

CONTRACT BETWEEN  
THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES  
AND THE EAST CONTRA COSTA IRRIGATION DISTRICT  
FOR THE ASSURANCE OF A  
DEPENDABLE WATER SUPPLY OF SUITABLE QUALITY.

THIS CONTRACT, made this 7<sup>th</sup> day of January, 1981, between the STATE OF CALIFORNIA, acting by and through its DEPARTMENT OF WATER RESOURCES (State), and the EAST CONTRA COSTA IRRIGATION DISTRICT (District), a political subdivision of the State of California, duly organized and existing pursuant to the laws thereof, with its principal place of business in Brentwood, California.

RECITALS

(a) The purpose of this contract is to agree upon the nature and extent of the District's water rights as between the District and the State for diversion from Indian Slough, and to provide that the State will maintain in the Sacramento-San Joaquin Delta in Old River at Indian Slough a dependable water supply of adequate quantity and quality for reasonable and beneficial uses within the District, that the State will recognize the right to make such uses within the District, and that the District will pay compensation for the assurance of any reimbursable benefits allocated to the District resulting from the Federal Central Valley Project and the State Water Project, and offset by any detriments caused thereby.

(b) The United States, acting through its Department of the Interior, has under construction and is operating the Federal Central Valley Project (FCVP).

(c) The State has under construction and is operating the State Water Project (SWP).

(d) The construction and operation of the FCVP and SWP at times have changed and will further change the regimen of rivers tributary to the Sacramento-San Joaquin Delta (Delta) and the regimen of the Delta channels from unregulated flow to regulated flow. This regulation at times improves the quality of water in the Delta and at times diminishes the quality from that which would exist in the absence of the FCVP and SWP. The regulation at times also alters the elevation of water in some Delta channels.

(e) Water problems within the Delta are unique within the State of California. As a result of the geographical location of the lands of the Delta and tidal influences, there is no physical shortage of water. Intrusion of saline ocean water and municipal, industrial and agricultural discharges and return flows, tend, however, to deteriorate the quality.

(f) The general welfare, as well as the rights and requirements of the water users in the Delta, require that there be maintained in the Delta an adequate supply of good quality water for agricultural, municipal and industrial uses.

(g) The law of the State of California requires protection of the areas within which water originates and the watersheds from which water is developed. The Delta is such an area and

within such a watershed. Part 4.5 of Division 6 of the California Water Code affords a first priority to provision of salinity control and maintenance of an adequate water supply in the Delta for reasonable and beneficial uses of water and relegates to lesser priority all exports of water from the Delta to other areas for any purpose.

(h) The District asserts that it has the right to divert, is diverting, and will continue to divert, for reasonable beneficial use, water from the Delta that would have been available therein if the FCVP and SWP were not in existence, together with the right to enjoy or acquire such benefits to which the District may be entitled as a result of the FCVP and SWP.

(i) The District asserts that its water right is based on a pre-1914 appropriative right to divert 50,000 acre-feet per year at a rate of 200 cubic feet per second from the Delta at Indian Slough for irrigation within a gross area of approximately 20,000 acres.

(j) The State asserts that it has the right to divert, is diverting, and will continue to divert water from the Delta in connection with the operation of the SWP.

(k) Operation of SWP to provide the water quality and quantity described in this contract constitutes a reasonable and beneficial use of water.

(l) It is not the intention of the State to acquire by purchase or by proceeding in eminent domain or by any other manner the water rights of water users within the Agency, including rights acquired under this contract.

(m) The parties desire that the United States become an additional party to this contract.

#### AGREEMENTS

1. Definitions. When used herein, the term:

(a) "Calendar year" shall mean the period January 1 through December 31.

(b) "Delta" shall mean the Sacramento-San Joaquin Delta as defined in Section 12220 of the California Water Code as of the date of the execution of the contract.

(c) "District" shall mean the East Contra Costa Irrigation District and shall include all of the lands within the East Contra Costa Irrigation District at the time the contract is executed, and all lands which may hereafter be included within the District which are within the District service area, as shown on Attachment A.

