

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

Closed Session

DEPT: Board of Supervisor

BOARD AGENDA# Announcement

Urgent _____ Routine X

AGENDA DATE March 13, 2001

CEO Concurs with Recommendation YES X NO _____
(Information Attached)

4/5 Vote Required YES _____ NO X

SUBJECT:

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION: COUNTY OF STANISLAUS VS. SOUTH SAN JOAQUIN IRRIGATION DISTRICT. STANISLAUS COUNTY SUPERIOR COURT. GOVERNMENT CODE SECTION 54954.5 (C).

STAFF RECOMMENDATIONS:

1. APPROVE AMENDMENT NO. 1 TO THE WOODWARD RESERVOIR AGREEMENT WHICH RESOLVED THE LITIGATION BETWEEN SOUTH SAN JOAQUIN IRRIGATION DISTRICT AND THE COUNTY
2. AUTHORIZE COUNTY COUNSEL TO SIGN ALL DOCUMENTS TO CONCLUDE THE LITIGATION

FISCAL IMPACT:

The county will share the cost of construction the upstream intake structure.

BOARD ACTION

No. 2001-193

On motion of Supervisor Blom, Seconded by Supervisor Mayfield

and approved by the following vote,

Ayes: Supervisors: Mayfield, Blom, Caruso, and Chair Paul

Noes: Supervisors: None

Excused or Absent: Supervisors: Simon

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

Motion:

Christine Ferraro

File No.

ATTEST: REAGAN M. WILSON, Clerk By: Deputy

ESCROW AGREEMENT

This Escrow Agreement (the "Agreement") is made and entered into by and between SOUTH SAN JOAQUIN IRRIGATION DISTRICT ("District") and the COUNTY OF STANISLAUS ("County") on June 23, 2003.

RECITALS

- A. WHEREAS, District owns and operates Woodward Reservoir and adjacent lands ("Woodward Reservoir") or "Reservoir") to supply water for irrigation purposes; and
- B. WHEREAS, County manages incidental recreational use of the Reservoir pursuant to the Grant of License with District as amended by Amendment Number One to Woodward Reservoir License ("Amended License") which was executed in March 2001 by both parties; and
- C. WHEREAS, County owns certain properties adjoining the land owned by the District and has constructed recreational amenities on County lands as well as on lands owned by the District, and has leased certain of the County-owned property to third parties for recreation, cattle grazing and other purposes; and
- D. WHEREAS, District intends to use Woodward Reservoir as a source of water for its South County Water Treatment Plant project ("Treatment Plant"), and the Treatment Plant will be a source of drinking water to the Cities of Manteca, Escalon, Lathrop and Tracy; and
- E. WHEREAS, the Treatment Plant project will include an intake structure near the actual dam structures ("lower intake structure") and an intake facility upstream in the vicinity of the District's main supply canal, including a pipeline along or beneath the bed of the Reservoir to Woodward Dam ("upper intake structure"); and
- F. WHEREAS, pursuant to the Amended License the County agreed to pay half the actual cost to construct the upper intake structure in the eastern area of the Reservoir as described in Amended License to the Grant of License; and
- G. WHEREAS, pursuant to the Amended License, the County is obligated to deposit in an interest bearing escrow account at least \$1,000,000 and not more than \$3,000,000 in the aggregate, to be drawn upon to pay the County's proportional one-half share of the progress payments for construction of the upper intake structure;
- H. WHEREAS, the parties have been unable to locate a bank willing to serve as escrow and the parties have agreed that the funds may be held by County's Auditor,

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. DEPOSIT OF FUNDS. County shall establish a separate account with its Auditor, which account shall require only the authorization of District to withdraw funds from the account. No later than June 30, 2003, County shall deposit into the account at least \$1,000,000, and not more than \$3,000,000. County shall replenish the account whenever the balance drops below \$250,000 to ensure sufficient funds for timely payment of progress payments. In no event shall County be required to deposit more than \$3,000,000 in the aggregate into the account. County shall not withdraw funds from the account without District's consent or place any restrictions on District's withdrawal of funds if District follows the procedure in this Agreement.

2. DISBURSEMENT OF FUNDS. The District shall separately account for all costs and expenses attributable to construction of the upper intake structure and provide a periodic accounting to County quarterly or more frequently upon County's request. District shall notify County when District plans to make progress payments from the account. Said notice shall be by a letter signed by District's General Manager addressed to the County's Director of Parks and Recreation and to County's Auditor. The Auditor shall disburse the funds stated in the letter to District within 10 days thereafter. District shall not request funds more than one time per month.

3. REMAINING PRINCIPAL BALANCE. County shall maintain the account until it has paid the lesser of one-half of the cost to install the upper intake structure or \$3,000,000. County shall be entitled to withdraw the principal balance, if any, remaining in the account after it has paid one-half the actual cost of construction of the upper intake structure. In no event shall County be responsible for more than \$3,000,000 towards the cost of the intake structure.

