chenery Reservoir.

9. Nothing herein shall be deemed to be a release or waiver of any right of the District to purchase supplemental water supplies from the State with the priorities established by Water Code Section 11460, 12201 to 12204 inclusive, and 12931.

IN WITNESS WHEREOF the parties hereto have executed this agreement by their respective officers thereunto duly authorized on the date first above written.

Approved as to legal form  
and sufficiency:

STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES

By P. A. Towner /s/  
Chief Counsel

By William R. Gianelli /s/  
Director

ATTEST:

CONTRA COSTA COUNTY WATER  
DISTRICT

B. M. McCloskey /s/  
Secretary

By Ralph D. Bollman /s/  
President

AGREEMENT

THIS AGREEMENT made this 11th day of April, 196<sup>8</sup>,  
 between the STATE OF CALIFORNIA, acting by and through its Department of Water Resources, hereinafter referred to as the "State" and the CITY OF ANTIOCH, a municipal corporation, hereinafter referred to as the "City",

## WITNESSETH:

WHEREAS, for over 100 years water has been diverted from the San Joaquin River for municipal and industrial use in and around the area which is now in the corporate limits of the City, and

WHEREAS, since 1904 such water has been diverted at a pumping plant located near the foot of A Street and has been treated and distributed to users by the City, and

WHEREAS, the City diverts such water whenever the chloride ion content in the surface zone at slack current after daily higher high tide (HHT) is 250 parts per million or less, hereinafter called "usable river water", and

WHEREAS, the average number of days per water year (October 1 to September 30, hereinafter referred to as "year") that usable river water has been available to the City at said point of diversion is 208 and the median period of said availability is from December 9 to July 5, both days inclusive, and

WHEREAS, during each day usable river water has been and will in the future be available to the City the quantity thereof has been and will be adequate to meet the water requirements of

*Agreement Authorized by*

*See "Water Entitlement" file for  
 compliance in Rem. to*

the City during such day, and

WHEREAS, in the future the average number of days per year that usable river water will be available to the City will be caused to decrease, and such decrease will be due in part to operation of the State Water Resources Development System, as defined in Section 12931 of the Water Code, and

WHEREAS, it is contemplated that the Contra Costa Canal, supplemented by the Kellogg Unit or other facilities to be constructed by the Bureau of Reclamation, will meet the City's future water requirements which are not met by usable river water. If such facilities are not constructed by the Bureau of Reclamation, water supply facilities will have to be constructed by another agency or agencies to meet the City's future requirements including a substitute water supply equal to the City's water deficiency entitlement as defined in this agreement.

NOW, THEREFORE, the parties agree as follows:

1. The term of this agreement shall begin on the first day of October 1968, and shall continue in effect until terminated by either party by written notice to the other party given at least 12 months prior to the effective date of such termination. The effective date of termination shall be the last day of a year (September 30) and no termination shall be effective prior to September 30, 2008.

2. The State shall reimburse the City in a manner hereinafter provided for any decrease in availability to the City of usable river water during the term of this agreement caused by

operation of the State Water Resources Development System. Such decrease in availability of usable river water is hereinafter referred to as the City's "water deficiency entitlement".

3. The quantity of the City's water deficiency entitlement shall be determined for each year during the term of this agreement by the formula

$$E = \frac{(208-D)}{3} \frac{(V)}{208}$$

where E is the City's water deficiency entitlement for such year in acre-feet, D is the number of days during such year that usable river water is available to the City in the San Joaquin River at its pumping plant, and V is the total quantity of water in acre-feet introduced into the City's transmission facilities for delivery within the City's service area as shown on Exhibit "A" attached hereto and by this reference made a part hereof from 8:00 a.m. on December 9, to 8:00 a.m. on July 6: Provided, That  $\frac{V}{208}$  shall not exceed the maximum diversion rate of the City's San Joaquin River diversion facility in acre-feet/day as such facility exists in such year. If in any year D exceeds 208, the City shall have no water deficiency entitlement for such year and the amount of such excess shall offset any water deficiency entitlement of the City for an equal number of days in the next succeeding year or years when D is less than 208.

4. For the purpose of computing the City's water deficiency entitlement, the City at no cost to the State, shall provide:

- (a) A covered facility or facilities wherein

the State can install devices to measure the chloride ion content of water in the San Joaquin River at or in the vicinity of the City's pumping plant,

(b) Sufficient power to operate all necessary measuring devices, and

(c) Sufficient right-of-way to such facilities to enable the State to install, service, remove, and take readings from any such devices.

The size of such facilities and the amount and type of power to be supplied shall be as mutually agreed upon.

The State shall be responsible for the actual measuring of the chloride ion content; all such measurements will be made available to the City.

Such measurements will be made at such intervals as shall be reasonably necessary and as mutually agreed upon.

The City shall have the right, at its expense, to verify the accuracy of the State's measurements and any inaccuracy thus disclosed shall be corrected by the State.

5. Each year during the term of this agreement that the City has a water deficiency entitlement it shall purchase substitute water from a project or projects constructed by an agency or agencies to supply the supplemental water requirements of an area including the City. For the purposes of this agreement, substitute water shall be deemed to have been purchased during the period beginning at 8:00 a.m. on December 9 and ending

at 8:00 a.m. on July 6 of such year and the price paid by the City for substitute water shall be deemed to be the average price per acre-foot paid by the City for all untreated water purchased by it for introduction into its water transmission facilities during said period.

6. Each year during the term of this agreement that the City purchases substitute water for its water deficiency entitlement, the State will pay the City an amount of money computed in accordance with the formula  $M = E (C_w + C_e - 4.90)$  where M is the amount in dollars to be paid by the State, E is the City's water deficiency entitlement for such year determined in the manner provided in Section 3 hereof,  $C_w$  is the amount per acre-foot paid by the City for substitute water delivered to the City as provided in Section 5 hereof, and  $C_e$  is the average amount (if any) per acre-foot paid by the City for electric energy to transport substitute water from the point of delivery thereof to the City to a storage reservoir or treatment plant operated by the City. The State shall pay said amount to the City not later than October 31 of the following year. Such payments are hereby determined to be reasonable costs of the annual maintenance and operation of the State Water Resources Development System and shall be disbursed from the California Water Resources Development Bond Fund pursuant to subsection (b) (1) of Section 12937 of the Water Code.

7. The City, in consideration of the payments by the State herein provided,

releases the State from any liability due to

any change in regimen of flows of water in the Delta or the San Joaquin River and the effects of such changes caused by operation of the State Water Resources Development System: Provided, That nothing herein shall be deemed to be a release of State liability resulting from the utilization by the State of any facilities for removal of drainage water from the San Joaquin Valley.

8. The obligations of the State herein shall not be affected by any modification of the City's facilities to divert river water, except as provided in Section 3 hereof.

9. Nothing herein shall be deemed to be a release or waiver of any right of the City to purchase supplemental water supplies from the State with the priorities established by Water Code Sections 11460, 12201 to 12204 inclusive, and 12931.

10. State agrees that other municipal and industrial entities in the Delta will not be granted compensation for damages caused by the State Water Resources Development System under substantially more favorable terms than those used to Compensate the City hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this agreement by their respective officers thereunto duly authorized on the date first above written.

STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES

By Williamelli  
Director

Approved as to legal form  
and sufficiency:

By J.C. Tourner  
Chief Counsel

CITY OF ANTIOCH

By [Signature]  
Mayor

ATTEST:

Jean Ashbaugh  
City Clerk



SERVICE AREA BOUNDARY

SCALE IN FEET  
2000 4000 6000

CITY OF ANTIOCH  
EXTENT OF SERVICE AREA

**RAW WATER SERVICE AGREEMENT**

Between

**Contra Costa Water District and  
the City of Antioch**

This Agreement is entered into this 5<sup>th</sup> day of July, 2000, between the Contra Costa Water District (hereinafter referred to as "CCWD" or "District"), a county water district organized and existing under Division 12, commencing with Section 30000, of the California Water Code, and (2) the City of Antioch (hereinafter referred to as "City" or "Antioch"), a general law city.

**RECITALS**

1. The City requires a reliable supply of raw water either to fully supply or supplement the City's own raw water supply for treatment and use in the City's service area.

2. Pursuant to CCWD's Regulations, the City has historically purchased raw water from the District as a Raw Water Municipal customer on demand.

3. The District planned, designed and constructed the Los Vaqueros Reservoir and related facilities for the benefit of all raw water customers, both existing and future, within the District's service area, which includes the City.

4. City and its customers benefit from the continuous availability of raw water from the Los Vaqueros Reservoir for emergency and other uses.

5. In order to ensure that the City contributes a fair and equitable portion of annual payments for Los Vaqueros Project revenue bond indebtedness, a minimum level of raw water must be taken and/or paid for by the City annually.

**AGREEMENT**

In recognition of the foregoing Recitals, the parties agree as follows:

1. **EFFECTIVE DATE:** This Agreement shall become effective on the date of the final signature hereon by the duly authorized representatives of each party, which shall be the date written above (the "Effective Date").

2. **DISTRICT REGULATIONS:** Except as otherwise expressly provided herein, CCWD's Code of Regulations ("the Regulations"), including the Municipal Raw Water rates and charges therein and the amendments to the Regulations from time to time adopted by the District's Board of Directors, shall apply to and govern all aspects of the relationships between the District and the City regarding the provision of raw water service.

3. TERM OF AGREEMENT: The term of this Agreement shall commence on the Effective date and shall continue in effect until December 31, 2030, or the retirement of the Los Vaqueros Project revenue bonds, whichever is sooner. Should there be any substantial changes in the terms and conditions of the Los Vaqueros debt service, i.e., a change of plus or minus ten percent or more in annual Los Vaqueros Project debt service, including assumption of any payment responsibility for Los Vaqueros debt service by entities other than the District, either party may initiate re-negotiation of this Agreement. The District shall notify the City in writing at least 60 days in advance of any change in the annual Los Vaqueros Project debt service payments that would meet the re-negotiation initiation criteria.

4. RAW WATER SERVICE: The City will purchase (or pay for) a minimum annual quantity of raw water from the District on a calendar year basis in an amount equal to the full quantity charge for Raw Water Municipal service then in effect as part of the Regulations. Actual water delivered to the City will be measured and billed by the District and paid for by the City on a monthly basis, pursuant to the Regulations. If the minimum annual quantity of water has not been delivered by the end of a calendar year, then the City will pay within 30 days from December 31 for the amount of water that equals the difference between the water taken from the District through December 31 and the minimum annual quantity in effect for that 12 month period. The rate applied to that difference shall be the full quantity charge for Raw Water Municipal service in effect as part of the District's Regulations for the 12 month period in which the minimum annual quantity was not purchased. In years where the District's available water supply is not restricted by the United States Bureau of Reclamation or other regulating entities, this Agreement shall not be deemed to limit in any way the quantity of raw water the City may purchase from the District.

a. Minimum Annual Quantity:

(1) The initial minimum annual quantity to be paid for by the City is five thousand, nine hundred (5,900) acre feet. This minimum annual quantity applies to the 12 month period of January 1 to December 31. If there are not the full 12 months remaining in the year this agreement is executed, then the minimum will be adjusted for that year only based on the number of days remaining through December 31 on a straight-line basis relative to 365 days in a full year (16.164 acre feet per day). Other than the potential initial year adjustment, this minimum shall not be adjusted for three full calendar years from the Effective Date of this agreement. At that time, and each third anniversary thereafter, the minimum annual quantity will be increased from the existing minimum annual quantity by the number of five-eighths inch (5/8 inch) equivalent water service connections added within the City's service area during each three year period.

