

APPENDIX B – 1985 SUISUN CITY STATE WATER PROJECT (NORTH BAY AQUEDUCT) CONTRACT

For an overview of the State Water Project, see the DWR web site: <http://www.water.ca.gov/swp/>.

ORIGINAL

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MEMBER UNIT CONTRACT BETWEEN
SOLANO COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT
AND
THE CITY OF SUISUN CITY

THIS CONTRACT was made on October 22, 1985, by and between SOLANO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a governmental agency created and existing under and by virtue of Chapter 1656 of the 1951 Statutes of the State of California, as amended, hereinafter referred to as "Agency," and the CITY OF SUISUN CITY, a municipal corporation of the State of California, hereinafter referred to as "the Member Unit."

WHEREAS, the State of California, acting by and through its Department of Water Resources, and Agency have entered into and subsequently amended a water supply contract (hereinafter referred to as "the State contract") whereby the State will supply certain quantities of water to Agency from the State Water Resources Development System, and providing that Agency will make certain payments to the State and setting forth the terms and conditions of such supply and such payment; and

WHEREAS, the lands and inhabitants of the Member Unit are in need of additional water for beneficial uses and desire to obtain a supplemental supply of water to be made available to Agency under the State contract;

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. Previous Contracts Superseded.

The Member Unit Contract of the parties dated July 18, 1979, and Amendment No. 1 thereto dated April 9, 1985, are hereby rescinded and superseded by this contract.

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2. Term of the Contract.

This contract shall become effective on the date first above written and shall remain in effect throughout the term of the State contract and any extension thereof.

3. Definitions.

As used herein, unless otherwise distinctly expressed or manifestly incompatible with the intent hereof, the terms defined in Article 1 of the State contract have the same meanings as therein set forth. The words "Member Units" mean all the governmental entities that enter into contracts with Agency for project water.

4. Applicability of the State Contract.

(a) All the rights and obligations of each of the parties hereto are and shall be subject to all the applicable terms, conditions and limitations in the State contract. The Member Unit hereby acknowledges receipt of a copy of the State contract and all amendments thereto to date which are respectively numbered 1, 2, 5, 6, 7, 9 and 10.

(b) The provisions of Articles 31, 32, 33, 34, 35, 40, 41, 42 and 44 of the State contract, with the word "Agency" substituted for the word "State" whenever the latter appears and the words "Member Unit" substituted for the word "Agency" wherever the latter appears, are hereby incorporated herein as though set forth in full at this point.

(c) The provisions of subdivision (p) of Article 45 of the State contract are incorporated herein as though set forth in full at this point. The Member Unit shall carry out all elements

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of Agency's water conservation program applicable to the Member Unit and shall do all acts and things to be done by the Member Unit as set forth in said subdivision (p).

5. Limitations on Obligations of Agency.

Agency shall be under no obligation to provide water service, or to make project water available to the Member Unit from the North Bay Aqueduct except during such times and as to the extent and in the quality and manner that the State makes project water available to Agency under the State contract. Agency shall not be liable to the Member Unit in the event of delay, interruption, discontinuance or quality deterioration of the water supply to be made available to Agency under the State contract, except to the extent that such delay, interruption, discontinuance or quality deterioration is the result of the fault of Agency.

6. Shortages.

If at any time there occurs a shortage from any cause in the quantity of project water made available to Agency so that the total quantity made available to Agency is less than the total of all quantities of project water contracted for by this Member Unit and other member units, Agency shall apportion the project water available among all member units in such manner as Agency shall determine to be equitable. In making such determination, Agency shall consult with all its member units and shall be guided by, but not limited to, consideration of the following factors with respect to each member unit: other supplies of water available to the member unit; the quantities of water normally used by the member unit for domestic, municipal, industrial, commercial and other purposes, and the relative ability of the member unit to reduce the quantity of water it uses; and the impact various reductions of water supply will have on the economy, public health and welfare.