4. GOOD FAITH RESOLUTION OF DISPUTES. In the event of a dispute as to disbursement of funds from the account, the parties shall meet and confer in good faith to negotiate a mutually acceptable resolution.

5. NOTICES. Any notice or other communication required or permitted under this Agreement shall be sufficiently given if sent by United States mail first class, postage prepaid, addressed as follows, or such other address(es) as the parties may specify in writing:

To DISTRICT:

South San Joaquin Irrigation District
General Manager
P. O. Box 747
Ripon, CA 95366

To COUNTY:

County of Stanislaus
Director of Parks and Recreation
Cornucopia Way, Suite C
Modesto, CA 95354

6. GOVERNING LAW AND VENUE. This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

7. AMENDMENT AND COUNTERPART EXECUTION. This Agreement may not be amended except in writing, executed by all the parties hereto. This Agreement and any amendment to it may be executed in counterparts, each of which shall be deemed to be an original and said counterparts shall constitute one in the same instrument which may be sufficiently evidenced by one counterpart.

8. DOCUMENTS. The parties agree to act in good faith and to promptly execute any and all documents necessary, or which may become necessary, to complete or effectuate the purposes of this Agreement.

9. ADVICE OF ATTORNEY. Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice. This Agreement is a compromise by and between the parties, and any ambiguity herein shall not be construed against the drafter, but rather the terms hereof shall be given a reasonable interpretation as if each party had in fact drafted the Agreement.

10. CONSTRUCTION. Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not a part of the Agreement, and shall not be used to interpret or determine the validity of this Agreement or any of its provisions.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized officers on the date first hereinabove written.

“DISTRICT”

By Stevan Stroud
Stevan Stroud, General Manager
South San Joaquin Irrigation District

“COUNTY”

By Kevin M. Williams
Kevin Williams, Director
Parks and Recreation Department

APPROVED AS TO FORM:

By Steven P. Emrick
Steven P. Emrick
General Counsel

APPROVED AS TO FORM:

MICHAEL H. KRAUSNICK
County Counsel

By Edward R. Burroughs
Edward R. Burroughs
Deputy County Counsel

AMENDMENT NUMBER ONE TO
WOODWARD RESERVOIR LICENSE

This Amendment Number One (“Amendment”) to the Grant of License dated December 1, 1985, by and between South San Joaquin Irrigation District (“District”) and the County of Stanislaus (“County”) is hereby adopted as follows:

RECITALS

- A. District owns and operates Woodward Reservoir and adjacent lands (“Woodward Reservoir” or “Reservoir”) to supply water for irrigation purposes.
- B. County manages incidental recreational use of the Reservoir pursuant to the Grant of License with District (“License Agreement” or “Agreement”). The License Agreement expires in 2011, but can be terminated beginning in 2006.
- C. County owns certain properties adjoining the land owned by the District and has constructed recreational amenities on County lands as well as on lands owned by District. County has also leased certain of the County-owned property to third parties for recreation, cattle grazing and other purposes.
- D. District intends to use Woodward Reservoir as a source of water for its South County Water Treatment Plant project (“Treatment Plant”). The Treatment Plant will be a source of drinking water to the cities of Manteca, Escalon, Lathrop and Tracy (“Cities”).
- E. District and County understand that certain changes in the recreation uses of Woodward Reservoir may be necessary from time to time so as to be consistent with existing and future laws, rules, regulations which affect the use of Woodward Reservoir as a source of water for the Treatment Plant and with the public health, safety, and welfare in general including (1) the Health and Safety Code, including section 115825, (2) rules or regulations of federal, state and local governmental agencies, (3) the terms of any permit or other approval issued for the Treatment Plant by the California Department of Health Services (“DOHS”) or other federal, state or local agency, as such permit or approval may be amended from time to time, and (4) and other Federal, State or local laws, regulations or guidelines which are consistent with the public health, safety, and welfare, including the DOHS “Guidance for Freshwater Beaches” (collectively, “Laws and Regulations”). In particular, the Department of Health Services may impose a limit on body contact recreation and may impose additional restrictions on recreation at Woodward Reservoir in order to issue a permit to the District pursuant to California Health and Safety Code Section 116525. By this Amendment, District and County intend to provide a mechanism to enable County to continue to operate recreational facilities at Woodward Reservoir in compliance with the Laws and Regulations.

- F. District recognizes the value of public recreation at Woodward Reservoir and County's efforts in providing such recreational opportunities at Woodward Reservoir and desires to contract with County to amend the License Agreement to provide continued recreation at Woodward Reservoir beyond the term of the current License Agreement.
- G. District and County desire to accommodate District's use of the Reservoir as a raw water supply for both irrigation and potable water supply, and County's continued use of Woodward Reservoir for recreational activities in a manner consistent with the Laws and Regulations. The District affirms its commitment to continue support for public recreation at Woodward Reservoir.

