

YUBA COUNTY WATER AGENCY
CONSTRUCTION AND OPERATING PERMIT AGREEMENT
NEW BULLARDS BAR RESERVOIR

Revised August 13, 1987



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**YUBA COUNTY WATER AGENCY
CONSTRUCTION AND OPERATING PERMIT AGREEMENT
NEW BULLARDS BAR RESERVOIR**

This Agreement is made and entered into this 9th day of March, 1988, by and between YUBA COUNTY WATER AGENCY, a political subdivision of the State of California ("AGENCY") and Summer Sounds, Inc., a(n) California Corporation doing business at 456 Old County Road, Tahoe City, CA. ("PERMITTEE") with reference to the following:

RECITALS

1. AGENCY built the New Bullards Bar Reservoir ("Reservoir") pursuant to a license from the Federal Energy Regulatory Commission ("FERC") as part of the construction of the Yuba River Development, Project No. 2246. AGENCY is the owner of certain lands in Yuba County which are adjacent to the Reservoir. Pursuant to the terms and conditions of the FERC license, AGENCY is required to and has developed and maintains a recreational use plan for the Reservoir. Since the Reservoir is surrounded by considerable acreage of national forest land, AGENCY, in September of 1962, entered into a cooperative agreement with the United States Forest Service ("USFS") for the development of a recreational use plan ("Plan") for the reservoir and land surrounding it.

2. As part of the Plan, AGENCY has contracted in the past for the operation of marina facilities near the Cottage Creek Picnic Area and Boat Ramp near the dam site and for management of various boat access campgrounds around the Reservoir. As a result

of these prior associations and due to recent legal developments generally, AGENCY is particularly sensitive to the need to be selective in the issuance of a marina operation permit and the effects upon it and upon the enforcement of this agreement of the laws relating to bankruptcy and, to a lesser degree, with those related subjects of insolvency and assignments for the benefit of creditors. As a result, AGENCY has carefully negotiated, drafted and agreed to enter into this agreement based upon its finding that successful performance of the terms of this agreement requires particular and specialized personal skill, expertise, knowledge, experience and financial ability related to the construction, operation, and maintenance of marinas and campgrounds on the part of PERMITTEE. Based upon that premise and as a result of careful review, analysis, and consideration of PERMITTEE's proposal submitted in response to a Request for Proposals promulgated by AGENCY, AGENCY has determined that PERMITTEE is qualified to perform this agreement and is the responsive proponent who best meets these standards.

3. PERMITTEE understands and acknowledges upon entering into this agreement that it has been selected based upon its own personal skill, expertise, knowledge, experience and financial ability. In the case where PERMITTEE is a corporation, it understands and acknowledges that AGENCY has selected it based upon these same qualities as they relate to the corporation and based upon these qualities as they relate to particular individuals within PERMITTEE's organization with whom AGENCY negotiated this agreement or with whom AGENCY will be primarily dealing.

4. Further, AGENCY has relied upon PERMITTEE's representations, both oral and in writing, that it is capable of constructing, operating and maintaining the marina, campgrounds and related recreational facilities referred to herein in compliance with the standards stated herein and that it has the skill, expertise, knowledge and experience, as well as financial qualifications to successfully construct, operate, and maintain a marina, campgrounds and related facilities at the Reservoir.

NOW, THEREFORE, the parties agree as follows:

GENERAL OPERATIONAL TERMS AND CONDITIONS

I. OBLIGATIONS OF AGENCY

1. Grant of permit. AGENCY hereby grants to PERMITTEE a permit, subject to the terms and conditions stated in this Agreement, for the exclusive right and privilege to construct, operate and maintain a marina and related facilities (hereinafter "marina" unless otherwise noted) and to operate and maintain boat access campgrounds (hereinafter "campgrounds" unless otherwise noted) for use by the general public at the Reservoir. The marina shall be located in the area more particularly described on Exhibit "A" attached hereto and incorporated herein. The campgrounds are currently operated by AGENCY under a Special Use Permit with the USFS, which shall be subpermitted from AGENCY to PERMITTEE pursuant to this Agreement. The campgrounds are more particularly described on Exhibit "B" attached hereto and incorporated herein.

2. United States Forest Service Facilities. The agreement between the USFS and AGENCY with regard to recreational use of the New Bullards Bar Reservoir Recreational Area contains a

clause which authorizes the USFS to assign to AGENCY the responsibility for operation and maintenance of various campgrounds and other facilities now under its jurisdiction in the event sufficient funding for said facilities is not appropriated by the Congress. Should this occur, AGENCY may, at its sole option, further assign and subpermit the responsibility for operations and maintenance of said facilities to PERMITTEE. Such assignment and subpermitting shall be effected by means of AGENCY giving notice thereof to PERMITTEE. In such event, the permit granted herein and the provisions of this agreement shall, automatically upon the giving of such notice and without further documentation, be amended to include the same.

3. Agency-Provided Facilities and Services. AGENCY shall furnish and make available to PERMITTEE the following:

a. Without charge other than as included in the fees provided for herein, reasonable and necessary use of such portion of the shoreline space as indicated on Exhibit "A" as may be required for the construction, operation and maintenance of the marina and related facilities;

b. At no charge up to 5,000 cubic feet per month and above that at twenty cents (\$.20) per 100 cubic feet, adequate potable water supply for the marina operation to the extent that the AGENCY can supply surplus water from its Cottage Creek system, after meeting the needs of Cottage Creek Picnic Area and other recreational uses. AGENCY shall be under no obligation to provide for the conveyance system for transportation of this water from AGENCY's storage tank to the marina or related facilities.

c. Reasonable use by PERMITTEE of the north one-half of the storage space in AGENCY's warehouse building and of the adjoining concrete slab, consistent and in no event conflicting with the needs of and use made by AGENCY of such space or slab, which needs and use shall have priority over those of PERMITTEE. Absent separate agreement of the parties which provides otherwise, upon reasonable notification by AGENCY, PERMITTEE shall immediately remove from the warehouse any items requested of it to be so removed.

4. Use of Premises. AGENCY hereby grants to PERMITTEE a permit to use and occupy the marina property as described on Exhibit "A" and the campgrounds property as described on Exhibit "B" generally for the purposes otherwise set forth herein and specifically for the purpose of constructing, operating and maintaining the marina and related facilities for public use and for the purpose of operating and maintaining the boat access campgrounds for public use and for no other purposes. Pursuant to this permit and in accordance with the terms stated herein, PERMITTEE may, and in some instances shall, where it is so otherwise provided herein, do the following: rent boat berths; rent houseboat mooring space; sell gasoline and oil; provide towing service for disabled water craft (because of the unique risks and liabilities associated with rafting, the towing of river rafts shall be the subject of a separate agreement to be negotiated independently with AGENCY); operate and maintain a restaurant/snackbar and store; rent, sell, and repair boats or motors; sell water sports and fishing equipment; sell bait and fishing tackle; sell boat and picnic supplies; sell food, ice, beverages,

(including beer and wine, but only pursuant to a duly issued "Off Sale" beer and wine license) tobacco and other vendable items.

5. Use of Existing Facility. There exists at the site of the proposed marina the remains of the facility previously installed, consisting of one building, floats, counterweights, ramps and docks and related equipment and hardware. PERMITTEE may use this existing facility to the extent such use is consistent with the remaining terms and conditions of this agreement. Should AGENCY or PERMITTEE determine that such use is not appropriate, PERMITTEE shall, at its own cost and expense promptly dispose of any or all of said facility in the most expeditious manner available and as authorized by applicable local, state, or federal law.

6. Right to Impose Restrictions. AGENCY reserves the right to prohibit the sale or rental of any item which it deems objectionable or beyond the scope of merchandise deemed necessary for proper service to the public reasonably related to the operation of the marina, campgrounds and related facilities as provide for herein.

7. Condition of Premises not Warranted. AGENCY does not warrant or represent that the premises are suitable for the purposes for which they are permitted to be used as a marina and campgrounds under the terms of this agreement. PERMITTEE hereby represents and warrants that it has examined the area described and designated in Exhibit "A" and Exhibit "B" and agrees and admits that no representations as to the condition or repair thereof have been made by AGENCY or its directors, officers, agents, or employees which are not otherwise herein specifically expressed; and likewise agrees that no agreement or promise to

alter, repair, or improve any of said premises not contained herein has been made by AGENCY, its directors, officers, agents or employees.

8. Photography: AGENCY reserves the right to grant permits to persons or corporations engaged in the production of still and motion pictures and related activities for the use of the marina, campgrounds, and related facilities for such purposes provided such activities shall not substantially interfere with the operation of the marina, campgrounds, and related facilities by PERMITTEE as provided for herein.

II. OBLIGATIONS OF PERMITTEE.

1. Use. Except as otherwise provided herein, PERMITTEE shall use and occupy the premises only in a manner consistent with and solely for the purposes set forth hereinabove in paragraph 4 of "OBLIGATIONS OF AGENCY".

2. No Unauthorized Use. PERMITTEE shall not use or permit the use of the marina, campgrounds or related facilities, in whole or in part, during the term of this agreement, for any purpose other than as stated in this agreement without the prior written consent of AGENCY being first had and obtained.

3. No Dangerous Activities. PERMITTEE shall not keep, store or sell, in or on the marina property or campgrounds area, any goods, merchandise and material which are in anyway explosive, toxic, or hazardous. PERMITTEE shall not keep or store on said property any hazardous waste as that term is defined by the Environmental Protection Agency.

PERMITTEE shall not transact or allow to be transacted any offensive, dangerous, or illegal trade, business, occupation

or activity on the premises. PERMITTEE shall not operate or allow to be operated any machinery or apparatus on or near the premises, the operation of which might cause damage or otherwise risk injury to the premises or adjacent buildings. All petroleum products contemplated to be sold pursuant to this agreement shall be kept, stored, handled and dispensed pursuant to local, state, and federal laws, rules and regulations.

4. Aircraft Services. PERMITTEE shall not provide services related to aircraft including but not limited to aircraft rentals, mooring of amphibian aircraft, aircraft servicing, and the like. It is the intention of the parties to clearly remove any authority of PERMITTEE to provide any services to aircraft of any kind, except however in cases of extreme emergency. However, this shall not relieve PERMITTEE of the responsibility to insure the Agency for any liability which may be occasioned by the rendering of such services, whether accidental or intentional.

5. State Waterways and National Forest Laws. PERMITTEE shall comply with and shall inform public users of the marina, campgrounds, and related facilities as to state, federal and local laws, rules and regulations governing California State Waterways and National Forest land where applicable to the use of New Bullards Bar Recreation Area.

6. Nondiscrimination. In the performance of this contract, PERMITTEE shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, sex or age. PERMITTEE shall take affirmative action to ensure that applicants are employed, and that employees are

treated during employment, without regard to their race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. PERMITTEE shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by AGENCY setting forth the relevant provisions of the Fair Employment Practices Act.

PERMITTEE shall permit access to its records of employment, advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices Commission, or any other agency of AGENCY or the State of California whose responsibility it is to insure compliance with this section of the contract.

