

Execution Copy

SETTLEMENT AGREEMENT
Relating to the Diversion of Water From the Santa Ana River System
(the "Seven Oaks Accord")
July 21, 2004

repair said ditch and to pay all of said damages.

IN WITNESS WHEREOF, the parties hereto sign their respective names this 23 day of May 1935.

L. C. Waite, A. M. Aplin, Mrs. D. C. Randall, Geo. Miller,
Th. C. Waite, Proxy, C. R. Wilke by W. Laycock, Proxy, Nelson
Laycock, John Stone by R. F. Cunningham, Proxy, R. F. Cunningham,
D. A. Coddington by R. F. Cunningham, Proxy, R. F. Cunningham,
Edd Dwyer, S. F. Crow by W. F. Crow, L. E. Rice, W. R. and T. S.
Ingham.

John Chony,
Wm. H. Chony,
Seth Marshall

By Their Attorney in Fact

H. M. Willis.

G. W. Beattie, Mrs. Anjelica Beattie by G. W. Beattie, Proxy,
H.M. Strong by G. W. Beattie, Att'y in Fact, John W7 Downs, A. R.
Crier, R. B. Pussardon, C. K. Mattison, M. Cloghorn, L. F. Cran,
J. C. Weeks, H. J. Quinn, Christian Kurtz, Mary Ely, F. H.
Cavalier,

North Fork Water Company
By L. C. Waite, President
G. W. Beattie, Secretary.

(SEAL)

State of California
County of San Bernardino

SS.

On this 23d day of May, one thousand eight hundred
and eighty-five, before me H. Connor, Court Commissioner in
and for the said County of San Bernardino, Personally appeared
L. C. Waite and G. W. Beattie, known to me to be the President and
Secretary respectively of the corporation that executed the
within instrument, and acknowledged to me that such corporation
executed the same.

EXHIBIT "E"

This supplemental agreement made this 27th day of June 1885 by and between the North Fork Water Company of the one part and the Bear Valley Land and Water Company of the other part, all of San Bernardino County, State of California, with intent to modify and render more definite and certain a certain contract heretofore made between said parties and other owners of the North Fork Water Ditch and right.

WITNESSETH: That it is understood and agreed that section four of said agreement of May 23, 1885, be, and the same is hereby stricken out, cancelled and declared of no force and effect.

It is also understood, covenanted and agreed by the said Bear Valley Land and Water Company to and with the said North Fork Water Company and other owners of and in the North Fork Ditch, not members of said corporation, that during the months of June, July, August and September of each year the parties of the second part in said agreement of May 23, 1885, shall have the right to pass over or draw back any amount of water they may designate from any month to any month of either of their aforesaid months, not exceeding the limit of six hundred inches in any one month and the aggregate amount of water for said four months shall not exceed twenty-two hundred and fifty inches.

The last clause of section three of the agreement of May 23, 1885, in reference to waste water is stricken out.

This agreement is intended to embrace all parties drawing water through the North Fork Ditch, and especially the portion of said water belonging to the Graa and Van Leuven Ditch.

And subject to the modification herein contained all

This Memorandum, made this 27th day of February, A. D., 1936, between the undersigned of the shareholders in the South Fork Ditch of the Santa Ana River, Sunnyside Division, parties of the first part, and the Bear Valley Land and Water Company, a corporation, party of the second part witnesseth:

Whereas parties of the first part and their co-owners in the said ditch above named are the owners of the right to use all of one half of the flow of the Santa Ana River divided at the point in the mouth of the Santa Ana Canon commonly known as the divide, and are desirous of making an arrangement with party of the second part whereby the supply of water available to parties of the first part, may be made certain and secure during the months of May, June, July, August and September and October.

Now Therefore, know all men by these presents, 1. That parties of the first part agree that all of their respective water water-rights and interests in such water and ditches hereinbefore mentioned over and above the amount or quantity herein stipulated to be furnished and allowed to or retained by said parties of the first part may be perpetually held and enjoyed by party of the second part for its use, benefit and disposal subject to the terms and conditions of this agreement and except as herein limited; it being expressly understood however that each party of the first part retains the right to sell, convey, transfer, mortgage, pledge or otherwise dispose of his respective right or interests in said water or water rights or in this agreement subject also to the terms and conditions hereof.

II. The party of the second part agrees to furnish and do-

EXHIBIT "F"

water measured under a four (4) inch pressure, to-wit; November, December, January, February, March of each and every year hereafter; provided that in case in any such months in any year it is found that there is flowing in said river at the divide a greater quantity of water than six hundred inches going to parties of the second part by the terms of this contract, then one half of the excess above six hundred inches up to and making a maximum of six hundred inches going to parties of the first part, shall be added to and be furnished to parties of the first part for such three hundred inches for any of such months and on the other hand; if it is found that there is flowing in said river at the divide a less quantity of water than six hundred inches going to parties of the second part by the terms of this contract, then one half of such deficiency shall be deducted from three hundred inches and the remainder only shall be for such months furnished to parties of the first part.

IV. It is understood and agreed that a quantity of water taken from the Santa Ana River aside from that which may be supplied from the Bear Valley reservoir substantially the same as that which has heretofore ordinarily flowed through the ditch of parties of the first part shall at all times hereafter flow through said ditch or such other ditch as may be constructed in lieu thereof.

V. It is further understood and agreed that the party of the second part shall be under no obligation to furnish water to parties of the first part as heretofore ^{before} provided until on and after June 1st, 1936, and that until said date all the water of said river which parties of the first part have used, or to which they have been entitled prior to the date hereof,

improved ditch constructed or to be constructed in lieu of their old ditch or any part thereof as aforesaid, if such purchase seems to them expedient upon the basis and at a price to be fixed as follows; to-wit: Parties of the first part and party of the second part shall each respectively appoint a disinterested person to act as an appraiser and in the event of said appraisers failing to agree, the two appraisers thus appointed shall select a third person to act with them as appraiser, and in the event of their failing to agree upon such third person, the Judge of the Superior Court of the County of San Bernardino may appoint such person, and a decision of the majority of said appraisers shall control in the event that said ditch so proposed to be purchased as aforesaid shall be of a capacity no greater than that required to convey two thousand (2000) inches of water measured under a four inch pressure; said appraisers shall view said ditch and determine its actual value at the time of such examination and shall report the result of their determination in the matter in writing within ten (10) days thereafter to the parties hereto or their assigns, and in the event of said ditch being of a capacity to convey more than two thousand (2000) inches of water measured under a four (4) inch pressure then said appraisers in making their estimate shall disregard the excess of capacity over two thousand (2000) inches, and shall appraise said ditch at the price that a ditch with a capacity of no more than two thousand (2000) inches similarly constructed and in like repair would be reasonably worth. And in either event, the parties hereto bind themselves, their heirs, executors, administrators, assigns and successors

EXHIBIT "F"

majority in interest of said parties of said parties of the first part shall control.

IX. It is understood and agreed by all the parties hereto that time is of the essence of this agreement; but if from the act of God, or any unforeseen accident elemental or otherwise not attributable to the negligence or default of the party of the second part whereby its dam or other works insofar the supply of water may be temporarily destroyed or injured, then in the event that all the natural flow of the water of the Santa Ana River and its tributaries to which the parties of the first part may be entitled, independent of this agreement, be permitted by party of the second part to flow down to the divide with the Redlands ditch at the place commonly known as the Sycamore Tree, then no damage shall be claimed or forfeiture ensue.

X. It is further understood and agreed that party of the second part shall permit no trespass upon, nor interference ^{rescue} with the right of parties of the first part in or to any of the waters of the Santa Ana River during the time that this contract shall remain in force and that said party of the second part may take such prompt steps by litigation, or otherwise lawfully and which the particular exigency may require to prevent any infringement by third parties upon the rights of parties of the first part, or any of them, in, or to any of said water.

And it is further understood and agreed that in the event of the failure of party of the second part to take such necessary steps for the purposes aforesaid parties of the first part hereby reserve to themselves the right to proceed in

EXHIBIT "F"

F. E. Hall,	2
J. B. Clover,	2-1/2
Israel Reel,	4-3/4
Redlands Water Company,	50
By David Morcy, President	
J. S. Edwards, Secy.	
R. B. Smith,	4
Truman Reeves,	1
D. L. Clark,	1
Wm. and E. Leidenberg,	4-1/2
Wm. B. Reeves and R. A. Reeves,	3
Mrs. Germlit (May)	1
W. C. Butler,	3-1/2
L. Fogler,	1
Ben Barton,	15
D. L. Adams and Julia and T. Adams	4
E. E. Booth,	1/2
C. E. Thompson by E. E. Booth	1/2
Mrs. Jane D. Hale,	1
Lugonia Fruit Packing Co.,	
by Geo. A. Cook, President,	
2nd Congregational Church of San Bernardino at	
Lugonia by Geo. A. Cook, Pres. Board Trustees	1/4
Mrs. A. M. Tichenor	3
E. I. Fullerton,	1/2
A. Elliot Paine,	1
Lugonia Fruit Growing and Packing	
Company by Henry W. Robinson, Pres.) 20	
and Charles W. Sumner, Treas.)	
A. F. Jones,	1/2

EXHIBIT "F"

STATE OF CALIFORNIA,).
) SS.
COUNTY OF SAN BERNARDINO.)

I, LEGARE ALLEN, County Recorder of said county, hereby certify the foregoing to be a full, true and correct copy of the Agreement between I. D. B. Stillman, et al, and the Bear Valley Land and Water Company, as recorded in Book I of Agreements, page 315, Records of San Bernardino county.