(d) "Electrical Conductivity" ("EC") shall mean the electrical conductivity of a water sample measured in millimhos per centimeter per square centimeter corrected to a standard temperature of 25° Celsius determined in accordance with procedures set forth in the publication entitled "Standard Methods of Examination of Water and Waste Water", published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation, 13th Edition, 1971, including such revisions thereof as may be made subsequent to the date of this contract which are approved in writing by the District and the State.

(e) "Federal Central Valley Project" (FCVP) shall mean the Central Valley Project of the United States.

(f) "Four-River Basin Index" shall mean the most current forecast of Sacramento Valley unimpaired runoff as presently published in the California Department of Water Resources Bulletin 120 for the sum of the flows of the following: Sacramento River above Bend Bridge near Red Bluff; Feather River, total inflow to Oroville Reservoir; Yuba River at Smartville; American River, total inflow to Folsom Reservoir. The May 1 or special June 1 forecast shall continue in effect until the February 1 forecast of the next succeeding year.

(g) "State-Water Project" (SWP) shall mean the State Water Resources Development System as defined in Section 12931 of the Water Code of the State of California.

(h) "SWRCB" shall mean the State Water Resources Control Board.

(i) "Subnormal snowmelt year" shall mean any year when the May 1 or special June 1 forecast of the Four-River Basin Index during the period April through July as reported in the California Department of Water Resources Bulletin 120 is less than 5.9 million acre-feet. The special June 1 forecast may be requested by either party with all costs to be paid by the State when the May 1 forecast is more than 5.7 million acre-feet and less than 6.1 million acre-feet.

## 2. Water Quality and Monitoring.

(a) The State will operate the SWP to provide water qualities in Old River at Indian Slough for the period

April 1 through October 31 of each year at least equal to the better of (1) the standards adopted by the SWRCB as they may be established from time to time; or (2) the criteria established in this contract as identified on the graph included as Attachment B. The 14-day running average of the mean daily EC shall not exceed the values determined from the Attachment B graph using the Four-River Basin Index.

(b) The Attachment B criteria will apply to water in Old River at Indian Slough. However, the initial point of measurement will be at the District's pumping plant No. 1. The State will install the necessary monitoring equipment at pumping plant No. 1 and will be responsible for the cost of maintaining the equipment. The District will operate the equipment and furnish records of all measurements at regular intervals to the State.

(c) If there is a difference of more than 0.1 EC in the 14-day running average between Old River at Indian Slough and the District's pumping plant No. 1 when the District is diverting more than 100 cubic feet per second, a joint study will be made by the State and the District to determine the cause. The State and the District shall jointly seek correction of the problem. If the degradation is not caused by the State, and if the degradation cannot be eliminated, the State shall have the option of establishing the measuring site in Old River at Indian Slough; however, the quality at the District's pumping plant No. 1 will continue to be recorded with equipment installed by the State.

(d) When and if a delta transfer facility referred to in Section 12934(d)(3) of Part 6 of Division 6 of the California Water Code is constructed and operating and all California Environmental Quality Act requirements for that project have been complied with, Attachment C shall be substituted for Attachment B as the minimum criteria to apply thereafter.

3. Emergency Provisions.

(a) If a structural emergency occurs such as a levee failure or a failure of a SWP facility, which results in the State's failure to meet the water quality criteria, the State shall not be in breach of this contract if it makes all reasonable efforts to operate SWP facilities so that the water quality criteria will be met again as soon as possible. For any period in which SWP failure results in failure of the State to meet the water quality criteria, the State shall waive payment under Article 8(a), prorated for that period, and the amount shall be deducted from the next payment due.

(b) (i) A drought emergency shall exist when all of the following occur and shall continue as long as all of the following continue to exist:

(1) The Four-River Basin Index is less than an average of 9,000,000 acre feet in two consecutive years (which occurred in 1933-4 and 1976-7); and

(2) An SWRCB emergency regulation is in effect providing for the operation of the SWP to maintain water quality different from that provided in this contract; and

(3) The water supplied to meet annual entitlements of SWP agricultural contractors in the San Joaquin Valley is being reduced by at least 50 percent of these agricultural entitlements (it being the objective of the SWP to avoid agricultural deficiencies in excess of 25 percent) or the total of water supplied to meet annual entitlements of all SWP contractors is being reduced by at least 15 percent of all entitlements, whichever results in the greater reduction in acre-feet delivered.

