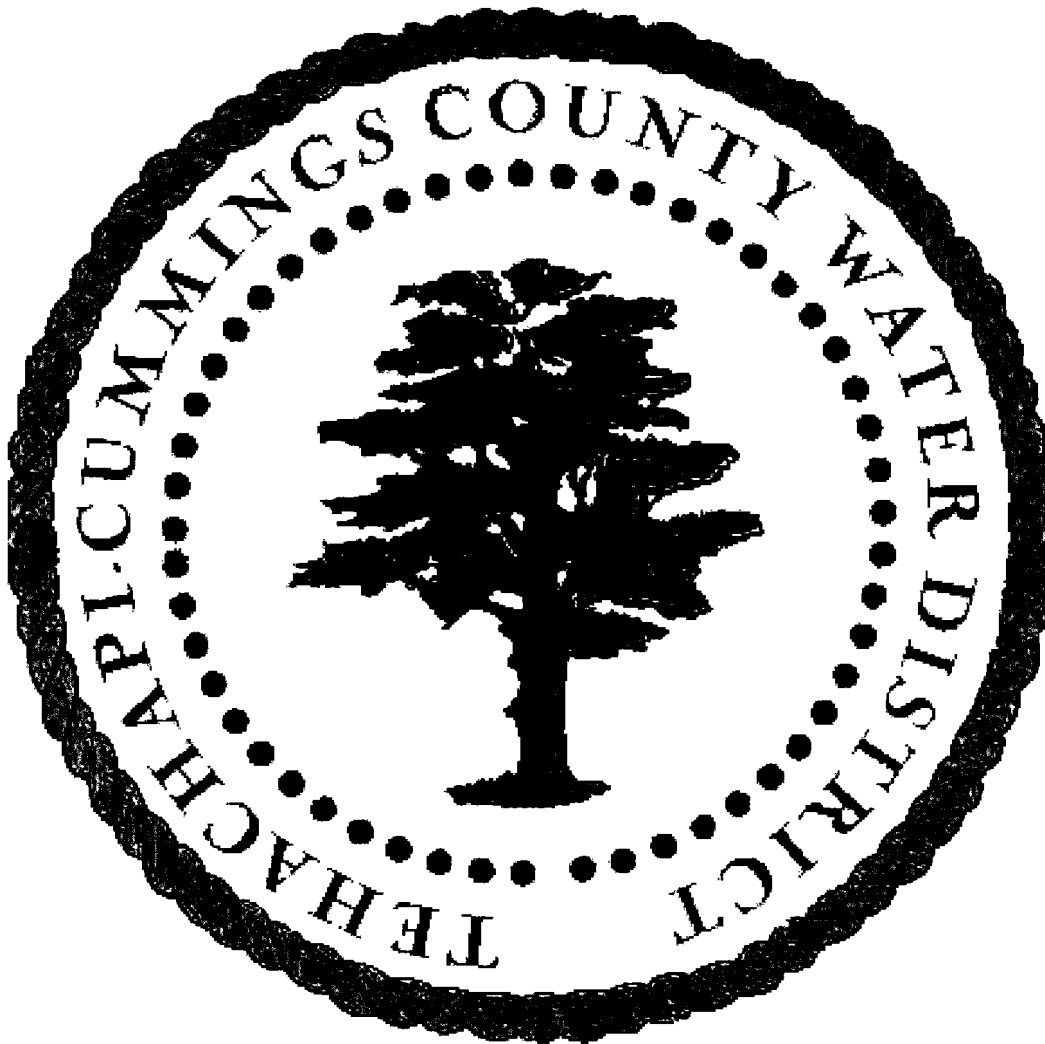


**REPORT OF TEHACHAPI-  
CUMMINGS COUNTY WATER  
DISTRICT AS WATERMASTER FOR  
CALENDAR YEAR 2012**



**THIRTY-EIGHTH ANNUAL  
WATERMASTER REPORT  
FOR CUMMINGS BASIN**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF KERN

TEHACHAPI-CUMMINGS COUNTY	)	
WATER DISTRICT, a Body	)	
corporate and politic,	)	
	)	
	)	
Plaintiff	)	No. 97209
	)	
vs.	)	REPORT OF TEHACHAPI-CUMMINGS
	)	COUNTY WATER DISTRICT AS
	)	WATERMASTER FOR CALENDAR
	)	YEAR 2012
FRANK M. ARMSTRONG, et. al.,	)	
	)	Cummings Basin
Defendants.	)	Thirty-Eighth Report
	)	
	)	
	)	

## I. PRELIMINARY STATEMENT

The case of "Tehachapi-Cummings County Water District, a body corporate and politic, Plaintiff, vs. Frank M. Armstrong, et al., Defendants", Kern County Superior Court No. 97209, went to trial in December of 1970. The case was duly and regularly continued further for trial to March 1, 1971. The matter was further continued for the remainder of trial to June 14, 1971. Trial continued through June 22, 1971. A Judgment was filed on March 6, 1972, whereupon defendant, State of California and its subsidiary departments and agencies appealed. A partial reversal followed by the Court of Appeal, 49 Ca. App. 3rd, 992 (1975), as modified in 50 Cal. App. 3rd, 528 A (1975), and has been remanded back to the trial court. Further hearing before the trial court was held on April 9, 1976. The April 9 hearing was continued to allow the parties time to review data and make further preparation.

Under the provisions of said Judgment, which appointed the Tehachapi-Cummings County Water District as Watermaster for the Cummings Basin, it is uncertain when the Watermaster Report is due with the Court. The Findings of Fact indicate that the period of administration and enforcement of the Judgment should be on a water year (October 1 through September 30). This report is therefore, submitted in order to bring the history of Cummings Basin up to date as nearly as practicable.

Due to the method of collection of available data, a calendar year appeared to be a more desirable time period for administration and enforcement of the Judgment. The Watermaster asked the Court to amend this provision of the Findings of Fact to place administration on a calendar year basis.

## II. THE CUMMINGS BASIN

### DESCRIPTION OF THE CUMMINGS GROUNDWATER BASIN

The Cummings groundwater basin surface is generally the Cummings Valley floor, bordered on the south by the Tehachapi Mountains, on the north by the Sierra Nevada, with low lying ridges connecting these two ranges on the east and west sides of the basin. The Cummings Basin is generally elongated in a northeasterly manner, approximately 6 miles at the longest point and 4 miles at the widest point.

Inflow of surface and subsurface water from the surrounding watershed including Cummings Creek replenishes the basin. Surface inflow from Chanac Creek draining a portion of the Brite Valley also flows into the Cummings Basin. Surface outflow is by Chanac Creek to the west. Subsurface outflow from the basin does not occur to any appreciable extent due to the rock outcroppings in the channel of Chanac Creek.

The Cummings groundwater basin may be pictured as a bowl, the bottom and sides of which are composed of impervious materials. The bowl is filled with heterogeneous pervious alluvium deposited through geological time by the streams carrying eroded materials from the surrounding watershed areas.

Groundwater is stored within the alluvium of the basin. The average annual safe yield of the groundwater within the basin was established in the Judgment of the Cummings Basin to be 4,090-acre feet as of the time of trial. Exhibit A is a map of the Cummings Basin as defined in said Judgment as originally entered.

## HISTORY OF WATER MANAGEMENT PROGRAM

The Tehachapi-Cummings Water Conservation District was formed in 1961 to carry out basin groundwater and watershed studies. This was a continuation of the Tehachapi Soil Conservation District's efforts in seeking solutions to water shortages within the area.

The Tehachapi-Cummings County Water District was formed February 16, 1965, by popular vote within the district, replacing the Tehachapi-Cummings Water Conservation District. A Citizens Advisory Committee composed of a cross section of community residents was established. This committee worked for more than a year on the basic solution to groundwater overdraft within the three major groundwater basins of the district.

On May 16, 1966, the Citizens Advisory Committee recommended to the Board of Directors of the Tehachapi-Cummings County Water District that three separate adjudication actions be filed on the Tehachapi, the Cummings and the Brite Valley groundwater basins. The purpose of these actions was to establish groundwater rights of all parties and to establish a physical solution and a groundwater management program in each basin when necessary to prevent further damage to the basin and also to allow the integration of imported supplemental water with local groundwater supplies. Plaintiff, Tehachapi-Cummings County Water District filed these actions in the Superior Court, on October 3, 1966.

On December 16, 1966, the Tehachapi-Cummings County Water District Board of Directors signed two contracts with the Kern County Water Agency for entitlement to State project water. One contract for an annual entitlement of 5,000 acre feet of agricultural water and the other for an annual entitlement of 15,000 acre feet of municipal and industrial water.

On June 8, 1971, a special district election was held with 65% of the eligible voters casting ballots. A federal loan under Public Law 984, in the amount of \$6.5 million, and a general obligation bond totaling \$2.5 million were approved by a 91% majority. The purpose of this financing was to construct an imported water system to convey State water to the Tehachapi-Cummings County Water District.

Construction on the water project began in May 1972. On November 4, 1973, the first imported water was pumped from the State Aqueduct near the A. D. Edmonston Pumping Plant through Cummings Valley and into the Tehachapi area. Project water has been delivered within the Cummings Basin during each season since water first arrived within the Tehachapi-Cummings County Water District.

### III. CLAIM BY TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT TO RETURN FLOW FROM IMPORTED WATER

At an adjourned regular meeting on June 13, 1973, the Board of Directors of the Tehachapi-Cummings County Water District adopted its Resolution No. 8-73 entitled "A Resolution of the Board of Directors of Tehachapi-Cummings County Water District Establishing Rates for Water Delivered by said District, Establishing other Charges and Rules and Regulations."

Said Part K of said Resolution remains in full force and effect, and said District's claim reflected in said Part K was affirmed and restated as Part K of the Tehachapi-Cummings County Water District's Resolutions No. 15-76. Part K was amended by Resolution 3-96 and later affirmed and restated as Part K of Resolution 13-09.

Part K of Resolution 13-09 provides in full as follows:

DISTRICT'S RIGHT IN WASTE, SEEPAGE AND RETURN FLOW. District has and claims all right, title and interest in and to all return flow into any ground water basin within District's boundaries resulting from water imported by District, along with the right to later recapture or otherwise utilize the same, provided, however, the District does not claim title to return flow from imported water purchased by a public entity from the District which is intentionally spread for storage in a groundwater basin by such public entity pursuant to rules and regulations promulgated therefore by the District acting as Watermaster of any such basin. The District's claim extends to all return flow from water imported by the District, whether from spreading operations by the District, from waste or seepage before any delivery of water by the District, from waste or seepage thereafter, and from percolation after or as a result of use or re-use of imported waters by any water user or other person, except imported water purchased from the District by a public entity which is intentionally spread for storage in a groundwater basin by such public entity pursuant to rules and regulations promulgated by the District acting as Watermaster of any such basin. District hereby expresses its intention to later recapture or otherwise utilize such return flow. Nothing herein shall prevent any person from engaging in drainage or other activities to protect his land or the use thereof from return flow which otherwise would injure or would threaten injury to the enjoyment or utilization of such land.

#### IV. EXTRACTION BY TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT OF RETURN FLOWS FROM IMPORTED WATER

Pursuant to Part K of Resolution 8-73, the District has exercised its right to extract from the Cummings Basin return flows from State Water Project water imported by the District. As noted in the April, 1991 Watermaster Report, the District extracted approximately 436 acre feet between May 1, 1988 and May 1, 1990 by means of Well #T32S R32E S31 B1, leaving approximately 1,779 acre feet of return flows from imported SWP water in storage in Cummings Basin as of December 31, 1990.

By Resolution No. 14-92, adopted by the Board of Directors of Tehachapi-Cummings County Water District on December 22, 1992, a new Section 3 was added to Part C of Resolution No. 15-76, which was affirmed and restated in Resolution 13-09, Part C, Section 3 and provides as follows:

Section 3. Amendment of Term M&I Agreements to Provide for Substitution of Return Flows (Including Intentionally Recharged Water) for Surface Deliveries.  
The Board of the District hereby find and determine that substantial savings in treating imported water can be realized by retail purveyors of water purchased pursuant to Term M&I Agreements from the District if the District allows such purveyors to pump return flows from imported water which heretofore has percolated into the groundwater basins within the District, whether from seepage before or after use or reuse or whether from intentional spreading by the District in recharge facilities. Provided that sufficient District return flows are in storage and pumping of same by retail purveyors will not adversely affect other pumpers of groundwater exercising valid rights, the District in its discretion may allow such purveyors to pump District return flows in lieu of imported water provided that such purveyors and the District execute an amendment to their Term M&I Agreement substantially in the form attached hereto as Appendix 2.

As provided in Part C Section 3 of Resolution No. 13-09, the District and Bear Valley Community Services District (BVCSD), the California Correctional Institution (CCI) and Stallion Springs Community Services District (SSCSD) have amended their respective Term M&I Agreements. Each agency began purchasing return flow and/or artificially recharged SWP water (conjunctive use). Table 5 summarizes the storage and extraction of return flows from imported water.

**TABLE 3. ESTIMATED PUMPING FROM CUMMINGS BASIN  
DURING THE PERIOD OF 2008 THROUGH 2012**

<u>TYPE OF USE</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Agriculture	3,022	3,495	2749	1,944	1,913
State of California	565	565	565	565	565
Other	321	346	336	366	403
TOTALS	3,908	4,406	3,650	2,875	2,881

**TABLE 4. ANNUAL RAINFALL IN CUMMINGS BASIN  
FOR YEAR 2008 THROUGH 2012 (IN INCHES)**

<u>MONTH</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
January	1.80	.95	2.45	.71	.73
February	3.01	.90	3.00	3.05	.90
March	.46	.60	.05	4.90	1.43
April	.61	.30	3.00	.21	1.56
May	.25	.10	.55	1.28	0.28
June	0	1.35	0	.01	0.02
July	.03	0	0	1.22	0
August	0	.02	0	0	0.11
September	0	0	.05	.02	0
October	.20	0	2.71	1.22	.13
November	2.32	1.05	1.65	.66	.25
December	1.72	2.90	3.91	.0	2.29
TOTALS	10.40	8.17	17.37	13.28	7.70

RAIN GAUGE LOCATION: NEAR THE MOST SOUTHERLY SOUTHWEST  
CORNER OF THE CUMMINGS ORCHARD



TABLE 5. RETURN FLOWS STORED, ARTIFICIAL REPLENISHMENT AND EXTRACTIONS

YEAR	RETURN FLOWS & ARTIFICIAL REPLENISHMENT						RETURN FLOWS AND ARTIFICIAL REPLENISHMENT EXTRACTIONS				RETURN FLOWS & ARTIFICIAL REPLENISHMENT IN STORAGE AS OF	
	IN STORAGE AS	IMPORTED	RETURN	IMPORTED WATER	TOTAL RETURN	BY SSCSD				TOTAL	31-Dec	
	OF JANUARY 1	WATER	FLOWS	ARTIFICIALLY	FLOWS & ARTIFICIAL		BY BVCSD	BY CCI	BY DISTRICT			
		DELIVERED		REPLENISHED	REPLENISHMENT							
1989	1,504	1,846	277	-	277	-	-	-	238	238	1,543	
1990	1,543	1,964	295	-	295	-	-	-	59	59	1,779	
1991	1,779	2,051	308	-	308	-	-	-	-	-	2,087	
1992	2,087	2,202	330	-	330	-	-	-	-	-	2,417	
1993	2,417	2,030	305	-	305	75	-	-	-	75	2,647	
1994	2,647	2,126	319	-	319	102	-	-	-	102	2,864	
1995	2,864	2,080	312	72	384	26	-	-	16	42	3,206	
1996	3,206	2,988	448	41	331	138	-	-	-	138	3,557	
1997	3,557	3,193	479	41	520	120	158	-	-	278	3,799	
1998	3,799	2,477	372	333	705	47	55	-	-	102	4,402	
1999	4,402	4,058	609	108	717	90	221	-	-	311	4,808	
2000	4,808	4,036	605	81	686	122	415	-	-	537	4,957	
2001	4,957	2,659	399	701	1,100	123	549	316	-	988	5,069	
2002	5,069	4,164	625	760	1,385	139	723	318	-	1,180	5,274	
2003	5,274	4,389	658	812	1,470	124	558	460	-	1,142	5,602	
2004	5,602	4,601	690	1,090	1,780	194	660	535	-	1,389	5,993	
2005	5,993	3,964	595	945	1,540	196	652	657	-	1,505	6,028	
2006	6,028	3,810	572	1,653	2,225	191	699	595	-	1,485	6,768	
2007	6,768	4,106	616	1,270	1,886	190	776	877	-	1,843	6,811	
2008	6,811	3,239	486	1,004	1,490	216	723	428	-	1,367	6,934	
2009	6,934	1,523	228	1,615	1,843	219	550	368	-	1,137	7,640	
2010	7,640	1,574	236	2,031	2,267	226	421	433	71	1,151	8,756	
2011	8,756	876	131	992	1,123	305	316	452	42	1,115	8,764	
2012	8,764	3,269	490	998	1,488	248	520	200	93	1,061	9,191	

## V. CUMMINGS BASIN KEY WELLS

In an attempt to monitor the groundwater level in Cummings Basin in such a manner that it could be observed when groundwater should in the future spill from the basin via Chanac Creek, a key well for monitoring purposes is being considered by the District and the State of California. This well will be known as the Cummings Basin Key Well, State Well No. 35N1. A copy of an updated hydrograph on this well is included herein as Exhibit B.

