

AGREEMENT FOR LEASE OF OVERLYING PRODUCTION WATER RIGHTS

This Agreement is made and entered by and between the Antelope Valley-East Kern Water Agency, a California Water Agency (hereinafter referred to as "AVEK") and Los Angeles County Waterworks District No. 40 (hereinafter referred to as "District No. 40") as of the effective date provided herein. AVEK and District No. 40 individually may be referred to herein as a "Party" and collectively may be referred to herein as the "Parties."

RECITALS

- A. California's water law and policy, Article X, Section 2 of the California Constitution requires that all uses of the State's water be both reasonable and beneficial. Specifically, this section of the Constitution states in part, "It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare."
- B. AVEK Water Agency Law codified as California Water Code Appendix 98-49 et seq. specifically provides for AVEK to sell and deliver or use water under the control of the agency for the beneficial use or uses and protection of the Agency and its inhabitants.
- C. The Urban Water Management Planning Act (California Water Code Section 10610 et. seq.) requires California's urban water suppliers to ensure adequate water supplies are available to meet existing and future water demands. Every urban water supplier that either provides over 3,000 acre-feet of water annually or serves 3,000 or more connections is required to assess the reliability of its water sources over a twenty year planning horizon considering normal, dry and multiple dry years.
- D. The Parties recognize that this Agreement for District No. 40 to lease water from AVEK will: (1) increase certainty for District No. 40 thereby enabling better water resource planning in the future; (2) support the ability of District No. 40 to establish community specific policies and goals based on consistent delivery of water; (3) promote improved water management since imported water will enable District No. 40 to implement and directly benefit from specific policies related to sustainability, dual plumbing and conjunctive use; and (4) improve coordination between District No. 40 and AVEK.
- E. AVEK and District No. 40 are parties to the action entitled Antelope Valley Groundwater Cases (Santa Clara County Case No. 1-05-CV-049053). The Overlying Production Rights allocated to AVEK in the Judgment in this matter will allow AVEK to produce 3,550 acre feet of water from the Basin on an annual basis or in such amount as is determined from time to time by the Watermaster. As of the effective date, AVEK's Overlying Production Rights as defined in the Judgment are believed to be 3,550 acre feet for the water year. This agreement is subject to and conditioned upon the execution by District No. 40 and AVEK

of the Stipulation for Entry of Judgment and Physical Solution substantially in the form that was circulated to the Parties on December 23, 2014, the entry of Judgment in the above captioned case ("Judgment"), and confirmation thereof by the Appellate Courts if appealed by any Party.

- F. This Agreement entered into by AVEK with District No. 40 will allow AVEK and District No. 40 to settle in the Antelope Valley Groundwater Cases and allows AVEK and District No. 40 to execute the Stipulation for Entry of Judgment.

MUTUAL PROMISES

AVEK and District No. 40 wish to enter into a lease that will contribute to the long term groundwater stability and sustainability of the Antelope Valley Groundwater Basin ("Basin").

The lease provisions herein entitles District No. 40 to the use, through this lease only, the water available to AVEK based upon AVEK's Overlying Production Rights. AVEK retains and does not convey to District No. 40 any other rights associated with AVEK's said production right.

AGREEMENT

IN CONSIDERATION of the foregoing recitals, which are incorporated herein as part of this Agreement, and the mutual promises set forth herein, AVEK and District No. 40 agree as follows:

1. **AVEK Water Agency Law, AVEK's Ordinances, Rules and Regulations and Board Policies.** This Agreement is subject to AVEK Water Agency Law (Water Code Appendix 98-49 et seq.), AVEK's Ordinances, Rules and Regulations and Board Policies. As of the effective date described in Paragraph 5, this Agreement is consistent with AVEK Water Agency Law, AVEK's Ordinances, Rules and Regulations and Board Policies.
2. **Leasing of Production Rights.** As described in more particularity herein, AVEK hereby leases to District No. 40 and District No. 40 lease from AVEK up to 3,550 acre-feet annually of AVEK's Overlying Production Rights as defined in the Judgment. This agreement does not impact any existing obligations or agreements between District No. 40 and AVEK relating to water AVEK delivers from the State Water Project.
3. **Annual Allocation of Leased Water.** As described in more particularity herein, the portion of the up to 3,550 acre feet of AVEK's Overlying Production Rights that AVEK shall lease annually to District No. 40 and that District No. 40 leases from AVEK shall be calculated by multiplying (a) 3,550 by (b) the average of the prior two years of District No. 40's purchases of AVEK's water taken as a percentage of the total amount of AVEK's treated water sold in those years to entities listed in Exhibit C that have existing contracts with AVEK for water service as of the effective date ("Existing AVEK Customers"). For example, if in each of the prior two years AVEK has sold 50,000 acre feet of treated water to Existing AVEK Customers, and in each year District No. 40 has purchased 35,000 acre feet of that 50,000 acre feet of treated water from

