

MEMORANDUM OF UNDERSTANDING
BETWEEN
BERRENDA MESA WATER DISTRICT
AND
KERN COUNTY WATER AGENCY
FOR
DEVELOPING AND OPERATING
A
JOINT WATER RECHARGE/RECOVERY PROJECT

RECEIVED
AUG 31 1992
K.C.W.A.

THIS MEMORANDUM OF UNDERSTANDING (MOU), made this 31st day of August, 1992, sets forth the principles for developing, operating, and managing the proposed Joint Water Recharge/Recovery Project ("Project"), located within Kern County. Berrenda Mesa Water District ("District") executes this Agreement as owner of property on which much of the Project will be located and as a Project participant. The Kern County Water Agency ("Agency") executes this Agreement for and on behalf of its Member Units, local water districts, and all other parties within the Agency having a physical or economic interest in the Project. It is the intent of the parties that this MOU serve as the statement of principles on which the Project construction, operation and management will be based, and will, among other things, be consistent with the State Water Project (SWP) water service contracts, provide for definition of Project priorities, define program management and operation responsibilities, and provide for supplemental land use. This MOU will be replaced by a long term agreement between the parties. It should be understood that the Agency's share of this Project is one of several components of a long-term Agency program of ground water recharge and recovery. These components are or will be interrelated and can be expected to influence each other. One component does not necessarily have priority over another component by virtue of the timing of its implementation.

The District and Agency hereby agree to the following:

1. DEFINITIONS

When used in this MOU, the following definitions shall apply:

- A. "Joint Water Recharge/Recovery Project" shall mean the development, operation and management of the Project located within Kern County on the Kern River Fan, largely on property owned by Berrenda Mesa Water District.
- B. "Department" shall mean the California Department of Water Resources.
- C. "Participants" shall mean those local water districts that have executed an agreement with the Agency to participate in the Joint Water Recharge and Recovery Project.
- D. "Loan" shall mean the loan the Agency obtained from the Department under the Water Conservation and Water Quality Bond Law of 1986.
- E. "Contract" shall mean the contract between the Department and the Agency for the Joint Water Recharge and Recovery Project Construction Loan.
- F. "Project Facilities" shall mean those facilities constructed as a part of the Project and included in Attachment A to this MOU. Project facilities shall include six wells constructed in 1991 as part of the Agency's 1991 Emergency Ground Water Recovery Program as well as six additional wells to be constructed.
- G. "Project Share" shall mean that portion of Project facility capacity allocated to Project Participants.

2. JOINT WATER RECHARGE/RECOVERY PROJECT: PURPOSE.

The primary purpose of the Project is to augment the dependable water supply of the SWP. Incidental to its primary purpose, the Project will produce local benefits in the form of improved ground water levels. A Project description, including a cost estimate, is attached to this MOU as Attachment A. The Project also includes construction of underground pipelines from two existing District wells to the Cross Valley Canal.

3. AGREEMENT.

The MOU shall constitute part of an agreement between the District and the Agency regarding the Project. This MOU addresses aspects of the Project not addressed in a separate agreement (described below) between the District and the Agency. A separate agreement will be executed between the District and the Agency which allows the Agency to proceed with a contract with the State Department of Water Resources ("Department") for a loan of \$2,687,000. This separate agreement provides for use of the land on which the Project is located, and for the operation and maintenance of the Project. The agreement is for the 20-year life of the loan.

4. JOINT WATER RECHARGE/RECOVERY PROJECT - GENERAL PROVISIONS.

The following provisions shall be applicable to the Project:

- A. Project Financing. The Agency shall be responsible for obtaining a loan from the Department to provide financing for purchase of lands and easements, as well as for construction of facilities.

- B. Develop Plans and Specifications. The Agency shall be responsible for preparation of plans and specifications for construction of Project facilities.
- C. Responsibilities for Operations. The Agency will be responsible for the physical operation and maintenance of the Project facilities to maximize recharge and recovery capabilities of the Project. Project facilities include works to convey water to and from the Cross Valley Canal and/or Kern River, recharge basins, and recovery wells.
- D. Operational Criteria. The operation of Project facilities shall be as follows:
- (1) When the Kern River Channel is available for recharge, the District will have first priority to sixty percent (60%) of the available recharge capacity of the Project and the Agency will have first priority to forty percent (40%) of the recharge capacity of the Project. During periods when one party is not fully using its share of the recharge capacity, the other party may use such unused capacity unless such unused capacity is for operational reasons such as allowing ponds to dry out between uses, etc.
 - (2) When the Kern River Channel is not available for recharge, the District will have first priority to fifty percent (50%) of the available recharge capacity of the Project and the Agency will have fifty percent (50%) of

the recharge capacity of the Project. During periods when one party is not fully using its share of the capacity, the other party may use such capacity unless such unused capacity is for operational reasons such as allowing ponds to dry, etc.

