

5-RosamondCSD-1

WATER SERVICE AGREEMENT
BETWEEN
ANTELOPE VALLEY-EAST KERN WATER AGENCY
AND

ROSAMOND COMMUNITY SERVICES DISTRICT

FOR WATER SERVICE

DATED 9-15-70.

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WATER SERVICE AGREEMENT

THIS AGREEMENT, made and entered into this 15 day of September 1970, by and between the Antelope Valley-East Kern Water Agency, established by Chapter 2146 of the 1959 Statutes of the State of California, hereinafter referred to as the "Agency" and Rosamond Community Services District, hereinafter referred to as the "Consumer;"

W I T N E S S E T H :

WHEREAS, water is needed within the Agency to supplement existing water supplies and for new areas requiring water supplies; and

WHEREAS, groundwater supplies within the Agency are seriously depleted; and

WHEREAS, the Agency and the State of California entered into an agreement entitled "Water Supply Contract Between the State of California, Department of Water Resources, and Antelope Valley-East Kern Water Agency," dated September 20, 1962, as amended by Amendment No. 1, dated September 22, 1964; Amendment No. 2, dated August 24, 1965; Amendment No. 3, dated February 16, 1967; and Amendment No. 4, dated May 11, 1967, whereby the State of California will furnish a water supply to the Agency; and

WHEREAS, the Agency desires to make available under terms and conditions which, as far as practicable and consistent with the ultimate use of water made available pursuant to said Contract and Amendments, shall be fair and equitable; and

WHEREAS, the inhabitants and lands of the Consumer are in need of additional water for beneficial uses; and

WHEREAS, the Consumer desires to contract with the Agency for a water supply to be for the use and benefit of the Consumer, and for which Consumer will make payment to the Agency upon the terms and conditions hereinafter set forth:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED by and between the parties hereto as follows:

Article 1. Definitions

When used in this Agreement, the following terms shall have the meanings hereinafter set forth:

(a) "Agency" as used herein shall mean Antelope Valley-East Kern Water Agency.

(b) "Consumer" as used herein shall mean any public body, including the United States of America and the State of California, and any of their agencies and departments empowered to contract, counties, cities, districts, local agencies or political subdivisions of the State of California; corporations, public utility water companies, mutual water companies or persons; or any other entity or individual able to and which does execute a Water Service Agreement with the Agency for a water supply; but shall not include any party with whom the Agency may contract to deliver water for a term of years and under special provisions which require the joint use of facilities for the particular benefit of said party and the Agency.

(c) "Agreement" as used herein shall mean this agreement for water service between Agency and Consumer.

(d) "Master Contract" shall mean the contract entitled "Water Supply Contract between the State of California Department of Water Resources and the Antelope Valley-East Kern Water Agency," dated September 20, 1962, as amended by Amendment No. 1, dated September 22, 1964, Amendment No. 2, dated August 24, 1965, Amendment No. 3, dated February 16, 1967, and Amendment No. 4, dated May 11, 1967, and any revisions, amendments or supplements thereto hereafter made.

(e) "Agency Law" shall mean the Antelope Valley-East Kern Water Agency Law, Chapter 2146, Statutes of 1959 of the State of California, as

amended and as the same may be hereafter amended, supplemented, re-enacted, or codified.

(f) "Project Water" shall mean water made available to the Agency by the State of California pursuant to the terms of the Master Contract.

(g) "Treatment and Distribution System" means all fixed installations owned and operated by the Agency having the purpose of treatment, conveyance, control, measurement, spreading and delivery of water.

(h) "Rules and Regulations" means the Rules and Regulations for Distribution of Water, Antelope Valley-East Kern Water Agency, as they may be amended and supplemented from time to time by the Board of Directors of the Agency. The Rules and Regulations set forth the conditions under which water will be distributed to the Consumer.

(i) "Year" means the same as the term "Year" means in the Master Contract.

Article 2. Term of Agreement

This Agreement shall become effective on the date first above written and shall remain in effect during the period necessary to repay any bonds designed to finance the Agency's water system.

Article 3. Relationship to Master Contract, and Application of Agency Law

(a) Consumer acknowledges having read the Master Contract and having general familiarity with its terms and that Agency's ability to supply water is governed by said Master Contract and any subsequent modification and supplements thereof.

(b) Consumer also agrees that this Agreement and the rights and obligations of the parties hereunder shall be subject to the Agency Law as it now exists and as it may be hereafter amended or codified by the Legislature of the State of California.

Article 3a. Water Rights

Because it may be necessary that consumer maintain and operate his own wells to provide for his own system peak demands and as an emergency reserve water supply, it is advisable that consumer retain and protect his rights to groundwater.

