

92-483-318

INFORMATION REGARDING MEDINA LAKE

SUBMITTED BY
BEXAR-MEDINA-ATASCOSA COUNTIES WCID #1
AND
THE BEXAR METROPOLITAN WATER DISTRICT

April 8, 1993

WATER SALE AGREEMENT

This Agreement is for the sale of "Excess Water" by Bexar-Medina-Atascosa Counties Water Control and Improvement District No. 1 ("Seller") to Bexar Metropolitan Water District ("Buyer"), and is to be effective on September 1, 1991 (the "Effective Date"). For and in consideration of the above recitals, the mutual promises made and the consideration given herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the mutual benefits to be derived by each of the parties hereto, each party evidences their agreement as follows:

1. Power and authorization to Contract.

1.1 Seller is a water conservation district organized and operated pursuant to Article XVI, Section 59, of the Texas Constitution and Chapters 50 and 51 of the Texas Water Code.

1.2 Buyer is a water conservation district organized and operated pursuant to Article XVI, Section 59, of the Texas Constitution and Texas Revised Civil Statutes article 8280-126, and Chapters 50 and 51 of the Texas Water Code.

1.3 Seller and Buyer are empowered to enter into this Agreement pursuant to Texas Water Code, Sections 11.036, 50.272, and Texas Revised Civil Statutes article 4413(32c), Section 5(a).

1.4 Each party represents and warrants to the other that the party is fully authorized and empowered by applicable law to enter into this Agreement as a sustaining and binding legal obligation of the party and that this Agreement does not violate or breach any applicable statute, order, rule, regulation, permit condition, bylaw, or board resolution applicable to the party making the warranty and representation.

1.5 The validity and enforceability of this Agreement is subject to the approval of the Texas Water Commission pursuant to Texas Water Code, Section 50.275.

2. Definitions.

2.1 "Buyer's Diversion Point" means each point during the term of this Agreement, whether one or more, at which Buyer

diverts water from Seller's irrigation system for Buyer's use as authorized by this Agreement.

2.2 "Buyer's Service Area" means that certain geographic area covered by Buyer's Certificate of Convenience and Necessity ("CCN") No. 10,675 issued by the Texas Water Commission and more particularly described on the map depicting the Certificated Area on file with the Texas Water Commission, or such area that is actually being served by the Buyer, whichever may be larger.

2.3 "Certificates of Adjudication" means Certificates of Adjudication Nos. 19-2130 and 19-2131, as amended, issued to Seller by the Texas Water Commission or its successor, and authorizing Seller to impound, divert and use water from Medina, Diversion and Chicon Lakes in the amounts, and for the purposes stated therein.

2.4 "Conservation Pool Level" means the contour line around Medina Lake at 1,030 feet mean sea level (msl) based upon the USGS Benchmark of 1084 msl at the top of Medina Dam.

2.5 "Contract Year" shall mean the annual period from January 1 through December 31 of each year of this Agreement; provided, however, the first Contract year shall be the short period from the Effective Date through December 31. The final Contract Year shall be the period from January 1 to the Termination Date.

2.6 "Excess Water" means all water, if any, available under Seller's Certificates of Adjudication which Seller's Board of Directors has determined in its sole and absolute discretion is in excess of the Seller's annual demands under "Prior Vested Rights" as defined in Section 2.8. The availability of Excess Water shall be determined from time to time by Seller in good faith. Provided, however, that Seller shall make a determination of the availability of Excess Water at least twice each year at a regularly scheduled meeting of Seller's Board of Directors held in the months of February and August of each Contract Year.

2.7 "Price" means the price Seller charges to Buyer pursuant to Section 4 of this Agreement.

2.8 "Prior Vested Rights" means any right to purchase, appropriate, divert, or otherwise obtain water by a third-party pursuant to Seller's Certificates of Adjudication, existing as of the Effective Date of this Agreement, including without limitation the "Service Rights" of Seller's landowners within Seller's boundaries to purchase approximately two acre feet of water per acre of land per year for irrigation of land for which the flat rate tax payment imposed by Seller has been paid. Without limiting the foregoing, Prior Vested Rights shall also include any rights

arising after the Effective Date as a result of any adjudication, order, regulation, or amendment to Seller's Certificates of Adjudication or other event or circumstance giving rise to a right to divert or appropriate water, including without limitation a request made by the Springhills Water Management District of Bandera County, Texas, to obtain in accordance with Section 7.6 of this Agreement up to 5,000 acre-feet per annum of water from Seller either by long-term contract or outright sale of Seller's water rights.

2.9 "Service Rights" means the right of a landowner or his tenant with land included within the Bexar-Medina-Atascosa Counties WCID No. 1 (the "District"), to purchase water for irrigation from the Seller.

2.10 "Termination Date" means the date upon which this Agreement terminates in accordance with its terms as set forth in paragraph 7.3.

2.11 "Water Meter" means such flow meter(s) and recording device(s) as are approved by the Seller, that permit the determination of quantities of raw water diverted or withdrawn by Buyer in units of cubic feet within five percent accuracy as contemplated in Section 6.2 of this Agreement.

3. Sale.

3.1 Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, during each Contract Year all Excess Water as determined by Seller, whether or not Buyer determines it can reasonably sell or otherwise use the same within Buyer's Service Area.

3.2 Buyer shall be obligated to divert all water declared to be Excess Water by Seller within thirty (30) days of the date Buyer receives notice of such declaration from Seller. Provided, however, that notwithstanding anything contained herein to the contrary, all water declared to be Excess Water by Seller shall be diverted by Buyer in the Contract Year in which the Buyer receives notice from Seller. Unless otherwise agreed to in writing by Seller, the Buyer's failure to divert the Excess Water within the time periods specified in this Section 3.2, and in any event in the same Contract Year, shall cause Buyer to forfeit any right or claim to divert said Excess Water. Provided, however, that such forfeiture shall not serve to extinguish, diminish or otherwise relieve Buyer of the obligation to pay Seller the Price established by this Agreement for the forfeited Excess Water, which obligation accrues on the date Seller declares the same to be Excess Water.

3.3 Buyer agrees to accept the water "As Is" from Seller. Seller makes no warranty, expressed or implied, as to the

quality or quantity of the water to be furnished. Any costs associated with treatment, testing, reporting, and maintaining of any water sold under this Agreement to any applicable lawful standards for whatever purposes Buyer may intend to use the same, including without limitation domestic or municipal consumption, shall be at the sole expense of Buyer.

3.4 Seller makes no warranty to Buyer that water will be available at any particular time, in any particular quantity pursuant to Seller's Certificates of Adjudication. Furthermore, Buyer acknowledges that in any given Contract Year that Seller may have no Excess Water available to sell to Buyer. Seller shall have no obligation to supply water to Buyer pursuant to Seller's Certificates of Adjudication or to provide any alternative supply of water to Buyer upon Seller's determination that no Excess Water is or will be available during any Contract Year. Buyer further acknowledges that the determination of the availability of Excess Water shall be made by Seller in good faith at the sole discretion of Seller's Board of Directors. The obligation of Seller under this Agreement is limited to an obligation to furnish Excess Water, as determined by Seller, when, and if water is available in sufficient quantities to satisfy all Seller's demands under Prior Vested Rights and to maintain its Conservation Pool Level in Medina Lake. Seller's obligation to furnish Excess Water to Buyer is further limited by and subject to the general law on distribution and allocation of water during shortages of supply as contemplated by Section 11.039, Texas Water Code, or any other statute, order, regulation, or directive issued during the term of this Agreement by any court or other governmental authority, including the Texas Water Commission. Seller's determination that no Excess Water is available shall not be subject to review or challenge by Buyer, nor shall it give rise to any claim for damages or loss to Buyer.

3.5 Buyer acknowledges and agrees that Seller has the right to maintain and operate Medina, Diversion and Chicon Lakes and their sources as Seller may deem appropriate under the then prevailing facts and circumstances. Buyer further acknowledges that Seller has a right at any and all times in the future to impound and release waters within and from Medina, Diversion and Chicon Lakes in any lawful manner and to any lawful extent Seller may see fit without regard for whether such action may affect the availability of Excess Water in any Contract Year or Years. Seller shall have no obligation by reason of this Agreement to release or not to release any impounded waters at any time.

3.6 All water diverted to Buyer pursuant to this Agreement shall either be used by Buyer for Municipal Purposes within Buyer's Service Area or, upon prior written approval of Seller, resold by Buyer to third parties outside Buyer's Service Area for any lawful purposes.

4. Price.

4.1 Buyer agrees to pay to Seller, for each metered acre-foot, or any portion thereof, of water diverted by Buyer, a dollar amount equal to fifty-six and No/100ths dollars (\$56.00) per acre-foot of water diverted by Buyer at the Buyer's Diversion Point (the "Price"), plus Buyer's pro-rata share, if any, of all amounts "passed through" to Buyer pursuant to Section 4.5 below.

4.2 Seller shall be entitled to adjust the per acre-foot Price effective at the commencement of each Contract Year beginning with January 1 of the third Contract Year.

4.3 The Price shall be further adjusted for each acre-foot, or any portion thereof, of water purchased by Buyer from Seller that is resold by Seller for a price greater than twenty percent (20%) of the Price established by Seller pursuant to this Section 4. The price per acre-foot of water, as set according to Section 4.1 shall be adjusted by increasing the Price by an amount on an acre-foot or smaller unit basis by fifty percent (50%) of the excess received by Buyer for the water above the Price.

4.4 The Price in effect from time to time shall be subject to adjustment in accordance with applicable law and regulation and shall at all times conform to the requirements of the Texas Water Code, including as applicable Section 50.4651, and any other applicable law and regulation. Seller shall make the price adjustments as may be required to comply with applicable law and regulation.

4.5 In addition to the adjustments in price described in the proceeding paragraphs of this section, Seller shall pass through to Buyer in like amounts any direct cost or expense which may be imposed upon Seller subsequent to the execution of this Agreement in connection with the fulfillment of its obligations under this Agreement by taxation, assessment, or as a result of regulations or requirements lawfully imposed by the State of Texas, the United States, or any state or federal agency including without limitation a pro-rata share of annual watermaster fees assessed to Seller by the Texas Water Commission pursuant to Texas Administrative Code, Title 31, Chapter 304 (the "Additional Costs"). Any amounts passed through shall be added in the Price for water furnished by Seller to Buyer from time to time under the terms of this Agreement. Buyer's pro-rata share of the additional costs shall be calculated using the following formula where:

"X" = the number of acre-feet of Excess Water in a contract year

"Y" = total number of acre-feet of BMA's water rights

"Z" = total Additional Costs

$$X/Y \times Z = \text{Buyer's Pro-rata Share}$$

4.6 If in any Contract Year the Buyer does not divert all or a portion of Seller's Excess Water within the time periods specified in Section 3.2 above, then Buyer shall pay Seller the entire Price for each acre foot of Excess Water, as determined by the Seller's Board of Directors, that Buyer has not diverted. Seller shall determine the amount due, if any, and bill Buyer for such amount. Buyer agrees to pay Seller the amounts due under this Section 4.6 pursuant to Section 5.1 of this Agreement. In the event Buyer elects within the earlier of (i) thirty (30) days of the date Seller notifies Buyer of the availability of Excess Water or (ii) ten (10) days of the end of any Contract Year not to divert all or a portion of the Excess Water in any Contract Year, Seller shall be free to use the Excess Water in any lawful manner deemed appropriate or useful by Seller. Provided, however, that in the event Buyer determines that Buyer is not able to use or store the Excess Water, Buyer shall be entitled to purchase said Excess Water and to resell the same to a third-party for any lawful purpose. Provided, however, that all expense, risk of loss and/or any other liability associated with such a sale, including without limitation all costs associated with (i) acquiring all necessary governmental approvals including amending or acquiring any permits, Certificates of Adjudication or Certificates of Convenience and Necessity required by the Texas Water Commission, (ii) acquiring easements and constructing transportation facilities, or (iii) transportation losses of the water, shall be borne solely by Buyer. Provided, further, that any such sales of Excess Water to a third-party are subject to the provisions of Section 4.3 of this Agreement regarding adjustments to the Price.

5. Payment.

5.1 Buyer shall pay to Seller the full amount of the Price due for all Excess Water whether or not diverted by Buyer pursuant to this Agreement. Payment shall be made by the fifteenth (15th) calendar day of the month following the date on which Seller notifies Buyer of the availability of Excess Water.

5.2 Payments shall be made to Seller in cash, certified funds, or cashier's check payable to Seller delivered to Seller's principal office as designated by Seller in writing to Buyer from time to time.

5.3 Time shall be of the essence in the payment of the full amount of the Price due for Excess Water pursuant to the terms of this Agreement. Failure of Buyer to make a timely payment pursuant to Section 5.1 above shall be a default by Buyer in the performance of Buyer's obligations pursuant to this Agreement. Among the remedies for such default shall be a right of Seller to impose a late fee in the amount of five percent (5%) of the amount not received by the due date specified in Section 5.1 above.

5.4 To the extent required by applicable law, Buyer shall make payments to Seller from the revenue of Buyer's water system.

6. Delivery.

6.1 Seller shall be obligated to furnish any Excess Water to Buyer at Buyer's Point of Diversion, whether one or more, only by gravity flow. Buyer shall furnish at its sole expense all pumping facilities and the Water Meter(s), and gate(s), check(s), or other diversion facilities required to divert and to measure accurately the diversion of water, as contemplated by Section 6.2 below. Buyer shall bear all the expense, including the risk of operating, maintaining, repairing, and replacing all such facilities. Buyer shall furnish at its sole expense all transportation facilities from Buyer's Point of Diversion, whether one or more, to Buyer's water system. Buyer shall bear all expense and risk of operating, maintaining, repairing, and replacing all such transportation facilities. Seller will provide Buyer with reasonable access on and across Seller's property in the vicinity of the Point of Diversion, whether one or more, to install and maintain the Water Meter(s), pumping facilities, and transportation facilities. Buyer agrees to repair any damages to Seller's property or to reimburse Seller for all costs associated with repairing or replacing the same to its prior condition.