The State of California, AGENCY or any agency of either may determine a willful violation of the Fair Employment Practices Act to have occurred upon receipt of a final judgment having that effect from a court in an action to which PERMITTEE was a party, or upon receipt of a written notice from the Fair Employment Practices Commission that it has investigated and determined that PERMITTEE has violated the Fair Employment Practices Act and has issued an order under Labor Code §1426, which has become final, or obtained an injunction under Labor Code §1429. Any such violation shall be considered a breach of this contract and AGENCY shall

have the right to immediately terminate this contract for such breach.

7. Compliance with Law. PERMITTEE agrees to comply with all applicable local, state, or federal laws, rules or regulations in regard to the construction, operation and maintenance of the marina and operation and maintenance of the campgrounds and related facilities. In particular, but without limitation to the following, PERMITTEE has been advised that AGENCY operates the Reservoir pursuant to the following licenses, permits, agreements, and ordinances, all of which are binding upon PERMITTEE, copies of which were made available to PERMITTEE for review prior to entering this agreement, and to which PERMITTEE agrees to adhere strictly in their current form and content and as amended from time to time, in addition to all other applicable local, state, and federal laws:

a. License for Project No. 2246 as amended, issued by the Federal Energy Regulatory Commission.

b. Contract dated May 13, 1966 between AGENCY and Pacific Gas and Electric Company, for the purchase and sale of power generated by the Yuba River Development, commonly known as the "Power Purchase Contract".

c. Contract dated May 10, 1966, No. DGGR15 by and between the State of California and AGENCY, commonly known as the Davis Grunsky Contract, as amended August 14, 1973 and as further amended from time to time.

d. Memorandum of Understanding by and between the AGENCY and USFS executed by AGENCY on July 8, 1965 and by USFS on August 27, 1965.

e. The annual project fire plan, Yuba River Project, prepared by USFS.

f. Agreement dated August 9, 1965 between AGENCY and USFS for cooperative fire control work.

g. Yuba County Ordinance No. 8.50 et seq.

h. Agreement dated September 9, 1968 between the AGENCY and the USFS for the Administration, Operation, and Maintenance of Recreational Facilities on the Yuba River Development Project in the Tahoe and Plumas National Forests.

i. USFS Special Use Permit dated July 12, 1984, User No. 1024.

8. Construction of Marina. PERMITTEE shall furnish everything necessary to and proper for and perform the work of the construction of the marina and related facilities to the extent required for the provision of the services called for herein and the mooring of houseboats, patioboats, and all other kinds of water craft as specified herein. PERMITTEE further agrees that the marina and related facilities shall be constructed in accordance with plans stamped or sealed by a registered Civil Engineer experienced in the construction of marina facilities which plans shall be further subject to the written approval of AGENCY in advance of the commencement of work and the terms of which plans shall be incorporated herein by reference. AGENCY's approval of the Engineer selected and all plans submitted by PERMITTEE prior to initiating construction is a condition to construction beginning. For purposes of this agreement, construction shall be deemed completed and a Certificate of Final Completion therefore authorized to be issued if said construction is performed in

strict compliance with said plans and with the terms of this agreement and if PERMITTEE secures AGENCY's prior written final inspection approval, which AGENCY will not unreasonably withhold. AGENCY shall be entitled, in furtherance of paragraph 5 of GENERAL TRANSACTIONAL TERMS AND CONDITIONS, to conduct regular inspections of the project from time to time throughout all phases of construction. All reinspections which are undertaken by AGENCY in response to the failure by PERMITTEE to perform the work in the manner specified by a prior inspection and/or in the plans, shall be at PERMITTEE's cost and shall be charged to PERMITTEE as a fee pursuant to paragraphs 18 and 19 herein. An exception to this shall be in the case of Final Inspection of the project wherein AGENCY shall, at its own cost and expense, conduct one "Pre-Final" and one "Final" inspection, all other reinspections to be charged to PERMITTEE as hereinabove stated.

9. Modification of Improvements. PERMITTEE shall not make any major alterations or modifications of any improvements referred to herein without obtaining the prior written consent of AGENCY, which consent will not be unreasonably withheld. As used herein, a major alteration or modification shall be deemed to be any such alteration or modification which causes said improvements to no longer substantially comply with the terms, plans or specifications set forth or otherwise incorporated herein.

10. Failure to Construct Marina.

a. If PERMITTEE fails in any material respect to cause the marina facilities to be completed in accordance with this agreement, AGENCY may by written notice to PERMITTEE terminate PERMITTEE's right to proceed with the work under this

contract. In such event, AGENCY may, at its option without necessarily terminating the agreement in its entirety, take over the work and, by contract or otherwise, prosecute it to completion or restore the site to its original condition. AGENCY may also, on like terms, assign such rights to another contractor with or without terminating the Agreement. PERMITTEE and its sureties shall be liable to AGENCY for the costs occasioned by AGENCY as a result of any of these actions. AGENCY may take possession of and utilize in completing the work, restoring the site or assigning the rights to do either, such materials, appliances, and equipment as may be on the site of the work and suitable or necessary therefor. Nothing contained in this paragraph shall be deemed to require AGENCY to take any of the actions stated herein.

11. Operation of Marina and Campgrounds. PERMITTEE shall construct, operate, and maintain the marina and shall operate and maintain the campgrounds and all related facilities in a good, clean, sanitary and safe condition keeping the same free of trash, garbage, waste, infestation and disease in compliance with any and all present and future local, state, and/or federal laws, regulations, general rules or opinions of any governmental authority now or at any time hereafter in effect relating to police powers generally and in particular sanitation or public health, safety, or welfare and shall at all times faithfully obey and comply with all laws, rules and regulations applicable thereto adopted by local, state, federal or other governmental bodies or departments or officers thereof.

12. Standard of Operation. PERMITTEE shall construct, operate and maintain the marina, campgrounds and related

facilities and provide the services described herein in a manner consistent with other marinas in the State of California providing similar facilities and services and recognized as being "state of the art" recreational facilities, subject only to such limitations or requirements, if any, as may be imposed by law or as otherwise set forth herein.

13. Parking. PERMITTEE shall construct, operate, manage and maintain certain areas designated "Marina Parking Area" within the area set forth on Exhibit "A" as areas reserved for storage, parking areas for boat trailers, boats, trailers, or vehicles, and for future trailer parks. Rates for parking fees, if any are allowed to be charged, shall be as established by PERMITTEE and subject to the prior written approval of AGENCY. Any rates which are subject to the prior approval of the State of California under the Davis-Grunsky Contract between the AGENCY and the State of California shall likewise be subject to the approval of the State of California prior to such rates being placed into effect. A schedule of all approved rates and fees shall be prominently displayed at the marina and, where applicable, campground areas and the parking areas and shall be filed with the AGENCY and, where applicable, the State of California.

14. Disposal of Sewage. PERMITTEE shall have the right to and shall use the existing pumping barge currently owned by AGENCY, or other AGENCY approved device mechanism, system, or process, including without limitation use of available AGENCY administrative site sewage disposal systems to the extent they are in place during the term of this Agreement, to pump out and otherwise maintain, repair, and/or replace the comfort stations at

the marina, all personal comfort stations at the campgrounds, all floating comfort stations, pump out all houseboats and to perform such other sewage removal and disposal functions as may be determined by AGENCY or as may be otherwise required by law. PERMITTEE shall, at its own cost and expense, be responsible for routine maintenance and repair, replacement, and a periodic cleaning of such barge or other device to insure its continuous uninterrupted functioning. PERMITTEE shall also adequately and in accordance with local, state and federal law, provide for the dumping of sewage generally and the dumping and flushing of portable toilets. Any supplemental service desired by AGENCY shall be provided by PERMITTEE at its sole cost and expense, it being agreed and understood that the same shall only be required as is necessary for PERMITTEE to meet its obligations to comply with all local, state, and federal laws regarding the handling, processing, and disposal of human waste and other sewage and/or as is necessary to otherwise fulfill the terms of this agreement.

15. Staffing of Facilities and Surveillance. PERMITTEE shall at all times either personally or through one or more duly authorized employee(s) of PERMITTEE be physically present somewhere on the facilities as described in Exhibit "A" twenty four (24) hours a day, every day during each season and from sunrise to sunset every day during the off-season. A part of the duties of PERMITTEE or said employee(s), as applicable, shall include the surveillance and protection of the premises described in both Exhibit "A" and "B" from and against trespass, vandalism or destruction and shall further include the supervision and surveillance of the marina facilities and surrounding grounds and boat-

access campgrounds for purposes of security. PERMITTEE and/or said employee(s) shall further be responsible for notifying AGENCY immediately of any violations of law occurring on or about the marina, campgrounds and/or related facilities, which shall be in addition to its responsibilities, if any, to notify other governmental agencies in accordance with local, state, or federal law.

PERMITTEE shall house itself or said employee(s) either in a mobile trailer home not to exceed 20 ft. in length parked on the designated parking lot for the marina or a mobile trailer home of unlimited length parked at the warehouse pad site. In either event, the delivery, location, installation, maintenance and occupation of said trailer shall be pursuant only to the prior written consent of AGENCY and, in all events, shall be allowed only in accordance with all local, state, and/or federal health, zoning, and building inspection permit laws and requirements, which laws and requirements shall be complied with in full prior to occupation and continue to be complied with in full and uninterrupted throughout the course of occupancy pursuant to this agreement.

16. Security Devices. PERMITTEE shall furnish, install, and operate at its own cost and expense any and all fences, warning lamps or lights, and other security devices, in addition to the individual resident provided for in paragraph 15, that any insurance company insuring any portion of the marina, campgrounds, and related facilities against loss by fire, theft or vandalism may deem necessary or merely advisable or recommended to prevent unauthorized persons from trespassing on the property and/or committing acts of arson theft, vandalism, or destruction thereon.

17. Repairs. PERMITTEE shall, at its sole cost and expense, construct, operate, keep and maintain all marina and campground improvements and facilities in good order and repair, including without limitation, structural repairs. Should PERMITTEE fail or refuse to do so, AGENCY shall have the option to declare a default hereunder and terminate the agreement and permit or to perform such maintenance and/or repairs for the account of PERMITTEE in which event PERMITTEE agrees to promptly reimburse AGENCY for the costs thereof as an additional fee hereunder, provided however, that AGENCY shall first give PERMITTEE 10 days written notice of its intention to perform said maintenance and repairs for the account of PERMITTEE during which 10 days PERMITTEE may perform such repairs to the satisfaction of AGENCY and be therefore relieved of the duties of repayment set forth in this paragraph. By reason of this paragraph, AGENCY is not and shall not be obligated to make any repairs or maintain any improvements and shall not be precluded from exercising any other remedy provided for herein. By reason hereof, PERMITTEE acquires no rights to, and hereby expressly waives the right to make any repairs at the expense of or for the benefit of AGENCY, with or without notice, except upon prior written consent of AGENCY.

