

**AGREEMENT TO PURCHASE
BERRENDA MESA WATER DISTRICT
STATE WATER PROJECT ENTITLEMENT TO WATER**

BERRENDA MESA WATER DISTRICT, a public entity ("Berrenda Mesa"), and WESTERN HILLS WATER DISTRICT, a public entity ("Western"), hereby agree as follows:

ARTICLE 1. DEFINITIONS

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

1.01. "*Berrenda Mesa/Kern Contract*" means the contract between Berrenda Mesa and Kern County Water Agency dated March 9, 1967, and all amendments thereto.

1.02. "*Berrenda Mesa Water Entitlements*" means Berrenda Mesa's entitlements to the delivery of Firm Water from the State Water Project; including Berrenda Mesa's rights to delivery capacity in State Water Project facilities within the California Aqueduct to Reach 10 (but not any capacity within the Coastal Branch Aqueduct, Reach 31A) as such facilities are described in the Berrenda Mesa/Kern Contract in proportion to the percentage of maximum Berrenda Mesa Water Entitlements transferred to Western hereunder.

1.03. "*CEQA*" means the California Environmental Quality Act, Public Resources Code Section 21000 et seq.

1.04. "*Close of Escrow*" or "*Closing Date*" means the date two weeks after the date on which all applicable conditions precedent are completed to Western's and Berrenda Mesa's satisfaction or waived.

1.05. "*DWR*" means the Department of Water Resources, State of California.

1.06. "*Effective Date*" means the date this Agreement becomes effective, which shall occur when it is last executed by all parties.

1.07. "*Escrow Agent*" or "*Escrow Holder*" shall mean Chicago Title Co. in its Modesto, California office.

1.08. "*Firm Water*" means the State Water Project water designated in Table A of the Kern/State Water Contract to be made available to the Kern County Water Agency by DWR. Berrenda Mesa's allocation of Firm Water is specified in Table 1 of the Berrenda Mesa/Kern Contract.

1.09. "*Kern/State Water Contract*" means the contract between Kern County Water Agency and the State of California dated November 15, 1963, and all amendments thereto.

1.10. "*Monterey Agreement*" means the agreement between the Department of Water Resources and the State Water Project contractors outlining principles for amendments to the State Water Project contracts as agreed to on December 1, 1994.

1.11. "*Purchase Price*" means \$8,000,000.00 (based on a calculation of \$1,000.00 per acre foot of the Berrenda Mesa Water Entitlements actually transferred pursuant to this Agreement).

ARTICLE 2. GENERAL

2.01. The Kern County Water Agency ("Kern") and the State of California, acting through DWR, previously entered into the Kern/State Water Contract for the acquisition and delivery of water to Kern.

2.02. Subsequently, Berrenda Mesa and Kern entered into the Berrenda Mesa/Kern Contract for the acquisition and delivery to Berrenda Mesa of a portion of the water delivered to Kern under the Kern/State Water Contract.

2.03. The Berrenda Mesa/Kern Contract gives to Berrenda Mesa a contract entitlement for therein defined Firm Water to be provided from Kern's State Water Project entitlements. Berrenda Mesa currently has a Firm Water entitlement of 130,100 acre feet per annum.

2.04. The Berrenda Mesa/Kern Contract in Articles 25 and 28 thereof provides for assignment by Berrenda Mesa of all or a portion of its Firm Water to successors and assigns of Berrenda Mesa subject to approval of such assignment by Kern, which shall not be arbitrarily, capriciously, or unreasonably refused.

2.05. Kern has agreed as a condition of the Monterey Agreement to facilitate the transfer of up to 130,000 acre feet of its member units State Water Project entitlement to out of County entities.

2.06. Western desires to acquire, and Berrenda Mesa desires to sell, in perpetuity, a portion of the Berrenda Mesa Water Entitlements in the quantity specified in Article 3.01 of this Agreement.

