

**DRAFT (6/19/2013 7/22/2013)**  
**MEMORANDUM OF AGREEMENT**  
**BETWEEN SAN JOAQUIN COUNTY,**  
**SAN JOAQUIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**  
**AND**  
**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**RELATIVE TO A GROUNDWATER BANKING DEMONSTRATION PROJECT**

This Agreement is made and entered into on this \_\_\_ day of \_\_\_\_\_, by and between San Joaquin County and the San Joaquin County Flood Control and Water Conservation District, together "County" and the East Bay Municipal Utility District "EBMUD" jointly referred to hereinafter as the "Parties" in this Agreement; all of the Parties are political subdivisions of the State of California.

Whereas the County and EBMUD have expressed a desire to work cooperatively to solve regional water supply needs; and

Whereas groundwater banking has been identified as one possible means to improve water levels in the Eastern San Joaquin Groundwater Basin and improve regional water supply; and

Whereas, it is agreed by the Parties that operation of a ground water banking project, including a demonstration project, must not negatively impact the Eastern San Joaquin County groundwater basin; and

Whereas the Parties are interested in developing a demonstration project in Eastern San Joaquin County ("Demonstration Project") that would help determine the potential to in turn develop a large scale conjunctive use project beneficial to the Parties and to determine the operating criteria for a larger scale conjunctive use project if one is to take place; and

Whereas, the Parties desire that the lead agency for the Demonstration Project would be the County, and that EBMUD would participate in the Demonstration Project as a Project partner or a Project customer.

Now, therefore, the Parties agree as follows:

**ARTICLE 1 – Demonstration Project Development Activities**

1.A. The Demonstration Project development activities to be undertaken pursuant to this Agreement, including preliminary engineering, environmental documentation, permitting, and public outreach are those described in Exhibit A attached hereto.

**ARTICLE 2 - Project Concept.**

2.A. The purpose of this Agreement is to perform the Demonstration Project development activities described in ARTICLE 1, consistent with the Demonstration Project Concept described in Exhibit B attached hereto.

**ARTICLE 3 - Coordination**

3.A. Time Commitments. Time commitments and effective coordination are essential to this Agreement. The County and EBMUD shall make their respective best good faith efforts and devote adequate resources as specified herein to maintain the following schedule:

August 2013                      Memorandum of Agreement acted on by EBMUD Board and San Joaquin County Board of Supervisors.

September 2013                Develop Conceptual Model.

- Agree upon approximate size and return ratio for Demonstration Project.
- Delineate zone of operations.
- Commence consultant selection processes for preliminary engineering and environmental documentation for the Demonstration Project.

September 2013                The Parties commence Demonstration Project preliminary

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permitting and water rights discussions with staff of the State Water Resources Control Board, the California Department of Fish and Wildlife, the Department of Public Health, and the Central Valley Regional Water Control Board and the Parties initiate the San Joaquin County Groundwater Ordinance permit application process.

- September 2013 The Parties commence discussions of the Demonstration Project concept with member agencies of the Northeastern San Joaquin County Groundwater Banking Authority and the Upper Mokelumne River Watershed Authority.
- January 2014 The Parties develop and execute a Budget and Cost-Share Agreement for purposes of furthering the development of the Demonstration Project.
- January 2014 The Parties begin the implementation of a public outreach program.
- February 2014 The County awards consulting contracts for preliminary engineering and environmental documentation on the Demonstration Project.
- April 2014 Preliminary engineering completed which includes Basin Operations Criteria and Success Criteria by which to measure success.
- April 2014 The County and other appropriate parties finalize the preparation of and submit a San Joaquin County groundwater export permit application which meets the objectives of conjunctive storage beneficial to San Joaquin County's groundwater basin and to EBMUD through an exportable dry year water supply consistent with the Basin Operations Criteria.