(2) The adjustment for growth in the number of additional equivalent five-eighths inch connections added to the City's treated water distribution system during the previous three-year period shall be determined using the calculation set forth in Exhibit A. Based on this calculation, the minimum will be increased by 0.2 acre feet per each 5/8 inch equivalent meter connection. For connections added to the City's distribution system that are larger than 5/8 inch, equivalency will be determined at the time of the growth adjustment consistent with Chapter 5.20, Section 5.20.010 of the District's Regulations.

b. Measurement of Water Deliveries

(1) The District will measure its deliveries to the City at the water meters located at the turn-outs from the Contra Costa Canal to the City's facilities.

(2) The District will read the water meters on a monthly basis, pursuant to the Regulations and remit to the City a monthly statement of the quantity of water delivered to the City and the amount of payment due to the District.

(3) The City and the District will attempt to resolve on an ongoing basis any disputes and/or discrepancies concerning quantities measured. Disputes which cannot be resolved administratively shall be resolved under the provisions of Section 8 of this Agreement.

c. Water Shortages:

(1) The District's Amendatory Contract with the United States Bureau of Reclamation (USBR) authorizes the USBR Contracting Officer, from time to time, to declare that a water shortage exists and to reduce annual water allotments by rationing available water among the USBR's various water service contractors. Should such a water shortage and reduced annual apportionment prevent the District from delivering to the City the full amount requested by the City in a given year, then, for that specific year, the minimum annual quantity will be reduced proportionally to the reduction imposed by the District on Antioch as a result of the USBR's supply reduction in the manner shown on Exhibit B. Should the City not take the reduced annual quantity for that year, then the City would pay for water not taken in the manner shown on Exhibit B of this Agreement.

(2) During any period when water shortage provisions pursuant to the District's Water Service contract with the USBR are in effect, the reduction in actual raw water service to the City will be consistent with the formula applied to the District by the USBR, with the apportionment method applied by the District to all Raw Water Municipal customers as determined by the District's Board of Directors, and with the Regulations.

(3) The parties recognize that CCWD may be required by operational constraints from regulatory requirements, emergency conditions, court order or otherwise to curtail some or all of its diversions or deliveries of water. In such circumstance, CCWD shall provide Antioch with as much advance written notice as is practicable before curtailing any or all deliveries of water to Antioch. In the notice, CCWD shall inform Antioch of the reason for curtailing the deliveries, the portion to be curtailed, and the anticipated duration. CCWD shall thereafter keep Antioch continuously informed of the status and extent of the curtailment, and the expected time the deliveries will be curtailed, until the situation is resolved and regular deliveries restored.

d. Non-Central Valley Project Water Use Credit

CCWD will use its good faith efforts in negotiations with the United States Bureau of Reclamation ("Bureau") for CCWD's new Central Valley Project ("CVP") contract, to obtain

what will be called a "Non-CVP Water Use Credit" ("Credit") for the City of Antioch. The Credit would apply to years when the District is not subject to Bureau mandated reductions and the City's annual use of CVP water is less than the minimum level established by this agreement.

The principle to be sought in negotiations with the Bureau is described in Exhibit C.

e. Water Quality

(1) City is solely responsible for ensuring the quality of the treated water that it treats and delivers, and for all aspects of compliance with applicable water quality regulations and standards, including but not limited to dealing with all regulatory agency issues related to disinfection and disinfection by-products, from the point of delivery throughout the City's distribution system.

(2) City shall also be solely responsible to receive and respond to communications from its customers relating to water quality concerns.

f. Water Rights

(1) There is no transfer of water rights from the District to the City as a result of this Agreement.

(2) There is no transfer of water rights from the City to the District as a result of this Agreement.

5. INTEGRATED AGREEMENT: This Agreement represents the entire agreement between the parties. The provisions of CCWD's Regulations, including all rates and charges provided for therein, and as they may from time to time be amended by the District's Board of Directors, shall govern the relationships between the parties except as expressly provided herein. All such exceptions have been determined by CCWD to be necessary, and represent determinations made by the Board of Directors in the exercise of its legislative authority and responsibility.

6. AMENDMENTS: This Agreement may only be amended or modified in writing, signed by the duly authorized representatives of the parties hereto.

7. INDEMNIFICATION:

a. Each party hereto shall defend, indemnify, and hold harmless the other party, and its officers, directors, employees, and agents, from and against any loss, cost, or expense, including reasonable attorneys' fees, where such loss, cost, or expense is caused, by the sole negligence or willful misconduct of the indemnifying party, or its officers, directors, employees, or agents, or by a breach of any obligation of this Agreement by the indemnifying party.

b. Where such loss, cost, or expense is caused, or claimed or alleged to be caused, by the negligence or willful misconduct of both parties, or their officers, directors,

employees, or agents, or by a breach of any obligation of this Agreement by both parties, each party shall defend, indemnify, and hold harmless the other party in proportion to their proportionate fault as determined by mutual agreement or by arbitration or judicial decree.

## 8. DISPUTE RESOLUTION:

a. **Mediation:** The parties agree to first submit any dispute arising out of or in connection with this Agreement to a mutually acceptable professional mediator and to negotiate in good faith toward an agreement with respect to the dispute. Either party within 30 days of providing written notice may initiate mediation. Either party within 60 days of having participated in the first mediation session may provide notice of termination of mediation and request Binding Arbitration. If the dispute is about financial matters, the disputed funds will be deposited in an interest bearing escrow account upon notice of arbitration.

b. **Binding Arbitration:** Should the parties be unable or unwilling to resolve their dispute through the mediation process provided in Section 8.a above, either party may give written notice to the other party and elect to have the matter resolved by final and binding arbitration in accordance with the rules and procedures of the arbitrator selected in accordance with this Section 8.b (the "Arbitrator"). The party seeking arbitration shall set forth in its notice the particulars of its claims and shall state with specificity the issue(s) to be submitted to arbitration and the relief sought. Within thirty (30) days of the date of the election to arbitrate, the parties shall select a single, mutually agreeable arbitrator. If the parties are unable to agree, they shall request that the Judicial Arbitration and Mediation Service, Inc. ("JAMS") if such entity is then in existence, appoint an Arbitrator in accordance with then-current procedures. The arbitrator shall be a retired judge of the Superior Court of California, or a justice of the Court of Appeal of California, or a retired judge of the United States District Court sitting in California. If JAMS is not in existence, the Presiding Judge of the Contra Costa Consolidated Court of Unlimited Jurisdiction shall appoint an Arbitrator in accordance with its then-current procedures. The rules and procedures for arbitration shall be as follows:

(1) The Arbitrator shall be selected and arbitration shall be conducted within a reasonable time, but in no event later than ninety (90) days after the date upon which the demand for arbitration is filed.

(2) The arbitration proceedings shall be conducted in Contra Costa County, California, at a time and location as agreed to in writing by the parties, or in absence of an agreement, as designated by the Arbitrator.

(3) Subject to the same rules pertaining to privileged communications and attorney work product that would apply if the proceeding was filed in the courts of the State of California, the Arbitrator shall have the authority to make all decisions regarding the relevance, materiality, and admissibility of all evidence offered at the arbitration.

(4) The Arbitrator may issue any remedy or relief, whether provisional or permanent, including but not limited to a default judgment, which the parties could have obtained under the law applicable in courts of the State of California under the same factual

circumstances, and the Arbitrator shall follow and otherwise employ the standards for issuing such relief as defined by California law; provided, however, that the Arbitrator shall have no authority or jurisdiction to enter an award for consequential, special, exemplary or punitive damages. The Arbitrator may also grant such ancillary relief as is necessary to make effective the award.

(5) Both parties may conduct discovery as if the matter were pending before a Superior Court of the State of California and the Arbitrator shall have the full power of the State of California to issue and enforce subpoenas and to award sanctions. Either party shall have the right to demand in writing that the other party provide a list of witnesses it intends to call at the hearing, designating which witnesses will be called as expert witnesses, and a list of documents it intends to introduce at hearing. The responding party's list(s) shall be served personally or by registered or certified mail on the requesting party, with a copy to the Arbitrator, at least thirty (30) days before the hearing.

(6) Each party shall have the right to be represented by counsel.

(7) The Arbitrator shall be paid a per diem or hourly charge as established at the time of appointment. Each party shall bear its own attorneys' fees and costs in presenting its case. All other actual costs of conducting the arbitration, including without limitation, the administrative fee and the Arbitrator's compensation, shall be paid by the party not prevailing, as determined by the arbitrator.

(8) This arbitration clause shall be interpreted under the arbitration laws of the State of California and not the Federal Arbitration Act, 9 U.S.C. § 1. Except as otherwise provided in this Agreement, any motion, application, complaint or proceeding arising out of or relating to this arbitration clause shall be determined in accordance with the law of the State of California.

(9) Unless otherwise provided in this Agreement or otherwise agreed in writing, the parties shall continue to perform their respective obligations under this Agreement during the pendency of arbitration proceedings.

(10) Except as modified or stated to the contrary in this Section 8, the rules and procedures of the Arbitrator in effect at the time of the arbitration shall apply to the arbitration procedure.

9. **FURTHER ASSURANCES.** In addition to the acts specifically required in this Agreement, the parties hereto agree to perform or cause to be performed any and all such further acts and to provide such further assurances as may be reasonably necessary to effect the transactions contemplated hereby, including the execution, delivery and, if applicable, filing of such additional documents and instruments as may be reasonably requested by such other party and/or be reasonably necessary to carry out the intent of this Agreement.

10. **GOVERNING LAW:** California law shall govern the interpretation and implementation of this Agreement, and the rights of the parties hereunder shall be determined in accordance with California law.

11. NOTICES: Any provision of this Agreement requiring notice shall be deemed to have been satisfied if notice is provided in writing by first class United States Mail, addressed as follows:

a. For the District:

General Manager  
Contra Costa Water District  
P.O. Box H20  
Concord, California 94524-2099

b. For the City

City Manager  
City of Antioch  
P.O. Box 5007  
Antioch, CA 94531-5007

12. MISCELLANEOUS PROVISIONS:

(a) Joint Preparation. Preparation of this Agreement has been a joint effort of the parties and this Agreement shall not be construed more severely against one of the parties than against the other.

(b) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors and assigns.

(c) Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

(d) Invalidity. The invalidity of one or more phrases, sentences, clauses, sections or paragraphs contained in this Agreement shall not affect the validity of the remaining portions of this Agreement so long as the material purposes of this Agreement can be determined and remain effectuated.

(e) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their respective behalf, by their respective representatives duly authorized, all as of the day and year first above written.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their respective behalf, by their respective representatives duly authorized, all as of the day and year first above written.