ARTICLE 3. PURCHASE AND PAYMENT TERMS

3.01. **Purchase and Sale.** Berrenda Mesa hereby sells Western and Western acquires, in perpetuity, 8,000 acre feet per annum of Berrenda Mesa Water Entitlements at the Purchase Price. The purchase and sale of the Berrenda Mesa Water Entitlements shall be consummated through the escrow opened with an Escrow Agent. Any escrow instruction given Escrow Agent by Western or Berrenda Mesa shall be consistent with the terms of this Agreement unless otherwise agreed to by all parties in writing.

3.02. Payment. Payment of the Purchase Price shall be made as follows:

(a) Within five (5) business days of the Effective Date, as consideration for Berrenda Mesa entering into this Agreement, Western shall open an escrow with Escrow Agent and deposit into escrow the sum of \$80,000.00 ("Non-Refundable Deposit"). Said Non-Refundable Deposit shall be paid immediately to Berrenda Mesa upon delivery to Escrow Agent of written evidence that the Kern County Water Agency has approved the transfer contemplated for this Agreement, and Escrow Agent will have no further responsibility for said Non-Refundable Deposit. If Kern County Water Agency does not approve the transfer because another state water contractor exercises its right of first refusal, or for any other reason, the Non-Refundable Deposit shall be returned to Western. The Non-Refundable Deposit shall be applied to the Purchase Price at Close of Escrow.

(b) Western shall, upon Close of Escrow, pay the balance of the Purchase Price.

3.03. Close Of Escrow. Close of Escrow shall occur when: (i) Western delivers to escrow the balance of the Purchase Price (paragraph 3.02(b), above), (ii) Berrenda Mesa and Western have deposited all requisite documents for transfer of the Berrenda Mesa Water Entitlements duly executed, authorized, and acknowledged, (iii) Escrow Holder is in a position to exchange the parties' consideration, and (iv) all other conditions precedent to Close of Escrow as set forth in this Agreement, have been satisfied; provided, however, that unless extended as provided for in this Agreement, escrow shall terminate one year from the Effective Date. Provided Western is using its reasonable best efforts to close escrow, if escrow is not ready to close one (1) year from the Effective Date, Western may extend the closing date for six (6) months by depositing an additional non-refundable deposit of \$1,000,000 into escrow which shall be released immediately to Berrenda Mesa and applied to the Purchase Price at Close of Escrow. Provided Western is using its reasonable best efforts to close escrow, if escrow is not ready to close at the end of the first six (6) month extension, Western may extend the closing date for an additional six (6) month period by depositing an additional non-refundable deposit of \$1,000,000 into escrow which shall be released immediately to Berrenda Mesa and applied to the

Purchase Price at Close of Escrow. At the Close of Escrow, Western shall cause Escrow Agent to be ready, willing, and able to deliver to Berrenda Mesa the balance of the Purchase Price, in cash, required from Western. Berrenda Mesa shall cause Escrow Holder to be ready, willing, and able to record and deliver to Western, subject to approval by both Western's and Berrenda Mesa's legal counsel, satisfactory evidence of transfer of the Berrenda Mesa Water Entitlement transferred hereby. Berrenda Mesa and Western shall notify by written notice to each other and Escrow Holder prior to expiration of the term, as such may be extended, of the intended date for Close of Escrow. All closing costs and fees, including without limitation, any transfer taxes, escrow fees, drafting and notary charges, and recording fees shall be paid by Western through escrow. Each party shall be responsible for attorney's fees of its own counsel.