In the event there is an adjudication of the groundwater basin or any of its sub-units, the Agency will assist the Consumers, if the latter so desire, in retaining their rights in the groundwater supply.

Those Consumers who wish the assistance of the Agency, in the event there is an adjudication of the groundwater basin or any of its sub-units, shall submit evidence of the amount of water pumped from each individual well during at least the preceding five-year period and longer if the information is available. This information may be submitted to the Agency at the time of execution of this Agreement or to the State Water Resources Control Board. The Consumer shall also keep continuous records of the amount of water pumped from each individual well for each year following execution of this Agreement. Each year the Consumer may file this information in writing with the Agency, or with the State Water Resources Control Board.

Agency agrees that in the event of such an adjudication as is mentioned in this Article, the evidence of groundwater use of the basin by the Consumers as may have been filed with the Agency will be presented to the Court or other reviewing officer in aid of the Consumers' retention of their rights in the groundwater supply.

This section is not intended in any way to relieve Consumer of any rights or responsibilities it may have under the Recordation Act of 1955 (Water Code, Sec. 4999, et seq.).

Article 4. Delivery of Water.

Agency will deliver water to Consumer through the Agency's treatment and distribution system at water service connections. Water delivered pursuant to this Agreement will be delivered to Consumer in accordance with the conditions and procedures set forth in the Rules and Regulations. Consumer shall make application for water delivery turn-ons and shut-offs in accordance with the procedures set forth in the Rules and Regulations. Consumer agrees to be bound by such Rules and Regulations insofar as the same pertain to the subject matter of this Agreement and by any subsequent amendments or supplements thereof that may be adopted by the Board of Directors of the Agency hereafter from time to time. Agency agrees that amendments or supplements to said Rules and Regulations shall not be made without providing Consumer at least 45 days prior written notice of each such proposed amendment or supplement and of the meeting of the Board at which such amendment or supplement is to be acted upon by said Board.

Despite the foregoing provisions and other terms and conditions contained in other Articles of this Agreement, it is understood and acknowledged that Agency's obligations to deliver water pursuant to this Agreement is conditioned upon its being able to provide a water distribution system with which Consumer can be served and that if Agency is unable to provide such a water system, neither it nor its officers, directors or agents shall have any liability to provide water to Consumer nor be subject to any claims, demands or causes of actions on such account.

Article 5. Water Service Connection(s)

Consumer shall make application to Agency for water service connections through which all or a portion of the water to be delivered pursuant to this Agreement shall be delivered to Consumer. Consumer agrees to pay any and all costs incurred by Agency for the design, construction, inspection, operation and maintenance of water service connection(s) serving Consumer. Application and payment for water service connections shall be in accordance with the procedures set forth in the Rules and Regulations. After the same have been constructed, Agency shall own the water service connections and all appurtenances and facilities a part thereof and related thereto. The water service connection, appurtenances and facilities do not include any portion of consumer's water delivery system designed, constructed, acquired or otherwise owned, operated and maintained by Consumer.

Article 6. Water Delivery Schedules

On or before August 1 of each year, Consumer shall submit in writing to the Agency its requested water deliveries by month from each water service connection for the succeeding five years. All requests shall be submitted in the manner set forth in the Rules and Regulations. All water orders, emergency turnoff, and any other request by Consumer which may alter the requested water delivery schedule shall be reported to Agency so that Agency can revise its delivery schedule with the State pursuant to the Master Contract. Because of the fact that the Agency anticipates being in a position to first deliver water in 1972, a Schedule 1 is attached hereto and hereby made a part hereof by reference whereby Consumer indicates its requested water deliveries by month from each water service connection for the succeeding five-year period, such requests, if this contract is dated before 1972, being shown as zero for each of the months involved prior to 1972. If the contract is entered into after the Agency is in a position to deliver water then the requested water deliveries will reflect Consumer's anticipated water requirements for the entire five-year period. Consumer agrees to take from the Agency when the latter is in a position to deliver water to Consumer, the water requested for the first year of service, and the Agency agrees to deliver such water to the Consumer, subject to the other provisions contained in this Agreement and to the Agency's Rules and Regulations.

Article 7. Measurement

All water furnished pursuant to this Agreement shall be measured by the Agency at each water service connection established pursuant to Article 5 hereof with equipment satisfactory to the Agency. Said equipment shall be installed, owned, operated and maintained by the Agency. All determinations relative to the measuring of water shall be made by the Agency and upon request by the Consumer, the accuracy of such measurement shall be investigated by the Agency in the manner set forth in the Rules and Regulations. Any error appearing therein will be adjusted pursuant to conditions set forth in the Rules and Regulations. The Agency will install, or cause to be installed, backflow prevention devices in connection with such measuring devices to prevent water delivered to the Consumer or other consumers from returning to the Agency's treatment and distribution system.