**CITY OF ANTIOCH**

**CONTRA COSTA WATER DISTRICT**

By: Mary H. Rocha  
Mary H. Rocha, Mayor

By: Joseph L. Campbell  
Joseph L. Campbell, President

ATTEST:

ATTEST:

L. Jylene Martin  
L. Jylene Martin, City Clerk

Dianne R. Aicardi  
Dianne R. Aicardi, Secretary

Approved as to Form:

Approved as to Form:

William R. Galstan  
City Attorney William R. Galstan

Carl P. Nelson  
District Legal Counsel

Exhibit A

**Growth Adjustment Calculation**

a) Peak demand per 5/8-inch equivalent connection = 912 gallons per day

b) Los Vaqueros Debt Service Peak Capacity Factor = 0.2

Annualized Peak Capacity per 5/8 inch equivalent meter connection =  $912 \times 365$  days = 332,880 gallons

332,880 gallons = 1.02 acre feet

1.02 acre feet  $\times$  0.2 LV Debt Service Factor = 0.20 acre feet Growth Adjustment per 5/8 inch equivalent meter connection

**Exhibit B**

**Raw Water Service  
Adjustment of Annual Minimum in Years  
Subject to Water Shortage Provisions**

**Example:** Bureau announces reduced Central Valley Project deliveries; District apportions available water to its customers.

**Assumptions:**

- City's Minimum annual quantity pursuant to this Agreement is 5,900 acre feet
- Shortage provisions result in a 25% reduction in District Water supply available for delivery to the City
- Recalculated Minimum annual quantity applicable in the example shortage year is 5,900 x 0.75 or 4,425 acre feet
- Assume further that City receives 4,000 acre feet and pays all rates and charges monthly
- Required Payment by the City will be the amount of the quantity charge for the 425 acre feet not received (4,425 revised minimum, less 4,000 acre feet taken and paid for), which is due to the District by January 31 of the following calendar year.

## Exhibit C

**Negotiation Principles for Accounting for Antioch Water Rights Use**

CCWD will, in its negotiations with the U.S. Bureau of Reclamation toward the renewal of its contract with the Central Valley Project ("CVP"), seek to have the following principle, at a minimum, included in the contract:

For any contract year (as defined in CCWD's CVP contract) in which the City uses its river water rights to the benefit of the Central Valley Project (CVP) (that is, in a way that augments the CVP's ability to put to beneficial use additional CVP water for any of the authorized purposes of the CVP, including but not limited to environmental enhancement, salinity control, storage, instream flow or consumptive use), in the calculations of their respective historical uses, CCWD and the City shall receive a credit in the quantity of CVP water under the minimum annual quantity (determined in accordance with section 4.a of this Agreement) that the City and CCWD chose to forego.

For example, if the City uses 4,000 acre feet of CVP water in a year in which the minimum annual quantity is 5,900 acre feet, (and thus chooses to forego 1,900 acre-feet which is available and could be taken under the City's water rights), and CCWD either does not schedule (request delivery of) the 1,900 acre-foot difference from the CVP or is able to reschedule its allocation to "return" the 1,900 acre foot difference to the CVP, and if in that same period the CVP has allocated 100% deliveries to CCWD, the method for calculation of CCWD's historical annual use shall include the 1,900 acre feet thus made available to the CVP for other beneficial uses.

The intent of this principle is to provide both CCWD and the City with additional quantities of water (1,900 acre feet in the above example) in their respective historical use bases. If CCWD was to succeed in its negotiation and to obtain a new CVP contract containing this principle (or a principle more protective of CCWD and the City), this would benefit both CCWD and the City in a subsequent year when the Bureau curtailed deliveries to CCWD as a fixed percentage of historical use. (In the event that the City takes delivery of more than the minimum quantity of CVP water from CCWD in a contract year (as defined in CCWD's CVP contract), CCWD will use the entire amount of water delivered in the historical use calculation for the purpose of applying the CVP's allocation to deliveries available to the City.) The parties recognize that it may not be possible for CCWD to obtain a new CVP contract containing the above principle (or a principle more protective of CCWD and the City).

RESOLUTION NO. 2001/ 135

RESOLUTION OF THE CITY COUNCIL OF CITY OF ANTIOCH  
APPROVING TREATED WATER SERVICE AGREEMENT WITH  
CONTRA COSTA WATER DISTRICT

**BE IT RESOLVED** that the Mayor is hereby authorized and directed to sign that certain Treated Water Service Agreement, attached hereto as Exhibit "A", to supplement City's existing treated water capacity on a long-term basis. A true and correct copy of which is on file in the Office of the City Clerk.

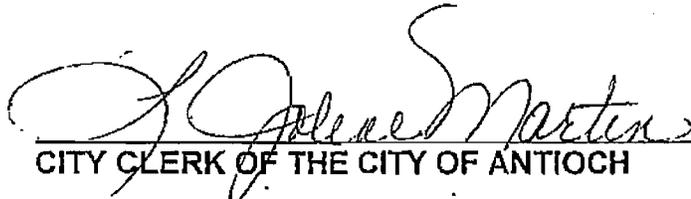
\* \* \* \* \*

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 13<sup>th</sup> day of November, 2001, by the following vote:

**AYES:** Davis, Kalinowski, Conley, Simonsen, and Mayor Freitas

**NOES:** None

**ABSENT:** None

  
CITY CLERK OF THE CITY OF ANTIOCH



**CONTRA COSTA  
WATER DISTRICT**

1331 Concord Avenue  
P.O. Box H20  
Concord, CA 94524  
(925) 688-8000 FAX (925) 688-8122

December 10, 2001

**Directors**  
James Pretti  
*President*

Noble O. Elcenko, D.C.  
*Vice President*

Elizabeth R. Anello  
Bette Boatman  
Joseph L. Campbell

Walter J. Bishop  
*General Manager*

Mr. Phil Harrington  
Deputy Director of Public Works  
1201 West 4th Street  
Antioch, CA 94509

**Subject: Executed Long-Term Treated Water Service Agreement**

Dear Mr. Harrington: *Phil*

Attached are the two City's originals of the Long-Term Treated Water Service Agreement that was executed on December 5, 2001 by the District's Board President. The agreement was approved unanimously by our Board of Directors on December 5, 2001. Two copies of our Board's resolution are also enclosed.

Sincerely,

Karen S. Ustin  
Director of Finance

/KSU

Attachments

**RESOLUTION NO. 01-34**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CONTRA COSTA  
WATER DISTRICT APPROVING A LONG-TERM TREATED WATER SERVICE  
AGREEMENT WITH THE CITY OF ANTIOCH**

WHEREAS, the City of Antioch (City) requires a reliable supply of treated water for use within the City's service area to supplement its existing treated water capacity on a long-term basis; and

WHEREAS, pursuant to the Contra Costa Water District's (District) Regulations, the City of Antioch has historically purchased raw water from the District as a Raw Water Municipal customer on demand; and

WHEREAS, the City and the District entered into an interim treated water supply agreement in May 2001 on a capacity rental basis from the Randall-Bold Water Treatment Plant (RBWTP) while the City evaluated its supplemental treated water capacity alternatives; and

WHEREAS, the District, as part of a Joint Powers Authority with the Diablo Water District (DWD) planned, designed, constructed and financed the Randall-Bold Water Treatment Plant (RBWTP) and related facilities to serve growth in the District's Treated Water Service Area as well as potentially to serve treated water on a wholesale basis in East Contra Costa County; and

WHEREAS, the District's ownership in the RBWTP is 25 million gallons per day (MGD) of treated water production capacity, which is 62.5% of the total plant capacity; and

WHEREAS, a portion of the District's share of RBWTP capacity is not anticipated to be required to supply treated water in the District's Treated Water Service Area within a ten year planning horizon, so there is sufficient plant capacity to provide up to 10 MGD of treated water to the City of Antioch; and

WHEREAS, the District is constructing a Multi-Purpose Pipeline (MPP) project that may be used to convey treated water to a point of interconnection with the City's distribution system; and

WHEREAS, the MPP pumps, originally designed exclusive of delivering treated water to the City, will be re-designed to provide for up to 10 MGD of treated water deliveries to the City; and

WHEREAS, the City and the District have found it in their best interests to enter into this Agreement to supplement the City's existing water treatment capacity from the District's portion of the RBWTP on a capacity right purchase basis for up to 10 MGD via an interconnection between the District's MPP and the City's Hillcrest Booster Pumping Station.

NOW, THEREFORE BE IT RESOLVED by the Board of Directors of Contra Costa Water District that the President of the Board of Directors be authorized and directed to execute, for and on behalf of this District, an Agreement (Exhibit A) with the City of Antioch, in a form approved by the general counsel.

BE IT FURTHER RESOLVED that, prior to the execution of said Agreement, the General Manager is directed to notify the Board by letter or subsequent agenda item of any revisions that materially change the provisions of the form of such Agreement presented to the Board of Directors on December 5, 2001.

BE IT FURTHER RESOLVED that the Board authorizes the General Manager or his designee to file a Notice of Exemption with the County of Contra Costa in accordance with applicable law and regulations.

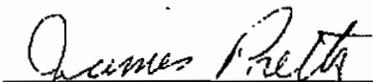
\*\*\*\*\*

The foregoing resolution was duly and regularly adopted at a meeting thereof held on December 5, 2001 by the Board of Directors of Contra Costa Water District, by the following vote of the Board.

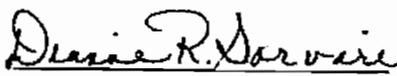
AYES: Boatmun, Elcenko, Anello, Campbell, and Pretti

NOES: None

ABSENT: None

  
James Pretti, President  
Contra Costa Water District

ATTEST:

  
Dianne R. Sorvari,  
District Secretary

## **TREATED WATER SERVICE AGREEMENT**

### **Between Contra Costa Water District and the City of Antioch**

This Agreement is entered into this 5th day of December, 2001, between the Contra Costa Water District (hereinafter referred to as "CCWD" or "District"), a county water district organized and existing under Division 12, commencing with Section 30000, of the California Water Code, and (2) the City of Antioch (hereinafter referred to as "City" or "Antioch"), a general law city.

### **RECITALS**

1. The City requires a reliable supply of treated water for use within the City's service area to supplement its existing treated water capacity on a long-term basis.
2. Pursuant to CCWD's Regulations, the City has historically purchased raw water from the District as a Raw Water Municipal customer on demand.
3. The City and the District entered into an interim treated water supply agreement in May 2001 on a capacity rental basis from the Randall-Bold Water Treatment Plant (RBWTP) while the City evaluated its supplemental treated water capacity alternatives.
4. The District, as part of a Joint Powers Authority with the Diablo Water District, planned, designed, constructed and financed the Randall-Bold Water Treatment Plant (RBWTP) and related facilities to serve growth in the District's Treated Water Service Area as well as potentially to serve treated water on a wholesale basis in East Contra Costa County.
5. The District's ownership in the RBWTP is 25 million gallons per day (MGD) of treated water production capacity, which is 62.5% of the total plant capacity.
6. A portion of the District's share of RBWTP capacity is not anticipated to be required to supply treated water in the District's Treated Water Service Area within a ten year planning horizon, so there is sufficient plant capacity to provide up to ten MGD of treated water to the City of Antioch.
7. The District is constructing a Multi-Purpose Pipeline (MPP) project that may be used to convey treated water to a point of interconnection with the City's distribution system.
8. The MPP pumps, originally designed exclusive of delivering treated water to the City, will be re-designed to provide for up to ten MGD of treated water deliveries to the City.
9. Antioch and the District have found it in their best interests to enter into this Agreement to supplement the City's existing water treatment capacity from the District's portion of the RBWTP on a capacity right purchase basis for up to ten MGD via an interconnection between the District's MPP and the City's Hillcrest Booster Pumping Station.

