CITY OF ST. HELENA

RESOLUTION NO. 97-131

APPROVING AN EMERGENCY WATER SUPPLY AGREEMENT WITH THE CITY OF NAPA

RECITALS

In the event of a system failure at the Louis Stralla Water Treatment plant, the City of Napa has agreed to provide water to the City of St. Helena as outlined in the attached Emergency Water Supply Agreement.

RESOLUTION

The attached Emergency Water Supply Agreement between the City of St. Helena and the City of Napa is hereby approved.

Approved at a Regular Meeting of the St. Helena City Council on November 13, 1997, by the following vote:

Ayes: Councilmembers Gard, Potter, Savidge, Slavens, Mayor Toller

Noes: None

Absent: None

Abstain: None

APPROVED:

[Signature]
Frank Toller
Mayor

ATTEST:

[Signature]
Delia Guijosa
City Clerk
MEMORANDUM

DATE: November 6, 1997

To: City Council, City Administrator

FROM: Martin S. Oldford, Director of Public Works

RE: Emergency Water Supply Agreement with City of Napa

COPY: File

Attached is a draft agreement with Napa for emergency treated water through the City’s connection at Rutherford. Our previous agreement expired about 10 years ago and the Yuba Water Agreement no longer applies. In 1994, Napa approved the sale of water during the drought and we used 80 acre-feet before the rains came.

Over the years we have requested and received permission to purchase short-term water during a system emergency. With the upgraded Rutherford connection in place Staff requested a more formal agreement. Napa is willing to bill us the inside commercial customer rate of $2.84 per thousand gallons ($927/acre-foot) with a $100 per month service charge whether or not any water is used. The maximum annual delivery would be 30 million gallons (92 acre-feet). The term would be for five (5) years with three (3) options to extend for five years each.

The agreement covers emergency water only in the event of a system failure such as a major leak or treatment plant shut down. Napa will determine what is an emergency condition.

Staff has reviewed the agreement and while it is rather one-sided in Napa’s favor it will provide us with emergency water at a reasonable rate during an outage. Funds are available in Water Sources Account 61-4033-2232.

Recommendation:

Approve the Emergency Water Supply Agreement with the City of Napa.
June 19, 1997

Mr. Martin Oldford
Public Works Director
City of St. Helena
1480 Main Street
St. Helena, CA 94574

Subject: Emergency Water Supply Agreement

Dear Marty:

Enclosed is a revised copy of the draft “Emergency Water Supply Agreement Between the City of Napa and the City of St. Helena” for your review and comment. This revised Agreement has been reviewed by, and incorporates the comments of, the City of Napa's Attorney.

If you have any questions, please call me at 257-9504 (direct line) or Felix Riesenberg at 257-9520, ext. 7319.

Sincerely,

[Signature]

Donald G. Ridenhour
General Manager, Water Division

Enclosure

cc: Michael O'Bryon, Public Works Director
    Felix Riesenberg, Water Division Engineer
EMERGENCY WATER SUPPLY AGREEMENT BETWEEN
THE CITY OF NAPA AND THE CITY OF ST. HELENA

THIS AGREEMENT, made and entered into this ___ day of __________, 1997, by and between the City of Napa, hereinafter referred to as "Napa" and the City of St. Helena, hereinafter referred to as "St. Helena."

WITNESSETH:

WHEREAS, the parties are mutually desirous of entering into an agreement whereby Napa will supply water to St. Helena on an emergency basis for use in the water system owned by St. Helena.

NOW, THEREFORE, said parties mutually agree as follows:

1. Term and Option of Agreement:

   A. The Initial Term of this Agreement shall be for five (5) years and shall commence on the date of execution by Napa. This Agreement shall terminate five (5) years from the date of execution by Napa, unless terminated sooner as provided herein.

   B. St. Helena is granted the option to extend the Initial Term of this Agreement for three (3) successive periods of five (5) years each, the "Extended Term," provided Napa, in its sole and exclusive discretion, determines that it continues to find the terms and conditions of this Agreement acceptable, and provided St. Helena has abided by the terms and conditions of this Agreement and is not in default hereunder, beyond any applicable notice and grace period, at the
commencement of the option term. If St. Helena should decide to exercise St. Helena's option to extend, St. Helena shall give written notice thereof to Napa at least sixty (60) days before expiration of the then current term. The terms of this Agreement shall govern any extended term.

2. **Point of Delivery:** Water made available under this Agreement will be delivered by Napa to the existing meter connecting the Napa water system with the St. Helena water system near the intersection of State Highway 29 and State Highway 128 in Rutherford, Napa County, California.

3. **Quantity:** The quantity of water to be made available to St. Helena under this Agreement shall be limited to a maximum of thirty million (30,000,000) gallons in any calendar year. *(RAFT)*

4. **Quality:** Napa will use reasonable efforts to provide water to St. Helena under this Agreement which will be of a quality substantially the same as that furnished to the customers of Napa under the permit from the State Department of Health Services, but makes no affirmative undertaking, representation or warranty concerning quality.