Therefore, District and County agree as follows:

AGREEMENT

1. Term of Agreement.

a. Extension of Term.

The term of the Agreement is extended to January 1, 2036. Effective January 1, 2036, and every five (5) years thereafter, the Agreement shall be renewed automatically for five (5) year terms, unless either party notifies the other party in writing of its objection to such renewal at least three (3) years before the expiration of the term or the extended term.

If District is not able to obtain by January 1, 2004, all approvals required to construct and operate the Treatment Plant, including all approvals required of DOHS and approvals sought by District from County, the Agreement may be terminated by either party according to the dates and other provisions of Section 5 of the License Agreement and in such event this Amendment shall be null and void.

b. Early Termination

On or before June 1, 2022, the parties shall initiate good faith negotiations to modify the terms of the Agreement, as amended herein, to continue to recognize and accommodate County's obligation to provide continued recreation at Woodward Reservoir and the District's obligation to deliver water to customers. New or modified terms and conditions agreed to by the parties, if any, shall become operative and effective on January 1, 2025. In any event, the District may opt to terminate the Agreement effective January 1, 2025, by furnishing the County written notice of its intent to terminate on or before January 1, 2023. If the District opts to terminate the Agreement before the end of the extended term of the Agreement as set forth herein, the District shall pay County the amounts according to Section 1c below.

c. Buy-Out before Expiration of Term.

The District may elect to buy-out the County's interest in the License Agreement prior to January 1, 2036, upon at least one (1) year's advance notice. In such event District shall be required to pay County as follows:

- i. If the Agreement is terminated effective on a date before January 1, 2025, the District shall pay County on the termination date an amount based on the following formula: Buy-Out Value = (Revenue – Expenses) + Improvements + Upper Intake, but in no event shall the Buy-Out Value be less than \$2 million, where:
 - (1) "Revenue" means the average annual revenue received by the County during the preceding five-years, multiplied by the number of years remaining until January 1, 2025, discounted to present value using as a discount rate, the latest prime rate of interest published in the West Coast edition of the Wall Street Journal as of the date of the notice.
 - (2) "Expenses" means the average annual expenses incurred by the County during the preceding five-years, multiplied by the number of years remaining until January 1, 2025, discounted to present value using as a discount rate, the rate determined in (1) above.
 - (3) "Improvements" means the fair market value of improvements related to recreation at the Reservoir that have been or were caused to be installed, constructed or furnished by the County, reduced by the fair market of the improvements constructed with the \$1 million or the actual amount expended on improvements constructed in accordance with Section 4 herein, whichever is less.
 - (4) "Upper Intake" means the prorata reimbursement for the County's contribution toward construction of the upper intake structure under Section 7a, based on the remaining useful life of those improvements.
- ii. If the Agreement is terminated effective on or after January 1, 2025, the District shall pay County on the termination date its prorata contribution toward construction of the upper intake structure under Section 7a, based on the remaining useful life of those improvements, plus pay the sum of two (2) million dollars.

In the event the Agreement terminates before January 1, 2036, the District agrees to allow public recreation at the Reservoir to the extent consistent with the Treatment Plant and the Laws and Regulations. To the extent that District would require the use of County-owned land at Woodward Reservoir to provide public recreation, the parties agree to work together to allow District to acquire an interest in such land as is then owned by County, whether by lease, purchase or by exercise of District's power of eminent, on mutually-acceptable terms. The terms

shall require District to pay the fair market value of that County-owned land and recreational-related improvements constructed by County thereon, necessary for District to continue to provide public recreation at Woodward Reservoir, excluding those improvements constructed in accordance with Section 4 with District's funds.

2. Treatment Plant is an Additional Paramount Use.

County agrees that District's use of Woodward Reservoir for water supply and power production, including its use as a source of water to supply the Cities through the Treatment Plant up to 31,000 acre-feet per year until the year 2010 and up to 41,000 acre-feet thereafter and a quantity of water to the City of Ripon not exceeding 6000 acre-feet, are paramount to County's use of Woodward Reservoir for recreation. County agrees to take the actions described in this Amendment and such other actions as may be necessary during the term of this Agreement in order to regulate recreation at Woodward Reservoir in compliance with the Laws and Regulations.

3. Operational Changes.

District and County agree that certain operational changes in County's recreational operations at Woodward Reservoir are required to further the public health, safety and welfare, to enable District to obtain and maintain a permit from DOHS, and to otherwise enable District to use Woodward Reservoir to supply treated water to the Cities. County agrees to adopt and enforce necessary rules and regulations to implement these operational changes and such other changes as may be necessary to comply with the Laws and Regulations at all times during the term of the License Agreement.

