

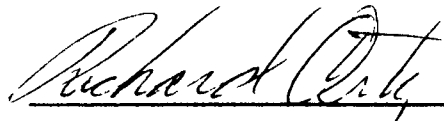
RESOLUTION NO. 1881

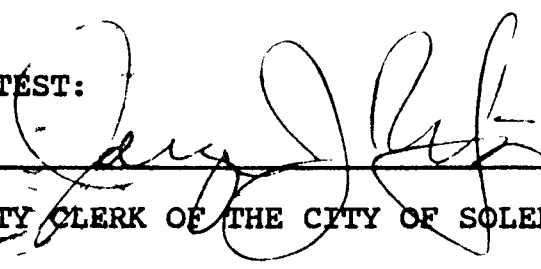
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH
WESTERN FOREST POWER CORPORATION IN
COMPLIANCE OF CONDITION NO. 18 OF
CONDITIONAL USE PERMIT
NO. 86-18

BE IT RESOLVED by the City Council of the City of Soledad that the Mayor, and the City Clerk be, and they are hereby, authorized and directed for and on behalf of said City to execute and deliver an agreement with Western Forest Power in the form of the document hereunto attached, marked "Exhibit A", and by reference made a part hereof.

PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 11th day of October, 1988, by the following vote:

- AYES, and in favor thereof, Councilmembers: Campos, Ledesma, Mayor Pro Tem Slagle, Mayor Ortiz
- NOES, Councilmembers: None
- ABSENT, Councilmembers: Untalon


MAYOR OF THE CITY OF SOLEDAD

ATTEST:

CITY CLERK OF THE CITY OF SOLEDAD



AGREEMENT

THIS AGREEMENT is made by and between the CITY OF SOLEDAD, a municipal corporation of the State of California, hereinafter called CITY, and WESTERN FOREST POWER CORPORATION, a corporation, hereinafter called WESTERN.

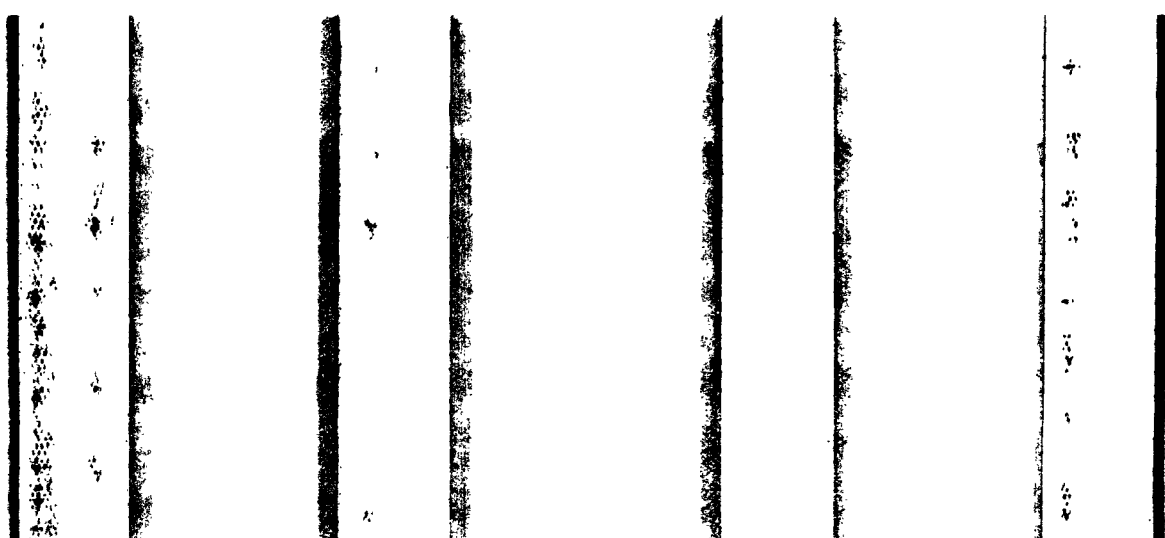
RECITALS:

A. On March 8, 1988, a conditional use permit ("CUP") was issued by CITY to WESTERN for the construction and operation of a 16 megawatt bio-mass fueled power plant on an 8-acre parcel of land located within the Los Coches Industrial Park in the City of Soledad.

B. Condition No. 18 of said use permit requires that prior to the issuance of a building permit for the project, the permittee (WESTERN) shall enter into a written agreement with the CITY OF SOLEDAD for the provision of water from the municipal water system.

