

**Appendix 7. Water Supply Contract
Standard Provisions**

LANDOWNERS CONTRACT
WITH
BERRENDA MESA WATER DISTRICT
FOR A WATER SUPPLY

This Contract, dated _____, 2001, between
BERRENDA MESA WATER DISTRICT, a California Water District,
organized and existing under and by virtue of Division 13 of the
Water Code of the State of California, hereinafter called
"District", and

hereinafter called "Buyer";

WITNESSETH:

WHEREAS, Buyer is the holder of title to the land in BERRENDA
MESA WATER DISTRICT, Kern County, California, described in Exhibit
"A" hereto attached; and

WHEREAS, Buyer desires to secure a water supply for
agricultural use on Said Lands; and

WHEREAS, Water Code Section 35422.5 allows the District to
enter into water supply contracts with its landowners; and

WHEREAS, District desires to make water available under terms
and conditions which, are fair and equitable to all owners of land
within District;

NOW, THEREFORE, IT IS AGREED between District and Buyer as follows:

ARTICLE 1. DEFINITIONS

When used in this contract, the following terms shall have the meaning hereinafter set forth:

- (a) "Agency" shall mean the Kern County Water Agency.
- (b) "Annual Entitlement" shall mean the total amount of water to be made available by District to Buyer during a year under the terms of this contract as set forth in Exhibit "A" hereto attached.
- (c) "Buyer" shall mean the party or parties signatory hereto as Buyer and any successor in interest of Buyer as beneficial owner of the interest in the land described in Exhibit "A" hereto attached.
- (d) "Contract Entitlement" shall mean the total amount of water to be made available by Agency to District during the particular year under the terms of the District Contract.
- (e) "District" shall mean Berrenda Mesa Water District.
- (f) "District Contract" shall mean the contract, hereinabove referred to, between Kern County Water Agency and Berrenda Mesa Water District, as such contract may hereafter be revised, amended, supplemented or replaced by a similar contract between the same parties.
- (g) "Judgment" shall mean that judgment entered in consolidated cases numbers 144956 and 144957, Kern County Superior Court.
- (h) "Master Contract" shall mean the contract entitled "Water

Supply Contract Between the State of California Department of Water Resources and Kern County Water Agency" dated November 15, 1963, and as it may hereafter be revised, amended, supplemented or replaced by a similar contract between the same parties.

(i) "Project Water" shall mean water made available to District by Agency pursuant to the terms of the District Contract.

(j) "Said Land" shall mean the land described in Exhibit "A" hereto attached.

(k) "Service Area" shall mean lands which were subject to the District's standby charges in the year 1996.

(l) "State" shall mean the State of California.

(m) "Water Users" shall mean Buyer and all other persons or entities with whom District shall have executed a contract for a water supply and all landowners in the service area who order water and are current in all payments to the district.

(n) "Year" shall mean the twelve (12) month period from January 1 through December 31, both dates inclusive.

ARTICLE 2. TERM OF CONTRACT.

This contract shall become effective on the date first above written and shall remain in effect throughout the term provided by ARTICLE 2 of the Master Contract, provided, however, that whenever the Master Contract or District Contract are terminated or suspended in the manner and for a cause specified in the Master Contract or District Contract, this contract similarly shall be terminated or suspended.

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ARTICLE 3. RELATIONSHIP TO DISTRICT CONTRACT, MASTER
CONTRACT AND JUDGMENT.

This contract is made subject to the obligations and limitations imposed by the District Contract which, in turn, is subject to the obligations and limitations imposed by the Master Contract. This contract is intended to be in conformance and harmony with the District Contract, the Master Contract and the Judgment. The District Contract, the Master Contract and Judgment are, by this reference, incorporated herein to the same extent and effect as though set forth here in full. Buyer expressly agrees to the provisions of the District Contract and of the Master Contract imposing obligations and limitations upon it, and further agrees that nothing in this contract shall be deemed to require District to perform any act in conflict with the District Contract or Master Contract. Buyer expressly waives all benefits conferred by the Judgment but recognizes that all parties to the Judgment are still bound by the duties set forth therein. District shall at all times keep and maintain at its office, available for examination by Buyer, copies of the District Contract, the Master Contract and Judgment and of all amendments thereto.