- a. County will limit public recreational use of and access to the Reservoir such that it does not exceed its recreational carrying capacity as set forth in a written plan prepared by the County on or before November 2001, in which the recreational carrying capacity of the Reservoir will be determined using acceptable industry standards. The District and County agree to work in good faith to agree upon the factors to be considered in determining the carrying capacity and to resolve any concerns the District may have with respect to the carrying capacity plan. County will obtain the District's prior written consent to any increase in the carrying capacity of the Reservoir.
- b. County will provide adequate maintenance at the Reservoir by, among other actions, ensuring that all trash and other solid waste is regularly removed to central facilities to prevent a health hazard or visual nuisance and by regularly servicing all human sanitary facilities as necessary.
- c. County will prohibit camping in undeveloped sites within the distance to the high water line (defined as elevation 210 feet) as limited by the Laws and Regulations within 180 days prior to the estimated date the Treatment Plant begins operation. Existing developed camp sites and full-hookup camp sites may remain

operational regardless of their proximity to the high water line, so long as they are in compliance with the Laws and Regulations. Newly developed sites will be located no closer to the high water line than as limited by the Laws and Regulations or, in the absence of any specific limitation in the Laws and Regulations, not closer than 30 feet from the high water line.

- d. At all times after the Treatment Plant begins operation, the County will enforce a ban on all public access to and use of the land and water area shown on Attachment 1, except for access to trails for hiking and equestrian use. The trails will be constructed in accordance with a plan to be approved by County and by District.
- e. County will prohibit any body-contact recreation in any portion of the Reservoir at all times that District requires use of the lower intake structure as described in Section 6b below, commencing 30 days after County's receipt of notice from District that it intends to take water from the lower intake structure. If 30 days' notice is impractical because of sudden failure of upstream diversion or conveyance facilities to deliver water to Woodward Reservoir, whether due to tunnel collapse, canal break or other sudden failure of the diversion facilities or chemical spill, that District cannot reasonably remedy or repair within five days, County will prohibit body-contact recreation in the Reservoir 5 days after County's receipt of notice from District. County may permit body-contact recreation to resume when District begins to use the upper intake structure. District shall work with County in an attempt to obtain consent of DOHS to allow body-contact recreation during the Memorial Day, Independence Day and Labor Day holidays during times that District's main canal is delivering water into Woodward Reservoir, so long as District's deliveries of water to the Treatment Plant are not affected, and subject to such terms and conditions as shall be acceptable to County and District.

District will provide County with a copy of the February and April water supply forecast it receives from the United States Bureau of Reclamation ("USBR") each year as soon as possible after receipt. District shall also supply along with the notice its estimate as to when it anticipates using the upper intake structure and when it anticipates using the lower intake structure during that year.

Body contact is used in this Amendment according to DOHS regulations or guidelines and in the absence of such regulations or guidelines, means any recreation activity except boating or fishing from boats or streambank that involves human contact with water at Woodward Reservoir, including swimming, wading, water skiing, wind surfing or any other form of boat-towed recreation, jet skiing or float fishing.

- f. So long as fuel containing the additive Methyl Tertiary Butyl Ether ("MTBE") is reasonably available for purchase in California, the County will adopt and

implement regulations for control of MTBE in the water at the Reservoir. If MTBE fuel is not reasonably available for purchase in California, the County will adhere to DOHS standards for MTBE limits in Reservoir water.

- g. County shall manage the beaches at the Reservoir in accordance with California Code of Regulations Title 17, Group 10.1, and the DOHS "Guidance for Freshwater Beaches." County shall develop and implement protocols as provided therein, subject to District approval, for sewage spills, sampling and analysis, beach posting, closure and reopening procedures and otherwise consistent with protocols relative to County's management of Modesto Reservoir for the Modesto Irrigation District. County shall conduct all water sampling, testing and analysis applicable to and reasonably necessary for County's management of recreation at its expense. Copies of all test results shall be provided to the District within a reasonable period of time after receipt by the County. The District shall perform its own sampling, testing and analysis of Reservoir water as required for the Treatment Plant.
- h. Such other restrictions as may otherwise be required by the Laws and Regulations.
- i. Use of adequate security and law enforcement personnel to enforce County's obligations in this section, as determined in the reasonable discretion of the County.

4. Physical Improvements

County will make physical improvements at Woodward Reservoir as set forth in Attachment 2 which, by this reference is made a part hereof and such other physical improvements as shall be required for the District to secure and maintain a permit from DOHS. County will provide District with a schedule for its implementation of the improvements and amend the schedule from time to time as necessary. If County proposes to make any further alterations, improvements or additions to District's land at the Reservoir, it will first obtain District's approval as set forth in Section 6 of the License Agreement, which approval will not be unreasonably withheld.

5. Changes in Land use. County agrees to adopt and enforce necessary rules and regulations to implement the following changes at all times during the term of the License Agreement.