IN WITNESS WHEREOF, I have herunto set my hand

(Seal) and affixed my official seal this 4th
day of September, a.d. 1933.

Legare Allen, County Recorder.

By W. M. Minkler Deputy.

1 CLAYSON, ROTHROCK & MANN
EUGENE A. NAZAREK
2 601 South Main Street
Corona, California 91720
3 Telephone: (714) 737-1910

4 Attorneys for Plaintiff

5
6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN BERNARDINO

10
11 BIG BEAR MUNICIPAL WATER)
12 DISTRICT,)

13 Plaintiff,)

No. 165493

14 v..)

NOTICE OF WITHDRAWAL OF
SPECIAL COUNSEL FOR PLAINTIFF

15 NORTH FORK WATER COMPANY,)
et al.,)

16 Defendants.)
17

18 PLEASE TAKE NOTICE that DONALD D. STARK, special counsel for
19 Plaintiff herein, hereby withdraws as counsel of record for pur-
20 poses of the Court's continuing jurisdiction. Co-counsel of recor

21 CLAYSON, ROTHROCK & MANN
22 EUGENE A. NAZAREK
601 South Main Street
23 Corona, California 91720
Telephone: (714) 737-1910

24 who are general counsel for Plaintiff District, will remain as
25 sole counsel of record for said party.

26 DATED: February 14, 1977.

27
28 

Donald D. Stark

IN THE COURT OF APPEAL
FOURTH APPELLATE DISTRICT, DIVISION TWO
STATE OF CALIFORNIA

BIG BEAR MUNICIPAL WATER DISTRICT,

Plaintiff and Petitioners,

v.

NORTH FORK WATER COMPANY, et al.,

Defendants and Respondents.

STIPULATION FOR ABANDONMENT AND
DISMISSAL OF APPEAL

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Conservation District

SURR & HELLYER

By Robert Birschbach

Attorneys for Respondent Bear Valle
Mutual Water Company

GREEN & GREEN

By Daniel Green

Attorneys for Respondent North Fork
Water Company

HALES & HALES

By Edwin B Hales

Attorneys for Respondent Lugonia
Water Company

WELEBIR, BRUNICK & TAYLOR

By Edward Taylor

Attorneys for Respondent Redlands
Water Company

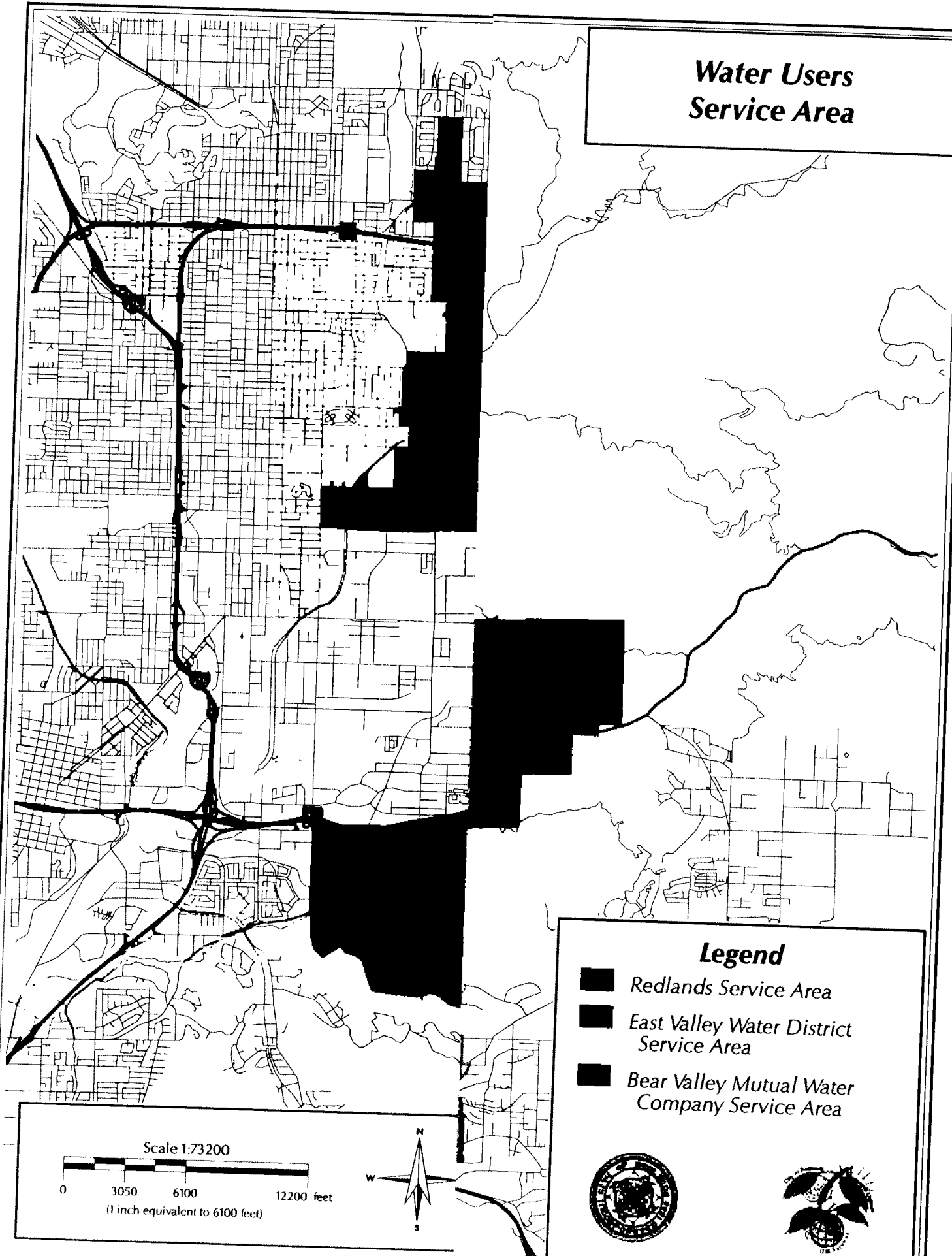
Edward Hullman

Attorney for Respondent San Bernardino
Valley Water Conservation District

EXHIBIT D

EXHIBIT E

Water Users Service Area



Legend

-  Redlands Service Area
-  East Valley Water District Service Area
-  Bear Valley Mutual Water Company Service Area



