

Fifth Amendment to Protest Dismissal Agreement

This Fifth Amendment to Protest Dismissal Agreement (Fifth Amendment) is entered into as of the last date next to the signatures below, by and between East Bay Municipal Utility District (EBMUD), North San Joaquin Water Conservation District (NSJWCD), and County of San Joaquin (County¹), individually referred to as “Party” and collectively referred to hereafter as “Parties.”

Recitals

- A. On September 24, 2013, EBMUD and the County entered into a Memorandum of Agreement Relative to a Groundwater Banking Demonstration Project in San Joaquin County.
- B. In 2014, County and EBMUD entered into an Agreement to Share the Cost of Consultant Services Procured to assist in the development of the Groundwater Banking Demonstration Project (Demo Project).
- C. EBMUD, NSJWCD, and County previously entered into a Protest Dismissal Agreement (PDA) on November 25, 2014.
- D. Under the PDA, EBMUD, and County agreed to pursue the Demo Project. Further, in accordance with Section 5.b of the PDA, PDA signatories agreed that the Demo Project would be located within NSJWCD and shall utilize portions of the NSJWCD South System. Sections 5.d and 5.e of the PDA set forth conditions for EBMUD’s funding of the Demo Project and improvements to the NSJWCD South System.
- E. On May 26, 2016, EBMUD, NSJWCD, and County entered into an Amendment to the PDA (Amendment to the PDA) that extended the due date for the County to issue the Demo Project export permit to August 10, 2016, and obligated EBMUD to pay NSJWCD \$1.75 million on or before July 15, 2016.
- F. The Parties agree that NSJWCD received the \$1.75 Million from EBMUD prior to July 15, 2016, in satisfaction of Section 5.e.
- G. Section 9.b.v of the PDA provides that Section 5 of the PDA may be amended by a written instrument signed by County, EBMUD, and NSJWCD.

¹ The reference to “County” includes the County of San Joaquin, San Joaquin County Flood Control and Water Conservation District, and Mokelumne River Water and Power Authority.

- H. In accordance with Section 9.b.v of the PDA, on August 29, 2016, County, EBMUD, and NSJWCD entered into a Second Amendment to Protest Dismissal Agreement (Second Amendment) that extended the due date for the County to issue the Demo Project export permit to September 30, 2016.
- I. On September 29, 2016, the Parties entered into the Third Amendment to the Protest Dismissal Agreement (Third Amendment) extending the due date for issuance of the Demo Project export permit to October 31, 2016.
- J. The Parties then entered into the Fourth Amendment to the Protest Dismissal Agreement (Fourth Amendment) on October 31, 2016, which extended the due date until November 30, 2016.
- K. The Parties now desire to modify Section 5 of the PDA to extend further the deadline for issuance of the Demo Project export permit to December 31, 2016.

AGREEMENT

NOW, THEREFORE, for valuable consideration which is hereby acknowledged by the Parties, the Parties agree as follows:

1. The recitals set forth above are incorporated.
2. Section 5.e of the PDA is hereby amended to read in full as follows:
 - e. **Timing:**
 - i. If County does not issue the Demonstration Project export permit by December 31, 2016, then EBMUD shall not be obligated to pay County \$2.25 Million of the \$4 Million for the Demonstration Project unless County, EBMUD, and NSJWCD agree to a modification of this term.
 - ii. Pursuant to Section 5.e.ii of the Agreement, as it was amended in the May 26, 2016 Amendment to Protest Dismissal Agreement, EBMUD paid NSJWCD \$1.75 Million of the \$4 Million prior to July 15, 2016. Said \$1.75 Million is to be used to improve the NSJWCD South System. NSJWCD shall place the funds in a separate, interest bearing account and shall only use the funds for improvements to its South System. NSJWCD's acceptance of the \$1.75 Million does not obligate or commit NSJWCD to undertake any groundwater banking project with EBMUD.

3. Except as set forth above, each and every provision of the PDA shall remain in full force and effect. This Amendment supersedes and replaces the Fourth Amendment to the PDA dated October 31, 2016.

EAST BAY MUNICIPAL UTILITY DISTRICT

By: _____ Date: _____

Name: _____

NORTH SAN JOAQUIN WATER CONSERVATION DISTRICT

By: _____ Date: _____

Name: _____

SAN JOAQUIN COUNTY

By: _____ Date: _____

Name: Kris Balaji
SJ Public Works Director