## AGREEMENT

In recognition of the foregoing Recitals, the parties agree as follows:

1. EFFECTIVE DATE: This Agreement shall become effective on the date of the final signature hereon by the duly authorized representatives of each party, which shall be the date written above (the "Effective Date").

2. DISTRICT REGULATIONS: Except as otherwise expressly provided herein, CCWD's Code of Regulations ("the Regulations"), including the Municipal Raw Water rates and charges therein and the amendments to the Regulations from time to time adopted by the District's Board of Directors, shall apply to and govern all aspects of the relationship between the District and the City regarding the raw water component of treated water service.

3. TERM OF AGREEMENT: The term of this Agreement shall commence on the Effective Date and shall continue in effect until either party terminates the agreement. Should the District elect to terminate the agreement, sufficient notice shall be provided to the City so that the City may secure sufficient alternative treated water capacity to meet its delivery requirements prior to agreement termination.

4. TREATED WATER SERVICE:

A. The District shall convey and treat water from one or more of the District's various water supplies at the 40 million gallon per day Randall-Bold Water Treatment Plant (RBWTP) using CCWD's 25 mgd share (rather than DWD's 15 mgd share) of the capacity of that plant. It is the intent of the District to provide treated water to Antioch in accordance with the terms of Article 7 of the Joint Powers Agreement (JPA) dated June 6, 1989 between CCWD and DWD. The District may also elect, from time to time, to deliver water to the City from its Bollman Water Treatment Plant. Should treated water be delivered from the Bollman Water Treatment Plant, for payment purposes, the water will be paid for as though it had been produced and delivered from the RBWTP.

B. The District shall deliver treated water through its Multi-Purpose Pipeline to an interconnection with the City's Hillcrest Booster Pump Station (HBPS). The District will design and construct the interconnection, and upon completion and final payment by the City convey ownership from the discharge side of the backflow prevention device to the HBPS to the City, which will be responsible for the operation and maintenance of its portion of the interconnection. The District will own, operate and maintain the interconnection from the MPP to the discharge side of the backflow prevention device. The City shall review and sign-off on the District's interconnection design and shall inspect the interconnection during construction as the City deems appropriate.

- C. To ensure that the District can meet all demands from its portion of the Randall-Bold Water Treatment Plant, the City shall purchase capacity rights of up to 10 MGD, or 6,944 gallons per minute, of treated water, pursuant to subsections 6. A., 6. B., and 6. C. of this Agreement.
- D. In the event of an emergency, the City may request additional treated water deliveries, which would be subject to the approval of the District.
- i. For the purposes of this subparagraph, "emergency" shall mean a condition caused by a sudden occurrence or event such as an earthquake, flood, severe fire or storm, unexpected and extended power or equipment outage, significant hazardous material spill or leak, or other unforeseen and unanticipated event which significantly impairs the City's water treatment and delivery capacity.
  - ii. In the event of an emergency, as defined above, the City shall notify the District's 24-hour Emergency Operator at (925) 625-6524 of the nature and extent of the emergency, and of the amount and timing of the City's need for water. The City shall confirm this request for emergency assistance in writing within one working day. The District shall determine if it has capacity available to respond to the City's request and shall notify the City of its response as soon as possible following the initial verbal request. The District's approval of any such City request shall not be unreasonably withheld. To the extent that the District is able to provide water to the City in response to such a request for emergency assistance, it shall do so solely for the duration of the emergency.
- E. Although it is not the District's intent to interrupt or discontinue treated water deliveries to the City, CCWD may temporarily reduce the quantities of treated water delivered, or may discontinue the delivery of treated water to the City, to enable CCWD to perform necessary inspection, repair, or replacement of any portion of the facilities that are then used to divert, convey, treat and deliver the water confirmed for use by the City. In the event of a reduction in deliveries of treated water, the City, where practical, shall receive a share of the reduced quantities based on its proportionate share of water treatment capacity rights at the RBWTP relative to the District's total rated water treatment plant capacity. CCWD shall provide the City with as much advance notice as is practicable of any such discontinuance of, or reduction in the delivery of water to the City. CCWD shall not be liable for failure to deliver water to the City if such failure is caused by any reason beyond the reasonable control of CCWD. Should CCWD not be able to deliver treated water to the City from the MPP for any reason, the City may continue to take treated water from the CCWD portion of the RBWTP through its emergency connection with Diablo Water District. In the event that water cannot be delivered from the RBWTP, but the MPP is operational then the District shall, if practical, serve treated water to the City from its Bollman water treatment plant via the MPP.

F. Measurement of Water Deliveries:

- i. The District will measure its treated water deliveries to the City at a water meter installed between the District's MPP and the City's distribution system for the purpose of determining quantities of raw water to be billed under the District's raw water regulations because raw water is a component of treated water delivered. Measurements at this meter will also be used to determine the proportional share of MPP pumping costs to be paid by the City.
- ii. The quantity of water treated at the Randall-Bold Water Treatment Plant for the purposes of this Agreement shall be the quantity measured at the pipeline directly connecting Antioch to the District's Multi-Purpose Pipeline, plus plant losses as calculated in subparagraphs a. and b. below.
  - a. Any water losses due to the treatment process will be apportioned annually based on Antioch's proportion of total flow through the RBWTP. Loss in the Treatment Plant is defined as the difference between water measured at the intake meter and water measured at the effluent meter. Antioch's portion of this loss is the ratio of the quantity measured at the intertie meter and adjusted for MPP system losses to the quantity measured at the effluent meter. Loss will be determined within ninety (90) days of the close of the fiscal year and included in the payment reconciliation called for in Section 8. B. iii.
  - b. The estimated quantity of losses and payment for losses occurring between the Randall-Bold Water Treatment Plant and the intertie will be accounted for based on the total amount of treated water leaving the RBWTP via the MPP less the total amount of treated water delivered to all users of treated water from the MPP less the flow level typically retained in the MPP.
- iii. The treated water purchased by the City pursuant to this agreement shall also be included as part of the City's minimum annual quantity to be taken and/or paid for by the City in accordance with a Raw Water Service Agreement dated July 5, 2000 between the District and the City.
- iv. The District will remit to the City a monthly statement of the quantity of water delivered to the City and the amount of payment due to the District.

5. PRINCIPLES OF CAPITAL COST REIMBURSEMENT:

- A. The City may purchase capacity rights to the RBWTP of up to 10 MGD. The amount to be paid per MGD of capacity right purchased shall be based on the avoided costs of the City not expanding its existing water treatment plant by 10 MGD. This avoided cost per MGD shall be determined by a third party civil engineer jointly selected and paid by the City and the District. The initial capacity right purchase shall be the amount of actual peak day treated water use from the RBWTP under the Interim

Treated Water Service Agreement at the time of initial capacity right purchase. Additional capacity rights up to 10 MGD will be purchased from the time of initial capacity right purchase as new meters are issued by the City for connection to its treated water distribution system.

- B. If and when the City upgrades, changes or modifies its existing water treatment plant specifically to meet future mandated regulatory requirements that are currently met by the existing capabilities of the District's Randall-Bold Water Treatment Plant, such as disinfection improvements, coagulation, filter upgrades, etc., the avoided costs used to determine the capacity right purchase price for the RBWTP shall be re-determined. Upgrades to the City's water treatment plant to meet future mandated regulatory requirements that also require upgrades to the RBWTP shall not result in re-determination of avoided costs.
- C. If and when the District upgrades, changes or modifies its treatment processes at the RBWTP specifically to meet future mandated regulatory requirements, such as disinfection improvements, coagulation, filter upgrades, etc., the City shall pay its proportionate share based on its capacity rights.
- D. The City shall pay the incremental capital cost to increase the MPP pump capacity by 10 MGD to accommodate deliveries of up to 10 MGD of treated water to the City. The estimated incremental capital cost as of October 2001 is \$250 thousand.
- E. The City will pay the full costs of design and construction of the interconnection between the MPP and the City's HBPS. Reimbursement to the District shall be based on actual costs.
- F. In the event it becomes necessary to replace a major capital structure at the RBWTP, or to expand the RBWTP, the City shall be consulted in advance of the replacement and/or expansion, and agreement will be reached as to the scope of the project, the proportionate share of costs to be allocated to the City, and the timing for repayment. The key principle for reaching such an agreement is that the City's share of repayment shall be proportionate to the benefits received from the replacement of major capital structures and/or expansions at the RBWTP.

6. CAPITAL COST PAYMENT:

- A. Payment for the initial capacity right purchase at the RBWTP shall be due within 30 days of substantial completion of the MPP interconnection to the City's HBPS. The payment amount will be determined through an avoided cost estimate per MGD to expand capacity at the City's water treatment plant as determined by a mutually selected and compensated third party civil engineer.
- B. Payment for additional capacity rights beyond the initial capacity right purchase, up to 10 MGD total, shall be paid monthly at a rate per equivalent 5/8-inch meter issued by the City for interconnection to the City's distribution system for that month. The

rate will be based on the avoided cost per MGD of treatment capacity determined by a mutually selected and compensated third party civil engineer.

- C. The amount to be paid to the District for each equivalent 5/8-inch meter shall be the avoided cost per MGD of treatment determined by the mutually selected and compensated third party civil engineer divided by 714. This represents an assumed peak demand per equivalent 5/8-inch meter of 1,400 gallons per day.
- D. Should the peak daily water use by the City at any time exceed the amount of capacity right purchased, other than for emergency purposes as described in Section 4. D. above, the District will notify the City of the exceedence within 60 days, and the City shall remit payment for the additional capacity rights, which shall increase the City's capacity rights to that level, based on the amount of the exceedence.
- E. If and when the City upgrades, changes or modifies its existing water treatment plant to meet future mandated regulatory requirements already met at the existing RBWTP, as discussed in section 5. B., above, the incremental avoided costs shall be added to the avoided cost per MGD for capacity rights already purchased by the City and for future capacity right purchases up to a total of 10 MGD. The incremental avoided costs shall be the difference between the avoided costs prior to the upgrade, change or modification and the avoided costs as subsequently determined. The total amount for the existing capacity rights shall be paid at the time of substantial completion of the City's upgrades, changes or modifications. The amount for future capacity right payments would be added to the charge per equivalent 5/8-inch meter issued by the City remitted monthly to the District.
- F. If and when the District upgrades, changes or modifies its treatment processes at the RBWTP to meet future mandated regulatory requirements, as described in section 5. F. above, the City will pay its proportionate share based on its capacity rights. The amount to be paid for existing capacity rights shall be paid upon substantial completion of the District's upgrades, changes or modifications. The amount for future capacity right payments would be added to the charge per equivalent 5/8-inch meter issued by the City remitted monthly to the District.
- G. The City shall pay the incremental costs of \$250 thousand to increase the MPP pump capacity by 10 MGD to accommodate deliveries of up to 10 MGD of treated water to the City. This shall be paid within 30 days of invoicing by the District following substantial completion of the MPP pump installation.
- H. The City will pay the full costs of design and construction of the interconnection between the MPP and the City's HBPS. Reimbursement to the District shall be based on actual costs. A deposit in the amount of the District's Engineer's Estimate for all design and construction to be done by the District shall be paid as a deposit by the City within 30 days of receiving the Engineer's Estimate. Following project close-out, the District will, within 30 days, either remit a refund to the City if actual costs are less than the amount deposited, or issue an invoice to be paid by the City within 30 days if actual costs exceed the deposit.