5. **Time of Delivery:** The intent of this Agreement is to provide an emergency water supply in the event that St. Helena experiences a treatment or distribution system failure causing a portion of or the entire St. Helena water system to be without water. Delivery shall be available at the times specified by St. Helena upon telephone contact with Napa, except as described in Item 6 below. Napa shall have sole and exclusive discretion in determining what is an "emergency" condition.
6. **Non-Delivery:** In the event of a severe water supply shortage (drought), or in the event the health, safety and general welfare of Napa so requires Napa shall have the right to interrupt or terminate delivery to St. Helena until such time as Napa determines, in its sole and exclusive discretion, that said shortage is finished or the health, safety and general welfare of Napa no longer require interruption or termination of delivery.

7. **Rate of Delivery:** The rate of delivery shall not exceed 4.0 cubic feet per second.

8. **Measurement of Water Delivered:** The water delivered hereunder shall be measured by a meter at the point of delivery. The meter shall be owned and maintained in good repair and replaced when necessary by Napa. Each party shall have the right to test the meter at its own expense.

9. **Price and Payment:** The metered rate per thousand gallons for all quantities of water delivered to St. Helena by Napa shall be at the prevailing inside the city commercial rates for a ten-inch (10") water meter. In addition to said rate, St. Helena shall pay a monthly service charge of one hundred dollars ($100.00), whether or not water is being taken from Napa’s system. The per thousand gallon rates and monthly service charge will be subject to adjustment by Napa from time to time when various water rates are revised. Napa shall bill St. Helena monthly for previous months water supplied and St. Helena shall pay the bill within thirty (30) days thereafter. Delinquent bills shall bear interest at the rate of ten percent (10%) per annum.
10. **Operations:** St. Helena may request but shall not require Napa to alter their treatment and distribution system operations to increase the available pressure and water available to St. Helena at the point of connection. St. Helena shall reimburse Napa for any unusual system operation costs associated with requested water system operation changes including but not limited to the start-up of the Hennessey Water Treatment Plant. Costs associated with water system operational changes requested by St. Helena shall be considered in addition to payments made for water usage charges. Determinations under this section shall be made in the sole and exclusive discretion of Napa.

11. **Liability and Indemnity:**

   a. Neither Napa or any of its officers, agents, or employees shall be liable for any damage, direct or indirect, arising from shortages in the amount of water and or quality of water to be made available for delivery to St. Helena under this Agreement caused by drought or any other cause beyond the control of Napa.

   b. Neither Napa or any of its officers, agents, or employees shall be liable for the control, carriage, handling, use, disposal or distribution of water after delivered hereunder, nor any damage or claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death arising out of or connected with the same.

   c. St. Helena shall indemnify, hold harmless, release and defend Napa, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, expenses including attorney's fees and other defense costs and liabilities of any nature that may be asserted by any person or entity including, but not limited to, St. Helena or any other third person.
arising out of this Agreement excepting only liabilities due to the sole negligence or willful misconduct of Napa. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for St. Helena under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by St. Helena and shall continue to bind the parties after termination/completion of this Agreement.

12. **No Damages Allowable Against the City of Napa:** Napa has entered into this Agreement solely as an act of inter-jurisdictional co-operation. In the event it is claimed that Napa has in any manner failed to satisfy any obligation under this Agreement, or otherwise has breached this Agreement, the sole and exclusive remedy against Napa shall be injunctive relief, specific performance, declaratory relief, writ of mandate or similar remedy. Under no circumstances shall Napa be liable for any damages of any kind arising from any asserted failure to satisfy an obligation under, or breach of, this Agreement. It is understood that this provision constitutes material consideration under which Napa agreed to enter into this Agreement, and that Napa would not have entered into this Agreement had it known it would have been subject to damages of any kind arising from its failure to satisfy any provision of, or breach of, this Agreement.

13. **Responsibility of St. Helena:** Subject to the provisions of this Agreement, St. Helena shall be solely responsible for the control, carriage, handling, use, disposal and distribution of water supplied to St. Helena hereunder after it has passed the delivery point.
14. **No Third Party Beneficiary Intended:** Nothing in this Agreement shall be construed or deemed as intending to create or confer any third party beneficiaries or rights in any third parties.

15. **Termination:** In addition to any other rights of termination and suspension set forth under this Agreement or at law, Napa shall have the right to terminate this Agreement at any time upon the following events:

   (1) St. Helena takes water at a rate greater than that specified in this agreement.

   (2) Non-payment of monthly invoices.
IN WITNESS WHEREOF, St. Helena and Napa have hereunto caused their hands to be subscribed through their duly authorized officers:

By St. Helena this _____ day of ________, 19______

and By Napa this _____ day of ________, 19______

CITY OF NAPA, a municipal corporation

BY: ____________________________
    Mayor

ATTEST: _________________________
    City Clerk

CITY OF ST. HELENA, a municipal corporation

BY: ____________________________
    Mayor

ATTEST: _________________________
    City Clerk

APPROVED AS TO FORM:

_______________________________
    City Attorney

COUNTERSIGNED:

_______________________________
    City Auditor
Water

Water rates, connection and other service charges are separately determined and adopted by the Council. Current rates and charges are stipulated in Resolution No. 96-071 adopted 4/2/96 and took effect for water usage after 5/1/96.

A. Inside the City Metered Water Rates
Quantity Charges by Customer Type
(Showing per 1,000 Gallon Water Rates)

1. Single Family and Multifamily Residential

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<td>Quantity Charge</td>
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2. Commercial Customers

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3. Irrigation Customers

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B. Outside the City Metered Water Rates
Quantity Charges by Customer Type
(Showing per 1,000 Gallon Water Rates)

1. Single Family and Multifamily Residential

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