

WATER SERVICES AGREEMENT BETWEEN
BYRON-BETHANY IRRIGATION DISTRICT AND
MOUNTAIN HOUSE COMMUNITY SERVICES DISTRI

~~COPY~~
ORIGINAL

THIS AGREEMENT is made and entered into between Byron-Bethany Irrigation District operating under and by virtue of Division 11 of the California Water Code (hereinafter called "BBID"), and the Mountain House Community Services District organized and existing under and pursuant to Title VI, Division 3 of the California Government Code (hereinafter called "MHCS").

NOW, THEREFORE, the undersigned parties agree, for full and valuable consideration, the receipt of which is hereby acknowledged as follows:

RECITALS

This agreement is made with reference to the following facts and conditions which the parties hereto agree are a true and accurate description of the basis upon which this agreement is made:

A. WHEREAS, BBID originally claimed water flowing in Old River, at the point where the west bank of Old River intersected the south bank of a branch or channel making south from said Old River and designated as "Italian Slough" which water flows extended to the use of 40,000 miner's inches measured under a 4-inch pressure and continues to divert said water flows pursuant to a "Notice of Appropriation of Water" dated May 18, 1914, and executed by the president and secretary of the then Byron-Bethany Irrigation Company, predecessor in interest to BBID. A copy of that Notice is attached to this agreement as Exhibit "A" and made a part hereof; and

B. WHEREAS, BBID subsequently entered into a contract with the State of California in 1964 to avoid condemnation proceedings proposed to eliminate a portion of BBID's S-45 Lateral Canal by construction and installation of the Intake Channel to the Harvey O. Banks pumping plant; and

C. WHEREAS, a copy of BBID's agreement with the State of California altering its original point of diversion pursuant to Water Code Section 1706 is attached hereto labeled Exhibit "B" and made a part hereof; and

D. WHEREAS, BBID currently provides water services primarily for agricultural purposes but is servicing lands within its boundaries which are susceptible to irrigation but the intent of which are to be used for residential, domestic and business purposes pursuant to Water Code Section 20702; and

E. WHEREAS, Water Code Section 22264 anticipates that domestic water service may be provided by an agricultural water services district; and

F. WHEREAS, BBID proposes to become one of numerous irrigation districts in California to provide water for domestic, municipal and industrial purposes as well as agricultural purposes; and

G. WHEREAS, BBID has the right to deliver water for domestic, municipal and industrial purposes pursuant to Water Code Sections 22075 and 22076 as these functions were taken from Section 15(b) of the California Irrigation District Act which preceded the California Water Code and expressly provided for distribution of water for domestic purposes; and

H. WHEREAS, on February 25, 1993, San Joaquin County approved General Plan Amendment Number GP-92-09 by Resolution 93-110 which changed 4,667 acres from general agricultural to a variety of urban land use designations that would enable the ultimate development of those lands into the Mountain House New Community; and

I. WHEREAS, BBID agreed to cooperate and supply raw water to the Mountain House New Community consistent with the terms and provisions of a letter dated August 18, 1989, a copy of which is attached hereto as Exhibit "C" and made a part hereof; and

J. WHEREAS, development of the Mountain House New Community will be phased over an approximate period from 1994 to 2030. During different periods throughout the phased development there will be land remaining in agricultural production, land utilizing water supplies for domestic, municipal and industrial purposes, and land under development utilizing no water supplies but needing water availability; and

K. WHEREAS, MHCS D proposes to construct necessary facilities and obtain necessary rights of way subject to the approval and subsequent transfer of facilities and rights of way to BBID to divert and convey a raw water supply which will be supplied by BBID to the Mountain House New Community at MHCS D's water treatment plant facilities and/or raw water storage facilities.

1.0. RECITALS.

The recitals contained herein are an integral part of this agreement.

2.0. DEFINITIONS.

2.1. Agricultural Use: The use of water primarily in the production of agricultural crops or livestock including, but not

limited to, domestic use incidental to such agricultural purposes and the use of water for livestock.

2.2 Bankhead Agreement. That agreement dated July 31, 1967, between BBID and Bankhead Enterprises, Inc., granting BBID the right to utilize Mountain House Creek for irrigation surface drainage, as well as the burden for maintenance of said creek.