Source: City of Redlands

Map Plotted: June 29, 2004

EXHIBIT F

Water Users Points of Diversion

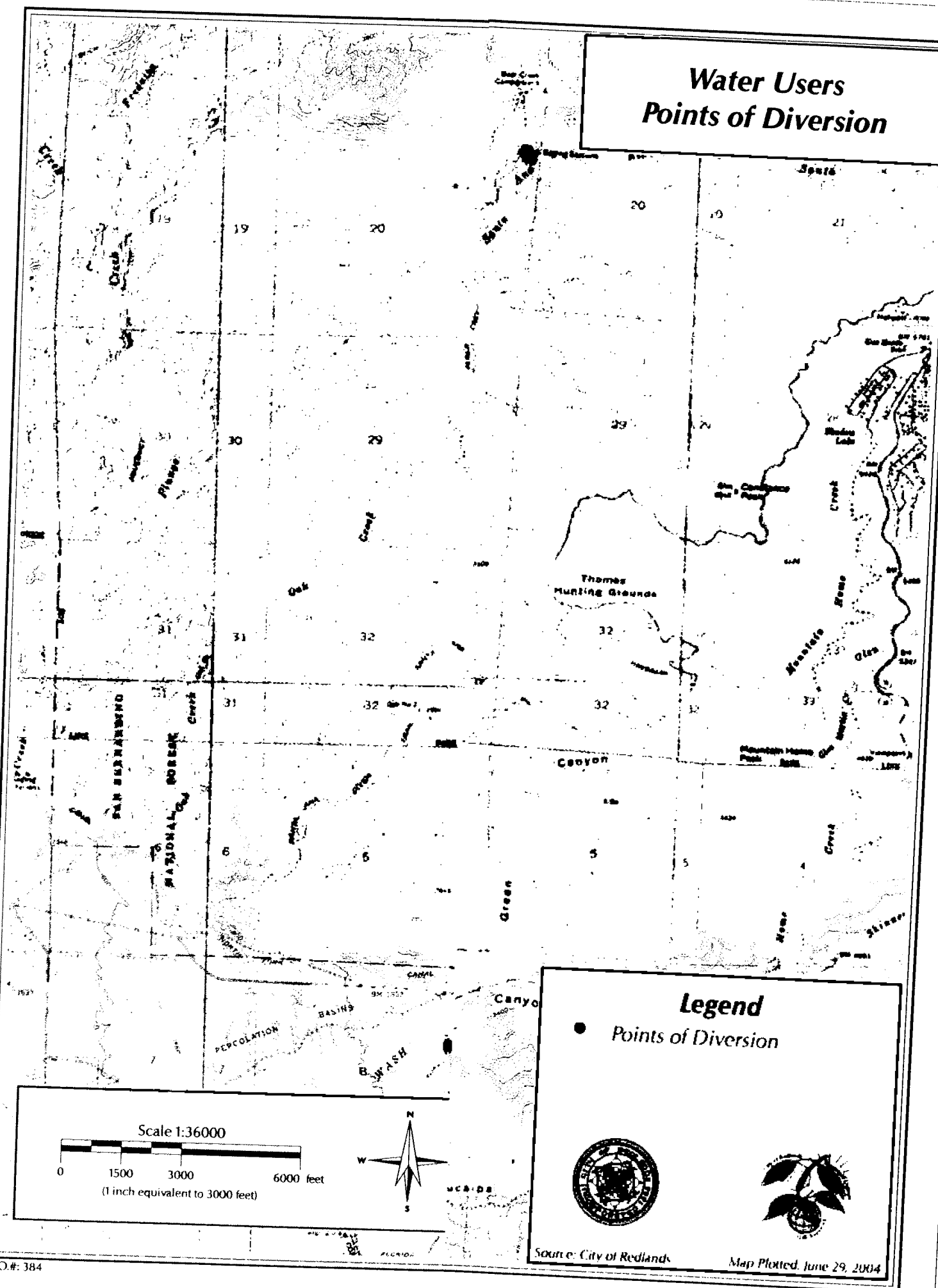


EXHIBIT G

SBBA Index Wells

Well No.	State Well Number	Owner	Well Name
1	02N05W19Q01S	City of San Bernardino MWD	Vincent Well
2	01N04W06H02S	City of San Bernardino MWD	Devil Canyon No. 3
3	01N04W08M01S	City of San Bernardino MWD	Devil Canyon No. 1
4	01N05W03H01S	City of San Bernardino MWD	Cajon Well No. 1
5	01N04W31A01S	City of San Bernardino MWD	Mt. Vernon
6	01N05W06G01S	Fontana Union Water Company	Well 27
7	01N05W07H01S	Fontana Union Water Company	Well 26
8	01N05W22A01S	Fontana Union Water Company	Well 13
9	01N05W36H04S	West Valley Water District	Lord 7
10	01N04W26A02S	East Valley Water District	Well 24A
11	01S04W14P02S	City of Riverside	Raub 1
12	01S04W23Q	Gage Canal Company	Lower Kelly
13	01N04W16E03S	City of San Bernardino MWD	Newmark 3
14	01N04W27A02S	City of San Bernardino MWD	Leroy Street Well
15	01S03W04N01S	East Valley Water District	Well 40
16	01S03W15F01S	City of Redlands	Orange Street Well
17	01S03W21H01S	City of Redlands	Well 32
18	01N03W30J01S	East Valley Water District	Well 62
19	01S02W19A01S	City of Redlands	Agate 2
20	01S03W23A03S	Bear Valley Mutual Water Company	Nelson Street
21	01S03W13M01S	City of Redlands	Airport 2
22	01S03W13Q01S	San Bernardino Valley MWD	San Bernardino Ave. Well
23	01S03W02J02S	East Valley Water District	Well 120
24	01S03W03R04S	East Valley Water District	Well 146A
25	01S02W07R01S	East Valley Water District	Observation Well

EXHIBIT H

Water Users Spreading Facilities

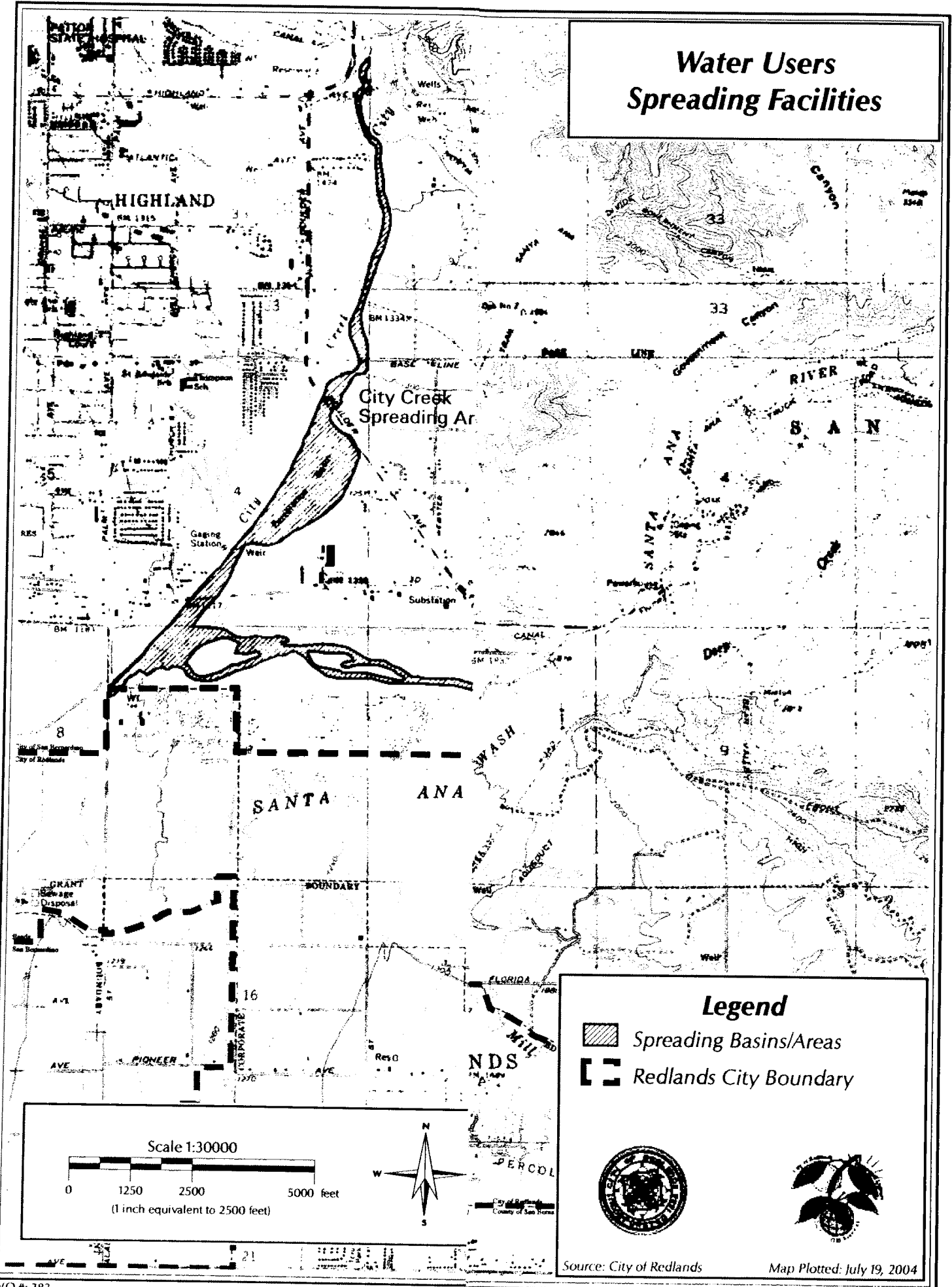


EXHIBIT I

**Thresholds of Significance and Mitigation Measures
To be Included in Applicants' EIR**

1. Threshold of Significance: Reduction in Groundwater Levels at Index Wells Outside the Pressure Zone

A reduction in groundwater levels outside the Pressure Zone is significant if the analysis in this EIR, using the integrated surface water and groundwater model developed by the project proponents, predicts that the project would reduce static groundwater levels at one or more index wells, on average, by more than 10 feet during a repetition of the 39-year base period hydrology, as compared to static water levels in the absence of the project.

2. Threshold of Significance: Increase in Groundwater Levels at Index Wells Within the Pressure Zone

An increase in groundwater levels in the Pressure Zone is significant if the analysis in this EIR, using the integrated surface water and groundwater model developed by the project proponents, predicts that the project would increase static groundwater levels at one or more index wells in the Pressure Zone, on average, by more than 10 feet during a repetition of the 39-year base period hydrology, as compared to static water levels in the absence of the project.

3. Mitigation Measure : Targeted Spreading to Maintain Groundwater Levels

To avoid a significant effect on groundwater levels at one or more index wells located outside the Pressure Zone, the project proponents shall spread sufficient water to maintain static groundwater levels at the affected index wells to reduce this project impact to a less-than-significant level.

4. Mitigation Measure : Limitation on Spreading to Prevent High Groundwater Levels.

To avoid a significant effect on groundwater levels in the Pressure Zone, the project proponents shall curtail their spreading or direct other parties engaged in the spreading of water to replenish the San Bernardino Basin to curtail their spreading to reduce this project impact to a less-than-significant level.

Notice of Exemption

To: ☒ Office of Planning and Research
PO Box 3044, 1400 Tenth Street, Rm. 222
Sacramento, CA 95812-3044

☒ County Clerks
County of San Bernardino
222 West Hospitality Lane
San Bernardino, California 92415

County of Riverside
P.O. Box 751
Riverside, California 92501

From: San Bernardino Valley Municipal Water District
1350 S. "E" Street (92408-2725)
P.O. Box 5906 (92412-5906)
San Bernardino, California

Western Municipal Water District of Riverside
County
450 Alessandro Blvd.
Riverside, CA 92508

City of Redlands
35 Cajon Street, Suite 15-A
Redlands, CA 92373

East Valley Water District
1155 Del Rosa Avenue
San Bernardino, CA 92413

Project Title: Settlement Agreement Relating to the Diversion of Water from the Santa Ana River System (the "Seven Oaks Accord")

Project Location - Specific: See description of project, below.