18. Computation and Payment of Permit Fee.

a. PERMITTEE shall pay to AGENCY as a permit fee for the permit granting it the right and privilege to construct, operate, develop, use and maintain the marina, campgrounds, and related facilities the sum of Five Hundred Dollars (\$500.00) per month for the period from October 1 through March 31 of each year and Seven Hundred and Fifty Dollars (\$750.00) per month for the

period of April 1 through September 30 of each year, plus, during either period of time the following percentage to the extent it exceeds the \$500 or \$750 minimum, as applicable: 6% of the prior month's gross income up to Fifteen Thousand Dollars (\$15,000.00), 6 1/2% of the prior month's gross income from Fifteen Thousand Dollars (\$15,000.00) to Twenty Five Thousand Dollars (\$25,000.00) and 7 1/2% of the prior month's gross income over Twenty Five Thousand Dollars (\$25,000.00). The minimum fees (\$500 or \$750) shall be paid and delivered to AGENCY on the first day of each month, beginning with the first day of the month first following the signing of this agreement. Said fees pay in advance for the month in which they are paid. Where additional fees are payable based upon a percentage of gross income or otherwise as stated in this agreement, such additional fees and a written accounting therefor shall be paid and delivered to AGENCY not later than the tenth (10th) day of the month following the month for which they are being paid.

b. As used herein, "monthly gross income" means the total of all receipts received during the particular month being calculated less any actual refunds given during that month. In the case of fees which are received during a particular month but which are in payment of services to be rendered over a period more than one month in length (for example, boat dockage fees which are ordinarily collected for an entire year) the fees so collected and/or refunds so given, shall be allocated month-by-month for the full term for which the services are to be rendered. [By way of example only, if boat dockage fees of \$1,200.00 are collected in April for one year's worth of boat dockage, then

there are receipts to the PERMITTEE of \$100.00 a month for that one-year period. If, six months into the period a request to cancel the boat dockage agreement and refund the balance of fees is given, then the refund of \$600.00 is allocated against previously allocated income at the rate of \$100.00 a month for the remaining six months of the contract.]

c. Minimum fees to be adjusted annually on January 1st of each year to reflect fluctuations in the cost of living as reflected on the most recently published Consumer's Price Index for Northern California.

d. All fees shall be paid by means of one check payable and sent each month by first class mail to AGENCY at P.O. Box 1569, Marysville, California 95901, or personally delivered to AGENCY at the Yuba County Courthouse, 215 5th Street, Marysville, California 95901, provided however, that nothing herein shall be deemed to alter the date on which payment shall be due to be received by AGENCY.

e. It is understood and agreed by PERMITTEE that there is and shall be no grace period in the payment of fees and other charges called for herein. The fees, minimum, percentage, and other, shall be in default if a valid and negotiable check, backed by sufficient funds in PERMITTEE's account upon which it is drawn, is not received by AGENCY on or before the date upon which it is stated herein to be due.

19. Carrying and Delay Fees. AGENCY incurs regular monthly expenses in the operation of the Reservoir generally. It is looking to PERMITTEE's timely payment of fees to help offset some of these expenses. If said fees are not timely received,

AGENCY then has to "cover" the difference. As a result, in the event any of the fees (including without limitation those provided for in GENERAL TRANSACTIONAL TERMS AND CONDITIONS, paragraph 17 "Attorneys Fees and Costs") provided for herein shall be received by AGENCY after their due date, in addition and without regard to the exercise by AGENCY of other remedies provided for herein, an additional amount shall be added to said fees as reimbursement to AGENCY of the cost of delay in payment. This amount shall be calculated per diem on the due balance at the rate of 3.0 % (percent) over the then existing reference rate set for commercial loans by the bank which is the then largest bank in terms of deposits in Marysville, California and which additional fee shall be immediately due and payable and which carrying fee shall be further compounded daily until paid in full.

20. Business Records. PERMITTEE shall keep adequate business records in accordance with generally accepted accounting principals.

a. During the period commencing with Phase 1 and continuing through to the beginning of Phase 5, PERMITTEE shall provide on a monthly basis beginning with the first partial or full month of operations, monthly profit and loss statements and monthly income and expense statements, certified by PERMITTEE under penalty of perjury to be true and correct;

b. During the entire term of this agreement, PERMITTEE shall provide the following to AGENCY:

(i) For each of the first five (5) years of this agreement, on an annual basis as of either the anniversary date of this agreement or, if PERMITTEE's fiscal year end is

different that that, the close of the fiscal year of PERMITTEE next preceding such anniversary date, audited financial statements including balance sheet, profit and loss statement, income and expense statement and statement of change in financial position prepared and duly certified by PERMITTEE's Certified Public Accountant.

(ii) Beginning five (5) years from and after the date of this agreement and continuing every three (3) years thereafter, audited financial statements for the prior year including balance sheet, profit and loss statement, income and expense statement and statement of change in financial position, prepared and duly certified by a Certified Public Accountant chosen by the parties in the manner described in paragraph 21 herein, entitled "TERMINATION AND EXPIRATION AUDIT".

(iii) Reasonable access during normal business hours to and, where requested, copies (at AGENCY's expense) of PERMITTEE's books and records whether located at the premises or elsewhere, including without limitation, sales logs, rental logs, cash register receipts, cash register tabulations, records of purchases, tax statements, tax records and such other documentary information as may be reasonably related to the operation of the marina, campgrounds, and related facilities pursuant to this agreement.

21. Termination and Expiration Audit. Upon the expiration of this agreement, or the sooner termination thereof as provided for herein, PERMITTEE shall cause an audit to be performed by a certified public accountant, who shall be selected by agreement between PERMITTEE and AGENCY within five (5) days of

such expiration or sooner termination. If the parties cannot so agree, then the two accountants selected by PERMITTEE and AGENCY shall select a third certified public accountant to perform this function. If PERMITTEE does not select an accountant, then the audit shall be performed by the accountant of AGENCY's choice, at PERMITTEE's expense. Said audit shall take place within thirty (30) days after the expiration or sooner termination of this agreement and shall be completed and reports delivered to the parties within forty-five (45) days of said expiration or sooner termination. PERMITTEE agrees to pay to AGENCY, at the time of delivery of this report, all monies due and owing to AGENCY, if any, as confirmed by said audit.

22. Indemnification. PERMITTEE shall indemnify, defend, and hold harmless AGENCY and its directors, officers, agents, and employees from and against any and all liability for personal injuries, property damage, or for loss of life or property resulting from or in any way connected with the condition or use of the premises covered by this agreement, or any means of ingress thereto or egress therefrom, except liability for personal injuries, property damages, or loss of life or property caused solely by the negligence of the Agency, its directors, officers, agents, or employees.

23. Workers' Compensation Insurance. PERMITTEE shall obtain and thereafter maintain continuously without interruption throughout the term of this agreement and provide to AGENCY evidence of Workers' Compensation Insurance in accordance with applicable local, state, or federal law regarding the maintenance of such insurance for employees of PERMITTEE.

24. Fire Insurance. PERMITTEE shall obtain upon entering this agreement and prior to taking possession of the property, and shall thereafter maintain continuously and without interruption during the term of this agreement and at all times provide to AGENCY evidence of, a policy or policies of fire insurance, with an extended coverage clause, insuring PERMITTEE against damage by fire, or other casualty ordinarily included in extended coverage provisions, to the extent of 100% of the full insurable replacement value of the marina and campground improvements and related facilities and their contents, and insuring against any business interruption occasioned thereby and naming therein as additional insureds AGENCY and its directors, officers, agents, and employees.

If fire or other casualty shall occur and some portion of the marina, campgrounds or related facilities shall be destroyed or damaged, making the same unusable, then unless such damage shall, in the opinion of AGENCY and PERMITTEE be so extensive as to prevent permanently the continuance of up to seventy-five percent (75%) of the operations at the marina, campgrounds, and related facilities, such damage shall be repaired by PERMITTEE with reasonable expedition and at its expense, and PERMITTEE shall use all payments received from fire or other insurance policies for this purpose and to otherwise compensate for the damage sustained, including without limitation business interruption which business interruption coverage shall provide for reimbursement of fees which, but for the casualty, would otherwise reasonably be expected to be paid to AGENCY. Liability for such fees shall not be excused by reason of said fire or other casualty or

by reason of lack of insurance coverage or dispute related thereto. If PERMITTEE shall not commence such repairs with reasonable diligence or in any event within thirty (30) days after the occurrence of such fire or other casualty, AGENCY may, at its option, terminate this agreement on ten (10) days written notice to PERMITTEE or perform such repairs and charge PERMITTEE therefor.

If such destruction or damage by fire or other casualty shall be so extensive as to prevent permanently the continuance of more than seventy-five percent (75%) of the operations at the marina and campgrounds, then this contract shall terminate, unless PERMITTEE shall within thirty (30) days from the date of such fire or other casualty, notify AGENCY in writing that it desires to restore or rebuild the marina improvements or related facilities and to replace any property and equipment destroyed and, pursuant to such notices, so restores, rebuilds and replaces within ninety (90) days of such notice and pays to AGENCY all fees provided for herein which shall include all fees which, but for such casualty, would otherwise reasonably be expected to be paid.

25. Liability Insurance. PERMITTEE shall obtain upon entering this agreement, and shall thereafter maintain continuously and without interruption throughout the term of the same, public liability and property damage insurance insuring PERMITTEE and, its employees, servants, agents and subcontractors, and the AGENCY and its directors, officers, agents, and employees against claims for damages for bodily injury including without limitation accidental death and/or property damage which may arise by reason of the construction, operation and/or maintenance of the marina,

and/or the operation and maintenance of the campgrounds and related facilities. The policy or policies of insurance shall be in the following amounts:

Bodily and personal injury...\$1,000,000.00 Each person,
Each Occurrence; No aggregate.

Property Damage.....\$ 500,000.00 Each
Occurrence

Excess Liability Umbrella...\$1,000,000.00 Each
Occurrence

The above-stated amounts of insurance shall be subject to increase annually at the direction of AGENCY to the extent AGENCY reasonably concludes that such insurance is necessary to adequately insure AGENCY in light of then-existing insurance industry, liability, legal and public policy trends. The policy or policies shall be endorsed to include as additional named insureds AGENCY and its directors, officers, agents, and employees while acting in the scope of their duties under this contract, with respect to any liability arising out of AGENCY or PERMITTEE's performance of this agreement. The policy or policies shall further stipulate that the insurance provided by the policy or policies shall operate as primary insurance and no other insurance in effect by AGENCY shall be called upon to contribute to a loss covered by the policy or policies. Said liability insurance shall include all coverage ordinarily provided under comprehensive general liability policies endorsed to cover personal and bodily injuries and generally accepted broad form property damage policies. Said policies shall completely insure, including without limitation, contractual liability, products liability, advertising offense, automatic newly acquired organizations, broad form

property damage, employees as additional insureds, extended bodily injury, host liquor liability, limited fire legal liability, personal injury, completed operations liability, automobile liability covering owned, nonowned, newly acquired and hired units and water craft liability covering owned, nonowned, newly acquired and hired units. The policies shall be obtained from an insurance company or companies licensed to do business in California, which policies and companies shall be subject to the prior approval of AGENCY. Copies of the policy or policies shall be submitted to AGENCY within five (5) days of the execution of this agreement and in any event prior to occupying, constructing on, using, or otherwise operating the premises in any manner whatsoever. The policy or policies shall be endorsed to provide sixty (60) days notice to AGENCY of cancellation or change in coverage or limits.