C. The Final Environmental Impact Report (EIR) for the project estimates that the power plant will have a peak demand of 424,800 gallons of raw water per day of operation (including approximately 450 gallons per day for employee usage), which on the basis of an assumed 8,000 hours of annual operation amounts to 435 acre-feet per year, the equivalent of one-third of the present capacity of the municipal water pumping and storage system. To mitigate this impact on the municipal water system, the EIR requires that WESTERN provide

Letter "A"



a special purpose well on-site to supply processing water for the plant, instead of taking water from the municipal system as required by CUP Condition No. 18. This agreement is made pursuant to said mitigation requirement of the EIR, it being intended that the provisions of this agreement shall supersede CUP Condition No. 18 to the extent that it is inconsistent with said Condition, and that by complying with this Agreement WESTERN will be deemed to have complied fully with all of the requirements of said Condition.

AGREEMENT:

It is therefore mutually agreed by and between the parties hereto, as follows:

1. Installation of Well. WESTERN agrees to drill a water well to supply processing water to the power plant at a location within the plant site selected by it, and to equip said well with a metered pump and appurtenant equipment necessary to its operation for that purpose, all to CITY standards and specifications. All costs so incurred, including costs of review of specifications and of inspection of the work by the City Engineer or CITY's engineering consultant, shall be paid by WESTERN. Prior to the commencement of work WESTERN will submit plans and specifications therefor to the City Engineer of CITY for approval.

2. Inspection of Work. Upon completion of the work of installation, said well shall be inspected by a qualified consultant selected or approved by CITY, and a report of such inspection shall be given to CITY. If the report discloses

any defect in the work of installation or in the equipment, as determined by said consultant, WESTERN shall immediately remedy the same and upon completion of such remedial work a re-inspection shall be conducted to assure that all defects have been cured. All costs incurred for such inspection and remedial work shall be paid by WESTERN.

3. Well Records and Data. WESTERN agrees to provide CITY with full access to all records and data obtained in the course of drilling said well, including core samples, logs and surveys, and other pertinent information. CITY shall be entitled to copies of such records and data upon payment of reproduction costs.

4. Limitation on Quantity of Wellwater. The maximum quantity of water to be produced and used from said well by WESTERN shall be 435 acre-feet per year, computed from July 1st of each year during the term of this agreement to and including June 30th of the following year. The meter on said well shall be monitored by CITY on a regular basis and meter readings shall be recorded at least monthly.

5. In-lieu Payment to CITY. In consideration of being relieved of the requirement in CUP Condition No. 18 that water for the operation of the power plant be provided from the municipal water system, and to compensate CITY for the loss of revenue resulting therefrom, WESTERN agrees to pay to CITY an "in-lieu" payment of twenty-seven cents (27¢) for each one hundred (100) cubic feet of water produced and used from

the on-site well referred to in Paragraph 1 above, as determined by meter measurement. Said in-lieu payment shall be remitted within ten days after the end of each calendar month. The payment rate (27¢ per 100 cu. ft.) shall be increased by three percent (3%) as of the first day of July next following the commencement of water use from said well, and on the first day of July of each succeeding year said payment rate shall be increased by three percent (3%) over the rate in effect during the next previous one-year period.

6. Limitation on Uses of Wellwater. Said wellwater shall be used only on-site for the operation of the power plant and uses incidental thereto, and not otherwise, except that such wellwater may be transported off-site to the adjacent premises now occupied and operated as a sawmill by Sequoia Forest Industries, Inc., to be used on the sawmill premises for purposes of dust control, cooling saw blades, spraying of the log deck, and landscape irrigation, but not for any other purpose; provided, that this exception shall not apply if the water being furnished to the sawmill is being sold for cash or any other valuation consideration.

7. Use of Water from the Municipal System. WESTERN will be furnished with water from the municipal water system, as follows:

(a) Water for domestic uses on the power plant site will be provided through a separate metered line, equipped with a backflow valve, at the regular rates from time to time in effect for such uses.

(b) Water for fire protection purposes will be provided through an unmetered line at no charge, compensation for the same being included in the payments to be made by WESTERN pursuant to Paragraph 5 above. Said water shall not be used for any purpose other than fire protection.