3.04. Future Annual SWP Costs of Transferred Entitlement. It is the intent of this Agreement that the future SWP annual fixed unit cost (S/AF) of entitlement transferred to Western be equal to the calculated SWP annual fixed unit cost (S/AF) which would have been charged to Berrenda Mesa for 155,100 acre feet, calculated as though Berrenda Mesa were a direct SWP contractor. Fixed costs are all SWP costs chargeable annually for BMWD entitlement, excluding the variable operation, maintenance, and replacement (OMP&R) of the transportation charge and the minimum OMP&R for Off-Aqueduct power facilities. Western shall be responsible for that share of the total fixed costs of all SWP facilities in which Berrenda Mesa has rights to use in proportion to the 8,000 acre feet transferred entitlement bears to 155,100 acre feet ($8/155.1 = .05158$). For example:

Assume Total Annual SWP Fixed Costs for 155,100 AF = \$8.5 Million = \$55/AF
Intended Western Share $.05158 \times \$8.5 \text{ Million} = \$438,430$
 $\$438,430 / 8,000 = \$55/\text{AF}$

Future variable OMP&R charges and minimum OMP&R for Off-Aqueduct for the transferred entitlement will be chargeable to Western based on annual entitlement deliveries at rates and methods charged for SWP entitlement.

DWR and KCWA will be required to make (i) the appropriate adjustments in components of the "proportionate use factors" used to calculate cost shares of SWP transportation facilities to assure the cost allocation intent of this Agreement, and (ii) to prepare the contract documents for payment of annual costs by Western to DWR.

In conjunction with the transfer of 8,000 acre feet of SWP entitlement, Western will be transferred a proportionate share of the capacity in all SWP transportation facilities, except Reach 31A, to which Berrenda Mesa has rights. The capacity rights to be transferred are estimated to be as follows:

California Aqueduct

Reach 1 through 8D	.05158 of 433 cfs	=	22 cfs
Reach 9 through 10A	.05158 of 150 cfs	=	8 cfs
Reach 31A		=	0 cfs

ARTICLE 4. ENVIRONMENTAL REVIEW PERIOD

4.01. The Environmental Review Period is that period which commences on the Effective Date and terminates the earlier of the completion of the tasks listed in Articles 4.02 and 4.03 or one year following the Effective Date, whichever first occurs. During the Environmental Review Period, Western and Berrenda Mesa agree to work cooperatively and in good faith to accomplish the tasks identified in Articles 4.02 and 4.03. Environmental Review Period may be extended for a mutually agreeable period by written consent of the parties.

4.02. Western shall use its best efforts with the reasonable cooperation of Berrenda-Mesa to complete the following tasks within the Environmental Review Period:

(a) Preparation of appropriate environmental documentation for the action contemplated in this Agreement, in compliance with CEQA. This Agreement is conditioned upon the completion of environmental review pursuant to the California Environmental Quality

Act ("CEQA"). The County of Stanislaus, as lead agency, is in the process of preparing a Supplemental Environmental Impact Report ("SEIR") which will address the impacts of this proposed project. No improvement shall be constructed pursuant to this Agreement until after the environmental review is completed and both parties have independently made all findings required by CEQA. If, upon completion of this environmental review, a party finds one or more significant, unmitigated environmental impacts relating to water and cannot make a finding that the benefits of the proposed project outweigh the impact or impacts, then this Agreement shall become null and void. If, upon completion of this environmental review, a party finds one or more significant environmental impacts and further finds that all such impacts can be feasibly mitigated or avoided by undertaking specific mitigation measures and/or alternatives (based upon the analysis in the SEIR), then such mitigation measures and/or alternatives shall be undertaken subject to such funding and implementation approvals required by this Agreement. Neither the execution of this Agreement, nor any preliminary steps taken to implement this Agreement, shall be taken into account in determining whether mitigating or avoiding any significant impact is feasible.

(b) Obtain, prior to the Closing Date, the necessary consents of interested governmental agencies, including but not limited to, DWR, State Water Resources Control Board, and Kern County Water Agency, provided, that nothing in this Agreement constitutes an admission, express or implied, that the consent of any of the aforementioned agencies is required by law.