## VI. CUMMINGS BASIN CONJUNCTIVE USE PROJECT

In 1996, the Tehachapi-Cummings County Water District adopted Resolution No. 3-96 adding a new Part C Section 4 of Resolution No. 15-76, authorizing the pumping of recharged imported water in lieu of surface delivery of imported water. On June 17, 2009, the Board of Directors adopted Resolution No. 13-09, which affirmed and restated Part C, Section 4 of Resolution No. 15-76 and it provides as follows:

Section 3. Amendment of Term M&I Agreements to Provide for Substitution of Return Flows (Including Intentionally Recharged Water) for Surface Deliveries.

The Board of the District hereby find and determine that substantial savings in treating imported water can be realized by retail purveyors of water purchased pursuant to Term M&I Agreements from the District if the District allows such purveyors to pump return flows from imported water which heretofore has percolated into the groundwater basins within the District, whether from seepage before or after use or reuse or whether from intentional spreading by the District in recharge facilities. Provided that sufficient District return flows are in storage and pumping of same by retail purveyors will not adversely affect other pumpers of groundwater exercising valid rights, the District in its discretion may allow such purveyors to pump District return flows in lieu of imported water provided that such purveyors and the District execute an amendment to their Term M&I Agreement substantially in the form attached hereto as Appendix 2.

The Tehachapi-Cummings County Water District constructed groundwater recharge facilities, which enable the District to store imported State Water Project water in the Tehachapi and Cummings groundwater basins for subsequent extraction and beneficial use. This banking program has significantly improved both water supply and quality in the Cummings Basin and has helped ensure adequate local water supplies during drought years. The District began recharge operations during 1995.

The Bear Valley Community Services District (BVCS D) constructed new wells in the Cummings Basin and installed a transmission pipeline to convey recovered State Water Project water for delivery within the BVCS D water service area. The BVCS D began its Cummings Basin extraction of imported water in June 1997. The groundwater extracted from the Cummings Basin under this recharge/recovery arrangement is imported State Water Project water and is not a portion of the native safe yield.

In 2004, the District's new lateral extending north from its Mainline was fully operational. SWP water deliveries to the northern end of Cummings Valley helped correct a localized cone of depression which had formed in this area. In addition, the District assisted Bear Valley CSD, CCI, Grimmway Farms and Tehachapi Turf to enter into an In Lieu Agreement whereby the farmers agreed to use SWP water delivered through the District's new lateral in lieu of groundwater; and CCI and BVCS D agreed to pay the farmers the differential in costs. This program was successful, but is no longer being used.

The District acquired all of the right of way needed for the Cummings Valley Lateral Modifications Project, a new 3.8 mile pipeline connecting the District's Mainline in Brite Valley with the District's new lateral in Cummings Valley, thereby eliminating the need for an additional pump plant. A turnout will be installed where the new line crosses Chanac Creek to enable the District to increase the amount of SWP water discharged into Chanac Creek for recharge of the Cummings Basin. The first phase of this project, from Bailey Road to the Chanac Creek recharge site was completed in 2011.

Resolution 20-11 was adopted by the Board of Directors on December 21, 2011. This resolution amended the rules and regulations for the sale, use and distribution of water by adopting a new form of Term M&I Agreement for recharge water customers. The four new elements of this Term M&I Agreement include: A 10-year term with an evergreen provision, which provides a water supply assurance to the water purveyors so they are able to approve development projects and water supply assessments. The contract will have an ultimate termination date of December 31, 2039, concurrent with the expiration of the State Water Project contract; Establishes banked water reserve accounts. Water purveyors are being asked to put a five-year water supply in the ground, which would be equal to a five-year imported water requirement. This can be accumulated over a 10-year period; This agreement also limits the amount of imported water that the District is committed to furnish, by the amounts shown in the Tehachapi Regional Urban Water Management Plan for 2040; and This agreement also reiterates the District's policy to meet the present and future needs of its Term M&I Agreement customers from the District's State Water Project water supply. The rules and regulations for the sale, use and distribution of water, is attached at Exhibit C to this report.

## VII. GROUNDWATER BASIN OPERATIONS

The District has continued to monitor the California Department of Corrections' response to remediation orders of the California Regional Water Quality Control Board, Central Valley Region, with respect to the MTBE contamination at CCI, Tehachapi. To date, CCI has put a removal system in place and contaminant levels have been dropping.

The District's consultants, Fugro West, Inc. and Etic Engineering, completed their draft Groundwater Modeling Study for the Cummings Basin as part of the Watermaster's ongoing program to better understand the geohydrology of the Cummings Basin. Fugro's computer model was based on a 21-year history (1981-2001). They estimated the safe yield of the basin to be 3,444 acre feet per year (AFY), consisting of 2,934 AFY of groundwater pumpage, plus 510 AFY of groundwater storage increase over the 21-year period. Their estimate is 15% less than the adjudicated safe yield of 4,090 AFY.

Subsequent to the publication of the Fugro Report, the District began to detect lowering groundwater elevations in three of its four key wells, with the exception being Well 32S/32E-20M1; which is located approximately ¼ mile from the District's recharge ponds. Key wells in the middle of the basin showed a steady decline from 2002 through 2009, with 2010 indicating a leveling pattern and 2011 showing some recovery.

In 2010, groundwater pumping was considerably less than it has been in recent years. In addition, the Board adopted a spreading loss surcharge in 2010, whereby the District spreads 6% more water than the conjunctive use customers extract.

In 2004, the District completed construction of additional recharge basins on 20 acres in the Chanac Creek fan immediately west of State Highway 202 acquired by the District in 2003. These additional recharge facilities, together with the District's recharge area along Chanac Creek upstream of State Highway 202 and recharge area on the Cummings Creek Fan in the southeast corner of the Basin now provide the District with ample capability to recharge far more water than required by the District's recharged SWP water customers, namely Stallion Springs CSD, Bear Valley CSD and CCI, Tehachapi.

In 2008, the Term M&I Agreement with the California Department of Corrections and Rehabilitation (CDC&R) was amended to reflect the fact that CCI, Tehachapi is pumping return flows of SWP water either directly or indirectly recharged back into the Basin, in lieu of surface deliveries of SWP water, which CCI no longer can receive since CCI's water treatment plant is inoperable.

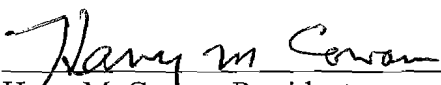
In December 2006, the District and the CDC&R executed an agreement whereby Corrections agreed to sell to the District, and the District agreed to purchase from Corrections, all tertiary treated disinfected effluent produced from CCI, Tehachapi's upgraded waste water treatment plant, for a term of 25 years from completion of the new plant. The District also adopted Rules and Regulations Governing the Use of Recycled Water.

In 2010, the District installed an 8" purple pipe to convey recycled water from CCI to the Horsethief Country Club Golf Course, four miles away. CCI's Waste Discharge Order was issued in 2010 and the District's Master Reclamation Order was issued in 2011. The golf course will use about one-third of the recycled water produced by CCI.

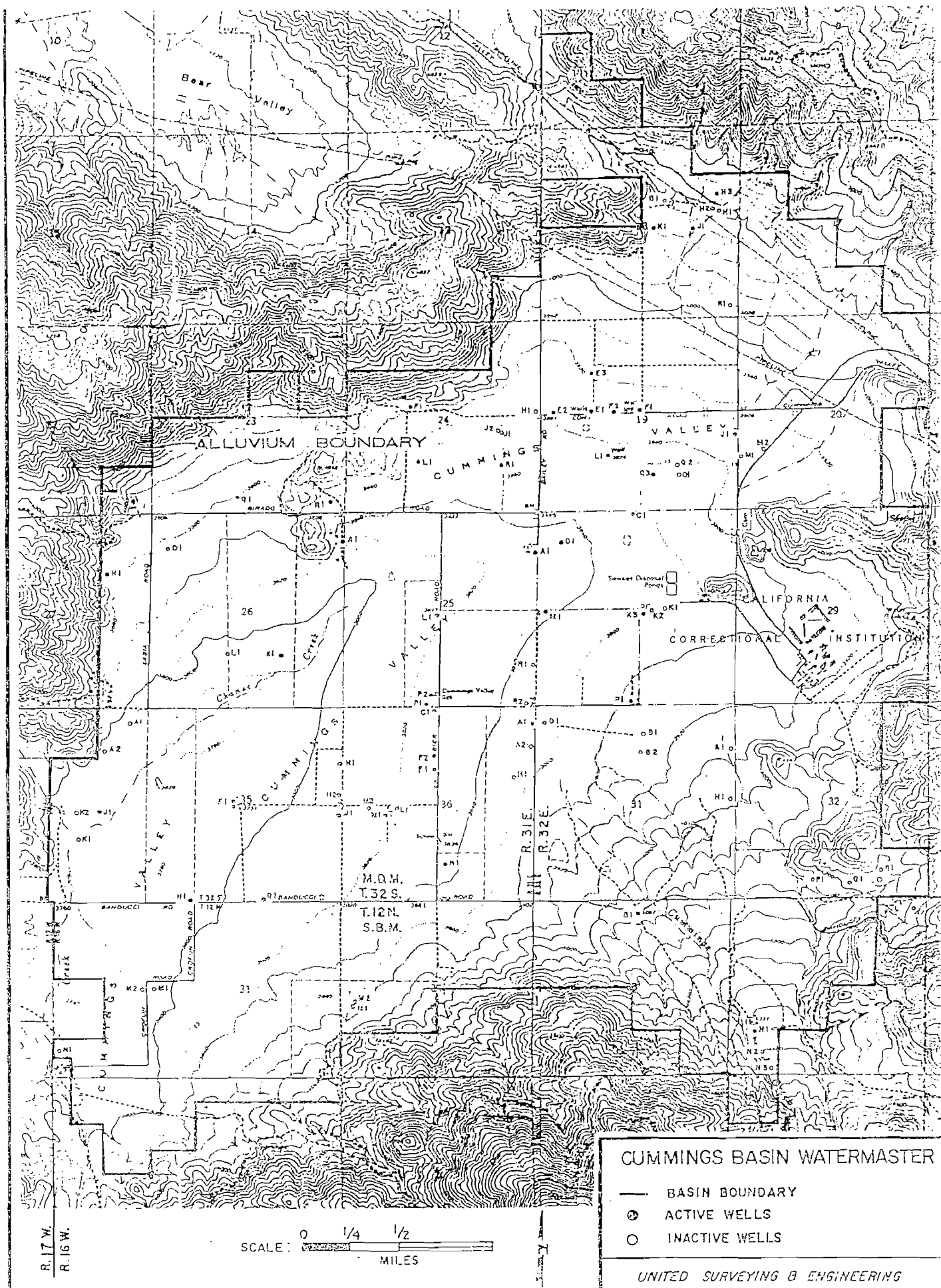
This Thirty-Eighth annual report is submitted for the Tehachapi-Cummings County Water District as Watermaster for the Cummings Basin.

DATE: June 19, 2013

By:

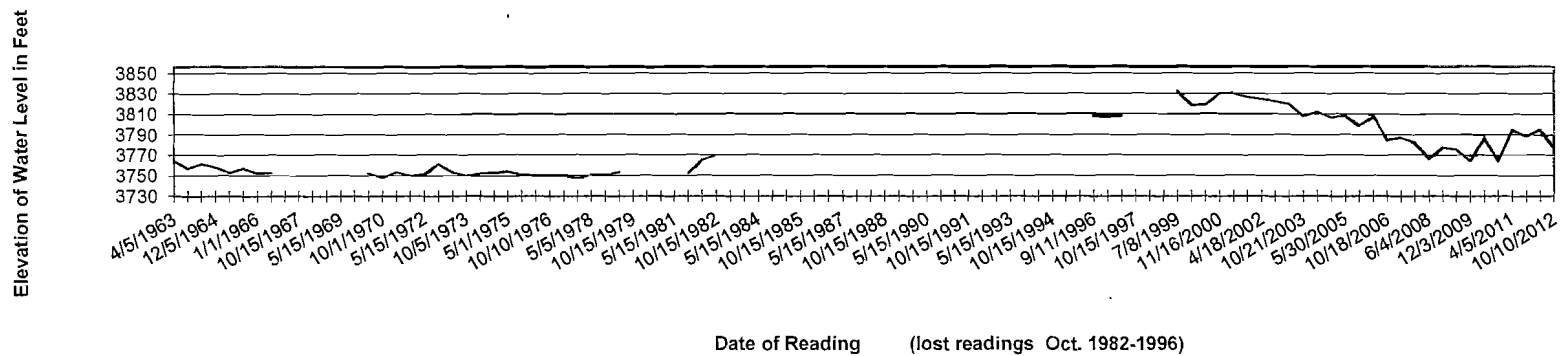
  
Harry M. Cowan, President

  
John A. Martin, General Manager



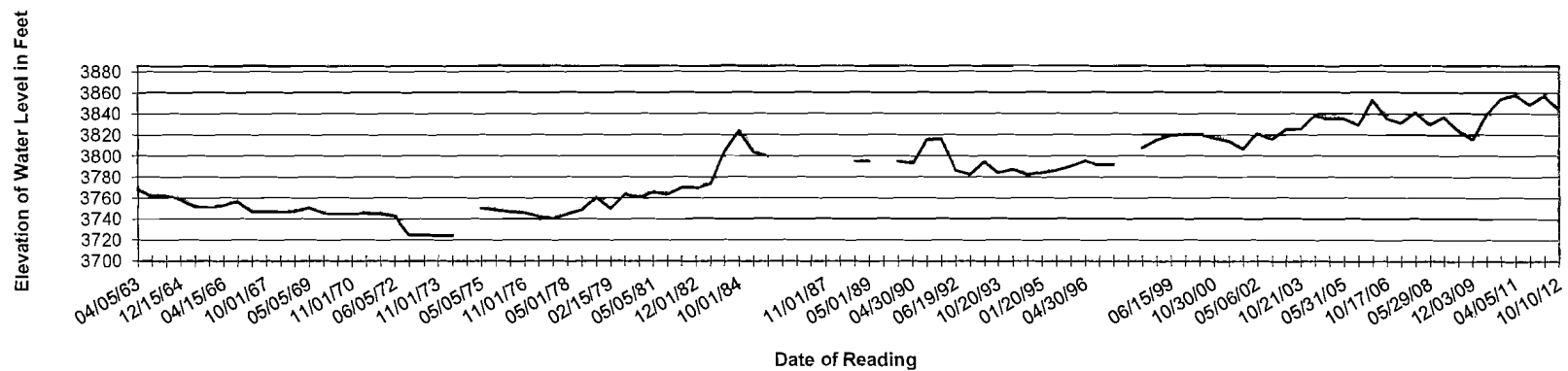
Hydrograph of Well 32S/32E-30K1 (CCI)

Ground Surface Elevation 3856.5 ft.



Hydrograph of Well 32S/32E-20M1

Ground Surface Elevation 3885.5 ft.