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- July 2014 Draft Environmental Documentation published by the County.
- September 2014 Final Environmental Documentation published and if required adopted by the respective Governing Boards of the Parties.
- September 2014 Obtain permit from San Joaquin County pursuant to the San Joaquin County Groundwater Ordinance. Confirm the status of permit processes such that advancing the Demonstration Project to the next stage is warranted.
- October 2014 Construction/Operation/Financial Agreement between the Parties completed and executed by the respective Governing bodies. This agreement shall clarify the final role of the Parties in the operation of the Demonstration Project with EBMUD as a partner organization or Project customer.
- January 2015 Permits obtained from SWRCB, CVRWQCB, San Joaquin County, Department of Public Health, Cal. Dept. of Fish and Wildlife, and any other Local, State, or Federal Agency as required to enable construction to take place.
- April 2015 Final design and property acquisition completed.
- June 2015 Begin Demonstration Project construction.
- April 2016 Commence Demonstration Project operation.

3.B. Resolution of Delays. Notwithstanding the good faith efforts to achieve the milestones set forth above, the Parties recognize that delays may occur. If significant delays occur in connection with any of the components of the work described in Paragraph 3.A above, the Parties shall meet to determine how to proceed with the project development and make appropriate adjustments in this schedule.

3.C. Work Plan Timeline. The Parties shall mutually create a work plan timeline including

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technical milestones to be determined as the Demonstration Project is developed.

- 3.D. Technical Coordination Team. The Parties ~~shall~~ designate the following representatives to participate in a Technical Coordination Team. The Technical Coordination Team shall be responsible for coordinating and performing Demonstration Project development activities, selecting project consultants, managing the work of Project consultants, reviewing and approving work products, providing technical input, and responding to the requests of the Negotiating Team.

**County Representatives**

Tom Gau

Fritz Buchman

Brandon Nakagawa

and others as may be designated by the County

**EBMUD Representatives**

Richard Sykes

Mike Tognolini

Tom Francis

and others as may be designated by EBMUD

- 3.E. Consultant Management. While the Consultants will contract directly with County, consultant management will be the responsibility of the Technical Coordination Team.

**ARTICLE 4 - Responsibilities and Costs**

- 4.A. General. No commitments for costs other than those described in Paragraphs 4.B, 4.D, 4.E, and Article 7 are created herein.
- 4.B. Responsibilities. Responsibilities and costs for Demonstration Project development activities, and other ancillary activities are as described in 4.D, and 4.E, of this Agreement.
- 4.C. Additional Costs. No additional costs other than those described in this Article, and Article 7 shall be the responsibility of the Parties unless this Agreement is amended. Staff costs are not subject to cost sharing.
- 4.D. Responsibilities and Costs for Procurement of Professional Services, and Project Development Activities.

4.D.(1) The responsibilities and costs to be borne by the County shall include:

- 4.D.(1)(a) A percentage of professional services required for engineering, permitting and environmental documentation for the Demonstration Project to be determined by the subsequent Budget and Cost-Share Agreement referenced in Paragraph 3.A.
- 4.D.(1)(b) Administration of contracts described in 4.D.(1)(a).
- 4.D.(1)(c) Obtaining all necessary local, state, and federal permits for the Demonstration Project (excluding SWRCB permit changes and modifications to EBMUD's Department of Public Health Water Supply Permit).
- 4.D.(1)(d) The County is responsible for the cost, development, and implementation of a public outreach program as described in Exhibit A.
- 4.D.(1)(e) In the event of litigation challenging the project environmental documentation and permit applications referenced in Paragraphs 4.D.(1)(a) and (c), the County will share in the costs of defense as provided in Article 7.C of this Agreement.
- 4.D.(1)(f) Obtaining a Permit under the San Joaquin County Groundwater Ordinance ~~as necessary to facilitate the Demonstration Project.~~

4.D.(2) The responsibilities and costs to be borne by EBMUD shall include:

- 4.D.(2)(a) A percentage of professional services required for engineering, permitting and environmental documentation for the Demonstration Project to be determined by the subsequent Budget and Cost-Share Agreement referenced in Paragraph 3.A.
- 4.D.(2)(b) SWRCB permit changes as required.

