



Phelan Piñon Hills Community Services District

4176 Warbler Road • P. O. Box 294049 • Phelan, CA 92329-4049 • (760) 868-1212 Fax (760) 868-2323

SPECIAL ENGINEERING COMMITTEE MEETING

May 30, 2018 – 4:00 p.m.

PPHCSD Office

4176 Warbler Road, Phelan, CA

AGENDA

1. **Call to Order** – Pledge of Allegiance
2. **Roll Call**
3. **Approval of Agenda**
4. **Public Comment** – Under this item, any member of the public wishing to directly address the Board on any item of interest that may or may not be within the subject matter jurisdiction of the Board, but not listed on the agenda, may do so at this time. However, the Board is prohibited by law from taking any action on any item not appearing on the agenda unless the action is otherwise authorized by the Brown Act. Any member of the public wishing to directly address the Board on any item listed on the agenda may do so when the item is being considered by the Board. If you wish to address the Board, please complete a Comment Card and present it to the Board Secretary. Speakers are requested to be brief in their remarks. The Chair may limit each speaker to a comment period of five (5) minutes.
5. **Review of Sheep Creek Mutual Water Company Water Transfer & Mutual Agreement**
6. **Adjournment**

Pursuant to Government Code Section 54954.2(a), any request for a disability-related modification or accommodation, including auxiliary aids or services, that is sought in order to participate in the above-agendized public meeting should be directed to the District's General Manager at (760) 868-1212 at least 24 hours prior to said meeting.

Agenda materials can be viewed online at: <http://www.pphcsd.org/2017.php>

**WATER EXCHANGE AGREEMENT
BETWEEN
SHEEP CREEK WATER COMPANY
AND
PHELAN PINON HILLS COMMUNITY SERVICE DISTRICT**

This Agreement (the "Agreement") is entered into this ____ day of _____, 2014, by and between SHEEP CREEK WATER COMPANY ("SCWC"), a California Corporation, and PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT ("CSD"), a public agency, which are hereafter collectively referred to as the "Parties".

RECITALS:

WHEREAS, SCWC is a mutual water company which services portions of Phelan and Wrightwood in the State of California by supplying potable water service to its shareholders and customers; and

WHEREAS, CSD is a Community Services District organized and operating pursuant to California Government Code Section 61000, et seq., which services Pinon Hills and areas of Phelan, from the Los Angeles County line continuing east through Phelan surrounding the Sheep Creek Service Area, by supplying potable water service to its customers; and

WHEREAS, SCWC owns and operates a 912,000 gallon water storage reservoir ("Tank 6") located south of Sheep Creek Rd and Snowline Dr; and

WHEREAS, CSD owns and operates a 428,000 gallon water storage reservoir ("Tank 6A") located south of Sheep Creek Rd and Snowline Dr; and

WHEREAS, SCWC owns and operates a well site north of Wrightwood, which has five wells and a underground tunnel and has periods of excess flow; and

WHEREAS, SCWC and PPHCSD at times have a need for additional water due to drought, main line breaks, vandalism and well problems.

WHEREAS, SCWC and CSD own and operate a 12" interconnection located between Tank 6 and Tank 6A ("Intertie").

NOW THEREFORE, in consideration of the mutual benefits which will accrue to the Parties in carrying out the terms of this Agreement, it is mutually understood and agreed as follows:

AGREEMENT:

1. **Term.** The term of this Agreement shall commence on the date first written above ("Commencement Date") and, unless otherwise terminated pursuant to the terms and conditions of this Agreement, shall continue for a period of one (1) year. This Agreement shall automatically renew for successive one (1) year periods unless and until one Party provides notice of termination to the other, in writing at least fourteen (14) days in advance of the expiration date of the Agreement.

2. **Amount of Water; Meter; Delivery Point.** Subject to the other terms of this Agreement, each of the Parties agrees to make available to the other Party such supplemental water supplies ("Exchange Water") necessary to assist the receiving Party to serve its customers. However, each Party understands and acknowledges that the other Party's primary responsibility is to serve its own stockholders or customers. Accordingly, each Party shall have the absolute discretion to determine what amount of Exchange Water, if any, to sell to the other Party under this Agreement. The Parties further agree that the precise quantity and pressure of Exchange Water delivered from the selling Party to the purchasing Party may also vary due to climatological, water supply, system availability and other conditions. Exchange Water deliveries shall be metered by the selling Party. Exchange Water shall ordinarily be delivered through the Intertie. Upon mutual concurrence of the Parties, Exchange Water may also be delivered at any other mutually agreeable location.

3. **Request Procedure; Delegation of Authority to Approve Purchases.** If one Party desires to purchase Exchange Water from the other, the purchasing Party shall send a request to the selling Party. The request shall contain the proposed parameters and details of the transaction, including the amount of Exchange Water requested, proposed delivery points and pressures, and the proposed delivery schedule. If the selling Party has or can make Exchange Water available and desires to sell Exchange Water to the purchasing Party, the details of the final transaction shall be negotiated and memorialized in writing by the Parties. For the purposes of this Agreement, the respective General Managers of the Parties are hereby delegated express authority to negotiate and approve purchases.