Project Location – Cities: San Bernardino, Highland, Rialto, Colton, Redlands, and Terra Ce, Loma Linda, and Ycaipa

Project Location - Counties: San Bernardino and Riverside Counties

Description of Nature, Purpose, and Beneficiaries of Project:

San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County have filed applications with the State Water Resources Control Board ("SWRCB") to appropriate water from the Santa Ana River for direct diversion and/or storage. The City of Redlands, East Valley Water District and Bear Valley Mutual Water Company (among others) have filed protests against the applications alleging infringement of their senior water rights and adverse impacts on the environment. The project is the execution of a settlement agreement, approved by the parties, to resolve the protests without the need for a lengthy and expensive water rights hearing. The execution of the settlement agreement will have no physical impact on the environment.

Name of Public Agency Approving Project: San Bernardino Valley Municipal Water District, Western Municipal Water District of Riverside County, City of Redlands, East Valley Water District.

Name of Person or Agency Carrying Out Project: San Bernardino Valley Municipal Water District, Western Municipal Water District of Riverside County, the City of Redlands, East Valley Water District, Bear Valley Mutual Water Company, Lugonia Water Company, North Fork Water Company, and Redlands Water Company.

Exempt Status: (*check one*)

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☐ Categorical Exemption. State type and section number:
- ☐ Statutory Exemptions: State code number:

Reasons why project is exempt: The project is the execution of a settlement agreement which requires the withdrawal of protests to applications presently pending before the SWRCB, the submission of letters in support of the applications, and an amendment to the applications. Consequently, there is no possibility that the project will result in a physical change to the environment and the project is exempt pursuant to the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. CEQA Guidelines §15061(b)(3).

Please see attached.

Lead Agency Contact Person:

Robert Reiter

(909) 387-9222

John Rossi

(909) 789-5000

Douglas Headrick

(909) 798-7698

Robert Martin

(909) 889-9501

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: _____ Date: _____

Title: _____

☐ Signed by Lead Agency

☐ Signed by Applicant

Date received for filing at OPR: _____

Determination of Exempt Status – Execution of Seven Oaks Accord

The execution of the Seven Oaks Accord is a project that is exempt from environmental analysis under the terms of the California Environmental Quality Act ("CEQA"). A project is exempt from CEQA if a lead agency can determine with certainty that there is no possibility that the activity in question may have a significant effect on the environment. (Cal. Code Regs. tit. 14, §15061, subd. (b)(3)); No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68, 74.) The purpose of this exemption is to provide "a short way for agencies to deal with discretionary activities which could arguably be subject to the CEQA process but which common sense provides should not be subject to the Act." (Cal. Code Regs. tit. 14, discussion following §15061; Davidon Homes v. City of San Jose (1997) 54 Cal.App.4th 106, 112.)

An agency can determine that a project will have no significant effect on the environment where the project will have no direct environmental effect and is not an implementation step in a comprehensive plan which can ultimately result in physical changes to the environment. (Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School District (1992) 9 Cal.App.4th 464, 474, 476.) In Kaufman & Broad-South Bay, Inc., the court held that an environmental analysis was not required for the formation of a community facilities district, emphasizing the absence of a causal link between the action and the alleged environmental impact, the construction of new schools. (*Id.* at 474.) Although the District could foreseeably construct new schools in the future, the court found that the formation of a community facilities district was not an "essential step" in a chain of events leading to a change in the environment. (*Id.*)

Here, the project involves the execution of a settlement agreement that resolves protests against water rights applications presently pending before the State Water Resources Control Board. The project itself requires administrative activities consisting of the withdrawal of protests to applications, a submission of letters in support of applications, and an amendment to the application. The project is exempt from CEQA for at least two reasons. First, the execution of a settlement agreement is not an "essential step" in the processing of the two water right applications before the State Water Resources Control Board; accordingly, under Kaufman & Broad-South Bay, Inc., the adoption of the settlement agreement is exempt from further analysis under CEQA. Second, given the nature of the project (i.e., the exchange of correspondence with the State Water Resources Control Board), common sense dictates that it can be seen with certainty that the project will not have an adverse impact on the physical environment. Similar to Kaufman & Broad-South Bay, Inc., and consistent with the terms of the settlement agreement itself, environmental impacts resulting from future decisions related to the Project will be examined at the time those decisions are made. (9 Cal.App.4th at 473.)

For these reasons, San Bernardino Valley Municipal Water District, Western Municipal Water District of Riverside County, the City of Redlands, and East Valley Water District can determine with certainty that there is no possibility that the project may have a significant effect on the environment.

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SETTLEMENT AGREEMENT

Relating to the Diversion of Water from the Santa Ana River System

This Settlement Agreement Relating to the Diversion of Water From the Santa Ana River ("**Agreement**") is entered into this 21st day of July, 2004 ("Effective Date") by and among: San Bernardino Valley Municipal Water District ("**Muni**") and Western Municipal Water District of Riverside County ("**Western**") (collectively, Muni and Western are referred to as the "**Applicants**"); the City of Redlands ("**Redlands**"); East Valley Water District ("**East Valley**"); and Bear Valley Mutual Water Company, Lugonia Water Company, North Fork Water Company and Redlands Water Company ("**Bear Valley**"), (collectively, Redlands, East Valley and Bear Valley are referred to as the "**Water Users**"). Each of the parties to this Agreement is referred to herein as a "**Party**" and the parties are collectively referred to herein as the "**Parties**."

Recitals

Applicants have filed with the State Water Resources Control Board ("**SWRCB**") Application Nos. 31165 and 31370 (collectively, the "**Applications**") to appropriate water from the Santa Ana River for direct diversion and/or storage. Water Users have filed protests against the Applications alleging infringement of Water Users' senior water rights and adverse impacts on the environment. The Parties wish to resolve these protests without the need for a lengthy and expensive water rights hearing.

- c. *Incorporation of Settlement in Applications.* Applicants shall, within twenty business days of the date on which Applicants issue a draft environmental impact report on the Applications for public review, amend the Applications to incorporate the terms of this Agreement therein and request the SWRCB to incorporate the terms of this Agreement in any permits issued to Applicants.
2. *Effect of Agreement.* Paragraphs 3 to 11 of this Agreement shall not take effect unless and until: (i) the Parties complete the review and analysis, if any, that may be required by the terms of the California Environmental Quality Act of the potential physical change in the environment of implementing those provisions and (ii) the SWRCB approves the Applications, in whole or in part, and issues water rights permits to Applicants pursuant thereto. In the event that the SWRCB denies the Applications in their entirety, paragraphs 3 to 11 of this Agreement shall immediately be deemed null and void and no Party shall be bound thereby. In the event that the SWRCB approves the Applications by the issuance of permits which contain terms or provisions that are inconsistent with the terms or provisions of this Agreement, the Parties shall implement the terms or provisions of this Agreement to the extent legally permissible.
3. *Diversions from the Santa Ana River*
 - a. *Diversions by Water Users.* Subject to the conditions contained in subparagraphs 3(a)(1) to 3(a)(7) below, any rights granted Applicants by the SWRCB to divert water from the Santa Ana River shall be subject to the prior right of Water Users to divert up to the first 88 cfs of the natural flow of the Santa Ana River and Applicants shall not, during the term of this Agreement, object to, nor challenge by way of any administrative proceeding, judicial proceeding or otherwise, Water Users' combined diversion of up to the first 88 cfs of the natural flow of the Santa Ana River, as defined in paragraph 3(a)(7) below. Such diversion may include, without limitation, Water Users' diversion of water at rates sufficient to:

Bernardino County Superior Court No. 165493) dated February 4, 1977, a copy of which is attached hereto as Exhibit C and incorporated herein by reference (the "**1977 Judgment**"). Water Users may divert up to the full 88 cfs using the combination of the Southern California Edison power conduit and the river pickup located downstream from Seven Oaks Dam and upstream from the afterbay of Southern California Edison Santa Ana River Powerhouse No. 3. The facilities described in this subparagraph are depicted in the map attached hereto as Exhibit D and incorporated herein by reference. If Southern California Edison sells or otherwise disposes of the power conduit system, Water User's right to divert the first 88 cfs of the natural flow of the Santa Ana River shall remain unaffected.

- (3) *Water Users' Service Areas.* The Water Users' combined service areas are defined more precisely in Exhibit E, which is attached hereto and incorporated herein by reference.
- (4) *Water Users' Points of Diversion.* Nothing in this Agreement is intended to prevent the Water Users from diverting water from points of diversion that they each respectively use at present. A list of such points of diversion is attached as Exhibit F and incorporated herein by reference. Water Users agree that Applicants may divert the water that is the subject of the Applications from Water Users' points of diversion, *provided* that Applicants may only divert water from Water Users' points of diversion during those times when there is diversion capacity available at those points of diversion which is excess to the needs of Water Users. Water Users shall execute the necessary documents, if any, to evidence full permission to Applicants to

of Water Users, which, pursuant to paragraph 3(a) above, shall not exceed 88 cfs. Water Users shall have no claims to or rights in the water diverted by Applicants provided that nothing in this Agreement is to be construed as prohibiting Water Users from participating in programs developed or implemented by Applicants on the same terms and conditions as other water purveyors in the San Bernardino Valley.