2.3. BBID: Including any lands which may hereafter be included within BBID.

2.4. BBID Facilities: Conduits, pipes, pumps and other works owned or controlled by BBID and used by BBID to convey water to or drain water from lands whether inside or outside of BBID.

2.5. BBID Water Supply: All water available to or received by BBID, including pre-1914 riparian and post-1914 water rights and water available to BBID from any other source.

2.6. Development: Any stage of growth within the Mountain House Area which growth causes or participates in causing an alteration in BBID water flows changing the direction or altering the course of irrigation and/or drainage waters within BBID lands not situated within the Mountain House Project Area.

2.7. Diversion Agreement: BBID'S right to divert water from the Harvey O. Banks Intake Channel to the California Aqueduct pursuant to written Agreement No. 353311 with the State of California Department of Water Resources dated May 4, 1964.

2.8. MHCSD: The boundaries and sphere of influence of which are more particularly shown on the map attached as Exhibit "D" including any lands which may hereafter be included in MHCSD.

2.9. MHCSD Service Facilities: Facilities to be constructed to provide water service for municipal, industrial and domestic use to the Mountain House Project Area, including, but not limited to, pipelines, pumps, water treatment plant and raw water storage facilities.

2.10. Mountain House Project Area: That land included within San Joaquin County General Plan Amendment Number GP-92-09 as approved on February 25, 1993, by Resolution 93-110, plus those incidental areas to be included within the master plan of the Mountain House Community, the boundaries of which are designated on a map attached as Exhibit "E".

2.11. Municipal, Domestic and Industrial Use: The use of water for other than agricultural use.

2.12. Non-BBID: Water available to MHCSD from sources other than BBID water supply, including, but not limited to,

riparian water rights.

2.13. Pre-1914 Water Right: BBID'S right to water pursuant to a "Notice of Appropriation of Water" dated May 18, 1914 and executed by the president and secretary of the Byron-Bethany Irrigation Company, predecessor in interest to BBID.

2.14. Unallocated Water: BBID water supply which is available to the Mountain House Project Area pursuant to this agreement which is not utilized for agricultural, domestic, municipal or industrial use.

3.0. WATER SERVICE:

3.1. Quantity of Water: During the term of this agreement and otherwise to its then certain current rules and regulations, the provisions of this agreement, and existing California statutory law set forth in the California Water Code, BBID shall provide a quantity of water sufficient to provide treated water service up to and including the same amounts as historically supplied land provided by BBID within the Mountain House Project Area. BBID's pre-1914 water right is to the use of water flowing to the extent of 40,000 miner's inches measured under a 4-inch pressure but actual use within the Mountain House Project Area currently within BBID has ranged from 5,900 to 10,100 acre-feet actually for the period 1976 through 1991, a period considered representative of historic hydrologic and climate conditions. Because of the need for a certainty of the right to water in developing a municipal, domestic and industrial water supply, the parties hereto have agreed for contracting purposes to utilize the average annual water conveyed to, distributed and consumed within the Mountain House Project Area currently within BBID from the period between 1976 and 1991 which is 9,413 acre-feet per year. Such water conveyed to, distributed and consumed within the Mountain House Project Area includes, but is not limited to, conveyance losses or line losses such as evaporation and seepage. The water allocated to MHCS D pursuant to this agreement will be measured at BBID's diversion pumps within the intake facilities which additional pumping facilities are to be constructed and conveyed to BBID by MHCS D as described in paragraph 6.1.

3.2. Increased Water Allocation to MHCS D:

3.2.1. Additional Water Use: Should BBID determine at any time that water in excess of the 9,413 acre-feet is available within the District to be served and delivered to MHCS D, MHCS D may be entitled to take any such additional water which can be put to beneficial use within the Mountain House Project Area within BBID after first receiving approval and consent of the District to water service pursuant to the then existing District rules and regulations and otherwise subject to the terms and conditions of this agreement.

3.3. Non-Availability of Water: MHCS D has requested, received and reviewed the pleadings, papers, records and other documents generated in Sacramento County Action No. 282495 and San Francisco County Action No. 765609 entitled State of California vs. Byron-Bethany Irrigation District, et al., which action was filed on or about June 26, 1979 and was subsequently dismissed in or about December, 1986. MHCS D is satisfied with their review of the above materials and agrees to indemnify BBID from any and all claim, liability, loss, cost or expense incurred or suffered by MHCS D, their landowners, customers or water users by virtue of the non-existence or diminished water supplies promised in this agreement by the action of the State of California or the United States Government.