ARTICLE 4. AGRICULTURAL PURPOSE.

This contract is for a supply of Project Water for agricultural use, supplied by District to Buyer. As used herein, the term "agricultural use" shall mean any use of water primarily in the production of plant crops or livestock for market, including any use incidental thereto including but not limited to domestic,

stock watering, or processing purposes.

ARTICLE 5. ANNUAL ENTITLEMENT.

(a) Buyer's Annual Entitlement of Project Water.

District, each year, shall make available for delivery to Buyer in the Service Area, the amount of Project Water expressed in acre feet which is set forth in Exhibit "A" hereto attached, not to exceed 4 acre feet per acre per year for land in the Service Area and 2.8 acre feet per acre per year for non-Service Area lands. The total of all such amounts, for any year, is referred to in this Contract as Buyer's Annual Entitlement for such year.

(b) Deliveries in Excess of Annual Entitlement.

Buyer may at any time or times during the term of this Contract, by timely written notice to District, request that Project Water be made available to it in any year in amounts greater than Buyer's Annual Entitlement for such year. With the approval of District and subject to District's ability to obtain such additional Project Water, and subject further to the requirement for additional payment as provided in the rules and regulations of District, District shall deliver to Buyer such additional Project Water.

(c) Request for Delivery of Less than Annual Entitlement.

Buyer may at any time or times during the term of this Contract, by timely written notice to District, request that Project Water be made available to it in any year in amounts less than Buyer's Annual Entitlement for such year. District shall reduce deliveries to Buyer during such year by the amounts

requested and, subject to District's ability to dispose of such Project Water elsewhere, Buyers' obligation to make payments hereunder to District during the following year shall be reduced by the net amount received by District in disposing of such water.

(d) Designation

Buyer shall designate on Exhibit A, a specific Entitlement for each parcel of property. Exhibit A may be amended to change quantities between parcels subject to District approval and provided that no parcel shall have designated more than four acre feet of entitlement per acre.

ARTICLE 6. DELIVERY OF PROJECT WATER.

(a) Project Water made available to Buyer pursuant to this Contract shall be delivered to and accepted by Buyer through District owned facilities unless other delivery is specifically authorized by the District.

(b) Apportionment

Water and Capacity shall be apportioned as set forth in Sections 3&4 of Resolution #612 as they exist as of the date of this contract. Said sections are incorporated herein and made a part hereof as if set forth herein at length.

ARTICLE 7. DELIVERY SCHEDULES.

(a) Procedure for Determining Water Delivery Schedules.

The amounts, times and rate of delivery of Project Water to Buyer during any year shall be in accordance with a water delivery schedule for that year, which schedule shall be determined in the rules and regulations of the District.

ARTICLE 8. LIMITATIONS ON OBLIGATION OF DISTRICT TO
FURNISH WATER.

(a) Notwithstanding any provisions of this contract to the contrary, the obligation of District to furnish Project Water hereunder shall be limited to the times and to the extent that Project Water and facilities necessary for furnishing the same are available to District pursuant to the District Contract.

(b) District shall not be liable for failure to perform any portion of this contract to the extent that such failure is caused by failure of State to perform any obligation imposed on State by the Master Contract, or by failure of Agency to perform any obligation imposed on Agency by the District Contract, provided, however, that the obligations of Buyer shall be reduced to the extent that District is prevented from performing as aforesaid and, provided, further, that District shall diligently and promptly pursue all rights and remedies available to it to enforce the rights of District and Buyer against State and/or Agency relative to such failure to perform.

ARTICLE 9. WATER SHORTAGES.

(a) No Liability for Shortages.

There may occur at times a shortage or shortages during any year or years in the quantity of Project Water available to District pursuant to the District Contract for furnishing to Buyer pursuant to this contract. In such event, no liability shall occur against District or any of its officers, agents or employees for any damage, direct or indirect, arising from such shortage or

shortages.

(b) Temporary Shortages.

Reduced allocations during shortages shall be equitably prorated pursuant to the rules and regulations of the District.

ARTICLE 10. CURTAILMENT OF DELIVERIES FOR MAINTENANCE PURPOSES.