4.03. Berrenda Mesa shall use its best efforts with the reasonable cooperation of Western to complete the following tasks within the Environmental Review Period:

(a) Review and approve as a responsible agency, the environmental document for the action contemplated in this Agreement, in compliance with CEQA. Such process shall include providing access to Western of its Berrenda Mesa/Dublin-San Ramon and Berrenda Mesa/Mojave Programmatic EIR and all supporting documents at the earliest opportunity;

(b) Obtain written approval of the water transfer contemplated in this Agreement by the Kern County Water Agency and DWR;

(c) Obtain written approval by owners of land within Berrenda Mesa to detach approximately 2,857 acres of said lands from Berrenda Mesa on the basis of one (1) acre to be detached for each 2.8 acre feet of Berrenda Mesa Water Entitlements transferred thereunder.

(d) Comply with requirements, if any, to offer Berrenda Mesa Water Entitlements to any entity or person to whom such an offer must be made under the Berrenda Mesa/Kern Contract or the Monterey Agreement as a condition of this transfer;

(e) Notify Western whether it has completed items (a), (b), (c), and (d), above, and is ready, willing, and able to close escrow conditioned upon satisfaction of the conditions precedent set forth below.

ARTICLE 5. DWR COMPLIANCE

5.01. Transfer. The transfer contemplated by this Agreement shall be subject to all of the terms and conditions contained in Article 52 of the December 13, 1995, Amendment of the Water Supply Contract between the State of California Department of Water Resources and the Kern County Water Agency. The parties hereto should execute such documents and assume such obligations as specified therein with respect to this transfer. Western shall assume a proportionate share of the Annual obligations of Berrenda Mesa specified in Article 15 of the Berrenda Mesa/Kern Contract based on the proportion that the Berrenda Mesa Water Entitlements transferred pursuant to this Agreement bear in relation to the total contractual entitlements to Firm Water held by Berrenda Mesa under the Berrenda Mesa/Kern Contract (155,000), including a proportional share of the fixed State Water Project costs of Reach 31A as illustrated in Section 3.04.

5.02. **Point of Delivery.** The point of delivery of the transferred Berrenda Mesa Water Entitlements shall be Reach 2A of the California Aqueduct and Western shall bear all costs of delivery to the Western Service Area. Actual physical delivery of water will be subject to approval by DWR of (i) schedules, and (ii) construction of a turnout.

ARTICLE 6. CONDITIONS PRECEDENT

6.01. **Western Conditions Precedent.** Western's obligation to purchase hereunder is subject to satisfaction or waiver by Western of each of the following conditions precedent prior to Close of Escrow. Failure of any of the following conditions to be met to the satisfaction of or waived by Western prior to Close of Escrow shall entitle Western to terminate this Agreement. Western shall communicate such failure to Berrenda Mesa and the Escrow Holder prior to expiration of the period for Close of Escrow. The following conditions precedent apply:

(a) final approval by Berrenda Mesa and Western and certification by Western (or other lead agency) of an environmental document for the action contemplated in this Agreement, in accordance with CEQA, provided that such certification has not been deliberately withheld by Western without just cause;

(b) final written approval of Kern County Water Agency of the transfer of Berrenda Mesa Water Entitlements as contemplated herein;

(c) final written approval of DWR to (i) the transfer of Berrenda Mesa Water Entitlements as contemplated herein, including written assurance by DWR that the water which is the subject of this transfer will continue to be diverted into the California Aqueduct, up to the delivery points of Western, and (ii) to permit construction and operation of a turnout from the California Aqueduct in Reach 2A.