26. Insurance Regarding the United States of America.

The insurance requirements set forth herein shall be in addition to the following:

a. PERMITTEE shall indemnify the United States against any liability for damage to life or property arising from the occupancy or use of National Forest lands under the Special Use Permit issued from the USFS to AGENCY referred to herein ("the permit" for purposes of this paragraph.)

b. PERMITTEE shall have in force public liability insurance covering: (1) property damage in the amount of ten thousand dollars (\$10,000.00) and (2) damage to persons in the minimum amount of one hundred thousand dollars (\$100,000.00) in the event of death or injury to one individual and the minimum amount of two hundred thousand dollars (\$200,000.00) in the event

of death or injury to more than one individual. The coverage shall extend to property damage, bodily injury, or death arising out of the PERMITTEE's activities under the permit including, but not limited to, the occupancy or use of the land and the construction, maintenance, and operation of the structures, facilities, or equipment authorized by the permit. Such insurance shall also name the United States as a co-insured and provide for specific coverage of PERMITTEE's contractually assumed obligation to indemnify the United States. PERMITTEE shall require the insurance company to send an authenticated copy of its insurance policy to the USFS immediately upon issuance of the policy. The policy shall also contain a specific provision or rider to the effect that the policy shall not be cancelled or its provisions changed or deleted before thirty (30) days written notice by the insurance company to the Forest Supervisor, Highway 49 and Coyote Street, Nevada City, CA 95959, with a copy sent to District Ranger, Downieville District Office, 15924 Highway 49, Comptonville, CA 95922.

c. PERMITTEE shall repair, replace, or restore any damage to or loss of structures, facilities, or equipment covered by the permit caused by fire or other casualty, including fires or other casualties beyond the control and without the fault of the holder, and shall have in force fire and other casualty insurance covering said Government-owned improvements.

Such fire and other casualty insurance shall be in the amount of thirty thousand dollars (\$30,000.00) and shall name the United States as beneficiary of proceeds payable as a result of claims for damage from fire or other casualty. The holder shall

furnish the USFS an authenticated copy of the insurance policy. The policy shall also contain a specific provision or rider to the effect that the policy will not be cancelled or its provisions changed before 30 days written notice to the Forest Supervisor.

27. Property Free of Liens. PERMITTEE shall be responsible for and pay timely when due all costs and expenses arising out of or in any way connected with the construction, operation, and maintenance of the marina and the operation and maintenance of the campgrounds and all related facilities. PERMITTEE shall keep the same free of any and all liens of mechanics or materialmen, partners, joint-venturers, or other investors and all liens of a similar character arising out of or related to the construction, repair, operation and maintenance of the marina, campgrounds, and related facilities.

28. Taxes. PERMITTEE shall pay immediately as they become due all lawful taxes, assessments or charges which at any time may be levied by any city or municipality, the County of Yuba, State of California, or United States of America or any other tax assessment and/or levying body now or hereafter in existence upon any interest in this contract or any necessary right which PERMITTEE may have in or to the premises covered hereby or the improvements thereon by reason of its use or occupancy thereof, as well as all taxes, assessments and charges upon goods, merchandise, fixtures, appliances, equipment and property owned by it on or about said premises.

The parties hereto understand and agree that the transfer of the right to use real property contemplated herein may subject PERMITTEE to real property taxation and that PERMITTEE may

be subject to the payment of property taxes levied upon such interest and PERMITTEE agrees to pay any such taxes so levied immediately as they become due.

29. Grant of Security Interest. This permit and this agreement are not transferable or assignable and therefore cannot be the subject of any mortgage, encumbrance, hypothecation or other consensual lien. However, as an inducement to AGENCY entering into this agreement, PERMITTEE does hereby grant to AGENCY a security interest in and to all property of PERMITTEE, of whatever kind and nature and located on the property described in Exhibit A and B or located elsewhere but related to the operation of the facilities contracted for herein, to secure the performance by PERMITTEE of the terms and conditions of this agreement. PERMITTEE further authorizes AGENCY to file with the California Secretary of State and agrees to cooperate in the execution of a UCC-1 Financing Statement as evidence of and for purposes of perfecting the security interest granted hereby.

30. Line of Credit. AGENCY has requested on-going proof of financial ability to perform this agreement. To help satisfy this requirement, and in addition to the Performance Bond called for herein, PERMITTEE shall obtain as a condition to execution of this agreement and provide to AGENCY evidence of an operating line of credit with a bank authorized to transact banking business in the State of California with a maximum loan limit of One Hundred Thousand Dollars (\$100,000.00), available by its terms for use by PERMITTEE with regard to its performance of this contract. PERMITTEE shall maintain this line of credit for the first full year of this Agreement. Beginning on the first

anniversary date of this Agreement and continuing on each anniversary date thereafter through the fourth (4th) anniversary, PERMITTEE shall establish and maintain said line of credit for the year following such anniversary in an amount equal to two-thirds (2/3) the amount estimated by PERMITTEE and agreed to by AGENCY as being necessary to complete the next year's phase improvements.

31. Performance Bond. AGENCY has requested assurances that any construction or other work to be performed hereunder will be completed and paid for. In order to provide such assurance, PERMITTEE has agreed to and shall secure and furnish to AGENCY or shall cause PERMITTEE's subcontractor, if any, to secure and furnish to AGENCY, at PERMITTEE's sole cost and expense and prior to beginning any construction of the improvements or work provided for in Phase 1 herein and thereafter prior to the beginning of construction or work related to any subsequent phase, a bond issued by a corporate surety authorized to issue surety insurance in California in the amount of 100% of the AGENCY approved estimated cost of performance for such phase of work, securing the PERMITTEE's faithful performance of and payment for the construction, repair, renovation or installation of facilities required of it pursuant to this agreement to be performed during such phase. Said bond shall not be released until completion of the work to which it relates and in no event without obtaining AGENCY's prior written consent thereto, which consent will not be unreasonably withheld.

32. Contractor's Statement. In the event PERMITTEE contracts with another individual or entity ("subcontractor") for

the performance of the work called for herein, or any portion thereof, PERMITTEE shall give notice thereof in advance, and further, any such subcontractor shall be required to be duly licensed to perform the work under and in accordance with local, state, and federal laws and shall, upon the request of AGENCY, provide proof that it has a California State Contractor's License and proof of insurance in conformity with the requirements of this agreement. Compliance with such request shall be a condition of said subcontractor being authorized to proceed with the work contracted for. Any questions concerning subcontractor may be referred to the Registrar, Contractor's State License Board, 3132 Bradshaw Road, Sacramento, California. Mailing Address: P.O. Box 26000, Sacramento, California 95826.

SPECIFIC DEVELOPMENT TERMS AND CONDITIONS

1. Phasing of Work. The construction, operation, repair and maintenance of the marina shall be staged in five phases. The duties stated in this section "SPECIFIC DEVELOPMENT TERMS AND CONDITIONS" are in addition to all other duties, responsibilities, rights or privileges provided for elsewhere herein and are set out in this manner to provide a specific minimum timetable for the performance of the same. Furthermore, the specific duties set forth in each phase are in addition to the continued and uninterrupted performance and/or maintenance of those referred to in prior phases or otherwise in this agreement. As used in this section and elsewhere in this agreement, the reference to said phases shall be with reference to the following time frames:

Phase 1. Commencing immediately upon the signing of this agreement and continuing until the end of the 1987 season.

As used herein, "season" means the period from April 1 through September 30 of each year.

Phase 2. Prior to the beginning of the 1988 season.

Phase 3. Prior to the beginning of the 1989 season.

Phase 4. Prior to the beginning of the 1990 season.

Phase 5. From and after the close of the 1990 season through the balance of the term of this agreement.

2. Work to be Performed. The following work shall be performed or actions taken by PERMITTEE according to the following minimum timetable:

Phase 1.

1. Operate and maintain three USFS boat access campgrounds: Garden Point (20 units); Frenchy Point (9 units); and, Madrone Cove (11 units) as directed by and in accordance generally with this agreement and specifically with the special use permit issued from the USFS to AGENCY regarding the same.

2. Assume liability and responsibility for and perform all provisions, including without limitation dockage and sewage disposal, of houseboat dockage agreements, if any, in force with houseboat owners and provide dockage and sewage disposal services to any and all houseboats otherwise on the reservoir and dockage services to patio boats on the reservoir. As used in this agreement, the term "houseboat" means water craft with self-contained sewage treatment facilities as therefore distinguished from a "patioboat."

3. Provide portable toilet pumping and flushing facilities for all public users of the marina, campgrounds, related facilities and reservoir generally pursuant to and in

accordance with standards set forth herein and otherwise in accordance with local, state, and federal law.

4. Maintain the existing picnic area at the Cottage Creek Public Parking Area, which area is located as indicated as "Picnic Area" on Exhibit "A" and which maintenance includes, without limitation, the regular maintenance to the satisfaction of AGENCY of the two tables, three trees, and related toilet facilities, water and sanitation.

5. Provide a flag pole at the marina site and maintain thereon approved U.S. Weather Bureau pennants in accordance with Bureau designations indicating small craft warnings when weather conditions require pennant warning flags to be flown.

6. Maintain at or near the marina area adequate 5-mile-per-hour buoys for boaters' information and safety and inform the public in particular of Yuba County Ordinance Code Chapter 8.50 et seq.

Phase 2.

1. Complete construction of and have open for business and available for public use a marina store building of at least 1200 square feet of interior space including therein, without limitation, inside restroom facilities and including, without limitation, outside and adjacent thereto handwashing and fish-cleaning facilities.

2. Provide for the sale of cold food, ice, hot and cold beverages (beverages includes beer and wine but only pursuant to a valid "Off-Sale" beer and wine license) tobacco and other lawfully vendable items, gasoline, oil, and boat and picnic

supplies in such manner as to reasonably meet the needs or demands of the public users of the facilities.

3. Provide for 12 boat slips with adequate ramps and walkways.

4. Provide an on-land (meeting all local, state, and federal standards) storage unit for gasoline with a lake access pumping unit accessible by boaters which system shall have a shutoff valve at the tank whereby until the lake access pump is activated, the release valve from the on-land tank to the lake access pump is not open.

5. Provide proper installation of water and electrical service to the marina site for purposes of providing restroom facilities, lighting, gasoline pump operation, and other related activities as may be incidental to and reasonably necessary for the operation of the marina. All water lines or pipes shall be buried underground. All electrical lines or cables shall be underground from the service pole to the high water mark on the shoreline and then shall be installed aboveground (but not aerialy) to run from said mark to the marina ramp by means of a gravity feed cable system with self-braking mechanism and then along and attached to the side of the ramp and up to a fuse box on the exterior of the marina building.