4.0. ANNEXATIONS.

BBID agrees to cooperate with MHCS D seeking the annexation of approximately 638 acres of property within the Mountain House Project Area without an alternative source of water supply, subject to the approval and imposition of such terms and conditions as the Board of Directors of BBID deems appropriate. It is contemplated by the parties that the landowners of approximately 175 of those acres will petition BBID immediately for annexation. It is also contemplated that additional lands which are currently within the Mountain House Project Area, but not within the boundaries of BBID, may petition to be annexed into BBID at some time in the future subject to the approval of BBID's Board of Directors, the appropriate Local Agency Formation Commission, and the terms and provisions of this agreement.

5.0. LEVEL OF WATER SERVICE.

The parties agree that it is their intent to insure that the existing level of service to BBID's agricultural landowners and water users shall not be impaired or impeded by the terms and provisions of this agreement as determined by BBID's Board of Directors.

6.0. WATER SERVICE FACILITIES.

By this agreement, including any action which may be taken under the terms and provisions of this agreement, BBID does not grant, transfer, or assign to MHCS D any interest in its water entitlement, water contracts or rights to receive water or any expectancy to said rights in regard to water or the water supply held by or anticipated to be held by BBID. MHCS D covenants that it shall take no action or make any claim that it is directly or indirectly entitled to any amounts of water which are otherwise available to BBID except as otherwise provided in the terms and provisions of this agreement and in this paragraph and its various subparagraphs. In order to take delivery of water from BBID for municipal, industrial and domestic use, MHCS D shall construct,

install, and, where indicated, transfer the following facilities:

6.1. Intake Facilities: MHCS D will construct a pump house, pumps and appurtenant facilities within BBID's diversion easement or a new diversion easement on the Intake Channel pursuant to the 1964 agreement with the State of California attached hereto as Exhibit "B". BBID shall select the location of the diversion easement on the intake channel subject to approval of the Department of Water Resources. The facilities constructed by MHCS D will be adjacent to but independent of BBID's existing pumping facilities. Facilities constructed by MHCS D will divert water into a raw water conveyance pipeline designed to convey and transmit the water to MHCS D treatment plant facilities and/or raw water storage facilities. BBID shall attempt to obtain permission from the Department of Water Resources for the construction, installation, transfer and subsequent operation of MHCS D facilities within BBID's diversion easement, or a new diversion easement, with the State of California. All facilities constructed by MHCS D pursuant to the provisions of this subparagraph shall be first approved in writing by BBID, and MHCS D shall compensate District for all plan check, inspection and approval services which are contemplated to be performed by BBID's engineers, CH₂M Hill. BBID's acceptance of payment for service performed is not a warranty or guarantee by BBID of proper design or proper specifications of materials or construction. Such payment shall include receiving the consent and approval of Department of Water Resources for construction, installation, transfer and subsequent operation of both BBID and MHCS D facilities set forth herein within BBID's diversion easement with the State of California. Additionally, upon completion of the pump house, pumps, appurtenant facilities and conveyance pipeline described in paragraph 6.2 below in a manner meeting BBID's approval, MHCS D shall convey all of said facilities and title thereto free and clear of all liens, encumbrances and expense to BBID by such form of conveyance and documents as deemed necessary by BBID.

6.2. Conveyance Pipeline: MHCS D will construct a water conveyance pipeline along one of the alternate routes set forth in the map attached as Exhibit "F" after first receiving written approval of the alternate route from BBID. MHCS D is not acting as a contractor, agent, official or representative of BBID in constructing either the raw water conveyance pipeline or any of the facilities and appurtenances thereto provided and set forth in paragraph 6.1. This agreement simply provides for the construction, installation, ownership and operation of such water system and facilities. BBID's approval of the route of raw water conveyance, pipeline, pumps, pumping facilities and other appurtenances thereto shall not be deemed as a warranty or guarantee by BBID of proper design and of proper specifications of materials or construction. BBID specifically relies upon the design and specifications as prepared or caused to be prepared by MHCS D as being in accordance with the conditions of the geography

and as having specific materials and equipment of the highest practicable quality and character.

