

WATER USE AGREEMENT

This Agreement, effective April 1, 2018, is made by and between THE MCCONNELL FOUNDATION, a California non-profit corporation, (hereafter "McConnell") and the Shasta County Water Agency (hereafter "Contractor").

RECITALS

A. McConnell has the right to receive 5,100 acre feet of water each year from the United States Department of the Interior, Bureau of Reclamation's (hereafter "Reclamation") Central Valley Project (hereafter "CVP") pursuant to a written contract dated August 11, 2000 (hereafter the "Contract").

B. Under the terms of the Contract, McConnell may designate the place of delivery of Contract water to any area that is within the permitted place of use for CVP water and temporarily assign its rights to receive Contract water to another party.

C. Contractor holds an existing contract to receive CVP water from Reclamation. Contractor's service area is within the permitted place of use for CVP water.

D. McConnell desires to grant to Contractor, and Contractor desires to purchase, the right to receive One Hundred (100) acre feet of Contract water, pursuant to the terms and conditions set forth below.

NOW, THEREFORE, the parties agree as follows:

TERMS AND CONDITIONS

1. **Purpose of Agreement:** The purpose of this Agreement is to allow Contractor to purchase a portion of McConnell's Contract water during the 2018-2019 water year ("Water Year") only.

2. **Term of Agreement:** This Agreement is effective as of the date first indicated above and shall expire February 28, 2019, unless otherwise extended by a written agreement signed by both parties.

3. **Quantity of Water:** The quantity of water Contractor is entitled to receive under this Agreement is One Hundred (100) acre feet (hereafter "Quantity"). Water delivered to Contractor under this Agreement shall be made available to Contractor by Reclamation pursuant to the terms of the Contract and in the quantity set forth in the Water Delivery Schedule attached hereto as Exhibit "A" and incorporated herein by reference, or as subsequently amended.

4. **Measurement of Water:** The water made available to Contractor under this Agreement will be measured with equipment owned, installed, operated and maintained by Contractor. Upon request by McConnell, Contractor will investigate the accuracy of such measurements and promptly correct any discovered errors.

5. **Use of Water:** The parties agree that water made available under this Agreement may be used for municipal and irrigation purposes.

6. **Payment for Water:** Contractor shall pay to McConnell the sum of Two Hundred Fifty Dollars (\$250.00) per acre foot for each acre foot of water purchased under this Agreement. Payments must be received by McConnell within thirty days of each month during which water is scheduled for delivery, and shall be made for the full amount of McConnell water scheduled for that month. Contractor understands that this is a “take or pay” agreement and that Contractor’s failure to take delivery of water scheduled under this Contract does not affect Contractor’s obligation to pay for the water purchased, provided that if Reclamation permits a change in the schedule, Contractor will pay for the water in accordance with the modified schedule. All payments to McConnell shall be sent to the address indicated in Paragraph 14, below.

7. **Delivery Schedule:** Water shall be available for diversion by Contractor at its existing point of diversion for CVP water in accordance with the attached Water Delivery Schedule. Any quantity of water not diverted by Contractor during the month in which it is scheduled shall be available to Contractor during any subsequent month of the Water Year only upon rescheduling through a revised Water Delivery Schedule and subject to Reclamation’s prior approval. Failure by Reclamation to reschedule unused water shall not relieve Contractor of its obligation to pay McConnell for the water.

8. **Limits on Use:** Contractor may use the water diverted under this Agreement for any beneficial use within its existing service area for CVP water. Contractor may not reallocate, transfer, sell or exchange any portion of the water diverted under this Agreement without McConnell’s prior written approval, which may be withheld at McConnell’s sole discretion.

9. **Reporting Requirements:** Contractor shall provide McConnell with monthly reports identifying the quantity of water diverted under this Agreement during the immediately preceding month. These reports must be received by McConnell by the 7th day of each month following any month in which water is diverted under this Agreement. Contractor also shall report to Reclamation by the 10th day of each month the quantity of water diverted under this Agreement.

10. **Interruption by Reclamation:** Contractor understands that the water made available under this Agreement is being delivered by Reclamation pursuant to the terms of McConnell’s Contract. McConnell shall not be liable to Contractor for any interruption or reduction of water deliveries under this Agreement caused by Reclamation not delivering water under McConnell’s Contract. In the event Reclamation does not deliver water to Contractor under this agreement for reasons unrelated to Contractor’s actions or inactions, Contractor shall not be required to pay for the undelivered quantity.

11. **Default:** If Contractor fails to pay any amount owed under this Agreement for a period of three (3) days after receiving written notice of this failure from McConnell, McConnell may terminate this Agreement and exercise its rights and remedies under the law.