- a. Prohibit cattle from entering the Reservoir water body. County will either ban such activities or provide for the installation and maintenance of fencing on land adjacent to the Reservoir's high water line, or other measures sufficient to prevent cattle from entering the Reservoir.

- b. The County shall continue to implement the goals and policies related to the protection of water quality set forth in the Conservation/Open Space Element of its General Plan for all discretionary approvals for land within the watershed of Woodward Reservoir. Such approvals shall contain provisions comparable to those for the watershed for Modesto Reservoir.
- c. Prohibition on the installation of septic system or leach field for any septic system within 100 feet of the Reservoir's high water line.

6. Upstream Intake for Treatment Plant.

- a. The Treatment Plant project will include an intake structure near the actual dam structures ("lower intake structure") and an intake facility upstream in the vicinity of the District's main supply canal, including a pipeline along or beneath the bed of the Reservoir ("upper intake structure").
- b. As part of the construction of the upper intake structure, a zone for the intake structure will be established which will be hydraulically separated from the lower portion of the Reservoir. In practical effect, this will divide the Reservoir into an upper intake zone ("Upper intake zone") and a "lower intake zone" comprising the remainder of the Reservoir. The Treatment Plant will use the upper intake structure as much as possible from the time that Woodward Reservoir is refilled by approximately April 15 following winter lowering for flood control and continuing through approximately September 15 of each year, unless insufficient water supplies or failure of upstream diversion or conveyance facilities require use of the lower intake during that time. Recreational activities in and adjacent to the upper intake zone will be restricted as described above in Section 3d. When the District is not able to divert sufficient water from the Stanislaus River, in years of reduced supply or sudden failure of upstream diversion or conveyance facilities as described in Section 3e, water from the lower intake zone will be diverted at the lower intake structure to supply the Treatment Plant. Should it be necessary to use water from the lower intake zone, County will enforce a prohibition on body contact recreation in the lower intake zone as described in Section 3e. When the Treatment Plant is operational, the District will provide the County with a minimum of 30 calendar days written notice of its intention to use the lower intake zone as a source of water supply, except in the instances described in Section 3e.
- c. District shall furnish County with a copy of the initial design of the plat, drawing or engineering plans for the upper intake facility when available and with a copy of any major revision of such design. Prior to start of construction of the Treatment Plant, District will provide County with plans of the final design of the upstream intake structure and final estimated costs. District and County agree to work in good faith to resolve any concerns County may have with respect to design or cost estimates, provided that District shall have final authority to design

and construct the upstream intake structure as determined in the reasonable discretion of the District.

- d. District agrees to notify County 90 days before start of construction of the upper intake structure. District will schedule construction of the upper intake facility to minimize impacts to recreation to the extent feasible.

7. Allocation of Cost.

- a. County agrees to pay half of the actual cost to construct the upper intake structure in the eastern area of the Reservoir as described below, estimated to be \$6,000,000. County's share shall not exceed \$3,000,000. Within 60 days of receipt of the District's notice described in Section 6d above, the County shall deposit in an interest bearing escrow account at least \$1,000,000 and not more than \$3,000,000 in the aggregate, that shall be drawn upon to pay the County's proportional one-half share of the progress payments for construction of the upper intake structure. The County shall replenish the escrow account whenever the balance drops at or below \$250,000 to ensure sufficient funds for timely payment of progress payments. County shall be entitled to all interest accrued on funds deposited in the escrow account. Draws upon the escrow account shall be made by written authorization from both the District and the County as set forth in a separate escrow agreement executed by the parties to this Agreement. The County shall be entitled to withdraw any principal balance, if any, after payment of one-half the actual cost of construction of the upper intake structure up to \$3,000,000. The District shall separately account for all costs and expenses attributable to construction of the upper intake structure..
- b. District will pay the first \$1,000,000 for implementing the physical improvements described in Section 4 beginning when District provides the notice described in Section 6d. District will contribute any remaining funds to complete such other improvements identified in County's Woodward Reservoir Regional Park Master Plan County elects to make. County's costs of implementing the improvements shall include administrative design costs incurred by County. County will be responsible for the remainder of its costs, if any, related to these improvements. County will periodically request payment from District for its costs in implementing the improvements described in Section 4 and District agrees to reimburse County within 30 days of County's request. District's obligation to contribute the funds described in this Section shall expire as to any requests for payment not received within 36 months from the date District provides the notice described in Section 6d.
- c. County will be responsible for its costs in implementing those land use changes described in Section 5 which are required as to County-owned land.

8. Rent.

County will continue paying District rent of \$1.00 per year throughout the term of the Agreement.

9. Concessionaire Agreement and Operation.

County will not enter into, amend or renew any concessionaire agreements at Woodward Reservoir without the prior written consent of the District Manager. All concessionaire agreements executed or amended after the date of this Amendment shall terminate upon expiration or sooner termination of the License Agreement. Agreements existing on the date of this Agreement shall terminate consistent with contractual rights and obligations existing on the date of this Agreement, unless amended to be consistent with the provisions in the preceding sentence.