4. *Groundwater Spreading Program.* Applicants, after consultation with Water Users, shall develop and manage a groundwater spreading program that is intended to maintain groundwater levels at the wells specified in Exhibit G at relatively constant levels, in spite of the inevitable fluctuations due to hydrologic variation. The groundwater spreading program shall identify target water level ranges in the specified wells and shall be subject to the requirement that such spreading not worsen the problem of high groundwater levels in the Pressure Zone. The determination of whether a particular action will worsen groundwater levels in the Pressure Zone shall be made using the integrated surface and groundwater models used by Applicants in the environmental impact report for the Applications, as those models may be refined in the future.
 - a. *Development and Implementation of Program.* Applicants shall adopt such an integrated management program within five years of the date on which the SWRCB grants Applicants a permit to divert water from the Santa Ana River. Water Users agree to limit spreading in the San Bernardino Basin Area so as to conform to an annual management plan adopted by Applicants that is consistent with the terms of this Agreement.
 - b. *Spreading by Water Users.* As part of the groundwater spreading program developed by Applicants, Bear Valley may, in lieu of a portion of its share of the 88 cfs of direct diversions of the natural flow of the Santa Ana River described in paragraph 3(a) above, divert up to a maximum collective total of 9 cfs for spreading at either the South Airport spreading basins and/or at the West Mill Creek spreading grounds. These spreading

proposed non-retail service, Applicants and the Water User shall promptly meet to consider whether the provision of non-retail water service would reduce or interfere with the diversion of water by Applicants. If the integrated groundwater/surface water model referred to in paragraph 4 above shows that the proposal for non-retail service would not have any impacts on the location, timing, quantity, spreading or other characteristic of Applicants' diversions, then the Water User may implement the proposal. In all other cases, the proposal for non-retail service shall only be implemented with the prior written consent of Applicants, which shall not be unreasonably withheld or unduly delayed.

6. *Banking and Exchanges.*

- a. *By Water Users.* Save in cases of emergencies, water diverted by Water Users may only be wheeled, banked, exchanged or transferred, directly or indirectly, in lieu or otherwise in the manner allowed by the Cooperative Water Project Agreement.
- b. *By Applicants.* Water Users acknowledge that Applicants intend to bank and/or exchange substantial quantities of native Santa Ana River water for water imported from the State Water Project or other sources of imported or native water pursuant to a comprehensive program for water banking and/or exchanges in the San Bernardino Valley and elsewhere in Southern California that includes, but is not limited to, the groundwater spreading plan described in paragraph 4 above, and that is not inconsistent with the terms of this Agreement.
- c. *Pursuant to Applicants' Program.* Water Users acknowledge that Applicants intend to develop a comprehensive program for water banking and/or exchanges in the San Bernardino Valley and elsewhere in Southern California that includes, but is not limited to, the groundwater spreading plan described in paragraph 4 above. Water Users may participate in such

10. *No Admissions.* Nothing in this Agreement shall be construed as an admission by any Party regarding any subject matter of this Agreement, including but not limited to the water rights of the Parties. The Parties agree that Evidence Code sections 1152 and 1154 render this Agreement inadmissible as evidence against any of the Parties in any adjudicative proceeding, except a proceeding to enforce or interpret the terms or conditions of this Agreement and/or the terms or conditions of a permit or permits issued to Applicants by the SWRCB pursuant to the Applications. In particular, nothing in this Agreement shall be construed as an admission by Applicants relating to the priority, nature, quantity or other characteristic of the water rights claimed by Water Users or a waiver of any contentions by Applicants relating to Water Users' claimed water rights.
11. *Preservation of Rights.* The Parties agree that this Agreement is in settlement of water right disputes and preserves all rights of the Parties as they may exist as of the Effective Date of this Agreement. Nothing in this Agreement is to be construed as altering the priorities or entitlements of Water Users among themselves to water from the Santa Ana River.
12. *Administration of Agreement*
 - a. *Recordation of Agreement.* Applicants shall, within ten days of the Effective Date of this Agreement, cause this Agreement to be recorded in the Official Records of the County of San Bernardino. Applicants shall provide Water Users with recorded copies of this Agreement promptly upon the receipt of such copies from the County of San Bernardino.
 - b. *Books and Records.* Each Party shall have access to and the right to examine any of the other Party's pertinent books, documents, papers or other records (including, without limitation, records contained on electronic media) relating to the performance of that Party's obligations pursuant to this Agreement. The Parties shall each retain all such books, documents, papers or other records to facilitate such review. Access to

with staff and/or technical consultants during the mediation and such staff and/or technical consultants may be present during the mediation. The costs of the mediator shall be divided evenly between the Initiating Party(ies) and the Responding Party(ies).

- (4) *Reservation of Rights.* Nothing in this paragraph 12 shall require a Party to comply with the dispute resolution process contained herein and each Party retains and may exercise at any time all legal and equitable rights and remedies it may have to enforce the terms of this Agreement; provided, that prior to commencing litigation, a Party shall provide at least five calendar days' written notice of its intent to sue to all Parties.
13. *Implementation of Agreement.* This Agreement shall become effective upon its approval by Muni, Western, Redlands, Bear Valley Mutual Water Company, and East Valley. Other Parties identified above shall have 90 days from the Effective Date to execute this Agreement.
14. *Environmental Impact Report.* Applicants shall include thresholds of significance and mitigation measures in substantially the form set forth in Exhibit I in their environmental impact report for the Applications.
15. *General Provisions.*
- a. *Authority.* Each signatory of this Agreement represents that s/he is authorized to execute this Agreement on behalf of the Party for which s/he signs. Each Party represents that it has legal authority to enter into this Agreement and to perform all obligations under this Agreement.
 - b. *Amendment.* This Agreement may be amended or modified only by a written instrument executed by each of the Parties to this Agreement.
 - c. *Jurisdiction and Venue.* This Agreement shall be governed by and construed in accordance with the laws of the State of California, except for

Agreement without the written consent of the other Parties, which consent shall not be unreasonably withheld or delayed.

- i. *Waivers.* Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement and forbearance to enforce one or more of the remedies provided in this Agreement shall not be deemed to be a waiver of that remedy.
- j. *Attorneys' Fees and Costs.* The prevailing Party in any litigation or other action to enforce or interpret this Agreement shall be entitled to reasonable attorneys' fees, expert witnesses' fees, costs of suit, and other and necessary disbursements in addition to any other relief deemed appropriate by a court of competent jurisdiction.
- k. *Necessary Actions.* Each Party agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out the purposes of this Agreement.
- l. *Compliance with Law.* In performing their respective obligations under this Agreement, the Parties shall comply with and conform to all applicable laws, rules, regulations and ordinances.
- m. *Third Party Beneficiaries.* This Agreement shall not create any right or interest in any non-Party or in any member of the public as a third party beneficiary.
- n. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
- o. *Notices.* All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing unless provided otherwise in this Agreement and shall be deemed to have been duly given

LUGONIA WATER COMPANY:

Lugonia Water Company
101 E. Olive Avenue
Redlands, CA 92373
(909) 793-4901
(909) 793-7073 (FAX)
Attn: General Manager

NORTH FORK WATER COMPANY

North Fork Water Company
1155 Del Rosa Avenue
P.O. Box 3427
San Bernardino, CA 92413
(909) 885-4900
(909) 889-5732 (FAX)
Attn: General Manager

REDLANDS WATER COMPANY

Redlands Water Company
101 E. Olive Avenue
Redlands, CA 92373
(909) 793-4901
(909) 793-7073 (FAX)
Attn: General Manager

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT:

San Bernardino Valley Municipal Water District
1350 S. "E" Street (92408-2725)
P. O. Box 5906 (92412-5906)
San Bernardino, CA
(909) 387-9222
(909) 387-9247 (FAX)
Attn: General Manager

WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY:

Western Municipal Water District of Riverside County
450 Alessandro Boulevard
Riverside, CA 92508
(909) 789-5000
(909) 780-3837 (FAX)
Attn: General Manager

BEAR VALLEY MUTUAL WATER COMPANY

By: Robert A. Hinze
Robert A. Hinze
President, Board of Directors

Attest:

By: Charlotte L. Van Eck
Charlotte L. Van Eck
Secretary

CITY OF REDLANDS

By: Susan Pepler
Susan Pepler
Mayor

Attest:

By: Lorrie Poyzer
Lorrie Poyzer
City Clerk

EAST VALLEY WATER DISTRICT

By: George E. (Skip) Wilson
George E. (Skip) Wilson
President, Board of Directors

LUGONIA WATER COMPANY

By: David B. Knight
David B. Knight
President

Attest:

By: Charlotte Van Eck
Charlotte Van Eck
Secretary

NORTH FORK WATER COMPANY

By: Arnold L. Wright
Arnold Wright
President, Board of Directors

REDLANDS WATER COMPANY

By: Joseph P. Buoye
Joseph P. Buoye
President, Board of Directors

Attest:

By: Charlotte L. Van Eck
Charlotte L. Van Eck
Secretary

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

By: Patrick Milligan
Patrick Milligan
President, Board of Directors

WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY

By: Wayne Holcomb
Wayne Holcomb
President, Board of Directors

List of Exhibits

<u>Exhibit</u>	<u>Title</u>
A	Form of Letter to the State Water Resources Control Board From Water Users Withdrawing Water Users' Protests
B	Form of Letter to the State Water Resources Control Board From Water Users Supporting the Issuance of Permits to Applicants (includes list of permits)
C	Judgment in <i>Big Bear Municipal Water District v. North Fork Water Company et al.</i> (San Bernardino Superior Court, No. 165493, February 4, 1977).
D	Map of Santa Ana River Facilities
E	Water Users' Service Areas
F	Water Users' Points of Diversion
G	SBBA Index Wells
H	Map of Water Users' Spreading Grounds
I	Thresholds of Significance and Mitigation Measures to be Included in Applicants' EIR

Arthur G. Baggett, Jr.
Chairman
State Water Resources Control Board
1101 I Street
Sacramento, California 95814

Re: Withdrawal of Protest by _____
Application Nos. 31165 and 31370
Santa Ana River, San Bernardino County

Dear Chairman Baggett:

_____ ("Protestant") has filed protests against Application Nos. 31165 and 31370 which have been filed with the State Water Resources Control Board (the "SWRCB") by San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County ("Applicants"). Protestant and Applicants have now approved a settlement agreement that resolves all of the matters that were the subjects of Protestant's objections to Application Nos. 31165 and 31370. Protestant, accordingly, hereby withdraws its protests to Application Nos. 31165 and 31370. A copy of that executed settlement agreement is enclosed with this letter.