7. PRINCIPLES OF OPERATING AND MAINTENANCE COST REIMBURSEMENT

- A. Rates for treated water service, shall reimburse CCWD for actual operating, maintenance, and administrative costs of treating water at the Randall-Bold Water Treatment Plant as well as a proportionate share of treatment plant maintenance projects (e.g., granulated activated charcoal media replacement, chemical feed system rehabilitation, etc.).
- B. Rates for treated water service shall reimburse CCWD for the costs of delivering treated water to Antioch via the MPP.
- C. If, after five years of treated water deliveries being available to the City from the RBWTP via the MPP, the City determines that the actual operating, maintenance, and other reimbursements are not consistent with the City's economic interests, the City may terminate this agreement at any point thereafter.

8. TREATED WATER SERVICE PAYMENTS: Unless other financial arrangements are made, CCWD shall invoice and Antioch shall pay, on a monthly basis, the following rates and charges for the delivery and treatment of water:

A. Raw Water rates and charges:

- i. The wholesale municipal raw water rate as set forth in the District's Code of Regulations Section 5.20.010, as amended from time to time by the District's Board of Directors.
- ii. For each added or enlarged meter, the facilities component of the wholesale municipal rate in the amount specified in the applicable table in Section 5.20.010 of the District's Code of Regulations, as amended from time to time by the District's Board of Directors.

B. Charges for treated water service:

- i. The City shall pay a proportionate share of operating, maintenance and administrative costs of treating each unit of water supplied to the City from the Randall-Bold Water Treatment Plant. These costs per unit of treated water shall be estimated based upon each fiscal year's budget for the RBWTP and the estimated amount of water to be treated for the City as a percentage of the total amount of water to be treated by the District's portion of the RBWTP.
- ii. Costs to pump treated water from the RBWTP to the City through the MPP shall be based on the City's proportionate share of all treated water deliveries through the MPP. The cost per million gallons pumped shall be estimated at the beginning of each fiscal year and trued up based on actual costs at fiscal year end.

- iii. Within ninety days of the end of each fiscal year, a cost per unit true-up will be completed to determine the City's share of actual costs for treated water from the RBWTP and for the costs of delivering treated water from the MPP for the completed fiscal year. If the City has paid more than its proportionate share of the actual costs, a credit will be issued. If the City has paid less than its proportionate share of the actual costs, an invoice will be presented by the District for payment within 30 days.
- iv. The City shall provide estimates of monthly water use by April 1 for the fiscal year beginning the following July 1.
- v. The City shall be invited to participate in the review process for each year's proposed RBWTP budget and in review of the annual cost true-up process.

9. WATER QUALITY:

- A. CCWD is solely responsible for ensuring the quality of water, and for all aspects of compliance with applicable water quality regulations and standards, up to the point the water leaves the discharge side of the backflow prevention device at the MPP interconnection.
- B. To ensure that water quality standards are maintained, the City shall take minimum flows through the MPP interconnection of 100 gallons per minute (gpm). In addition, a blowoff valve will be designed and built as part of the interconnection to be owned and operated by the City.

Antioch is solely responsible for ensuring water quality, and for all aspects of compliance with applicable water quality regulations and standards from the point of delivery at the discharge side of the backflow prevention device at the MPP interconnection throughout the Antioch distribution system. Subject to the preceding provisions of this paragraph, Antioch shall be responsible to receive and respond to communications from customers within the City of Antioch related to water quality concerns.

10. WATER RIGHTS:

- A. There is no transfer of water rights from the District to the City as a result of this Agreement.
- B. There is no transfer of water rights from the City to the District as a result of this Agreement.

11. RESERVATION OF CAPACITY:

- A. Pursuant to Section 6., above the City will generally pay for capacity rights at the RBWTP as growth occurs up to a maximum of 10 MGD. The District shall reserve 10 MGD of capacity at the RBWTP for ultimate purchase and use by the City.

- B. Should the City determine at any time after agreement execution that the City does not need to purchase the full amount of reserved capacity of 10 MGD from the RBWTP, the City shall notify the District in writing of its intent to cap the City's capacity rights at a specified amount. This amount shall be no less than the highest peak day of actual treated water deliveries from the District. The modified reserve capacity amount shall be incorporated into this agreement by amendment. Should the capacity right purchased be exceeded, additional payments shall be made in accordance with Section 6. D. of this agreement.
- C. Prior to planning and design of any expansion of the RBWTP, the District shall notify the City in writing of such planned expansion and request that the City reconfirm its intent ultimately to take 10 MGD or some lesser amount of RBWTP treated water capacity. The City shall respond to such a request within 60 days of receiving the notification. If the City elects to cap its reserved capacity at less than 10 MGD, and the District has expanded the RBWTP after reconfirming that the City plans to ultimately purchase 10 MGD of capacity rights, the District and the City will determine an appropriate amount to be paid by the City to the District for the capacity under 10 MGD not taken by the City. Such payment shall be the subject of a separate agreement, and if agreement cannot be reached between the parties, the amount to be compensated to the District by the City shall be subject to dispute resolution as provided for in Section 15. of this agreement.
- D. If the District and the City mutually determine that the District may defer expansion of the RBWTP because the City does not require its full 10 MGD allotment of RBWTP capacity at a given point in time, the City will continue to maintain reserved capacity of 10 MGD once the plant is expanded if the City has confirmed in writing its intent ultimately to purchase the full 10 MGD of reserved capacity.

12. INTEGRATED AGREEMENT: This Agreement represents the entire agreement between the parties concerning long term treated water service. The Raw Water Service Agreement dated July 5, 2000 between the District and the City remains in full force and effect except that the treated water purchased by the City pursuant to this Agreement shall also be included as part of the City's minimum annual quantity to be taken and/or paid for by the City for purposes of the Raw Water Service Agreement. Except as expressly provided in this Agreement or in the Raw Water Service Agreement, the provisions of CCWD's Regulations, including all rates and charges provided for therein, and as they may from time to time be amended by the District's Board of Directors, shall govern the relationships between the parties. All such exceptions have been determined by CCWD to be necessary, and represent determinations made by the Board of Directors in the exercise of its legislative authority and responsibility.

13. AMENDMENTS: This Agreement may only be amended or modified in writing, signed by the duly authorized representatives of the parties hereto.

#### 14. INDEMNIFICATION:

- A. Each party hereto shall defend, indemnify, and hold harmless the other party, and its officers, directors, employees, and agents, from and against any loss, cost, or expense, including reasonable attorneys' fees, where such loss, cost, or expense is caused, by the sole negligence or willful misconduct of the indemnifying party, or its officers, directors, employees, or agents, or by a breach of any obligation of this Agreement by the indemnifying party.
- B. Where such loss, cost, or expense is caused, or claimed or alleged to be caused, by the negligence or willful misconduct of both parties, or their officers, directors, employees, or agents, or by a breach of any obligation of this Agreement by both parties, each party shall defend, indemnify, and hold harmless the other party in proportion to their proportionate fault as determined by mutual agreement or by arbitration or judicial decree.

#### 15. DISPUTE RESOLUTION:

- A. Mediation: The parties agree to first submit any dispute arising out of or in connection with this Agreement to a mutually acceptable professional mediator and to negotiate in good faith toward an agreement with respect to the dispute. Either party within 30 days of providing written notice may initiate mediation. Either party within 60 days of having participated in the first mediation session may provide notice of termination of mediation and request Binding Arbitration.
- B. Binding Arbitration: Should the parties be unable or unwilling to resolve their dispute through the mediation process provided in Section 15.A above, either party may give written notice to the other party and elect to have the matter resolved by final and binding arbitration in accordance with the rules and procedures of the arbitrator selected in accordance with this Section. The party seeking arbitration shall set forth in its notice the particulars of its claims and shall state with specificity the issue(s) to be submitted to arbitration and the relief sought. Within thirty (30) days of the date of the election to arbitrate, the parties shall select a single, mutually agreeable arbitrator. If the parties are unable to agree, they shall request that the Judicial Arbitration and Mediation Service, Inc. ("JAMS") if such entity is then in existence, appoint an Arbitrator in accordance with then-current procedures. The arbitrator shall be a retired judge of the Superior Court of California, or a justice of the Court of Appeal of California, or a retired judge of the United States District Court sitting in California. If JAMS is not in existence, the Presiding Judge of the Contra Costa Superior Court (Unlimited Jurisdiction) shall appoint an Arbitrator in accordance with its then-current procedures. The rules and procedures for arbitration shall be as follows:
  - i. The Arbitrator shall be selected and arbitration shall be conducted within a reasonable time, but in no event later than ninety (90) days after the date upon which the demand for arbitration is filed.

- ii. The arbitration proceedings shall be conducted in Contra Costa County, California, at a time and location as agreed to in writing by the parties, or in absence of an agreement, as designated by the Arbitrator.
- iii. Subject to the same rules pertaining to privileged communications and attorney work product that would apply if the proceeding was filed in the courts of the State of California, the Arbitrator shall have the authority to make all decisions regarding the relevance, materiality, and admissibility of all evidence offered at the arbitration.
- iv. The Arbitrator may issue any remedy or relief, whether provisional or permanent, including but not limited to a default judgment, which the parties could have obtained under the law applicable in courts of the State of California under the same factual circumstances, and the Arbitrator shall follow and otherwise employ the standards for issuing such relief as defined by California law; provided, however, that the Arbitrator shall have no authority or jurisdiction to enter an award for consequential, special, exemplary or punitive damages. The Arbitrator may also grant such ancillary relief as is necessary to make effective the award. Both parties may conduct discovery as if the matter were pending before a Superior Court of the State of California and the Arbitrator shall have the full power of the State of California to issue and enforce subpoenas and to award sanctions. Either party shall have the right to demand in writing that the other party provide a list of witnesses it intends to call at the hearing, designating which witnesses will be called as expert witnesses, and a list of documents it intends to introduce at hearing. The responding party's list(s) shall be served personally or by registered or certified mail on the requesting party, with a copy to the Arbitrator, at least thirty (30) days before the hearing.
- vi. Each party shall have the right to be represented by counsel.
- vii. The Arbitrator shall be paid a per diem or hourly charge as established at the time of appointment. Each party shall bear its own attorneys' fees and costs in presenting its case. All other actual costs of conducting the arbitration, including without limitation, the administrative fee and the Arbitrator's compensation, shall be shared equally.
- viii. This arbitration clause shall be interpreted under the arbitration laws of the State of California and not the Federal Arbitration Act, 9 U.S.C. § 1. Except as otherwise provided in this Agreement, any motion, application, complaint or proceeding arising out of or relating to this

arbitration clause shall be determined in accordance with the law of the State of California.

