

ORIGINAL

AGREEMENT

THIS AGREEMENT is by and between the City of Banning ("City") and the Beaumont-Cherry Valley Water District ("District"), sometimes jointly referred to as the "Parties."

RECITALS

WHEREAS, the Parties are the agencies serving the largest number of domestic water users in the San Geronio Pass area and collectively rely in substantial part on the Beaumont Basin ("Basin") as a source of water; and

WHEREAS, the Parties desire to promote conjunctive use of the Basin and desire to jointly address issues concerning the long-term reliability of the Basin as a source of potable water, including the use of water recycling and the treatment and use of imported water.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I. PRODUCTION FACILITIES.

The Parties shall share the cost of constructing and operating three new production wells as follows:

A. Description.

The production wells shall be located west of Highland Springs Road at mutually agreed locations; shall be at least 1,500 feet deep' shall have minimum diameters of 18"; and each shall be capable of producing a minimum of 2,000 gallons per minute ("gpm").

B. Construction Costs.

The costs of constructing the production wells shall be shared equally between the Parties. The costs of constructing facilities to connect a Party's distribution system to any or all of said wells shall be borne by that Party.

C. Ownership.

The District and the City shall own and operate the wells jointly, on a 50-50 basis. District shall function as the lead operating agency with primary responsibility for the operation and maintenance of the joint facilities.

D. Operation, Maintenance, Repair and Replacement Costs.

(1). Operating and maintenance costs for each well shall be assessed to each Party on a per well basis. "Operating and maintenance costs" are defined as direct labor costs, electric costs, and costs of routine maintenance of the pumping facilities. "Repair and Replacement Cost: are defined as necessary costs of required repair or replacement of equipment and facilities. The District shall deliver the water to a tie-in point with City's water system at Highland Springs Avenue from the joint facilities at the Operating and maintenance costs of the water and without any wheeling cost.

(2). The cost shall be assessed based on the ratio of water supplied to that Party from a well/wells to the total water produced from that source.

(3). Each Party shall bear as its separate obligation those costs related to operation of facilities that it owns and that are used to deliver water to its distribution system.

(4). The District will submit the actual operation costs to operate the joint well/wells along with the necessary back up information on quarterly basis to the City. City will reimburse the District the said operation costs on quarterly basis subject to verification of such actual costs.

E. Production & Supply Pending Construction of Wells.

With respect to each production well, commencing on the date hereof and pending construction and development of the well to the point where total production from the well reaches 2,000 gpm, the District shall supply up to 1,000 gpm during Southern California Edison ("SCE") off peak hours to the City on an as-needed basis, at the District's cost of production. "Costs of production" are hereby defined as costs of electricity and direct labor costs required to bring the water to the surface and make it available to the City at the tie-in point.

F. Production & Supply Following Construction of Wells

(1). When the combined, total production from the three production wells reaches 6,000 gpm on a continuous basis, City shall be entitled to receive the greater of 3,000 gpm or 50% of the production at the District's Operating and Maintenance costs as defined above.

(2). The quantity of water delivered to City from the wells shall be charged to the City's total entitlement water from the Beaumont Basin set forth on Exhibit "Appropriators and Their Rights and Shares of Safe Yield and Operating Yield" of (Column number 6, "Operating Yield") the Stipulated Judgment in the Riverside County Superior Court case, San Timoteo Watershed Management Authority, etc. v. City of Banning, et al., Riverside County Superior Court case No. RIC 389197.

II. WATER TREATMENT PLANT.

A. Development of Joint Water Treatment Facilities.

The District has plans to build a water treatment facility for the treatment of state water project water on the District property located in Cherry Valley adjacent to District's Taylor reservoir. The Parties hereby express their intent to share the cost for design and construction of proposed treatment facilities. However, such agreement shall not prevent any party from unilaterally commencing the construction of the treatment plant. Should a Party elect to proceed with the design and construction of the treatment plant, it will not preclude the second party from constructing additions to the plant at a later date at the discretion of that Party. If construction on such water treatment plant has not commenced within 10 years of date hereof, Section II of this agreement "Water Treatment Plant" shall become void and of no further effect, unless otherwise mutually agreed by the Parties.

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(1) Construction Costs.

Costs shall be shared based on percentage of participation in the total capacity of the plant: the City's percentage participation shall be determined by City, but shall not exceed 50% of rated plant capacity.