6.2 The Water Meter(s) may be calibrated at any reasonable time by either party to this Agreement, provided that the party making the calibration shall notify the other party at least two weeks in advance and allow the other party to witness the calibration. The Seller may install, at its expense, check meters in or to the Water Meter(s) at any time and may leave such check meters installed for such periods as Seller may deem reasonably necessary to determine the accuracy of the Water Meter(s). On or before the first day of each month, Seller shall have the right to make a reading of the Water Meter(s) installed by the Buyer. The Buyer shall be responsible for providing means of access to the Water Meter(s) to representatives of the Seller. At its expense, Buyer shall test the Water Meter(s) for accuracy once each Contract Year at intervals of approximately 12 months, and Buyer shall promptly furnish to Seller a report of such test(s). In the event any question arises at any time as to the accuracy of the Water Meter(s), then the Water Meter(s) shall be tested promptly upon the demand of Seller with such tests being at the expense of Seller if the Water Meter(s) is found to be correct and at the expense of Buyer if the Water Meter is found to be incorrect. Readings within five percent (5%) of accuracy prescribed by the manufacturer of the meter, shall be considered correct. If, as a result of any tests, any Water Meter(s) is found to be registering inaccurately (that is, outside five percent (5%) of accuracy prescribed by the manufacturer of the meter), then the readings of the Water Meter(s)

shall be corrected at the rate of its inaccuracy for any period which is definitely known and agreed upon. If no such period is known and agreed upon, the shorter of the following periods shall be used as the basis for correction:

a. a period extended back either 60 days from the date of demand for the test or, if no demand for the test was made, 60 days from the test;

b. a period extending back half of the time lapsed since the last previous test.

The records of the readings shall be adjusted accordingly and the Price paid to Seller by Buyer shall also be adjusted. Any amount due Buyer as a result of such adjustment shall be credited against the next payment due Seller. Buyer shall pay any amount due Seller upon demand. Following each test, Buyer shall adjust the Water Meter(s) as required to register accurately. Buyer shall notify Seller prior to making each test of the Water Meter(s), and the Seller shall have the right to have a representative present at each test to observe the same and any meter adjustments found to be necessary.

6.3 The Seller shall bear all transportation losses, including without limitation, any loss by theft, evaporation or seepage in the delivery of water to Buyer's Point(s) of Diversion. Buyer shall bear all risks of loss, of every kind for all water diverted by Buyer at its Point(s) of Diversion.

6.4 Buyer's Diversion Points shall be designated from time to time by Buyer in writing and delivered to Seller pursuant to Section 13.1 below. Buyer and Seller shall maintain in their offices copies of maps which reflect the Diversion Points designated by Buyer in accordance with this Section 6.4.

7. Agreement Term.

7.1 The initial term of this Agreement shall be from the Effective Date through December 31, 2011.

7.2 Subject to the provisions of Section 7.3 below, Buyer shall have the option on a one time basis to extend this Agreement for an additional period of ten (10) Contract Years by giving, at least one year prior to the Termination Date, written notice to Seller of Buyer's election to exercise such option to extend. If the option is exercised, the extended term shall be through December 31, 2021.

7.3 The "Termination Date" shall be the date specified in paragraph 7.1 above unless (i) Buyer shall timely exercise its option, or (ii) the Agreement is terminated sooner by either Buyer

or Seller pursuant to the terms of this Agreement. If Buyer does timely exercise its option, then the Termination Date shall be the last day of the extended term. Notwithstanding the foregoing, the Termination Date shall be the date specified by Seller in the event Seller elects to terminate this Agreement in accordance with the provisions of Section 7.4, 8.3, 8.4, 10.1, 10.2 or 11.3 hereof, or by Buyer in the event Buyer elects to terminate this Agreement in accordance with the provisions of Section 7.5.

7.4 Notwithstanding anything contained herein to the contrary, upon 120 days prior written notice (the "Notice") to Buyer, Seller shall have the right to terminate this Agreement, on the date specified by Seller in its notice to Buyer (which date shall be at least two (2) ^{years} after the date of the Notice), by paying to Buyer in cash a termination fee consisting of an amount of money determined as follows:

a. Seller shall pay to Buyer a "Cash Payment," according to the formula outlined below, the "depreciated value" of all property and assets, including without limitation any equipment, facilities, together with any design, engineering or architectural costs associated therewith (the "Improvements") to extent such Improvements are attributable solely and directly to the transmission of Excess Water from BMA to BMWD pursuant to the Agreement. The value of the improvements subject to depreciation shall be the actual cost(s) of the Improvements as recorded by Buyer and reported to Seller in the year incurred, less salvage value (if any). For purposes of calculating the Cash Payment to Buyer under this Section 7.4 only, the Parties agree that for Improvements which have been built, the depreciated value of the Improvements shall be calculated by "straight line" depreciation over the shorter of (i) the "useful life" of the Improvements or (ii) thirty (30) years. For Improvements that have been designed, engineered, etc., but have not been built as of the date of the Notice, the Parties agree that the depreciated value of the Improvements, shall be calculated by "straight line" depreciation over a five (5) year period such that any costs incurred by Buyer for Improvements which were not built within five (5) years of the year in which the costs were recorded and reported to Seller, Buyer shall not be entitled to recoup any of those costs as part of the Cash Payment made to Buyer pursuant to this Section 7.4. Provided, further, that Seller shall be entitled to deduct from the depreciated value to be paid to Buyer, in addition to any "salvage value," the full amount of any grant funds received by Buyer for the cost of all or any portion of the Improvements, but only to the extent Buyer is not required to refund or repay the grant funds because of Seller's exercise of the rights contained in this Section 7.4

b. In addition to the depreciated value of the Improvements to be included in the Cash Payment to be paid to Buyer

in accordance with subparagraph a. above, on the date specified in the Notice above, Seller shall also pay to Buyer an amount of money equal to the greater of (i) fifty percent (50%) of the original actual costs of all the Improvements, exclusive of any costs for Improvements which were not built within five (5) years of the year in which the cost was incurred by Buyer, as recorded by Buyer and reported to Seller, or (ii) fifty percent (50%) of any replacement project acquired by Buyer to the extent said project provides a water supply comparable to the water supply contemplated by this Agreement in light of the quantities of water sold to Buyer historically pursuant to this Agreement; provided, however, that in no event shall Seller be required to pay Buyer more than one hundred percent (100%) of the original cost of the Improvements (exclusive of the cost of any Improvements that were not built within five (5) years of the year in which the costs associated with those Improvements were incurred by the Buyer).

c. During the two (2) year period between the date of the Notice and the termination period specified therein (the "Phase-Out Period") Seller shall be obligated to sell "Excess Water," to the extent the same is determined to be available during the Phase-Out Period, to Buyer up to the amount of the highest number of acre-feet of water previously sold to Buyer in any Contract Year prior to the date of the Notice.

7.5 a. In the event Seller receives from any third party during the term of this Agreement a bona fide offer to purchase all or a portion of Seller's water rights under Seller's Certificates of Adjudication, Seller shall have the right to negotiate the terms and conditions of such a sale to said third party; provided, however, that Seller's acceptance of any such negotiated third party offer shall be subject to a right of first refusal in Buyer as follows:

(i) Upon receipt of an offer contemplated by this Section 7.5 acceptable to Seller ("Third-Party Offer"), Seller shall in writing offer to sell to Buyer on the same terms and conditions the water rights sought to be acquired by the third party. Any such written offer shall be delivered to Buyer in the same manner prescribed for any other notice under this Agreement as contemplated in Section 13.1.

(ii) Upon receipt of Seller's written offer to sell, Buyer shall have one hundred eighty (180) days to accept said offer in writing, or the same shall automatically become null and void and of no further force or effect. In the event Buyer rejects, or otherwise fails to accept Seller's offer to sell, in a timely fashion, Seller shall be free to accept the Third-Party Offer pursuant to the same terms and conditions tendered Buyer.

(iii) In the event Seller sells only a portion of its water rights pursuant to this Section 7.5, or in the event of the sale of all Seller's water rights wherein Seller otherwise provides for the continued sale of Excess Water to the Buyer by the Third-Party Purchaser, then this Agreement shall remain in full force and effect unless otherwise terminated in accordance with the terms of this Agreement.

7.6. Buyer acknowledges that Seller previously has disclosed to Seller a request from the Springhills Water Management District ("SWMD"), a special legislative water district operating in Bandera County, Texas, to purchase on a firm yield basis up to 5,000 acre-feet of water per year from Seller beginning in an unspecified year sometime between the Effective Date of this Agreement and the year 2011. Buyer further acknowledges Seller's desire to supply SWMD the requested water. However, Buyer and Seller agree that SWMD's inability to specify the precise date of anticipated diversion and quantity of water as of the Effective Date of this Agreement affects Buyer's ability to make plans to enjoy the benefits accruing to Buyer pursuant to this Agreement. Accordingly, in an effort to accommodate SWMD's request and to allow Buyer to begin to enjoy the benefits of the Agreement at the earliest possible date, the Parties agree that notwithstanding anything to the contrary contained in this Agreement (to include without limitation the provisions of Sections 7.4 and 7.5 above), in the event Seller receives a written request from SWMD within six (6) months of the Effective Date of this Agreement specifying the quantity of water desired and the dates SWMD anticipates commencement of diversion of said amounts (the "Specified Water"), Seller shall, on terms and conditions acceptable to Seller, be entitled to enter into a contract with SWMD to either (i) sell up to 5,000 acre-feet of water rights to SWMD without first tendering a right of first refusal to Buyer, or (ii) enter into a long term contract to sell up to 5,000 acre-feet of water per annum to SWMD, which contract shall constitute a portion of Seller's "Prior Vested Rights" as defined in Section 2.8 above.

Provided, however, that in the event SWMD fails to specifically offer to purchase all, or any portion, of the water within the time period specified herein, then in such event Seller's right to negotiate with SWMD contained in this Section 7.6 shall terminate as to any portion of the 5,000 acre-feet of water not included as a portion of the "Specified Water." Provided, further, that any water supply contract negotiated pursuant to Section 7.6 shall provide that during the term of this Agreement (i) that in the event SWMD fails to commence the diversion of the Specified Water by the dates set forth in the BMA/SWMD contract, the BMA/SWMD contract shall terminate automatically as to that portion of the Specified Water not timely diverted, unless an extension of the time for the commencement of diversion is approved by Buyer; and (ii) that SWMD shall be precluded from selling or

reselling any water to any third party outside of its certificated service area without Buyer's prior approval.

Subject to the terms and conditions set forth in this Section 7.6, Buyer hereby expressly waives any right, claim or entitlement to a right of first refusal to purchase the water rights sought to be acquired, if any, by SWMD.

7.7 Buyer shall have the right to terminate this Agreement for any reason by providing written notice of such termination to Seller in accordance with Section 13.1 of this Agreement. Provided, however, that such termination shall not become effective until December 31st of the Contract Year following the Contract Year in which the notice is received by Seller. Provided, further, that Buyer shall be obligated to purchase from Seller all excess water, as determined by Seller's Board of Directors, until the termination of the Agreement specified in this Section 7.7 becomes effective.

8. Permits and Consents.

8.1 Buyer shall be solely responsible at its expense for obtaining any amendments to Seller's Certificates of Adjudication or obtaining any additional permits or consents that may be required for Buyer to divert water at Buyer's Point(s) of Diversion. Buyer shall be solely responsible for the maintenance of any additional permits and consents in full force and effect throughout the term of this Agreement. Buyer shall observe all conditions imposed as part of any such permits or consents.

8.2 a. Seller will cooperate with Buyer in Buyer's prosecuting its applications and, as appropriate, file jointly all applications with Buyer for all required amendments to Seller's Certificates of Adjudication and any additional permits and consents to make the diversions of water pursuant to this Agreement. Provided, however, that Buyer shall be obligated to reimburse Seller for all out-of-pocket expenses incurred by Seller in the fulfillment of its obligations under this Section 8.2, including without limitation all application fees, attorneys' fees or expert consulting fees.

b. In consideration of Buyer and Seller entering into this Agreement and Seller's inability to provide Buyer with water for any authorized other than for irrigation purposes under Seller's Certificates of Adjudication as currently issued, Seller agrees to prepare and file the necessary applications with the Texas Water Commission to amend its Certificates of Adjudication to authorize Seller to divert and use all the water authorized under its Certificates of Adjudication for the dual purposes of irrigation and municipal uses. Buyer agrees to reimburse Seller for all out-of-pocket expenses which may be incurred by Seller in

the preparation, filing and prosecution of such applications, including without limitation all application fees, attorneys' fees and expert consulting fees.

8.3 Without limitation of the generality of the foregoing paragraphs of this Section 8.0, Buyer agrees in good faith to seek to obtain or cause to be obtained all approvals, if any, required from any governmental agency or other regulatory body for any sanitary sewage system or systems which collect domestic sewage derived from water provided to Buyer pursuant to this Agreement. Failure of Buyer to meet any standards imposed by any such agency shall subject Buyer to all remedies allowed by law including, without limitation, termination or suspension of this Agreement by Seller, in addition to such other rights in event of default as may be provided by this agreement.

8.4 Buyer agrees to develop and implement a water conservation program satisfactory to the Texas Water Commission. Buyer agrees that the water diverted by Buyer pursuant to this Agreement will be used in accordance with such program. Buyer agrees in its program to promote practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency and the use of water, or increase the recycling and reuse of water so that a water supply is made available for future alternative uses. This requirement shall be imposed by Buyer in any contracts for resale of the water diverted under this Agreement. Buyer's failure to comply with any of the requirements of this Section 8.4 shall constitute a default pursuant to Section 10.2 of the Agreement, and Seller shall have all of the remedies specified in Section 10.1 for a failure to make payment.