6.3. Treatment Plant and Raw Water Storage Facilities: MHCS D will construct a water treatment plant and appurtenant facilities within the Mountain House Project Area at one of the alternative locations described on the map attached as Exhibit "F". Additionally, MHCS D acknowledges that BBID may have a right to store its pre-1914 water, which may be utilized by MHCS D as an overall component of its water supply system. MHCS D agrees that it will provide for storage of raw water as a component of its water service facilities as required by local, state and federal laws and regulations.

6.4. BBID Cooperation: Agrees to cooperate with MHCS D to obtain approvals which may be required for construction and operation of water service facilities as set forth in paragraphs 6.0 Through 6.3. BBID shall be indemnified by MHCS D for all costs incurred for such cooperation. MHCS D shall have the right to utilize the water service facilities for conveyance of non-BBID water, pursuant to the terms and provisions of this agreement.

7.0. NON-INTERFERENCE.

MHCS D shall take all steps necessary to protect BBID facilities during construction, operation, maintenance, repair and replacement of proposed water service facilities described in paragraphs 6.0 through 6.3 and shall insure that irrigation and drainage to all lands within BBID shall be maintained at the level of service delivered by BBID prior to the execution of this agreement. Should that level of water service be disturbed by activities associated with construction, installation, repair or replacement of water service facilities as determined by BBID's Board of Directors, MHCS D shall make any necessary arrangements for water supply and drainage to any lands within BBID which are severed from remaining lands within BBID by development within the Mountain House Project Area currently within BBID.

7.1. Drainage Responsibility: As lands within Mountain House are removed from irrigation and developed for non-agricultural uses, MHCS D shall assume the responsibility for drainage of those lands in accordance with the law. Upon assumption of such drainage responsibilities by MHCS D to the satisfaction of BBID, BBID shall quit claim and/or assign to MHCS D any and all easements, contracts and other interests in land which are no longer required to provide drainage services. In that regard, MHCS D shall indemnify and hold harmless BBID, its directors, officers, officials, employees, agents and independent contractors from any and all liability to any third party, arising directly or indirectly, from any act or omission or alleged act or omission arising from the performance or failure to perform any duty or obligation arising out of or in connection with the

provision of the drainage obligations set forth in this subsection; which indemnification includes, but is not limited to, all expenses, attorney fees and other costs.

7.2.1. Agricultural Drainage and Mountain House Creek: BBID agrees to continue to provide agricultural drainage as required by law, to lands within Mountain House which remain under agricultural irrigation provided that the Bankhead Agreement shall be assigned to and become the responsibility of MHCS D as of the date of execution of this agreement. To the extent that the development and/or development activities within MHCS D increase the burden on BBID to maintain the level of drainage services provided by BBID prior to execution of this agreement, MHCS D shall provide the additional services required. MHCS D hereby grants to BBID the right to use Mountain House Creek from Alameda County to Old River, or an alternate water course as determined mutually by MHCS D and BBID, for discharge of agricultural drainage water and current flood flows. MHCS D agrees to reasonably maintain Mountain House Creek within San Joaquin County as a natural drainage channel as required for the purposes described herein.

7.3. Waste Water: MHCS D will not utilize treated waste water for agricultural irrigation purposes within the boundaries of BBID without the prior written consent of BBID. For purposes of this subsection, agricultural irrigation shall not include application of treated waste water for municipal irrigation, including, but not limited to, golf courses, municipal landscaping, median strips, or wetlands maintenance.

8.0. WATER DELIVERY.

Water utilized by MHCS D for municipal, domestic and industrial use shall be delivered by BBID through the pumping facilities and conveyance line identified in paragraphs 6.0 through 6.2 all to be constructed within BBID's diversion easement acquired and to be acquired rights of way. Water utilized within the Mountain House Project Area currently within BBID for agricultural use shall be delivered through BBID facilities and be subject to the then current District rules and regulations adopted by BBID pursuant to Water Code Section 22257.