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- 4.D(2)(c) Modification to the EBMUD's Department of Public Health water supply permit
- 4.D(2)(d) In the event of litigation challenging the project environmental documentation and permit applications, referenced in Paragraphs 4.D.(1) (a) and (c), EBMUD will share in the costs of defense as provided in Article 7.C of this Agreement
- 4.D.(3) The Parties shall mutually develop a Budget and Cost-Share Agreement for various items of work to be undertaken jointly by the Parties. The budget shall be determined prior to initiation of the work effort and said budget will be updated on a biannual basis.

**ARTICLE 5 - Term and Final Report.**

- 5.A. Term of Agreement. This Agreement shall be effective on the date first set forth above through completion of the Demonstration Project. Upon completion of Demonstration Project, a Final Report as to the effects of the Demonstration shall be prepared and the cost thereof shall be borne by the Parties as set forth in the Budget and Cost-Share Agreement.
- 5.B. Termination. Either Party may, at their option, terminate this Agreement in the event: (1) the SWRCB proposes terms and conditions on either Party which are unacceptable to that Party; (2) a Permit as required by the San Joaquin County Groundwater Ordinance enabling conjunctive use and exportation is not issued or is issued but in the opinion of EBMUD does not allow sufficient export of water; or (3) within 30 days' notice, either Party may terminate this Agreement but must pay all of its cost obligation as incurred up to the date of termination.

**ARTICLE 6 - General Provisions.**

- 6.A. Amendment. All amendments to this Agreement shall be in writing and shall be effective upon execution by the County and EBMUD.
- 6.B. Entire Agreement. This Agreement represents the entire understanding of the County and EBMUD with respect to the Demonstration Project. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder.

**ARTICLE 7 - Indemnification.**

- 7.A. Indemnification of EBMUD. The County expressly agrees to defend, indemnify, and hold harmless EBMUD and its Directors, officers, agents and employees from and against any and all loss, liability, expense, claims, suits, and damages, including attorney fees, arising out of or resulting from the County's, its associates', employees', subconsultants', or other agents' negligent acts, errors or omissions, or willful misconduct, in the operation and/or performance under this Agreement.
- 7.B. Indemnification of San Joaquin County. EBMUD expressly agrees to defend, indemnify, and hold harmless the County and its Supervisors, Directors, officers, agents, and employees, from and against any and all loss, liability, expense, claims, suits, and damages, including attorneys' fees, arising out of or resulting from EBMUD's, its associates', employees', subconsultants', or other agents' negligent acts, errors, or omissions, or willful misconduct, in the operation and/or performance under this Agreement
- 7.C. Permit Challenge . In the event the environmental documentation and/or permit applications described in Article 4.D of this Agreement are challenged as being in violation of law, the Parties agree to cooperatively defend against such challenge and to share equally the reasonable costs of such defense.



IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement as of \_\_\_\_\_, 2013.

EAST BAY MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
\_\_\_\_\_, President

Date: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
EBMUD Office of General Counsel

Date: \_\_\_\_\_

SAN JOAQUIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: \_\_\_\_\_  
Ken Vogel, Chairman  
San Joaquin County Flood Control and Water Conservation District

Date: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
San Joaquin County Office of the County Counsel

Date: \_\_\_\_\_

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# EXHIBIT A

## Demonstration Project Development Activities to be Undertaken Pursuant to the Agreement

### Preliminary Engineering

The Parties will develop a preliminary engineering document (30% Design) which will be used as the basis for the Demonstration Project environmental documentation. The Demonstration Project Concept is described in Exhibit B attached to the Agreement.

### Environmental Documentation

The Parties will complete the environmental documentation necessary to implement the Demonstration Project as described in the preliminary engineering document.

### Permitting

The Parties have identified a preliminary list of necessary permits and approvals to implement the Demonstration Project including, but not limited to:

- State Water Resources Control Board Change in Place of Use
- Department of Public Health Water Supply Permit
- County Encroachment Permits
- County Well Construction Permits
- Regional Water Quality Control Board Injection and Discharge Permits
- County Building Permits
- County Groundwater Export Permit applicable to water stored under the Demonstration Project and which may be exported from San Joaquin County as a part of the Demonstration Project.