6. Provide minimum grading of parking lots and access roads such as to provide ample public parking and safe public access for ingress and egress to the marina facility.

7. Provide for the rental to the public of a minimum of six boats. As used in this provision, "boat", means solid-hull

craft registrable with the California Department of Motor Vehicles.

8. Provide for the rental to the public of one houseboat.

Phase 3.

1. Provide for the retail sale of fishing, water sports, and camping supplies from the marina building.

2. Provide for the sale of hot food (including the authorization for but not requiring food cooked on the premises).

3. Provide for a total of ten (10) houseboat buoys or other berthing facilities to be located as indicated on Exhibit "A".

4. Provide for additional boats to be rented to the public should AGENCY deem the demand indicates that additional rentals are necessary and appropriate to meet the needs of the public.

5. Provide for an additional houseboat to be available for rental to members of the general public for a total of two rentable houseboats.

Phase 4.

1. Provide for 24 boat slips.

2. Provide for a total of forty (40) houseboat buoys or other berthing facilities to be located as indicated on Exhibit "A".

Phase 5.

1. Provide for up to a maximum of eighty (80) houseboat buoys or other berthing facilities to be located as indicated

in Exhibit "A" and provide a total of four (4) houseboats for rental to members of the general public and more if demand warrants it. Unless AGENCY consents, after formal board approval, to a greater number, in no event shall the number of houseboats physically located on the reservoir, whether or not operable and whether or not privately owned or rented, exceed eighty (80) in total number.

2. Provide such other facilities and services as may be required or otherwise authorized by the terms of this agreement.

GENERAL TRANSACTIONAL TERMS AND CONDITIONS

1. Term. The term of this agreement is restricted by the conditions set forth in FERC Project No. 2246 and all amendments thereto, which by its terms expires in the year 2016. The term of this agreement is therefore set forth in an initial phase with two optional renewal periods of unequal length to bring it to the year 2016.

This agreement shall have an initial term beginning on the date it is signed and continuing through 12/31/90, to accommodate for the completion of Phase IV improvements stated herein and termination of the calendar year related thereto.

If all of the conditions of this agreement and the permit conveyed hereby to be performed by PERMITTEE during this initial term have been so performed by it as provided for herein and in such manner as to meet with the satisfaction of AGENCY, then the term of this agreement and said permit shall be extended for a period of ten (10) years, from 1/1/91 through 12/31/2000.

If all of the conditions of this agreement and the permit conveyed hereby to be performed by PERMITTEE during this second term have been so performed by it as provided for herein and in such manner as to meet with the satisfaction of AGENCY, then the term of this agreement and said permit shall be extended for a period of sixteen (16) years, from 1/1/2001 through 12/31/2016, at which time the term of this agreement and said permit shall thereupon fully and finally expire.

2. Right of First Refusal. In the event that as of or prior to the year 2016, FERC renews AGENCY's license to operate the New Bullards Bar Reservoir and AGENCY accepts the terms of said renewal and provided PERMITTEE has fully and completely performed this agreement and the permit conveyed herein to the satisfaction of AGENCY for the entire term hereof, PERMITTEE shall be entitled to and is hereby granted a right of first refusal as to any new contract and permit issued by AGENCY pursuant to said license renewal unless the granting of such right is then prohibited by applicable local, state or federal law. Said right shall be exercisable by PERMITTEE for a period of ninety (90) days from and after receipt by PERMITTEE of AGENCY's proposed contract and shall be exercised by PERMITTEE by execution of said contract and the return of said contract to AGENCY within said ninety (90) day period.

3. Prohibition Against Assignment. Except as otherwise provided herein, PERMITTEE shall not, for the reasons stated in RECITALS and elsewhere in this Agreement, be entitled to sell, assign, mortgage, or encumber this contract or the permit granted thereby nor shall PERMITTEE obtain hereby any interest herein or

any power or authority to permit any other person or party to have any interest in or use of any part of the premises, building, space or spaces covered by this contract for any purpose whatsoever, except in all events upon the prior written consent of AGENCY. It is the purpose of this contract to grant the rights and privileges set forth herein solely to PERMITTEE and neither directly nor indirectly, in whole or in part, to any other person or parties. The consent of the AGENCY referred to herein shall not be unreasonably withheld, but the withholding of such consent because AGENCY finds, in its sole discretion, that a proposed assignee does not have the skill, expertise, knowledge, experience, or financial qualifications necessary for it to perform this agreement to the AGENCY shall be deemed reasonable and PERMITTEE hereby stipulates and agrees to the same.

4. Grant of Concessions. Solely upon the prior written consent of AGENCY and subject to the conditions set forth in the preceding paragraph and elsewhere in this agreement, PERMITTEE shall have a limited right to grant concessions for the operation of any portion of the facilities related to the marina and to issue permits for the use of any part of the premises for any business related to the operation and maintenance of the concession or permit in accordance with the provisions of this Contract. The conditions under which AGENCY will grant such consent shall be the same as stated in the recitals herein, the preceding paragraph, and elsewhere in this agreement as related to the awarding of this contract to PERMITTEE and/or assignment generally thereof. No grant of concession or permit shall release PERMITTEE of any of its obligations under this contract and

PERMITTEE shall continue to be and remain liable and responsible for the due performance of all of the terms, covenants, and conditions of this contract. Any such Sub-Permittee as may be allowed hereunder shall obtain and maintain continuously and uninterrupted throughout the term of its subpermit insurance according to the terms of this agreement. AGENCY, its officers, agents and employees shall be named as additional insureds on said policy. Prior to the effective date of any such concession or subpermit, and as a condition thereof, a certificate of such insurance shall be filed with AGENCY. Failure to file shall, at the option of AGENCY, void such concession or subpermit. Any such policy of insurance shall be endorsed to provide sixty (60) days notice to AGENCY of cancellation or change in coverage or limits.

5. Inspection of Premises. As stated elsewhere herein, AGENCY reserves the right to enter upon the marina and related facilities at any reasonable time to inspect the same. AGENCY further reserves the right of ingress and egress to inspect, investigate and survey said premises as deemed necessary and the right to do any and all work of any nature necessary for the general preservation, maintenance, and operation of the New Bullards Bar Recreation Area. PERMITTEE shall bear the cost, as a fee herein, of any reinspection necessitated in AGENCY's opinion by PERMITTEE's failure to repair, cure, or remedy items noted on a prior inspection. PERMITTEE will be given reasonable notice when such work may become necessary and shall adjust its operation in such a manner as will permit AGENCY to proceed without impediment in the performance of such work.

6. Performance. Performance by PERMITTEE under this contract is of prime material consideration to AGENCY. In the event AGENCY, in its sole discretion, determines that the marina, campgrounds and/or related facilities are not being operated at reasonable standards for such operations or otherwise are not in substantial compliance with the terms of this agreement or the permit granted herein, AGENCY may elect, in addition to any other remedy which it may have in law or equity, to terminate this contract and all rights of PERMITTEE thereunder upon giving three (3) months' notice to PERMITTEE. Upon such termination, AGENCY shall pay to PERMITTEE the then value of the facilities erected or placed on the premises by PERMITTEE less any amounts owed from PERMITTEE to AGENCY, the value of which facilities shall be determined by agreement between the parties. AGENCY shall have nine (9) months from the giving of notice of termination to pay such amount. If for any reason the parties cannot agree on said value, PERMITTEE and AGENCY shall employ an independent appraiser to appraise the fair market value of all the facilities and shall share the cost thereof, in which event AGENCY shall have six (6) months from the determination of value by said appraiser to pay such amount. If, in the reasonable estimation of AGENCY as of the time of the giving of notice of termination, PERMITTEE is going to owe money to AGENCY, even after offset for the value of the facilities, PERMITTEE shall pay such amount of AGENCY not later than the sooner of the end of the three (3) month notice period or PERMITTEE's vacating the marina, campgrounds, and related facilities pursuant to such notice. If there is a dispute as to the value of the facilities, then PERMITTEE shall pay the full amount

claimed by AGENCY to be due into an escrow account to be established at the entity of AGENCY's choice. Said funds shall be disbursed pursuant to and upon the resolution of the valuation issue as provided for herein. In calculating the value of the facilities, no consideration shall be paid for facilities, services, materials, buildings, or other services furnished by AGENCY to PERMITTEE without charge.

7. Breach of Contract. This contract is made upon the condition that if all or any part of the fees which PERMITTEE herein agrees to pay shall go unpaid by PERMITTEE, or if default be made in the performance any of the other terms herein contained or should PERMITTEE become insolvent or bankrupt, either voluntarily or involuntarily, then, and in any such event, at the option of the AGENCY, this contract and the Permit granted herein shall upon three (3) month's notice cease and terminate, and AGENCY may upon giving such notice and in addition to other remedies available to it, enter onto the property and take possession thereof pursuant to this agreement, make demand upon the performance bond as provided herein, and foreclose upon the security interest herein granted to AGENCY.

8. Unavoidable Delays and Defaults. Either party under this agreement shall be excused for any delays or defaults by that party in the performance of this agreement unavoidably caused by the act of the other, the act of any agent of the other, the act of any governmental authority, the act of any public enemy, acts of God, the elements, war, war defense conditions, litigation (other than that involving the parties against each other), strike, walkouts, or other causes beyond that party's

control. Each party shall use reasonable diligence to avoid any such delay or default and to resume performance under this agreement as promptly as possible after any such delay or default.

9. Abandonment or Insufficient Performance Constituting Abandonment. Abandonment or insufficient performance constituting abandonment as defined in this paragraph, shall authorize AGENCY to reenter the property and treat this agreement and the permit as cancelled and the contract as breached. If the property is found by AGENCY in a condition where no responsible adult is in attendance and no work is being done at the premises for any two full and consecutive months in any year, or any 2 months out of any season or any 4 months out of any year, this shall constitute abandonment, unless prior written notice is provided to AGENCY specifying the time period of closure and the reasons therefore and AGENCY consents to said closure.

10. Eminent Domain. If, during the term of this contract, any property described herein or hereafter added hereto is taken in an eminent domain proceeding, the entire award shall be paid to AGENCY and this contract shall terminate provided, however, that PERMITTEE shall be paid the value of the improvements determined as provided in Paragraph 6 of this section and that portion of the award attributable to the loss of the net profit from the business, but in no event shall PERMITTEE be entitled to an amount in excess of said amount less fees payable to AGENCY nor in any event in excess of the award.

11. Personal Property Improvements. Title to all personal property provided by PERMITTEE and additions and betterments thereto made by PERMITTEE shall remain in PERMITTEE except

as otherwise provided herein and further subject to the security interest in such property granted herein to AGENCY.

12. Waiver of Claims. PERMITTEE hereby waives any claims against AGENCY, its directors, officers, agents, or employees for damages or loss caused by any suit or proceeding directly or indirectly attacking the validity of this contract, or any part thereof or by any judgment or award in any suit or proceeding declaring this contract null, void or voidable, or delaying the same or any part thereof from being carried out. PERMITTEE further waives the raising by it as a defense to any action brought against it by AGENCY any applicable statutes of limitation.