- ix. Unless otherwise provided in this Agreement or otherwise agreed in writing, the parties shall continue to perform their respective obligations under this Agreement during the pendency of arbitration proceedings.
- x. Except as modified or stated to the contrary in this Section 15, the rules and procedures of the Arbitrator in effect at the time of the arbitration shall apply to the arbitration procedure.

16. FURTHER ASSURANCES: In addition to the acts specifically required in this Agreement, the parties hereto agree to perform or cause to be performed any and all such further acts and to provide such further assurances as may be reasonably necessary to effect the transactions contemplated hereby, including the execution, delivery and, if applicable, filing of such additional documents and instruments as may be reasonably requested by such other party and/or be reasonably necessary to carry out the intent of this Agreement.

17. GOVERNING LAW: California law shall govern the interpretation and implementation of this Agreement, and the rights of the parties hereunder shall be determined in accordance with California law.

18. NOTICES: Any provision of this Agreement requiring notice shall be deemed to have been satisfied if notice is provided in writing by first class United States Mail, addressed as follows:

A. For the District:

General Manager  
Contra Costa Water District  
P.O. Box H20  
Concord, California 94524-2099

B. For the City:

City Manager  
City of Antioch  
P.O. Box 5007  
Antioch, CA 94531-5007

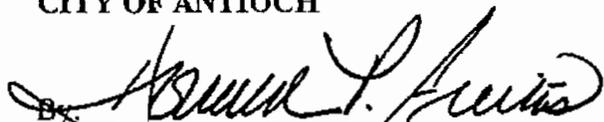
19. MISCELLANEOUS PROVISIONS:

- A. Joint Preparation. Preparation of this Agreement has been a joint effort of the parties and this Agreement shall not be construed more severely against one of the parties than against the other.

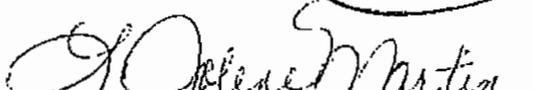
- B. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors and assigns.
- C. Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.
- D. Invalidity. The invalidity of one or more phrases, sentences, clauses, sections or paragraphs contained in this Agreement shall not affect the validity of the remaining portions of this Agreement so long as the material purposes of this Agreement can be determined and remain effectuated.
- E. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their respective behalf, by their respective representatives duly authorized, all as of the day and year first above written.

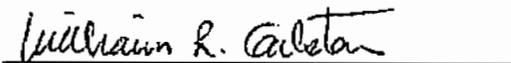
**CITY OF ANTIOCH**

By:   
 Donald P. Freitas  
 Mayor

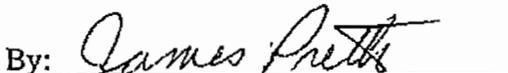
ATTEST:

  
 L. Jolene Martin, City Clerk

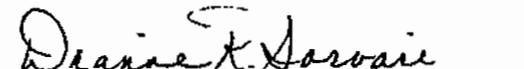
Approved as to Form:

  
 City Attorney

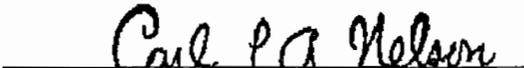
**CONTRA COSTA WATER DISTRICT**

By:   
 James Pretti  
 President

ATTEST:

  
 Dianne R. Sorvari, District Secretary

Approved as to Form:

  
 District Legal Counsel

SD15304

State of California  
State Water Resources Control Board  
DIVISION OF WATER RIGHTS  
P.O. Box 2000, Sacramento, CA 95812-2000  
Info: (916) 657-2170, FAX: (916) 657-1485, Web: http://www.waterrights.ca.gov

00 0012 02 44  
00 0012 02 44  
00 0012 02 44

STATEMENT OF WATER DIVERSION AND USE  
(This is not a Water Right)

This Statement should be typewritten or legibly written in ink and submitted to the address above.  
A separate statement should be filed for each point of diversion. A duplicate copy will be returned for your file.

A. Name of person diverting water CITY OF ANTIOCH  
Address P. O. Box 5007, Antioch, CA 94531-5007  
Telephone: (925) 779-6950

B. Water is used under: X Riparian claim; X Pre 1914 right; \_\_\_\_\_ Other (explain)

C. Name of body of water at point of diversion San Joaquin River  
Tributary to Sacramento River

D. Place of diversion NE 1/4 of SW 1/4 Section 18, of Township T2N, Range R1E, MD B&M,  
Contra Costa County, and locate it on a print of a USGS quad sheet or make a sketch on the section grid provided  
on the reverse side of this form with regard to section lines and prominent local landmarks. Name of works Antioch Diversion

E. Do you own the land at the point of diversion? Yes X NO \_\_\_\_\_

F. Capacity of diversion works 11,100 cfs or (gpm) Capacity of storage reservoir 735 (gallons or acre-feet)  
Type of diversion facility: Gravity \_\_\_\_\_ Pump X  
Method of measurement: Weir \_\_\_\_\_ Flume \_\_\_\_\_ Electric Meter X Estimate X

G. Enter the amount of water used each month Million X  
Amounts below are: Gallons \_\_\_\_\_ Acre-feet \_\_\_\_\_ Other \_\_\_\_\_

Year	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total Annual
1999	263	257	315	354	463	445	360	232	0	0	0	0	2689MG

If monthly and annual use of water are not known, check months in which water was used. State extent of use in units,

such as acres of each crop irrigated, average number of persons served, number of stock watered, etc. City population  
is approximately 85,000

H. Annual water use in recent years: Maximum 12,400 Minimum 5,000 (gallons or acre-feet) Year of first use (nearly as known) Late 1800's

I. Purpose of use (what is the water being used for) Domestic water supply

J. General description or location of place of use (use sketch of section grid on reverse side of this form if you desire) \_\_\_\_\_  
City of Antioch, CA

K. Please answer only those questions below which are applicable to your project.

1. Conservation of water
  - a. Describe any water conservation efforts you may have started: Partnership with Contra Costa Water District in implementing Best Management Practices in conjunction with the California Urban Water Conservation Council
  - b. If credit toward beneficial use of water under claimed pre 1914 appropriative water right for water not used due to a conservation effort is claimed under section 1011 of the Water Code, please show the amounts of water conserved:
 

19 \_\_\_\_\_ (af/mg)

2. Water quality and wastewater reclamation
  - a. Are you now or have you been using reclaimed water from a wastewater treatment facility, desalination facility or water polluted by waste to a degree which unreasonably affects such water for other beneficial uses? YES \_\_\_\_\_ NO X
  - b. If credit toward use under a claimed pre 1914 appropriative water right through substitution of reclaimed water, desalinated water or polluted water in lieu of appropriated water is claimed under section 1010 of the Water Code, please show amounts of reduced diversions and amounts of reclaimed water used:
 

19 \_\_\_\_\_ (af/mg)

A

3. Conjunctive use of surface water and groundwater  
 a. Are you now using groundwater in lieu of surface water? YES \_\_\_ NO X  
 b. If credit toward use under a claimed pre 1914 appropriative right through substitution of groundwater in lieu of appropriated water is claimed under section 1011.5 of the Water Code, please show the amounts of groundwater used:

19 \_\_\_\_\_ (af/mg)

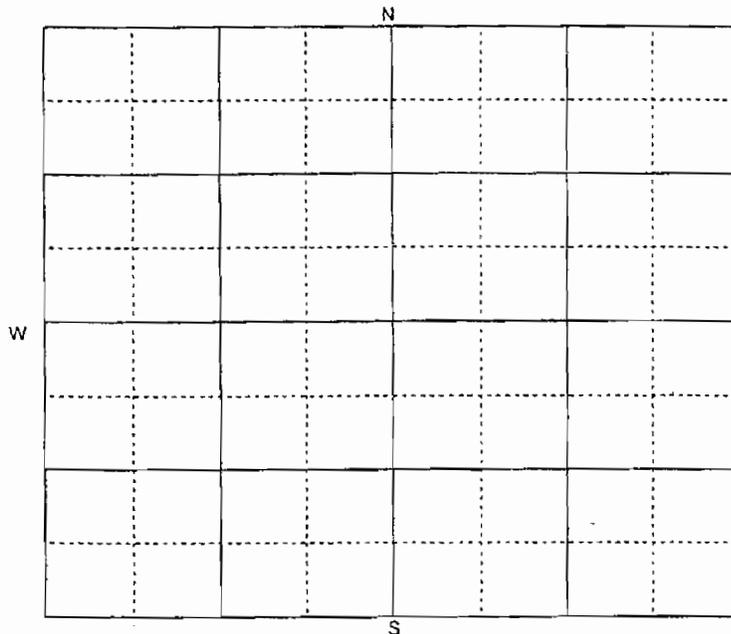
I declare under penalty of perjury that the information in this report is true to the best of my knowledge and belief.

DATE: June 14, 2000 at Antioch, California

SIGNATURE: \_\_\_\_\_

PRINTED NAME: Joseph G. Brandt  
 (first name) (middle init.) (last name)

COMPANY NAME: City of Antioch



The location of the diversion point and the place of use may be sketched on the section grid provided. If it is used, please enter the section(s), township, range and the base & meridian below. Also, show any streams or other landmarks that will assist in identifying the area.

Section(s) \_\_\_\_\_

Township \_\_\_\_\_

Range \_\_\_\_\_

\_\_\_\_\_ B&M

GENERAL INFORMATION PERTAINING TO WATER RIGHTS IN CALIFORNIA

There are two principal types of surface water rights in California. They are riparian and appropriative rights.

A riparian right enables an owner of land bordering a natural lake or stream to take and use water on his riparian land. Riparian land must be in the same watershed as the water source and must never have been severed from the sources of supply by an intervening parcel without reservation of the riparian right to the severed parcel. Generally, a riparian water user must share the water supply with other riparian users. Riparian rights may be used to divert the natural flow of a stream but may not be used to store water for later use or divert water which originates in a different watershed, or return flows from use of groundwater.

An appropriative right is required for use of water on nonriparian land and for storage of water. Generally, appropriative rights may be exercised only when there is a surplus not needed by riparian water users. Since 1914 new appropriators have been required to obtain a permit and license from the State.

Statements of Water Diversion and Use must be filed by a riparian and per-1914 appropriative water users. The filling of a statement (1) provides a record of water use, (2) enables the State to notify such users if someone proposes a new appropriation upstream from their diversion, and (3) assists the State to determine if additional water is available for future appropriators.

The above discussion is provided for general information. For more specific information concerning water rights, please contact an attorney or write to this office. We have several pamphlets available. They include: (1) Statements of Water Diversion and Use, (2) Information Pertaining to Water Right in California and (3) Appropriation of Water in California.