(ii) Notwithstanding the provisions of Article 2(a), when a drought emergency exists, the emergency water quality criteria of the SWRCB shall supersede the water quality requirements of this contract to the extent of any inconsistency; provided, however, that the State shall use all reasonable efforts to preserve Delta water quality, taking into consideration both the limited water supply available for that purpose and recognizing the priority established for Delta protection referred to in Recital (g).

(iii) When a drought emergency exists and an overland supply is not available to an individual water user comparable in quality and quantity to the water which would have been available to the user under Attachment B, the State shall compensate the user for loss of net income for each acre either (A) planted to a more salt-tolerant crop in the current year, (B) not planted to any crop in the current year provided such determination not to plant was reasonable based on the drought emergency, or (C) which had a reduced yield due to the drought emergency, calculated on the basis of the user's average net income for any



three of the prior five years for each such acre. A special contract claims procedure shall be established by the State to expedite and facilitate the payment of such compensation.

4. Water Surface Elevation. The State shall not operate the SWP so as to cause the water surface elevation at the District's pumping plant No. 1 to fall below - 2.30 feet, District datum (0.0 on District datum is equal to +0.35 feet USGS datum) during the period April 1 through October 31 of each year.

5. Place of Use of Water.

(a) No water diverted at Indian Slough under this contract for use within the District shall be used or otherwise disposed of outside the District.

(b) All return flow water from water diverted within the District under this contract shall be returned to the Delta channels. Subject to the provisions of this contract concerning the quality and quantity of water to be made available to the District, and to any reuse or recapture by water users within the District, the District relinquishes any right to such return flow, and as to any portion thereof which may be attributable to the SWP, the District recognizes that the State has not abandoned such water.

(c) If water is attempted to be used or otherwise disposed of outside the District so that the State's rights to return flow are interfered with, the State may seek appropriate administrative or judicial action against such use or disposal.

(d) This article shall not relieve any water user of the responsibility to meet discharge regulations legally imposed.

6. Scope of Contract.

(a) During the term of this contract:

(i) This contract shall constitute the full and sole agreement between the State and the District as to (1) the vested water rights of the District to divert water from Indian Slough, (2) the quality of water which shall be in Old River at Indian Slough, and (3) the payment for the assurance given that water of such quantity and quality shall be available for reasonable and beneficial uses on lands within the District. Said uses shall not be disturbed or challenged by the State and the District shall not claim any right against the State in conflict with the provisions hereof so long as this contract remains in full force and effect.

(ii) The State recognizes a pre-1914 appropriative right of the District to divert from the Delta at Indian Slough for use within the District. The State shall furnish such water as may be required within the District, up to 50,000 acre-feet per year at a rate of 200 cubic feet per second, to the extent not otherwise available under the water rights of the District.

(b) Nothing herein contained is intended to or does limit rights of the District against others than the State, or the State against any person other than the District and water users within the District.

(c) This contract shall constitute a full agreement between the State and the District concerning all water rights of the District to divert from Indian Slough.

(d) The District agrees to defend affirmatively as reasonable and beneficial the water qualities established in this contract. The State agrees to defend affirmatively as reasonable and beneficial the use of water required to provide and sustain the qualities established in this contract. The State agrees that such use should be examined only after determination by a court of competent jurisdiction that all uses of water exported from the Delta by the State and by the United States for agricultural, municipal, and industrial purposes are reasonable and beneficial, and that irrigation practices, conservation efforts, and groundwater management within areas served by such exported water should be examined in particular.

(e) The District consents to the State's export of water from the Delta so long as this contract remains in full force and effect and the State is in compliance herewith.

7. Term of Contract.

(a) This contract shall continue in full force and effect until such time as it may be terminated by the written consent and agreement of all of the parties hereto, provided that 40 years after execution of this contract and every 40 years thereafter, there shall be a six-month period of adjustment during which any party to this contract can negotiate with the other parties to revise the contract as to the provisions set out in Article 8. If, during this period, agreement as to a requested

revision cannot be achieved, the parties shall petition a court of competent jurisdiction to resolve the issue as to the appropriate payment to be made under Article 8. In revising Article 8, the court shall review water quality and supply conditions within the District under operation of the FCVP and SWP as opposed to conditions had there been no FCVP and SWP, and identify any reimbursable benefits allocated to the District resulting from operation of the FCVP and SWP, offset by any detriments caused thereby. Until such time as any revision is final, including appeal from any ruling of the court, the contract shall remain in effect as without such revision.