9.0. ESTABLISHMENT OF RATES AND CHARGES FOR WATER SERVICES.

BBID shall from time to time establish by resolution adopted by its Board of Directors, such rates, charges and levees sufficient to provide for the cost of all operation, maintenance, repairs, water supplies or materials together with reasonable reserves for operation, maintenance, repair and replacement of facilities, accounts for depreciation and sinking funds, together with funds for rehabilitation or expansion of existing pumping and conveyance facilities and acquisition of further facilities as may be needed in the determination of BBID to divert water for

municipal, industrial and domestic uses to MHCS D. Quantities of water diverted by BBID for the benefit of MHCS D shall be determined by meters installed on the pumps constructed and installed as provided in paragraph 6.1 above. All metering and other measuring devices constructed and installed shall be performed by MHCS D at their cost subject to the approval of BBID. Non-BBID water which is diverted through the pumping and conveyance line facilities shall be subtracted from the total quantity of metered water delivered to MHCS D provided that if such nonmetered water is owned by MHCS D and conveyed at MHCS D's request, MHCS D shall pay BBID a charge for wheeling water through BBID facilities for the benefit of MHCS D in an amount to be determined at the time of MHCS D's request for delivery of non-BBID water.

9.1. Standby and/or Water Availability Charge Pursuant to Water Code Section 22280: MHCS D shall pay standby and/or water availability charges to BBID. The initial charge shall be determined by the Board of Directors based upon 9,413 acre-feet of water made available to MHCS D for municipal, industrial and domestic use. The standby charge shall be in the nature of a charge to the entire Mountain House Project Area within the boundaries of BBID. The standby and/or water availability charge shall be determined by BBID's Board of Directors pursuant to its then current District rules and regulations and paid monthly by MHCS D with payments due BBID on the first day of each and every month. The water availability and/or standby charge payment shall be due BBID thirty (30) days following construction and installation of the water service facilities including the conveyance line as described in paragraphs 6.0 through 6.2 herein. The Mountain House Project Area shall have direct access to the water service facilities and conveyance line described in paragraphs 6.0 through 6.2 upon completion of construction; therefore, the pumping facilities and conveyance water line can provide services from BBID owned, operated, maintained and repaired facilities which facilities will or may be under permit from the Department of Public Health of the State of California or a county department of public health permit provided under the applicable provisions of the Health and Safety Code of the State of California or other applicable regulations and licensing facility for the service of water for human consumption.

10.0. FULL BENEFICIAL USE.

10.1. Water Use: The water supply made available pursuant to this agreement may be used in the Mountain House Project Area currently within BBID for agricultural, domestic, municipal and/or industrial uses. Additionally, the water supply made available pursuant to this agreement may be used for any other purposes set forth below. MHCS D reserves the right to determine the method of distributing water within the boundaries of MHCS D provided that such water is not distributed and/or used outside the boundaries of BBID without first receiving a determination from

BBID's Board of Directors that such waters are surplus to the needs of landowners and water users within BBID pursuant to the then current rules and regulations and applicable provisions of the California Water Code and/or existing law. MHCS D and BBID shall mutually determine whether or not any action is required to be brought by the District or desired in Superior Court or before the State Water Resources Control Board in order to confirm any change or expansion in use of the water supplies made available to MHCS D pursuant to the terms and provisions of this agreement. MHCS D shall bear all costs of proceeding with any such actions.

10.2. Phased Development of Mountain House: MHCS D and BBID understand and agree that there will be years during the term of this agreement when the full amount of water allocated to MHCS D pursuant to this agreement cannot be used within Mountain House. MHCS D understands that BBID's water rights were acquired and are operated and utilized for the full benefit of landowners and water users within the boundaries of BBID and that BBID's Board of Directors will put MHCS D's unallocated or unused water to beneficial use in the Board's discretion pursuant to then current rules and regulations and California law.

11.0. EFFECTIVE DATE.

This agreement shall become effective upon the date of the signature of the last signing party. It is contemplated that there may be some delay in time between the signature of BBID and that of MHCS D; therefore, the execution of this agreement by BBID is understood to be the extension of an irrevocable offer restricted to the terms and provisions set forth in this document. The irrevocable offer extended by BBID is supported by payment of Ten Thousand Dollars (\$10,000.00) cash monies annually as of the date this agreement was authorized and approved for execution by BBID; i.e., August 31, 1993, provided that should MHCS D sign this agreement prior to the expiration of this irrevocable offer; option monies due and payable to BBID shall be prorated over 365 days. Additionally, should this agreement not be executed by MHCS D on or before the third anniversary of the authorized signature of BBID; i.e., August 31, 1993, then this irrevocable offer to perform by BBID shall be of no further force and effect regardless of the signature of MHCS D, unless subsequently reinstated or ratified by BBID. Notwithstanding section 22 of this agreement, the landowners within the proposed boundaries of the MHCS D including, but not limited to, the developer, Trimark Communities, a California general partnership, shall be third party beneficiaries to this agreement and shall be entitled to enforce the offer which this agreement constitutes upon execution by BBID until formation of the MHCS D or expiration of the offer. Provided further that the developer, Trimark Communities, owning approximately 1,200 acres of real property within proposed MHCS D, shall be responsible for payment of the consideration for the option as provided above. The standby charge and/or water availability charge described in