10. Waiver of Certain Claims.

The purposes of this Amendment are in part to minimize potential conflicts between the parties associated with the Treatment Plant potential impacts to County.

- a. County waives against District or any of the Cities (i) any claim, demand, obligation or liability arising out of, and (ii) the right to assert before in any court, administrative hearing or any other forum, that County has been, is being or will be injured or damaged during the term of this Agreement as a result of:
 - i. Impacts to recreation at the Reservoir due to reduced storage volume or water levels or to maintain water quality to standards imposed by the DOHS, by the Laws and Regulations or by District pursuant to this Agreement;
 - ii. Impacts to the use of land in the watershed of the Reservoir caused by the Treatment Plant;
 - iii. Reduction in County's gate receipts or increases in County's capital expenditures or in its operation or maintenance expenses at the Reservoir;
 - iv. Changes to District's water rights which District may elect to pursue to supply to the Cities up to 31,000 acre-feet of treated water per year until the year 2010 and up to 41,000 acre-feet thereafter and not exceeding 6,000 acre-feet to the City of Ripon, or to supply any additional amounts to said cities so long as further restrictions on recreational use of Woodward Reservoir are not required by Laws and Regulations as a result and so long as such changes do not enable District to exceed the District's one-half share of the annual quantity of water to be supplied by the USBR

set forth in the 1988 Agreement and Stipulation between the District, the Oakdale Irrigation District and the USBR.

- v. Any alleged failure by District in environmental documents prepared to satisfy the requirements of the California Environmental Quality Act, to analyze impacts to recreation or any other impacts to County from the Treatment Plant.

- b. District waives and agrees to hold County harmless from claims for damages arising during the term of this Agreement by the District, any of the Cities or its customers or the City of Ripon or its customers for any inability of District to supply sufficient water of a potable quality from Woodward Reservoir, except to the extent County has failed to remedy a default related to water quality after notice and opportunity to cure as provided in Section 12a. District reserves the right to assert claims against County for reimbursement if civil fines or penalties are levied against District for violations of water-quality related laws at Woodward Reservoir that are attributable to County operations or failure to perform its obligations under this Agreement.

11. County's Covenants.

In addition to the other provisions of this Agreement, County covenants during the term of the Agreement to:

- a. Manage recreation at Woodward Reservoir consistent with the Laws and Regulations and with the public health, safety and welfare.
- b. To take actions necessary to comply with all Laws and Regulations.
- c. Comply with any order or ruling of any federal, state or local governmental agency or court pertaining to recreation at Woodward Reservoir.
- d. To support District in any proceeding before the State Water Resources Control Board which involves District's water rights used to supply to the Cities up to 31,000 acre-feet of treated water per year until the year 2010 and up to 41,000 acre-feet thereafter and not exceeding 6,000 acre-feet to the City of Ripon or to supply any additional amounts to said cities so long as further restrictions on recreational use of Woodward Reservoir are not required by Laws and Regulations as a result and so long as such District does not exceed the District's one-half share of the annual quantity of water to be supplied by the USBR set forth in the 1988 Agreement and Stipulation between the District, the Oakdale Irrigation District and the USBR.
- e. Acknowledge District has a statutory franchise to lay its pipelines along and underneath County roads or road rights of way in connection with the Treatment

Plant, subject to the limitations set forth in Water Code Section 22431, and subject to the County's right under Article 2 (commencing with section 1460) of Chapter 5.5, Division 2 of the Streets and Highways Code to grant an encroachment permit for such use of County roads.

- f. Recognize that District is not subject to County's building or zoning ordinances in connection with the location or construction of facilities for the production, generation, storage or transmission of water pursuant to Government Code section 53091. This provision does not apply with respect to facilities that are ancillary to such functions. This provision also does not affect the District's obligations to submit proposals to construct buildings or structures which qualify for the exemption in section 53091 to the local planning agency for advisory review as to conformity with the applicable General Plan.

If, during the term of this License Agreement, County shall contest any of the Laws and Regulations or any order or ruling of any federal, state or local governmental agency or court as such may pertain to Woodward Reservoir or County's obligations in the License Agreement, County shall, notwithstanding its protest, fully perform all of its obligations during the pendency of its contest.

County and District agree to work cooperatively with each other in discussions with the DOHS regarding the application of the Laws and Regulations to the use of Woodward Reservoir as a source of water for the Treatment Plant.