(d) final written approval by DWR of a petition to the State Water Resources Control Board to add the future service area of Western to the water rights place of use;

(e) execution of all necessary documents, including final written approval by owners of at least 2,857 acres of land within Berrenda Mesa to detach said lands from Berrenda Mesa for the water transferred hereunder pursuant to Article 4.03(c), and as further described in Article 8.01(a), and written consent by such landowners for the transfer of the Berrenda Mesa Water Entitlements;

(f) amendment of the Berrenda Mesa/Kern Contract, and the Kern/State Water Contract, and execution of the new Western/State Contract as contemplated by Article 4.02(b);

(g) there are no material, adverse changes to the representations and warranties made by Berrenda Mesa in Article 10.02;

(h) payment by Berrenda Mesa to Western of any shared environmental review costs as provided in Article 7.02(c);

(i) delivery by Berrenda Mesa to the Escrow Agent of an opinion of counsel addressed to Western that this Agreement has been duly authorized, executed, and delivered by Berrenda Mesa and constitutes the valid and binding obligation of Berrenda Mesa enforceable against Berrenda Mesa in accordance with its terms, subject to the effect of any bankruptcy, insolvency, reorganization, moratorium, or other laws or judicial decisions affecting the enforcement of creditors' right generally, including but not limited to the effect of statutory and other laws or judicial decisions regarding fraudulent conveyances or transfers and preferential transfers; and

(j) final judgment of validation in an action by Western to validate this Agreement.

6.02. Berrenda Mesa Conditions Precedent. Berrenda Mesa's obligation to sell hereunder is subject to satisfaction or waiver by Berrenda Mesa of each of the following conditions precedent prior to Close of Escrow. Failure of any of the following conditions to be satisfied or waived by Berrenda Mesa prior to Close of Escrow shall entitle Berrenda Mesa to terminate this Agreement. Berrenda Mesa shall communicate such failure to Western and Escrow Holder prior to expiration of the period for Close of Escrow. The following condition precedent applies:

(a) Payment of the balance of the Purchase Price.

ARTICLE 7. ENVIRONMENTAL REVIEW

7.01. Environmental Review. The parties agree to cooperate so as to reduce any overlap in analyzing, mitigating, or studying environmental impacts associated with the actions proposed in this Agreement. Western (or Stanislaus County) shall serve as lead agency for any required environmental review. The Programmatic EIR previously prepared for the Berrenda Mesa/Dublin-San Roman and Berrenda Mesa/Mojave transfer may be utilized in the EIR review to address impacts within Berrenda Mesa. Berrenda Mesa shall provide any additional information on such impacts as determined necessary by Western to complete the environmental process.

7.02. Costs. All costs associated with the environmental review of the action contemplated in this Agreement shall be allocated between the parties as follows:

(a) all consulting costs associated with any additional review required of the environmental impacts of the contemplated action within Berrenda Mesa or Kern County including the costs of any lawsuit brought by any interest within Kern County challenging the Environmental Review shall be borne by Berrenda Mesa.

(b) all costs associated with the review of the environmental impacts of the contemplated action within Western including the costs of any lawsuit brought by any interest within the boundaries of Western challenging the Environmental Review and impacts associated with conveyance of water to Western shall be borne by Western ; and

(c) in the event that any costs do not reasonably fall within categories (a) or (b) of this paragraph, then Berrenda Mesa and Western shall share such costs equally. In the event that the parties cannot agree how to allocate such costs, they shall submit the issue to an impartial arbitrator agreed to by both parties. The decision of the arbitrator as to the allocation of costs shall be final, non-appealable, and binding on the parties.

ARTICLE 8. CLOSING COVENANTS

8.01. Concurrent with Close of Escrow, the following shall be accomplished:

(a) Berrenda Mesa shall obtain agreements from landowners for detachment from its boundaries of at least one (1) acre for each 2.8 acre feet of Berrenda Mesa Water Entitlements so that the land may be permanently fallowed and the legal owners of the lands shall, by recorded covenant acceptable in form to Western, release Berrenda Mesa, Western, and their successors and assigns from any and all obligations to provide water to their property, shall waive any and all claims to the Berrenda Mesa Water Entitlements herein described or to any water rights resulting therefrom, and shall covenant not to initiate any legal action as to any use or entitlement, of such rights against Berrenda Mesa, Western, or any of their successors or assigns.