9. Indemnification.

Buyer agrees to defend, indemnify and hold harmless Seller, its directors, officers, employees and agents, against and from any and all claims, demands, causes of action, indemnifications, suits, or litigation (including all costs, expenses and attorneys' fees incurred in respect of any such matters) of every kind and character, brought or asserted for injuries or death of any persons, or for damaged property, or for any other damage, fine or penalty whatsoever, arising out of, resulting from, or in connection with the purchase and delivery of water and the performance of Buyer's other obligations hereunder. This covenant to defend, indemnify and hold harmless includes without limitation any injury, death, damage, fine or penalty which in any part arises out of, results from, or occurs in connection with the negligence or fault of Buyer, its directors, officers, employees or agents. The term "fault" as used herein includes, among other matters, a condition or event that gives rise to strict liability, or to a breach of warranty. However, if the Buyer, its officers,

employees, agents or contractors did not cause the injury, death, damage, fine or penalty, in whole or in part, and are not otherwise responsible for such death, injury, damage, fine or penalty, then Buyer shall have no liability under this indemnity. This indemnity is hereby limited and shall be interpreted (including the severance of invalid provisions) as may be required to make the indemnity valid and enforceable under existing law. Buyer agrees to take such actions as may be necessary or required to cause this indemnity to be enforceable and valid to its fullest permitted scope under law.

10. Default.

10.1 In the event that Buyer fails to make payment in accordance with the provisions of this Agreement including without limitation the time prescribed in Section 5.1 above, Seller may suspend all diversions of water by Buyer until such payment is made. Provided, however, that Seller agrees to confirm the suspension of the diversion to Buyer in writing, which notice shall be delivered to Buyer in accordance with Section 13.1 below, and shall specify that the Buyer's failure to remit the entire unpaid balance (including the late fee specified in Section 5.3 (above) with five (5) business days shall constitute a default under the terms of this Agreement which shall entitle Seller to pursue all other remedies available at law or in equity for failure of the Buyer to make timely payment including, without limitation, termination of this Agreement for a material breach. For this purpose a failure to make payment within the five (5) day period specified in this Section 10.1 is a material breach. Nothing in this Section 10.1 shall limit any other remedy provided Seller in this Agreement.

10.2 In the event of a default by Buyer other than a failure to make payment covered by Section 10.1 above, Seller shall give Buyer written notice of such default, and Buyer shall have a reasonable time to cure such default, not to exceed thirty (30) days. Provided, however, that in the event of a default by Buyer which poses a threat to the health, safety, or welfare of the public or a threat to pollute the environment, or result in the waste of water made available under this Agreement, Seller shall be entitled to suspend all diversions of water by Buyer until such default is cured. Provided, however, that Seller agrees to confirm the suspension of diversions by Buyer in writing, which notice shall be delivered to Buyer in accordance with Section 13.1 below, and shall specify that Buyer's failure to cure the default within ten (10) business days shall constitute a default under the terms of this Agreement which shall entitle Seller to declare an immediate default of this contract without giving Buyer any further opportunity to cure. Upon the failure to cure timely any default (or declaration of an immediate default as herein provided), Seller

shall have all of the remedies specified in Section 10.1 for a failure to make payment.

11. Assignments; No Third Party Beneficiary.

11.1 This contract may not be assigned or delegated in whole or in part for any purpose by Buyer. Seller may assign this contract and delegate its performance to any successor in interest of Seller in the ownership and/or operation of Medina Lake.

11.2 The parties are entering into this Agreement solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege, or benefit on any person or entity other than the parties hereto.

11.3 In the event Seller enters into an agreement with any third party to convey or does convey its right to impound, appropriate, and divert water controlled by Seller under its Certificates of Adjudication, then Seller or its assignee may elect by giving written notice to Buyer (i) to terminate this Agreement pursuant to Section 7.4, or (ii) to limit during the remainder of the Contract Term the amount of Excess Water available for Buyer to purchase to the greatest quantity of water that has actually been diverted to Buyer during any prior Contract Year. Provided, further, that in the event Seller determines to exercise the right granted in this Section 11.3 to limit the amount of water to be provided to Buyer, Buyer's right to extend this Contract pursuant to Section 7.2 shall terminate immediately and be of no further force or effect.

12. Attorneys' Fees.

12.1 In the event either party defaults under this Agreement and, as a result of such default, the other party employs an attorney to enforce the provisions of this Agreement, then the non-defaulting party can recover from the defaulting party reasonable attorneys' fees and expenses, irrespective of whether suit is filed. In the event of litigation between the parties concerning this Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees and litigation expenses from the other party.

13. General Provisions.

13.1 Any notice required to be delivered to any party pursuant to this Agreement shall be delivered to the following addresses; provided, however, that either party may change the address for receipt of notices by providing written notice of such change to the other party:

TO THE SELLER:

Bexar-Medina-Atascosa Counties Water
and Improvement District No. 1
Attention: Cliff A. Mueller, President
P.O. Box 170
Natalia, Texas 78059

WITH A COPY TO:

Edmond R. McCarthy, Jr.
McGinnis, Lochridge & Kilgore
919 Congress Avenue, Suite 1300
Austin, Texas 78701

TO THE BUYER:

Bexar Metropolitan Water District
Attention: Thomas C. Moreno, General Manager
2706 West Southcross, South San Antonio
P.O. Box 3577
San Antonio, Texas 78211-6577

WITH A COPY TO:

Louis F. Rosenberg
De Mazieres Building
322 Martinez Street
San Antonio, Texas 78205-3407

13.2 This Agreement and any exhibit attached hereto contain the entire agreement between Seller and Buyer, and both parties agree that this Agreement cannot be altered or varied by any prior, contemporaneous, or subsequent oral agreement, stipulation, representation, or understanding.

13.3 The headings contained in this Agreement are for convenience only and shall not enlarge or limit the scope or meaning of the various sections hereof. Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise clearly requires.

14. Compliance with Filing Requirements.

14.1 Seller agrees to file a copy of this Agreement with the Executive Director of the Texas Water Commission, P.O. Box 13087, Capitol Station, Austin, Texas 78711. Buyer acknowledges that the effectiveness of this contract is dependent upon compliance with the rules of the Texas Water Commission.

Executed in multiple originals this 19th day of August 1991.

Seller:

BEXAR-MEDINA-ATASCOSA COUNTIES
WATER CONTROL AND IMPROVEMENT
DISTRICT NO. 1

By: *C.A. Mueller*
C.A. "Cliff" Mueller
President, Board of Directors

Buyer:

BEXAR METROPOLITAN WATER DISTRICT

By: *Ronald C. Williamson*
Ronald C. Williamson
President, Board of Directors

FIRST AMENDED WATER SALE AGREEMENT

RECITALS

WHEREAS, the Bexar-Medina-Atascosa Counties WCID No. 1 ("BMA") and the Bexar Metropolitan Water District ("BMWD") entered into that certain "Water Sale Agreement" dated August 19, 1991 (the "Agreement") to be effective September 1, 1991 (the "Effective Date"); and

WHEREAS, BMA and BMWD are collectively referred to herein as the "Parties"; and

WHEREAS, in response to a request from the Texas Water Commission, the Parties desire to establish the average quantity of water anticipated to be furnished on an annual basis under the Agreement; and

WHEREAS, the Parties desire to clarify other matters which were fully understood and agreed to by the Parties at the time they executed the Agreement, but which might otherwise might not be fully clear to third parties reading the Agreement;

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals, the mutual benefits to be derived by the Parties pursuant to both the Agreement and this "First Amendment to the Water Sale Agreement," Ten and No/100ths Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged by the Parties, the Parties agree as follows:

1. Based upon (i) the proposed increased conservation methods to be implemented by BMA, and (ii) the anticipated continued urbanization of the BMA district and a corresponding reduction in the demand within the BMA System for irrigation water, the Parties anticipate that during the term of the Agreement, from and after the "Operative Date," that a minimum of ten thousand (10,000) acre-feet per annum of untreated surface water will be made available to BMWD pursuant to the Agreement.

2. While BMA agrees and acknowledges that it will use its best efforts to make such waters available to BMWD on an annual basis, the Parties, and in particular BMWD, fully acknowledge, confess and agree that the Agreement provides only for the delivery of "Excess Water" pursuant to the terms of the Agreement. Nothing in this "First

Amendment" is intended to, or is subject to being construed as, amending any of the rights, conditions or obligations of either Party as expressed in the Agreement except to the extent specifically provided for herein. Provided further, that BMWD acknowledges that BMA has given BMWD no warranty, express or implied, with regard to either the quality or quantity of water to be delivered to BMWD pursuant to the Agreement.

3. The "Operative Date" of the Agreement shall be the date on which BMA obtains the necessary amendments to its Certificates of Adjudication from the Texas Water Commission to authorize it to deliver water to BMWD for municipal or other lawful purposes as contemplated by the Agreement.

4. Section 7 of the Agreement, entitled "Agreement Term," is hereby amended to provide that the Agreement remains effective as of September 1, 1991; however, BMA's right to declare the availability of "Excess Water" for a period of twenty (20) years, including the one time option of BMWD to extent its right to buy Excess Water for an additional ten (10) year period, as contemplated in the Agreement shall now run from the "Operative Date" as defined in paragraph 3 above, instead of the "Effective Date" defined in the Agreement.

5. The Parties further agree, that to the extent necessary to give full effect to the intent of paragraph 4 above, all other dates and/or deadlines contained in the Agreement are amended to run from the "Operative Date" rather than the "Effective Date" of the Agreement.

6. The Parties acknowledge that the purpose of this Amendment, and the desire of the Parties, is to affirm their commitment to maximize the mutual benefits available to both Parties during the term of the Agreement, as modified herein, and to work cooperatively in good faith to insure the achievement of that goal.

7. Except as otherwise expressly provided herein, the terms, conditions and the obligations, liabilities and rights of the Parties, as expressed in the Agreement, remain in tact and are otherwise unaffected by this First Amended Water Sale Agreement.

8. Unless otherwise expressly provided therein in writing, it is the express intent of the Parties that the Water Sale Agreement and this First Amended Water Sale Agreement shall survive, and be binding upon the Parties, beyond the execution of any and all other agreements,

contracts and/or memorandum of understanding of every kind or nature, regardless of whether the same are executed before, simultaneously with, or after the signing of this First Amended Water Sale Agreement.

Executed and delivered in multiple counterparts on the dates shown below to be effective September 1, 1991.

SELLER:

BEXAR-MEDINA-ATASCOSA COUNTIES WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1

DATE: April 13, 1992

C.A. Mueller
C.A. "Cliff" Mueller,
President, Board of Directors

Attest: Erich Linnartz
Erich Linnartz,
Secretary

BUYER:

BEXAR METROPOLITAN WATER DISTRICT

DATE: May 20, 1992

Ronald C. Williamson
Ronald C. Williamson,
President, Board of Directors

Attest: Marni Spettengul
Secretary
Board of Directors

SECOND AMENDMENT TO WATER SALE AGREEMENT
(Identification of Diversion Points 1-5)

RECITALS

WHEREAS, the Bexar-Medina-Atascosa Counties WCID No. 1 ("BMA" and the Bexar Metropolitan Water District ("BMWD") entered into that certain "Water Sale Agreement" dated August 19, 1991, (the "Agreement") to be effective September 1, 1991, (the "Effective Date"); and

WHEREAS, BMA and BMWD are collectively referred to herein as the "Parties"; and

WHEREAS, in response to a request from the Texas Water Commission, the Parties desire to establish the Diversion Points, one or more of which are anticipated to be used, in connection with implementation of the Water Sale Agreement dated August 19, 1991; and

WHEREAS, the parties desire to identify the five (5) Diversion Points, which have been identified between them at this time, and to make each of these Diversion points, by attachment to this Second Amended Water Sale Agreement, a part hereof;

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals, and the mutual benefits to be derived by the Parties, respectively, pursuant both to the "Agreement", the First Amendment to the Water Sale Agreement, and this, the Second Amendment to the Water Sale Agreement, and in addition thereto, Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged by the Parties, and by evidencing their signatures below, the Parties do hereby agree as follows:

1. The Agreement and the First Amended Water Sale Agreement, are hereby supplemented by the identification of the Diversion Points specified on Attachment "A" hereto, which attachment becomes an integral part of the Agreement, by reference through this Second Amendment to Water Sale Agreement.
2. Each of the Diversion Points is identified on Attachment "A", attached herewith and included herein by reference, as if fully set forth at this place in paragraph 2.
3. The recital and inclusion of the five (5) attached Diversion Points shall not limit the opportunity or necessity of adding additional Diversion Points, as the project is developed, and engineering or public necessity may require.

4. The specification of the Diversion Points is supplemental to the Agreement and the First Amendment to the Water Sale Agreement, and shall be construed as designating points from which water shall be withdrawn from the system, and shall in no other way operate to contradict previous recitals or provisions of the Agreement or First Amendment to the Water Sale Agreement.

This Second Amendment to Water Sale Agreement is executed and delivered in multiple counterparts on the date shown below, to be effective from and after September 1, 1991.

