

MINUTES OF THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY, CALIFORNIA

Agree. 91-166-A-1;
CSA's 70-W-1 & W-4;
Mojave Water Agcy.

March 7, 1995

FROM: EMIL A. MARZULLO, Director
Special Districts Department

SUBJECT: AMENDMENT TO MORONGO BASIN PIPELINE AGREEMENT
NO. 91-166--COUNTY SERVICE AREA 70, IMPROVEMENT
ZONES W-1 (GOAT MOUNTAIN) AND W-4 (PIONEERTOWN)

RECOMMENDATION: Acting as the governing body of County Service Area 70, Improvement Zones W-1 and W-4, approve Amendment No. 1 to Agreement No. 91-166, with Mojave Water Agency, transferring a percentage of the capacity and debt obligation allocated in the Morongo Basin Pipeline project.

BACKGROUND: On March 11, 1991, the San Bernardino County Board of Supervisors adopted Resolution No. 91-74 approving the terms and conditions of Agreement No. 91-166. County Service Area 70, Improvement Zones W-1 and W-4 are mandatory participants in Division Two of the Mojave Water Agency, which initiated Proposition "O," authorizing the sale of General Obligation Bonds for the design and construction of the Morongo Basin Pipeline. The original agreement established the responsibilities and liabilities of the participating parties and set forth the percentage each participant is obligated. The proposed amendment reduces the participation and costs for County Service Area 70, Improvement Zones W-1 and W-4.

FINANCIAL DATA: The anticipated savings will be reflected in the budgets for County Service Area 70, Improvement Zones W-1 and W-4's beginning Fiscal Year 1995-96.

REVIEW: This action has been reviewed by County Counsel (L. Thomas Krahelski) and coordinated with the Third Supervisorial District (Donna Munoz) and the Morongo Basin Pipeline Advisory Commission.

Agreement No. 91-166-A-1

cc: SDD-Bangert w/7 agrees, for
signature
Contractor c/o SDD
Auditor
Contract Compliance
CSA's 70-W-1 & W-4
CAO
Co. Counsel-Krahelski
File

Action of the Board of Supervisors

APPROVED BOARD OF SUPERVISORS
COUNTY OF SAN BERNARDINO

MOTION AYE AYE MOVE AYE SECOND
1 2 3 4 5

EARLENE SPROAT, CLERK OF THE BOARD
BY *[Signature]*

DATED: MARCH 7, 1995

lw



DISTRICT
F A S

CONTRACT TRANSMITTAL

FOR COUNTY USE ONLY

E	New	Vendor Code		Dept.	Contract Number			
M	Change			SC	91-166-A1			
X	Cancel			A				
District County Service Area 70, Dept. Orgn.					Contractor's License No.			
Improvement Zones W-1 & W-4								
District Contract Representative				Ph. Ext.	Amount of Contract			
Ronald L. Bangert				387-5811				
Fund	Dept.	Organization	Appr.	Obj/Rev Source	Activity	GRC/PROJ/JOB Number		
Commodity Code			Estimated Payment Total by Fiscal Year					
			FY	Amount	I/D	FY	Amount	I/D
Project Name								
Morongo Basin								
Pipeline Project								

CONTRACTOR MOJAVE WATER AGENCY

Birth Date _____ Federal ID No. or Social Security No. _____

Contractor's Representative LARRY ROWE

Address P.O. BOX 1089, APPLE VALLEY, CA 92302 Phone (619) 240-9201

Nature of Contract: *(Briefly describe the general terms of the contract.)*

Transferring a percentage of the capacity and debt obligation allocated in the Morongo Basin Pipeline Project.

