

STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
DEPARTMENT OF WATER RESOURCES

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AGREEMENT BETWEEN  
THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF CALIFORNIA  
AND THE BYRON-BETHANY IRRIGATION DISTRICT  
REGARDING THE DIVERSION OF WATER  
FROM THE DELTA

THIS AGREEMENT is made MAY 28, 2003, between the  
DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA  
(Department), and the BYRON-BETHANY IRRIGATION DISTRICT (District) a  
governmental agency acting under and by virtue of Division 11 of the California Water  
Code.

RECITALS

- A. The District maintains a right to divert water for irrigation and domestic uses from the Delta at a point where the Italian Slough channel intersects Old River based on a pre-1914 appropriative right.
- B. The Department holds certain appropriative rights from the State Water Resources Control Board pursuant to which water is conveyed and distributed by agreements through what is commonly referred to as the State Water Project, which permits include certain rights to divert and redivert water from the Delta.
- C. Pursuant to "Agreement Between Byron-Bethany Irrigation District and the State of California Department of Water Resources," executed May 4, 1964, and which remains in effect, the Department was allowed to cross the District's S45 lateral, destroy a portion of the lateral, and pay the District a lump sum of money for the

District to construct two pumping plants on the Harvey O. Banks Delta Pumping Plant intake channel. The Department consented to the permanent and perpetual use by the District, without cost, of the Department's facilities and of that portion of its right of way required for the construction, operation and maintenance of the District's pumping facilities. The District, pursuant to Section 1706 of the Water Code of the State of California, changed its point of diversion from Italian Slough at Old River to the Intake Channel.

- D. The District provides water for irrigation and municipal and industrial purposes in parts of Contra Costa, San Joaquin, and Alameda counties.
- E. Pursuant to "Agreement Between the Department of Water Resources of the State of California and Byron-Bethany Irrigation District for an Exchange of Water," executed September 17, 1993, the terms for an annual exchange of up to a maximum of 4,000 acre-feet of water between the District and the Department were defined. The District was to make water available to the Department during the period April 1 through October 31 for a like amount of water made available to the District during the period November 1 through March 31. This exchange provided the District with a reliable year-round source of water for the approved Mountain House Community development.
- F. The purpose of this Agreement is to describe the nature and extent of the District's rights as between the District and the Department for the diversion of water from the Delta for agricultural, municipal and industrial uses within the District.

## AGREEMENT

The parties agree as follows:

1. DEFINITIONS.

- a. "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 this Agreement.
- b. "Department" shall mean the Department of Water Resources of the State of California.
- c. "District" shall mean the Byron-Bethany Irrigation District and shall include all of the lands within the jurisdiction of the Byron-Bethany Irrigation District at the time the Agreement is executed, or are within the boundaries of the Mountain House Community, and those lands which may hereafter be annexed to the District with the approval of the Department, which are within the area shown on Attachment A.
- d. "Intake Channel" shall mean the Harvey O. Banks Delta Pumping Plant intake channel.
- e. "Mountain House Community" shall mean the development described in the Mountain House Community general plan amendment (GP-92-09 as approved by the San Joaquin County Board of Supervisors on February 25, 1993, by Resolution R-93-110, plus those incidental areas to be included within the Master Plan of the Mountain House Community, as shown on the map dated May 5, 1993 attached as Attachment B.



- f. "SWP" shall mean the State Water Resources Development System as defined in Section 12931 of the Water Code of the State of California.
- g. "Year" shall mean the period January 1 through December 31.

2. TERM OF AGREEMENT

This Agreement shall become effective upon the date stated in the first sentence of this Agreement, and shall remain in effect through December 31, 2035.

Within a reasonable time prior to the expiration of this Agreement, the parties shall enter into good faith negotiations to renew this Agreement on terms and conditions agreeable to both parties. This Agreement may be amended or terminated at any time by mutual agreement of the parties. In the event this Agreement terminates, the parties' water rights, as between the Department and the District, shall exist as if this Agreement had not been executed.

3. ENVIRONMENTAL DOCUMENTATION

As may be necessary, the District shall serve as lead agency and the Department as responsible agency under the California Environmental Quality Act with respect to this Agreement. The District shall submit to the Department any environmental document that has been prepared and shall file a notice of determination under CEQA.

4. REGULATORY RESTRICTIONS

Restrictions imposed by state or federal regulatory agencies for environmental, drought, or other purposes that affect the ability of the Department to make water

diversions from the Delta for SWP deliveries, shall only be applied to the District if they are imposed directly upon the District by law.

5. INABILITY TO MAKE WATER AVAILABLE

If a structural emergency occurs such as a levee failure or a failure of a SWP facility due to but not limited to, earthquake or flood damage which prevents diversion of water from the Intake Channel and the Delta facilities for agricultural, municipal and industrial purposes, the Department shall not be in breach of this Agreement if it makes reasonable efforts to maintain operations of the SWP. Neither the Department nor any of its officers, agents, or employees shall be liable for any damage, direct or indirect, arising from shortages in the amount of water to be made available for diversion by the District as a result of emergencies, disasters, catastrophic conditions, or activities beyond the control of the Department.

6. AREA SERVED.

District water shall not be sold or otherwise disposed of by the District for use outside of the District as shown on Attachment A, without the prior written consent of the Department. Such consent shall not be arbitrarily or unreasonably withheld. All return flow water from water diverted by the District under this Agreement shall be returned to the Delta channels.

7. WATER QUALITY.

Neither the Department, nor its officers, agents, or employees shall be liable for the quality of the water diverted by the District, including but not limited to,

property damage, personal injury, or death arising out of or in connection with the quality of the water delivered beyond the District's diversion point.