Please feel free to call if you or your staff have questions regarding this withdrawal of protests.

Very truly yours,

Arthur G. Baggett, Jr.
Chairman
State Water Resources Control Board
1101 I Street
Sacramento, California 95814

Re: Letter of Support by _____
Application Nos. 31165 and 31370
Santa Ana River, San Bernardino County

Dear Chairman Baggett:

_____ ("Protestant") has filed protests against Application Nos. 31165 and 31370 (collectively, the "Applications") which have been filed with the State Water Resources Control Board ("SWRCB") by San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County (collectively, "Applicants"). Protestant and Applicants have now approved and executed a settlement agreement that resolves all of the matters that were the subjects of Protestant's objections to the Applications.

Protestant hereby supports the SWRCB's issuance of permits to Applicants for the diversion and storage of the full quantities of water from the Santa Ana River identified in the Applications. Protestant also supports the issuance of all other permits or other regulatory approvals that may be necessary for Applicants to implement their plans to divert water from the Santa Ana River, including seasonal water conservation at Seven Oaks Dam and Reservoir, as reflected in the Applications.

Please feel free to call if you or your staff have questions regarding this letter in support of the Applications.

Very truly yours,

<i>Agency</i>	<i>Permits/Approvals</i>
State Historic Preservation Officer	• Consultation per Section 106 of the National Historic Preservation Act
South Coast Air Quality Control Board	• Permit to Construct • Approval of the fugitive dust emissions plan
County of San Bernardino	• Road Encroachment and Closure permit • Flood Control Right-of-Way (for construction in the floodplain) • Soil Erosion and Sediment Control Permit
City of Highland	• Grading permits • Road encroachment and closure permits
City of Rialto	• Grading permits • Road encroachment and closure permits
San Bernardino Flood Control District, Orange County Flood Control District, and Riverside County Flood Control and Water Conservation District (Local Sponsors of Seven Oaks Dam)	• Encroachment permits and access agreements • Agreement(s) to implement seasonal water conservation at Seven Oaks Dam
Metropolitan Water District of Southern California	• Encroachment permits and access agreements • Exchange agreement (Attachment 5 to Coordinated Operating Agreement for Conveyance Facilities and State Water Project Supplies)

Original Filed

FEB 7 1977

V. Dennis Wardle
County Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

BIG BEAR MUNICIPAL WATER
DISTRICT,

Plaintiff

v.

NORTH FORK WATER COMPANY
et al.,

Defendants

No. 165493

JUDGMENT

This action having been pending on appeal from a prior judgment of this Court, and the parties having stipulated to a form of judgment disposing of the issues raised by the complaint, and the Court of Appeal, pursuant to stipulation, having remanded the case for proceedings in accordance with said Stipulation for Judgment, and good cause appearing

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I. DEFINITIONS AND EXHIBITS

1. Definitions. As used in this judgment, the following terms shall have the meanings herein set forth:

(a) Basin Make-up Water. Water provided by District to

DONALD D. STARK
ATTORNEY AT LAW
31 BUSINESS CENTER
DRIVE

1 impounded by the Dam.

2 (n) Lake Storage Right. The right of Mutual to use the
3 full storage capacity of the Lake for storage of water
4 diverted at the Dam, pursuant to Mutual's appropriative
5 right, which storage right was expressly reserved by Mutual
6 in its conveyance of the Lake Properties to Bear Valley
7 Mutual Water Company Partial Liquidation Trust.

8 (o) Mill Creek Exchange. The Santa Ana River-Mill
9 Creek Cooperative Water Project Agreement, dated May 3, 1976,
10 as amended from time to time.

11 (p) Mouth of the Canyon. The location at which the
12 Santa Ana River passes from its mountain canyon onto the
13 alluvial valley overlying San Bernardino Basin, as shown on
14 Exhibits "A" and "C".

15 (q) Mutual. Bear Valley Mutual Water Company.

16 (r) Mutual's Lake Water Operations. The calculated,
17 hypothetical account of operation of the lake under condi-
18 tions of In Lieu Water deliveries pursuant to the physical
19 solution herein, which account shall be maintained by Water-
20 master in accordance with Watermaster Criteria.

21 (s) North Fork Agreement. That certain agreement dated
22 May 23, 1885, between Bear Valley Land and Water Company and
23 North Fork Water Company, attached as Exhibit "E".

24 (t) Prior Right Agreements. Collectively, the North
25 Fork Agreement and the Sunnyside Agreement, Exhibits "E" and
26 "F".

27 (u) Prior Right Companies. Collectively, North Fork
28 Water Company, Lugonia Water Company and Redlands Water

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II. DECLARATIONS

A. HYDROLOGY

3. Upper Bear Creek Watershed is commonly known as Bear Valley. Its surrounding mountains rise to elevations of 8500 feet, and the watershed extends down to the Dam at elevation 6743 feet. Said watershed is drained by Bear Creek and its tributaries. Immediately easterly of Upper Bear Creek Watershed is the watershed of Baldwin Lake. The dominant geographic feature in Upper Bear Creek Watershed is the Lake, which has existed continuously since 1893. Surrounding the Lake are several mountain communities, the largest of which is Big Bear Village, situate on the southerly border of the Lake. Easterly of Big Bear Village and within Baldwin Lake Watershed is Big Bear City. Domestic water service in Upper Bear Creek Watershed is provided by Southern California Water Company, a public utility, Big Bear City Communities District, and through individual domestic wells. All of the privately-held lands in Upper Bear Creek Watershed lie within the boundaries of District.

4. Early Santa Ana River Diversions. The earliest appropriations of water from the Santa Ana River commence in 1856 from the Santa Ana River as it traversed San Bernardino Basin. Two successor diversions developed by progressive moving of canal and diversion facilities upstream to the Mouth of the Canyon, from which the North Fork Canal distributed water northwesterly into San Bernardino Basin and the Sunnyside Ditch distributed water southwesterly to the vicinity of Redlands. Above these canals there subsequently developed ancillary facilities to serve higher ground through the Edwards Canal and High Line, respectively. The

1 storage capacity in the Lake not utilized by Mutual.

2 B. DECLARATION OF RIGHTS

3 7. Mutual. Mutual is the owner of an appropriative right,
4 with the priorities of 1833 and 1909, to divert at the Dam and
5 store in the Lake for subsequent release and beneficial use within
6 Mutual's service area of all of the flow of Bear Creek at the Dam
7 and Lake. Said diversion shall be at such rate as may be reason-
8 ably necessary to meet the requirements of Mutual's stockholders,
9 not exceeding 65,000 acre feet in any ten (10) year period, as
10 determined by the Board of Directors of Mutual in its sole discre-
11 tion. Said rights have become prescriptive in nature as to all
12 water right claimants downstream from the Dam, excepting only the
13 rights of Prior Right Companies.

14 8. Prior Right Companies. Prior Right Companies, as the
15 successors to the earliest diversion rights at the Mouth of the
16 Canyon, are the owners of the prior appropriative rights confirmed
17 by the Prior Right Agreements, which contractual rights constitute
18 a burden and charge upon the said appropriative right of Mutual.
19 The exact nature, scope and extent of the rights of prior right
20 companies are set forth in said Prior Right Agreements (Exhibits
21 "E" and "F"), and said agreements are hereby confirmed and shall
22 remain otherwise unimpaired by the declarations and determination
23 of this Judgment.

24 9. Conservation District. Conservation District owns an
25 appropriative right to divert and spread storm flows of the Santa
26 Ana River at and below the Mouth of the Canyon, for the benefit of
27 water right claimants within Conservation District. Said rights
28 are derived from and based upon

1 the release of water from the Lake to meet the requirements of
2 Mutual, except in compliance with the physical solution herein-
3 after decreed.

4 5 IV. CONTINUING JURISDICTION

6 13. Continuing Jurisdiction. Full jurisdiction, power and
7 authority are retained and reserved to the Court for the purpose
8 of enabling the Court, upon application of any party by motion and
9 upon 30 days' notice hereof, and after hearing thereon, to make
10 such further and supplemental orders or directions as may be
11 necessary or appropriate for interpretation, enforcement or carry-
12 ing out this Judgment. The Court may award attorneys' fees to the
13 prevailing party in any further proceedings, pursuant to this
14 paragraph.

15 16 V. WATERMASTER

17 A. APPOINTMENT AND COMPOSITION

18 14. Watermaster Committee. The Court will appoint a Water-
19 master Committee, by subsequent order, in accordance with the
20 following procedure:

21 (a) Nominations. On or before sixty (60) days after
22 entry of judgment herein, nominations shall be submitted by
23 a separate pleading filed herein. For said purpose, one
24 nominee each shall be submitted by District, Mutual and
25 Conservation District.

26 (b) Appointment. The three nominees, if acceptable to
27 the Court, will thereupon be appointed by such subsequent
28 order.