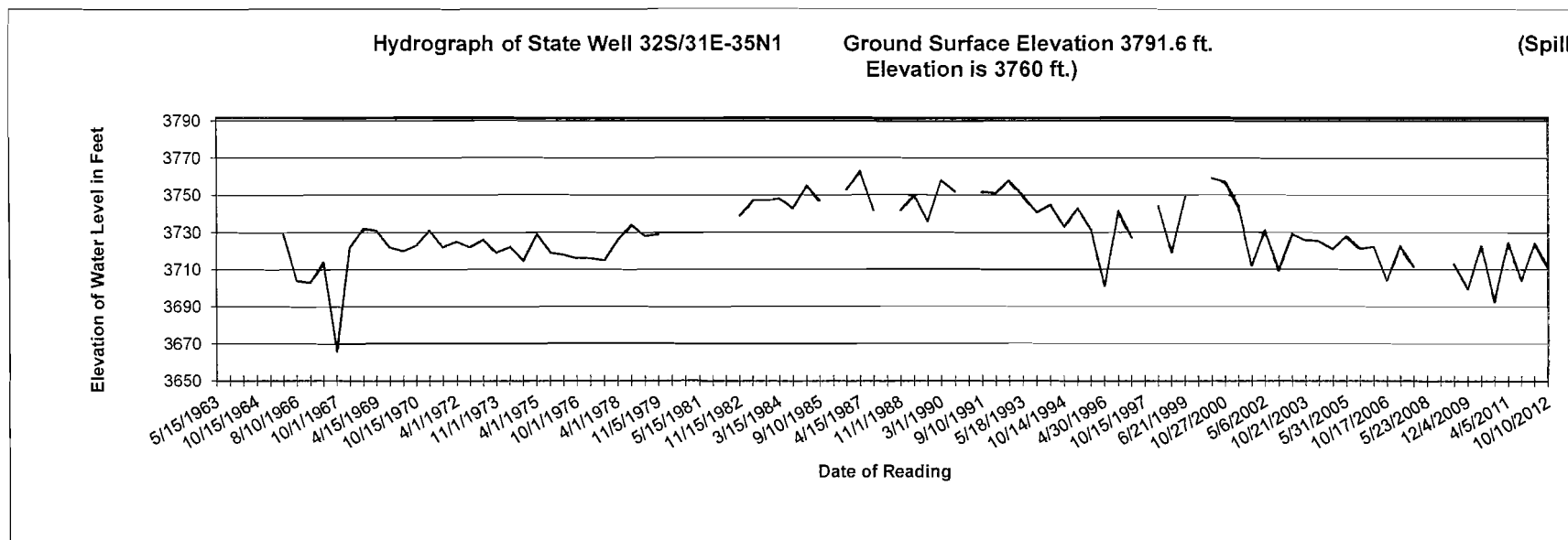
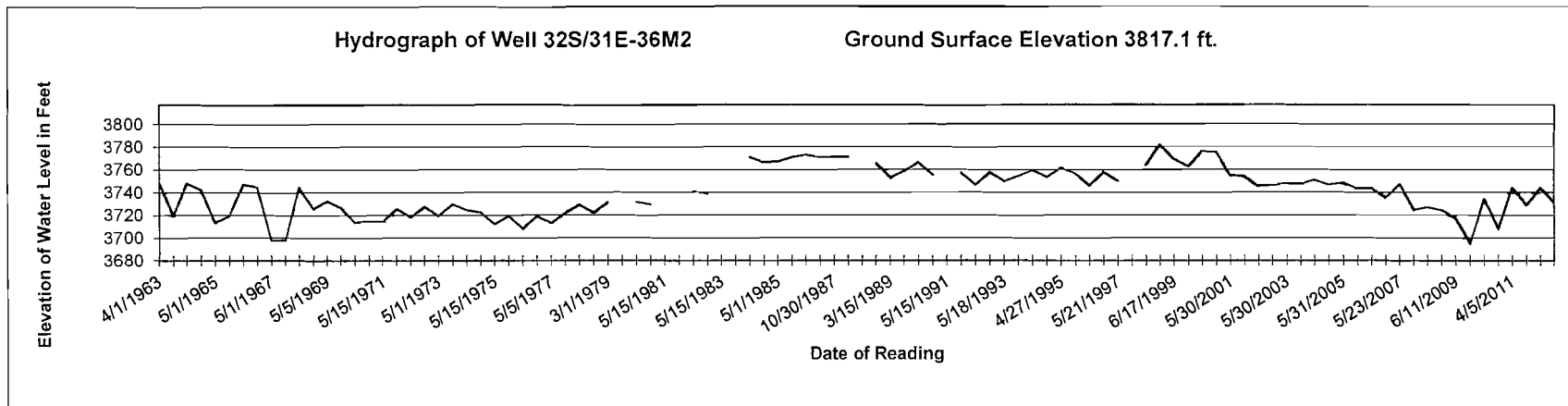


EXHIBIT B

TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT

RULES AND REGULATIONS  
FOR THE SALE, USE AND DISTRIBUTION OF WATER

PART A. DEFINITIONS. The following terms, as used in all parts of these Rules and Regulations shall have the following meanings, unless the context requires another meaning.

Section 1. "District" – Tehachapi-Cummings County Water District.

Section 2. "Agricultural water" - water used primarily in the commercial production of agricultural crops or livestock, including domestic use incidental thereto, on tracts of land operated in units of more than two (2) acres.

Section 3. "M&I water" - water used for any use so that the same is not agricultural water within Section 2 hereof.

Section 4. "General Manager" - the General Manager of District, or in the event of his absence the employee designated by the Board of Directors of District to assume the General Manager's duties.

Section 5. "Person" - any natural person or artificial person, including but not limited to, a partnership, corporation, association, public entity or any other type of entity.

Section 6. "Term M&I Agreement" - a written agreement entered into between District and a water user or prospective water user wherein that person agrees to purchase water from District for a term and with provisions as provided for in Part C, Section 1 of these Rules and Regulations.

Section 7. "These Rules and Regulations" or "Hereof" or Other Words Referring to these Rules and Regulations or Some Part or Section Hereof – these Rules and Regulations as amended from time to time and any successor Rules and Regulations as amended from time to time.

Section 8. "Water User" - any person whose application for water service has been approved by the General Manager and which applicant has complied with all provisions of these Rules and Regulations precedent to entitling him to commencement of water service.

Section 9. "Prospective Water User" - a person desiring water service from District, but who is not yet a water user within the preceding definition.

Section 10. "Board" – The Board of Directors of the District.

EXHIBIT C



## PART B. RATES.

### Section 1. Setting Rates.

The Board from time to time shall by resolution set rates for water sold by the District. Rates shall be set for the following categories:

- (a) M&I water delivered pursuant to a Term M&I Agreement;
- (b) M&I water delivered other than pursuant to a Term M&I Agreement;
- (c) Agricultural water.

The Board shall establish appropriate recharge surcharges for any of the above categories where the water user pumps recharged water in lieu of taking delivery on the surface. Such recharge surcharges shall be set to recover the unreimbursed capital costs of acquiring and constructing recharge facilities and the costs of maintaining and operating such facilities. The recharge surcharge shall also include the cost of imported water lost on account of evaporation, phreatophyte consumption or any other losses incurred in the transportation and spreading of recharge water.

### Section 2. General Policies Governing Rate Setting.

In setting rates, the Board shall consider the following general policies adopted on account of facts and circumstances unique to the District:

(i) The District purchases State Water Project ("SWP") water from the Kern County Water Agency ("KCWA") pursuant to the two written contracts, both dated December 16, 1966 (the KCWA Contracts), one for up to 15000 AF of M&I water, the other for up to 5000 AF of Agricultural water. The KCWA Contracts obligate the District to pay a specified percentage of (a) KCWA's "fixed obligations" (i.e., "the capital cost and minimum operation, maintenance, power and replacement components of the Delta Water Charge and Transportation Charge") to the State Department of Water Resources ("DWR") under the "Master Contract" between DWR and KCWA, and (b) KCWA's "variable obligations" (i.e., "the variable operation, maintenance, power and replacement components of the Transportation Charge") applicable to delivering the District's Table 1 entitlement to the District's turnout in Reach 16 of the California Aqueduct. The District's "fixed obligations" to KCWA must be paid irrespective of the quantity of SWP water actually delivered. In other words, the District must pay its share of "fixed obligations" even if DWR is unable to deliver any SWP water.

(ii) From its turnout in the California Aqueduct, the District lifts SWP water some 3425 feet by means of four pump stations and 31 miles of transmission lines into its storage reservoir in Brite Valley. The District's main transmission line continues eastward through Tehachapi Valley and ends in Oak Creek Canyon at California Portland Cement Company's plant. The District also owns and operates various distribution lines, recharge facilities in the Tehachapi and Cummings Basin, and water wells as part of its Imported Water System.

(iii) Pursuant to the holding of Fourth District Court of Appeal in *Goodman v. County of Riverside* (1983) 140 Cal.App.3d 900, the District's obligations to the KCWA under the KCWA Contracts are prior voter approved indebtedness and, consequently, the District may levy ad valorem real property taxes to meet the District's obligations, in whole or in part, to the KCWA under the KCWA Contracts.

(iv) The full cost of SWP water purchased by the District from the KCWA pursuant to the KCWA Contracts and pumped and delivered through the Imported Water System far exceeds the ability of either M&I or Agricultural customers to pay. It is the policy of the District to set water rates such that M&I and Agricultural users in the aggregate pay the full cost of operating and maintaining the District's Imported Water System, including reasonable reserves for repairs and replacement, less a major portion of the District's share of the 1% general ad valorem tax levy. It is additionally the policy of the District, on account of the benefit to property owners District-wide bestowed by the SWP water supply made available pursuant to the KCWA Contracts, to levy ad

valorem taxes each year to meet the District's annual obligations under the KCWA Contracts.

(v) In setting rates for M&I water, it is the policy of the District that the rate for M&I water delivered other than pursuant to a Term M&I Agreement (the "normal M&I rate") shall be set to recover the full cost to the District of purchasing and delivering such water on a non-scheduled occasional demand basis, including all costs under the KCWA Contracts. The rate for M&I water sold pursuant to a Term M&I contract or other contractual basis shall be set at a lower rate than the normal M&I rate on account of the long term contractual commitment of the water user to the District to purchase a portion of the District's Table I entitlement. Further, the ultimate retail purchaser of water sold to wholesale purveyors under Term M&I Agreements pay real property taxes, which support District operations, while non-contract purveyors of M&I water typically are not taxpayers within the District. Further, a lower rate is justified since Term M&I contract customers must schedule their anticipated deliveries six years in advance which assists the District in meeting its obligations to the KCWA under the KCWA Contracts to likewise schedule its deliveries six years in advance.

(vi) As set forth in Part K hereof, the District owns all return flows from SWP water purchased from the KCWA under the KCWA Contracts and imported into the District through the District's Imported Water System. In setting rates for agricultural water, it is the policy of the Board to take into account the fact that the percentage of return flows back into the ground from agricultural water is substantially higher than that from M&I uses. It is the policy of the District to avoid, to the extent possible, setting rates higher than the ability of its customers to pay for water since it is in the District's best interests to maximize water sales revenues.

#### PART C. TERM M&I AGREEMENTS.

Section 1. Contents. Except in circumstances requiring other forms of agreement, as determined by the Board in its discretion, Term M&I Agreements for surface delivery of SWP water shall be substantially in form and content set forth in Appendix 1 hereto and Term M&I Agreements for subsurface delivery of recharged SWP water shall be substantially in form and content as set forth in Appendix 2 hereto.

Section 2. Policy Concerning New Term M&I Customers. Not all of the SWP facilities authorized and necessary for the DWR to deliver all of the KCWA's Table A entitlement under the Master Contract (and necessary for the KCWA to deliver all of the District's Table I entitlement under the KCWA Contracts) have been constructed. Recent court decisions adverse to the DWR water supply cast further uncertainty as to the amount and dependability of the District's SWP water supply. It has been and remains the District's policy to routinely extend Term M&I Agreements upon conclusion of their stated terms since the District's wholesale customers and their retail customers have built water distribution systems, homes, businesses and other public and private improvements in reliance on the long term availability of SWP water from the District. Before entering into new Term M&I Agreements or other contracts with new customers, it is the District's policy to carefully consider whether any SWP water under the KCWA Contracts, surplus to the anticipated long term needs of the District's existing Term M&I and other contract customers, exists and will continue to exist during the entire duration of the new customer's anticipated demand. In allocating its available water supply, the District will first meet the reasonable present and future needs of its existing M&I Term customers, other existing contract customers and existing agricultural customers. If and when such needs cannot be met, it is District's policy that new customers, as a condition of service, shall provide the District with such additional water supply as needed to meet such customer's long term water requirements.

PART D. WATER SERVICE; APPLICATIONS; CONNECTION AND RECONNECTION CHARGES; DEPOSITS. Water service will be furnished in accordance with the policy and rules herein adopted and the connection and reconnection charges herein established, subject to all other provisions of these Rules and Regulations.

Section 1. District Service Policy: Domestic Use. It is the current policy of District to act as a wholesaler of water and not as a retailer, i.e., to transmit such water and not to distribute the same. It shall be consistent with this policy to provide agricultural water service to users who connect at their own expense to District's transmission facilities from time to time. Except for sales to "Exchangees" pursuant to the Amendment to Judgment in the Tehachapi Basin case<sup>1</sup>, the District will provide M&I water service only to: (a) entities or persons constituting recognized public purveyors, including public agencies, public utilities under the jurisdiction of the Public Utilities Commission, and mutual water companies; (b) entities or persons for industrial and other non-domestic uses; and (c) for agricultural direct use but for ultimate M&I use under an approved exchange agreement. Included in (a) above shall be improvement districts, whether of this District or other public entities, established to furnish water service to the public. Transmission facilities additional to those now provided for may be provided by District from time to time in the discretion of the Board, and it shall be in the discretion of the Board to determine whether and to what extent any particular proposed facility is a transmission facility.

Section 2. Point of Service. Except as additional turnouts are authorized by the Board, all services shall be from existing turnouts, and from the turnout as determined by the General Manager after consultation with the prospective water user.

Section 3. Preliminary Information; Past Due Amounts. Prior to filing with District an application for service, the prospective water user shall furnish in writing to District, on a form which the General Manager shall prepare, information from which the General Manager may determine the size of service required and the turnout at which service would be provided, any special facilities required to provide service, and whether the prospective water user or owner of the property on which the water will be used owes any past due charges of any kind to District, or whether there is a lien on said property for any such charges. If there exists any such past due charges or lien, no application for service shall be accepted for filing unless such amounts, together with all interest, are first paid.

Section 4. Application. Each prospective water user ("applicant") must make an application for the service desired. Except where a water purveyor is the applicant, each application for service shall be jointly signed by all the persons constituting the owner of the property on which the water is to be used ("owner" collectively hereafter in these Rules and Regulations) and in the event the prospective water user is not the owner, by such owner and prospective water user, and they shall all be jointly and severally liable for all water charges and other charges. Application shall be made at District's office (presently located at 22901 Banducci Road, Tehachapi, California, 93561). Where the prospective water user is not the owner, District's General Manager is given discretion to waive such requirement that the owner sign, provided that the prospective water user shall provide a deposit equivalent to two (2) months' charges as estimated by District's General Manager (which required deposit may be revised from time to time based on experience). If the prospective water user desires to have a refund of the deposit, he may do so by having a duplicate original of the application executed by the owner and by himself, and filing the same with District. Each such application shall contain the following information, in addition to such other information as may be provided for on said form by the General Manager: (1) Name and address of applicant; (2) Date of application; (3) Location of the premises upon which the water will be used; (4) Date service is requested to be commenced; (5) The purpose for which the water is to be used; (6) Prospective water user's mailing address, if different from the first address listed; (7) a copy of the vesting deed shall be attached; (8) The turnout from which service is requested, which shall be as determined by the General Manager; (9) The size service requested, which shall be as determined by the General Manager; and (10) as to M&I service, whether a Term M&I Agreement is desired. The application shall be accompanied by all required charges required prior to the furnishing of service. Above the

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<sup>1</sup> *Tehachapi-Cummings County Water District v. City of Tehachapi, etc, et al.*, Kern County Superior Court Case No. 92710.

applicant's signature shall be contained the following in type or print of a size or style to fairly distinguish it from the remainder of the application:

"The undersigned applicant understands that upon approval of this application, District will take steps toward installation of the necessary facilities for service. However, applicant understands that District is not liable for any direct or consequential damages of any kind to applicant by reason of delay in the commencement of service. Applicant also understands that as a part of this service contract, it is subject to the Rules and Regulations for the Sale, Use and Distribution of Water as adopted by Resolution No. 13-09 of the Tehachapi-Cummings County Water District (the "Rules and Regulations"), as the same may have been heretofore amended, or as the same may be hereafter amended, and to any successor Rules and Regulations as may be thereafter adopted, and that all rates, charges and other rules and regulations are subject to amendment at any time without prior notice to applicant. Applicant acknowledges receipt of a copy of the Rules and Regulations. If this application results in a Term M&I Agreement, the provisions of said Term M&I Agreement will modify the provisions of this paragraph."

Section 5. Where New Turnout Required. If the applicant desires service from a point requiring construction of a new turnout, an application for service shall state the location thereof. The application shall not be approved until the Board has approved the location of the new turnout, and the estimated cost thereof, which amount shall be an additional connection charge which must be deposited prior to approval of the application.

Section 6. Approval of Application. When all conditions precedent to entitlement to service have been met, the General Manager shall endorse approval on the application form and return one executed counterpart to the prospective water user. Where a Term M&I Agreement is to be executed, service shall not commence until such agreement is executed in two (2) counterparts by District and the prospective water user.

Section 7. Separate Applications for Each Connection. A separate application shall be required for each separate service connection, but a delinquency by a water user as to any service connection shall constitute a delinquency as to all of the water user's connections. A reconnection for the same water user where service has been discontinued under Sections 2 through 4 of Part E shall not require a new application if reconnection is made within three (3) months of disconnection, and any owner who has signed the initial application shall remain responsible for charges.