Article 8. Limitations on Obligation of Agency to Furnish Water.

(a) Notwithstanding any provisions of this Agreement to the contrary, the obligation of the Agency to furnish water hereunder shall be limited to the times and to the extent that water and facilities necessary for furnishing the same are available to the Agency pursuant to the Master Contract with the State of California.

(b) The Agency shall not be liable for the failure to perform any portion of this Agreement to the extent that such failure is caused by the failure of the State of California to perform any obligation imposed on the State of California by the Master Contract; provided, however, that the Agency shall diligently and promptly pursue all rights and remedies available to it to enforce the rights of the Agency, the Consumer and other consumers against the State of California under the Master Contract relative to such failure to perform.

Article 9. Water Shortages

(a) No Liability for Shortages.

Neither the Agency, nor any of its officers, agents or employees, shall be liable for any damage, direct or indirect, arising from any shortages which may occur from time to time in the amount of water to be made available for delivery to the Consumer pursuant to the Master Contract or any other cause beyond the control of the Agency.

(b) Allocation of Water in Times of Shortage.

The Agency reserves the right in the event that at any time the quantity of water available to the Agency pursuant to the Master Contract is less than the aggregate of the requests of all consumers to allocate the quantity of water available to the Agency to the extent permitted by law.

Article 10. Curtailment of Delivery for Maintenance Purposes

The Agency may temporarily discontinue or reduce the amount of water to be furnished to the Consumer for purposes of maintaining, repairing, replacing and investigating or inspecting, any of the facilities necessary for the furnishing of such water to the Consumer. Insofar as it is feasible the Agency will give the Consumer due 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, the Agency will make available upon resumption of service, as nearly as may be feasible, and to the extent water is available to it, the quantity of water which would have been available to the Consumer in the absence of such discontinuance or reduction.

Article 11. Responsibilities for Delivery and Distribution of
Water Beyond Water Service Connection(s)

After such water has passed the Water Service Connection(s) established in accordance with Article 5, neither the Agency nor its officers, agents, or employees shall be liable for the control, carriage, handling, use, disposal, distribution or changes occurring in the quality of such water supplied to the Consumer or for claim of damages 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, distribution or changes occurring in the quality of such water beyond said Water Service Connection; and the Consumer shall indemnify and hold harmless the Agency and its officers, agents, and employees from any such damages or claims of damages, and including reasonable attorneys' fees incurred as against the unsuccessful party in defending against any claims or actions for damages on such account.

Article 12. Water Quality

The quality of water delivered by the Agency to the Consumer pursuant to this Agreement shall depend upon the quality of the water furnished to the Agency under the Master Contract, except as the same may be modified by the Agency's local treatment of water. The Agency undertakes no responsibility to Consumer to furnish water pursuant to this Agreement of any particular quality except as may result from the above-mentioned source of supply and any treatment provided by the Agency.

Article 13. Payments

Payment of all charges shall be made at the rates, times and in the manner provided for in the "Rules and Regulations for Distribution of Water, Antelope Valley-East Kern Water Agency," as the same may be amended and supplemented from time to time by the Board of Directors of the Agency. On or before July 1st of each year, the Agency shall adopt by resolution of the Board of Directors the water rate in dollars per acre-foot which will be charged for water to be delivered in the next succeeding year. At this time, the Agency shall make available to the Consumers the estimated water rates in dollars per acre-foot to be charged for water to be delivered in the second and third succeeding years.

Article 14. Excess Lands

The provisions of Article 30 of the Master contract to the extent applicable shall be binding upon Consumer, and Consumer agrees to obtain and furnish to the Agency such certifications and information as are required to be furnished by the Agency to the State of California by said Article 30.

Article 15. Default

In the event of default by the Consumer in payment to the Agency of any money required to be paid hereunder and pursuant to the Rules and Regulations, the Agency may in its discretion, and in accordance with the Rules and Regulations, suspend delivery of water to the Consumer during the period that the latter is delinquent in its payments.

Article 16. Interest on Overdue Payments.

Upon each charge to be paid by the Consumer to the Agency pursuant to this Agreement which shall remain unpaid after the same shall have become due and payable, interest shall accrue at the rate of one-half of one percent (1/2%) per month of the amount of such delinquent payment from and after the date when the same becomes due until paid, and the Consumer hereby agrees to pay such interest. In no event shall such interest be compounded.

