

**PROTEST WITHDRAWAL AGREEMENT AMONG AMADOR WATER AGENCY,  
JACKSON VALLEY IRRIGATION DISTRICT  
AND EAST BAY MUNICIPAL UTILITY DISTRICT**

THIS AGREEMENT is made effective as provided in paragraph 6.e below by and among the Amador Water Agency (“AWA”), the Jackson Valley Irrigation District (“JVID”), and the East Bay Municipal Utility District (“EBMUD”), all of which are California special districts. AWA, JVID, and EBMUD also are collectively referred to herein as the “Parties” and individually as a “Party”.

Recitals

A. AWA has filed the Petition for Partial Assignment of State Filed Application 5647 and Accompanying Application 5647X03 for a new water right permit for direct diversion of 1,050 acre-feet annually (“afa”) and 1,400 acre-feet (“af”) by diversion to storage to serve its Central Amador Water Project (“CAWP”). This petition and application are referenced in this Agreement as the Application. The Application is based on a proposed reversion of 1,050 afa of JVID’s existing water-right Permit No. 12167 (“JVID Permit”), which currently authorizes JVID to appropriate 3,850 afa of water from the Mokelumne River and its tributaries.

B. JVID protested AWA’s Application and, in an April 22, 2013 letter filed with the State Water Resources Control Board (“SWRCB”), dismissed its protest on terms stated in that letter.

C. EBMUD protested AWA’s Application and, in a March 13, 2007 letter filed with the SWRCB, requested withdrawal of its protest on terms stated in that letter.

D. In a release from priority issued by the Department of Water Resources dated March 5, 1959, 20,000 afa of Mokelumne River water available under state-filed applications 5647 and 5648, including an existing 15,000 afa diversion for the Amador Canal, was reserved as a safe yield amount for use in Amador County.

E. The remaining 5,000 afa of the Amador County reservation was permitted to JVID in 1960 under the JVID Permit, subject to a right of reversion of 2,200 afa for municipal, domestic, and irrigation uses in the upstream portion of the county.

F. On January 25, 1979, the SWRCB issued Decision 1490, which ordered a reversion to the State of 1,150 afa of the 5,000 afa previously assigned to JVID, modified the JVID Permit to reduce the maximum direct diversion from 5,000 afa to 3,850 afa, and directed that a permit be issued to AWA authorizing AWA to, among other things, divert to storage up to 1,600 afa to Lower Bear Reservoir operated by Pacific Gas & Electric (“PG&E”), and to directly divert and redivert from storage up to 1,150 afa for beneficial use within the CAWP. Pursuant to Decision 1490, AWA received Permit 17579 on March 22, 1979. On February 7, 2019, Permit 17579 was superseded by License 13899 (the “AWA License”).

G. JVID currently directly diverts the water it appropriates under the JVID Permit from facilities located at EBMUD's Pardee Reservoir pursuant to an agreement between JVID and EBMUD dated June 22, 1999 ("JVID-EBMUD Agreement"). The JVID-EBMUD Agreement currently provides that the quantity of water released to JVID from Pardee Reservoir shall not exceed 3,850 afa.

H. AWA, JVID and EBMUD did not sign formal agreements based on the terms stated in JVID's and EBMUD's respective protest dismissal letters.

I. In light of the SWRCB's pending hearing on AWA's Application, the Parties wish to enter into an agreement that fully states the terms agreed to by AWA to resolve JVID's and EBMUD's protests and to have those terms incorporated into a new water-right permit anticipated to be issued based on AWA's Application (the "AWA Permit"). In entering into this Agreement, it is the mutual intent of the Parties to (i) ensure that combined beneficial use under the JVID Permit and the AWA Permit will not exceed 3,850 afa and for JVID and AWA to provide accounting and reporting to show compliance with that 3,850-afa combined limit, (ii) provide for JVID's continued direct diversions and beneficial use of water to be reverted under the Application while and to the extent such water is not needed by AWA and define the scope of EBMUD's obligation to convey such water to JVID, and (iii) clarify the maximum quantity which may be stored under the AWA Permit and AWA License.