THIS IS NOT A CONTRACT
THIS IS A COVER
TRANSMITTAL ONLY

(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

Approved as to Legal Form <u>D. Thomas Hrabelski</u> County Counsel Date <u>3/13/95</u>	Reviewed as to Affirmative Action <u>[Signature]</u> Date <u>3-13-95</u>	Reviewed for Processing <u>[Signature]</u> Agency Administrator/CAO Date <u>3-13-95</u>
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AMENDMENT TO AGREEMENT NO. 91-166

THIS AGREEMENT is entered into as of the 10th day of January, 1995, by and between the MOJAVE WATER AGENCY, a public agency, (hereinafter "AGENCY") and SAN BERNARDINO COUNTY, SERVICE AREA 70, Improvement Zones W-1 and W-4, public districts within the County of San Bernardino, (hereinafter "CSA 70 W-1 & W-4").

R E C I T A L S

A. AGENCY is a public entity organized and operating pursuant to the California Water Code Appendix, Section 97-1 et seq.

B. CSA 70 W-1 & W-4 are County Service Area Improvement Zones W-1 and W-4 within the County of San Bernardino, and are organized and operated pursuant to the Government Code Section 25210.1, et seq.

C. Said agencies are participants in an agreement (Agreement No. 91-166, hereinafter the "Project Agreement") for construction, operation and financing of the Morongo Basin Pipeline Project (hereinafter "Project"), a copy of said agreement is attached hereto and incorporated herein as Attachment "A". Said agreement allocates the percentage of the Project capacity to the participants. (*Attachment "A" is on file in the Office of the Clerk of the Board.)

D. CSA 70 W-1 & W-4 provide domestic water service within two areas known as County Service Area 70, Improvement Zones W-1 and W-4 within the County of San Bernardino which areas have received allocation of water from the Project and will be responsible for the debt costs of the Project

E. The provisions of Section 17 of the Project Agreement for the transfer of unutilized project allotment have been complied

with and the parties desire to enter into this AGREEMENT for the purpose of reallocating the water available to the Project and the debt obligation of CSA 70 W-1 & W-4 as provided in the Project Agreement.

C O V E N A N T S

NOW THEREFORE, in consideration of the preceding recitals and the mutual covenants contained herein the parties agree as follows:

Section 1. TRANSFER OF CAPACITY. CSA 70 W-1 & W-4 agree to transfer to AGENCY seventy five percent (75%) of the capacity allocated to CSA 70 W-1; and one hundred percent (100%) of the capacity allocated in the Project to CSA 70, W-4 according to the terms and conditions contained herein.

Section 2. ACCEPTANCE OF THE TRANSFER. The AGENCY agrees to accept the transfer of the said capacity in the Project and to assume payment for the debt which was allocated to Improvement Zones W-1 and W-4 according to the percentage specified in Exhibit A Part II of the Project Agreement. The first payment on the debt to be made by the AGENCY shall be the next payment due according to the schedule of payments in Section 5(b) and Section 13 of the Project Agreement. Payment for transfer of capacity shall be as provided for in Attachment "B", titled "Reimbursement from Mojave Water Agency to CSA 70 W-1 & W-4", which is attached hereto and incorporated herein.

Section 3. USE OF THE PROJECT BY CSA 70 W-4. AGENCY agrees that CSA 70 W-4, from time to time, obtain capacity in the Project as may be desired by the CSA 70 W-4 on the following terms and

conditions:

- a. CSA 70 W-4 shall be provided the use of the unused capacity in the Project for the period of time the unused capacity is available.
- b. CSA 70 W-4 shall pay for the use of such unused capacity the fair compensation as shall be established by the AGENCY for such use. Such compensation shall include, but are not limited to, costs incurred by the AGENCY for capital, operation, maintenance, and replacement costs, increased costs from any necessitated purchase of supplemental power.
- c. The AGENCY shall also establish such terms and conditions for the use of such capacity which shall include timing of notices for use, operation and maintenance requirements, scheduling, quality and other terms which are necessary for efficient operation of the Project.

Section 4. APPROVAL BY PIPELINE COMMISSION. The parties agree that this AGREEMENT shall not become effective until approved by the by the Morongo Basin Pipeline Commission.