8. RIGHT TO DIVERT WATER

The District maintains that water diverted by the District under this Agreement shall be deemed diverted under the District's present water rights. This Agreement neither enlarges nor restricts the District's present water rights. This Agreement shall constitute the full and sole agreement between the Department and the District to divert water from the Delta for agricultural, municipal and industrial use. The uses shall not be disturbed or challenged by the Department and the District shall not claim any right against the Department in conflict with provisions in this Agreement so long as this Agreement remains in full force and effect.

9. DIVERSION AMOUNT

The District may divert up to 50,000 acre-feet of water annually from the District's point of diversion in the Intake Channel, mile post 1.83, for beneficial use within historic District boundaries, as shown on Attachment A, at a rate not to exceed 300 cubic feet per second. The District may furnish water under the provisions of this Agreement to the Tracy Hills portion of the District, as shown on Attachment A, to the extent that such deliveries could have been made under the water rights of BBID in the absence of this Agreement. Total diversions by BBID for delivery within all portions of the District shall not exceed 50,000 acre-feet.



The District may divert water during any month of the year for agricultural, municipal, and industrial purposes.

10. MEASUREMENT OF WATER DIVERTED

The District shall measure the quantity of water diverted from the Delta and shall keep and maintain accurate and complete records thereof. The measuring devices and equipment shall be examined regularly, tested and serviced as needed to insure their accuracy by the District at its sole cost. At its discretion, the Department may inspect such measuring devices and equipment and the records relating to the diversion. The District shall continue to provide records of daily diversions to the Delta Field Division Area Control Center. The District shall take reasonable steps to ensure that 50,000 acre-feet maximum annual diversion in Paragraph 9 is not exceeded.

11. INDEMNITY

The District shall defend and hold harmless the Department and its officers, agents, or employees, from any action, liability, damages, claims of damages, judgement, or settlement, including, but not limited to those nor shall be liable for property damage, personal injury, and death (1) arising out of the control, carriage, handling, use, disposal, water quality, or distribution of water after it has been diverted by the District after such water has passed its diversion points, (2) involving the District's legal authority to divert water from the Delta, or (3) relating to the District's compliance with CEQA under Paragraph 3 of this Agreement.

12. RESERVATION WITH RESPECT TO STATE LAWS.

Nothing in this Agreement shall be construed as estopping or otherwise preventing either party, or any person, firm, association, corporation, or public body claiming by, through, or under either party, from contesting by litigation or other lawful means, the validity, constitutionality, construction or application of any law of the State of California.

13. OPINIONS AND DETERMINATIONS

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

14. ASSIGNMENT

No assignment of this Agreement in whole or in part shall be valid without the written approval of the Department. The Department may impose reasonable terms and conditions on any assignment which it approves.

15. WAIVER OF RIGHTS.

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



16. ASSURANCE RELATING TO VALIDITY OF AGREEMENT

After the execution and delivery of this Agreement, the District may file and pursue 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 Agreement and the validity of the provisions thereof as a binding and enforceable obligation upon the Department and the District. If, in this proceeding or other proceeding before a court of competent jurisdiction, any portion of this Agreement should be determined to be constitutionally invalid, then the remaining portions of this Agreement shall remain in full force and effect.

17. NOTICES

All notices that are required either expressly or by implication to be given by one party to the other under this Agreement shall be deemed to have been given if delivered personally or if enclosed in a properly addressed envelope and deposited in the United States Post Office for delivery by registered or certified mail and sent by facsimile. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown below:

The Department:

Chief, State Water Project Analysis Office  
Department of Water Resources  
Post Office Box 942836  
1416 Ninth Street  
Sacramento, California 94236-0001  
Facsimile: (916) 653-9628

The District:

General Manager  
Byron-Bethany Irrigation District  
Post Office Box 160  
3944 Main Street  
Byron, California 94514-0160  
Facsimile: (925) 516-1239

18. TERMINATION OF 1993 AGREEMENT

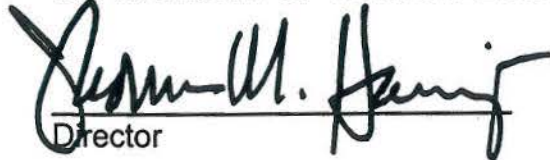
The "Agreement Between the Department of Water Resources of the State of California and Byron-Bethany Irrigation District for an Exchange of Water," executed September 17, 1993, shall terminate on the effective date of this Agreement.

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

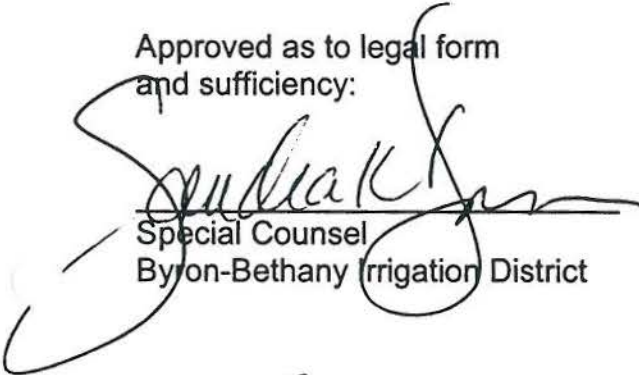
Approved as to legal form  
and sufficiency:

  
Chief Counsel  
Department of Water Resources

STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES

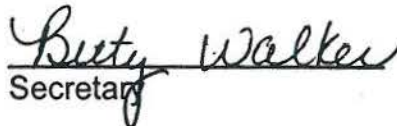
  
Director

Approved as to legal form  
and sufficiency:

  
Special Counsel  
Byron-Bethany Irrigation District

BYRON-BETHANY IRRIGATION  
DISTRICT

  
Signature

Attest:   
Secretary