12. Default and Remedies.

- a. If either party shall fail to perform its obligations under this Agreement after notice of, and reasonable period of time to cure, such failure, that party shall be in default, and the other party may, short of terminating the Agreement:
 - i. Seek recovery by way of damages;
 - ii. Seek specific performance of the Agreement;
 - iii. Seek injunctive or other immediate legal relief.
 - iv. Seek such other relief as may be appropriate under the circumstances.
- b. The persistent and repeated failure of a party to diligently perform an obligation under the Agreement shall constitute a material default giving the non-defaulting party the right to terminate the Agreement; provided, however, no such circumstance shall constitute an event of default unless and until (1) the non-defaulting party has given written notice to the other party specifying the particular default exists which will, unless corrected, constitute a material breach of the Agreement, and (2) the defaulting party has not either corrected such

default or initiated reasonable action to correct such default within 30 days from the date of such notice and, thereafter, does not diligently continue to pursue such action.

- c. Either party may seek injunctive or other immediate legal relief at any time to protect the public health, safety or welfare.
- d. No right or remedy given to a party on the breach of any provision of this Agreement is intended by the parties to be exclusive; each shall be cumulative and in addition to any other remedy provided in this Agreement or otherwise available at law or in equity. No failure by the nonbreaching party to exercise, and no delay in exercising, any right shall operate as a waiver of that right. Nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of a right, power, or privilege granted by this Agreement or otherwise.

13. Legislative Waiver of DOHS Regulations.

District and County presently believe that seeking a legislative waiver from DOHS restrictions on body contact at Woodward Reservoir does not appear to offer the long term solution desired by both parties and the parties have chosen to pursue other options. However, should the District or the County elect to pursue a legislative waiver, the other party will if requested, provide written support and such other nonfinancial support as may be reasonably requested. If a legislative waiver of limitations on body-contact recreation at Woodward Reservoir is obtained, District agrees that body-contact recreation shall be permitted in the lower intake zone of Woodward Reservoir described in Section 6b so long as the waiver is effective and County agrees to otherwise operate the recreation facilities as set forth in this Amendment.



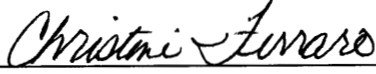
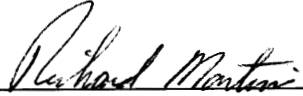

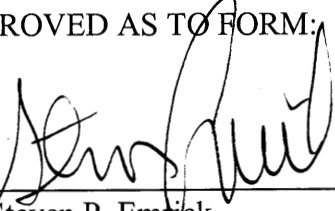
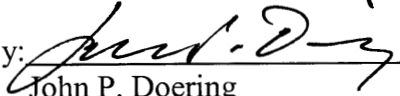
14. Venue.

The venue of any action involving the Agreement is Stanislaus County; provided, however, the parties agree to stipulate to appointment of a neutral judge to hear any disputes between the parties and to share equally the costs of such neutral judge, if any.

15. Effect of Amendment One on License Agreement.

The Amendment shall be incorporated into and made a part of the Agreement. Except as modified by this Amendment, the License Agreement shall remain in full force and effect.

Therefore, the parties have executed this Amendment to the License Agreement on the dates beside their respective signatures below.