(2) Operation and Maintenance, Repair and Replacement Costs.

Operations and Maintenance shall be assessed on each Party according to its percentage of participation in the cost of operating and maintaining said water treatment facilities. "Repair and Replacement Cost" repair and replacement costs shall be assessed on each party according to its percentage of participation in the operation of the plant.

B. Treated Water Allocation.

Each party will be entitled to its prorata share of State Water Project water treated by the water treatment plant, based on its percentage of financial participation in the construction of the plant.

III. INTERCONNECTION OF SYSTEMS.

A. Connections.

City's and District's existing potable water distribution systems and recycled water systems (as the same are developed) shall be interconnected in order that each system will serve as a backup to the other. Connections will be at mutually agreed upon points between compatible pressure zones. Each connection shall be metered. Interconnection shall be established at such times and such places as are mutually agreed by the Parties in writing.

B. Cost Sharing.

(1) Construction Costs.

The costs of constructing/installing connections, meters and related facilities shall be borne equally by the Parties unless otherwise agreed in writing.

(2) Operation, Maintenance, Repair and Replacement

Each Party shall be responsible for operation, maintenance, repair and replacement of connections, meters, and related interconnection facilities assigned to it, as shown on Exhibit "A," attached hereto. Said exhibit may be amended from time to time. Each agency shall annually invoice the other for one-half of the total costs incurred for the operation and maintenance of said connections, etc.

C. Excess Deliveries Charges.

Water delivered to City by District shall be charged to City's entitlement to production from the wells as set forth in Paragraph 1(E) and 1(F) above. Deliveries by District to City in excess of said quantities shall be charged to City at District's lowest domestic water rate. Conversely, deliveries

by City to District shall be charged to District at City's lowest domestic water rate.

IV. RECYCLED WATER AND IN-LIEU WATER.

The District shall give the City first-take on any excess recycled water of the District. The decision to accept the water made available under this section shall be at the sole discretion of the City. The District and the City will work together to develop a system for deliveries to be made to the City under this subsection.

V. 1960, 1966 MEMORANDA OF UNDERSTANDING.

The 1960 and 1966 Memoranda of Understanding between the Parties are hereby modified to the extent necessary to allow for the construction and operation of the wells described in Paragraph 1 above, for the benefit of both parties. Consistent with those Memoranda of Understanding, either Party may, without consulting the other, develop additional water supplies within its boundaries, provided that it observes the one-half mile setback or buffer zone on each side of Highland Springs Road as created by said MOU's.

VI. Effective Date.

This MOU shall become effective when both Parties have executed this MOU and have executed the Stipulation for Judgment in the adjudication action, San Timoteo Watershed Management Authority v. City of Banning, et al., Riverside County Superior Court, Case No. RIC 389197.

VII. TERMINATION.

This Agreement may be terminated by written consent of both parties.

VIII. JOINT FUNDING EFFORT.

The Parties agree to work together to obtain Federal and State funding for projects that will jointly benefit both Parties, including the development of Supplemental Water Master Plans to include importation of State Water Project water, the capture and recharge of urban and storm runoff, recycled water systems, interconnection of domestic water systems, and State Water Project water treatment facilities. In addition, the Parties hereby agree to work with the California Department of Water Resources, the San Geronio Pass Water Agency ("Pass") and others, to develop supplemental water and recycled water supplies and will work closely with Pass to obtain access to and storage and distribution of State Water Project water.

IX. AMENDMENT.

This Agreement may be amended only by written amendment signed by the Parties.

X. SEVERABILITY.

In the event a portion of this Agreement is illegal or unenforceable, the remaining provisions will be given effect in order to preserve the original intent of the Parties.

XI. NOTICES.

Notices shall be sent as follows:

City of Banning:

Beaumont-Cherry Valley Water District:

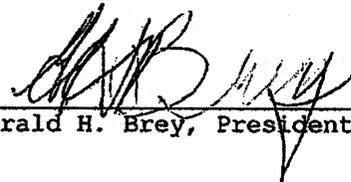
DATED, 12/23/ 2003 CITY OF BANNING

By


Arthur L. Welch, Mayor

DATED, 2003 BEAUMONT-CHERRY VALLEY WATER DISTRICT

By


Gerald H. Brey, President