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7. Water Service to Member Unit.

(a) Commencing with the year of initial delivery of project water to Agency through the North Bay Aqueduct, Agency shall make available for delivery to the Member Unit the amounts of project water shown in Table A, attached hereto and incorporated herein. The amounts of project water shown on Table A for each year are sometimes referred to in this contract as "the Member Unit's annual entitlements." The amount of project water shown for 2015 and each succeeding year is sometimes referred to herein as "the Member Unit's maximum annual entitlement."

(b) In no event shall Agency be obligated to deliver project water to the Member Unit at a rate of flow in excess of that portion of the capacity of the North Bay Aqueduct allocated to Agency as the Member Unit's maximum annual entitlement bears to the total maximum entitlements of all Member Units to whom a supply of project water will be made available from the North Bay Aqueduct.

8. Deliveries to Member Unit, Payment for Delivery Structures and Measuring Devices.

(a) Project water made available to the Member Unit pursuant to this contract shall be delivered to the Member Unit at such location on the North Bay Aqueduct as is requested by the Member Unit and approved by the Department of Water Resources. The Member Unit shall pay all of the costs of the delivery structure for the delivery of project water to it and shall deposit with Agency, prior to the commencement of construction of the delivery structure, the amount of money estimated by the Department of Water Resources to be sufficient to cover the costs thereof. If the delivery structure is also used by another member unit, the costs shall be allocated among the member units on a proportionate use basis.

(b) The Member Unit shall pay all the costs of acquiring and installing devices and equipment to measure deliveries of water to the Member Unit hereunder. Prior to such acquisition and installation, the Member Unit shall deposit with Agency the amount of money estimated by the Department of Water Resources to be sufficient to cover such costs.

(c) The Member Unit shall transmit to Agency schedules showing the amounts, times, and rates of delivery of project water desired by the Member Unit, as and when required by Agency, to comply with Section 12 of the State contract.

9. Responsibility of Handling Water and Indemnification.

The Member Unit shall be responsible for the carriage, handling and control of water delivered hereunder after the water has passed the delivery structures referred to in subdivision (a) of Section 8. Neither Agency, the State of California, nor any of their respective officers, agents or employees shall be liable for any damage or claim of damage of any nature, including, without limitation, property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal or distribution of such water beyond said delivery structures, and the Member Unit shall indemnify and hold harmless the State of California and Agency and their respective officers, agents and employees from any such damages or claims of damage.

10. Place of Use.

Project water delivered to the Member Unit pursuant to this contract shall not be sold or otherwise disposed of by the Member Unit for any use outside the Member Unit's water service area and sphere of influence of the Member Unit, as established from time to time by the Local Agency Formation Commission of

Solano County, without the prior written consent of Agency, which consent shall not be unreasonably withheld.

11. Payment for Water.

The Member Unit shall pay Agency the rate for project water established pursuant to Section 12 hereof for all project water furnished to and received by the Member Unit during each year throughout the term of this contract, but for not less than the quantity shown on Table A for that year. The Member Unit shall make said payments not later than the due date stated on Agency's invoices. The due date shall not be earlier than 30 days after receipt of Agency's invoice by the Member Unit nor more than 30 days prior to the date Agency is obligated to disburse said payment pursuant to the State contract.

12. Project Water Rate.

(a) The project water rate shall be established by Agency for each year. Except as provided in subsection (b) of this Section 12, the water rate shall be \$20.50 per acre-foot or the rate charged by the United States Bureau of Reclamation for municipal and industrial water from the Solano Project delivered in the Putah South Canal, whichever is the greater.

(b) The project water rate may be increased over the amounts established pursuant to subsection (a) of this Section 12 to the extent necessary to produce an amount of money which, when added to the water rate payments by all the other member units and the revenue from Agency's State Water Project Tax, hereinafter referred to as "the tax," and Agency's reserve fund, shall be sufficient to enable the District to make all payments to the State of California as and when they are due and payable and to maintain all required reserves, pursuant to the State contract.