(b) Berrenda Mesa shall obtain approval of the detachment of its landowners and shall provide written assurance that it shall indemnify and hold Western harmless from any and all claims by any Berrenda Mesa or Kern County landowner, or public agency within Kern County which are filed subsequent to the Closing Date or any claims challenging the Berrenda Mesa/Dublin-San Ramon and/or the Berrenda Mesa/Mojave Programmatic EIR utilized by Western in the environmental review of the Berrenda Mesa/Western transfer.

(c) Western shall pay or cause to be paid to Berrenda Mesa the balance of the Purchase Price.

ARTICLE 9. ESCROW AGENT'S EXCULPATORY PROVISIONS

9.01. Neglect, Misconduct. Escrow Agent will not be liable for any of its acts or omissions unless the same constitutes negligence or willful misconduct.

9.02. Information. Escrow Agent will have no obligation to inform any party of any other transaction or of facts within Escrow Agent's knowledge, even though the same concerns the Water Entitlements, provided such matters do not prevent Escrow Agent's compliance with this Agreement.

9.03. Form, Validity, and Authority. Escrow Agent will not be responsible for (i) the sufficiency or correctness as to form or the validity of any document deposited with Escrow Agent, (ii) the manner of execution of any such deposited document, unless such execution occurs in Escrow Agent's premises and under its supervision, or (iii) the identity, authority, or rights of any person executing any document deposited with Escrow Agent.

9.04. Conflicting Instructions. Upon receipt of any conflicting instructions, Escrow Agent shall immediately notify both parties that there is an apparent conflict in the instructions. Escrow Agent will have the right to take no further action until otherwise directed, either by the parties' mutual written instructions or a final order or judgment of a court of competent jurisdiction.

9.05. Interpleader. Escrow Agent will have the absolute right, at its election, to file an action in interpleader requiring the parties to answer and litigate their several claims and rights among themselves, and Escrow Agent is authorized to deposit with the clerk of the court all documents and funds held in Escrow. If such action is filed, the parties will jointly and severally

pay Escrow Agent's termination charges and costs and reasonable attorney's fees which Escrow Agent is required to expend or incur in the interpleader action, the amount thereof to be fixed and judgment therefor to be rendered by the court. Upon the filing of such action, Escrow Agent will be and become fully released and discharged from all obligations to further perform any obligations imposed by this Agreement.

ARTICLE 10. MISCELLANEOUS

10.01. As Is. Subject to the representations and warranties set forth in Article 10.02, Western represents and warrants that Western is purchasing the Berrenda Mesa Water Entitlements "As Is" with respect to the quality of the water transferred under this Agreement and the physical availability of water arising from political, environmental, climatological, physical condition of the aqueduct, and hydrologic conditions.

10.02. Representations and Warranties. The parties, as indicated hereinbelow, hereto represent and warrant that as of the date of this Agreement and as of Close of Escrow:

(a) Berrenda Mesa represents and warrants that it is the legal owner of the Berrenda Mesa Water Entitlements with full authority to transfer such entitlements;

(b) Berrenda Mesa represents and warrants that it has full legal authority and capacity to enter into this Agreement, consummate the transactions and conveyances contemplated hereby, and perform according to its terms and conditions; Western represents and warrants that it has full legal authority and capacity to enter into this Agreement, consummate the transactions and conveyances contemplated hereby, and perform according to its terms and conditions;

(c) Berrenda Mesa represents and warrants that the entry into this Agreement does not create or result in the breach of any other agreement to which Berrenda Mesa is a party or to which Berrenda Mesa is otherwise subject or bound; Western represents and warrants that

the entry into this Agreement does not create or result in the breach of any other agreement to which Western is a party or to which Western is otherwise subject or bound;