SELLER

BEXAR-MEDINA-ATASCOSA COUNTIES WATER
CONTROL AND IMPROVEMENT DISTRICT NO.
1

DATE: _____

John W. Ward
John W. Ward,
President, Board of Directors

Attest: Alex Hitzfelder
Alex Hitzfelder
Secretary

BUYER

BEXAR METROPOLITAN WATER DISTRICT

DATE: _____

Ronald C. Williamson
Ronald C. Williamson
President, Board of Directors

Attest: Marvin Sueltenfuss
Marvin Sueltenfuss, Secretary,
Board of Directors

ATTACHMENT "A"

(See attached legal description and map)

Diversion Point No. 1 - Medina Diverson Lake

Diversion Point No. 2 - Cedar Hill

Diversion Point No. 3 - Rio Medina

Diversion Point No. 4 - Hwy. 1957

Diversion Point No. 5 - Reuters Cove

DIVERSION POINT NO. 1

BEGINNING AT THE MOST SOUTHERN SOUTHEASTERN CORNER OF THE G.C. & S.F. R.R. SURVEY #67, ABSTRACT A-1285, SAID CORNER ALSO BEING A POINT IN THE NORTH LINE OF THE J.B. BROWNRIGG SURVEY #394, ABSTRACT A-118, FROM WHICH POINT THE NORTHEAST CORNER OF THE J.B. BROWNRIGG SURVEY #394, ABSTRACT A-118, BEARS EAST, 2,600 FEET; THENCE, WEST, 2,900 FEET ALONG THE MOST SOUTHERN LINE OF THE G.C. & S.F. R.R. SURVEY #67, ABSTRACT A-1285, SAID LINE ALSO BEING THE NORTH LINE OF THE J.B. BROWNRIGG SURVEY #394, ABSTRACT A-118; THENCE, NORTH, 300 FEET TO DIVERSION POINT #1.

DIVERSION POINT NO. 1 IS ALSO DESCRIBED AS BEING AT LATITUDE $29^{\circ}30'42''$ N, LONGITUDE $98^{\circ}54'00''$ W.

DIVERSION POINT NO. 2

BEGINNING AT THE NORTHWEST CORNER OF THE A. REYES SURVEY #105, ABSTRACT A-1417, SAID CORNER ALSO BEING THE SOUTHWEST CORNER OF THE W.M. McMASTERS SURVEY #106, ABSTRACT 1306; THENCE, EAST, 9,400 FEET ALONG THE NORTH LINE OF THE A. REYES SURVEY #105, ABSTRACT 1417, SAID LINE ALSO BEING THE SOUTH LINE OF THE W.M. McMASTERS SURVEY #106, ABSTRACT 1306; THENCE, SOUTH, 3,300 FEET TO DIVERSION POINT #2.

DIVERSION POINT NO. 2 IS ALSO DESCRIBED AS BEING AT LATITUDE $29^{\circ}30'12''$ N, LONGITUDE $98^{\circ}54'15''$ W.

MEDINA LAKE

Carters Point

Red Cove

Mico

Medina Dam

Gauging Sta

BM 1075

SCALE 1" = 2000'

BEXAR METROPOLITAN WATER DISTRICT
PROPOSED DIVERSION LOCATIONS

DIVERSION

DIVERSION POINT NO. 1

DIVERSION POINT NO. 2

MEDINA RIVER

Cedar Hill

Gauging Sta

DIVERSION POINT NO. 3

BEGINNING AT THE NORTHWEST CORNER OF THE WASHINGTON KIGANS SURVEY #36, ABSTRACT A-567, SAID CORNER ALSO BEING A POINT IN THE SOUTH LINE OF THE JOHN KIGAN SURVEY #35, ABSTRACT A-568, FROM WHICH POINT THE SOUTHWEST CORNER OF THE JOHN KIGAN SURVEY #35, ABSTRACT A-568, BEARS WEST, 2,600 FEET;
THENCE, EAST, 10,050 FEET, ALONG THE NORTH LINE OF THE WASHINGTON KIGAN SURVEY #36, ABSTRACT 567, SAID LINE ALSO BEING THE SOUTH LINE OF THE JOHN KIGAN SURVEY #35, ABSTRACT 568;
THENCE, SOUTH, 3,000 FEET TO DIVERSION POINT #3.

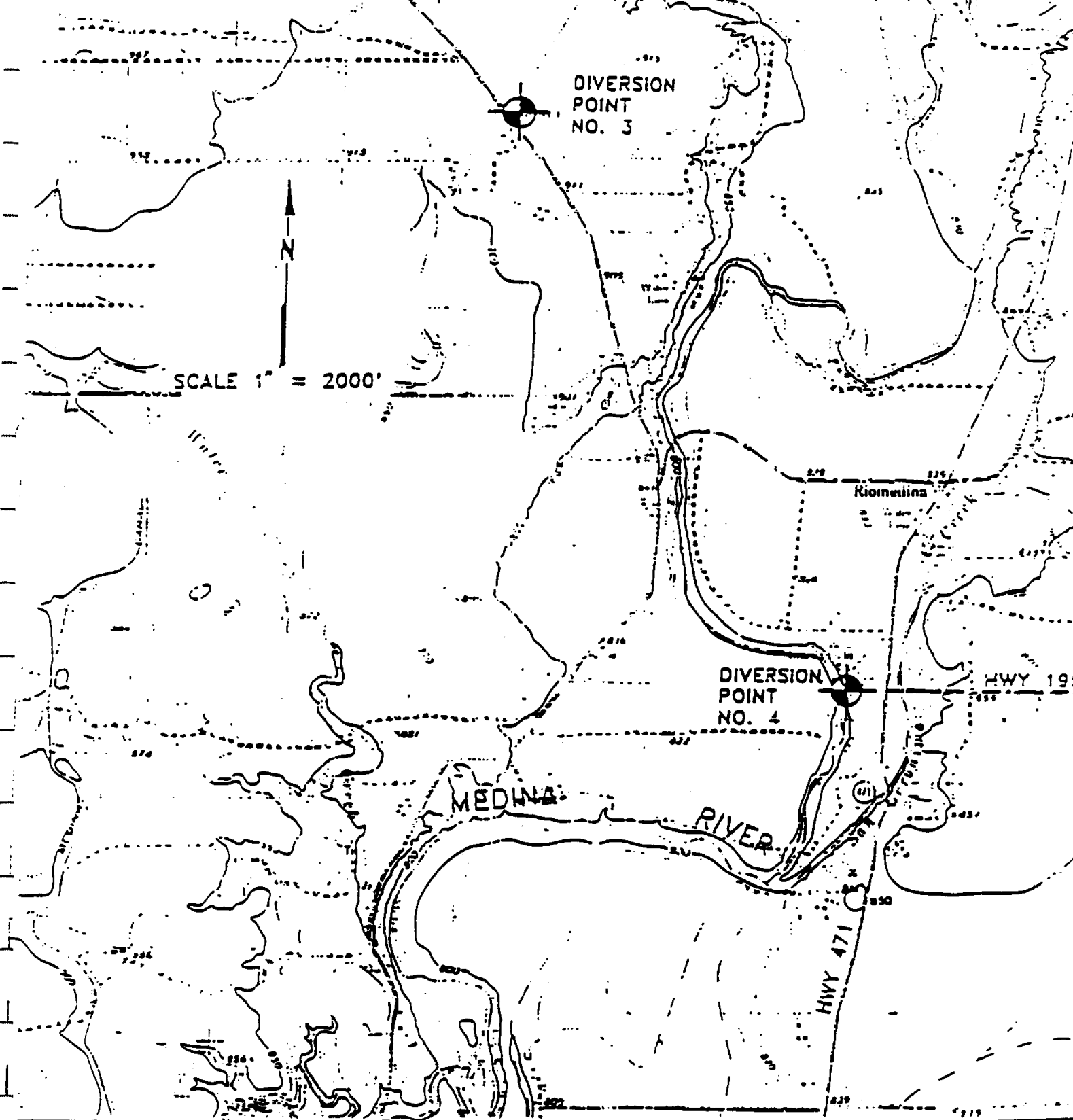
DIVERSION POINT NO. 3 IS ALSO DESCRIBED AS BEING AT
LATITUDE $29^{\circ}27'21''$ N, LONGITUDE $98^{\circ}54'15''$ W.

DIVERSION POINT NO. 4

BEGINNING AT THE SOUTHWEST CORNER OF THE CYRUS WICKSON SURVEY #46, ABSTRACT A-1003, SAID CORNER ALSO BEING THE SOUTHEAST CORNER OF THE JOSEPH HALEY, SR. SURVEY #454, ABSTRACT A-512;
THENCE, EAST, 10,000 FEET ALONG THE SOUTH LINE OF THE CYRUS WICKSON SURVEY #46, ABSTRACT A-1003, SAID LINE ALSO BEING THE NORTH LINE OF THE W.M.G. STILL SURVEY #1, ABSTRACT A-842;
THENCE, NORTH, 1,000 FEET TO DIVERSION POINT #4.

DIVERSION POINT NO. 4 IS ALSO DESCRIBED AS BEING AT
LATITUDE $29^{\circ}15'55''$ N, LONGITUDE $98^{\circ}53'17''$ W.

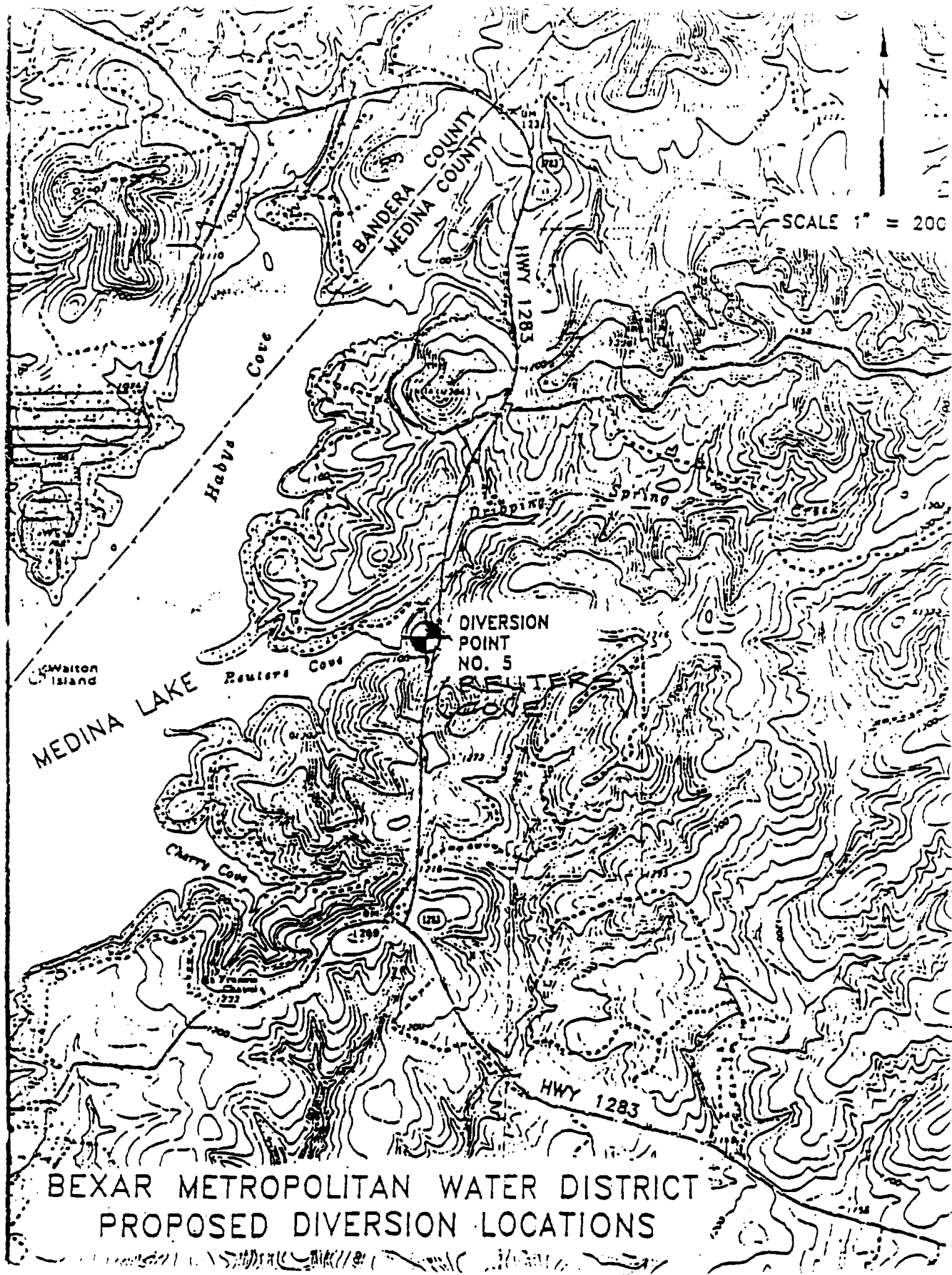
BEXAR METROPOLITAN WATER DISTRICT PROPOSED DIVERSION LOCATIONS



DIVERSION POINT #5 (REUTERS COVE)

BEGINNING AT THE SOUTHEAST CORNER OF THE T.C.R.R. SURVEY #1,
ABSTRACT A-1421, SAID CORNER ALSO BEING THE SOUTHWEST CORNER OF THE
LEOPOLD HABY SURVEY #408, ABSTRACT 1746;
THENCE, NORTH, 3,300 FEET ALONG THE EAST LINE OF THE T.C.R.R. SURVEY
#1, ABSTRACT A-1421, SAID LINE ALSO BEING THE WEST LINE OF THE
LEOPOLD HABY SURVEY #408, ABSTRACT 1746;
THENCE, WEST, 700 FEET TO DIVERSION POINT #5.

DIVERSION POINT #5 IS ALSO DESCRIBED AS BEING AT
LATITUDE $29^{\circ}34'02''$ N, LONGITUDE $98^{\circ}54'15''$ W.