paragraphs 9 through 9.1.1 shall become effective as described in paragraph 9.1 above. Prior to that time, service within the entire Mountain House Project Area currently within BBID shall continue for agricultural use subject to the then current existing rules and regulations of BBID, and provisions of Division 11 of the California Water Code and existing law otherwise subject to the terms and provisions of this agreement.

12.0. ANNUAL REPORT.

On or before March 1 of each year, MHCS D shall provide BBID with a projected annual report which will make a non-binding estimate of the acreage within MHCS D and within BBID boundaries which will be in agricultural production, will be in domestic, industrial or municipal use or for construction or other developmental purposes. This obligation shall cease upon full development within MHCS D to domestic, municipal and industrial uses.

13.0. RECORDS.

BBID shall provide MHCS D with monthly bills for water services including water availability and/or standby charges which shall reflect water use reports for all lands within MHCS D.

14.0. WINTER WATER RIGHTS.

The parties acknowledge that they believe BBID maintains the right to divert, convey and distribute water pursuant to pre-1914 water rights previously acquired to MHCS D on an annual basis for either and/or all water uses including, but not limited to, agricultural, municipal, industrial and domestic. In order to supplement BBID'S right to divert water from a period determined to be October to March each year, BBID agrees to pursue an application for post-1914 appropriative water rights for supplemental water from the state of California Department of Water Resources, to coordinate and cooperate with MHCS D and the State of California to effectuate an exchange agreement and to assist MHCS D in all reasonable efforts to secure supplemental winter water or confirm BBID'S existing right to serve pre-1914 water during the period of October through March annually. MHCS D and BBID shall mutually determine whether or not any actions are required to be brought by the District or desired in Superior Court or before the State Water Resources Control Board in order to confirm any change or expansion in use of the water supplies made available to MHCS D pursuant to the terms and provisions of this agreement. MHCS D shall bear all costs of proceeding with any such actions.

15.0. WATER QUALITY.

The parties acknowledge that the water to be supplied MHCS D by BBID pursuant to the terms and provisions of this agreement, then

current District rules and regulations and applicable provisions of the California Water Code is non-potable. MHCS D assumes all responsibility for producing a water supply sufficient for municipal, industrial and/or domestic use and for compliance with all local, state and federal requirements for the provision of potable water. BBID does not guarantee in any respect or assume any responsibility for the chemical, bacterial or other quality of the raw water made available to MHCS D or its compatibility for water treatment.

16.0. ASSESSMENTS.

MHCS D recognizes that property within the Mountain House Project Area and the boundaries of BBID will remain subject to existing BBID ad valorem taxes and assessments. MHCS D recognizes and agrees that future assessments against properties within the Mountain House Project Area and within the boundaries of BBID will and do incur, both direct and indirect, benefits from the existence and supplies of raw water by BBID and those lands will continue to incur future ad valorem taxes and assessments. MHCS D agrees to make payment directly to BBID for all assessment of properties within its boundaries.

17.0. MUNICIPAL, INDUSTRIAL AND DOMESTIC WATER SUPPLY.

MHCS D shall comply in all respects with local, state and federal requirements for provision of a domestic, municipal and/or industrial water supply including, but not limited to, water treatment, storage and availability. MHCS D shall indemnify and hold harmless BBID, its directors, officers, officials, employees, agents and independent contractors from any and all liability to any third party, arising directly or indirectly from any act or omission or alleged act or omission arising from the performance or failure to perform any duty or obligation arising out of or in connection with the provision of domestic, municipal and/or industrial water supply including water treatment, storage and availability which indemnification includes but is not limited to all expenses, attorney fees and other costs.

18.0. VALIDATION PROVISIONS.

The parties acknowledge that this agreement and/or any of its provisions including, but not limited to, the right to store water, the inclusion and extension of BBID's pre-1914 water rights to areas of land within the Mountain House Project Area, but not within BBID, and the provisions of municipal, industrial, and domestic water supplies within the boundaries of BBID, may be subject to a validation action to be brought by the District. MHCS D agrees to bear all costs associated with such validation action if it is mutually determined to pursue such an action.