13. Conflict of Interest. PERMITTEE warrants and covenants that no official or employee of AGENCY nor any business entity in which an official or employee of AGENCY is interested: (1) has been employed or retained to solicit or aid in the procuring of this contract; or (2) will be employed in the performance of this contract without the immediate divulgence of such fact to Agency. In the event AGENCY determines that the employment of any such official, employee, or business entity is not compatible with such official's or employee's duties as an official or employee of AGENCY, PERMITTEE upon request of AGENCY shall terminate such employment immediately. In the event of breach or violation of this paragraph, AGENCY shall have the right both to annul this contract without liability and, at its discretion, recover the full amount of any such compensation paid to such official, employee, or business entity.

14. Agent for Service of Process. It is expressly agreed and understood that if none of the owners or partners of PERMITTEE is a resident of this State, then PERMITTEE shall file with AGENCY and with the appropriate state agency a designation of a natural person residing in the State of California, giving his name, residence, and business address, as its agent for the purpose of service of process in any court action between it and Agency arising out of or based upon this contract, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon PERMITTEE; and it is further expressly agreed, covenanted, and stipulated that if for any reason service of such process upon such agency is not possible, then in such event PERMITTEE or its designated agent may be personally served with such process outside of this State, and that such service shall constitute valid service upon PERMITTEE; and PERMITTEE submits to the jurisdiction of the courts of the State of California, consents to venue being situated in Yuba County and waives all objection and protest thereto.

15. Rights to Apply for Grants or Loans. Nothing in this contract shall be construed to preclude or prevent AGENCY from prosecuting applications for grants or loans from the State of California or from the United States for the construction of improvements in the Marina area or from utilizing the proceeds of such grants for such improvements.

16. Notice. Any notices herein provided to be given or which may be given by either party or to the other, shall be deemed to have been fully given when made in writing and deposited

in the United States mail, postage prepaid, and addressed as follows:

To PERMITTEE at:

To AGENCY at: Yuba County Water Agency
P.O. Box 1569
Marysville, California 95901

The address to which the notices shall be mailed as aforesaid by either party may be changed by written notice given by such party to the other as herein above provided, but nothing herein contained shall preclude the giving of any such notice by personal service.

17. Attorney's Fees. In the event the services of an attorney or any member of his or her support staff are retained by either party to this agreement to assist said party in securing from the other party performance generally hereunder and specifically but without limitation in negotiating and resolving disputes regarding the interpretation of clauses, collecting fees and charges due, exercising default remedies, prosecuting or defending litigation, arbitration, or administrative hearings and otherwise, (herein "legal activity") the prevailing party in any such legal activity shall be entitled to charge the fees and costs thereof to and collect the same from the losing party as an additional fee herein and further recover the same from said party by any means allowable pursuant to this agreement or otherwise provided by law.

MISCELLANEOUS PROVISIONS

1. Sole and Only Agreement. Except as otherwise provided herein, this Agreement, together with all attached

exhibits and PERMITTEE's response to AGENCY's Request for Proposal as filed with and accepted and acted upon by AGENCY, constitutes the sole and only agreement of the parties relating to the matters addressed herein and correctly and completely sets forth the rights, duties and obligations of each to the other as of its date. Any prior agreements, promises, representations, or negotiations not expressly set forth in this agreement or incorporated herein by express reference shall be of no force and effect.

2. Governing Law. The rights and obligations of the parties and the interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules.

3. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated.

4. Amendment. The provisions of this Agreement may be modified at any time by agreement of the parties. Any such agreement hereafter made shall be ineffective to modify this Agreement in any respect unless in writing and signed by the parties against whom enforcement of the modification or discharge is sought.

5. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall whenever possible be cumulative with all other remedies at law or in equity.

6. Waiver. Any of the terms or conditions of this Agreement may be waived at any time by the party entitled to the

benefit thereof, but no such waiver shall affect or impair the right of the waiving party to require observance, performance, or satisfaction either of that term or condition as it applies on a subsequent occasion or of any other term or condition hereof.

7. Succession. As qualified by the provisions and restrictions otherwise contained in this Agreement, this Agreement shall inure to the benefit of and be binding on the successors and assigns of the respective parties hereto.

8. Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons or their assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over against any party to this Agreement.

9. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if the parties had all signed the same document. All counterparts shall be construed together and shall constitute one agreement.

10. Gender and Number. As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates. Wherever the terms "and" and "or" are used herein, they are deemed to mean "and/or".

11. Captions. All paragraph captions are for reference only and shall not be considered in construing this Agreement.


12. Exhibits. All exhibits to which reference is made are deemed incorporated in this Agreement whether or not actually attached.

13. Time. Time is of the essence to this Agreement.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed on the date and year first above written.

"AGENCY"


BY



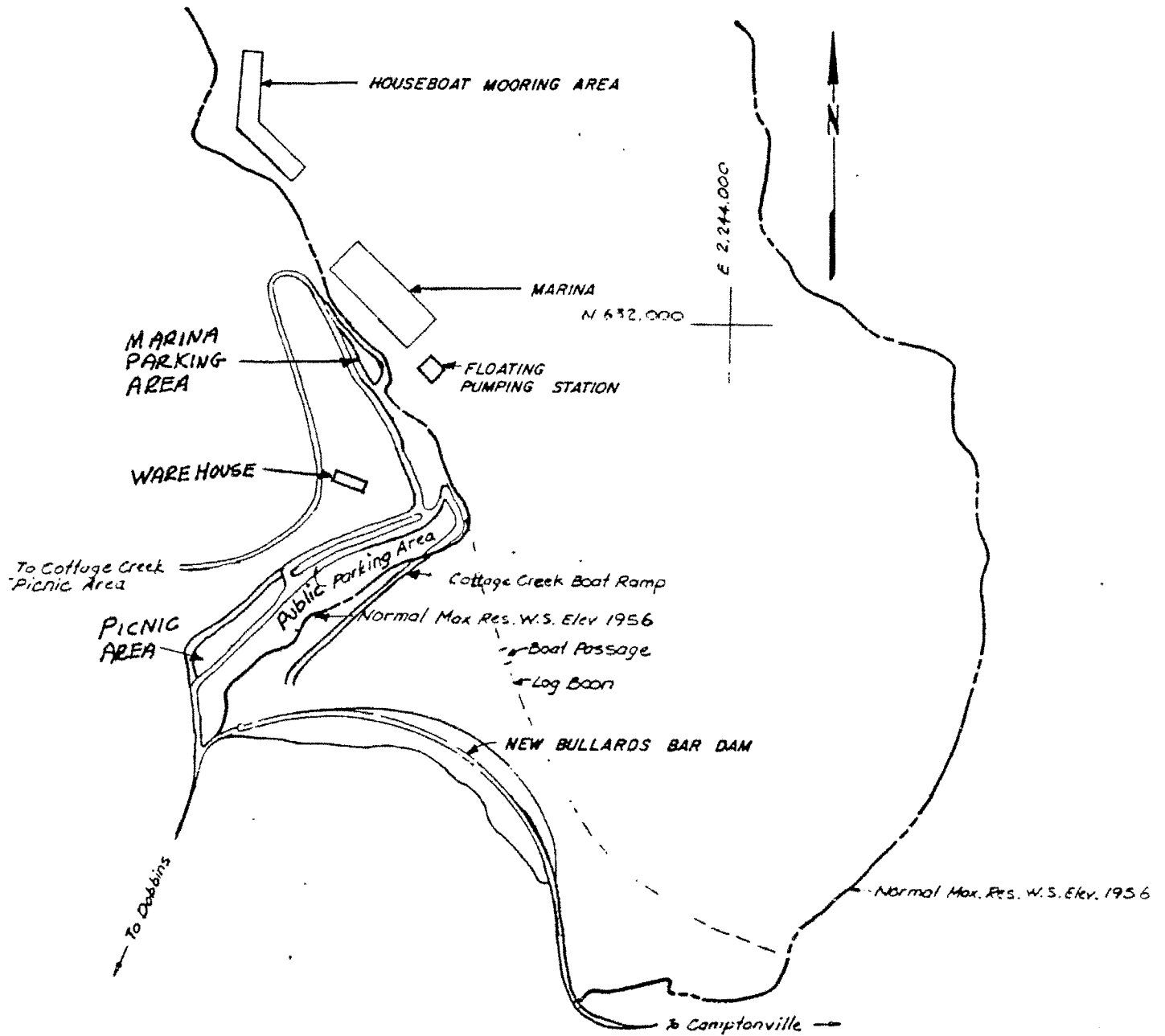
JOHN R. DOWER, CHAIRMAN
BOARD OF DIRECTORS, YUBA COUNTY
WATER AGENCY

"PERMITTEE"