(b) In the event this contract terminates, the parties' water rights to quality and quantity shall exist as if this contract had not been entered into.

8. Amount and Method of Payment for Water.

(a) The District shall pay each year as consideration for the assurance that an adequate water supply and the specific water quality set forth in this contract will be maintained, the sum of eleven thousand dollars <sup>2001 - 19,533</sup> (\$11,000.00). The annual payments shall be made to the State one-half on or before January 1 and one-half on or before July 1 of each year commencing with January 1, 1982.

(b) In the event that the gross area of the District changes by more than 1,000 acres, the payment established in (a) of this Article will be modified. The modified payment shall bear the same relation to the payment specified in (a) of this Article, as adjusted according to (c) of this Article, that

the new gross area bears to the present gross area of approximately 20,000 acres, and shall be effective the year following the change in area.

(c) The payment established in (a) of this Article shall be subject to adjustment as of January 1, 1987, and every fifth year thereafter. The adjusted payment shall bear the same relation to the payment specified in (a) of this Article, as modified according to (b) of this Article, that the mean of the State's latest projected Delta Water Rate for the five years beginning with the year of adjustment bears to \$10.00 per acre-foot; provided that, no adjusted payment shall exceed the previous payment by more than 25 percent.

(d) The payments provided for in this article shall be deposited by the State in trust in the California Water Resources Development System Revenue Account in the California Water Resources Development Bond Fund. The trust shall continue for five years (or such longer period as the State may determine) but shall be terminated when the United States executes a contract as provided in Article 9 with the State and the District at which time the proportion of the trust fund shall be paid to the United States (with a pro rata share of interest) that reflects the degree to which the operation of the FCVP has contributed to meeting the water quality standards under this contract as determined solely by the State. In the event that the United States has not entered into such a contract before the termination of the trust, the trust fund shall become the sole property of the State.

9. Participation of the United States. The District will exercise its best efforts to secure United States joinder and concurrence with the terms of this contract and the State will diligently attempt to obtain the joinder and concurrence of the United States with the terms of this contract and its participation as a party hereto. Such concurrence and participation by the United States in this contract shall include a recognition ratified by the Congress that the excess land provisions of Federal reclamation law shall not apply to this contract.

10. Remedies.

(a) The District shall be entitled to obtain specific performance of the provisions of this contract by a decree of the Superior Court requiring the State to meet the standards set forth in this contract. If the water quality in Old River at Indian Slough deteriorates from that provided in this contract, then, at the request of the District, the State shall cease all diversions to storage in SWP reservoirs or release stored water from SWP reservoirs or cease all export by the SWP from Delta channels, or any combination of these, to the extent that such action will further State compliance with the water quality standards set forth in this contract, except that the State may continue to export from Delta channels to the extent required to meet water quality requirements in contracts with the Delta agencies specified in Section 11456 of the California Water Code.

(b) If the State's operation of the SWP causes the water surface elevation at District Pumping Plant No. 1 to fall

below that provided in Article 4, and export by the SWP from Delta channels is not enjoined, the State shall pay for resultant increased operating costs of the District.

(c) To the extent permitted by law, the State agrees to forego the use of eminent domain proceedings to acquire water rights of the District or any rights acquired under this contract for water or water quality maintenance for the purpose of exporting such water from the Delta. This provision shall not be construed to prohibit the utilization of eminent domain proceedings for the purpose of acquiring land or any other rights necessary for the construction of water facilities.

(d) Except-as provided in the water quality assurances in Article 2 and the provisions of Article 4 and Article 6, neither the State nor its officers, agents, or employees shall be liable for or on account of:

(i) The control, carriage, handling, use, disposal, or distribution of any water outside the facilities constructed, operated and maintained by the State.

(ii) Claims of damage of any nature whatsoever, including but not limited to property loss or damage, personal injury or death arising out of or connected with the control, carriage, handling, use, disposal or distribution of any water outside of the facilities constructed, operated and maintained by the State.

(e) The use by the District or the State of any remedy specified herein for the enforcement of this contract is

not exclusive and shall not deprive either from using any other remedy provided by law.