S015304

SHERMAN LAKE

SHERMAN ISLAND

SHERMAN

WATERFOWL MANAGEMENT AREA

SAN JOAQUIN RIVER

Kimball Island

Cabin Slough

Mayberry Cut

TOPEKA

Mile 5 Pump Station

RIVER

SANTA FE

Boat Ramp

Sewage Disposal

Industrial Waste Ponds

Sixth St Park

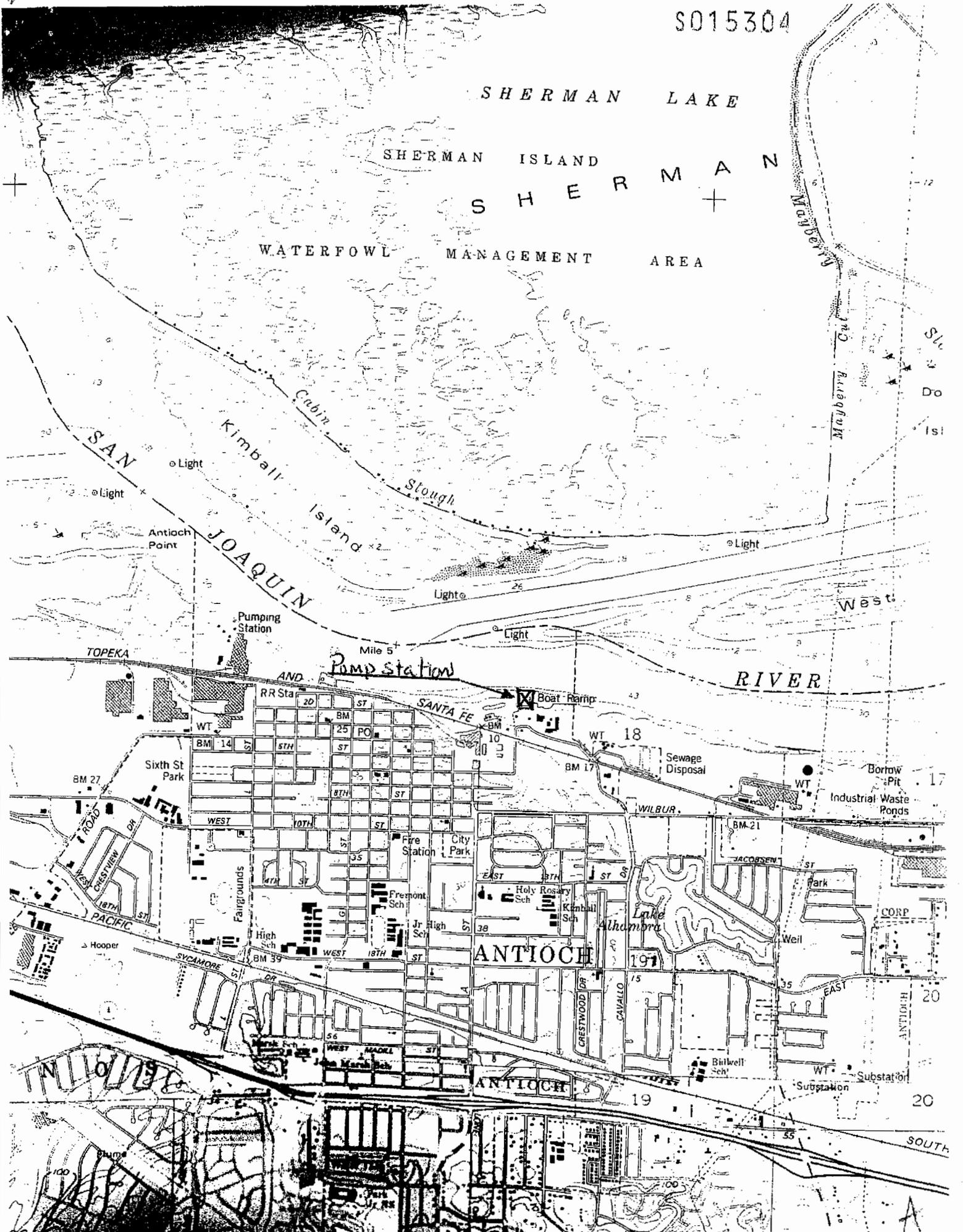
Fire Station

ANTIOCH

Lake Alhambra

ANTIOCH

SOUTH





S015304%\$%2004

2002, 2003, 2004

**SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE**

If the information below is inaccurate, please line it out in red and provide current information.

Notify this office if ownership or address changes occur during the coming year.

Please Complete and Return This Form by JULY 1, 2005.

\*If the mail recipient's name, address or phone No. is wrong or missing, please correct.

Owner of Record: CITY OF ANTIOCH;

PRIMARY CONTACT OR AGENT FOR MAIL & REPORTING:

CITY OF ANTIOCH  
 WATER TREATMENT SUPERINTENDENT  
 PO BOX 5007  
 ANTIOCH, CA 94531-5007

STATEMENT NO.: S015304  
 CONTACT PHONE NO.: (925)779-7029

Source Name: SAN JOAQUIN RIVER

Tributary To: SAN PABLO BAY

County: Contra Costa

Diversion Within: NE1/4 of SW1/4 Section 18, T02N, R01E, MB&M

Year of First Use: 1800

Parcel Number:

A. Water is Used Under: Riparian claim \_\_\_\_\_ Pre-1914 right X Other (explain): \_\_\_\_\_

B. Year of First Use: (Please provide if missing above) \_\_\_\_\_

C. Amount of Use: Enter the amount (or the approximate amount) of water used each month, using the table below.

Year	Gallons			Million Gallons (MG)				Acre-feet (AF)				Other		Total Annual
	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec		
2002	350.6	322.1	400.2	449.9	437.9	244.8	18.9	0	0	0	0	74.2	2,298.5	
2003	345.6	318.4	400.2	448.0	460.0	302.0	233.4	308.8	0	0	0	32.4	2,848.7	
2004	345.5	214.6	422.5	433.1	323.8	56.3	0	0	0	0	0	0	1,795.7	

D. Purpose of Use - Specify number of acres irrigated, stock watered, persons served, etc.

Irrigation \_\_\_\_\_ acres; Stockwatering \_\_\_\_\_; Domestic 100,590;

Other (specify) \_\_\_\_\_

E. Changes in Method of Diversion - Describe any changes in your project since your previous statement was filed.

(New pump, enlarged diversion dam, location of diversion, etc.)

N/A

F. Please answer only those questions below which are applicable to your project.

1. Conservation of water

a. Are you now employing water conservation efforts? YES X NO \_\_\_\_\_  
 Describe any water conservation efforts you have initiated: Public education. The City of Antioch and Contra Costa Water District perform water audits. Contra Costa Water District offers low flow toilet replacement and low flow shower heads.

b. If you are claiming credit for water conservation under section 1011 of the Water Code for your claimed pre-1914 appropriative right, please show the amount of water conserved: N/A

Reduction in Diversions:

Year \_\_\_\_\_ (AF/MG) Year \_\_\_\_\_ (AF/MG) Year \_\_\_\_\_ (AF/MG)

Reduction in consumptive use:

Year \_\_\_\_\_ (AF/MG) Year \_\_\_\_\_ (AF/MG) Year \_\_\_\_\_ (AF/MG)

I have data to support the above surface water use reductions due to conservation efforts. YES \_\_\_\_\_ NO \_\_\_\_\_

5-11-05  
 RMM

2. Water quality and wastewater reclamation

- a. Are you now or have you been using reclaimed water from a wastewater treatment facility, desalination facility or water polluted by waste to a degree which unreasonably affects such water for other beneficial uses? YES \_\_\_ NO X
- b. If you are claiming credit due to the substitution of reclaimed water, desalinated water or polluted water in lieu of a claimed pre-1914 appropriative right under section 1010 of the Water Code, please show amounts of reduced diversions and amounts of substitute water supply used:

Amount of reduced diversion:

Year \_\_\_\_\_ (AF/MG) Year \_\_\_\_\_ (AF/MG) Year \_\_\_\_\_ (AF/MG)

State the type of substitute water supply: \_\_\_\_\_

Amount of substitute water supply used:

Year \_\_\_\_\_ (AF/MG) Year \_\_\_\_\_ (AF/MG) Year \_\_\_\_\_ (AF/MG)

I have data to support the above surface water use reductions due to the use of a substitute water supply. YES \_\_\_ NO \_\_\_

3. Conjunctive use of surface water and groundwater

- a. Are you now using groundwater in lieu of surface water? YES \_\_\_ NO X
- b. If you are claiming credit due to the substitution of groundwater for a claimed pre-1914 appropriative right under section 1011.5 of the Water Code, please show the amounts of groundwater used:

Year \_\_\_\_\_ (AF/MG) Year \_\_\_\_\_ (AF/MG) Year \_\_\_\_\_ (AF/MG)

I have data to support the above surface water use reductions due to the use of groundwater. YES \_\_\_ NO \_\_\_

I understand that it may be necessary to document the water savings claimed in "F" above if credit under Water Code sections 1010 and 1011 is sought in the future.

I declare that the information in this report is true to the best of my knowledge and belief.

DATE: March, 2005 at Antioch, California

SIGNATURE: Vince Darone

PRINTED NAME: Vince A. Darone  
(first name) (middle initial) (last name)

COMPANY NAME: City of Antioch

If there is insufficient space for your answers, please use the space provided below.

ITEM	CONTINUATION

GENERAL INFORMATION PERTAINING TO WATER RIGHTS IN CALIFORNIA

There are two principal types of surface water rights in California. They are riparian and appropriative rights.

A riparian right enables an owner of land bordering a natural lake or stream to take and use water on his riparian land. Riparian land must be in the same watershed as the water source and must never have been severed from the sources of supply by an intervening parcel without reservation of the riparian right to the severed parcel. Generally, a riparian water user must share the water supply with other riparian users. Riparian rights may be used to divert the natural flow of a stream but may not be used to store water for later use or to divert water which originates in a different watershed, water previously stored by others, return flows from use of groundwater, or other "foreign" water to the natural stream system.

An appropriative right is required for use of water on non-riparian land and for storage of water. Generally, appropriative rights may be exercised only when there is a surplus not needed by riparian water users. Since 1914, new appropriators have been required to obtain a permit and license from the State. Appropriative rights can be granted to waters "foreign" to the natural stream system.

Statements of Water Diversion and Use must be filed by riparian and pre-1914 appropriative water users as set forth in Water Code section 5100 with specific exceptions. The filing of a statement (1) provides a record of water use, (2) enables the State to notify such users if someone proposes a new appropriation upstream from their diversions, and (3) assists the State to determine if additional water is available for future appropriators.

The above discussion is provided for general information. For more specific information concerning water rights, please contact an attorney or write to this office. We have several pamphlets available. They include: (1) Statements of Water Diversion and Use, (2) Information Pertaining to Water Rights in California, and (3) Appropriation of Water in California.

**WATER RIGHTS  
OF THE  
CITY OF ANTIOCH**

**Prepared by  
BOLD AND POLISNER  
December, 1991**

## CONTENTS

Basis of Antioch's Right to Take Water from the San Joaquin River	1
Quantification of the Right	2
Rate of Diversion: The Public Trust Doctrine	3
Where Can the City Divert Water?	4
Where Can the Water Be Used?	4
Historical Impairment of the River Supply	5
What Can the City Reasonably Expect in the Future?	7
Antioch's "Delta Priority"	7
Water Supply from the Contra Costa Canal	9
The Integrity of the City's Water Service Area	9
Water Transfers	10
Regulatory Agencies	10

Basis of Antioch's Right to Take Water from the San Joaquin River The rights of the City of Antioch to appropriate and use water from the San Joaquin River stem from actual diversions made prior to December 19, 1914. This is the date the Water Commission Act became effective which provided that thereafter the exclusive method of acquiring an appropriative right was by filing an application and obtaining a permit and license from (what is now) the State Water Resources Control Board ("State Board").