Connection fees and installation charges shall be paid by WESTERN. If the waterline for fire protection purposes is connected to the on-site system carrying well water, a backflow valve, of a kind and type approved by the Public Works Director of CITY, shall be installed in the fire protection line to prevent well water from entering the municipal water system. Said backflow valve shall be maintained in good operating condition at all times by WESTERN and shall be tested at least annually at WESTERN's expense. If at any time said valve is found to be defective, it shall be replaced immediately by WESTERN, at its own expense. CITY shall have the right of entry to the power plant site at all reasonable times to read the meter on the domestic waterline and to check for contamination of the underground aquifer.

8. Additional Wells. Should the on-site well be abandoned, or should production from said well diminish to the point that it no longer will provide an adequate supply of water for power plant operations, WESTERN may develop one or more additional on-site wells at a location or locations to be selected by WESTERN and approved by CITY to replace or to supplement production from the original on-site well;

provided, that the total production from on-site sources, whether one or more, shall not exceed the maximum of 435 acre-feet per year specified in Paragraph 4 above. If the amount of water obtainable from the on-site wells should prove insufficient for the operation of the power plant, CITY will furnish water from the municipal water system in an amount sufficient to make up the deficiency at the applicable rate from time to time in effect for industrial users, subject to said maximum of 435 acre-feet per year; in such event the wellwater line shall be metered and the monthly payment to CITY specified in Paragraph 5 above shall be reduced in the proportion that the metered average daily production from said wells during the month, expressed in gallons, bears to 424,800. Connection fees and installation charges for the municipal service shall be paid by WESTERN and the installation shall include a back-flow valve at the point of connection to the municipal line to prevent wellwater from entering the municipal water system. Said backflow valve shall be maintained, tested and replaced by WESTERN in the same manner as is provided for the backflow valve referred to in Paragraph 7 above.

9. Water Sources Limited. Except as otherwise expressly provided in Paragraph 10 below, all water used by WESTERN in its power plant operations during the term of this agreement shall be produced from on-site wells or obtained from the municipal water system, as hereinabove provided, it being understood and agreed that water from any other source

shall not be used.

10. Emergency Water Supply. Notwithstanding the foregoing provisions of this agreement, WESTERN shall be allowed to obtain water from the existing well on the adjacent sawmill property for power plant use in case of an emergency which prevents the use of the on-site well, but only for as long as is reasonably required to restore the on-site well to service or to drill a replacement well, and in no event longer than ninety (90) days. For purposes of this paragraph, an "emergency" is any situation which requires the removal of the pump from the on-site well, or which requires the shut-down of the well for health, safety or environmental reasons. WESTERN must immediately notify CITY, orally or in writing, of the commencement and termination of such emergency use. WESTERN shall pay CITY for water taken from said well at the same rate as is provided in Paragraph 5 above for water from the on-site well or wells. In computing the amount due to CITY, the daily quantity used during the period of emergency shall be deemed to be the same as the average daily quantity produced and used by WESTERN from the on-site well or wells, as determined from meter readings, during the last three (3) full calendar months preceding the commencement of the emergency. Notwithstanding anything contained in this paragraph the total limitation of 435 acre-feet of water per year stated in Paragraph 4 above shall not be exceeded.

11. Compliance with Laws. In all of its operations pursuant to this agreement, WESTERN shall comply with all

applicable laws, rules and regulations of governmental authorities having jurisdiction, including those of the City of Soledad.

12. Indemnity. WESTERN accepts full responsibility for the operation of said on-site wells and water system in a safe and lawful manner and hereby indemnifies CITY, its officers, employees, and agents, from and against: (a) all liability for, and all legal and other expenses incurred in defending itself against, any violation or alleged violation of any governmental law, rule, or regulation relating to the development, use, maintenance, or operation of said on-site wells and water system, or of the well on the adjacent property referred to in Paragraph 10 above, by WESTERN, (b) all costs and expenses incurred by CITY in treating or eliminating any contamination of the municipal water supply, or any damage to the municipal water system, resulting from the development, use, maintenance, or operation of said on-site wells and water system, and (c) all claims, demands, and causes of action brought against CITY by third parties for personal injury (including death) or for property damage, arising from said development, use, maintenance, or operation of said on-site wells and water system, together with legal and other costs incurred in defending the same.