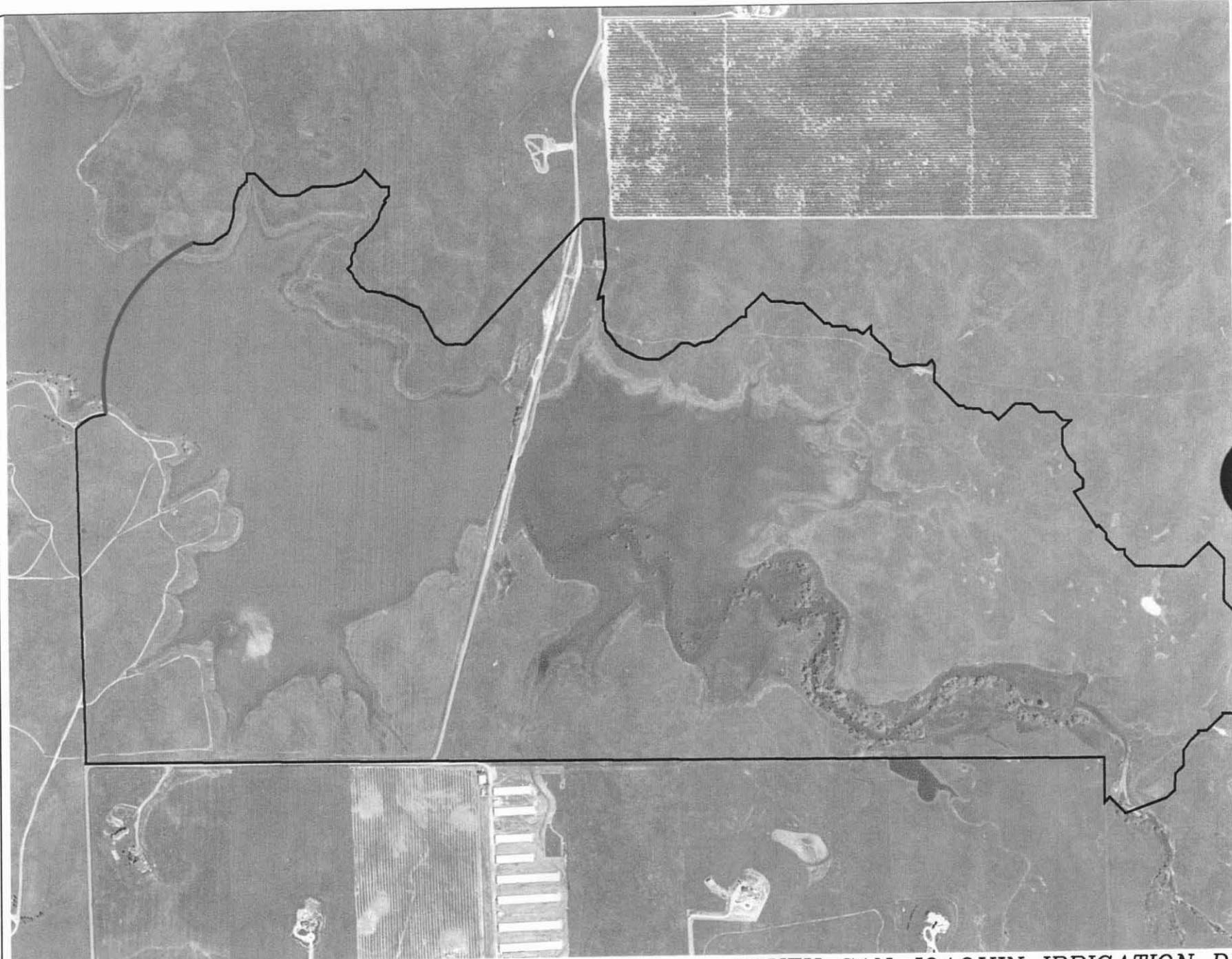
<p>COUNTY OF STANISLAUS</p> <p>By: <u></u> PAT PAUL, Chair Board of Supervisors</p> <p>Dated: March <u>13</u>, 2001</p>	<p>SOUTH SAN JOAQUIN IRRIGATION DISTRICT</p> <p>By: <u></u> Name Dave Kamper Title President</p> <p>Dated: March <u>15</u>, 2001</p>
<p>ATTEST: REAGAN M. WILSON Clerk of the Board of Supervisors of the County of Stanislaus, State of California</p> <p>By: <u></u> Deputy Clerk</p>	<p>APPROVED AS TO CONTENT:</p> <p>By: <u></u> Richard Martin General Manager</p>
<p>APPROVED AS TO CONTENT: Department of Parks and Recreation</p> <p>By: <u></u> Kevin M. Williams Director</p>	<p>APPROVED AS TO FORM:</p> <p>By: <u></u> Steven P. Emrick General Counsel</p>
<p>APPROVED AS TO FORM: Michael H. Krausnick County Counsel</p> <p>By: <u></u> John P. Doering Deputy County Counsel</p>	

Amend No. 5E.wpd
March 7, 2001 (3:35pm)

SCHEDULE OF ATTACHMENTS

Attachment 1 - Map showing no trespassing zone.

Attachment 2 - Schedule of Physical Improvements



ATTACHMENT #1

**SOUTH SAN JOAQUIN IRRIGATION DISTRICT
ENGINEERING DEPARTMENT**

ATTACHMENT 2

IMPROVEMENT OBJECTIVES AT WOODWARD RESERVOIR

The following are the physical improvement objectives for Woodward Reservoir to be funded by South San Joaquin Irrigation district as described in section 4 and 7b of the Agreement. The improvement objectives are in order of priority. Projects will be implemented in this order unless otherwise mutually agreed upon by both agencies. The associated costs of these projects will exceed the allocated funding. Alternative funding sources will be needed for the successful completion of the total list of improvements. The County will continue to pursue grants for funding and implementation of the Parks Master Plan projects.

1. Improve wastewater system
 - a. Replace all pit toilets with either chemical toilets or vaulted toilets; place additional units where required
 - b. The existing wastewater facilities to be improved, including possible alarms and berms to contain any accidental spills.
2. Install regulatory and informational/educational signs
3. Install additional garbage bunkers and garbage totes and cans
4. Potable water supply- one or more new wells with distribution systems to new developed campsites for drinking water and tree watering; also to be used for future projects for the development of restrooms and showers.
5. Irrigation system to irrigate trees in undeveloped areas
6. Design and install additional developed campsites in three locations of the undeveloped area, away from reservoir waters. (To include paving, tables, fire rings, trees, bushes, vaulted toilets, water)
7. Day use areas- installation of picnic tables and grills
8. Extend wastewater system for full-hookup and developed camping.
9. Hiking paths
10. Grassed activity areas
11. Pave roads to the newly developed campsites