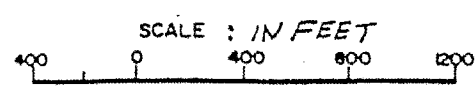
BY

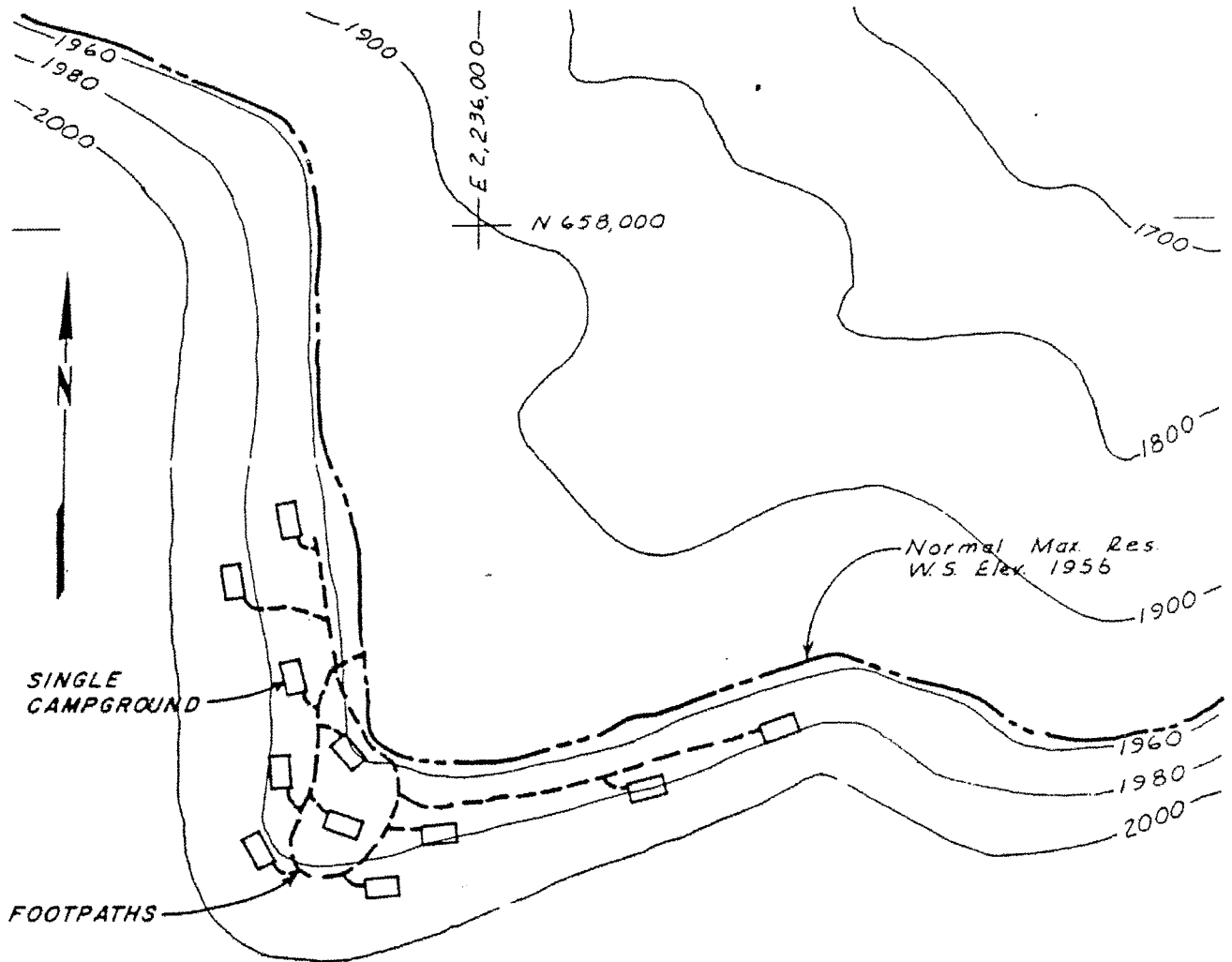


WILLIAM BURTON, PRESIDENT
SUMMER SOUNDS, INC.



COTTAGE CREEK BOAT RAMP &
FUTURE MARINA AREA

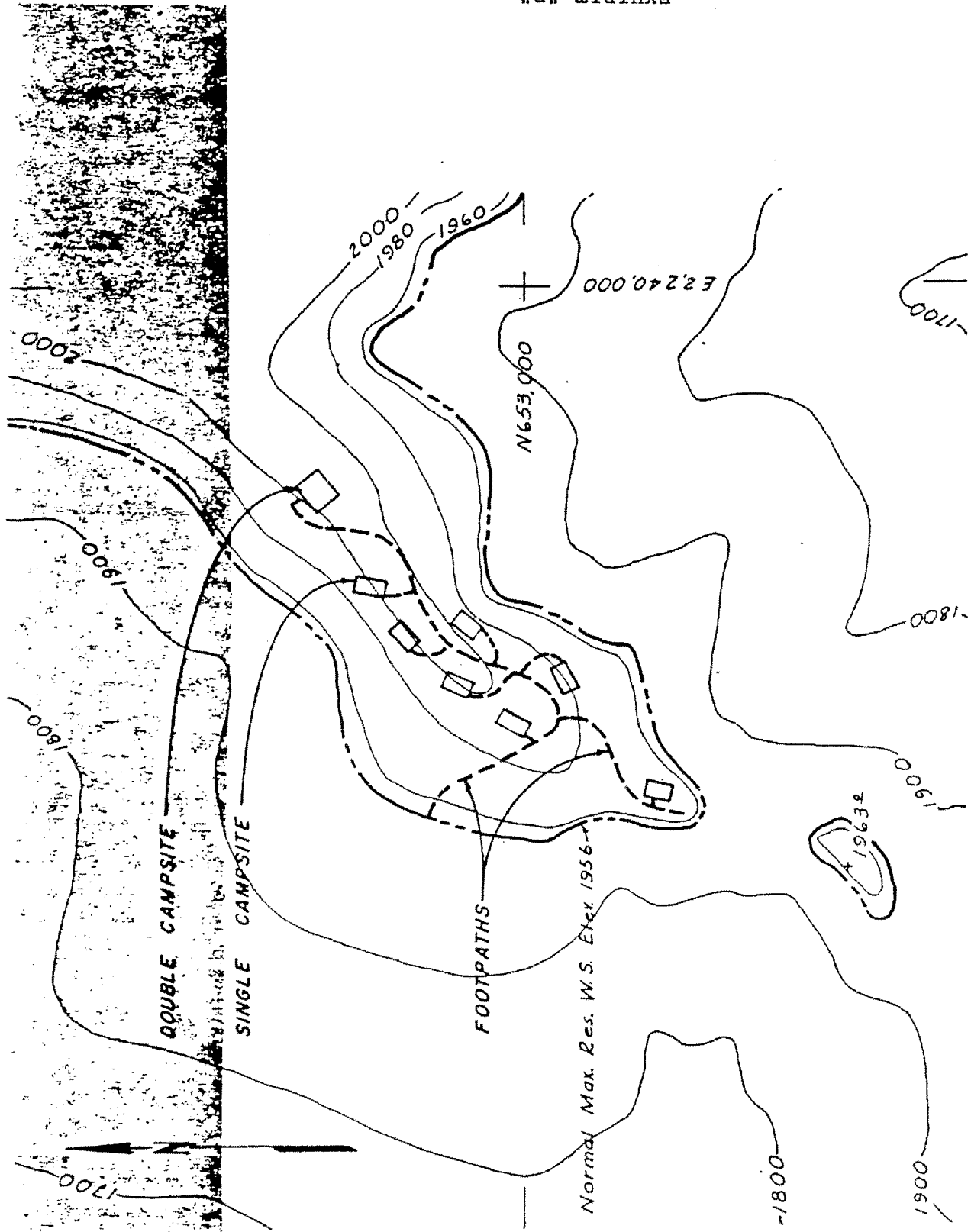




MADRONE BOAT ACCESS CAMPGROUND

Scale: NOT TO SCALE

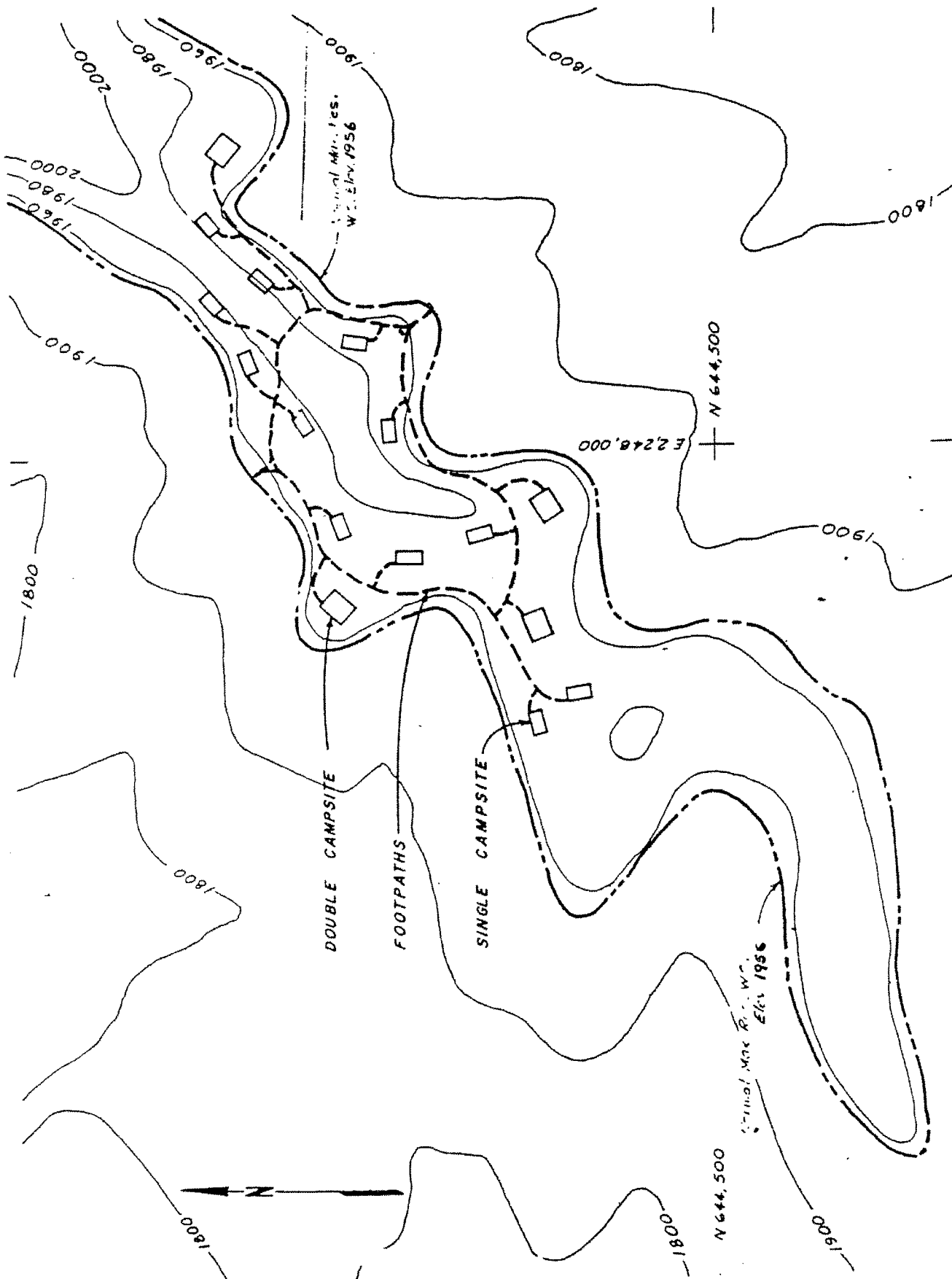
- || CAMPSITES, All Single.
- | FLOATING COMFORT STATION.
- APPROXIMATE CLEARED AREA 7 ACRES



FRENCHY POINT BOAT ACCESS CAMPGROUND

Scale: NOT TO SCALE 8 CAMPSITES, 1 Double, 7 Single.

APPROXIMATE CLEARED AREA 3 ACRES



GARDEN POINT BOAT ACCESS CAMPGROUND

Scale: Not To Scale
16 CAMPSITES, 4 Double, 12 Single.