Section 5. ASSURANCE BY AGENCY. AGENCY herein agrees that this transfer of allocation of capacity in the Project and the assumption of the debt allocated to the CSA 70 W-1 & W-4 is with the assurance that the obligation of the CSA 70 W-1 & W-4 as a participant to the Project Agreement, and any Bond Resolution and any other agreements made by the AGENCY will be promptly and adequately met.

Section 6. INDEMNIFICATION OF CSA 70 W-1 & W-4. AGENCY agrees to indemnify, hold harmless and assume the defense of, and pay all court costs and attorneys fees relating to or arising therefrom, in any actions of law or in equity, the CSA 70 W-1 & W-4, its officers, agents, employees, and elective boards, all claims, losses, damage, including property damage, personal injury, including death, an liability of every kind, nature and description, arising out of or in any way connected with the negligent acts, errors or omissions, or the willful misconduct of the AGENCY or any person directly or indirectly employed by, or acting as agent for, AGENCY, but not including the sole or active negligence, or the willful misconduct of the CSA 70 W-1 & W-4. This indemnification shall extend to claims, losses, damage, injury and liability for injuries occurring during the term of this AGREEMENT.

Section 7. NOTICES. Any notice, tender or delivery to be given hereunder by either party to the other shall be effected by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed communicated as of mailing or in case of personal delivery, as of actual receipt. Mailed notices shall be addressed as set forth below, but each party may change its address by written notice in accordance with this section.

To AGENCY

MOJAVE WATER AGENCY
P.O. Box 1089
22450 Headquarters
Apple Valley, CA 92307

To CSA 70 W-1 & W-4

COUNTY SERVICE AREA 70
P.O. Box 1658
Victorville, CA 92392

Section 8. AMENDMENTS. This is an entire AGREEMENT and no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto. Failure by either party to enforce any provisions shall not constitute a waiver of said party's right to enforce subsequent violation of the same or any other provisions.

Section 9. INUREMENT. This AGREEMENT shall be binding upon and inure to the benefit of the successors and assigns of the parties.

Section 10. ASSIGNMENT. Neither party to this AGREEMENT may assign its rights and obligations under this AGREEMENT without the acceptance of the other party and the approval of the Morongo Basin Pipeline Commission.

Section 11. TERMINATION. This AGREEMENT shall terminate upon the earliest of the following: (a) the expiration of the Project Agreement; (b) the reconveyance of the general obligation bonds voted to finance the Project; (c) fifty (50) years from the date of execution of this AGREEMENT.

Section 12. PARTIAL INVALIDITY. If any term, covenant, condition, or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and

effect, and shall in no way be affected, impaired, or invalidated thereby.

Section 13. VALIDITY. This Agreement will be construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed by their respective officers as of the date first above written.

MOJAVE WATER AGENCY

By: *Frank Smith*
President of the Board of Directors

ATTEST:

Peggy Sartor
Secretary of the Board

COUNTY SERVICE AREA 70,
IMPROVEMENT ZONES W-1 & W-4

By: *Marsala Jussi* #A1-166-A1

MAR 07 1995

Chairman, Board of Supervisors,
acting in it's capacity as the
governing body of CSA 70 W-1 and
CSA W-4

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD

EARLENE SPROAT, Clerk of the Board
of Supervisors

By: *Earlene Sproat*
Deputy



ATTACHMENT B

REIMBURSEMENT FROM MOJAVE WATER AGENCY
TO CSA 70 W-1 & W-4

CSA 70 W-1

1991/92	\$42,000.00	
1992/93	\$42,000.00	
1993/94	<u>\$72,000.00</u>	
Total		\$156,000.00

CSA 70 W-4

1991/92	\$14,000.00	
1992/93	\$14,000.00	
1993/94	<u>\$24,000.00</u>	
Total		<u>\$ 52,000.00</u>
Grand Total		\$208,000.00