13. Assignment. WESTERN may not assign this agreement, or any interest herein, except to SOLEDAD ENERGY PARTNERSHIP, a California general partnership, or to an affiliated company or corporation controlled by it, without

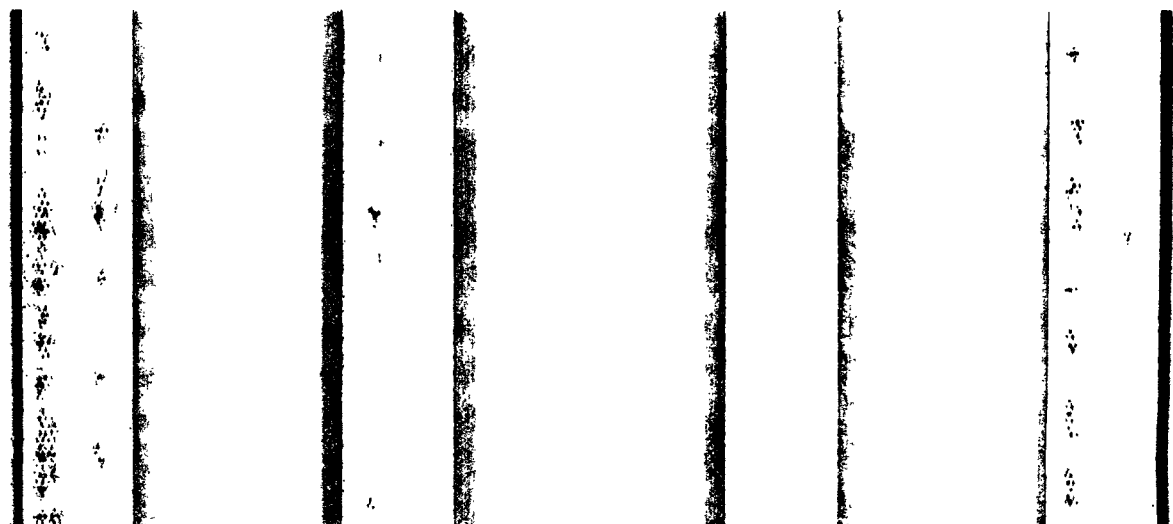
the prior written consent of CITY. Notwithstanding such consent, an assignment shall in no event relieve WESTERN of its obligations hereunder. Any assignment made shall contain the express written agreement of the assignee to keep and perform, and to be bound by, all of the obligations of WESTERN under this agreement, and a fully executed original of the same shall be delivered to CITY, with a fully-executed copy of said assignment.

14. Default. Time is of the essence under this agreement and any of the following events shall constitute a default on the part of WESTERN, or any successor of WESTERN, hereunder:

(a) The failure to pay any moneys due to CITY under Paragraph 5 hereof within fifteen (15) days after the date on which the same shall become due;

(b) Any breach or failure to keep or perform any other obligation of WESTERN hereunder and the continuance of such default for thirty (30) days after receipt from CITY of written notice of the existence of such default, or, if the default is such that it cannot with due diligence be cured within that time, the commencement within that time of action to cure the same and the diligent prosecution thereof to completion at the earliest possible time, but in no event longer than six (6) months from the date of said notice.

Any such default under this agreement shall constitute a



default under Condition No. 18 of the Conditional Use Permit referred to in Recital A above and shall be cause for the revocation of said Permit.

15. Waiver of Default. The waiver by CITY of any default hereunder shall not constitute the waiver of any subsequent or other default hereunder.

16. Disclaimer of Warranties. WESTERN is entering into this agreement solely in reliance upon its own investigation and judgment as to the kind, quantity, and suitability for its purposes of the water that may be produced from said on-site well or wells, or from the municipal water system. It is understood and agreed that CITY has made no representation or warranty, oral or written, in that regard, nor has it made any such representation or warranty as to any other matter or thing not expressly set forth in this agreement.

17. Term of Agreement. The term of this agreement is thirty (30) years from and after the date of issuance of a Certificate of Occupancy, but in no event later than July 1, 1990; subject, however, to the provisions for earlier termination set forth in Paragraphs 18 and 19 below. After expiration of said thirty (30) years' term, WESTERN shall have the right, at its election, to do either of the following:
(a) Use water from the municipal water system for its power plant operations, at the regular industrial rate from time to time applicable to such use, or (b) extend the term for four (4) successive periods of five (5) years each by giving to CITY written notice of its election to do so at least ninety

(90) days prior to the commencement of each such period, in which event the compensation to be paid to CITY during those periods of extension shall be a monthly rate equal to fifty-one percent (51%) of the applicable rate from time to time in effect for industrial users of the municipal water system.