"Pre-1914 rights", as they are commonly called, are of two kinds. The first are the "statutory" rights obtained by posting and recording of a notice in accordance with Civil Code section 1415 followed by construction of diversion and delivery works. A search of the County Recorder's records reveals no such recording by the City or a predecessor water purveyor. The decision in Antioch v. Williams Irr. Dist. (1922) 188 Cal. 45, states "the City has never posted a notice of appropriation as provided in section 1415 of the Civil Code." (p. 456)

The second pre-1914 method of acquiring an appropriative right was simply to take the water and put it to beneficial use, referred to as a "non-statutory" right. Numerous cases have held that prior to 1914 the procedure described in Civil Code section 1415 was not mandatory or exclusive, that the actual diversion of water and its application to use gave rise to the right, and that the failure to post and record notice was immaterial. Lower Tule River Ditch Co. v. Angiola Water Co. (1906) 149 Cal. 496, 499;

Haight v. Costanich (1920) 184 Cal. 426, 431; and Antioch v. Williams Irr. Dist., supra at 456. The City's non-statutory right is just as valid today as a pre-1914 statutory right and may even be better because it is not limited to a recorded maximum quantity and specified diversion works.

Antioch's use of water from the river has been continuous since it was initiated by the original purveyors of water to the City, having been interrupted only when the quality was unsuitable for municipal use. Antioch has a valid right to appropriate water from the San Joaquin River, which leads us to consideration of the quantity, point of diversion and place of use of the water.

Quantification of the Right Unlike an application to appropriate under the Water Code there is no maximum quantity applicable to Antioch's non-statutory appropriation. The only limitation on the right is the Constitutional mandate that the water must be reasonably required for beneficial municipal purposes (California Constitution, Article X, Section 2).

The general rule regarding appropriation of water is that the appropriator must use "due diligence" in constructing the diversion works and applying the water to use (see Water Code, section 1202 (b)). Cities, however, are exempted from the requirement of due diligence in recognition of the fact that their needs gradually increase over an indefinite period of time as they grow. Water Code section 106.5 recognizes the right of a

city to appropriate water for future requirements "as and when necessity therefor exists"<sup>1</sup>.

Water Code section 106.5 also declares it to be "the established policy of this State that the right of a municipality to acquire and hold rights to the use of water should be protected to the fullest extent necessary for existing and future uses."

The conclusion to be drawn is that the City has the right to divert from the San Joaquin River whatever quantities of water it requires from time to time for reasonable and beneficial use. There is no specific limit on this quantity; it will increase as the City grows in population, area, and water demand.

The limitations on this general conclusion follow.

Rate of Diversion: The Public Trust Doctrine Decisions of the Supreme Court have declared that the State has an affirmative and continuing duty to protect public trust interests to the extent feasible and reasonable. (National Audubon Society v. Superior Court (1983) 33 C 3d 419). Justice Racanelli in the Delta decision emphasized that the State Board has continuing jurisdiction and the duty to reexamine water rights and to impose conditions on any appropriation of water necessary to protect fish and wildlife. (U.S. v. State Water Resources Control Board (1986) 182 C.A. 3d 82).

---

<sup>1</sup>. A city must permit others to use water that is temporarily in excess of the city's needs subject to the city's prior right to reclaim the water when it needs it.

It does not appear likely that the volume of water diverted by the City will have a measurable effect on fish or wildlife habitat simply because whenever the quality of the water is usable by the City (i.e. less than 150 milligrams per liter of chloride ion) the Delta outflow is enormous, perhaps in excess of 10,000 cubic feet per second. However the rate of diversion could have an adverse effect by sucking fish into the pumps. It must therefore be recognized that the State Board and the Department of Fish and Game have the power to compel the City to install and operate such screens or other devices they may determine to be necessary to minimize fish losses. Apart from this risk there is no legal limit on the rate at which the City can divert water from the river.

Where Can the City Divert Water? A persistent issue is whether the City can move its intake upstream where the water quality is better and transport it back to the City. This was suggested by the Court in Antioch v. Williams Irr. Dist. (p. 465).

The law is clear that the holder of a pre-1914 right to appropriate water can move the point of diversion provided that the move does not injure any other lawful user of water. A movement of Antioch's point of diversion any distance upstream would probably impact the rights of the Bureau of Reclamation and the Department of Water Resources. This is because the City's diversions would require greater releases of "carriage water" to

effect delivery of any specific quantity of water to the Projects' export pumps.

Where Can the Water Be Used? The "place of use" of the City's water right is obviously the City. Just as the quantity of the right has increased over the years, so has the place of its use. It is our opinion that the place of use is not limited to the corporate territory of the City but also includes the reasonable service area of its municipal water system outside the city limits but within the sphere of influence determined by the Local Agency Formation Commission.

Historical Impairment of the River Supply By the turn of the century the development of the Central Valley and increased diversion of water upstream from the City so reduced Delta outflow during the summer months of dry and below-normal years that salt water intruding from the Bay made the City's supply temporarily unusable. It was because of this that in 1919 Antioch filed the action against Williams Irrigation District and others to enjoin their diversion of water from the Sacramento River whenever the flow at Sacramento was less than 3,500 cubic feet per second. The Court found that in 1919 and 1920 the water at Antioch "was made salty and unfit for any use" (p. 455) but held that the City did not have the right to require subsequent upstream appropriators to leave enough water flowing in the stream to repel salt water intrusion downstream.

The degradation of quality in the early 1930s was so severe that the legislature enacted the Central Valley Project Act of

1933 (Statute 1933, Chapter 1042) which among other things authorized the "Contra Costa Conduit" to convey water from "a point near Knightsen to the vicinity of Martinez" (now Water Code section 11215). Because the State during the depression could not finance the project the United States began construction of the CVP by an Executive Order of President Roosevelt made on September 10, 1935 which transferred \$20,000,000 from the Emergency Relief Appropriation. The first unit of the CVP to be operational was the portion of the Contra Costa Canal to Antioch.

The unprecedented development of California after World War II and the corresponding increases in demands for water led the development of the "Feather River and Delta Diversion Projects" in 1951 which evolved into the State Water Project in 1957. Funding was provided by the Burns-Porter Bond Act approved by the voters in 1960. The State Water Project, unlike the CVP, has no facilities which can benefit Antioch. To the contrary, the project provides for massive exports from the Delta which further reduce the availability of usable water at Antioch.

To mitigate the damage caused by the State Water Project, the City negotiated the agreement with the Department of Water Resources dated April 11, 1968. The agreement recognized that historically usable water (150 parts per million or less of chloride) occurred on an average of 208 days per year. If in any year the number of days of availability of usable water is less than 208 the Department must pay to the City one-third of the City's incremental costs of purchasing canal water to replace the

river supply. The one-third fraction was based on the assumption that the depletion of the natural supply is due one-third to the operation of the Central Valley Project, one-third to the State Water Project and one-third to all the other upstream diverters, riparians and appropriators.

What Can the City Reasonably Expect in the Future? Of course California will continue to grow and demands for water will increase. The problem which now challenges the State Board is the allocation of a finite supply among growing and competing demands for more water than is available. It appears likely that the water rights decision that will emerge from the Bay-Delta hearings will provide greater flows for bass, salmon, and protection of the estuary environment than now are required under the Board's 1978 Decision 1485. To provide these flows will likely require further limitations on the seasons of diversion by riparians as well as appropriators together with restrictions on the times and rates of export pumping. Increased flows for fish could conceivably, but not probably, increase the number of days usable water is available at Antioch. However as indicated above it is not considered likely that the City diversions will be reduced because foregoing diversion would not measurably affect the estuary. In brief, the City will be able to divert as much water as it physically is able to pump whenever the quality is acceptable, but it has no assurance that the present conditions of availability will get much better.

City of Downey v. Downey County Water District (1962) 202 C.A. 2d 786, 797). Antioch will be required to pay such uniform and non-discriminatory rates for water service as CCWD shall fix from time to time.

The Integrity of the City's Water Service Area Article II, Section 9 (a) of the California Constitution gives cities the right to operate public works to furnish its inhabitants with water. The question is whether any other entity can supply water in the City.

Because Antioch supplies potable water for domestic, commercial and industrial uses, no utility, public or private, can provide such service in the City. But because Antioch does not supply recycled water other entities, such as a sanitation district or CCWD, may do so provided they comply with such reasonable conditions as the City may impose in the exercise of its police power. Antioch could impose conditions on the use of recycled water more stringent than those established by the Central Valley Regional Water Quality Control Board.

Antioch can supply potable water outside its boundaries provided it does not enter an area being furnished the same kind of service by another city (California Constitution XI, 9 (a) ), a water district (Glenbrook Development Co. v. City of Brea (1967) 253 C.A. 2d 267), or a private utility (Public Utility Code sections 1501 to 1506).

Water Transfers Antioch can purchase water from any lawful vendor if there were means to deliver the water to the City.

However, an exchange of Antioch's San Joaquin Water is not permissible because its use is restricted to the City and its water service area.

Regulatory Agencies Some of the federal and state agencies with jurisdiction in matters relating to Antioch's water supply are these:

The Environmental Protection Agency administers the Federal Water Pollution Control Act ("Clean Water Act", 33 U.S.C. 1251 and following). It reviews the state water quality criteria and implementation program to determine if they meet federal standards. The EPA has concluded that the Water Quality Control Plan for Salinity in the Bay Delta Estuary adopted by the State Board in May, 1991, does not meet federal standards. The asserted deficiencies may be cured by the State Board's forthcoming water rights decision, the final phase of the Bay-Delta Hearings. If this is not accomplished by late 1992, EPA may itself set the requirements for protection of Delta water quality, which could possibly have an impact on the City's operations.

The EPA is also responsible for issuing permits for the discharge of pollutants into navigable water under the National Pollutant Discharge Elimination System (NPDES, 33 U.S.C. 1324). This function has been suspended by reason of the administration of the California permit program by the Regional Water Quality Control Boards.

)

The Corps of Engineers is responsible for issuing permits under section 404 of the Clean Water Act (33 U.S.C. 1344) for the discharge of dredged or fill materials in the Bay-Delta estuary. This is the primary legislative authority in federal efforts to regulate activities in and affecting wetlands. (33 C.F.R. 320-330). In the selection and use of disposal sites the Corps relies on guidelines prepared by the EPA (33 C.F.R. 230).

The State Water Resources Control Board has no statutory jurisdiction over pre-1914 appropriative rights, but it may limit diversions in the course of protecting public trust resources and to provide minimum Delta flows during droughts.

The California Department of Fish and Game advises the State Board respecting terms and conditions to be imposed on permits to divert water necessary to provide flows for fish survival and prevent conditions deleterious to fish and wildlife. As noted above the Department can also require installation of screens on diversion conduits.

The California Department of Health Services administers the State's drinking water regulatory program under the California Safe Drinking Water Act (Health and Safety Code section 4010 and following).

The Regional Water Quality Control Board for the Central Valley Region sets requirements and issues permits for waste discharges that could affect the quality of water in the Bay-Delta estuary (Water Code section 13263).