Section 8. Connection and Reconnection Charges. The Board by resolution shall set connection and reconnection charges to recoup the full cost of each initiation of water service or reestablishment thereof.

Section 9. Connection or Reconnection, Pursuant to Exchange Pool Requirements Under Adjudications. To the extent that any water user is required by the Court in any of the ground water adjudications (Kern County Superior Court Case Nos. 92709, 92710 and 92711) to purchase water from District in connection with the physical solution imposed by the Court under any exchange pool or similar arrangement, connection charges otherwise payable prior to connection or reconnection shall be paid by District, except such reconnection charges as arise by reason of disconnection under Sections 2 through 4 of Part E.

Section 10. Lateral Distribution Lines Privately Financed. Lateral distribution lines, the cost of construction of which is paid for or substantially all paid for by a person or persons for service to specific property or properties, when and as dedication thereof is accepted by this District, shall be accepted on the following condition:

"Water deliveries from said lateral distribution line for the benefit of properties other than the described property (the "described property" hereafter) shall not be permitted to the extent that use of the said line's capacity therefore would prevent the District from meeting reasonable beneficial demands for the described property. Nothing herein contained shall relieve grantors or their successors or the described property from the effect of any ordinance, rule or regulation of District, now or hereafter established, relating to scheduling of deliveries, interpretability of service for one or more types of use or sub-categories of a use or uses, handling of shortages of water or shortages of water available for certain types of uses or sub-categories of uses, priority of one or more uses or sub-categories of uses or purposes, or any other ordinance, rule or regulation, whether or not of the same or a different type than any of the foregoing, provided the ordinance, rule or regulation is not solely occasioned by or applicable only to said lateral distribution line solely by reason of shortage of capacity occasioned by deliveries or desired deliveries of water there from to properties other than the described properties".

The foregoing provisions shall not apply to lateral distribution lines financed through assessment districts or improvement districts, or if the offered dedication expressly provides that it is not subject to the foregoing and is accepted on that basis by the District. Nothing herein affects or purports to affect the powers of the District as Tehachapi Basin Watermaster under the judgment as amended from time to time in "Tehachapi-Cummings County Water District, a body corporate and politic, vs. City of Tehachapi, a municipal corporation, et al.", Kern County Superior Court No. 97210.

PART E. DISCONNECTION OF SERVICE. Disconnection of service may be made in the following instances, but shall not excuse the water user or owner from payment of all charges otherwise payable.

Section 1. Disconnection at User's Request. Any water user who desires service disconnected shall give at least one full business day advance written notice to District (a business day being other than a District holiday or any Saturday or Sunday). A water user in addition to being responsible for water delivered to him shall be responsible for charges for any use of water from his connection by any unauthorized person until the end of such one full business day following said written notice. Notwithstanding, when District has knowledge that the water user has vacated the premises in question or has otherwise permanently discontinued use of water, District may make a disconnection.

Section 2. Disconnection for Non-Payment. District may disconnect any water user's connection when any bill for water service rendered or other charge has become delinquent. District shall not be required to apply any deposits on hand to avoid such disconnection. A delinquency as to any service connection shall be a delinquency as to all service connections of that water user under this section.

Section 3. Emergency Disconnection for Detrimental or Damaging Conditions. If a condition unsafe or hazardous to District facilities or water supplies is found to exist on the water user's premises, or if the use of water thereon is found to be detrimental or damaging to District facilities or water supply for any reason, including but not limited to, chemicals, fertilizers or other substances applied with or added to such water, or water user's equipment, application, consumption, use and disposition of such water, the service may be disconnected without prior notice. District will notify the water user of the reasons for the disconnection and the corrective action to be taken by the water user before service may be restored.

Section 4. Disconnection for Failure to Comply with Rules and Regulations. The District may disconnect any water user's connection for any other failure to comply with these Rules and Regulations.

Section 5. Notice and Hearing. Prior to any disconnection of any water user's connection, except an emergency disconnection under Section 3 of this part, the General Manager shall notify the water user in writing of the basis for the District's proposed action; the date the District proposes to disconnect the connection; that the water user, upon timely

request, may have a hearing before the Board to present any objections to the proposed District action; and the last date upon which the request must be received by the District. If the water user does not timely request a hearing before the Board, the District shall proceed to disconnect the connection. If the water user timely requests a hearing before the Board, the Board shall schedule the hearing at the next regular Board meeting, consider the objections of the water user, and make such decision as appears proper under all of the circumstances.

PART F. STATEMENTS. Statements for water charges shall be rendered as follows:

Section 1. Regular Statements. Statements for water delivered shall be mailed monthly on or before the tenth (10th) day of the month with respect to water delivered the preceding month. However, late mailing shall not extend the dates hereafter set forth. All such statements are due and payable immediately, and become delinquent if not paid by the twenty-eighth (28th) day of the month, or if the same not be a District business day, by the next succeeding business day; provided, that as to a public entity water user, a statement shall not become delinquent if paid within twenty-one (21) days after the first regular or adjourned regular meeting of its governing body held after receipt of the billing. If service is discontinued prior to a statement being mailed, it may likewise include charges for water furnished through date of discontinuance.

Section 2. Closing Statements. Closing statements, other than as provided above, shall be mailed promptly upon discontinuance of service and shall be due and payable within fifteen (15) days after the date on which mailed, or the next succeeding District business day if such fifteenth (15th) day be not a business day. If not paid within that time, they are delinquent.

Section 3. Water User's Obligation to Request Statement. If any water user has not received a statement or bill which should have been received by him under the foregoing rules, it shall be his obligation to timely obtain a duplicate statement from District, and risk of loss in the mails shall not be the responsibility of District.

Section 4. Meter Readings. Bills for water service will state the date on which read, the date of the last prior reading, the respective meter readings on those two (2) dates, the amount of the bill and the last-day for payment before the same becomes delinquent, in addition to any other matters determined by the General Manager. Billings will be based on meter readings. However, if there has been a substantial malfunction or failure of a meter, it shall be the responsibility of the General Manager to cause an investigation and to determine the estimated actual quantity used. Any supplementary statements rendered on account thereof shall be payable within a like period and with like consequences, as a closing bill, as provided in Section 2 of this part. If a previously over-billing has been involved such amounts shall be credited or refunded, if request for refund is made.

Part G. Delinquent Charges; Deposits; Liens; Actions to Collect. In addition to and not in substitution of District's other rights and remedies, the following provisions shall apply.

Section 1. Late Payment Charges. If any statement for water delivered shall become delinquent (See Part F) there shall be added to the other applicable charges interest at the maximum rate authorized by law, commencing with the date on which the same became delinquent, and an administration charge, which the Board hereby determines to be reasonable in relation to District's anticipated costs, of Two Hundred Fifty Dollars (\$250.00) or ten percent (10%) of the billed amount involved, whichever is the lesser, in addition to any reconnection charges under Section 8, Part D.

Section 2. Deposits for Service. Any water user against whom late payment charges have accrued shall be required to make a deposit with District in an amount equal to estimated charges for water for the highest two (2) months of anticipated use in any calendar year, such amount to be determined in the discretion of District's General Manager. Such deposit shall be maintained until the water user has timely paid all bills without delinquency, for a period of twelve (12) consecutive calendar months. Failure to pay any required deposit within ten (10) days of written notice thereof, where service has not theretofore been discontinued, shall be further ground for discontinuance of service by District with reconnection charges as provided in Section 8, Part D.

District may, but is not required to, apply any deposit to outstanding amounts due and owing. When a deposit has been made, but is no longer required, the same will be refunded to the water user after deduction of any charges or indebtedness to District which are due and owing, or applied against succeeding water bills. Absent written direction as to the first alternative, District may apply the same to succeeding water bills.

Section 3. Unpaid Charges a Lien on Property. To the extent permitted by law, any unpaid charges, including connection charges and other charges, shall constitute a lien on the property of the water user as specifically provided by the County Water District Act (Water Code Section 31701.7). The District may record with the County Recorder a notice or "certificate" of any such lien and thereafter file suit to foreclose such lien in the manner provided by law.

Section 4. Actions to Collect. In the event any action is brought to collect any of unpaid charges, including connection and other charges, whether separately or apart from any foreclosure of lien, the District shall be entitled to recover, in addition to any such charges, its reasonable attorneys fees and court costs.

#### PART H. NON-LIABILITY OF DISTRICT; INDEMNIFICATION AND HOLD HARMLESS OF DISTRICT BY WATER USERS.

Section 1. Untreated Water - No Warranty. All water sold by the District will be untreated water. It shall be the responsibility of the water user utilizing, serving or otherwise disposing of the same for human or animal consumption to cause such treatment thereof as may be required by any applicable law, rule or regulation for any such use and as may in addition thereto be necessary or desirable for any such use. District expressly disclaims any warranty or representation of suitability for any of the above uses, and the water user shall assume full responsibility therefore. The water user shall provide any person to whom the water is otherwise sold or disposed of a copy of this section, unless such user shall have treated said water in accordance with all applicable laws, rules and regulations. No water user or other person shall serve water obtained directly or indirectly from the District in a domestic water system without first complying with all applicable laws, rules and regulations. There is further no warranty or representation concerning any use of delivered water as to content of dissolved or undissolved solids in the water, salts, or absence of impurities or foreign objects in any water delivered, nor as to the long or short-term effect on soils, pipes or fittings of utilization of water delivered.

Section 2. District Not Liable; Indemnifications. Notwithstanding the term "sale" or like terms in these Rules and Regulations, which may be used for convenience, any service of water to any water user is a water service agreement. Any such water user shall be required to and shall be deemed to have consented to accept water service at the location served subject to such conditions of pressure and service as may be provided from time to time, and such condition may be changed by the District's General Manager, consistent with these Rules and Regulations. The District, its Directors, agents, employees and independent contractors shall not be liable to any water user or any person to whom a water user provides water, directly or indirectly, for any claimed damage or expense occasioned from any of the following, whether or not occasioned by the concurrent or contributory negligence, actual or alleged, of District or its Directors, agents, employees or independent contractors: quality or content of water, whether relating to a matter specified in the preceding section or otherwise; delayed commencement or recommencement of service; interruptions of service; low pressure; high pressure fluctuations of pressure; shortage or insufficiency of supply; the control, carriage, handling, use, disposal or distribution of water delivered to a water user once it reaches a point beyond the facilities owned and operated by District. Notwithstanding any provisions in these Rules and Regulations, any water service agreement is solely between District and the applying water user (subject to liability of any co-signing owner), notwithstanding that that water user may in turn supply such water to others, and no provision in this agreement shall be deemed to make any other person a beneficiary, third party or otherwise, of any provision of said water service agreement, or to establish any contractual relationship between such other party and District. It is the responsibility of the water user to provide terms and conditions as a part of any furnishing of water to others. Each water user shall indemnify and hold the District, its Directors, agents, employees and independent contractors harmless from any claims by any such other persons, whether from matters set forth in this section, or based on any other ground, and whether or not occasioned by the concurrent or contributory negligence, actual or alleged, of District or its Directors, agents,

employees or independent contractors.

**PART I. SERVICE CONNECTION FACILITIES INSTALLED BY DISTRICT; FACILITIES TO BE INSTALLED BY WATER USER; PROTECTION OF DISTRICT FACILITIES.** The following facilities will be installed and maintained by District and water user respectively, subject to all other provisions of these Rules and Regulations.

Section 1. Installation by District. Upon approval of an application for service, payment of all required connection charges and execution by District and water user of any other required agreement, the facilities to be installed by District will consist of any new turnout approved under Part D, Section 5 hereof, a mainline valve, propeller meter, manhole, all required pipe, fittings and couplings, and any and all pipeline to the boundary of District's permanent easement. The facilities may include, as determined by the General Manager, a manifold, secondary valve and a check valve. All such facilities to the boundary of said easement shall be the property of and be maintained by District.

Section 2. District's Assistance in Necessary Rights-of-Way and Easements. Notwithstanding any other provision of these Rules and Regulations, District, under appropriate agreement approved by its Board, may acquire, either consensually or through condemnation proceedings, easements and rights-of-way for lateral or other lines to prospective water users who cannot otherwise obtain such easements and rights-of-way. Such water users will be required to bear all costs and expenses of easement acquisition and installation of facilities therein, which the District will own.

Section 3. Water User's Responsibility for Distribution System. The water user shall provide his own installation and maintenance of facilities from the terminus of District facilities.

**PART J. CERTAIN USES OF WATER AND OTHER ACTS PROHIBITED; RATES FOR PROHIBITED WATER USES.** The following uses and acts are prohibited, and, for prohibited uses and acts, water rates shall be payable in accordance with the following.

Section 1. No Water to be Conveyed to Third Person Except by a Water Purveyor. No water user, except a water purveyor (being one regularly engaged in the business of distributing M&I water) shall, without the prior written consent of District, sell or convey any water obtained from District to any other person or permit any other person to obtain the same from water user's distribution facilities.

Section 2. Uses for Which Rates Have Not Been Established. No water user shall use or permit to be used any water obtained from District for any use or category for which rates have not been established or which requires the consent of District where that consent has not been first obtained in writing. Each water user shall be absolutely responsible for the acts of its distributees in this regard.

Section 3. Unauthorized Connection or Reconnection. Only District personnel are authorized to connect or reconnect service. No other person shall do so.

Section 4. Charges and Rates for Violation. Any water user who violates any of the foregoing sections of this part, and any other person who violates Section 3 of this Part, or who bypasses a District meter, shall be deemed to have agreed to pay double the normal M&I rate, and in the case of a Section 3 violation, all charges which would otherwise be imposed for an authorized connection or reconnection. Nothing herein shall preclude District from disconnecting. In the event of a by-pass of a District meter, it shall be presumed that such by-pass occurred immediately after the last meter reading, and that water has been taken twenty-four (24) hours a day each day thereafter at the full rate of flow which the connection is capable of transmitting, and it shall be the burden of that person to demonstrate to the contrary. The General Manager in such event shall determine the amounts due and, payable from time to time and render a billing which is immediately due and payable.

Section 5. Only District Personnel to Operate or Control District Facilities. No person other



than authorized District personnel shall operate, control or otherwise disturb any District water system equipment or facilities.

**PART K. DISTRICT'S RIGHT IN WASTE, SEEPAGE AND RETURN FLOW.** District has and claims all right, title and interest in and to all return flow into any ground water basin within District's boundaries resulting from water imported by District, along with the right to later recapture or otherwise utilize the same, provided, however, the District does not claim title to return flow from imported water purchased by a public entity from the District which is intentionally spread for storage in a groundwater basin by such public entity pursuant to rules and regulations promulgated therefore by the District acting as Watermaster of any such basin. The District's claim extends to all return flow from water imported by the District, whether from spreading operations by the District, from waste or seepage before any delivery of water by the District, from waste or seepage thereafter, and from percolation after or as a result of use or reuse of imported waters by any water user or other person, except imported water purchased from the District by a public entity which is intentionally spread for storage in a groundwater basin by such public entity pursuant to rules and regulations promulgated by the District acting as Watermaster of any such basin. District hereby expresses its intention to later recapture or otherwise utilize such return flow. Nothing herein shall prevent any person from engaging in drainage or other activities to protect his land or the use thereof from return flow which otherwise would injure or would threaten injury to the enjoyment or utilization of such land.

**PART L. SHORTAGES.** District retains the right and power to later provide, consistent with any then applicable provisions of law, for priorities, restrictions, prohibitions and exclusions in the event of shortage or other emergency, including cessation or interruption of sale of water to particular users.

**PART M. MANAGEMENT OF DISTRICT WATER SYSTEM; ACCESS.** The following provisions apply to management of District's system and access to lands of water users.

Section 1. Management - General Manager and Employees. Subject to the Board's overall control, District's water system is under the exclusive management and control of the General Manager who is a person appointed by District's Board to manage the affairs of District pursuant to its direction. No other person except said General Manager or a person operating under his authority shall operate any of the facilities of District's system. The General Manager shall supervise the activities of all District employees in connection with operation and maintenance of District's water system and all other activities of District. Any controversy between a water user and District shall be handled by the General Manager, or in his absence the employee designated by the Board to act.

Section 2. Right of Access. District employees authorized by the General Manager shall have reasonable access to lands and irrigation facilities within District for the purpose of conducting District business which may include the following: (a) Inspection of the lands upon which water delivered by District is being applied for the purpose of determining water users' compliance with these Rules and Regulations or performing any function under these Rules and Regulations; (b) Inspection, maintenance, repair or modification of facilities of District's water system.

Section 3. Scheduling of Agricultural Water. When deemed necessary or desirable by the General Manager, he may schedule the delivery of agricultural water in such manner as he deems advisable.