APPROXIMATE CLEARED AREA 6 ACRES

RESOLUTION 1988 - 7

YUBA COUNTY WATER AGENCY

A RESOLUTION AMENDING RESOLUTION NO. 1988 - 6 APPROVING THE AWARD OF THE CONTRACT FOR THE CONSTRUCTION AND OPERATION OF MARINA, CAMPGROUNDS, AND RELATED FACILITIES, NEW BULLARDS BAR RESERVOIR, AND AUTHORIZING THE CHAIRMAN OF THE AGENCY TO ENTER INTO SAID CONTRACT WITH THE SUCCESSFUL BIDDER UPON SATISFACTION OF CONDITIONS PRECEDENT ENUMERATED HEREIN

WHEREAS, there was not a full meeting of the minds as set forth in Paragraphs Two and Three of Resolution No. 1988 - 6; and

WHEREAS, the parties thereto have discussed the lack of agreement and resolved the differences as set forth in this amendment to the prior Resolution;

NOW, THEREFORE, BE IT RESOLVED, that the YUBA COUNTY WATER AGENCY hereby modifies Resolution No. 1988 - 6 as follows:

1. Paragraph 2 is amended to require a payment of \$25,248.71 and not \$33,319.08, nor any other sum.
2. Paragraph 3 is amended in that the parties hereto agree that the costs of escrow are to be shared equally by YUBA COUNTY WATER AGENCY and WILLIAM J. BURTON, SUMMER SOUNDS, INC.
3. The bidder herein, WILLIAM J. BURTON, SUMMER SOUNDS, INC., is hereby allowed thirty (30) days beyond March 9, 1988, for the required submittals pursuant to the requirements of the stipulations and order of the Bankruptcy Court and of the YUBA COUNTY WATER AGENCY's request for proposals for the construction and operation of marina, campgrounds, and related facilities at New Bullards Bar Reservoir, Yuba County, California.
4. The above amendments are conditional upon WILLIAM J. BURTON, SUMMER SOUNDS, INC., agreeing to and, in fact, executing and entering into the written contract for this project with YUBA COUNTY WATER AGENCY on or before March 9, 1988.

BE IT FURTHER RESOLVED that the Chairman of the YUBA COUNTY WATER AGENCY is hereby authorized to sign said contract as herein amended.

PASSED AND ADOPTED THIS 7th day of March, 1988, by the following vote:

RESOLUTION No. 1988 - 7
YUBA COUNTY WATER AGENCY
PAGE 2

AYES: Directors Deveraux, Dower, Harper, M. Mathews and
McGill

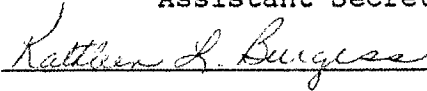
NOES: None

ABSENT: Directors Gilbert and C. Mathews



Chairman, JOHN DOWER

ATTEST: KATHLEEN L. BURGESS
Assistant Secretary



APPROVED: 3/7/88

RESOLUTION 1988 - 8

YUBA COUNTY WATER AGENCY

A RESOLUTION DIRECTING DONN WILSON, THE ENGINEER/ADMINISTRATOR TO ENTER INTO A WRITTEN CHANGE ORDER OF THE CONTRACT FOR THE CONSTRUCTION AND OPERATION OF MARINA, CAMPGROUNDS, AND RELATED FACILITIES, AT NEW BULLARDS BAR RESERVOIR

WHEREAS, there have been delays in the beginning of performance of the contract for the construction and operation of marina, campgrounds, and related facilities at New Bullards Bar Reservoir, Yuba County, California; and

WHEREAS, it is mutually beneficial to both parties to extend the time for performance of Phase 2 of said contract;

NOW, THEREFORE, BE IT RESOLVED, that YUBA COUNTY WATER AGENCY hereby directs the Engineer/Administrator to issue a written change order extending the time for performance of Phase 2 by six (6) weeks from the time it was to have been performed pursuant to the terms of said contract.

BE IT FURTHER RESOLVED that the Engineer/Administrator is hereby authorized to sign said written change order extending the time for performance of Phase 2 by six (6) weeks from the time it was to have been performed pursuant to the terms of said contract, and that said change order be attached to and made a part of said original contract.

PASSED AND ADOPTED THIS 7th day of March, by the following vote:

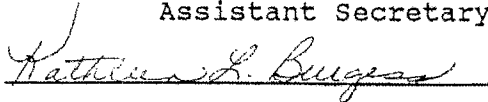
AYES: Directors Deveraux, Dower, Harper, M. Mathews and McGill

NOES: None

ABSENT: Directors C. Mathews and Gilbert


Chairman, JOHN DOWER

ATTEST: KATHLEEN L. BURGESS
Assistant Secretary



APPROVED: 3/7/88

CHANGE ORDER NO. 1

MODIFICATION OF CONTRACT DOCUMENT

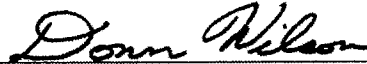
Project: Construction and Operation of Marina,
Campgrounds and Related Facilities,
New Bullards Bar Reservoir

It is the intention of the parties affected by this modification that the terms of this instrument shall govern and take precedence over any provisions contained in the contract documents relating to the above captioned project that are inconsistent with the terms of this instrument.

The parties agree that performance of Phase 2 of this contract is hereby extended by six (6) weeks from the date it was to have been performed.


This change order is authorized by Resolution No. 1988 - 8 of YUBA COUNTY WATER AGENCY.

DATED: March 9, 1988.



DONN WILSON
Engineer/Administrator
Yuba County Water Agency

SUMMER SOUNDS, INC.

BY 

WILLIAM J. BURTON

CHANGE ORDER NO. 2

MODIFICATION OF CONTRACT DOCUMENT

Project: Construction and Operation of Marina,
Campgrounds and Related Facilities New
Bullards Bar Reservoir as Revised

It is the intention of the parties affected by this modification that the terms of this instrument shall govern and take precedence over any provisions contained in the contract documents relating to the above captioned project that are inconsistent with the terms of this instrument.

WHEREAS, the Yuba County Water Agency (hereinafter referred to as "YWCA") and Summer Sounds, Inc. (hereinafter referred to as "Permittee") have entered into the above referenced Agreement as modified; and

WHEREAS, YCWA and Permittee wish to modify their rights and duties under said Agreement;

NOW, THEREFORE, for valuable consideration, Permittee shall no longer be responsible for:

- (a) Cleaning, operating, and maintaining boat-in campgrounds;
- (b) Cleaning floating rest rooms;
- (c) Administration of shoreline camping permit areas, including monitoring compliance with permit system, enforcement of Federal regulations, and cleaning areas of public use;
- (d) Maintenance and/or construction of any other campgrounds.

NOW, THEREFORE, Permittee shall be responsible for the permits which shall be required for boat-in camping. They shall issue and sell said permits and collect the fees therefor. In addition to its other fees and accounting obligations, Permittee shall account to the YCWA for each permit issued and the fees collected therefor. Permittee shall be entitled to a percentage of fees collected on said permits; said percentage to be set by the Board of Directors of YCWA.

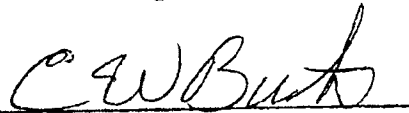
The number of permits issued and the fees charged therefor shall be set by resolution of the Board of Directors of the YCWA, and are subject to change upon review by said Board of Directors.

This Change Order is authorized by Resolution 1990-9 of the YCWA.

DATED:

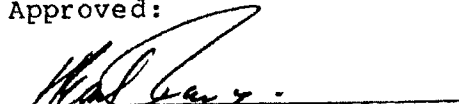


DONN WILSON
Engineer--Administrator
Yuba County Water Agency



SUMMER SOUNDS, INC.
Permittee

Approved:



E. EARL PARKER, JR.
Attorney for YCWA

CHANGE ORDER NO. 3

**MODIFICATION OF
YUBA COUNTY WATER AGENCY
CONSTRUCTION AND OPERATING PERMIT AGREEMENT
NEW BULLARDS BAR RESERVOIR**

THIS MODIFICATION TO AGREEMENT is made May 8, 2007, by and between SUMMER SOUNDS, INC. ("Summer Sounds"), EMERALD COVE MARINA, INC ("Operator") and YUBA COUNTY WATER AGENCY ("Agency"), who agree as follows.

1. Recitals

1.1 On March 9, 1988, Summer Sounds and Agency entered in the Yuba County Water Agency Construction and Operating Permit Agreement ("Agreement"), a copy of which is on file in the Agency office.

1.2 This Change Order No. 3 approves and implements a transfer and assignment of the Agreement from Summer Sounds to Operator pursuant to paragraph 3 of the General Transactional Terms and Conditions (on page 37) of the Agreement.

1.3 Summer Sounds desires to sell and assign the Agreement to Operator. Agency has reviewed the financial viability, verified professional references and interviewed the management team of Operator and concludes it would be in the best interests of Agency to allow the sale and assignment.

1.4 Operator has been managing the marina since entering into the "Marina Operating Agreement" between Permittee and Operator in July 2006. That agreement expired April 30, 2007. Operator desires to purchase the Agreement and to assume the rights and responsibilities of Permittee under the Agreement until a new agreement can be negotiated.

2. Modification to Agreement. The Agreement is hereby modified as follows:

2.1 For valuable consideration, effective May 1, 2007 (the "Effective Date"), Summer Sounds hereby transfers and assigns the Agreement, the permit under the Agreement, and all rights and responsibilities under the Agreement to Operator. Operator accepts the transfer and assignment and acknowledges that upon the Effective Date, it shall be responsible and liable as Permittee under the Agreement. Upon the Effective Date, Summer Sounds shall have no responsibility or liability under the Agreement; however, Summer Sounds shall remain responsible and liable for acts and omissions that occur prior to the Effective Date. Operator shall be liable for debts and liabilities under the Agreement accruing on and after the Effective Date and Summer Sounds shall remain liable for debts and liabilities that accrue prior to the Effective Date.

2.2 In all sections of the Agreement, PERMITTEE shall no longer refer to Summer Sounds, Inc., but to Operator (Emerald Cove Marina, Inc.)

2.3 The Permittee address shall be 140 Litton Dr., Ste. 210, Grass Valley, CA, 95959 and the telephone shall be 530-692-3200.

3. **No Effect on Other Provisions.** Except for the modifications in section 2, the remaining provisions of the Agreement shall be unaffected and remain in full force and effect.

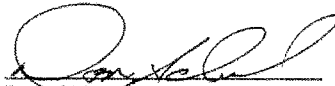
Agency:

Don Schrader
Yuba County Water Agency
1402 D Street
Marysville, CA 95901

Retiring Permittee:

Chris Burton
Summer Sounds, Inc.
11214 Tahoe Drive
Truckee, CA 96161


YUBA COUNTY WATER AGENCY

By: 
Don Schrader

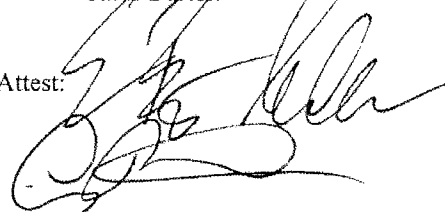
Attest:


Secretary

SUMMER SOUNDS, INC

By: 
Chris Burton

Attest:


Secretary

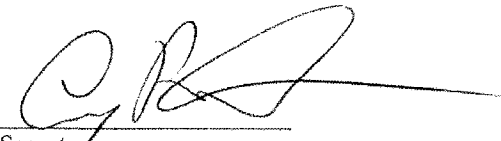
New Permittee:

Scott Robertson
Emerald Cove Marina, Inc.
140 Litton Dr., Ste 210
Grass Valley, CA 95945

EMERALD COVE MARINA, INC

By: 
Scott Robertson

Attest:


Secretary