1 18. Accounting. Watermaster shall make calculations and
2 maintain accounts to reflect both actual operation of Big Bear
3 Lake and Mutual's Lake Water Operations. Said accounts shall be
4 maintained in accordance with Watermaster Criteria.

5 19. Watermaster Expenses. Each party shall pay the costs
6 and expenses of the representative of such party on Watermaster.
7 The obligation for and cost of making measurements and accumula-
8 ting basic data shall be assumed and paid as follows:

9 (a) At and upstream from Dam -- District.

10 (b) Downstream from Dam -- Mutual and Conservation
11 District, in shares to be agreed upon from time
12 to time.

13 New or additional measurements, relevant hydrologic studies or
14 other activities of Watermaster involving significant cost shall
15 be paid pursuant to unanimous agreement entered into before such
16 costs are incurred. In the absence of agreement, the Court will,
17 by subsequent order, allocate any necessary common Watermaster
18 expenses.

19 20. Reports. Watermaster shall prepare, serve on all
20 parties and file with the Court an annual report on or before
21 April 1 of each year, which shall set forth the accounting for
22 water under the Physical Solution, and a report on all significant
23 Watermaster activity during the preceding calendar year.

24 21. Review Procedures. All actions, decisions or rules of
25 Watermaster shall be subject to review by the Court on its own
26 motion or on timely motion by any party or Watermaster member, as
27 follows:

28 (a) Effective Date of Watermaster Action. Any action,

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2 VI. PHYSICAL SOLUTION
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4 23. Need For Physical Solution. There exists a need for
5 additional water for recreational and wildlife enhancement pur-
6 poses within District. There is not an economically feasible
7 source of supplemental water available to meet the needs of
8 District and its inhabitants for such purposes. Any such use by
9 District of the waters in storage in the Lake will be junior to
10 the declared rights of Mutual and other defendants herein. Supp-
11 lemental sources of water may, from time to time, be available
12 within defendants' areas of use (other than Edison), but are more
13 expensive than waters which might be diverted from storage in the
14 Lake. In order to assure the maximum beneficial use of waters of
15 the State, in accordance with the mandate Article X Section 2 of
16 the Constitution, it is appropriate that the Court adopt a phys-
17 ical solution herein.

18 24. General Plan of Operation. In general terms, the
19 physical solution hereafter decreed will provide for retention of
20 waters of Bear Creek in the Lake by reason of delivery of In Lieu
21 Water to Mutual's system. The costs of In Lieu Water and Basin
22 Make-up Water shall be borne solely by District as consideration
23 for the right to retain an equivalent quantity of stored water in
24 the Lake for District's account.

25 25. District's Right to Provide In Lieu Water. District
26 shall have the right to provide In Lieu Water to Mutual, at Dis-
27 trict's sole expense, to be delivered into Mutual's system at
28 locations designated by Mutual, as a condition of retaining in th

1 water in storage in the Lake. Said High Line obligation
2 shall supersede District's In Lieu Water right unless and
3 until In Lieu Water can be provided by District to meet s
4 High Line requirements from other sources.

5 (f) Dry Year Releases. In the event, by reason of
6 natural disaster or extreme drought, or otherwise, Mutual
7 unable to meet its obligation under the Prior Right Agree
8 ments to Prior Right Companies, and there exists water in
9 storage in the Lake which is not otherwise available to
10 Mutual, District shall make such releases as are necessar
11 enable Mutual to meet said Prior Right obligations. In s
12 event, District shall acquire a right to replacement of
13 quantities in the Lake for its account from the next natu
14 inflow to the Lake, which would otherwise be credited to
15 Mutual.

16 26. Basin Make-up Water. District's lake stabilization
17 operations by exercise of its in lieu right may have some adve
18 impact on the supplies of water to the San Bernardino Basin.

19 27. Procedures for In Lieu Water. In the operation of
20 District's In Lieu right, the following procedures shall be
21 followed:

22 (a) District's Election to Provide In Lieu Water.

23 District shall, on or before April 15 of each year, notif
24 Mutual of District's intent to provide In Lieu Water duri
25 the following fiscal year, and shall designate the maximu
26 amount it is prepared to so provide. District may, durin
27 any year, on ninety (90) day written notice, amend or mod
28 the amount of In Lieu Water so specified.

1 such facility is being used by Mutual for its own account at
2 the time of such replacement, Mutual shall pay such replace-
3 ment cost and shall be reimbursed by District in the same
4 manner as provided above. All such replacement facilities
5 shall be and remain the property of Mutual.

6 (d) Payment. Any costs incurred by Mutual with re-
7 lation to In Lieu Water deliveries shall be paid by District
8 within thirty (30) days of receipt of approved billing
9 therefor. All bills for such In Lieu Water shall be sub-
10 mitted to and approved by Watermaster, provided, however,
11 that Watermaster may, if it deems it to be appropriate,
12 require District to maintain on deposit reasonable sums to
13 insure advance payment of current costs in order to relieve
14 Mutual of any financial burden in connection with said
15 In Lieu Water.

16 28. Procedure for Basin Make-up Water. Watermaster shall
17 annually calculate the net amount of these various adjustments.
18 District shall be obligated to periodically balance any resulting
19 net deficiencies in recharge to the San Bernardino Basin as
20 Watermaster shall determine. Balancing of any deficiency in said
21 account shall occur at least once in each ten (10) year period,
22 the time of delivery within said period to be at the option of
23 District; provided, that in no event shall such negative impact be
24 allowed to exceed 15,000 acre feet; provided, further, that if the
25 net deficiency exceeds 10,000 acre feet, District shall reduce the
26 net deficiency to at least 10,000 acre feet within the succeeding
27 two (2) years; provided, however, that District shall, at the
28 election of Conservation District on or before January 1, 1981,

1 Dam.

2 31. District to Hold Mutual Harmless. District shall hold
3 Mutual free and harmless from any and all liability, cost or ex-
4 pense (including attorney's fees) arising from District's opera-
5 tion of the Lake pursuant to the Lake Surface Rights, and shall
6 cause Mutual to be named as an additional insured on any public
7 liability insurance policies which District may obtain covering
8 its operation of the Lake.

9 32. Physical Solution Agreement. That certain "Physical
10 Solution Agreement" heretofore entered into between District,
11 Mutual and Conservation District on December 23, 1976, is super-
12 seded by this Judgment.

13 33. Costs. No party shall recover any costs in this pro-
14 ceeding from any other party.

15 DATED: FEBRUARY 1, 1977.

16
17 JOSEPH B. CAMPBELL
18 Judge

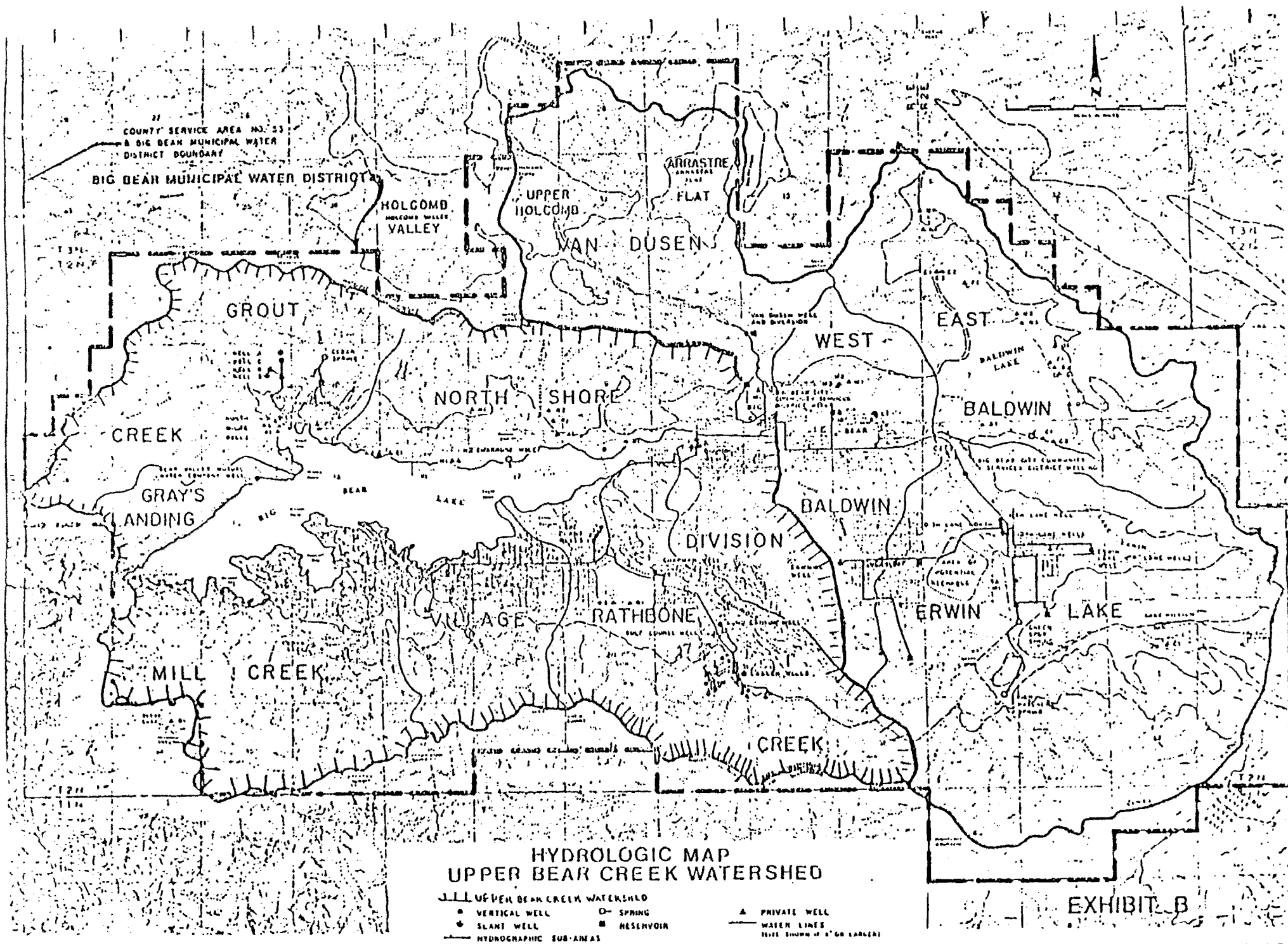


EXHIBIT "D"