AVEK, District No. 40's average purchases would be 70% and District No. 40 would be entitled to 70% of the 3,550 acre feet or 2,485 acre feet.

4. **Carryover of Unused Lease Production Rights.** Any Overlying Production Rights that are leased pursuant to Paragraph 2 and are not used in the year in which they are leased shall be carried over and accrue over time. For example, if in each of the prior two years AVEK has sold 50,000 acre feet of AVEK's treated water to Existing AVEK Customers, and in each year District No. 40 has purchased 35,000 acre feet of that 50,000 acre feet of treated water from AVEK, District No. 40's average purchases would be 70% and District No. 40 would be entitled to carry over, accrue and subsequently lease 70% of the 3,550 acre feet or 2,485 acre feet from that accrual year. At the end of each year in which AVEK's Overlying Production Rights are leased pursuant to Paragraph 2 but are not used in that year, AVEK shall: (1) notify the Watermaster the amount of AVEK's Overlying Production Rights leased to District No. 40 that were not pumped; and (2) take all necessary steps to ensure that such unused and accrued carry over water is transferred to District No. 40 for District No. 40's use as Carry Over water as defined in the Judgment and pursuant to Section 15.3 of the Judgment.

5. **Effective Date.** This Agreement shall become effective and binding upon the Parties on the first day of the month following the execution of the Agreement by District No. 40 and AVEK and entry of the Judgment by the Superior Court. If the Judgment should be overturned at any level, this Agreement shall become null and void.

6. **Term.** The term of this Agreement shall commence at the effective date as described in Paragraph 5 and be in effect so long as AVEK is allocated water under contract with the State of California or any of its subdivisions or via statute for purchase and/or delivery of water.

7. **Lease Rate, Payment, and Adjustment.**

7.1 The rental amount payable under this Agreement shall be \$50 per acre foot, in addition to the actual direct costs incurred by AVEK, if any, for any portion of the lease water not pumped by District No. 40 that requires the use of AVEK groundwater pumping and distribution system to deliver the leased water to District No. 40

On July 1, 2017, and each July 1st thereafter, the rental amount provided for in Paragraph 7.1 shall be increased by the percentage change in the Consumer Price Index (All Urban Consumer Index set forth for the Los Angeles-Riverside-Orange County area), for the prior calendar year (e.g., 2016 on July 1, 2017.)

7.2 The annual rental amount shall be paid by District No. 40 when water is pumped and upon receipt of an invoice for the full amount from AVEK.

- 7.3 All payments due AVEK pursuant to this Lease shall be made and sent as follows:

AVEK
6500 West Avenue N
Palmdale, CA 93551

8. Agreement regarding Basin Watermaster.

- 8.1 AVEK agrees to execute and deliver to District No. 40 all documents which, from time to time, may be required by the Watermaster to reflect the lease to District No. 40 of the Overlying Productions Rights which are the subject of this Agreement. All such documents shall be in such form and substance as shall be reasonably satisfactory to AVEK, District No. 40, and Watermaster.
- 8.2 District No. 40 shall, at its expense, prepare and submit all reports required by the Watermaster in connection with the exercise by District No. 40 of its allocation pursuant to this Agreement.
- 8.3 This Agreement entitles District No. 40 to lease the water associated with AVEK's Overlying Production Right. AVEK retains and does not convey to District No. 40 any other rights associated with its Overlying Production Right.
- 8.4 District No. 40 shall pay any and all Watermaster assessments and County of Los Angeles charges which may be levied against the portion of AVEK's aforesaid Overlying Productions Rights that District No. 40 leased, as additional rent.