(c) To the extent necessary to avoid an increase in the project water rate in accordance with subsection (b) of this Section 12, Agency shall levy the tax on both secured and unsecured property during each fiscal year from 1985-1986 through 1999-2000, at a rate of not more than two cents per \$100 of total assessed valuation and during each fiscal year from 2000-2001 through 2034-2035 at a rate of not more than one cent per \$100 of total assessed valuation. The tax in fiscal year 1985-1986 shall be levied on all taxable property in the territory of Agency. In subsequent years Agency may, to the extent it is legally permissible for it to do so, levy the tax on all taxable property within a zone of benefit that shall include within its boundaries at least the Suisun Marsh and the corporate territory, sphere of influence and water service area of each member unit and of the Solano Irrigation District and the Maine Prairie Water District. If either the City of Rio Vista or the City of Dixon enters into a member unit contract with Agency for a water supply from the North Bay Aqueduct, the corporate territory, water service area, and the sphere of influence of such city shall be included in the zone of benefit.

(d) Nothing herein shall preclude Agency from using, or require Agency to use, taxation, assessment or other methods of finance to meet its obligations under the State contract, or to pay other project-related costs on behalf of itself or any member unit.

13. Reimbursement of Agency's Obligation to Napa.

(a) The Member Unit acknowledges that the selection of the route for the reach of the North Bay Aqueduct from the Delta to Cordelia resulted in a benefit to the Cities of Fairfield, Suisun City, and Vacaville, and a financial detriment to Napa County Flood Control and Water Conservation District ("Napa"). The Member Unit shall pay to Agency 16.375 percent of that sum Agency is required

to pay after December 1, 1985, to reimburse Napa for said detriment, to wit: Three Hundred Twelve Thousand and No/100 Dollars (\$312,000.00) annually until July 1, 2036, or until the capital cost of Phase II of the North Bay Aqueduct has been paid to the State of California, whichever shall occur first. The Member Unit shall make said payments not later than the due date stated in Agency's invoices. The due date shall not be earlier than 30 days after receipt of the invoice by Member Unit nor 30 days prior to the date Agency must disburse said payment pursuant to the Napa agreement. Agency's member unit contracts with the Cities of Fairfield and Vacaville shall contain provisions similar to this Section 13 so that Agency shall be reimbursed for the total amount of said costs and liabilities pursuant to the Napa agreement.

(b) On the request of the Member Unit, Agency shall, to the extent that it is legally permissible for it to do so, establish a zone of benefit having the same boundaries as the Member Unit and levy upon all the taxable property therein taxes that shall produce revenues equal to and in lieu of the payments that would otherwise be made by the Member Unit pursuant to subsection (a) of this Section 13.

IN WITNESS WHEREOF, the parties have executed this contract by their respective officers therewith duly authorized as of the date first above written.

Attest:

Linda Tenn
Secretary

SOLANO COUNTY FLOOD CONTROL
AND WATER CONSERVATION
DISTRICT

By Don Pappis
Chairman, Board of Directors

Attest:

Walter S. Skinner
City Clerk

CITY OF SUISUN CITY, A
Municipal Corporation of the
the State of California

By John M. Rundlett
Mayor Pro Tem

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Table A
Annual Entitlements of
Water from North Bay Aqueduct
City of Suisun City

<u>Year</u>	<u>Total Annual Amount in Acre Feet</u>
1990	50
1991	100
1992	150
1993	200
1994	250
1995	300
1996	350
1997	400
1998	450
1999	500
2000	550
2001	600
2002	650
2003	700
2004	750
2005	800
2006	850
2007	900
2008	950
2009	1,000
2010	1,050
2011	1,100
2012	1,150
2013	1,200
2014	1,250
2015 and each succeeding year thereafter for the term of this contract as a Maximum Annual Entitlement	1,300

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