

Amendment to Protest Dismissal Agreement

This Amendment to Protest Dismissal Agreement (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. Specifically, Section 5.e of the PDA provides that EBMUD is not obligated to pay County any of the \$4.0 Million for the Demo Project if County does not issue the Demo Project export permit by June 30, 2016 unless County, EBMUD, and NSJWCD agree to a modification of the relevant PDA term. If County does not issue the Demo Project export permit by June 30, 2016 and there is no agreed upon modification of the relevant PDA term, the PDA stipulates that EBMUD shall pay NSJWCD \$1.75 Million on or before July 15, 2016, which funds are to be used by NSJWCD to improve the NSJWCD South System.
- F. The Parties agree that the \$1.75 Million dedicated for use to improve the NSJWCD South System is due regardless of whether County issues the Demo Project export permit.

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.

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.

H. The Parties desire to modify the terms of the PDA to extend the deadline for issuance of the Demo Project export permit while continuing to make the \$1.75 Million available to NSJWCD as originally intended.

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 August 10, 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. \$1.75 Million of the \$4 Million is to be used to improve the NSJWCD South System. EBMUD shall pay NSJWCD the \$1.75 Million on or before July 15, 2016. 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.

EAST BAY MUNICIPAL UTILITY DISTRICT

By: _____

Date: _____

Name: _____

NORTH SAN JOAQUIN WATER CONSERVATION DISTRICT

By: _____

Date: _____

Name: _____

SAN JOAQUIN COUNTY

By:  _____

Date: 5/5/16 _____

Name: Kris Balaji
SJ Public Works Director