(d) Berrenda Mesa represents and warrants that title to the Berrenda Mesa Water Entitlements is held free and clear of any liens, encumbrances, or rights of any other party, other than obligations of the State Water Project, and Berrenda Mesa shall maintain the Berrenda Mesa Water Entitlements free and clear of any such claims until payment of the Purchase Price;

(e) Berrenda Mesa represents and warrants that the execution and delivery of this Agreement by Berrenda Mesa has been validly authorized by all requisite action on the part of Berrenda Mesa; Western represents and warrants that the execution and delivery of this Agreement by Western has been validly authorized by all requisite action on the part of Western;

(f) Berrenda Mesa represents and warrants that other than Planning and Conservation League v. Department of Water Resources et al, Sacramento County Superior Court Case No. 95 CS 03216, there is no litigation or governmental proceeding pending, threatened, or implied with respect to the ownership, use, or transfer of the Berrenda Mesa Water Entitlements;

(g) Berrenda Mesa represents and warrants that no proceedings are pending, threatened, or in process which would limit the Berrenda Mesa Water Entitlements or cause a taking of all or any portion thereof in eminent domain or subject the Berrenda Mesa Water Entitlements to any assessments, special assessments, or other taxes;

(h) Berrenda Mesa represents and warrants that except as otherwise set forth in this Agreement, there are no contracts, licenses, commitments, agreements, or undertakings respecting the Berrenda Mesa Water Entitlements by which Western would become obligated or liable to any person;

(i) Berrenda Mesa represents and warrants that no proceedings are pending or threatened in which Berrenda Mesa may be adjudicated as bankrupt or discharged from any and all of its debts or obligations or granted an extension of time to pay its debts or a reorganization or readjustment of its debts; Western represents and warrants that no proceedings are pending or threatened in which Western may be adjudicated as bankrupt or discharged from any or all of its debts or obligations or granted an extension of time to pay its debts or a reorganization or readjustment of its debts; and

(j) Berrenda Mesa represents and warrants that compliance by Berrenda Mesa with the provisions of this Agreement will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State, or of any department, division, agency, or instrumentality thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, bond, resolution, indenture, contract, agreement, or other instrument to which Berrenda Mesa is a party or is otherwise subject or bound; Western represents and warrants that compliance by Western with the provisions of this Agreement will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State, or of any department, division, agency, or instrumentality thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, bond, resolution, indenture, contract, agreement, or other instrument to which Western is a party or is otherwise subject or bound.

10.03. Covenants. Berrenda Mesa and Western covenant and agree as follows:

(a) From and after the closing, the parties shall take no action that adversely affects or limits Western's exercise of the Berrenda Mesa Water Entitlements transferred hereunder.

(b) The representations, warranties, and indemnities included or provided for in this Agreement or in any Schedule or certificate or other document delivered pursuant to this Agreement shall survive the Closing Date for a period of 2 years.

(c) The parties shall cooperate with each other, and, will from time to time, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered such further instruments, including documents of transfer, certifications, and opinions as may reasonably be required for carrying out the intention of or facilitating the performance of this Agreement.

10.04. Finders. Western and Berrenda Mesa represent to each other that neither has dealt with any finder, agent, broker, or person with respect to this transaction and that no other finder, agent, broker, or other person is entitled to the payment of a fee, commission, or other compensation with respect thereto. Berrenda Mesa hereby agrees to indemnify and hold Western harmless from all loss and liability including, without limitation, costs and attorneys' fees in the event any claim is made which is contrary to such representation. Western hereby agrees to indemnify and hold Berrenda Mesa harmless from all loss and liability including, without limitation, costs and attorneys' fees in the event any claim is made which is contrary to such representation.