General Provisions

9. Definition. Capitalized terms not otherwise defined herein shall have the same meaning ascribed to such terms in the Judgment.
10. Termination. This agreement shall terminate only upon mutual written consent of both Parties.
11. Amendments. This Agreement may be modified or amended only upon mutual written consent of both Parties.
12. No Assignments. This Agreement and the rights, duties and benefits contained in it, may not be assigned.
13. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the Parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

14. Governing Law. This Agreement shall be governed by the laws of the State of California.

15. Successors. This Agreement shall inure to the benefit of and be binding on the parties to this Agreement and their respective successors.

16. Covenants, Conditions or Remedies. The waiver by one Party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The remedies set forth in this Agreement are cumulative and not exclusive to any other legal or equitable remedy available to a party. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

17. Exhibits. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement whether or not actually attached. The following exhibits are attached to this Agreement:

- **Exhibit "A"** - AVEK Boundaries
- **Exhibit "B"** - District No. 40 Service area
- **Exhibit "C"**

18. Counterparts. This agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

19. Legal Advice. Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon preparation of the document, or any attribution of such party as the sole source of the language in question.

20. All notices and demands (collectively "Notices") of any kind shall be made in writing and personally served or sent by registered or certified mail, postage prepaid to the following:

AVEK
6500 West Avenue N
Palmdale, CA 93551

Los Angeles County Waterworks District No. 40
900 South Fremont Avenue
Alhambra, CA 91803

Any Notice personally served shall be effective upon service. Any Notice sent by mail, and properly addressed, shall be effective upon date of receipt, or refusal as indicated on the return


receipt. Either party may change its address for Notices by Notice to the other given in a manner provided in this Paragraph.

21. Each Party shall, upon request of the other party, take such further actions and execute and deliver such further instruments as shall be reasonably required to carry out the purpose and intent of this Agreement.

22. This Agreement is executed in the State of California and shall be governed by and construed in accordance with California law. Venue for any action arising out of or related to this Agreement shall be placed in any court of the State of California with appropriate jurisdiction and located in the County of Los Angeles, with service of process to be in accordance with the then provisions of the California Code of Civil Procedure.

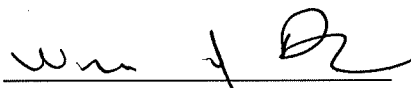
23. The paragraph headings contained in this Agreement are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