State or Agency may temporarily discontinue or reduce the amount of Project Water to be furnished to District for the purposes of maintaining, repairing, replacing, investigating or inspecting any of the facilities necessary for the furnishing of water to District, which temporary discontinuance or reduction may result in a similar discontinuance or reduction in deliveries to Buyer. District may similarly temporarily discontinue or reduce the amount of Project Water to be furnished to Buyer for the purpose of maintaining, repairing, replacing, investigating or inspecting any of District's facilities necessary for the furnishing of Project Water to Buyer. Insofar as it is feasible, District will give Buyer notice in advance of any such temporary discontinuance or reduction, except in the case of emergency, in which case no notice need be given. In the event of such discontinuance or reduction, District will, upon resumption of service, deliver, as nearly as may be feasible and to the extent Project Water is furnished to it by Agency, the quantity of Project Water which would have been furnished to Buyer in the absence of such discontinuance or reduction.

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ARTICLE 11. NON-RESPONSIBILITY FOR DELIVERY AND
DISTRIBUTION OF PROJECT WATER.

Neither District nor its officers, agents or employees shall be liable for the control, carriage, handling, use, disposal or distribution of Project Water supplied to Buyer after such water has passed the delivery structure through which such water is delivered to Buyer, nor for claims of damage of any nature whatsoever including, but not limited to, property damage, personal injury or death arising out of or connected with the control, carriage, handling, use, disposal or distribution of such water beyond such delivery structure and Buyer shall indemnify and hold District and its officers, agents and employees harmless from any such damage or claim of damage.

ARTICLE 12. NON-RESPONSIBILITY FOR QUALITY OF WATER.

District assumes no responsibility with respect to the quality of water to be furnished pursuant to this contract. BUYER IS ADVISED THAT PROJECT WATER, AS DELIVERED BY DISTRICT, WILL BE UNFIT FOR HUMAN CONSUMPTION.

ARTICLE 13. PAYMENT FOR WATER.

Payment for water shall be as established by the rules and regulations of the District.

ARTICLE 14. OBLIGATION OF BUYER TO MAKE PAYMENTS.

(a) Character of Obligation.

The obligations of Buyer arising out of or pursuant or incidental to this Contract shall constitute a personal obligation of Buyer. Buyer hereby grants District a lien against Said Land

enforceable in the manner provided by the Water Code for the enforcement of District assessments to secure all Buyer's obligations hereunder. Buyer shall be relieved of all unaccrued obligations hereunder when and to the extent that Buyer transfers Said Land to a third party approved by District and such third party has assumed in writing the obligations of Buyer hereunder.

(b) Refusal of Project Water does not Affect Obligation.

Buyer's failure or refusal to accept delivery of Project Water to which it is entitled under this Contract shall in no way relieve Buyer of its obligation to make payments to District as herein provided for. District, however, shall make reasonable efforts to dispose of any Project Water made available to but not required by Buyer and, to the extent of Buyer's obligations hereunder, any net revenue from such disposal shall be credited to Buyer. In disposing of any such Project Water, District shall make every reasonable effort to obtain the maximum amount of credit for Buyer.

ARTICLE 15. ENTITLEMENTS HEREUNDER LIMITED TO USE ON SAID LAND.

Project Water delivered to Buyer under this Contract shall not be sold or otherwise disposed of by Buyer for use other than on said land except as provided for in Article 16(b).

ARTICLE 16. APPURTENANCE AND NON-ASSIGNABILITY.

(a) Appurtenance.

This Contract and Buyer's right to receive water hereunder is appurtenant to Said Land. Upon the transfer, whether by sale or by operation of law, of all Said Land, the transferee of Said Land

shall be substituted for Buyer hereunder to the same extent and effect as though said transferee had executed this Contract as Buyer, provided, however, that unless and until, after a lapse of ninety (90) days from the date of any such transfer, such transferee shall have executed a contract for a water supply for Said Land, identical in all provisions with this Contract, District may, pending execution of such a contract, suspend delivery of Project Water to Said Land, in which event, and notwithstanding such suspension, all charges and payments shall continue to accrue and shall constitute a charge against Said Land secured by the lien herein provided for. Upon the transfer, whether by sale or by operation of law, of less than all of Said Land, this Contract shall be deemed divided and the transferee of a portion of Said Land shall be entitled thereafter to receive that portion of Buyer's annual entitlements which bears the same relation to the amount of Buyer's total annual entitlements hereunder as the acreage transferred bears to the total acreage of Said Land, provided, however, that unless and until, after a lapse of ninety (90) days from the date of any such transfer, such transferee shall have executed a contract for a water supply for the portion of Said Land so transferred, identical in all provisions with this Contract, except as to annual entitlements and land descriptions, District may, pending execution of such a contract, suspend delivery of Project Water to the portion of Said Land so transferred, in which event, and notwithstanding such suspension, a pro rata share of all charges and payments required hereunder