Public Outreach

At the earliest possible date, the County will complete a public involvement plan. Key stakeholders will be identified and provided information prior to publication of the draft environmental document. The County will provide regular updates to these stakeholders, including the Northeastern San Joaquin County Groundwater Banking Authority, the San Joaquin County Advisory Water Commission, the San Joaquin County Farm Bureau, local and regional environmental organizations, landowners within the particular water conservation district and/or water agency within which the Demonstration Project is sited, and other stakeholders. EBMUD will assist in the public involvement effort by providing updates to any agency or interest group within its service area and within Alpine, Calaveras, and Amador Counties, including but not limited to, the Upper Mokelumne River Watershed Authority and its member agencies

Possible Ordinance Revision

~~During and following the Demonstration Project, San Joaquin County will determine based upon the information developed by the Demonstration Project whether modifications of the existing San Joaquin County Groundwater Ordinance should be considered to facilitate future recharge, storage, and extraction projects and the delivery of water for export outside of San Joaquin County.~~

Permit

In order to export water to EBMUD as a part of the Demonstration Project, an application for a Permit under the San Joaquin County Groundwater Ordinance will be submitted. If a Permit is denied, the Demonstration Project will not proceed.

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# EXHIBIT B

## Project Concept and Initial Project Outline

### Vision Statement:

The County and EBMUD jointly envision a major Conjunctive Use Groundwater Recharge and Banking Project which provides mutual benefit in terms of dry-year water supplies, improved groundwater management, sustainable agriculture, and the protection of water rights in a manner that sustains the social, economic, and environmental viability of the Mokelumne River Watershed, San Joaquin County, and the EBMUD service area.

### First Step

As a first step, the County and EBMUD will undertake a Demonstration Project which will test how the basin functions with the addition of water and export of water pursuant to a Permit issued under the San Joaquin County Groundwater Ordinance.

### Concept / "Primary" Components:

- Surface Water Source: Source water is the Mokelumne River.
- Conveyance Means: EBMUD aqueducts would be used to convey the water from the source. A connection pipeline would tie into the aqueduct and deliver it to the Demonstration Project site. Other facilities may be used to convey water from the source as agreed upon by the Parties.
- Storage (Groundwater Basin): The storage facility would be the Eastern San Joaquin Groundwater Basin, where infiltration, injection of water or by in-lieu irrigation into storage is practical.
- Land: The land for the groundwater project must be large enough such that site spreading basins, injection wells, and well-head treatment plant(s) can be constructed. Securing the site may be via agreements with landowners, land purchases, etc.

Recharge would occur via infiltration (spreading basins), injection well, or by in-lieu supply of surface water. During dry years, extraction of banked groundwater would be through existing or new wells. Also in dry years, a portion of the banked water would go to EBMUD.

Managing recharged water is intended to be addressed within the Basin Operations Criteria (BOC) developed by San Joaquin County. The BOC will address landowner assurances and will dictate how water stored within the basin will be accounted for over time, be made available for local use and/or export, and meet water quality and other applicable standards. Extraction of the water from the basin and use of the water both within San Joaquin County and outside San Joaquin County via exportation by EBMUD will provide valuable information as to how the Groundwater Basin will function.

Ownership and Governance:

Aside from components that are directly associated with making or facilitating connections to EBMUD's Aqueducts, the Demonstration Project facilities constructed pursuant to this Agreement and the subsequent Construction/Operation/Financial Agreement referenced above in Article 3.A shall be wholly owned throughout and after the term of the Demonstration Project by the County, a local agency designated by the County, or a local entity created by the County for the purpose of owning such facilities.

The County will perform public outreach to identify potentially participating landowners and to develop a structure of governance under which the facilities will be maintained and operated.

Success Criteria:

The Demonstration Project must achieve the following criteria to be deemed a success:

- Show net improvement in aquifer levels even when permitted withdrawals are made.
- Demonstrate extraction for in-county and outside the county purposes.
- Demonstrate a means by which Parties are assured the use of stored water when they need it.
- Be acceptable to the local community and other stakeholders.
- Have the ability to scale up and provide a sound basis for a larger water banking project.