

## APPENDIX J

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (hereinafter "the Agreement") is entered into as of the 21st day of January, 1994, by and between YUCAIPA VALLEY WATER DISTRICT (hereinafter "YVWD") and BEAUMONT-CHERRY VALLEY WATER DISTRICT (hereinafter "BCVWD").

### R E C I T A L S

A. YVWD is a county water district organized and operating pursuant to California Water Code Section 30000 et seq. YVWD furnishes water service to its customers within its jurisdictional boundaries in Riverside County and San Bernardino County, State of California.

B. BCVWD is an irrigation district organized and operating pursuant to California Water Code Section 20500 et seq. BCVWD furnishes water service to its customers within its jurisdictional boundaries in Riverside County and San Bernardino County, State of California.

C. On or about November 20, 1992, BCVWD filed suit against YVWD in the Superior Court of Riverside County, Case Number 226259 (hereinafter "the Lawsuit"), alleging that BCVWD and YVWD both pump water from an underground storage unit identified as the Beaumont Storage Unit which is purportedly in a state of overdraft. The

Lawsuit seeks injunctive relief to prevent YVWD from continuing to produce groundwater from its wells allegedly located within the Beaumont Storage Unit. YVWD has denied the material allegations of the Lawsuit.

D. YVWD and BCVWD desire to enter in this Agreement for the purpose of resolving the Lawsuit without any further litigation, and developing a Basin Management Plan for the joint use and management of the Beaumont Storage Unit, and are entering into the Agreement for said purposes. This Agreement shall never be treated or otherwise construed as an admission of liability by either party for any purpose.

#### C O V E N A N T S

NOW THEREFORE, in consideration of the preceding Recitals and the mutual Covenants contained herein, the parties agree as follows:

1. Dismissal of Lawsuit. BCVWD shall dismiss YVWD from the Lawsuit without prejudice. BCVWD shall only be permitted to file suit against YVWD to litigate the issues addressed in the Lawsuit if authorized under this Agreement.

2. Production Limitation. YVWD shall limit its annual production of groundwater from the Beaumont Storage Unit to an amount equal to its average annual pumping from the Beaumont Storage Unit as calculated from 1986 to 1991. BCVWD shall limit its annual production of groundwater from the Beaumont Storage Unit to an amount equal to its average annual pumping from the Beaumont Storage Unit as calculated from 1986 to 1991. Said amounts shall be hereinafter referred to as the party's Production Limitation.

3. Production Inconsistent With Limitation. If a party produces groundwater from the Beaumont Storage Unit in an amount less than its respective Production Limitation, that unused amount may be banked and credited for the next year or credited towards that party's allocation under the Basin Management Plan. If a party produces groundwater from the Beaumont Storage Unit in excess of its respective Production Limitation, that party shall be required to replace its excess water use in accordance with any physical solution established in the Basin Management Plan.

4. Use of Reclaimed Water. Each party will receive credit for all reclaimed water which that party put to beneficial use in the Beaumont Storage Unit. This credit can be applied against the party's actual production in the year the reclaimed water is put to beneficial use or, at the party's option, against any obligation under Paragraph 3 above to replace water produced in excess of its Production Limit, including any such obligation which arose in a

year prior to the year the reclaimed water is put to beneficial use which has not yet been satisfied.

5. Period of Production Limitation. The Production Limitation set forth in Section 2 of this Agreement shall be for a period of two (2) years from the date of this Agreement unless otherwise specified in the Basin Management Plan.

6. Development of Basin Management Plan. During the period of the Production Limitation set forth in Section 5 of this Agreement, YVWD and BCVWD shall make a good faith effort to jointly develop and implement a Basin Management Plan for the Beaumont Storage Unit. The Basin Management Plan shall include a review of prior studies, tests, and available data regarding the hydrologic condition of the Beaumont Storage Unit to determine if that Unit is in a state of overdraft. If overdraft is found to exist, the Basin Management Plan shall quantify each party's entitlement to groundwater from the storage unit, and provide for the physical solution to said overdraft and the administration thereof.