WATERMASTER OPERATING
CRITERIA

The following operating criteria shall guide and bind Watermaster in administering the provisions of this Physical Solution Agreement:

1. Basic Data. Watermaster shall accumulate basic data in the form of measurements or estimates of the following flows or hydrologic facts which Watermaster may determine to be necessary to maintenance of accounts required by the physical solution. In the accumulation of such data, Watermaster shall observe the following criteria:

(a) Lake Elevations. Monthly readings shall be taken on or about the first of each month of the elevation of the lake surface as shown on the gage located at the Dam.

(b) Lake Evaporation. Evaporation stations shall be strategically located in the vicinity of the lake and average monthly rates of evaporation shall be calculated therefrom.

(c) Precipitation. Average total rainfall in Upper Bear Creek Watershed shall be derived from weighted analysis of rainfall stations to be designated or established by Watermaster.

(d) Surface Flows.

(1) Natural Tributary Inflow to Lake. All

(4) Dam Spills. Any spills of water over the Dam shall be measured or estimated and recorded monthly.

(5) Dam Leakage. All leakage through the dam shall be measured or estimated and a correlation between leakage and lake elevation shall be developed if possible.

(6) Santa Ana River at the Confluence with Bear Creek shall be calculated.

(7) Bear Creek at the Confluence with Santa Ana River shall be calculated.

(8) Santa Ana River at the Mouth of the Canyon shall be measured and average daily flows recorded. (This is currently being maintained by U.S.G.S.)

(e) Canyon Subsurface Diversions. Average subsurface diversions at Canyon Wells #1 and #2 shall be recorded monthly.

(f) Diversions at Mouth of the Canyon. Monthly quantities diverted at the Mouth of the Canyon shall be separately measured and recorded for diversions to

- (1) High Line
- (2) Redlands Canal
- (3) North Fork Canal
- (4) Edwards Canal
- (5) Conservation District Spreading Grounds.
- (6) Amount not diverted.

but not limited to, proposed Rathbone
reclamation operation), less

(3) Export from Upper Bear Creek Watershed
(i.e., BBAWA project).

(b) Monthly Evaporation shall be calculated for
both

- (1) Actual lake operations, and
- (2) Mutual's Lake Water Operation.

(c) Monthly Releases shall be accumulated for
both

- (1) Actual lake operations, and
- (2) In Lieu Water deliveries.

(d) Spills and Leakage shall be accumulated for

- (1) Actual lake operations, and
- (2) Mutual's Lake Water Operation.

(e) Monthly Change in Storage shall be calculated
for

- (1) Actual lake operations, and
- (2) Mutual's Lake Water Operation.

(f) Area and Capacity Curve will be developed
for the Lake under current conditions.

3. Accounts.

(a) Mutual's Water In Storage shall be deter-
mined as follows for each month:

Beginning storage

+ Total Inflow

- Import from Non-tributary sources by District

EXHIBIT "D"

P_d = In lieu water purchased by District from San Bernardino Valley MWD or the Management Committee of the Mill Creek Exchange and delivered under District Operation to Mutual for service area requirements.

4. Supplemental Inflow to Lake and Export from Upper Bear Creek Watershed. In accounting for water in storage in the Lake to Mutual's account and calculating District's obligation for Basin make-up water, the effect of certain existing and potential diversion and export practices must be accommodated.

(a) Supplemental Inflow. Whether inflow to the Lake is supplemented from surface streams, production of ground water, diversion of reclaimed water or otherwise, it shall be credited to the water-in-storage account of Mutual or District, in accordance with which party causes such inflow to be so supplemented. In the event an existing diversion by Mutual is enlarged or expanded by District, at its sole expense, an allocation of resulting flows shall be made by Watermaster.

Such supplemented inflow shall be accounted for in the calculation of District's Basin Make-up Water obligation depending upon whether the source of any such surface water was tributary or non-tributary to the Santa Ana River.

(b) Export from Upper Bear Creek Watershed. Conservation District has entered into an agreement with Big Bear Area Regional Wastewater Agency, County

EXHIBIT "E"

THIS MEMORANDUM, made this 23rd day of May, 1905, by and between the Bear Valley Land and Water Company, a corporation party of the first part, and the North Fork Water Company, a corporation, and the undersigned, other than the said two corporations owners of water in the North Fork Ditch of the Santa Ana River, and Cram and Van Louven Ditch, parties of the second part;

WITNESSETH: Parties of the second part are desirous of making an arrangement with the party of the first part whereby the supply of water available to said parties of the second part may be made certain and secure during the months of June, July, August, September, October and November, and are further desirous of increasing the present capacity of the said North Fork Ditch and completing the construction of the same,

NOW THEREFORE, Know all men by these presents;

I,

Parties of the second part agree that all their respective water, water rights and interests over and above the amount or quantity herein stipulated to be furnished and allowed to or attained by the parties of the second part may be perpetually held and enjoyed by the party of the first part for its use, benefit and disposal, subject to the terms and conditions of this agreement, and except as herein limited, it being expressly understood however, that each party of the second part retain the right to sell, convey, transfer, mortgage, pledge or otherwise dispose of his or its respective rights or interests in said water or water rights or in this agreement, subject also to the terms and conditions hereof.

EXHIBIT "E"

waters of the North Fork and South Fork Ditches, so called, are divided, shall belong and be delivered to parties of the second part by parties of the first part. It being further understood and agreed that the surplus of all waters so apportioned to parties of the second part which is not required or desired to be used by parties of the second part, may be used by parties of the first part; always providing that parties of the second part shall be the sole judges of whether such surplus water is or is not required by them; all waste water at the end of the said North Fork Ditch shall belong to party of the first part. *This stricken out by supplemental agreement IV.*

This stricken out by supplemental agreement
It is further understood and agreed that in the event of there being upwards of Thirteen Hundred (1300) inches of water in the said Santa Ana River at the point of "Divide" aforesaid, in its natural flow exclusive of water therein placed by act of parties of the first part during the month of June of any year, then one-half of the surplus of said water shall belong and be delivered by party of the first part to parties of the second part and the division and allotment of surplus shall in no way affect or control the allotment of water hereinbefore specified under Caption II hereof, and shall be considered as and be wholly independent thereof.

V.

All division or allotment of water under this agreement as between party of the first part and the parties of the second part shall be measured and made at the point on the Santa Ana Canon or River hereinbefore referred to and known as the "Divide".

VI.

Parties of the second part agree within two years from

increased beyond said fifteen hundred (1500) inches by either party of the first part or parties of the second part, in which event the expense of said enlargement may be borne in equal proportions by the parties hereto, and in that event said parties shall be entitled to share equally in the use and enjoyment of said increased capacity. In the event, however, that either of the parties hereto shall fail or refuse to unite with the other of said parties in effecting said increase of capacity, or in promptly paying one-half of the expense of making the same, then and in that case the parties so failing or refusing shall not be entitled to the use or enjoyment of said increased capacity or of any of the benefits thereof.

X.

It is understood and agreed that substantially one-half of all water taken from the Santa Ana River aside from that which may be supplied from the Bear Valley Reservoir shall at all times flow in said North Fork Ditch.

XI.

It is further understood and agreed that the party of the first part shall be under no obligation to furnish water to parties of the second part as heretofore provided until on and after June 1st, 1886. And that until said date all the water of said River which parties of the second part have used, or to which they have been entitled prior to the date hereof shall be used as heretofore and in the same proportions irrespective of the allotments mentioned under this agreement.

XII.

Each individual of the parties of the second part agrees

comply with the terms and conditions of this agreement in furnishing and delivering water to the parties of the second part or their successors in interest, then it shall forfeit all right, franchises, privileges and interest derived from parties of the second part, under and by virtue of this agreement, and all rights, franchises and privileges or interests hereby conceded to it by said parties of the second part, or created in pursuance of the terms hereof, may be resumed and retained by said parties of the second part, the same as if this agreement had not been made. And all rights and interests of said party of the first part to the said North Park Ditch shall cease and determine. But a temporary failure or interruption of not more than ten days after said party of the first part has received written notice thereof from said parties of the second part, resulting from unforeseen or unexpected accident not attributable to the negligence or fault of the party of the first part shall not be considered such a failure as to work such forfeiture— it being the intention not to favor or take advantage of mere technical breaches of this agreement, but that the same shall receive a fair and liberal construction to promote substantial justice and fair dealing between the parties hereto.

XIV.

In all matters or things to be acted upon or done or decided by or concerning the affairs, conduct, management or interest of the parties of the second part under this agreement; A majority in interest of said parties of the second part shall control.