4. **Payments for Water.** The Parties shall determine the price of the Exchange Water at the time of the transaction. SCWC shall charge no more than its actual cost to supply and deliver Exchange Water. During the course of any transaction, at the end of each month, the selling Party shall read the appropriate meter(s) and record the quantity of Exchange Water that was actually delivered from the selling Party to the purchasing Party during the preceding month. The selling Party shall deliver a copy of such record and/or an invoice to the purchasing Party reflecting the amount of Exchange Water that the selling Party delivered to the purchasing Party reflecting the amount of Exchange Water delivered and the price therefor. The purchasing Party shall pay the selling Party for all Exchange Water that the selling Party delivered to the purchasing Party on or before the thirtieth (30th) calendar day after the purchasing Party receives the monthly invoice for such Exchange Water from the selling Party. ~~The purchasing Party shall have the option to replace water used, at NO COST, at a later agreed upon date. Time of replacement water shall be agreed upon by the General Manager of both Parties~~ Upon terms and conditions mutually acceptable to the General Managers of both Parties, the purchasing Party

may satisfy all or any portion of its Exchange Water payment obligation by direct delivery of an agreed-upon volume of replacement water to the selling Party.

5. **Water Quality.** All Exchange Water **and replacement water** supplied pursuant to this Agreement shall be of good and sufficient quality, and shall comply with any and all applicable standards and laws. Water sold for potable/public drinking water uses shall conform to all applicable local, state and federal drinking water laws and standards.

6. **Interruption of Water Supply.** The Parties acknowledge and agree that from time to time during the term of the Agreement it may be necessary for the selling Party to interrupt the flow of Exchange Water to the purchasing Party. The selling Party retains the right, in its reasonable discretion, to interrupt the flow of Exchange Water at any time for any reason; provided, however, that the selling Party shall exercise best efforts to minimize, to the extent possible, the frequency and duration of any such interruption. The selling Party will also exercise its best efforts to notify the purchasing Party at least 24 hours in advance of any substantial reduction or cessation of Exchange Water supply deliveries to the purchasing Party.

7. **Insurance.** Each Party shall procure and maintain, for the duration of this Agreement, insurance or self-insurance against claims for injuries to persons or damages to property that may arise from or in connection with the Agreement. Each Party shall obtain and furnish to the other Party proof of coverage of each Party's standard insurance coverage for water production, storage, and delivery. The insurance coverage provided by each Party shall be approved by the other Party and shall not be non-renewed, canceled, or materially changed without first giving thirty (30) days advance written notice to the other Party.

8. **Termination.** Either Party may unilaterally terminate this Agreement, for any or no reason, upon the expiration of thirty (30) days after written notice of termination is provided to the other Party.

9. **No Assignment.** Neither Party may assign its rights under this Agreement without the express, written consent of the other Party.

10. **Indemnification.** SCWC and CSD shall each defend, indemnify and hold the other Party and its officials, officers, employees, consultants, subcontractors, volunteers and agents free of harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, to the extent arising out of or incident to any negligent acts, omissions or willful misconduct of the indemnifying party or its officials, officers, employees, consultants, subcontractors, volunteers and agents arising out of or in connection with the performance of this Agreement (including but not limited to the negligent or willful failure to provide emergency water of sufficient quality to meet all applicable federal, state and local laws related to water quality), including without limitation, the payment of all consequential damages and attorney fees and other related costs and expenses.

11. **Entire Agreement.** This Agreement contains the entire agreement between the Parties respecting the subject matter hereof and supersedes all prior understandings and agreements, whether oral or in writing, between the Parties respecting the subject matter of this Agreement.

12. Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenant, conditions or provisions of this Agreement, or the application thereof any other person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

13. Waiver of Covenants, Conditions and Remedies. The waiver by one Party of the performance of any covenant or condition under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by it of any other covenant or condition under this Agreement. The waiver by either or both Parties of the time for performing any act under this Agreement shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.

14. Amendment. This Agreement may be amended at any time by the written agreement of the Parties. All amendments and changes of this Agreement, in all or in part, and from time to time, shall be binding upon the Parties despite any lack of legal consideration, so long as the same shall be in any writing and executed by the Parties hereto.

15. Relationship of Parties. The Parties agree that their relationship is one of mutual assistance and that nothing contained herein shall render either Party, the agent or legal representative of the other for any purpose whatsoever, nor shall this Agreement be deemed to create any form of business organization between the Parties hereto, nor is either Party granted any right or authority to assume or create any obligation or responsibility on behalf of the other Party, nor shall either Party be in any way liable for any debt of the other.

16. No Third Party Benefit. This Agreement is intended to benefit only the Parties hereto and no other person or entity has or shall acquire any rights hereunder.

17. Further Acts. Each Party hereby agrees that it shall, upon request of the other, execute and deliver such further documents (in form and substance reasonably acceptable to the Party to be charged) and do such other acts and things as are necessary and appropriate to effectuate the terms and conditions of this Agreement.

18. Notices. All notices and demands that either Party is required or desires to give to the other shall be given in writing by United States registered or certified mail, return receipt requested, by personal delivery, by facsimile with confirmation of receipt, by express courier service or by electronic mail to the street address or facsimile number set forth below for the respective Party or any electronic mail address subsequently given, provided that if any Party gives notice of a change of name or address, notices to that Party shall thereafter be given as set forth in that notice. All notices and demands shall be effective upon receipt or upon refusal to accept delivery.

SCWC
4200 Sunnyslope Road
P.O. Box 291820
Phelan, CA 92329
Attn: General Manager

CSD
4176 Warbler Road
P.O. Box 294049
Phelan, CA 92329-4049
Attn: General Manager

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

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth above.

SHEEP CREEK WATER COMPANY

PHELAN PINON HILLS COMMUNITY
SERVICES DISTRICT

Chris Cummings
General Manager

Donald J. Bartz
General Manager

Date

Date