**PART N. DECISIONS OF GENERAL MANAGER; APPEAL TO BOARD.** In order to assure fairness to water users, the following provisions are established relative to decisions of the General Manager and appeals there from.

Section 1. General Manager Decisions. Any person desiring to appeal a decision of the General Manager affecting that person as a water user or prospective water user shall first request that the decision be placed in writing and provided that person. It shall be the duty of the General Manager to promptly do so, who may also reduce any

decision to writing without such a request.

Section 2. Appeals. If any such written decision involves the payment of any charge or amount of money, any appeal therefrom as hereinafter provided for shall not excuse the payment when otherwise due and payable had there been no appeal. Provided that all such payments have been made to the District, the water user or prospective water user may file an appeal in writing to the Board within twenty (20) days after the written decision is deposited in the mails or personally delivered to the person affected, specifying the decision appealed from and the grounds of the appeal. The Board shall thereafter hear the evidence on the matter and make its determination in writing. Failure to timely pay any amount involved which becomes due and payable after the filing of the appeal but before hearing shall be deemed an abandonment of the appeal unless the Board should otherwise rule. Any such hearing shall be conducted as close as possible in accordance with normal rules of evidence, but the acceptance of inadmissible evidence shall not be grounds for voiding the decision of the Board. If any refund is then indicated it shall be promptly made, or if the water user or prospective water user so consents shall be credited against subsequent charges. If no appeal is filed within twenty (20) days after the written decision is mailed to the person or personally delivered to him, or any payment called for by said decision is not made concurrently with or before the filing of any such appeal, the decision of the General Manager becomes final and conclusive, unless for good cause shown the Board grants relief from any default in timely filing an appeal or making any payment otherwise due and payable under said decision.

#### PART O. SEVERABILITY; INTERPRETATION.

Section 1. Severability. If any provision of these Rules and Regulations is determined to be invalid, it is the intention that the remainder of these Rules and Regulations shall not be affected thereby.

Section 2. Interpretation. In the event of any ambiguity in these Rules and Regulations or its application, the Board's interpretation shall be final and conclusive.

#### PART P. SPECIAL RULES AND REGULATIONS GOVERNING THE USE OF RECYCLED WATER.

Section 1.1. Introduction. The District by contract with the California Department of Corrections & Rehabilitation (CDCR) will receive disinfected tertiary recycled water ("recycled water") from CDCR's California Correctional Institution in Cummings Valley ("CCI"). The District intends to sell water for irrigation uses enumerated in and in accordance with subpart (a) of section 60304 of Title 14 of the California Code of Regulations. For any other recycled water uses in the future including, but not limited to, industrial processes and commercial, landscape or recreational impoundments, wildlife habitat, and groundwater recharge, the District shall submit additional plans and documents to the State of California, Department of Health Services and the Central Valley Regional Water Quality Control Board for review and approval. These future recycled water applications will be evaluated on a case-by-case basis and shall be evaluated in accordance with the California Environmental Quality Act.

Section 1.2. Purpose. The purpose of these special recycled water rules and regulations is to promote the conservation and reuse of water resources and to ensure maximum public benefit from the use of District's recycled water supply by regulating its use in accordance with applicable federal, state and local regulations. These rules and regulations are also intended to be those required as a condition of issuing a master recycled water project permit pursuant to section 13523.1(b)(3) of the Water Code.

Section 1.3. Policy. Recycled water supplies shall be used to the maximum extent possible for any approved beneficial use. This shall be accomplished through the beneficial use of recycled water in compliance with applicable federal, state and local regulations.

Section 1.4. Intent. The District shall provide recycled water wherever the District determines its use is economically and technically feasible and consistent with these rules and regulations and its

contractual obligations to CDCR.

Pursuant to Water Code section 13523.1(b)(3), the establishment and enforcement of these rules and regulations shall govern the design, construction and use of recycled water distribution and disposal systems within the District.

It is further, the intent of these rules and regulations to be consistent with the following criteria:

- California Code of Regulations, Title 22, Division 4, Chapter 3, *Wastewater Reclamation Criteria*;
- California Code of Regulations, Title 17, Division 1, Chapter 5, Group 4, Articles 1 & 2;
- The State Department of Health Services (State DHS), *Preparation of an Engineering Report for the Production, Distribution and Use of Recycled Water*;
- Any measures that are deemed necessary for protection of public health, such as the American Water Works Association (AWWA) California/Nevada Section, *Guidelines for the Distribution of Non-Potable Water and Guidelines for Retrofitting to Recycled Water* or alternate measures that are acceptable to the State DHS.
- The General Waste Discharge Requirements for Landscape Irrigation Uses of Municipal Recycled Water as Adopted by the State Water Resources Control Board.

Section 1.5. Scope. These special rules and regulations establish the requirements for recycled water use and the provision of recycled water service by the District to its customers. If there is any conflict between the provisions of these rules and regulations and the provisions of any of the documents incorporated by reference, the most stringent requirement will govern.

Section 1.6. Incorporation of Supporting Documentation. The following documents and programs, as may be amended hereafter, are incorporated herein and by this reference made a part hereof as though fully set forth:

- A. California Code of Regulations, Department of Health Services, Title 22, Division 4;
- B. Department of Health Services, "Manual of Cross-Connection Control/Procedures and Practices"
- C. California Code of Regulations, "Regulations Relating to Cross-Connections" (Title 17, Chapter 5, Subchapter 1);
- D. California State Water Resources Control Board, "General Waste Discharge Requirements for Landscape Irrigation Uses of Municipal Recycled Water"
- E. California-Nevada Section American Water Works Association "Guidelines for Distribution of Non-potable Water"

- F. California-Nevada Section American Water Works Association “Guidelines for the On-Site Retrofit of Facilities Using Disinfected Tertiary Recycled Water.”
- G. T-CCWD “Recycled Water Use Guidelines And Best Management Practices” (Sections 7.1-7.7).
- H. T-CCWD “Recycled Water Inspection And Monitoring Program” (Sections 8.1-8.6).
- I. All other Federal, State or local statutes, regulations, ordinances governing the distribution and use of recycled water.

Section 2.I. Definitions.

- A. **“Applicant”**. Party requesting a Recycled Water Service Connection and/or recycled water service from District.
- B. **“As-Built Drawings”**. Engineered drawings that depict the completed facilities as constructed or modified.
- C. **“Backflow”**. A condition that results in the flow of water into District pipelines from a source other than an approved water supply.
- D. **“Board”**. The Board of Directors of Tehachapi-Cummings County Water District.
- E. **“Cross Connection”**. Any unapproved and/or unprotected connection between a standard District water system and a non-potable system.
- F. **“Customer/User”**. Recipient of recycled water service from the District.
- G. **“District”**. Tehachapi-Cummings County Water District and/or the Staff thereof.
- H. **“Service Connection”**. The District’s valve and meter through which a customer takes delivery from the District of recycled water.
- I. **“Recycled Water”**. Disinfected tertiary treated recycled water as defined in section 60301.230 of Title 14 of the California Code of Regulations.
- J. **“District’s Standard Rules and Regulations.”** The Rules and Regulations for the sale, use and distribution of water, of which these special regulations for recycled water are a part (Part P), as adopted by Resolution No. 13-09, and as may be amended in the future.
- K. **“Non-Potable Water”**. Water that is not acceptable for human consumption in conformance with federal, state and local drinking water standards.
- L. **“Off-Site Recycled Water Facilities”**. Facilities under the control of the District from the source of supply (CDCR) to the point of connection to the

customer's on-site facilities normally up to and including the Service Connection.

- M. **"On-Site Recycled Water System"**. The customer operated portion of the recycled water system facilities, extending from the Service Connection to the customer's parcel to be provided with recycled water service and including recycled water system facilities on the parcel to be irrigated with recycled water.
- N. **"Potable Water"**. Water which conforms to the latest federal, state and local drinking water standards.
- O. **"Recreational Impoundment"**. A body of water used for recreational activities including, but not limited to, fishing, boating, and/or swimming.
- P. **"Recycled Water Agreement"**. An executed contract between the District and the customer, as a condition for obtaining recycled water service.
- Q. **"Regulatory Agency"**. Individually, or in concert, the U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, the Central Valley Regional Water Quality Control Board, State Water Resources Control Board, State Department of Health, California Department of Fish and Game, the Kern County Department of Environmental Health Services, and the District.
- R. **"Standard District Water"**. Water, other than recycled water, supplied by the District.
- S. **"Unauthorized Discharge"**. Any release of recycled water that violates the provisions of these rules and regulations or any applicable federal, state, District, or local statutes, regulations, ordinances, contracts or other requirements.
- T. **"Use Area"**. The specific area designated to be served recycled water through on-site recycled water facilities.

#### Section 3.1. Off-Site Recycled Water Facilities and Service Connections.

- A. Off-site recycled water facilities and Service Connections shall be planned, furnished and installed by the District at customers' expense in accordance with applicable federal, state and local statutes, ordinances and regulations.
- B. The District reserves the right to determine the location, size, capacity, manufacturer and model(s) of off-site recycled water facilities and Service Connections.
- C. Requests for modification or relocation of an existing Service Connection shall be made to the District in writing and paid for in advance before the District will begin the involved work.
- D. The District reserves the right to limit the use area to be supplied by one Service Connection to one customer. A Service Connection shall not be used to supply adjoining property of a different customer unless approved by the District, in writing in advance of any new use.

- E. Every Service Connection shall be equipped with a valve on the inlet side of the meter to control the water supply through the meter assembly.
- F. District ownership and maintenance responsibilities terminate at the valve on the user's side of the meter assembly.
- G. The standard District water supply system or any public water supply shall not be used as a backup or supplemental source of water for a recycled water system unless the connection between the two systems is protected by an air gap separation which complies with the requirements of sections 7602(a) and 7603(a) of Title 17 and the approval of the District or the operator of the public water system has been obtained. If a "Swivel-ell" type connection is used it must be used in accordance with the provisions of the Department of Health Services Policy Memo 2003-003. Approved backflow prevention devices shall be provided, installed, tested, and maintained by the recycled water user in accordance with the applicable provisions of Title 17, Division 1, Chapter 5, Group 4, Article 2.

### Section 3.2. On-Site Recycled Water Facilities.

- A. Each customer shall be responsible for furnishing, installing, operating and maintaining all facilities necessary to convey water from the meter assembly at the Service Connection to the use area in a manner that does not harm or damage any person or property, including any employees or property of the District.
- B. On-site recycled water facilities shall be constructed in accordance with applicable federal, state and local statutes, ordinances and regulations.
- C. The District shall inspect the construction of all recycled water facilities to ensure compliance with applicable regulations.
- D. The District shall approve irrigation system schedules of its customers who shall be obligated to coordinate the scheduling of their irrigation demand among themselves so that all of the District's customers receive their share of recycled water supplied by CDCR to the District in an efficient manner. The District shall have the right to impose schedules upon its recycled water customers if the customers fail to agree.
- E. On-site recycled water facilities shall be tested under active conditions in the presence of the District inspector and most likely a representative from the State DOHS, Kern County Department of Environmental Health Services, Central Valley Regional Water Quality Control Board or other regulatory agency to ensure compliance with local, state and federal conditions.

### Section 3.3. Conversion of Existing Facilities.

- A. Conversion of Existing Facilities to Recycled Water Use. Prior to the conversion of an existing irrigation system to recycled water use, the District at the customer's expense shall, at a minimum, review the record drawings, prepare required reports, and determine the measures necessary to bring the system into

full compliance. No existing irrigation facilities shall be converted to, or incorporated into, a recycled water system without proper testing and approval by District and/or other regulatory agencies.

Section 3.4. Marking Water Facilities.

- A. The exposed portions of the customer's recycled water piping and appurtenances shall be clearly identified in accordance with local and health department requirements. The method of identification shall be clearly detailed on all plans, specifications, and engineering reports.
- B. Water meters used for recycled water service shall not be used for any other water service.

Section 3.5. Cross-Connection Prevention.

- A. Backflow Assembly. Backflow assemblies are required at every recycled water service connection and at every back up connection between a customer recycled water system and the standard District water system or with any public system. The customer, at his/her sole expense, shall install, test, and maintain an approved backflow assembly in accordance with Title 17 of the California Code of Regulations as a prerequisite to receiving recycled water service.

Any backflow prevention device installed to protect the standard District water system or other public water system shall be tested, inspected, and maintained in accordance with section 7605 of Title 17, California Code of Regulations.

- B. System Testing. As required by the State Department of Health Services or the regulatory agency, the District will periodically conduct a cross-connection control test of the integrity of the on-site recycled water system at those facilities having both standard District water service or other public water service and recycled water service. Methods of system testing include, but may not be limited to: 1) isolating each system in turn and recording the internal pressure of the isolated system; or 2) introducing tracer dyes into the system to determine existence of backflow into the standard District or other public water system. The recycled water system shall be tested as described above for possible cross connections at least once every four (4) years.
- C. The District shall provide adequate notice prior to conducting a cross-connection control test to the State Department of Health Services and any other regulatory agency requesting notice.
- D. The cost of testing and any repairs or corrections identified during the testing shall be paid for solely by the customer.

Section 4.1. General Statement. The District shall provide recycled water where the District

determines recycled water is technically and economically feasible. However, each use must be approved on a case-by-case basis. Determination of the specific uses shall be in accordance with the treatment standards and water quality requirements set forth in Title 22, Division 4, Chapter 3 of the California Code of Regulations and to preserve the public health. Each use shall, in addition, be subject to the availability of distribution facilities or the technical and economic feasibility of making such facilities available, as determined by District.

Section 4.2. District's Liability. The District is not responsible for any condition of the recycled water itself, or any substance that may be mixed with or be in recycled water as delivered to any customer, except as required by Title 22 and applicable regulations. The District shall not be liable for any damage from recycled water, including that resulting from inadequate capacity, interrupted service, defective plumbing, broken or faulty services, or recycled water mains; or any conditions beyond the control of the District. All users shall accept the pressure provided at the location of the Service Connection and hold the District harmless from any and all liability, damage, loss, costs, fees or expenses of whatever type or nature, arising from low pressure or high pressure conditions, or from interruptions of service.

Section 4.3. Conditions of Service. Recycled water service will be made available to the customer in accordance with the following terms and conditions:

- A. Compliance with Regulations. The District's recycled water shall be used in a manner that complies with all applicable federal, state, and local statutes, ordinances, regulations and other applicable requirements for the treatment level supplied, as determined by the District.

The use of recycled water shall not, at any time, cause pollution, contamination, or a private or public nuisance, as defined by section 13050 of the California Water Code. Recycled water shall be used by customers at all times in a manner that does not cause illness or injury to any person and in a manner that does not harm or damage any real or personal property of any person or entity, including the District. Customers shall not discharge recycled water into any watercourse unless Waste Discharge Requirements for such discharge have been previously obtained by the customer from the Central Valley Regional Water Quality Control Board.

- B. Studies and Reports. The cost and preparation of any study or report necessary to comply with California Environmental Quality Act (CEQA) or obtaining any permit or other approval required from a regulatory agency shall be the responsibility of the applicant.
- C. Service Constraints. All service is contingent on the quantity and quality of recycled water available to the District from CDCR at CCI and shall be provided in accordance with the terms of the Agreements between the District and CDCR and between the District and the customer.
- D. Distribution. The District reserves the right to control and schedule distribution as necessary to: 1) maintain an acceptable working pressure; 2) safeguard the public health; 3) manage the availability of recycled water supply to each of the District's customers; and 4) construct, maintain, and operate the facilities.



- E. Deliveries. Deliveries (or runs) of recycled water shall, in no event, be less than 15% or more than 100% of the rated capacity (as determined by the District) of the involved meters.
- F. Metering. All recycled water use shall be metered, and all recycled water used on any premises where a meter is installed must pass through a meter. Customers shall be held responsible and charged for all recycled water passing through the meter(s), unless otherwise specified by the District.
- G. Best Management Practices. Each applicant must demonstrate its ability to comply with the Recycled Water Use Guidelines and Best Management Practices (Sections 7.1.1 – 7.1.6 hereafter), including, but not limited to, an adequate reuse system, including adequate tailwater ponds and recycling pumps.

#### Section 4.4. Request for Service.

- A. Application. All requests for recycled water service must be made by the applicant completing and signing the appropriate District application form. Upon receipt of an application, the District will review the application and may prescribe requirements and conditions in the District's sole discretion, in writing to the applicant as to the off-site and on-site facilities necessary to be constructed, the manner of connection, the financial responsibility, and the use of the recycled water. Prior to receiving recycled water service, the proposed use shall be approved by the District and any other regulatory agency which asserts jurisdiction to approve the proposed use. The District will inspect on-site recycled water facilities to assure initial and future continued compliance with the District's regulations and other applicable requirements.
- B. Recycled Water Use Agreement. Upon approval of the application by the District in its sole discretion, and issuance of all required regulatory agency permits, a Recycled Water Agreement shall be executed between the District and customer authorizing the applicant to receive recycled water service subject to the terms and conditions of these rules and regulations and federal, state, and local regulatory agencies rules and regulations. Such agreement shall include, but not be limited to, the property location, quantity of recycled water to be used, permitted uses, and rate to be charged for the recycled water. Such agreement shall require any customer before applying recycled water to any land the customer does not own to supply to the District the landowner's consent on a form be supplied by the District.