11. Comparable Treatment. In the event that the State gives on the whole substantially more favorable treatment to any other Delta entity under similar circumstances than that accorded under this contract to the District, the State agrees to renegotiate this contract to provide comparable treatment to the District under this contract.

#### GENERAL PROVISIONS

12. Amendments. This contract may be amended or terminated at any time by mutual agreement of the State and the District.

13. Reservation With Respect to State Laws. Nothing herein contained shall be construed as estopping or otherwise preventing the District, or any person, firm, association, corporation, or public body claiming by, through, or under the District, from contesting by litigation or other lawful means, the validity, constitutionality, construction or application of any law of the State of California.

14. Opinions and Determinations. Where the terms of this contract provide for action to be based upon the opinion, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.



15. Successors and Assigns Obligated. This contract and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

16. Assignment and Subcontract. The District may enter into subcontracts with water users within the District in which the assurances and obligations provided in this contract as to such water users are assigned to the area covered by the subcontract. The District shall remain primarily liable and shall make all payments required under this contract. No assignment or transfer of this contract, or any part hereof, rights hereunder, or interest herein by the District, other than a subcontract containing the same terms and conditions, shall be valid unless and until it is approved by the State and made subject to such reasonable terms and conditions as the State may impose. No assignment or transfer of this contract or any part hereof, rights hereunder, or interest herein by the State shall be valid except as such assignment or transfer is made pursuant to and in conformity with applicable law.

17. Books, Records, Reports, and Inspections Thereof. Subject to applicable State laws and regulations, the District shall have full and free access at all reasonable times to the SWP account books and official records of the State insofar as the same pertain to the matters and things provided for in this contract, with the right at any time during office hours to make copies thereof, and the proper representatives of the State shall have similar rights with respect to the account books and records of the District.

18. Waiver of Rights. Any waiver at any time by either party hereto of its rights with respect to a default, or any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any other default or matter.

19. Assurance Relating to Validity of Contract.

Promptly after the execution and delivery of this contract, the District shall file and prosecute to a final decree, including any appeal therefrom to the highest court of the State of California, in a court of competent jurisdiction a special proceeding for the judicial examination, approval, and confirmation of the proceedings of the District's Board of Directors and of the District leading up to and including the making of this contract and the validity of the provisions thereof as a binding and enforceable obligation upon the State and the District. If, in this proceeding or other proceeding before a court of competent jurisdiction, any portion of this contract should be determined to be constitutionally invalid, then the remaining portions of this contract shall remain in full force and effect unless modified by mutual consent of the State and the District.

20. Notices. All notices that are required either expressly or by implication to be given by one party to the other shall be deemed to have been given if delivered personally or if enclosed in a properly addressed, postage prepaid, envelope and deposited in a United States Post Office. Unless or until formally notified otherwise, the District shall address all notices to the State as follows:

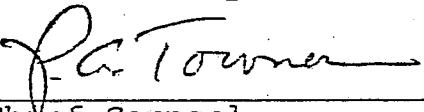
Director, Department of Water Resources  
P. O. Box 388  
Sacramento, California 95802

and the State shall address all notices to the District as follows:

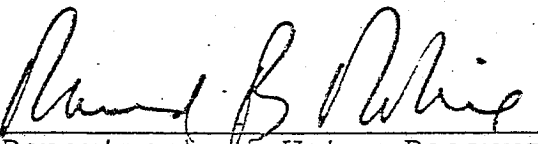
East Contra Costa Irrigation District  
P. O. Box 696  
Brentwood, California 94513

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

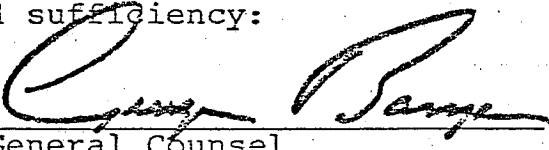
Approved as to legal form  
and sufficiency:

By   
Chief Counsel  
Department of Water Resources

STATE OF CALIFORNIA

By   
Department of Water Resources

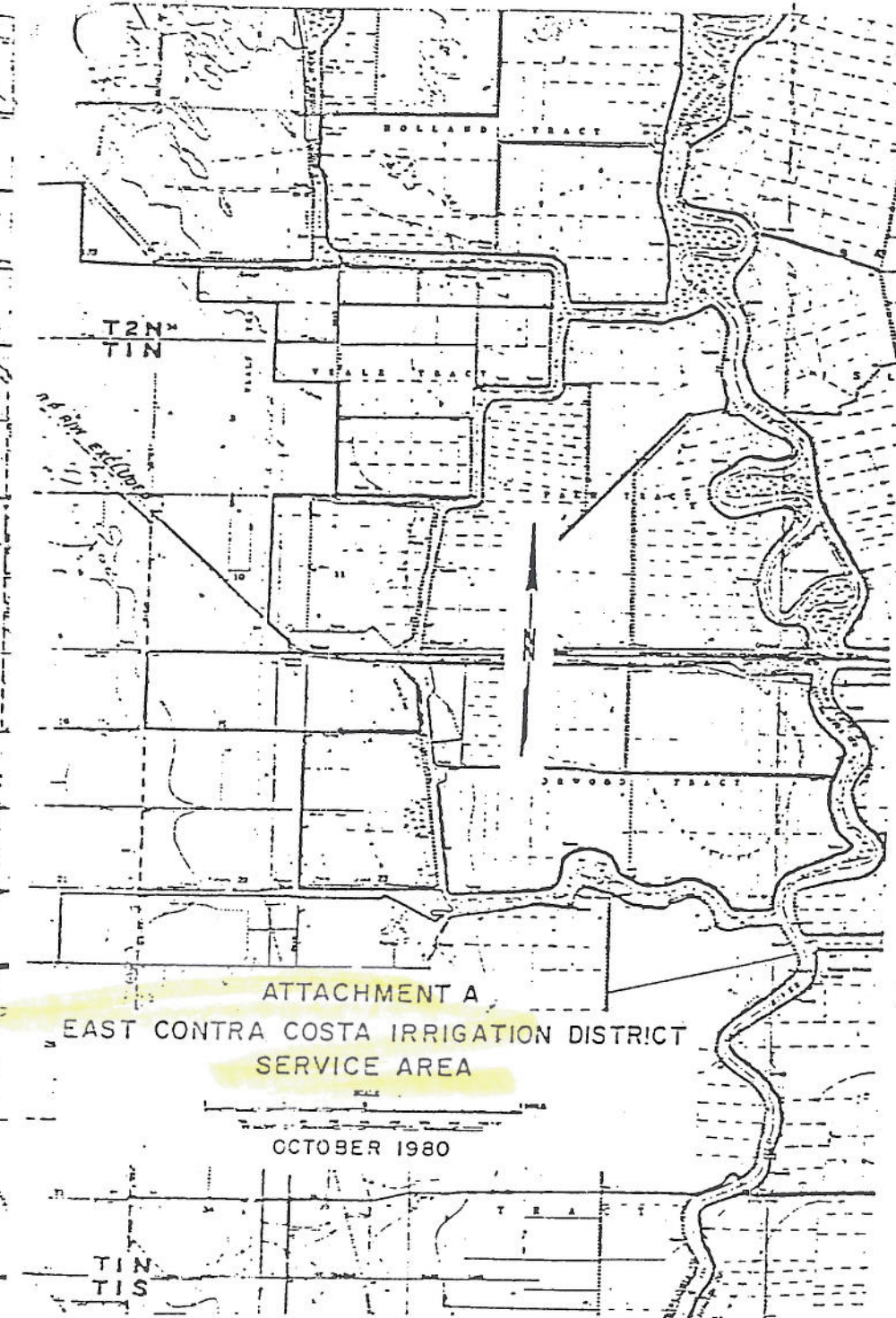
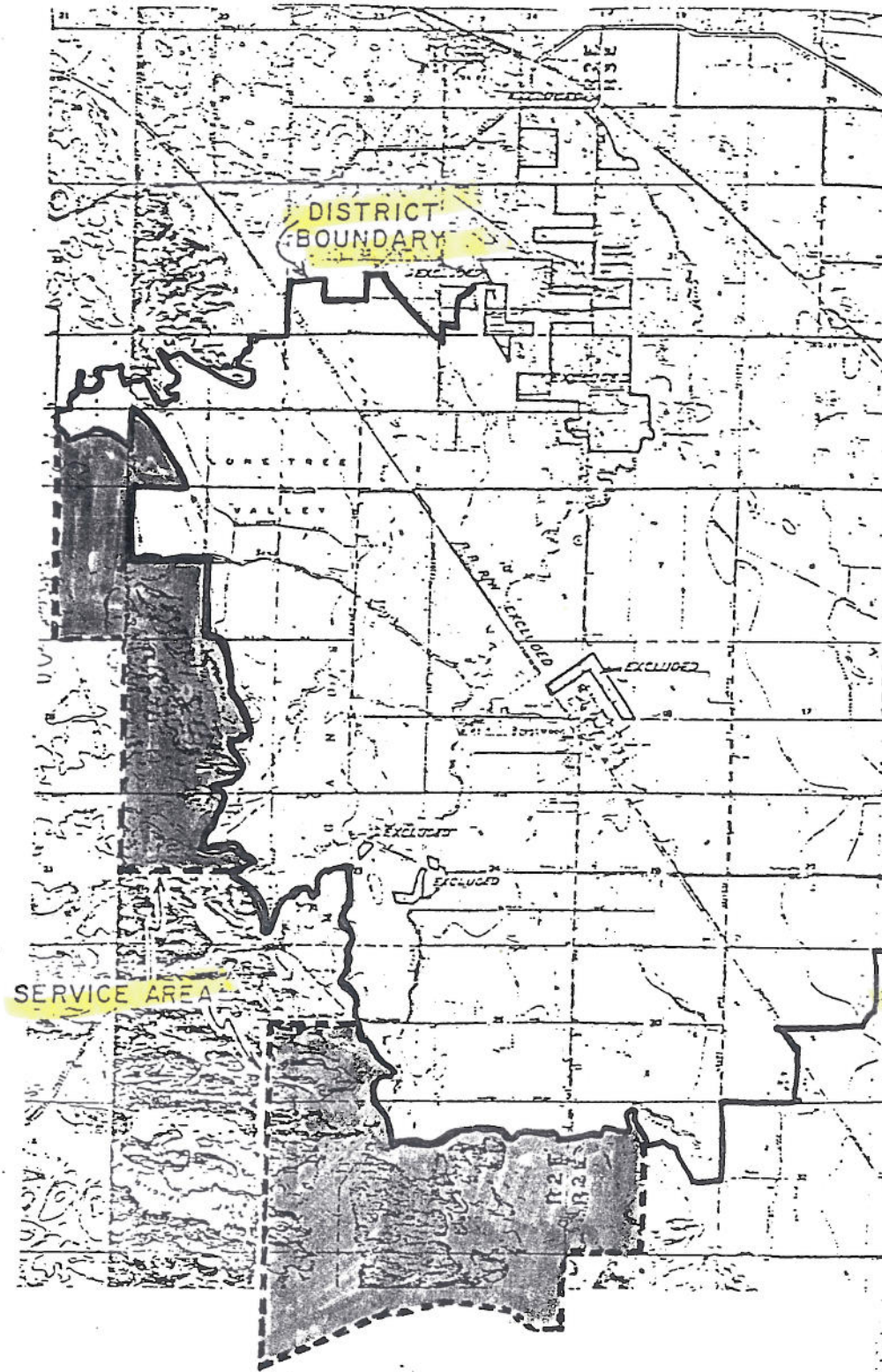
Approved as to legal form  
and sufficiency:

By   
General Counsel  
East Contra Costa Irrigation  
District

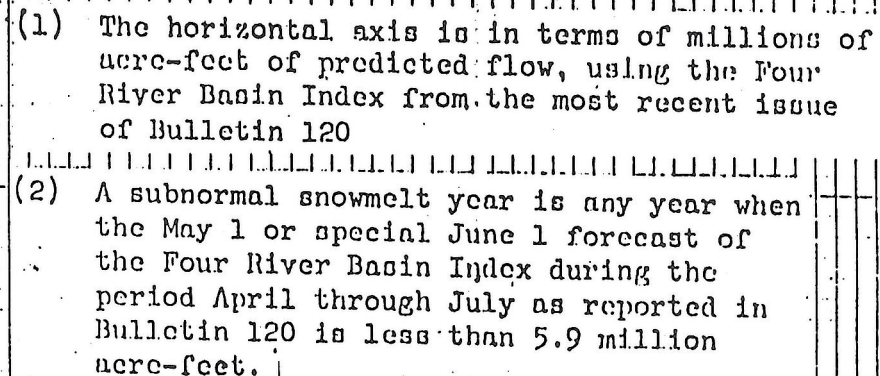
EAST CONTRA COSTA IRRIGATION  
DISTRICT

By   
Chairman  
Board of Directors







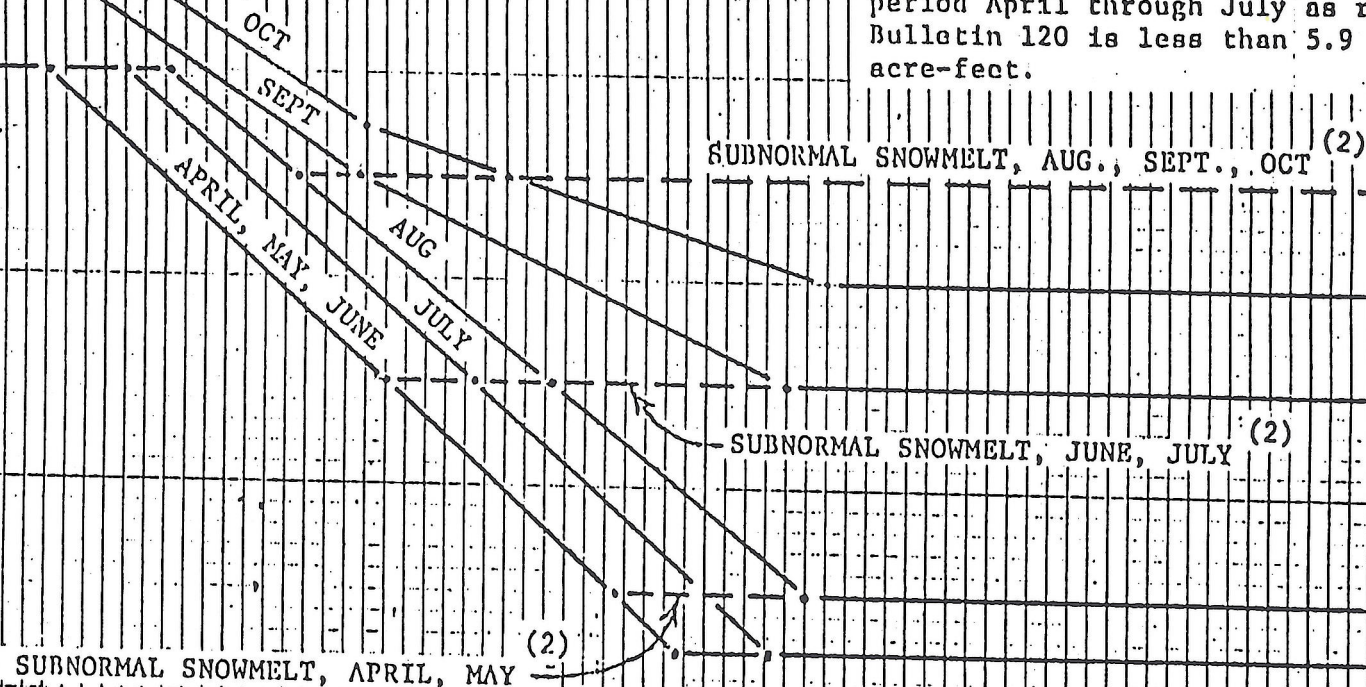




(1) The horizontal axis is in terms of millions of acre-feet of predicted flow, using the Four River Basin Index from the most recent issue of Bulletin 120

(2) A subnormal snowmelt year is any year when the May 1 or special June 1 forecast of the Four-River Basin Index during the period April through July as reported in Bulletin 120 is less than 5.9 million acre-feet.

EC IN ACES



WATER QUALITY CONTRACT CRITERIA  
 OLD RIVER AT INDIAN SLOUGH  
 POST PERIPHERAL CANAL

ACRE-FEET IN MILLIONS (1)

EAST CONTRA COSTA IRRIGATION DISTRICT