19.0. RESPONSIBILITY OF CONVEYING, TRANSMITTING AND DISTRIBUTING WATER.

BBID shall be responsible for the conveyance, transmission and distribution of water to the MHCS D treatment plant as described in paragraphs 6.0 through 6.2 set forth herein.

20.0. INDEMNIFICATION.

BBID and MHCS D each agree to indemnify the other and save the other free and harmless of and from any and all liability, damage, loss, cost, or expense incurred or suffered by the other, by reason of damage to the property of the other or injury to any other person or property arising out of its own conduct, acts, omissions, or faults, in connection with any matter related to this agreement except as otherwise set forth herein.

21.0. RELATIONSHIP OF PARTIES.

Nothing contained in this agreement shall be deemed or construed by the parties or by any third party to create the relationship of principal and agent, a partnership, joint venture, or of any other association between the parties.

22.0. NO RIGHT IN THIRD PARTIES.

Nothing in this agreement, express or implied, is intended to confer any rights or remedies under or by reason of this agreement on any third party, nor is anything in this agreement intended to relieve or discharge the obligation or liability of any third party to any party in this agreement, nor shall any provision in this agreement give any third party any right of subrogation or action over or against any party to this agreement.

23.0. SPECIFIC PERFORMANCE.

By reason of the specialized nature of the water service to be rendered, and for the further reason that the extent of any damage caused to any party by reason of any breach of this agreement may be extremely difficult to determine, it is agreed by the parties hereto that an action for damages is an inadequate remedy for any breach, and that specific performance, without precluding any other remedy available in equity or at law, will be necessary to furnish any party hereto with an adequate remedy for the breach by any other party hereto of any covenant or obligation for the benefit of the aggrieved party.

24.0. ASSIGNMENT. The terms and provisions of this agreement taken independently or within the entirety of the agreement shall not be assigned or transferred by MHCS D without first receiving the written consent of BBID provided that BBID shall not unreasonably withhold such consent.

25.0. SEVERABILITY.

If any term, provision, covenant, or condition of this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be effected, impaired or invalidated.

26.0. ENTIRE AGREEMENT.

This agreement is full and entire and may not be altered except by a writing executed by the parties hereto. The parties agree that there are no warranties, either express or implied, no covenants or promises or expectations other than those contained within as set forth in writing in this agreement, and that this agreement is full and entire.

27.0. AMENDMENT.

This agreement may be amended only by a written instrument duly executed by the parties.

28.0. WAIVER.

The waiver or failure to declare a breach as a result of the violation of any term of this agreement shall not constitute a waiver of that term or condition and shall not provide the basis for a claim of estoppel.

29.0. ADDITIONAL DOCUMENTS.

Each party agrees to make, execute, and deliver any and all documents and to join in any application or action reasonably required to implement this agreement.

30.0. NOTICES.

Any notice, demand, or request provided for in this agreement shall be in writing, and shall be deemed properly served, given, or made if delivered in person or if sent by registered or certified mail, postage prepaid, to the person specified below:

BBID: Byron-Bethany Irrigation District
3944 Main Street
P.O. Box 273
Byron, CA 94514

MHCSD: Mountain House Community Services District

31.0. TERM.

This agreement shall become effective on the date first above written and shall remain in effect in perpetuity.

32.0. ARBITRATION.

In the event of a dispute between the parties as to any right, alleged right, obligation or alleged obligation under this agreement, the parties shall make a good faith effort to resolve the dispute. In the event that a resolution of the dispute cannot be reached despite these efforts, either party may declare an impasse and its intent to submit the matter to arbitration as provided in this section. Notice of such impasse shall be given in writing to the other and shall include a description of the disputed issue or issues, a description of the possible solutions or resolutions to the dispute and the course of action or solution advocated by the party declaring the impasse.

32.1. Impasse Notice: The party receiving the notice of impasse described in paragraph 32.0 shall respond in writing within twenty-one (21) days. Said response shall contain that party's response to the issues raised and the responding party's proposed resolution to the impasse. The parties shall then meet within ten (10) days and attempt to resolve the impasse.