Antelope Valley East Kern Water Agency

By: 
Frank Donato
Director

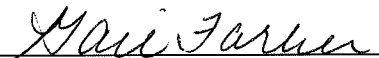
Date: 2-10-15

APPROVED AS TO FORM

By: 
William J. Brunick
Agency Special Counsel


Date: 2-10-15

Los Angeles County
Waterworks District No. 40

By: 
Gail Farber
Director of Public Works

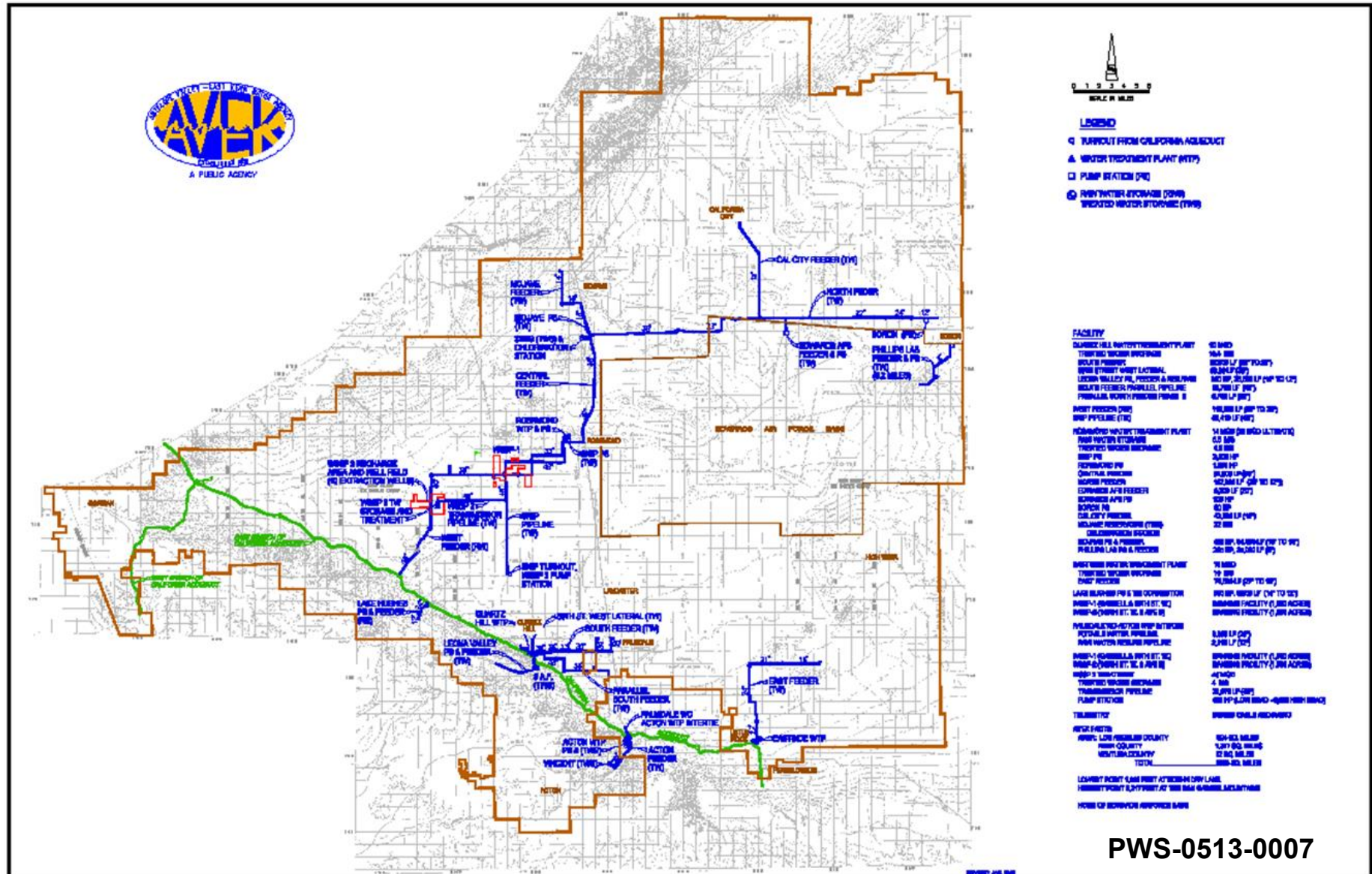
Date: 2/24/15

APPROVED AS TO FORM by Mark J.
Saladino, County Counsel

By: 
Warren R. Wellen
Principal Deputy County Counsel

Date: 2/24/15

AVEK Boundary Map

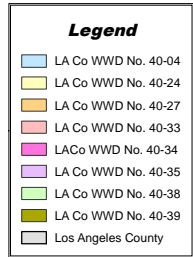


LOS ANGELES COUNTY
SAN BERNARDINO COUNTY

KERN COUNTY
LOS ANGELES COUNTY

EXHIBIT B - DISTRICT NO. 40 SERVICE AREA

PWS-0513-0008



A horizontal scale bar with markings at 0, 3, and 6 miles. The bar is divided into three equal segments, each representing 2 miles.

WATERWORKS AND SEWER MAINTENANCE DIVISION	
DEPARTMENT OF PUBLIC WORKS	
LOS ANGELES COUNTY WATERWORKS DISTRICT No. 40 SERVICE AREA	DATE: 7/2010
	DRAWN BY: MTR

Exhibit C

AVEK Treated Water Customers

Alan Nishino
Allen Copeland
Antelope Valley Country Club
Association of Irrigation Water Users
Boron CSD
California Water Service
City of California City
Daniel Castronova
Darik Bolin
Desert Lake CSD
Desert Sage Apartments
Earl Jaques
Edgemont Acres MWC
Edwards AFB
Frances Lane
Frank Cosola
Frank Lane
George Lane
Gary Shafer
Karelskint-Cum , Inc.
Keith Miller
Kirkpatrick
LA County Waterworks Districts
Landale MWC
Les Kuete
Mojave PUD
Palm Ranch Irrigation District
Pat Kellerman
Quartz Hill Water District
Rancho Colima
Rio Tinto/US Borax
Rosamond CSD
Shadow Acres MWC
Sunnyside Farms MWC
Terry Milford
White Fence Farms #3 MWC
White Fence Farms MWC