(3) The operation of Project facilities in recovery years shall be as follows:

- a. The District shall have first priority to two existing wells present on the property before 1991 (one was deepened in 1991), plus fifty percent (50%) of the available Project recovery capacity. The Agency shall have a second priority use of the two existing wells. Facility use fees, as shown in Article 4F, will be paid to the District for use of these two wells.
- b. The Agency shall have first priority to fifty percent (50%) of the available Project recovery capacity.
- c. Each party shall have access to unused capacity or the other party's share of recovery capacity, when available.

(4) The Project shall initially provide for a five percent (5%) allowance for losses associated with recharge activities. This loss rate shall be used

unless another procedure is adopted for general use in banking projects in the basin.

- (5) Water to be recharged shall be measured at the turnout from the Cross Valley Canal for SWP water or at Bellevue Weir for other supplies from the Kern River.

- (6) The District and Project Participants will compensate the Agency for actual operation and maintenance costs. These costs will be set initially at \$2.00/acre-foot for operation and maintenance of recharge or recovery facilities. At the end of each year, the Agency will determine its costs for the prior year. If actual costs are less than the total revenue received, the difference will be refunded to the District and Project Participants in proportion to each district's use of the Project facilities during the year. If actual costs exceed revenues, the District and Project Participants will be billed for the unfunded portion in proportion to each district's use of Project facilities in that year. In the event there is no use of Project facilities, operating costs will be funded in proportion to Project shares.

E. Project Participants. The Agency shall be responsible for developing priorities for use of Project facilities by Project Participants. Priorities for allocated shares of Project facilities will be on the basis of Member Unit entitlement or requested use, whichever is less. An example of such an allocation is shown on

Attachment A to this MOU. The District will be treated the same as other Project Participants in the event the District elects to participate in the Agency share of this joint Project.

F. Facility Use Fees. The Agency will impose facility use fees upon the District and other Project Participants; however, the use fee imposed on the District when using its 60.0/50.0 percent share of recharge or recovery facilities shall be one-half of that imposed on other Project Participants. In the event the District has a project share allocated based on entitlement or requested use, its facility use fees shall be the same as other Project participants for the Project share portion of its use. These facility use fees are estimated to be as follows:

	Berrenda Mesa Water District <u>(\$/af)</u>	Other Project Participants <u>(\$/af)</u>
Facility Recharge Use Fee	5.00	10.00
Facility Recovery Use Fee		
A. KCWA wells	5.00	10.00
B. BMWD wells	N/A	15.00

These or similar fees will be levied until the accumulated excess reaches an amount adequate to meet loan repayments during a period of five consecutive years when no facility fees may be available. After this level of reserve has been reached, facility use fees will be suspended or reduced as required to avoid exceeding this level at the end of each year following the year when the level is reached.

- G. Loan Repayment. The \$2,687,000 loan from the State Department of Water Resources will be repaid using facility use fees. In the event the accumulated facility use fees are insufficient to meet loan repayment to the Department, the District, agrees to fund up to one-half of the required repayment. The other portion of the required payment will be made by Project Participants in proportion to its Project share. An example of such an allocation is shown on Attachment B. Such advances would be repaid with subsequent user fees in years when user fees exceed the required loan payment, plus operation and maintenance costs.

In computing the required payment from the District and Project Participants, credit will be given for any recharge or recovery use fees paid by the District and/or Project Participants during the year for which the payment is required. Payments made by the District and/or Project Participants will be repaid or partially repaid, the first succeeding year in which there is an excess of facility use fees over and above required contract loan repayment. Partial repayments shall be allocated among the District and Project Participants in proportion to total payments made by the District and/or Project Participants, less prior repayments.

- H. Land Easements. Easements acquired for Project facilities will name the District, as well as the Agency, as joint users.

- I. Use of Cross Valley Canal. Agency agrees to share available Cross Valley Canal capacity to transport State Project water with District. The District share of such Cross Valley Canal capacity shall be equal to its proportional use or requested use of Project facilities, whichever is less.