Section 4.5. Disputed Recycled Water Bills. The District will investigate any dispute over the correctness of a recycled water bill. Bills reflecting clerical or meter errors shall be adjusted, taking into consideration the volume of business, seasonable demand, and any other factors that may assist in determining an equitable charge.

Section 4.6. Non-Registering Recycled Water Meter. When a meter is found to be out of order, the charge for water will be based on, at the option of the District, either the average monthly consumption for the preceding months during which the meter is known to have registered correctly, or the consumption as registered by a "substitute meter". Consideration will also be given to volume of business, seasonal demand and any other factors that may assist in determining an equitable charge.

Section 4.7. Wholesale Recycled Water Service. Wholesale recycled water service to another water agency shall be specifically dealt with in a special agreement, by and between the involved water agency and the District covering the terms and conditions for service.

Section 4.8. Discontinuance of Service.

- A. Turn-off At Customer's Request. A customer may request that service be discontinued, either temporarily or permanently, only if permitted and in the manner provided in the Recycled Water Agreement.
- B. Turn-off by the District. The District may discontinue a customer's service for any of the reasons set forth in Part E of the District's Standard Rules and Regulations and for the following additional reasons:
  - 1. Water Quality. Service may be discontinued if CDCR discontinues recycled water deliveries to the District for any reason or, at any point in the District's distribution system, the recycled water does not meet the requirements of the District or any regulatory agency. Service will, in the latter case, be restored at such time as recycled water again meets the requirements of regulatory agencies.
  - 2. For Non-Compliance With Terms & Conditions Contained in District's Recycled Water Agreement. The customer's failure to comply with any of the terms and conditions contained in the District's standard recycled water agreement shall result in an enforcement action. The District shall have the right to enforce the agreement by any method provided in the agreement or by any applicable federal, state or local law, rule or regulation.
  - 3. For Non-Compliance With Regulations. Service may be suspended or terminated in the manner provided herein at any time the customer's operations do not conform to these special rules and regulations as determined by the District in its sole discretion. Where safety of water supply or public health is endangered, or regulations have been violated, service may be suspended immediately without notice. Otherwise, all defects noted shall be corrected within the period of time specified by the District.
  - 4. For Waste of Water. In order to protect against serious and negligent waste or misuse of recycled water, the District may suspend service if such wasteful practices are not remedied after notice to such effect has been given to the customer.
  - 5. For Unauthorized Use of Recycled Water. When the District has discovered an unauthorized use, the service may be suspended without notice. Any person obtaining recycled water without District approval will be liable for a penalty charge, as set forth in Part J of these Rules and Regulations. The District shall, as appropriate, notify the State Department of Health Services and the Kern County Department of Environmental Health Services of such unauthorized use. Repeated

unauthorized usage shall be considered as tampering with District property and may result in the offender being charged and prosecuted.

Section 4.9. Re-Establishment of Service. The District shall have the right to refuse to re-establish service following termination of service for violation of these provisions or any Recycled Water Agreement. Any request to re-establish service subsequent to the termination of recycled water service shall be in the manner prescribed for initially obtaining recycled water service from the District, which may include the collection of a security deposit, as set forth in Part G of these Rules and Regulations.

Section 4.10. Special Rules Pertaining to Use of Recycled Water in the Cummings Basin.

- A. No recycled water shall be used in the Cummings Basin north and west of the South Quarter Corner of Section 25, T.32S., R.31E., M.D.B.&M., that is, west of Pellisier Road [County Road No. 241] and north of the westerly extension of Highline Road.
- B. Customers using recycled water to irrigate crops (including turf grass) in the Cummings Basin as a condition of receiving recycled water for irrigation shall elect to participate in the Southern San Joaquin Valley Water Quality Coalition, Kern River Sub-Basin. The District shall establish a surface water quality monitoring station in Chanac Creek at the eastern boundary of Parcel Map No. 4117 subject to approval of the Central Valley Regional Water Quality Control Board, and shall take and analyze samples collected therefrom when and as may be required by the Regional Board as part of any WDR Conditional Waiver Program.
- C. The District shall monitor Cummings Basin groundwater quality on a monthly basis by taking and analyzing samples from Well No. 36C2 near the Northwest Corner of Section 36, T.32S., R.31E., M.D.B.&M., commonly referred to as "SSCSD's Cummings Valley Well No. 1." Analyses of such samples shall be public documents, available to inspection and copying by members of the public.
- D. Customers in the Cummings Basin shall not discharge recycled water into Chanac Creek or any other water course except pursuant to Waste Discharge Requirements issued by the Central Valley Regional Water Quality Control Board. Any such discharge shall be grounds for termination of the Recycled Water Agreement between the customer and the District.
- E. Customers using recycled water to irrigate crops in the Cummings Valley shall demonstrate to the District's satisfaction that their recycling systems, including tailwater ponds and pumps, are sized, constructed, located and maintained such so as to preclude any accidental overflows or discharges to adjoining lands or Chanac Creek. Customers shall grant the District the right to position mobile diesel pumps at tailwater ponds for emergency back up operation by customers in the event a customer's pump fails. All costs of operating District mobile diesel pumps shall be promptly reimbursed by the customer. At a minimum, the District shall install a mobile diesel pump at any tailwater pond which has overflowed in the previous five years.

- F. As used herein, "Cummings Basin" shall mean all the land overlying the Cummings Valley Groundwater Basin and all non-overlying lands within the Cummings Valley Watershed as defined in Findings of Fact and Conclusions of Law in Kern County Superior Court Case No. 97210.

Section 5.1. On-Site Facilities. Customer shall operate, maintain and control all on-site recycled water facilities in accordance with the requirements established by District, federal, state, and local regulatory agencies. It shall be the sole responsibility of the recycled water user to:

- A. Designate a recycled water supervisor who is responsible for the recycled water system at each use area under the user's control. Specific responsibilities of the recycled water supervisor include the proper installation, operation, and maintenance of the irrigation system; compliance of the project with the District's rules and regulations, prevention of potential hazards, implementation of Best Management Practices and preservation of the recycled water distribution system in its "as built" form. Designated recycled water supervisors shall obtain instruction in the use of recycled water from an institution approved by the State DOHS.
- B. Maintain a copy of these rules and regulations, irrigation system layout map, and a recycled water system operations manual at the use area. These documents shall be available to operating personnel at all times.
- C. Ensure that all on-site operations personnel are trained and familiarized with the use of recycled water.
- D. Furnish its operations personnel with maintenance instructions, irrigation schedules, controller charts, and record drawings to ensure proper operation in accordance with the on-site facilities design, the Recycled Water Agreement, and these rules and regulations.
- E. Prior to the initiation of recycled water service, the recycled water user shall submit plans and specifications for recycled water distribution facilities to the District for review and approval.
- F. The recycled water user shall provide written notification, in a timely manner, to the District of any material change or proposed change in the character of the use of recycled water.
- G. Ensure that the design and operation of customer's recycled water facilities remain in compliance with all the terms of the Recycled Water Agreement and all the terms of these rules and regulations.
- H. Implement on-site controls, which meet the requirements established by District, federal, state, and local regulatory agencies to protect the health of customer's employees and the public.
- I. Notify the District immediately of any and all failures in the system resulting in an unauthorized discharge or a contamination of another system due to a cross-connection on the premises. Customer complaints or complaints received by

customers concerning recycled water use that may involve public illness shall be reported to the State DOHS, the Kern County DEH, and to the District which shall maintain a log of all complaints regarding recycled water.

- J. Protect all recycled water storage facilities, including tailwater ponds, against erosion, overland runoff, and other impacts resulting from a 20-year, 24-hour frequency storm unless the Central Valley Regional Board Executive Officer approves relaxed storm protection measures for the facility.
- K. Protect all recycled water storage facilities against 20-year frequency peak stream flows as defined by the Flood Plain Management Division of the Kern County Engineering and Survey Services Department, unless the such division approves relaxed storm protection measures for the facility.
- L. Protect all potable drinking water fountains and eating facilities from spray of recycled water.
- M. Ensure that the recycled facilities are operated at all times in full compliance with all federal, state, local and District recycled water requirements.
- N. Ensure that all recycled facilities are operated at all times in a manner that does not result in a discharge of recycled water into a watercourse, or cause illness or injury to any person or damage any real or personal property of any person, including the District.

#### Section 5.2. District Recycled Water System Facilities.

- A. Ownership, operation and maintenance of all recycled water system facilities up to, and including, the District's valve meter assembly at the Service Connection, shall be the responsibility of the District.
  - 1. Tampering with District Property. No person shall at any time tamper with District property. Such tampering constitutes a misdemeanor or felony criminal violation punishable by law. Only authorized District personnel may operate District facilities. A customer may operate District recycled water facilities only if expressly authorized in a Recycled Water Agreement.
  - 2. Unauthorized Use of Recycled Water. Customers who open the valve of a Service Connection without District approval may be liable for a penalty charge, as determined by the District, and for the cost of water usage, based either on the meter reading (if available) or the estimated consumption during the time water service was received without proper arrangements. Repeatedly turning on service without making proper arrangements shall be considered as tampering with District property and may result in the offender being charged and prosecuted.

Use of recycled water on a site that has not been approved for the use of recycled water requires the immediate notification of State DOHS and/or Kern County DEH and/or Central Valley Regional Water Quality Control Board.

3. Property Damage. Any repair costs incurred by District as a result of damage inflicted by the customer or others will be billed to the responsible party. Failure by the responsible party to pay for such costs shall constitute grounds for discontinuance of water service and/or legal action by the District. Amounts paid by the District shall incur interest at 12% per month until paid in full.

Section 5.3. Access to customer's Premises.

- A. The Tehachapi-Cummings County Water District, the Central Valley Regional Water Quality Control Board, the State DOHS, the Kern County DEH, or any other regulatory agency, and any authorized representative of these agencies, upon presentation of proper credentials, shall have the right to enter upon the recycled water use site during reasonable hours, or at any time during an emergency, for the following reasons:
  1. Monitoring and inspecting all recycled water systems to ascertain compliance with these rules and regulations and other regulatory requirements of any regulatory agency.
  2. Installing, maintaining, repairing and reading District owned facilities serving the customer's premises.

Where necessary, keys and/or lock combinations shall be provided to the District for site access.

Section 6.1. Termination of Service. Tehachapi-Cummings County Water District may terminate service to a recycled water user who uses, transports, or stores such water in violation of these special rules and regulations, in violation of the District's Standard Rules and Regulations, or in violation of any Recycled Water Agreement with the District.

The Central Valley Regional Water Quality Control Board may initiate enforcement action against any recycled water user, including but not limited to, the termination of the reclaimed water service, who:

- A. Discharges recycled water in violation of any applicable discharge requirement prescribed by the Regional Board or by the State Water Resources Control Board, or in a manner which creates or threatens to create conditions of pollution, contamination, or nuisance, as defined in Water Code section 13050.
- B. Uses, transports, or stores such water in violation of the rules and regulations governing the design, construction and use of recycled water distribution and disposal systems promulgated by the District; or in a manner which creates or threatens to create conditions of pollution, contamination, or nuisance, as defined in Water Code section 13050.

Section 6.2. Investigation and Initial Determination. District shall investigate all reports of non-compliance with any provision of these special rules and regulations and/or the Recycled Water Agreement to determine the seriousness of the violation. Determination regarding the seriousness will be based upon: 1) the magnitude and duration of the violation; 2) its effect on the operation of the District's

recycled water system; 3) its effect on third parties; 4) its impact on public and environmental health and safety; 5) the history and good faith of the customer; and 6) its effect on District's compliance with regulatory agency rules and regulations or regulatory agency permit conditions.

Section 7.1. Recycled Water Use Guidelines and Best Management Practices. As a supplier of recycled water, the District must ensure that the District's customers are aware of their responsibilities regarding recycled water use. The following Sections 7.1.1 through 7.1.6 constitute the District's Recycled Water Use Guidelines and Best Management Practices ("BMP"). The BMP are consistent with those promulgated by the State of California Department of Health Services, in Title 17 and Title 22 of the California Code of Regulations. The implementation of the BMP is essential in controlling soil erosion, over spray and ponding, promoting efficient irrigation practices and preventing discharged of recycled water offsite or into watercourses.

Section 7.1.1. General Operational Controls.

- A. The use of recycled water must be limited to the areas designated and approved by the District.
- B. All recycled water valves and outlets shall be properly tagged to warn the public and employees that the water is not safe for drinking.
- C. All recycled water piping and appurtenances in new installations and appurtenances in retrofit installations shall be colored purple or distinctively wrapped with purple tape in accordance with Chapter 7.9, section 4049.54 of the California Health and Safety Code.
- D. Where feasible, different piping materials should be used to assist in water system identification.
- E. All recycled water valves, outlets and sprinkler heads should be of a type that can only be operated by designated personnel.
- F. No recycled water shall be discharged into any watercourse.
- G. The recycled water piping system shall not include any hose bibbs. The use or installation of hose bibbs on any on-site water system that presently operates or is designed to operate with recycled water, regardless of the hose bibb style, construction or identification is strictly prohibited.
- H. No physical connection shall be made or allowed to exist between any recycled water system and any separate system conveying standard District water. Backflow preventers shall be required at the discretion of the district.
- I. The use of recycled water shall at no time create odors, slime, deposits, become a public or private nuisance or create a trespass of any kind.
- J. The use area shall be maintained to prevent the breeding of flies, mosquitoes or other vectors.

- K. Reclaimed water facilities shall be operated in accordance with best management practices (BMP's) to prevent direct human consumption of reclaimed water and to minimize misting, ponding, and runoff. BMP's shall be implemented that will minimize public contact and preclude discharges onto areas not under customer control and discharges into watercourse.
- L. Customers shall ensure that all recycled water facilities are maintained, operated and repaired at all times in a manner that does not cause illness or injury to any person and in a manner that does not cause damage or injury to the real or personal property of any person or entity, including the District.

Section 7.1.2. Posting of On-Site Notices. All use areas where recycled water is used and that are accessible to the public shall be posted with conspicuous signs, in a size no less than 4 inches by 8 inches, that include the following wording and picture in a size no less than 4 inches high by 8 inches wide: "RECYCLED WATER - DO NOT DRINK". The sign(s) shall be of a size easily readable by the public. The prescribed wording should also be translated into Spanish and other appropriate languages and included in the required signs.

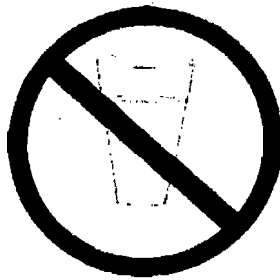


Figure 1

All water outlets shall be posted as "potable" or "non-potable", as appropriate

Section 7.1.3. Worker/Public Protection. Workers, residents, and the public shall be made aware of the potential health hazards associated with contact or ingestion of recycled water, and should be educated about proper hygienic practices to protect themselves and their families.

- A. Workers and others must be notified that recycled water is in use, through the posting of signs, etc.
- B. The following measures should be taken to minimize contact with recycled water:



1. Workers/public should not be subjected to recycled water sprays.
  2. Workers should be provided with the appropriate clothing during prolonged contact with recycled water.
- C. Potable drinking water should be provided for workers.
  - D. Toilet and washing facilities should be provided.
  - E. Precautions should be taken to avoid contact with food and food should not be taken into areas that are still wet with recycled water.
  - F. A first aid kit should be available on site, to prevent cuts and other injuries to contact recycled water.

Section 7.1.4. General Crop Irrigation Uses. All windblown spray and surface runoff of reclaimed water applied for irrigation onto property not owned or controlled by the discharger or reclaimed water user shall be prevented by implementation of BMP's.

Irrigation with reclaimed water shall be during periods of minimal human use of the service area. Consideration shall be given to allow an adequate dry-out time before the irrigated area will be used by the public.

All drinking fountains located within the approved use area shall be protected by location and/or structure from contact with recycled water spray, mist, or runoff. Protection shall be by design, construction practice, or system operation.

Facilities that may be used by the public, including but not limited to eating surfaces and playground equipment and located within the approved use areas, shall be protected to the maximum extent possible by siting and/or structure from contact by irrigation with recycled water spray, mist or runoff. Protection shall be by design, construction practice or system operation.