SCALE 1" = 200'

DIVERSION
POINT
NO. 5

BEXAR METROPOLITAN WATER DISTRICT
PROPOSED DIVERSION LOCATIONS

SECOND AMENDMENT TO WATER SALE AGREEMENT
(Identification of Diversion Points 1-5)

RECITALS

WHEREAS, the Bexar-Medina-Atascosa Counties WCID No. 1 ("BMA" and the Bexar Metropolitan Water District ("BMWD") entered into that certain "Water Sale Agreement" dated August 19, 1991, (the "Agreement") to be effective September 1, 1991, (the "Effective Date"); and

WHEREAS, BMA and BMWD are collectively referred to herein as the "Parties"; and

WHEREAS, in response to a request from the Texas Water Commission, the Parties desire to establish the Diversion Points, one or more of which are anticipated to be used, in connection with implementation of the Water Sale Agreement dated August 19, 1991; and

WHEREAS, the parties desire to identify the five (5) Diversion Points, which have been identified between them at this time, and to make each of these Diversion points, by attachment to this Second Amended Water Sale Agreement, a part hereof;

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals, and the mutual benefits to be derived by the Parties, respectively, pursuant both to the "Agreement", the First Amendment to the Water Sale Agreement, and this, the Second Amendment to the Water Sale Agreement, and in addition thereto, Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged by the Parties, and by evidencing their signatures below, the Parties do hereby agree as follows:

1. The Agreement and the First Amended Water Sale Agreement, are hereby supplemented by the identification of the Diversion Points specified on Attachment "A" hereto, which attachment becomes an integral part of the Agreement, by reference through this Second Amendment to Water Sale Agreement.
2. Each of the Diversion Points is identified on Attachment "A", attached herewith and included herein by reference, as if fully set forth at this place in paragraph 2.
3. The recital and inclusion of the five (5) attached Diversion Points shall not limit the opportunity or necessity of adding additional Diversion Points, as the project is developed, and engineering or public necessity may require.

4. The specification of the Diversion Points is supplemental to the Agreement and the First Amendment to the Water Sale Agreement, and shall be construed as designating points from which water shall be withdrawn from the system, and shall in no other way operate to contradict previous recitals or provisions of the Agreement or First Amendment to the Water Sale Agreement.

This Second Amendment to Water Sale Agreement is executed and delivered in multiple counterparts on the date shown below, to be effective from and after September 1, 1991.

SELLER

BEXAR-MEDINA-ATASCOSA COUNTIES WATER
CONTROL AND IMPROVEMENT DISTRICT NO.
1

DATE: May 28, 1992

John W. Ward
John W. Ward,
President, Board of Directors

Attest: Alex Hitzfelder

Alex Hitzfelder
Secretary

BUYER

BEXAR METROPOLITAN WATER DISTRICT

DATE: May 26, 1992

Ronald C. Williamson
Ronald C. Williamson
President, Board of Directors

Attest: Marvin Sueltenfuss

Marvin Sueltenfuss, Secretary,
Board of Directors

ATTACHMENT "A"

(See attached legal description and map)

Diversion Point No. 1 - Medina Diverson Lake

Diversion Point No. 2 - Cedar Hill

Diversion Point No. 3 - Rio Medina

Diversion Point No. 4 - Hwy. 1957

Diversion Point No. 5 - Reuters Cove

DIVERSION POINT NO. 1

BEGINNING AT THE MOST SOUTHERN SOUTHEASTERN CORNER OF THE G.C. & S.F. R.R. SURVEY #67, ABSTRACT A-1285, SAID CORNER ALSO BEING A POINT IN THE NORTH LINE OF THE J.B. BROWNRIGG SURVEY #394, ABSTRACT A-118, FROM WHICH POINT THE NORTHEAST CORNER OF THE J.B. BROWNRIGG SURVEY #394, ABSTRACT A-118, BEARS EAST, 2,600 FEET; THENCE, WEST, 2,900 FEET ALONG THE MOST SOUTHERN LINE OF THE G.C. & S.F. R.R. SURVEY #67, ABSTRACT A-1285, SAID LINE ALSO BEING THE NORTH LINE OF THE J.B. BROWNRIGG SURVEY #394, ABSTRACT A-118; THENCE, NORTH, 300 FEET TO DIVERSION POINT #1.

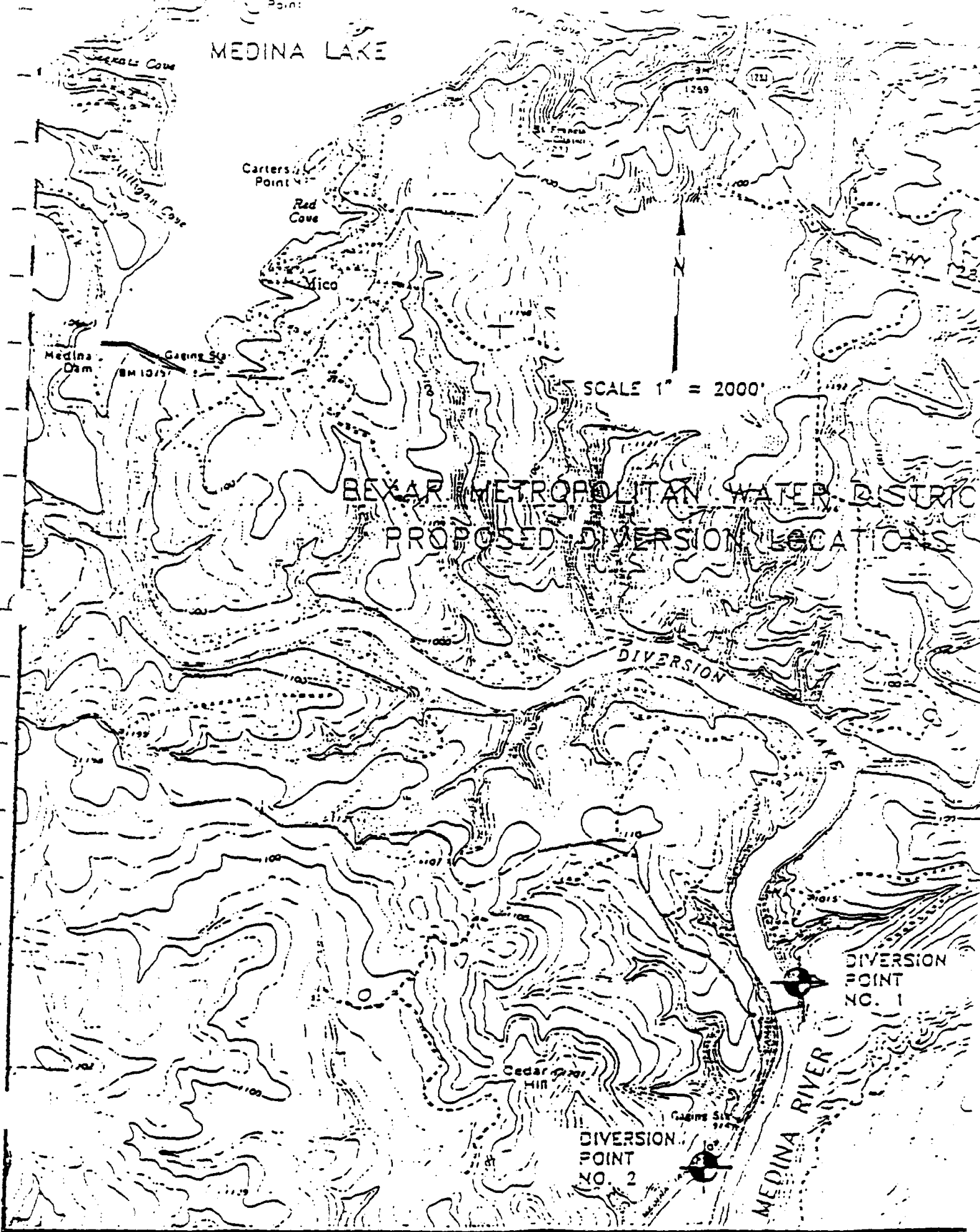
DIVERSION POINT NO. 1 IS ALSO DESCRIBED AS BEING AT LATITUDE $29^{\circ}30'42''$ N, LONGITUDE $98^{\circ}54'00''$ W.

DIVERSION POINT NO. 2

BEGINNING AT THE NORTHWEST CORNER OF THE A. REYES SURVEY #105, ABSTRACT A-1417, SAID CORNER ALSO BEING THE SOUTHWEST CORNER OF THE W.M. McMASTERS SURVEY #106, ABSTRACT 1306; THENCE, EAST, 9,400 FEET ALONG THE NORTH LINE OF THE A. REYES SURVEY #105, ABSTRACT 1417, SAID LINE ALSO BEING THE SOUTH LINE OF THE W.M. McMASTERS SURVEY #106, ABSTRACT 1306; THENCE, SOUTH, 3,300 FEET TO DIVERSION POINT #2.

DIVERSION POINT NO. 2 IS ALSO DESCRIBED AS BEING AT LATITUDE $29^{\circ}30'12''$ N, LONGITUDE $98^{\circ}54'15''$ W.

Point:
MEDINA LAKE



BEXAR METROPOLITAN WATER DISTRICT
PROPOSED DIVERSION LOCATIONS

SCALE 1" = 2000'

DIVERSION
POINT
NO. 1

DIVERSION
POINT
NO. 2

MEDINA RIVER

DIVERSION POINT NO. 3

BEGINNING AT THE NORTHWEST CORNER OF THE WASHINGTON KIGANS SURVEY #36, ABSTRACT A-567, SAID CORNER ALSO BEING A POINT IN THE SOUTH LINE OF THE JOHN KIGAN SURVEY #35, ABSTRACT A-568, FROM WHICH POINT THE SOUTHWEST CORNER OF THE JOHN KIGAN SURVEY #35, ABSTRACT A-568, BEARS WEST, 2,500 FEET;
THENCE, EAST, 10,050 FEET, ALONG THE NORTH LINE OF THE WASHINGTON KIGAN SURVEY #36, ABSTRACT 567, SAID LINE ALSO BEING THE SOUTH LINE OF THE JOHN KIGAN SURVEY #35, ABSTRACT 568;
THENCE, SOUTH, 3,000 FEET TO DIVERSION POINT #3.

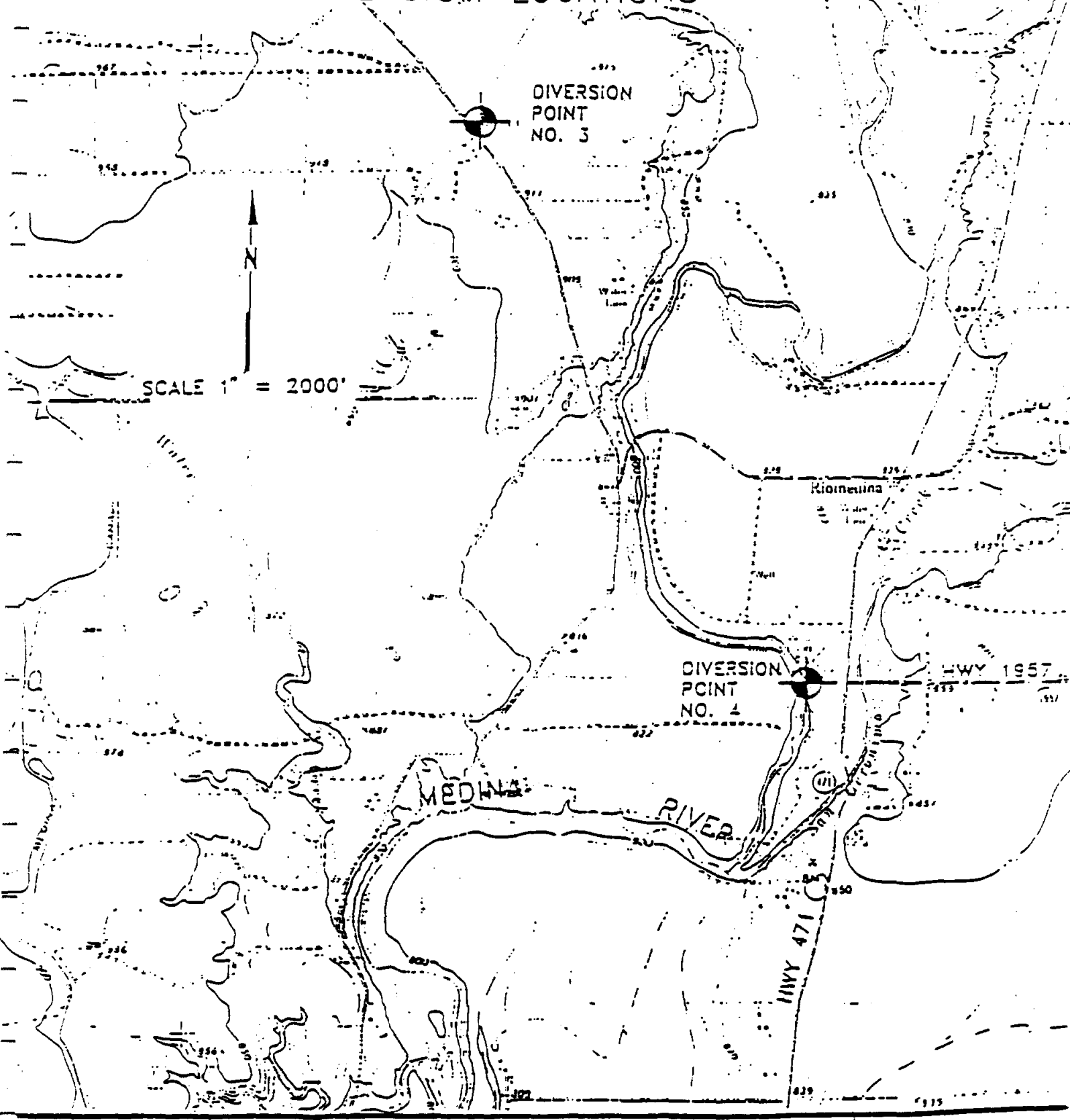
DIVERSION POINT NO. 3 IS ALSO DESCRIBED AS BEING AT
LATITUDE $29^{\circ}27'21''$ N, LONGITUDE $98^{\circ}54'15''$ W.