- J. Increased Property Taxes and Liability Insurance Costs. In the event property taxes and liability insurance costs increase because of improvements on the property, such increased costs shall be part of the Project costs and not a responsibility of the District alone. Property taxes were \$9,194.64 in 1991-92.

- K. Right to Market Water. This Agreement does not affect in any way the rights which may or may not exist of the District or any of its landowners to market its water in ground water storage or SWP entitlement water.

- L. Development Potential. The District shall have the right to develop portions of the District's property which are not needed by the Project and which if developed, would not affect the costs of Project operation.

- M. Term. The term of this MOU shall be for twenty (20) years unless mutually extended except as provided in Article 4M(4). In the event the Project is terminated, the disposition of Project assets shall be as follows:

- (1) Improvements:
 - a. All Project facilities constructed on District property shall become District property except as provided in Article 4M(4). All Project facilities constructed off-site shall remain the property of the Agency. The Agency shall have second priority for use of Project facilities on District property at reasonable charges following termination.
 - b. Lands and easements purchased for Project use shall remain the property of the Agency with easements to District for use of conveying water to and from the property.
 - c. Conveyance and intake facilities constructed off-site as part of the Project shall remain the property of KCWA with provisions for proportional use of the conveyance and intake facilities by the District at reasonable charges. The District shall have second priority use of off-site wells constructed as part of this Project at reasonable charges following termination.
 - d. District to provide easement to the Agency for transport of water across District property.

- (2) Accumulated Funds: Accumulated facility use fees not needed for Project loan repayment shall be distributed to Project Participants in proportion to their contributions to facility use fees.
- (3) Water in Storage: All water in storage shall be assigned to the various Project Participants and Project wells will be available for extraction of such water for ten years following termination of this MOU. Priorities for use during this ten year period will be the same as priority for use under Project operations prior to termination.
- (4) In the event the six offsite wells are not constructed within ten (10) years of the date of this MOU, the Project shall terminate and except as provided in this section, Project assets will be distributed as provided under Article 4M. The Department loan will be repaid using unexpended loan proceeds. If these proceeds are insufficient, the loan will be repaid as provided in Article 4G. District shall pay the Agency the depreciated value of the pumps, motors, electrical panels, pipelines, mechanical and electrical appurtenances, and above-ground appurtenances of the six wells located on the District property constructed as part of the 1991 Emergency Ground Water Recovery Program based on a twenty year useful life, provided the Agency shall have the option to remove all pumps, motors, electrical panels, pipeline mechanical and electrical appurtenances and other above-ground appurtenances.

N. Third Party Use. Non-participants shall be allowed to use Project facilities under certain conditions which are described as follows:

- (1) All recharge or recovery facility use fees collected from non-participants will be used to meet loan payments, thereby, reducing costs to Project participants.
- (2) Recharge and/or recovery facility use fees will be established by KCWA after consultation with the District and Project participants.
- (3) Charges for operation and maintenance shall be the same as for Project participants.
- (4) Non-participant use of Project facilities will be limited to capacity available after District and Project participants use requirements are satisfied.

5. INSURANCE AND INDEMNIFICATION

The parties agree to mutually indemnify each other from any and all claims resulting from their own negligence. The parties shall maintain insurance, proper Workers Compensation insurance under the laws of the State of California.

6. ATTORNEY'S FEES

In the event an action is commenced by a party to this MOU against any other party, or parties hereto to enforce its rights or obligations arising from this MOU, the prevailing party in such action, in addition to any other relief and recovery awarded by the court, shall be entitled to recover all statutory costs plus a reasonable amount for attorney's fees.

7. SUCCESSORS AND ASSIGNS

All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns; provided, however, that no assignment of this MOU shall be made without written consent of the parties to this MOU.

8. NOTICES

Any notice or instrument delivered under this MOU may be delivered by personal delivery or by depositing the same in a United States Post Office, registered or certified, postage prepaid, addressed to:

Agency: Kern County Water Agency
P. O. Box 58
Bakersfield, CA 93302-0058
ATTN: Thomas N. Clark, General Manager

Berrenda Mesa: Berrenda Mesa Water District
2100 "F" Street, Suite 100
Bakersfield, CA 93301
ATTN: Ronald Lampson

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be executed as of the day and year first hereinabove written.

BERRENDA MESA WATER DISTRICT

By

Title President

KERN COUNTY WATER AGENCY

By

Title GENERAL MANAGER