Section 7.1.5. Efficient Irrigation. The following methods of irrigation management should be applied to reduce run off, ponding and over spray and preclude discharges of recycled water to watercourses. When followed, these methods will result in uniform irrigation and efficient operation.

A. Hardware.

All irrigation systems must have the appropriate equipment/hardware for the application.

1. Install irrigation system according to the design.
2. Make sure all sprinkler heads are uniform in brand, model and nozzle size. Where different arcs are needed at the same station, match precipitation rates by changing nozzles.
3. Measure spacing between sprinkler heads. Place heads per manufacturer's recommendations.

4. Where lower precipitation rates are required, such as on slopes, reduce nozzle size and spray angle per manufacturer's recommendations.
5. Install booster pumps to increase pressure where needed.
6. Install pressure reducers to decrease pressure where needed, often on steep hillsides where main lines run downhill.
7. Make sure piping is sized to transmit water in the quantity demanded by the system.
8. Use check valves either in-line or built into the sprinkler head assembly to virtually eliminate low head drainage after the valve has closed. THESE DEVICES SUBSTANTIALLY REDUCE RUN OFF AND PONDING FROM INDIVIDUAL SPRINKLER HEADS.
9. Use automatic flow control devices that shut down a system if a break or other similar high flow/low pressure situation develops during irrigation. THESE DEVICES CAN SAVE SIGNIFICANT AMOUNTS OF WATER AND ELIMINATE RUN OFF OR PONDING IF A BREAK SHOULD OCCUR.
10. The use of centralized control systems or controllers that measure or can be programmed to use evaporation rates, or systems that use controls such as moisture sensors is recommended.

#### B. Maintenance.

Maintenance is often the most overlooked irrigation system component. Perform the following routinely, and to fix a problem with the irrigation system.

1. Adjust sprinkler heads so they achieve 80% head to head coverage through out their intended arc. There should be no obstruction that would interfere with the free rotation and smooth operation of any sprinkler, such as trees, tall grass, shrubs, signs, etc. The system should be tested during the daytime so adjustments can be made.
2. Adjust valves or pressure regulators so that the systems are operating at the pressure required by the sprinkler heads or emitters. Test pressures periodically with a pressure gauge to maintain appropriate pressure levels.
3. Routinely test the accuracy of time clocks. Have the time clock recalibrated or repaired as necessary.
4. Repair or replace broken risers, sprinklers, valves, etc. as soon as they are discovered. Replace with appropriate make and model of equipment to maintain uniformity through out the system.

5. Routinely check backflow devices, pumps, etc. for leaks and repair or replace as necessary.
6. Routinely clean screens and backwash filters to keep systems operating optimally.

### C. Management

System management determines: 1) the appropriate duration of the irrigation cycle, and 2) the frequency at which irrigation occurs.

1. Duration: The duration or length of an irrigation cycle (run time) should be long enough to fill up the root zone reservoir. If total run times are longer than required, then deep percolation losses occur. There are exceptions to this general rule. A common and important exception to this rule is to reduce levels of salts in the root zone reservoir. This is accomplished by applying additional water to force salts down past the root zone. This process, called leaching, is a common use of irrigation water. Run times are also dependent on distribution uniformity (DU). DU is a measurement of how evenly water is applied to the irrigated area. Run times are reduced by higher levels of DU.
2. Frequency: The frequency of an irrigation cycle should be as often as necessary to meet the water requirements of the vegetation. This is determined by measuring the amount of moisture remaining in the root zone reservoir between irrigation cycles. When an appropriate moisture level is determined, the irrigation cycles should be scheduled to ensure watering frequency is such to maintain that level.
3. Practices for optimizing management of an irrigation system:
  - a) Use tensiometers, gypsum blocks, soil probes, the “feel method”, and/or the California Irrigation Management Information System to estimate soil moisture levels. Inspect and maintain regularly to ensure accuracy and reliability.
  - b) Use automatic rain shut-off devices to reduce irrigation if significant rainfall occurs.
  - c) Use multiple rain shut-off devices to reduce ponding if precipitation rate is higher than the infiltration rate of the soil.
  - d) Irrigate in the evening or early morning to avoid the heat and/or windy parts of the day. This will reduce evaporation losses and minimize windblown spray from entering unintended areas.
  - e) Group irrigated areas into zones of similar water use. For example, irrigate grass areas separately from shrub areas, sunny areas separately from shady areas, etc.

- f) As needed, aerate the soil to improve infiltration of air and water into the soil.
- g) Provide as much flexibility as possible into the design of the irrigation system. Built in ability to make changes as necessary can add to the efficiency of the system.
- h) Perform good horticultural practices; fertilization, mowing, de-thatching, aeration, and pest control, as necessary to create the best growing environment for landscape vegetation.

Because irrigation systems have constant wear and tear, periodic checks and adjustments are all part of good landscape water management programs.

D. Reuse System and Tailwater Ponds:

- 1. Each customer shall have a system to collect and reuse tailwater, including tailwater ponds with recycling booster pumps of sufficient number, size, construction and location to (a) recycle all excess irrigation water for reuse, (b) contain and confine all irrigation water on the customer's fields and (c) preclude discharge of any recycled water onto adjoining lands or into any watercourse.
- 2. Each customer shall allow the District to position on those customer tailwater ponds the District selects District owned mobile diesel pumps to be operated by a customer as an emergency backup if a customer's recycling pump fails. At a minimum, the District shall position a mobile diesel pump on any tail water pond which within the previous five years has overflowed onto adjoining land or into a watercourse. The customer shall provide fuel for such pumps and shall promptly reimburse the District for any costs incurred by the District during emergency operation of such backup pumps.

Section 7.1.6. Use of Recycled Water Adjacent to Potable Wells.

- A. Irrigation with recycled water shall not take place within 50 feet of any domestic water supply well unless all of the following conditions have been met:
  - 1. A geological investigation demonstrates that an aquitard exists at the well between the uppermost aquifer being drawn from and the ground surface.
  - 2. The well contains an annular seal that extends from the surface into the aquitard.
  - 3. The well is housed to prevent any recycled water spray from coming into contact with the wellhead facilities.
  - 4. The ground surface immediately around the wellhead is contoured to allow surface water to drain away from the well.

5. The owner of the well approves of the elimination of the buffer zone requirement.
- B. No impoundment of recycled water shall take place within 100 feet of any domestic water supply well.
- C. Crop Irrigation with recycled water shall be prohibited within the Cummings Valley north and west of the intersection of Pellisier Road (County Road No. 241) and the western extension of Highline Road.
- D. Other special restrictions applicable to use of recycled water in the Cummings Valley and its watershed are set forth in section 4.11 of the District's Rules and Regulations Governing Use of Recycled Water.

Section 8.1. Recycled Water Inspection and Monitoring Program. The Recycled Water Inspection and Monitoring Program set forth in the following Sections 8.1.1 through 8.1.5 is designed to insure compliance with all federal, state and local regulations governing the use of recycled water. The District's "Rules and Regulations Governing the Use of Recycled Water" provides the legal authority for the implementation of this Recycled Water Inspection and Monitoring Program. The key components of this program include the District's Cross Connection Control Program. In addition, educational information may be provided by the District's staff to prevent any unintentional misuse of recycled water.

Section 8.1.1. Plan Check Function. All new recycled water users proposing to install recycled water irrigation systems are required to submit plans for review and approval by the District and Regulatory Authority. Plan review is conducted by the District's staff to verify conformance with District standards. The irrigation system is inspected following construction to verify conformance with the approved plans.

Section 8.1.2. Application for Service. The District's "Rules and Regulations Governing the Use of Recycled Water" requires all customers desiring or required to obtain recycled water service to submit an application on a form developed by the District. This provision also requires that an agreement be signed prior to any connection to any District owned recycled water facilities.

Section 8.1.3. Recycled Water Agreement. After review of the application for service, a recycled water service agreement is prepared. This agreement is between the District and the customer, and is a condition of obtaining recycled water service.

Section 8.1.4. Inspection and Monitoring. Recycled water meters are read periodically by District water operators, meter readers and other District personnel. If any problems are discovered (ponding, run-off, inappropriate use, over spray, missing signs, etc.), the Wastewater/Recycled Water Supervisor, or his designee, will respond within 72 hours. Any issues that have potential health risks will be responded to immediately and reported to the County Department of Environmental Health Services.

In addition, all recycled water users will be inspected a minimum of annually. This routine inspection is conducted to verify compliance with the provisions established in the District's "Rules and Regulations Governing the Use of Recycled Water", the Recycled Water Agreement, and any other federal, state or local regulations. The inspection will be conducted with the designated "On-Site Recycled Water Supervisor". Any violations, deficiencies, or unacceptable findings will be noted and the On-Site Recycled Water Supervisor will be required to perform corrective action.

Section 8.1.5. Non-Compliance Issues. It is the policy of the District to remedy a violation as soon as possible through progressive enforcement procedures. This procedure provides the customer due process, and considers the seriousness of the violation when determining the appropriate enforcement action.

Enforcement mechanisms (notices, penalties, fines and termination of service) are described in more detail in the District's "Rules and Regulations Governing the Use of Recycled Water". Enforcement mechanisms are also included in the District's Recycled Water Agreements.

#### PART Q. RIGHT TO AMEND, ETC.; PROVISIONS PART OF EVERY WATER SERVICE AGREEMENT; CERTAIN OTHER CONTRACTS.

Section 1. Right to Amend. The District retains the right at any time and from time to time, with or without notice, to amend, repeal, or add provisions additional to, any provision in these Rules and Regulations, either by actual amendment hereof, or by successor Rules and Regulations and amendments thereto. Any such change, including but not limited to, increases in rates or re-categorization or uses for rate purposes, or any rule or regulation, shall apply to water service commenced theretofore or thereafter, except to the extent as may be provided in any Term M&I Agreement or other contract.

Section 2. Provisions as Amended Part of Water Service Agreements. Every provision of these Rules and Regulations, as the same may be changed from time to time, whether before or after the entering into of any water service agreement (whether by approval of application alone or by reasons of a Term M&I Agreement) shall be deemed a part of each such water service agreement, and without thereby limiting the foregoing, each water user and co-signing owner shall be deemed to have agreed to District's right to waste, seepage and return flow as provided in Part K, and to have quitclaimed to District any otherwise right, title or interest of water user therein.

Section 3. Incorporation of Provisions of the KCWA Contracts and Master Contract. Every water service agreement is also subject to the provisions of the KCWA Contracts as they may be hereafter amended, and to the extent provided or later provided therein, or otherwise by law, to the provisions of the Master Water Supply Contract between DWR and the KCWA, as the same may be hereafter amended.

## TERM M & I AGREEMENT

THIS AGREEMENT is entered into effective \_\_\_\_\_, \_\_\_\_\_, by and between TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT, a county water district ("District" hereinafter) and \_\_\_\_\_ ("Water User" hereinafter).

### A. Recitals.

(i) Water User has filed an application with District for water service under date of \_\_\_\_\_, \_\_\_\_\_, for M & I use as defined in District's Rules and Regulations. To the extent any water taken by Water User qualifies for agricultural rates, the Rules and Regulations shall govern the same and this agreement shall be inapplicable thereto.

(ii) This is a "term M & I agreement", entered into pursuant to the Rules and Regulations.

### B. Agreement.

Now, therefore, it is agreed between the parties, in consideration of the concurrent approval of Water User's application for service, and the lower rates for M & I water taken pursuant to a term M & I agreement, as follows:

1. During the term of this agreement, and each annual period hereunder, Water User agrees to purchase from District all water used, sold or distributed by Water User for M & I use as defined in the District's Rules and Regulations, over and above quantities of "local water available to Water User", and used, sold or distributed by it, as that quoted term is defined and limited in paragraph 2 hereof. Such water to be purchased from District after consideration of local water available to and used by Water User is hereinafter referred to as the "net imported M & I requirement".

2. "Local water available to Water User" shall include only the following:

(a) As to water intended to be produced, extracted or diverted from Tehachapi Basin or its watershed, Brite Basin, or its watershed, or Cummings Basin, or its watershed, as such terms

[Revised 2009]

APPENDIX 1

are defined in the three judgments in the respective ground water adjudications,<sup>1</sup> local water available to Water user shall include only the following annual quantities and other rights of which Water User owns or leases, and as such annual quantities and other rights are or shall have been reduced, and thereafter adjusted from time to time, by the Court in allocating the allowable annual production from the particular basin, or otherwise reduced in any annual period pursuant to any provisions of the particular judgment as amended from time to time: (i) Such annual quantity or other right originally adjudicated to said Water User in the particular judgment (if any), as so reduced and adjusted, and (ii) such annual quantity or other right originally adjudicated to another party in the particular judgment but subsequently acquired or leased by Water User, as so reduced and adjusted, provided that such transfer complied with all conditions and procedures set forth in the particular judgment.

Notwithstanding the foregoing, said quantities and rights shall be local water available to Water User only in the quantities used or to be used (i) within the basin area as to which the water rights were adjudicated, (ii) within an area to which water appropriated pursuant to an adjudicated water right under the particular judgment may legally be transported.<sup>2</sup> If Water User was entitled under any written agreement in effect when the particular judgment was entered to a transfer of any water right, such quantity shall, upon such transfer, be considered as "originally adjudicated" to said Water User.

(b) Local sources of water not consisting of water which would be produced, extracted or diverted from Tehachapi Basin or its watershed, Brite Basin or its watershed, or Cummings Basin or its watershed, and which would not, if left uncaptured, percolate into any one of said basins. Notwithstanding the foregoing sentence, "Local water available to Water User" shall not include appropriations of groundwater in Cummings Basin as distinguished from extractions by a person exercising overlying rights.

3. As Water User's net imported M & I requirement increases, it shall pay for the installation of any new turnout and connection in the same manner as upon original application, and shall file application therefor, or obtain the remainder of said requirement through any Exchange Pool or similarly named vehicle which may be established pursuant to the reserved jurisdiction of the Court in any of the referenced groundwater adjudications, to the extent the requirement is available therefrom.

4. This agreement is subject to all the provisions of the District's Rules and Regulations including all future amendments thereof. Any application for service concurrently approved or hereafter approved shall likewise constitute a part of this agreement.

5. Within thirty (30) days of the execution of this agreement, and prior to each August 15 thereafter during the term of this agreement, Water User shall furnish to District a written estimate of its

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<sup>1</sup> Tehachapi-Cummings County Water District v. Frank Armstrong, et al., Kern County Superior Court No. 97209 (Cummings Basin); Tehachapi-Cummings County Water District v. City of Tehachapi, a municipal corporation, et al., Kern County Superior Court No. 97210 (Tehachapi Basin); and Tehachapi-Cummings County Water District v. Irving P. Austin, et al., Kern County Superior Court No. 97211 (Brite Basin).

<sup>2</sup> If there is a connected water system of Water User serving either of said types of areas, and other areas, the form of this agreement must be first revised to provide for the method of treatment thereof.



net imported M & I requirement for each calendar year, or portion thereof, then remaining under this agreement. This estimate shall not constitute a contractual obligation to take the estimated quantity. Nothing herein shall limit the right of District to require other and further reports pursuant to the powers reserved under paragraph 4.

6. Notwithstanding any other provision of this agreement, Water User agrees to pay District for a minimum quantity of five (5) acre-feet per each annual period or any partial annual period under this agreement, unless failure of Water User to receive that quantity is due to inability of District to deliver.

7. If the Water User should at any time substantially fail to comply with this agreement, and District on account thereof terminates this agreement, or should Water user terminate the same other than for a reason hereinabove set forth, Water User shall be obligated to forthwith pay to District, in addition to any amounts otherwise owing to District, the difference between the amount of money which Water User was obligated to pay to District for water sold and delivered pursuant to this agreement and the amount of money which Water User would have been obligated to pay to District had said water so sold and delivered been originally sold and delivered at the normal M & I rate. Nothing herein contained is intended to foreclose the District from seeking such damages as it may sustain from any breach, substantial or not, of this agreement by Water User whether or not such breach leads to District's termination of this agreement.

8. The annual period under this agreement shall be the calendar year, and if the first annual period be less than a full calendar year, "local water available to Water User" for that short annual period shall be in such proportion as the number of days under this agreement in that calendar year bears to 365. It is contemplated that any injunction and "physical solution" under any of the referenced judgments will be on a calendar year basis. If one should at any time be on another basis, Water User agrees to an amendment to the annual period under this agreement with such prorations as may be equitable to accomplish the purpose and intent of this agreement.

9. In lieu of Water User taking direct delivery from District of all water used, sold, or distributed by Water User for M & I use over and above quantities of local water available to Water User, and used, sold, and distributed by it, such supplemental water requirements may be taken by Water User under and pursuant to the provisions of the Exchange Pool contained in the amendment to judgment in the Tehachapi Basin adjudication, Kern County Superior Court No. 97210. If Water User's application states that it intends to obtain such requirements through the Exchange Pool, so long as it does so, no connection shall be required.