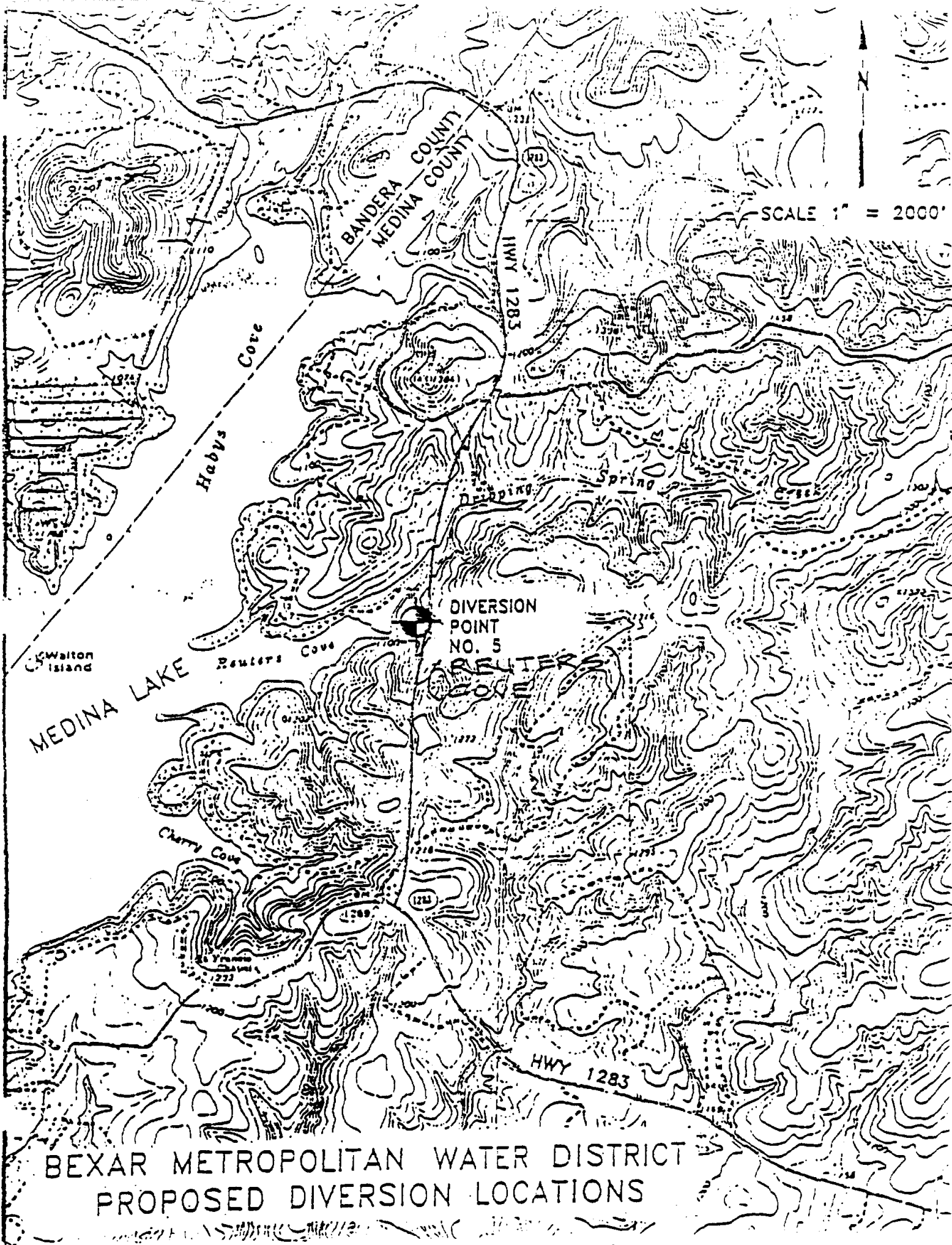
DIVERSION POINT NO. 4

BEGINNING AT THE SOUTHWEST CORNER OF THE CYRUS WICKSON SURVEY #46, ABSTRACT A-1003, SAID CORNER ALSO BEING THE SOUTHEAST CORNER OF THE JOSEPH HALEY, SR. SURVEY #454, ABSTRACT A-512;
THENCE, EAST, 10,000 FEET ALONG THE SOUTH LINE OF THE CYRUS WICKSON SURVEY #46, ABSTRACT A-1003, SAID LINE ALSO BEING THE NORTH LINE OF THE W.M.G. STILL SURVEY #1, ABSTRACT A-342;
THENCE, NORTH, 1,000 FEET TO DIVERSION POINT #4.

DIVERSION POINT NO. 4 IS ALSO DESCRIBED AS BEING AT
LATITUDE $29^{\circ}15'55''$ N, LONGITUDE $98^{\circ}53'17''$ W.

REXAR METROPOLITAN WATER DISTRICT PROPOSED DIVERSION LOCATIONS





BEXAR METROPOLITAN WATER DISTRICT
PROPOSED DIVERSION LOCATIONS

DIVERSION POINT #5 (REUTERS COVE)

BEGINNING AT THE SOUTHEAST CORNER OF THE T.C.R.R. SURVEY #1,
ABSTRACT A-1421, SAID CORNER ALSO BEING THE SOUTHWEST CORNER OF THE
LEOPOLD HABY SURVEY #408, ABSTRACT 1746;
THENCE, NORTH, 3,900 FEET ALONG THE EAST LINE OF THE T.C.R.R. SURVEY
#1, ABSTRACT A-1421, SAID LINE ALSO BEING THE WEST LINE OF THE
LEOPOLD HABY SURVEY #408, ABSTRACT 1746;
THENCE, WEST, 700 FEET TO DIVERSION POINT #5.

DIVERSION POINT #5 IS ALSO DESCRIBED AS BEING AT
LATITUDE 29°34'02" N, LONGITUDE 98°54'15" W.

THIRD WATER SALE AGREEMENT AMENDMENT

RECITALS

WHEREAS, the Bexar-Medina-Atascosa Counties WCID No. 1 ("BMA") and the Bexar Metropolitan Water District ("BMWD") entered into that certain "Water Sale Agreement" dated August 19, 1991 (the "Agreement") to be effective September 1, 1991, as amended (the "Effective Date"); and

WHEREAS, BMA and BMWD are collectively referred to herein as the "Parties"; and

WHEREAS, BMA and BMWD have previously amended said Agreement on two occasions, with both amendments to be effective September 1, 1991 (the "prior amendments"); and

WHEREAS, the Parties desire to modify one of the Points of Diversion at which BMWD proposes to divert water from BMA pursuant to the Agreement, and which the Parties will identify as the Points of Diversion in BMA's Application to the Texas Water Commission to Amend BMA's Certificate of Adjudication No. 19-2130 for purposes of facilitating the sale of "Excess Water" to BMWD pursuant to the terms of the Agreement;

NOW, THEREFORE, in consideration of the Recitals, the mutual benefits to be derived by the Parties pursuant to this "Third Water Sale Agreement Amendment," Ten and No/100ths Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged by both the Parties, the Parties agree as follows:

AGREEMENT

1. The Parties agree to delete existing Diversion Point No. 4, which is more particularly described on Exhibit A attached hereto and incorporated for all purposes. In substitution for the existing Diversion Point No. 4, the Parties agree to include the diversion point located on the downstream side of the main dam at Medina Lake, which is more particularly described in Exhibit B attached hereto and incorporated for all purposes. The Parties further agree to revise BMA's draft application to amend its Certificate of Adjudication No. 19-2130 to include the new diversion point described in Exhibit B.

2. The Parties acknowledge that the purpose of this Amendment, and the desire of the Parties, is to affirm

their commitment to maximize the mutual benefits available to both Parties during the term of the Agreement, as modified herein, and to work cooperatively in good faith to insure the achievement of that goal.

3. Except as otherwise expressly provided herein, the terms, conditions and the obligations, liabilities and rights of the Parties, as expressed in the Agreement as amended, remain in tact and are otherwise unaffected by this Third Water Sale Agreement Amendment.

4. Unless otherwise expressly provided therein in writing, it is the express intent of the Parties that the Water Sale Agreement, together with all prior amendments and this Third Water Sale Agreement Amendment shall survive, and be binding upon the Parties, beyond the execution of any and all other agreements, contracts and/or memorandum of understanding of every kind or nature entered into by and between the Parties, regardless of whether the same are executed before, simultaneously with, or after the signing of this Third Water Sale Agreement Amendment.

Executed and delivered in multiple counterparts on the dates shown below to be effective September 1, 1991.

SELLER:

BEXAR-MEDINA-ATASCOSA COUNTIES WATER
CONTROL AND IMPROVEMENT DISTRICT NO.

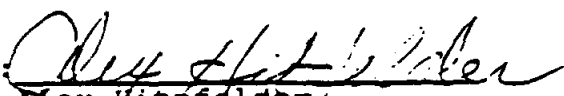
1

DATE: _____, 1993



John W. Ward,
President, Board of Directors

Attest:



Alex Hitzfelger,
Secretary

BUYER:

BEXAR METROPOLITAN WATER DISTRICT

DATE: _____, 1993

Ronald C. Williamson
Ronald C. Williamson,
President, Board of Directors

Attest:

Martin W. Swetstone
Secretary
Board of Directors

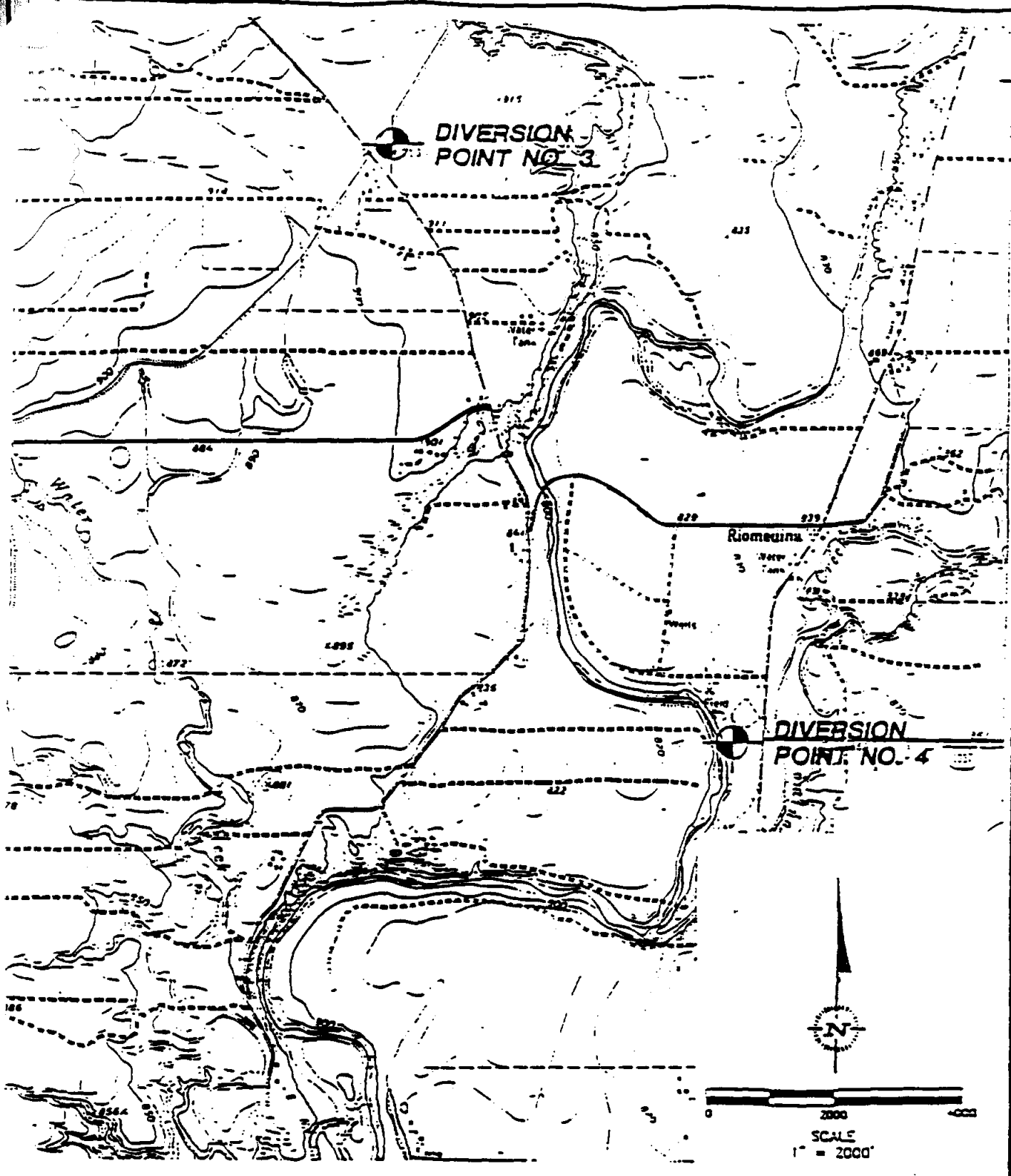
EXHIBIT A

DIVERSION POINT NO. 4 [To be deleted]

BEGINNING AT THE SOUTHWEST CORNER OF THE CYRUS WICKSON SURVEY #46, ABSTRACT A-1003, SAID CORNER ALSO BEING THE SOUTHEAST CORNER OF THE JOSEPH HALEY, SR. SURVEY #454, ABSTRACT A-512; THENCE, EAST, 10,000 FEET ALONG THE SOUTH LINE OF THE CYRUS WICKSON SURVEY #46, ABSTRACT A-1003, SAID LINE ALSO BEING THE NORTH LINE OF THE W.M.G. STILL SURVEY #1, ABSTRACT A-842; THENCE, NORTH, 1,000 FEET TO DIVERSION POINT #4.