10.05. Interpretation. This Agreement has been executed in California and California law shall apply to this Agreement. The captions of paragraphs used in this Agreement are for convenience only. The provisions hereof shall be binding upon and inure to the benefit of the successors and assigns of Berrenda Mesa and Western. Any amendment or modification of this Agreement must be in writing, signed by Berrenda Mesa and Western. This Agreement contains the entire agreement of the parties hereto and supersedes any prior written or oral agreements. All oral or written representations, agreements, arrangements, or understandings relating to the subject matter are fully expressed herein. The parties agree and acknowledge that this Agreement has been mutually reviewed by counsel for the two parties and that the provisions of Civil Code §1654 shall not apply to the interpretation of this Agreement.

10.06. Time of Essence. Time is of the essence of this Agreement and of the escrow provided for herein.

10.07. Attorneys' Fees. In the event any party to this Agreement brings any legal or equitable proceedings for enforcement of any of the terms or conditions of this Agreement, or any alleged disputes, breaches, defaults, or misrepresentations in connection with any provision of this Agreement, the prevailing party in such action, or the nondismissing party where the dismissal occurs other than by reason of a settlement, shall be entitled to recover its reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and costs of defense paid or incurred in good faith. The "prevailing party," for purposes of this Agreement, shall be deemed to be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment or as determined by the court, arbitrator, or mediator to whom the dispute is submitted.

10.08. Additional Documents. From time to time prior to and after the Close of Escrow, each party shall execute and deliver such instruments of transfer and other documents as may be reasonably requested to carry out the purpose and intent of this Agreement. Berrenda Mesa shall record such documents as necessary to bind future owners of Berrenda Mesa lands and shall directly obligate any new owner to abide by the terms and conditions of this Agreement for the express benefit of Western..

10.09. Assignment. This Agreement may be assigned by Western upon written notice to Berrenda Mesa.

10.10. Dependency and Survival of Provisions. The respective warranties, representations, covenants, agreements, obligations, and undertakings of each party hereunder shall be construed as dependent upon and given in consideration of those of the other party and shall survive the close of the escrow and delivery of the deed. No waiver by either party on any provisions hereto shall be deemed a waiver of any other provision hereof or of any subsequent breach by either party of the same or any other provision.

10.11. Notices. All notices, approvals, consents, or other documents required or permitted under this Agreement shall be in writing, and, except as otherwise provided herein, shall be effective upon personal delivery or three (3) days after deposit in the United States mails, registered or certified mail, with first-class postage fully prepaid, addresses as follows:

Berrenda Mesa: Berrenda Mesa Water District
2100 F Street, Suite 100
Bakersfield, CA 93301
Attention: Engineer-Manager

With a copy to: George G. Logan, Esq.
Attorney-at-Law
2669 Alabama Avenue
Atwater, CA 95301

Western: Western Hills Water District
C/O Keith Schneider
801 Tenth Street
Fifth Floor, Suite 1
Modesto, CA 95354

With a copy to: Russell A. Newman, Esq.
NORMOYLE & NEWMAN
801 Tenth Street
Fifth Floor, Suite 1
Modesto, CA 95354

or to such other addresses as either party shall, from time to time, specify in the manner provided herein.

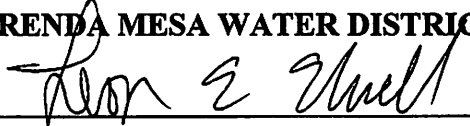
10.12. Venue. The parties agree that, in any action to interpret or enforce this Agreement, venue shall be improper in the counties of Kern or Stanislaus, but that venue shall be proper in the County of Sacramento or any other county in which venue is proper under California law.

10.13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed as original, but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, Berrenda Mesa and Western, by execution of counterparts hereof, have approved this Agreement. This Agreement shall become effective upon its execution by Berrenda Mesa and Western.

Dated: June 10, 1998

BERRENDA MESA WATER DISTRICT:

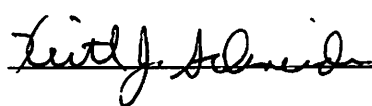
By: 

Vice

Its: President, Board of Directors

Dated: June 10, 1998

WESTERN HILLS WATER DISTRICT

By: 

Its: President, Board of Directors