Article 17. Changes in Organization of Consumer

The Consumer will furnish the Agency with maps showing the territorial limits of the Consumer and the service area or areas of its water distribution system. Throughout the term of this Agreement, the Consumer will promptly notify the Agency of any changes, either by inclusion or exclusion, in said territorial limits and service area or areas. Consumer agrees to conform to the requirement of Article 15(a) of the Master Contract that any water wholly or partly delivered by the Agency to Consumer will not be delivered outside of the territorial boundaries of the Agency without written consent having first been obtained.

Article 18. Remedies Not Exclusive

Remedies provided in this Agreement for enforcement of its terms are intended and shall be construed as cumulative rather than exclusive and shall not be deemed to deprive the party using the same from also using any other remedies provided by this Agreement or by law.

Article 19. Amendments

This Agreement may be amended or supplemented at any time by mutual written agreement of the parties in any manner that may be consistent with the applicable law. In amending or supplementing this Agreement, however, the Agency will bear in mind that substantial uniformity of Agreements between the various Consumers of the Agency is thought to be desirable as to the main contracting concepts and principles that are to be used and therefore will attempt to maintain uniformity between the various Consumers' Agreements in such respects.

Article 20. Opinions and Determinations

Where the terms of this Agreement 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. In the event legal action is brought to enforce or determine the rights of either party under this agreement, the prevailing party in such action shall be entitled to court costs and reasonable attorney's fees.

Article 21. Waiver of Rights

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

Article 22. Notices

All notices that are required either expressly or by implication to be given by any party to the other under this Agreement shall be signed for the Agency and for the Consumer by such officers and persons as they may, from time to time, authorize in writing to so act. All such notices shall be deemed to have been given and delivered if delivered personally or if enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown on the signature page of this Agreement.

Article 23. Assignment

The provisions of this Agreement shall apply to and bind the successors and assigns of the respective parties, but no assignment or transfer of this Agreement, nor any part hereof nor interest herein by the Consumer shall be valid until and unless approved by the Agency, except an assignment to an affiliate of the Consumer, or to a party or parties, which by merger, consolidation, dissolution, purchase or otherwise, shall succeed to substantially all of the assets and business of the Consumer. Affiliate, as used herein, shall mean a corporation that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the assigning party.

Article 24. Inspection of Books and Records

The proper officers or agents of the Consumer shall have full and free access at all reasonable times to the account books and official records of the Agency insofar as the same pertain to the matters and things provided for in this Agreement, with the right at any time during office hours to make copies thereof at the Consumer's expense, and the proper representatives of the Agency and designated personnel and agents shall have similar rights in respect to the account books and records of the Consumer.

Article 25. Validation

At any time after the execution of this Agreement, either party may if it so desires submit this Agreement to a Court of competent jurisdiction for a determination of its validity, and whichever party elects to follow such a procedure the other party agrees to cooperate therein to any extent that may be necessary or advisable and that shall be requested by the plaintiff. The plaintiff shall bear the costs and attorneys' fees incurred in such a proceeding.

Article 26. Uniformity of Provisions

It is intended by the parties that this Agreement shall be uniform as to form and content as between the Agency and the various Consumers entering into this Agreement with the Agency and for this reason any subsequent amendments and supplements hereof that may be entered into that will substantially affect the interests of Agency's Consumers generally in the Agency's opinion shall as provided in Article 19 hereof be made available to all Consumers entering into this Agreement with the Agency on an equal basis.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

Approved as to Form and Sufficiency

By: [Signature]
Attorney for Agency

ANTELOPE VALLEY-EAST KERN
WATER AGENCY
554 West Lancaster Boulevard
Lancaster, California 93534
(805) 942-8439

ATTEST:

By: [Signature]
Secretary
Antelope Valley-East Kern
Water Agency

By: [Signature]
President

ROSAMOND COMMUNITY SERVICES DISTRICT
A Public Agency
2707 Dixie Street
P. O. Box H
Rosamond, California 93560
(805) 256-2325

Approved as to Form and Sufficiency

By: [Signature]
Attorney for Consumer

ATTEST:

By: [Signature]
Secretary

By: [Signature]
President

ANTELOPE VALLEY - EAST KERN WATER AGENCY

SCHEDULE NO. 1

REQUESTED 5-YEAR WATER DELIVERY
for

Rosamond Community Services District
(Name of Consumer)

(Service Connection)

(Acre-Feet per Month)

Sheet _____ of _____

	1971	1972	1973	1974	1975
January					
February					
March					
April					
May					
June					
July					
August					
September					
October					
November					
December					
TOTAL					

Submitted by _____ (Name) _____ (Title) _____ (Date)

FOR Approved: (Initial Year Only)

AGENCY _____ As submitted above _____
USE _____ As amended above _____ (General Manager) _____ (Date)