DIVERSION POINT NO. 4 IS ALSO DESCRIBED AS BEING AT LATITUDE 29° 15'55" N, LONGITUDE 98° 53'17" W.

Reflected on Attached Plat



BEXAR METROPOLITAN WATER DISTRICT
PROPOSED DIVERSION LOCATIONS

EXHIBIT B

DIVERSION POINT NO. 4 [To be substituted at Medina Lake Dam]

BEGINNING AT THE EASTERN MOST SOUTH CORNER OF THE ARMIN BOEHME SURVEY #418, ABSTRACT A-1767, SAID CORNER ALSO BEING A POINT IN THE NORTH LINE OF THE GC&SFRR SURVEY #417, ABSTRACT A-1200, FROM WHICH POINT THE NORTHEAST CORNER OF THE GC&SFRR SURVEY #417, ABSTRACT A-1200 BEARS EAST 3,900 FEET;
THENCE, WEST, 7,700 FEET ALONG A SOUTH LINE OF THE ARMIN BOEHME SURVEY #418, ABSTRACT A-1767, SAID LINE ALSO BEING THE NORTH LINE OF THE GC&SFRR SURVEY #417, ABSTRACT A-1200.
THENCE, NORTH, 2,500 FEET TO DIVERSION POINT NO. 4.

DIVERSION POINT NO. 4 IS ALSO DESCRIBED AS BEING AT
LATITUDE 29°32'24" N, LONGITUDE 98°56'02" W.

Reflected on Attached Plat

1992 WATER CONSERVATION AGREEMENT

I.
INTRODUCTION

This "1992 Water Conservation Agreement" (the "Conservation Agreement") is entered into by and between the Bexar-Medina-Atascosa Counties Water Control and Improvement District No. 1 ("BMA") and the Bexar-Metropolitan Water District ("District"), to be effective as of September 1, 1992 (the "Effective Date"). This Conservation Agreement is intended to develop and increase the availability of "Excess Water" within the BMA irrigation system (the "System") through enhanced conservation efforts by BMA. The enhanced conservation is to be accomplished through a series of capital expenditures and improvements, including but not necessarily limited to the refurbishing, repair, and ongoing maintenance of existing improvements and facilities within the System, and the construction of new improvements and facilities intended to increase the availability of water in the System through the improved delivery efficiency and reduced transportation losses, including without limitation losses resulting from seepage, evaporation and unauthorized diversions of water within the System.

II.
RECITALS

1. The District was created by legislative act (Tex. Rev. Civ. Stat. Ann. art. 8280-126, as amended) for purposes of carrying out the provisions of Article XVI, Section 59 of the Texas Constitution including, without limitation, the acquisition, development, conservation and distribution of waters essential for domestic and other uses by the inhabitants of the District, to include the necessary water supply for cities and towns situated within the District.

2. BMA was originally created pursuant to Section 52, Article III of the Constitution of the State of Texas and Chapter 87 of the General Laws passed by the Legislature of the State of Texas, at its regular session in 1917. BMA's creation was accomplished by the filing of the requisite petition, and subsequent confirmation elections held in Bexar, Medina and Atascosa Counties on January 24, 1925. On November 1, 1979, BMA converted to a Water Control and Improvement District for the purpose of carrying out the provisions of Article XVI, Section 59 of the Texas Constitution and Chapter 51 of the Texas Water Code, to include, without limitation, the acquisition, development, conservation and distribution of waters essential for the irrigation of agricultural lands within the District.

3. The District and BMA acknowledge that the water resources of Medina Lake and Diversion Lake are important components of the water resources of the region composed of Bexar, Medina, Atascosa,

Uvalde and Bandera Counties (the "Region"). The District and BMA further acknowledge that water from Medina and Diversion Lakes may be available to be beneficially used to supplement the existing limited municipal groundwater water supplies of the District and the Region located in the Edwards Aquifer, which the Texas Water Commission declared to an underground river subject to state regulations and pumpage limitations on April 15, 1992.

4. In an effort to increase the volume of surface water that might be available from the BMA System to supplement the current municipal water supplies of the District which currently are derived exclusively from pumpage from the Edwards Aquifer, and to assist the District in its efforts to reduce its demand from and reliance upon the Edwards Aquifer, and for other lawful purposes in addition to irrigation, the District and BMA entered into a long term water supply contract styled "Water Sale Agreement" (the "Contract"), as amended. The Contract, effective September 1, 1991, was entered into pursuant to then Section 5 of the Interlocal Cooperation Act (formerly Tex. Rev. Civ. Stat. Ann. art. 4413 (32c), Section 5, recodified as Chapter 791, Section 791.26, Texas Gov't Code), and Sections 11.036 and 50.272, Texas Water Code. The Contract provides for the purchase by the District of "Excess Water" which may be available, from time to time, and authorized for use by BMA pursuant to Certificates of Adjudication Nos. 19-2130 and 19-2131, as amended.

5. Both BMA and the District believe that the development and sale of Excess Water pursuant to the Contract will be mutually beneficial. To provide for the enhanced development of Excess Water through conservation and related means BMA, the District and the Canyon Regional Water Authority ("CRWA") have entered into a "Tri-Party Agreement" to seek technical and financial assistance through the Texas Water Development Board, and the United States Department of Interior, Bureau of Reclamation, to enhance water conservation, improve water distribution and delivery efficiencies and insure the preservation of the valuable water resources of the Region.

6. Both BMA and the District also believe that in addition to the Tri-Party Agreement, BMA and the District should engage in other activities designed to increase the volume of Excess Water available to the District pursuant to the Contract through enhanced water conservation within the BMA System. Accordingly, effective February 1, 1992, BMA and the District entered into that certain "1992 Memorandum of Understanding" (the "1992 MOU"), as extended, during which the Parties intended to investigate thoroughly the feasibility of entering into this "1992 Water Conservation Agreement."

7. The Parties agree that a critical element in the development of this Conservation Agreement is the District's and BMA's desire to maximize the eligibility of the Parties' efforts

related to the performance of this Conservation Agreement toward qualification as local interest expenditures reimbursable or creditable toward any loan or grant program(s), or legislative approval(s) that may be pursued and implemented to advance the purposes of both the 1992 MOU and 1992 Water Conservation Agreement, as well as the 1991 Water Sale Agreement.

III.
AGREEMENT

For and in consideration of the Recitals, the mutual promises made and the mutual benefits to be derived by each of the Parties hereto, Ten and No/100ths Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged by the Parties, BMA and the District evidence their agreement as follows:

1. Power and authorization to Contract.

1.1 BMA is a water conservation district originally organized pursuant to Article III, Section 52, of the Texas Constitution and subsequently converted and now operated pursuant to Article XVI, Section 59, of the Texas Constitution and Chapters 50 and 51 of the Texas Water Code.

1.2 The District is a water conservation district organized and operated pursuant to Article XVI, Section 59, of the Texas Constitution and Texas Revised Civil Statutes Article 8280-126, and Chapters 50 and 51 of the Texas Water Code.

1.3 BMA and the District are empowered to enter into and carry out this Conservation Agreement pursuant to Sections 51.122, 51.137, 51.149, 51.166 and 51.168 of the Texas Water Code, and Section 791.26 of the Texas Interlocal Cooperation Act (Texas Gov't Code, Chapter 791).

1.4 Both BMA and the District represent and warrant to the other (i) that each is fully authorized and empowered by applicable law to enter into this Conservation Agreement as a sustaining and binding legal obligation of the party, and (ii) that this Conservation Agreement does not violate or breach any applicable statute, order, rule, regulation, permit condition, bylaw, or board resolution applicable to the party making the warranty and representation.

2. Definitions.

2.1 Except as otherwise expressly defined herein, each of the terms, expressions and words used herein shall have the same meaning, definition and intent as that expressed in the Contract including, without limitation, the definitions expressly provided in Section 2 of said Contract.

2.2 "Contract Year" shall mean the annual period from September 1st through August 31st of each year of this Conservation Agreement.

2.3 "Termination Date" means the date upon which this Conservation Agreement terminates in accordance with Section 5 below.

3. Water Conservation Efforts.

3.1 The purpose of this Conservation Agreement is to enhance water conservation within the BMA system and thereby increase the availability of "Excess Water" for sale to the District pursuant to the Contract. The Parties agree to use their best efforts to develop and increase the availability of Excess Water through enhanced water conservation and other related means to include, without limitation, (i) coordination with and solicitation of technical assistance from the Texas Water Commission, Texas Water Development Board, and the United States Department of Interior - Bureau of Reclamation, and other appropriate federal, state and local entities identified by the Parties, and (ii) planning and engineering activities designed to provide for the repair, refurbishing, and improvement of existing BMA irrigation system facilities, and/or (iii) the design and construction of new and refurbishing of existing water delivery and storage facilities in the BMA System.

3.2 The Parties agree that (i) the "Contribution" described hereafter, (ii) any additional matching or supplemental funds received from any other governmental entities or other third parties (to include, but not limited to, the Bureau of Reclamation and the Texas Water Development Board), and (iii) any other funds approved for expenditure in furtherance of this Conservation Agreement by either the District or the BMA Board of Directors (collectively referred to as the "Funds") may be expended by BMA in good faith on projects designed to increase the availability of Excess Water through enhanced water conservation efforts and related means. Such Funds may be expended in any lawful manner within the discretion of the BMA Board of Directors acting in good faith on water conservation related projects to include, without limitation, expenditures on design and construction, engineering, surveying, and/or legal or other professional services contracted for by BMA prior to or after the Effective Date of this Conservation Agreement of which are directly related to the stated goals, purposes and/or objections of this Conservation Agreement.

3.3 In determining what projects to authorize the expenditure of the Funds for, the Parties agree that all Projects are to be reviewed by the Parties jointly in an effort to insure their eligibility to qualify as Local Interest Expenditures which are reimburseable or creditable toward any loan or grant program(s) or legislative approval(s) that may be pursued and implemented by

the Parties as contemplated by this Conservation Agreement. Additionally, the Parties agree that BMA will use as a guideline the following prioritization of projects agreed upon by the Parties to enhance water conservation within the BMA System and develop additional Excess Water (the "Projects"):

- (A) Engineering studies to evaluate the stability of the Medina and Diversion Dams, together with any necessary repair, refurbishing, replacement or improvement of the same and their related appurtenances, including the installation of monitoring equipment recommended by BMA's engineering consultants and approved by BMA designed to monitor dam stability and transportation losses within the BMA canal system.
- (B) Refurbishing, repairing, maintaining and/or upgrading of portions of the existing BMA irrigation canal system, e.g., a) dredging, lining or rerouting of canals within the System, b) installation of metering equipment to identify portions of the System to which the highest volume of water losses are attributable either due to seepage, evaporation or theft, c) repair and/or improvement of siphons, canal crossings and related facilities, and d) proper preparation of land for irrigation to include the construction of tailwater ponds and basins.

The Parties agree that for purposes of this Section 3.3(B), they will use their best efforts to insure that priority will be given to those canals which provide water directly from either Medina Lake or Diversion Lake to the District's identified Diversion Point(s) under the Contract.

- (C) The construction of any new improvements and/or facilities within the BMA System intended to enhance water conservation and increase the volume of available Excess Water, and the ongoing repair, refurbishing, modification and improvement of any such new improvements and facilities.

The Parties expressly acknowledge and agree that the "prioritization" set forth above is merely a guideline, and is not intended to inhibit or otherwise restrict BMA and its Board of Directors in the exercise of their discretion in determining what conservation projects should be paid for with the Funds.

3.4 In addition to the Projects described in Section 3.3 above, the Parties also agree to pursue the following "Goals":

- (A) The promulgation and adoption by both BMA and the District of water conservation plans for submission to the Texas Water Commission, Texas Water Development Board and/or the United States Department of Interior/Bureau of Reclamation.
- (B) The promulgation and adoption by BMA of regulations designed to encourage water conservation and prevent water waste by BMA's District members.
- (C) Preservation and mitigation of existing environmental values to include, but not limited to, educational, environmental mitigation and habitat enhancement of environmental resources with the affected region.

3.5 The Parties agree to review and revise from time to time the Projects and the Goals described in Sections 3.3 and 3.4 above to update the Parties' efforts to accomplish the enhancement of water conservation and the increased availability of Excess Water within the BMA System. At least quarterly, the Parties agree that the respective designated representatives of each Party shall meet to review the status of all conservation projects undertaken by the Parties pursuant to this Conservation Agreement. Furthermore, the Parties agree that each shall within thirty (30) days of the execution of this Conservation Agreement designate their respective representative (the "Representative") who shall be authorized by the respective Party to represent said Party to carry out the daily decisions and actions necessary to accomplish the purposes of this Conservation Agreement. As appropriate and/or necessary, the respective Representative of each Party shall meet regularly to coordinate the efforts of either Party to carry out this Conservation Agreement.

4. Payment of the Contribution.

4.1 The District agrees to pay to BMA in each year of this Conservation Agreement, as a contribution to aid in BMA's enhanced conservation efforts, an amount equal to Three Hundred Thousand and No/100ths Dollars (\$300,000.00), United States Currency (the "Contribution"). The District's Contribution shall be payable as follows:

- (A) The Contribution in the first year shall be paid as follows:
 - i) Two Hundred Fifty Thousand Dollars (\$250,000.00) to be paid (a) One Hundred Ninety-Two Thousand Five Hundred Dollars (\$192,500.00) in cash or certified funds upon the execution of this Conservation

Agreement, (b) the release to BMA of the Fifty Thousand Dollars (\$50,000.00) the District previously delivered to by to BMA in escrow pursuant to the "1992 Safekeeping Agreement and Receipt for Escrow," and (c) crediting the District for its prior contribution of Seventy-Five Hundred Dollars (\$7,500.00) in partial payment for equipment, including piezometers and weirs, installed at BMA's Medina Dam in connection with BMA's ongoing studies to evaluate the stability of Medina Dam

ii) The District agrees to pay BMA the remaining balance (Fifty Thousand Dollars (\$50,000.00)) by holding the same in reserve (the "Reserve") pending further negotiations with the Department of the Interior, Bureau of Reclamation for additional technical assistance in aid of the Parties' enhanced conservation efforts. Those negotiations may require the Parties to contribute all or a portion of the Fifty Thousand Dollars (\$50,000.00) cash in partial funding of such assistance. HOWEVER, in the event the Parties have not negotiated an agreement with the Department of Interior, Bureau of Reclamation on or before January 1, 1993, then in such event the Distirct shall deliver said Reserve to BMA, and BMA shall be free to spend said Reserve (Fifty Thousand Dollars (\$50,000.00)) in accordance with this Conservation Agreement.