32.2. Arbitrator Selection: In the event that the impasse is not resolved, the parties shall jointly appoint a mutually agreeable arbitrator who is a licensed civil engineer with experience and expertise in the area in dispute. The arbitrator shall be selected within thirty (30) days and in the event that the parties cannot do so, application may be made, by either or both parties, to the Contra Costa County Superior Court to appoint an arbitrator meeting these qualifications.

32.3. Powers of Arbitrator: The arbitrator appointed pursuant to paragraph 32.2 shall set a date within thirty (30) days of his appointment to meet with the parties and review all aspects of the issue in contention. The arbitrator shall receive and consider any documents or other written evidence submitted by the parties together with any oral presentation of information by either or both of the parties. The arbitrator shall be entitled to conduct his own inquiry into the facts of the dispute or require further information of either or both of the parties. The arbitrator shall render his decision in writing within ten (10) days of receipt of all information he deems necessary to his decision.

32.4. Determination: The arbitrator's determination may provide for mechanisms of enforcement and terms of compliance. The arbitrator may direct the preparation, execution, and recordation of any agreement, or conveyance resulting from his

determination. The arbitrator may determine issues involving adjustment of contractual obligations based on changed circumstances and appropriate limits of insurance coverage. The arbitrator may award to the prevailing party attorney fees, expert and consultant fees and costs reasonably incurred in pursuing the arbitration or may divide such fees and costs between the parties. Unless appealed, as set forth in paragraph 32.5 below, the arbitrator's decision shall be binding and enforceable against the parties.

32.5. Contest of Award: If either party to the arbitration wishes to contest the decision of the arbitrator, that party may do so, only under the following conditions:

a. The notice of intent to appeal the arbitration decision must be made within thirty (30) days of receipt of that decision.

b. The party seeking to appeal the decision shall pay for all costs of the appeal including any experts, consultants or other expenses deemed necessary by the appellate panel.

c. The party seeking the appeal shall abide by the original arbitration decision including all payments required thereunder, unless doing so would create an irrevocable situation or condition making further arbitration moot. In this case, the party seeking appeal shall pay any money awarded by the arbitrator and abide by as much of the decision as possible without creating an irrevocable condition.

32.6. Appeal: The appeal of an arbitration decision shall be made to a panel consisting of three (3) arbitrators. Each arbitrator shall be a civil engineer licensed in California. The arbitrator who made the decision being appealed shall not be a member of the panel. Each party to the dispute shall appoint one (1) arbitrator to the panel who shall then appoint a third arbitrator mutually agreeable to them. Each party shall appoint its arbitrator within thirty (30) days of initiation of the notice of appeal. The two (2) arbitrators shall then make their appointment of the third arbitrator within twenty (20) days of the date on which the last arbitrator was appointed by a party. If the two (2) members of the arbitration panel are unable to agree on the selection of the third member, the parties may apply to the Superior Court of Contra Costa County to appoint that arbitrator.

32.7. Powers of Arbitration Panel: The arbitration panel shall have the right to consult with the original arbitrator, conduct its own inquiry into the facts of the dispute or require further information of either or both of the parties. The panel shall have the right to employ consultants or other experts to assist in rendering its determination. The panel shall render its decision in writing within ten (10) days of receipt of all

information it deems necessary to its decision.

32.8. Final Decision: The decision of the arbitration panel shall be final and binding upon the parties and shall be implemented in accordance with any provisions contained in the arbitration determination. The parties waive the right to commence any court proceeding involving any issue which is subject to arbitration, except as may be necessary to enforce any final decision of arbitration. In the event court proceedings are necessary to enforce any decision of the arbitrator, the court may award reasonable attorney fees and costs incurred in connection with said action upon a finding that said action was reasonably necessary to enforce or accomplish the arbitration determination.

"BBID"
BYRON-BETHANY IRRIGATION DISTRICT

Authorized and approved
for signature on August 31,
1993:

Dated: Sept. 7, 1993

By: Jerry Tennant
JERRY TENNANT, Director and
Acting President

Authorized and approved
for signature on August 31,
1993:

Dated: 9-7-93

By: Betty Compilli
BETTY COMPILLI Secretary

"MHCS"
MOUNTAIN HOUSE COMMUNITY SERVICES
DISTRICT

Authorized and approved
for signature on

Dated: _____

By: _____
President

Authorized and approved
for signature on

Dated: _____

By: _____
Secretary