shall continue to accrue and shall constitute a charge against the portion of Said Land so transferred secured by the lien herein provided for. The contract to be executed by the transferee of less than all of Said Land shall provide for annual entitlements which bear the same relation to Buyer's total annual entitlement hereunder as the acreage transferred bears to the total acreage of Said Land and "Said Land" under said contract shall be the land so transferred. Upon execution of such contract, covering less than all of Said Land, this Contract shall be deemed amended to eliminate from Said Land the land described in such contract and to reduce Buyers' annual entitlements by the amount of the annual entitlements provided in such contract. District may, in evidence of such amendment, execute and record in the Office of the County Recorder of Kern County, California, a declaration of such amendment.

(b) Assignment and Transfer

(i) Project water may be transferred from service area or non-service area lands for use on other lands owned by Buyer within the District.

(ii) Unused Project water shall not be transferred outside the District in water short years but may be returned to the District or sold directly to other land owners within the District at market prices. If no offers are made at market price by any District Landowner or by the District the water may be transferred outside the District.

(iii) In water excess years, Project water may be sold

or transferred inside or outside the District without limitation imposed by the District.

(iv) For the purposes of this Article 16, water short years shall mean a year when on April 20th, the water orders exceed the available supply. For the purposes of determining a water short year under this subdivision each Buyer shall be limited to ordering the amount of its contract or an accumulation of 2.8 acre feet per acre for non-contract lands.

ARTICLE 17. REMEDIES NOT EXCLUSIVE.

The use by either party of any remedy specified herein for the enforcement of this Contract is not exclusive and shall not deprive the party using such remedy of or limit the application of any other remedy provided by law.

ARTICLE 18. AMENDMENTS.

This contract may be amended at any time by mutual agreement of the parties except insofar as any proposed amendment is in any way contrary to applicable law or inconsistent with the provisions of the District Contract, the Master Contract, or the stipulated judgment. District shall make available to Buyer at all times during normal business hours, at the District offices, for Buyer's inspection, copies of all contracts now or hereafter executed by District with all other Water Users and of any amendments thereto.

ARTICLE 19. OPINIONS AND DETERMINATIONS.

Where the terms of this Contract provide for action to be based upon opinion, judgment, approval, review or determination of either party hereto, such terms are not intended to be and shall

never be construed as permitting such opinion, judgment, approval, review or determination to be arbitrary, capricious or unreasonable.

ARTICLE 20. WAIVER OR RIGHTS.

Any waiver at any time by either party hereto of its rights with respect to a default or any other matter arising in connection with this Contract shall not be deemed to be a waiver with respect to any other default or matter.

ARTICLE 21. NOTICES.

Any notice herein provided for to be given by District to Buyer shall be deemed given and delivered if delivered personally to Buyer or if enclosed in an envelope addressed to Buyer at the address hereafter set forth below Buyer's name and deposited in the United States mail for delivery by registered or certified mail. Any notice herein provided for to be given by Buyer to District shall be deemed given and delivered if delivered personally to an officer of District at District's office or if enclosed in an envelope addressed to District at 2100 "F" Street, Bakersfield, California, 93301, and deposited in the United States mail for delivery by registered or certified mail. Either party may at any time and from time to time, by proper notice to the other, change its address for receipt of notice.

ARTICLE 22. INSPECTION OF DISTRICT'S BOOKS AND RECORDS.

Buyer shall have full and free access at all reasonable times to the account books and official records of District with the

right at any time during normal business hours to make copies thereof.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands as of the day and year first hereinabove written.

BERRENDA MESA WATER DISTRICT _____

By: _____
President

By: _____

By: _____
Secretary

"DISTRICT"

BUYER