(B) In each of the four remaining years (years 2 through 5) of this Conservation Agreement, the District shall pay Three Hundred Thousand Dollars (\$300,000.00) in cash or certified funds on the anniversary of the Effective Date of this Conservation Agreement, i.e., September 1st.

The total Contribution to be paid by the District to BMA is One Million Five Hundred Thousand Dollars (\$1,500,000.00). The Contribution evidences the District's support of BMA's good faith efforts to develop additional Excess Water for sale to the District through enhanced water conservation efforts generally outlined in Section 3 above. Time shall be of the essence in making the annual payment of the Contribution pursuant to the terms of this Conservation Agreement.

4.2 In consideration of the Contribution, subject to the limitations contained in paragraph 4.3 below, BMA shall credit eighty-five percent (85%) of the Contribution made in the first year of this Conservation Agreement, and one hundred percent (100%) of the Contribution made in each of years 2 through 5. The total "Credit" to be given to the District is One Million Four Hundred Fifty-Five Thousand Dollars (\$1,455,000.00). The entire Credit described in this Section 4.2 shall be applied toward the District's future purchases of Excess Water under the Contract. Said Credit shall be applied at the Price in effect at the time the water is declared to be "Excess Water" available for sale and delivery to the District pursuant to the Contract. PROVIDED, HOWEVER, that no more than one-fifth of the Credit may be applied toward the purchase price of Excess Water in any single year in which BMA sells water to the District pursuant to the Contract. PROVIDED, FURTHER, that in the event that either no "sales" of Excess Water occur during the term of the Contract, or the total sales of Excess Water are insufficient, for any reason, to absorb and/or use-up the entire amount of the Credit described in this Section 4.2, BMA shall have no obligation to refund, repay or rebate to the District any portion of the Contribution BMA has been paid, nor to perform or provide any other service, product or benefit to the District, of any kind, including providing a substitute supply of water to the District. PROVIDED FURTHER, that until it is applied toward the purchase of Excess Water, the Credit shall be available to the District for application toward the purchase of Excess Water until the termination of the Contract.

4.3 The Parties agree that the District shall not be entitled to receive an additional credit toward future purchases of Excess Water under the Contract pursuant to this Conservation Agreement for any Third Party Funds. PROVIDED, HOWEVER, that the District may use Third Party Funds to fulfill its obligation to make the Contribution described in paragraph 4.1 without receiving any credit for future water purchases under the Contract.

4.4 The Parties agree and acknowledge, that subject to the limitations and terms contained herein, the Credit to be given to the District pursuant to Section 4.2 in favor of the District described herein shall be good, and remain in full force and effect notwithstanding the termination of this Conservation Agreement, during the entire term of the Contract, as the same may be amended from time to time by the Parties, it being the expressed intent of the Parties that the District be entitled to receive, expect and enjoy the benefit of the Credit toward the future purchase(s) of Excess Water.

4.5 In further consideration of the Contribution described in Section 4.1 above, BMA agrees to waive, forego and surrender its right under the Contract to declare the availability of Excess Water through August 31, 1997, whether or not BMA believes or otherwise concludes that it has water in excess of the

amount required to satisfy its landowners and Prior Vested Rights between the Effective date of this Conservation Agreement and August 31, 1997, which water would otherwise be available for sale to the District as Excess Water pursuant to the Contract. PROVIDED, HOWEVER, that the Parties agree and acknowledge that nothing in this Conservation Agreement is intended, nor is it to be interpreted to limit or increase the amount, volume or quantity of water that BMA may determine to be Excess Water from and after August 31, 1997, in accordance with the Contract. Nor is this Section 4.5 intended to limit, extinguish or otherwise modify the District's obligations to pay for water declared to be Excess Water pursuant to the Contract on or after August 31, 1997. PROVIDED, FURTHER, that nothing in this Section 4.5 is intended to limit, extinguish or otherwise modify the District's obligation to reimburse BMA for any of the "Additional Costs" described in Section 4.5 of the Contract, whenever the same may be assessed or taxed to BMA including any such Additional Costs which may accrue during the period from the Effective Date of this Conservation Agreement through August 31, 1997. The District acknowledges its obligation to pay, and hereby agrees to pay, all such Additional Costs pursuant to the Contract notwithstanding the provisions of this Section 4.5.

4.6 In consideration of BMA's agreement to waive, forego and surrender its right to declare the existence of Excess Water as described in Section 4.5 above and require the District to purchase the same, the District agrees and expressly acknowledges that BMA shall have the right to sell water determined to be "Excess Water" by BMA through August 31, 1997 to any third party without the payment of any compensation for such right and sales to the District for water notwithstanding any provision of the Contract to the contrary. PROVIDED, HOWEVER, that BMA agrees to notify the District upon receipt of an offer contemplated by this Section 4.6 acceptable to BMA ("Third Party Offer"). BMA shall in writing offer to sell to the District on the same terms and conditions the water sought to be required by the Third Party. Any such written offer shall be delivered to the District in the same manner prescribed for any other notice under this Agreement as contemplated in Section 10.1. Upon receipt of BMA's written offer to sell water, the District shall have ten (10) business days to accept said offer in writing, or the same shall automatically become null and void and of no further force or effect. In the event the District rejects, or otherwise fails to accept BMA's offer to sell, in a timely fashion, BMA shall be free to accept the Third Party Offer pursuant to the same terms and conditions tendered to the District. PROVIDED, HOWEVER, that BMA's right to sell Excess Water pursuant to this Section 4.6 shall be limited to "spot market sales" only, i.e., without the District's prior written approval, BMA is not authorized pursuant to this Section 4.6 to enter into any long term water sales contract which would require the delivery of water by BMA beyond August 31, 1997; PROVIDED, HOWEVER, that water sold by BMA as "Excess Water" up and

until August 31, 1997, shall be deliverable by BMA without any compensation from or by BMA to the District.

4.7 The Parties agree and acknowledge that the Contribution described in Section 4.1 shall be non-refundable to the District. FURTHERMORE, except as expressly provided in this Conservation Agreement, BMA's acceptance of any portion of said Contribution shall not obligate BMA either to perform or to provide any service, product, or other benefit of any kind to the District, nor shall it entitle the District to recover any portion of the Credit(s) described herein. The District acknowledges that the Contribution is being made by the District pursuant to this Conservation Agreement and accepted by BMA solely for the purposes and the considerations recited herein.

5. Term of the Conservation Agreement.

5.1 The term of this Conservation Agreement shall be the period from the Effective Date, September 1, 1992, through August 31, 1997, or such date as may be mandated by the terms and conditions of any agreement to provide financial or technical assistance to the Parties in achieving the goals of this Conservation Agreement entered into jointly by the Parties with any federal or state governmental entity (the "Termination Date").

5.2 The "Termination Date" shall be the date specified in Section 5.1 above unless the Contract is terminated sooner by either the District or BMA pursuant to the terms of this Conservation Agreement.

5.3 In the event that the Texas Water Commission fails to grant BMA's request to amend its Certificates of Adjudication to include terms and conditions required to carryout the Contract, either Party may terminate this Conservation Agreement by providing written notice of termination to the other Party pursuant to Section 10.1 below. Upon termination of this Conservation Agreement in accordance with this Section 5.3 the Parties shall be released from the terms of this Conservation Agreement, and (i) the District shall be relieved of its obligation to make any additional payments of the Contribution, and (ii) BMA shall be relieved of its obligations to give the District any "Credit" for any portion of the Contribution previously paid to BMA.

6. Permits and Consents.

6.1 BMA and the District agree to use their best efforts, and to cooperate fully with each other to obtain any and all necessary permits and consents from all regulatory authorities required to carry out the terms of this Conservation Agreement.

6.2 Nothing contained in the Conservation Agreement is intended to, nor should it be construed to change, alter, limit,

expand, amend, or otherwise modify the rights, duties and obligations of the Parties contained in the Contract with regard to obtaining any and all necessary permits and consents from applicable regulatory authorities required to carry out the terms of the Contract, including, without limitation, the desired amendments to BMA's Certificates of Adjudication.

7. Indemnification.

7.1 Except as otherwise provided in this Conservation Agreement, and to the extent allowed by law, BMA and the District each agree to defend, indemnify and hold harmless the other Party and their respective directors, officers, employees, agents and consultants against and from, any and all claims, demands, causes of action, indemnifications, suits, or litigation (including all costs, expenses and attorneys' fees incurred with respect to any such matters) of every kind and character, brought or asserted for injuries or death of any persons, or for damaged property, or for any other damage, fine or penalty whatsoever, arising out of, resulting from, or in connection with the actions of the respective Party in the fulfillment of their duties and obligations contained in this Conservation Agreement. The covenant to defend, indemnify and hold harmless contained in this Section 7.1 includes, without limitation, any injury, death, damage, fine or penalty which in any part arises out of, results from, or occurs in connection with the negligence or fault of the respective Party or their respective directors, officers, employees, agents or consultants.

7.2 The term "fault" as used herein includes, without limitation, among other matters, a condition or event that gives rise to strict liability, or to a breach of warranty. However, if the respective party, or its officers, employees, agents or contractors did not cause the injury, death, damage, fine or penalty, in whole or in part, and are not otherwise responsible for such death, injury, damage, fine or penalty, then that party shall have no liability under this indemnity. This indemnity is hereby limited and shall be interpreted (including the severance of invalid provisions) as may be required to make the indemnity valid and enforceable under existing law. The parties agree to take such actions as may be necessary or required to cause this indemnity to be enforceable and valid to its fullest permitted scope under law.

8. Assignments; No Third Party Beneficiary.

8.1 This Conservation Agreement may not be assigned, pledged or delegated in whole or in part for any purpose by either Party without the prior written consent of the other Party. PROVIDED, HOWEVER, that either Party may assign or pledge this Conservation Agreement and delegate its performance to any successor in interest of said Party in the ownership and/or operation of the District to the extent such assignment, pledge or

delegation does not impair the other Party's rights under either this Conservation Agreement or the Contract.

8.2 The Parties are entering into this Conservation Agreement solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege, or benefit on any person or entity other than the parties hereto.

9. Attorneys' Fees.

9.1 In the event either Party defaults under this Conservation Agreement and, as a result of such default, the other party employs an attorney to enforce the provisions of this Conservation Agreement, then the non-defaulting Party can recover from the defaulting party reasonable attorneys' fees and expenses, irrespective of whether suit is filed. In the event of litigation between the Parties concerning this Conservation Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees and litigation expenses from the other Party.

10. General Provisions.

10.1 Any notice required to be delivered to any Party pursuant to this Conservation Agreement shall be delivered to the following addresses; provided, however, that either Party may change the address for receipt of notices by providing written notice of such change to the other Party:

TO BMA:

Bexar-Medina-Atascosa Counties Water
& Improvement District No. 1
P.O. Box 170
Natalia, Texas 78059
Fax # (512) 663-3519

Attention: John W. Ward, President

WITH A COPY TO:

Edmond R. McCarthy, Jr.
McGinnis, Lochridge & Kilgore L.L.P.
1300 Capital Center
919 Congress Avenue
Austin, Texas 78701
Fax # (512) 495-6093

TO THE DISTRICT:

Bexar Metropolitan Water District
2706 West Southcross, South San Antonio
P.O. Box 3577
San Antonio, Texas 78211-6577
Fax # (512) 924-9229

Attention: Thomas C. Moreno, General Manager

WITH A COPY TO:

Louis Rosenberg, P.C.
De Mazieres Building
322 Martinez Street
San Antonio, Texas 78205-3407
Fax # (512) 225-5450

Attn: Louis Rosenberg

10.2 This Conservation Agreement and any exhibit attached hereto contain the entire agreement between BMA and the District, and the Parties agree that this Conservation Agreement cannot be altered or varied by any prior, contemporaneous, or subsequent oral agreement, stipulation, representation, or understanding.

10.3 The headings contained in this Conservation Agreement are for convenience only and shall not enlarge or limit the scope or meaning of the various sections hereof. Words of any gender used in this Conservation Agreement shall include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise clearly requires.

10.4 Except as expressly provided herein, nothing in this Conservation Agreement, is intended to, nor is it to be construed in any way to modify, amend or supersede any of the terms, conditions and/or obligations of the Parties pursuant to the Contract. The Parties expressly acknowledge that the terms and conditions of the Contract shall survive, and the same are not merged into this Conservation Agreement.

IV.
CONCLUSION

Executed in multiple originals on the dates shown below to be effective September 1, 1992.

BMA:

Date: September 10, 1992

BEXAR-MEDINA-ATASCOSA COUNTIES
WATER CONTROL AND IMPROVEMENT
DISTRICT NO. 1

By: _____

John W. Ward
President, Board of Directors

Attest: _____

Alex Hitzfelder, Secretary
Board of Directors

The District:

Date: September 10, 1992

BEXAR METROPOLITAN WATER DISTRICT

By: _____

Ronald C. Williamson
President, Board of Directors

Attest: _____

Marvin W. Sueltenfuss
Secretary