7. Funding of Basin Management Plan. YVWD and BCVWD shall each retain their own consultant and shall be solely responsible for payment of their respective consultant fees and associated costs. Neither party shall be responsible for the payment of said fees or costs for the other party. Each of the parties agrees to furnish to the other all non-privileged materials, including but

not limited to, water extractions data from the Beaumont Storage Unit, studies concerning water conditions and quality, pump and well information, engineering reports, master plans, will-serve letters and agreements with other water producers or importer, as requested by the consultants. BCVWD will provide all non-privileged information to YVWD currently in its possession, regarding the Beaumont Storage Unit, as well as all evidence presented at trial and discovery materials in the Lawsuit.

Consultants will review all pertinent information and no later than eight (8) days months after this Agreement has been signed, jointly consult and begin preparation of the Basin Management Plan.

8. Time Limitations and Remedies.

(a) In the event that the Basin Management plan is not completed during the period of the Production Limitation as set forth in Section 5 (i.e., two [2] years), either party may, by giving written notice, extend the period of the Production Limitation by one additional year, to allow for completion of the Basin Management Plan. During the additional, third year, the conditions of this Agreement will remain in effect.

(b) Alternatively, at the end of initial two (2) year Production Limitation period, either party may file suit to litigate the issues addressed in the Lawsuit. If said suit is filed within thirty (30) day after the expiration of the two (2)

year period set forth in Section 5 of this Agreement, the parties hereby agree to abide by the production limits established pursuant to Section 5 of this Agreement for one (1) additional year from the date the suit is filed or until final judgment is entered, whichever is earlier.

9. Remedy for Violation of Production Limits During the One-Year Period. If the one (1) year period under Paragraph 8(b) is put into effect, and either of the parties produces groundwater from the Beaumont Storage Unit in an amount less than its respective Production Limitation, that unused amount may be banked and credited toward that party's allocation under any judgment that may be entered. If during said one (1) year period a party produces groundwater from the Beaumont Storage Unit in excess of its respective Production Limitation, that excess amount shall be deducted from that party's allocation under any subsequent judgment.

10. No Relinquishment or Waiver. By entering into this Agreement, neither party is relinquishing or waiving any rights to surface, reclaimed or recharged water.

11. Indemnification. Each party agrees to indemnify, hold harmless, and assume the defense of the other party, its officers, agents, employees, and elective Boards, and pay all court costs and reasonable attorneys' fees relating thereto, in any action, with

respect to a claim, loss, damage or injury, asserted by a third party against the party entitled to indemnification hereunder, and arising out of a negligent act, error or omission, or wilful misconduct, of an employee or agent of the party whose actions under this Agreement gave rise to such third-party claim.

12. Notices. Any notice, tender or delivery to be given hereunder by either party to the other shall be effected by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed communicated as of mailing or in the case of personal delivery, as of actual receipt. Mailed notices shall be addressed as set forth below, but each party may change its address by written notice in accordance with this Section.

To: Yucaipa Valley Water District  
12990 Second Street  
P. O. Box 730  
Yucaipa, CA 92399-0730  
Attention: General Manager

To: Beaumont-Cherry Valley Water District  
560 North Magnolia Avenue  
P.O. Box 2037  
Beaumont, CA 92223  
Attention: General Manager

13. Attorneys' Fees. Each party hereto shall be responsible for payment of their respective attorneys fees and costs.

14. Amendments. This is an entire agreement and supersedes all prior agreements oral or written between the parties, and their agents, and cannot be amended unless in writing, with specific reference hereto by the parties authorized to be charged. Failure by either party to enforce any provisions shall not constitute a waiver of said party's rights to enforce subsequent violation of the same or any other provisions.

15. Inurement. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

16. Captions. The captions of Sections and Subsections of this Agreement are for reference only and are not to be construed in any way as part of this Agreement.

17. Validity. This Agreement will be construed in accordance with the laws of the State of California.

18. Severability. If any section, clause or phrase of this Agreement is for any reason held to be unconstitutional or unlawful, such a decision shall not effect the validity of the remaining portions of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers as of this date first above written.

YUCAIPA VALLEY WATER DISTRICT

By Carl B. Nelson  
Board President

ATTEST \_\_\_\_\_  
Board Secretary

BEAUMONT-CHERRY VALLEY WATER DISTRICT

By Rolanda Russell  
Board President

ATTEST C. Butcher  
Board Secretary