12. **Assignment Restricted:** Contractor’s rights and obligations under this Agreement shall not be assigned without McConnell’s prior written consent, which may be withheld in McConnell’s sole

and absolute discretion, and any assignment without consent shall be void and have no effect. Subject to this restriction, this Agreement shall inure to the benefit of and be binding on the parties and their respective successors, heirs and assigns.

13. **Indemnification and Hold Harmless:** McConnell shall not be responsible for the control, carriage, handling, use, disposal or distribution of water made available to Contractor under this Agreement. Contractor shall indemnify, defend and hold McConnell, its affiliates, partners, officers, directors, shareholders, employees, independent contractors, agents, successors and assigns harmless from any damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water, including but not limited to court costs and attorney fees and the fees of expert witnesses.

14. **Notices:** Any notices given under this Agreement shall be in writing and shall be served either personally or delivered by first class or express United States mail with postage prepaid, return receipt requested pursuant to registered or certified mail, or by a nationally recognized overnight commercial courier service with charges prepaid. Notices may also effectively be given by transmittal over electronic transmitting devices if the party to whom the notice is being sent has a receiving device in its office, and provided a complete copy of the notice shall also be served either personally or in the same manner as required for a mailed notice. Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in the United States mail with postage prepaid or with a nationally recognized overnight commercial courier service with charges prepaid. Notices shall be directed to the following addresses:

To: McConnell,

John Mancasola
The McConnell Foundation
800 Shasta View Drive
Redding, CA 96003-8208

With a copy to:

Swanson Law Office
Jeffery J. Swanson
2515 Park Marina Drive, Suite 102
Redding, CA 96001

To: Contractor,

Patrick Minturn
Shasta County Water Agency
1855 Placer Street
Redding, CA 96001

Any party may change its address for notice purposes by giving notice to the others in accordance with this paragraph, provided that the address change shall not be effective until three (3) days after notice of the change.

15. **Force Majeure:** Neither party shall be liable for any loss, damage or penalty resulting from delays or failures in performance resulting from acts of God or other causes beyond its control. Each party agrees to notify the other party promptly of any circumstance delaying its performance and to resume performance as soon thereafter as is reasonably practicable. If there is such a delay or failure due to events as set forth in this paragraph, such delay or failure will result in all scheduled deadlines and time limitations being extended by an amount of time equal to such delay or failure.

16. **Severability:** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

17. **Attorneys' Fees:** In any dispute between the parties, whether or not resulting in litigation, the prevailing party shall be entitled to recover from the other party all reasonable costs, including, without limitation, reasonable attorneys' fees.

18 **No Party Deemed Drafter:** In the event of a dispute between any of the parties hereto over the meaning of this Agreement, no party shall be deemed to have been the drafter hereof, and the principle of law that contracts are construed against the drafter does not and shall not apply.

19. **Authority:** Upon request, each party shall deliver to the other party a certified copy of a resolution of its board of directors/governing body or other evidence authorizing the execution of this Agreement and naming the persons authorized to execute this Agreement on behalf of the named entity.

20. **Counterpart Copies:** This Agreement may be signed in counterpart or duplicate copies, and any signed counterpart or duplicate copy shall be equivalent to a signed original for all purposes.

21. **Entire Agreement/Amendments:** This Agreement, which includes the Exhibits, contains all representations and the entire understanding and agreement between the parties. Correspondence, memoranda, and oral or written agreements which originated before the date of this Agreement are replaced in total by this Agreement unless otherwise expressly stated in this Agreement. The provisions of this Agreement may be waived, altered, amended, or repealed, in whole or in part, only on the written consent of all parties to this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed their names as of the date and year indicated below.

THE MCCONNELL FOUNDATION

CONTRACTOR

By: _____
JOHN A. MANCASOLA,
President

By: _____
LES BAUGH, Chairman
SCWA Board of Directors

Date: _____

Date: _____

APPROVED AS TO FORM:


DAVID M. YORTON, JR.
Senior Deputy County Counsel

RISK MANAGEMENT APPROVAL

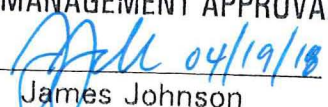
BY:  04/19/18
James Johnson
Risk Management Analyst

EXHIBIT "A"

WATER SCHEDULE

THE MCCONNELL FOUNDATION/SHASTA COUNTY WATER AGENCY

WATER YEAR 2018-2019

Month	Quantity (af)	Point of Diversion	Place of Use
March	0		
April	0		
May	0		
June	0		
July	5	CSA No. 23	Crag View
August	7	CSA No. 23	Crag View
September	8	CSA No. 6	Jones Valley
	3	CSA No. 3	Castella
	5	CSA No. 23	Crag View
October	1	CSA No. 6	Jones Valley
November	0		
December	1	CSA No. 6	Jones Valley
January	2	CSA No. 25	Keswick
February	67	CSA No. 25	Keswick
	1	CSA No. 6	Jones Valley
Total	100		