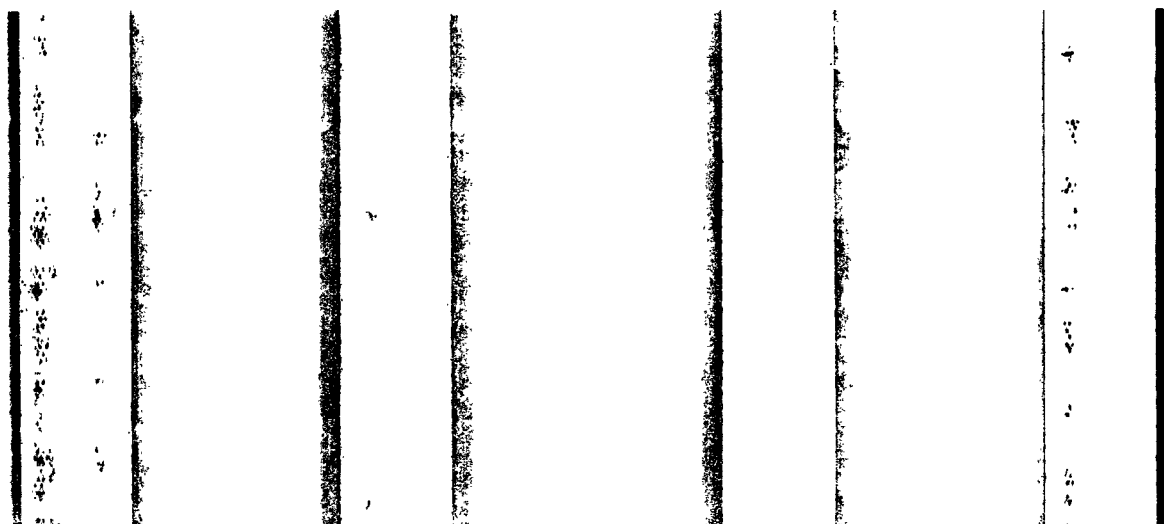
18. Termination by WESTERN. This agreement may be terminated by WESTERN when and if it determines, on the basis of an investigation and report by a qualified consultant satisfactory to CITY, that said on-site well or wells are not capable of furnishing a sufficient quantity of water to justify their use for its power plant operations, and for that reason it is necessary to discontinue their use. Notice of such termination shall be given to CITY in writing at least sixty (60) days prior to the effective date thereof. In the event of such termination by WESTERN, it shall comply with the provisions of CUP Condition No. 18 by connecting its power plant to the municipal water system, and thereafter using said system as the sole source of water for plant operations; in such event, applicable city water rates from time to time in effect for users of the municipal water system shall be paid by WESTERN in lieu of the compensation specified in Paragraph 5 above. At the time of connection WESTERN shall enter into a written agreement with CITY pursuant to CUP Conditions 18 and 64 containing hold harmless covenants satisfactory to CITY regarding disruptions in water service caused by emergencies, well failure, and accidents to wells or waterlines.

19. Termination on Cessation of Use. In the event there is a cessation of power plant operations on the subject property and said property is converted to another use, this agreement shall forthwith terminate without the necessity of any action on the part of CITY. Upon such termination all wells drilled on the subject property shall be abandoned as provided in Paragraph 20.

20. Abandonment of Wells. If WESTERN elects to abandon any on-site water well, it shall do so at its own expense in full compliance with all applicable Federal, State and local laws, ordinances, rules and regulations, and shall give written notice to CITY of its intention to do so at least thirty (30) days prior to the commencement of proceedings for such abandonment. At the time of termination of this agreement, however occurring, WESTERN shall abandon all on-site wells in accordance with the foregoing provisions of this paragraph.

21. Inspection of Premises. CITY by its authorized agents shall have the right at all reasonable times to enter the premises of WESTERN for the purpose of inspecting the on-site water system and the manner in which it is being used.

22. Notices. All notices hereunder shall be in writing and delivered in person to an officer or agent of the party to which such notice is addressed, or mailed by registered or certified mail to such party at the address shown below such party's signature hereto, or at such other address as such party hereafter may designate for the service



of notice hereunder.

23. Successors and Assigns. Subject to the restriction on assignment hereinabove set forth, this agreement, and all of the terms, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of, the legal representatives, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the said parties have executed this agreement this 20 day of SEPTEMBER, 1988.

CITY OF SOLEDAD, a California municipal corporation,

By [Signature]
Mayor

ATTEST:
[Signature]
City Clerk
Address:
P. O. Box 156
Soledad, California 93960

WESTERN FOREST POWER CORPORATION, a corporation,

By [Signature]
Title: PRESIDENT

By [Signature]
Title: SECRETARY
Address:
41 B Hangar Way
Watsonville, CA 95076