10. This agreement shall have a term ending \_\_\_\_\_, \_\_\_\_\_. (Here insert the end of the calendar year which is closest to six years from the effective date of this agreement, whether said date is more or less than six years in total.)

WHEREFORE, the parties have executed this agreement as of the dates opposite their respective signatures.

Dated:

TEHACHAPI-CUMMINGS COUNTY  
WATER DISTRICT

By \_\_\_\_\_  
President

By \_\_\_\_\_  
Secretary

Dated:

\_\_\_\_\_  
DISTRICT

By \_\_\_\_\_  
President

By \_\_\_\_\_  
Secretary

**TERM M&I AGREEMENT**  
**[For Existing Recharge Water Customers]**

THIS AGREEMENT is entered into effective \_\_\_\_\_, \_\_\_\_\_, by and between TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT, a county water district ("District" hereinafter) and \_\_\_\_\_ ("Water User" hereinafter).

**A. Recitals.**

(i) As provided in Part C of the District's Rules and Regulations, it is District policy to meet the present and future needs of its Term M&I Agreement Customers from the District's State Water Project ("SWP") water supply pursuant to the District's two water supply contracts with the Kern County Water Agency ("KCWA") both dated December 16, 1966 (the "KCWA WATER SUPPLY CONTRACTS"). Water User for many years has had a Term M&I Agreement with the District, for M&I use as defined in District's Rules and Regulations, and wishes to enter into a further Term M&I Agreement, as herein provided. To the extent any water taken by Water User qualifies for agricultural rates, the Rules and Regulations shall govern the same and this agreement shall be inapplicable thereto.

(ii) This is a "Term M&I Agreement", entered into pursuant to the Rules and Regulations.

(iii) Pursuant to Part K of the District's Rules and Regulations, as amended, the District claims all right, title and interest in and to all return flows into any groundwater basin within the District's boundaries of water imported by the District, whether by means of waste, seepage or percolation before or after delivery, use or reuse, or from the District's intentional recharge of IMPORTED WATER by the District in District spreading areas, together with the right to recapture and otherwise utilize same (all such return flows hereafter "RECHARGE WATER").

(iv) Pursuant to Section 3 of Part C of the District's Rules and Regulations, as amended, the District in its discretion may elect to allow retail purveyors having Term M&I Agreements with the District to pump RECHARGE WATER in lieu of taking surface deliveries of IMPORTED WATER.

(v) Water User wishes to reduce the cost of treating IMPORTED WATER by substituting therefor RECHARGE WATER to be pumped by Water User from the \_\_\_\_\_ Basin.

(vi) In accordance with the longstanding holdings of the California Supreme Court (*City of Los Angeles v. City of Glendale* (1943) 23 Cal. 2d 68, 76-77 and *City of Los Angeles v. City of San Fernando* (1975) 14 Cal. 3d 123, 257-261), and other holdings of the Courts, the District and the Water User have the right to recharge, store and withdraw IMPORTED WATER from the \_\_\_\_\_ Basin.

**B. Agreement.**

Now, therefore, it is agreed between the parties, in consideration of the terms hereof, and the lower rates for M&I water taken pursuant to a Term M&I Agreement, as follows:

1. During the term of this agreement, and each annual period hereunder, Water User agrees to purchase from the District (a) all water used, sold or distributed by Water User for M&I use as defined in the District's Rules and Regulations, over and above quantities of "LOCAL WATER AVAILABLE TO WATER USER", as that quoted term is defined and limited in paragraph 2 hereof, (hereinafter referred to as the "NET IMPORTED M&I REQUIREMENT") provided, however, District shall have no obligation to sell to Water User more than \_\_\_\_\_ [insert Water User's 2040 projected

**APPENDIX 2**

SWP water demand from Table 2-13 of the 2010 Tehachapi Regional UWMP] and (b) sufficient water to establish and maintain Water User's BANKED WATER RESERVE ACCOUNT as provided in paragraph 3 hereafter. Water User shall pay the District for the water purchased hereunder at the Term M&I rate for the Water User's pressure zone, as such rates and zones are established and modified from time to time by the District's Board of Directors.

2. "LOCAL WATER AVAILABLE TO WATER USER" shall include only the following:

(a) As to water intended to be produced, extracted or diverted from Tehachapi Basin or its watershed, as such terms are defined in the judgment, as amended, in *Tehachapi-Cummings County Water District v. City of Tehachapi, a municipal corporation, et al.*, Kern County Superior Court No. 97210 (Tehachapi Basin), LOCAL WATER AVAILABLE TO WATER USER shall include only the following annual quantities and other rights of which Water User owns or leases, and as such annual quantities and other rights are or shall have been reduced, and thereafter adjusted from time to time, by the Court in allocating the allowable annual production from the Basin, or otherwise reduced in any annual period pursuant to any provisions of the judgment as amended from time to time: (i) Such annual quantity or other right originally adjudicated to said Water User in the judgment as so reduced and adjusted, and (ii) such annual quantity or other right originally adjudicated to another party in the judgment but subsequently acquired or leased by Water User, as so reduced and adjusted, provided that such transfer complied with all conditions and procedures set forth in the judgment.

(b) As to water intended to be produced, extracted or diverted from the Brite Basin or its watershed, as such terms are defined in the judgment in *Tehachapi-Cummings County Water District v. Irving P. Austin, et al.*, Kern County Superior Court No. 97211 (Brite Basin), LOCAL WATER AVAILABLE TO WATER USER shall include only extractions by Water User lawfully exercising overlying rights until such time as such rights may be curtailed or modified in any future amendment to such judgment.

(c) As to water intended to be produced, extracted or diverted from the Cummings Basin or its watershed, as such terms are defined in the judgment in *Tehachapi-Cummings County Water District v. Frank Armstrong, et al.*, Kern County Superior Court No. 97209 (Cummings Basin), local water available to Water User shall only include extractions by Water User lawfully exercising overlying rights until such time as such rights may be curtailed or modified in any future amendment to such judgment.

(d) As to water intended to be produced or diverted from any basin other than the Tehachapi, Brite and Cummings Basins, any native water which Water User has a right to divert or pump.

3. In addition to its NET IMPORTED M&I REQUIREMENT, Water User shall purchase from the District and direct the District to spread and store in the Tehachapi [or Cummings] Basin for Water User's account sufficient water to establish and thereafter maintain a BANKED WATER RESERVE ACCOUNT ("BWRA") equal to, at a minimum, five times the annual average of Water User's SWP water demand over the previous five calendar years as set forth in the table entitled "BANKED WATER RESERVE ACCOUNT CALCULATION" attached hereto as **Exhibit A** which the District shall update annually by February 1 (the "BWRA TABLE"). Water User may spread and store water for its BWRA in its own recharge facilities in whole or in part in lieu of directing the District to spread its BWRA water in District spreading facilities. Water User shall pump and draw from its BWRA whenever the District is unable to supply all of the Water User's NET IMPORTED M&I REQUIREMENT on account of drought, damage to SWP or District facilities, or any other event. During the first ten years of the term of this agreement, Water User shall purchase each year, at a minimum,

sufficient water to achieve its BWRA goal as set forth in the BWRA TABLE by December 31, \_\_\_\_\_[insert 10<sup>th</sup> year from effective date]. Water User shall not be required in any one year to purchase for its BWRA more than twice its NET IMPORTED WATER REQUIREMENT for such year. Upon termination of this agreement, Water User shall own the water in its BWRA free of any and all restrictions imposed by this agreement and Water User may continue to store, or may pump, or may sell, or otherwise dispose of such water as it sees fit.

4. This agreement is subject to all the provisions of the District's Rules and Regulations including all future amendments thereof, except to the extent inconsistent with a material term of this agreement.

5. Within thirty (30) days of the execution of this agreement, and prior to each November 1 thereafter during the term of this agreement, Water User shall furnish to District a written estimate of its NET IMPORTED M&I REQUIREMENT for the next calendar year. This estimate shall not constitute a contractual obligation to take the estimated quantity. Nothing herein shall limit the right of District to require other and further reports pursuant to the powers reserved under paragraph 4 above.

6. Notwithstanding any other provision of this agreement, Water User agrees to pay District for a minimum quantity the greater of (i) its scheduled BWRA input or (ii) if its BWRA is full, five (5) acre-feet per each annual period or any partial annual period under this agreement, unless failure of Water User to receive that quantity is due to inability of District to deliver all or a portion of such supply.

7. If the Water User should at any time substantially fail to comply with this agreement, and District on account thereof terminates this agreement, or should Water User terminate the same other than for a reason hereinabove set forth, Water User shall be obligated to forthwith pay to District, in addition to any amounts otherwise owing to District, the difference between the amount of money which Water User was obligated to pay to District for water sold and delivered pursuant to this agreement and the amount of money which Water User would have been obligated to pay to District had said water so sold and delivered been originally sold and delivered at the normal M&I rate during the calendar year of such termination or substantial failure to comply with this agreement. Nothing herein contained is intended to foreclose the District from seeking such damages as it may sustain from any breach, substantial or not, of this agreement by Water User whether or not such breach leads to District's termination of this agreement.

8. The annual period under this agreement shall be the calendar year, and if the first annual period be less than a full calendar year, "LOCAL WATER AVAILABLE TO WATER USER" for that short annual period shall be in such proportion as the number of days under this agreement in that calendar year bears to 365.

9. In lieu of Water User taking direct delivery from District, Water User's NET IMPORTED M&I REQUIREMENT may be provided in accordance with this paragraph 9. For purposes of this paragraph 9, (i) "IMPORTED WATER" means SWP water purchased by the District pursuant to the KCWAWATER SUPPLY CONTRACTS and (ii) "WATER USER'S WELL[S]" means that [those] certain well[s] in the \_\_\_\_\_ Basin as listed in **Exhibit B** hereto, as such list may be modified from time to time as a result of Water User constructing or acquiring new wells and/or abandonment of then existing wells, provided, however, Water User shall obtain the District's prior written consent to change Water User's extraction wells which shall not be withheld unless the District reasonably determines that such new well or wells will substantially interfere with another well or wells in the vicinity.

(a). Substitution of Recharge Water. Water User may pump RECHARGE WATER in lieu of taking surface delivery of IMPORTED WATER at the price and subject to the terms

and provisions hereinafter set forth.

(b). Place of Delivery. Any RECHARGE WATER supplied by the District in lieu of surface deliveries of IMPORTED WATER shall be delivered underground in the \_\_\_\_\_ Basin at the depth of groundwater as it fluctuates in WATER USER'S WELL[S]. Water User shall be responsible for all costs, liability and expense of pumping RECHARGE WATER to the surface and transporting same for use within Water User's boundaries.

(c). Place of Use. Water User shall use RECHARGE WATER to provide retail water to its customers within the District's boundaries and for no other purpose.

(d). Scheduling. On or before November 1 of each year for the balance of the term of the agreement, Water User shall notify the District in writing of the proportion of its NET IMPORTED M&I REQUIREMENT for the following calendar year it wishes to be met with RECHARGE WATER in lieu of surface deliveries of IMPORTED WATER. On or before February 28<sup>th</sup> of each year, the District shall notify Water User of the estimated amount of RECHARGE WATER which is available to be substituted for surface deliveries of IMPORTED WATER in such calendar year. Periodically thereafter, the District shall provide updated estimates as SWP delivery allocations are revised.

(e). Metering. The Water User shall install a meter of manufacture and model approved by the District at WATER USER'S WELL[S] at Water User's expense. The meter shall be maintained in good working order and regularly calibrated so as to comply with the standards of the American Water Works Association per their manuals M6, M33 and M36. Water User shall provide the District with proof satisfactory to the District that Water User has obtained the right to exclusively operate WATER USER'S WELL[S] for the purposes set forth herein and that the owner of WATER USER'S WELL[S] and surrounding lands has conveyed to the District in writing the right to enter such lands to take meter readings at WATER USER'S WELL[S].

(f). Reduction or Termination of Substitute Deliveries. In the event a third party demonstrates that new or increased pumping of RECHARGE WATER by Water User as herein provided is causing significant impacts on the third party's existing well or wells, the Water User shall confer with such third party and mitigate such impacts to a level acceptable to such third party, failing which the District in its sole discretion may determine the rate of pumping and quantities of RECHARGE WATER which Water User may extract in lieu of surface deliveries of IMPORTED WATER provided, however, the District shall provide Water User with fifteen (15) days prior written notice of any reduction or termination of allowed pumping of RECHARGE WATER hereunder.

(g). Price. For RECHARGE WATER delivered and metered by the District hereunder, except for water recharged through facilities owned and operated by the Water User, Water User shall pay the District, in addition to the Term M&I rate, a surcharge determined by the District from time to time to recapture the construction, operation and maintenance costs of the District's recharge facilities.

(h). Spreading Loss Factor. For all water spread, whether in the District's or the Water User's spreading facilities, a spreading loss factor of 6% will be imposed pursuant to Section 1 of Part B of the District's Rules and Regulations for losses on account of evaporation, phreatophyte consumption and any other losses incurred in the transportation and spreading of RECHARGE WATER.

(i). Disclaimer. Water User acknowledges that the District's right to RECHARGE WATER within the Cummings, Brite and Tehachapi Basins has not been determined but is a matter within the continuing jurisdiction of the Kern County Superior Court in Case No. 97209, 97210

and 97211. Water User acknowledges that paragraph 2 of the Judgments in each such case generally prohibits the exportation outside of the particular groundwater basin of any native groundwater extracted from such basin. Water User further acknowledges that paragraph 5 of the Judgments in each such case provides, in part:

"Nothing in this Judgment contained shall be deemed a determination whether the Plaintiff or any other party will or will not have any rights in any return flow from water subsequently imported, which matter shall be within the continuing jurisdiction of the Court."

Water User further acknowledges that the State of California, a defendant in Case No. 97209, has objected to the District's Amended Findings of Fact, Conclusions of Law and Judgment in Case No. 97209, in which the District claims the right to return flow from the use of imported waters or waste or seepage from the District's imported water project in the Cummings Basin, and that the Court has not ruled on such objection. While the District has claimed and continues to claim a right to return flow from the use of imported waters in the Cummings, Brite and Tehachapi Basins, including the right to extract and export outside of such basins imported SWP water intentionally percolated by the District in District recharge areas for storage in such basins and subsequent extraction and beneficial use, all consistent with rulings from the California Appellate Courts, the District makes no warranties or representations to Water User as to the validity of the District's position on these issues. Water User has sought its own legal advice concerning the validity of the District's claim to RECHARGE WATER and Water User's right to export RECHARGE WATER for use on lands which do not overlie the groundwater basin from which the RECHARGE WATER will be pumped and has relied upon its own independent legal advice in entering into this agreement and acquiring rights in and improving and repairing WATER USER'S WELL[S]. Accordingly, Water User acknowledges that the District shall have no liability to Water User in the event that it is ultimately determined in Case Nos. 97209, 97210 and 97211 or any other proceeding that the District does not have the right to sell RECHARGE WATER in the Cummings, Brite and Tehachapi Basins or Water User may not export RECHARGE WATER for use outside of the basin or basins in which the District had spread RECHARGE WATER.

10. The District's obligation to supply water hereunder is conditioned upon the availability of sufficient SWP water under the KCWA WATER SUPPLY CONTRACTS to enable the District to meet all of its Customers' water demands. In event the District in any year has insufficient SWP water available to meet the full needs of Water User pursuant to the terms of this agreement and its other customers, the District's available SWP water in that year shall be allocated in accordance with the District's Rules and Regulations or other policies adopted by the District from time to time, provided that such policies recognize any priorities mandated by statute or recognized under the KCWA WATER SUPPLY CONTRACTS OR KCWA's contract with the State of California referenced therein. Provided, however, the Water User shall draw upon Water User's BWRA to make up any such shortages.

11. This agreement shall have a term ending \_\_\_\_\_, \_\_\_\_ [(Here insert the end of the calendar year which is closest to 10 years from the effective date of this agreement, whether said date is more or less than 10 years in total.)]; provided, however, that each year on the anniversary date of this agreement, this agreement shall extend one additional year, unless, at least 90 days prior to such anniversary date either party provides notice to the other that it will not consent to such further extension(s) of this agreement and further, provided, however, this agreement shall terminate upon termination of the KCWA WATER SUPPLY CONTRACTS (December 31, 2039) unless and to the extent the terms of such agreements are extended.

WHEREFORE, the parties have executed this agreement as of the dates opposite their respective signatures.

Dated: \_\_\_\_\_

TEHACHAPI-CUMMINGS COUNTY  
WATER DISTRICT

By \_\_\_\_\_  
President

By \_\_\_\_\_  
Secretary  
("District")

Dated: \_\_\_\_\_

By \_\_\_\_\_  
President

By \_\_\_\_\_  
Secretary  
("Water User")

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