#### Agreement

NOW, THEREFORE, the Parties agree as follows:

1. AWA and JVID collectively shall not divert or divert to beneficial use in any year more than 5,000 af under the AWA Permit, the AWA License, and the JVID Permit collectively.
2. If issued by the SWRCB, the 1,050 afa of water by direct diversion authorized by the AWA Permit shall remain available to JVID for diversion under the JVID Permit until such time as AWA determines that its demand for water under the AWA Permit requires the use of any portion of the 1,050 afa direct diversion right, subject to the following terms:
  - a. Within 30 days after the date of issuance of the AWA Permit, AWA shall issue a written notice to JVID stating the amount of water that it needs under the AWA Permit for the remainder of that calendar year. The remaining amount of the 1,050-afa-direct-diversion supply under the AWA Permit will be available for diversion by JVID under the JVID Permit. AWA shall provide a copy of this written notice promptly to the SWRCB and EBMUD. Upon AWA's issuance of the notice, the right to directly divert the amount of water stated in AWA's notice for that calendar year shall be deemed available for diversion by AWA under the AWA Permit. AWA then shall be entitled to directly divert that amount in that

calendar year under the AWA Permit and JVID's right to divert that same quantity of water under the JVID Permit shall cease.

- b. On or before December 15 of each year after the AWA Permit is issued, and until AWA has used 1,050 afa under the AWA Permit, AWA shall notify JVID in writing of the amount of water that it needs and will divert under the AWA Permit for the upcoming calendar year. The remaining amount of the 1,050-afa direct-diversion supply under the AWA Permit will be available in the applicable year for diversion by JVID under the JVID Permit. AWA shall provide a copy of the notice promptly to the SWRCB and EBMUD. As AWA's annual use of water increases or decreases under the AWA Permit as indicated in the written notices to be provided by AWA in the manner described herein, the annual amounts needed and to be diverted by AWA under the AWA Permit shall not be available for JVID to divert under the JVID Permit. In no event, however, shall: (i) the total of the reductions in JVID's rights under the JVID Permit exceed 1,050 afa as a result of AWA's use under the AWA Permit; or (2) the combined total of direct diversions under the AWA License, AWA Permit, and the JVID Permit exceed 5,000 afa.
- c. AWA's determination of its need to use water under the AWA Permit stated in each written notice shall be conclusive and binding on the Parties.
- d. Nothing in this Agreement shall obligate AWA to deliver any water to JVID from the water stored in Lower Bear Reservoir under the AWA License or under the AWA Permit. No Party shall request that the SWRCB impose a term having such an effect on the AWA Permit.
- e. Nothing in this Agreement, the Application, the AWA Permit or the JVID Permit shall obligate EBMUD to deliver more than 2,800 afa of water to JVID except to the extent that: (i) AWA first provides to EBMUD the written notices required under paragraphs a and b above, (ii) the written notice applicable at the time such delivery is to be made indicates AWA has surplus water under the AWA Permit available for diversion by JVID under the JVID Permit, and (iii) such water is in fact available for direct diversion by JVID. JVID and EBMUD agree to negotiate in good faith to amend the JVID-EBMUD Agreement to reflect the partial reversion and assignment contemplated by the Application and to incorporate the procedures described in this Protest Withdrawal Agreement regarding diversions above 2,800 afa by JVID.

3. The Parties shall jointly present this Agreement to the SWRCB. AWA shall request, and JVID and EBMUD will support such request, that the SWRCB insert the following term into the Permit:

This right is subject to the Protest Withdrawal Agreement Among Amador Water Agency, Jackson Valley Irrigation District and East Bay Municipal Utility District

dated [ ], 2020, to the extent such agreement covers matters within the State Water Board's jurisdiction. The right holder shall provide the State Water Board with a copy of any future agreements or amendments to agreement that may affect this right. The annual amount that Jackson Valley Irrigation District may directly divert under Permit 12167 shall be reduced by the amounts of water Amador Water Agency directly diverts under this Permit, effective on the dates of Amador Water Agency's notices to Jackson Valley Irrigation District provided in paragraphs 2.a and 2.b of the Protest Withdrawal Agreement Among Amador Water Agency, Jackson Valley Irrigation District and East Bay Municipal Utility District dated [ ], 2020, and in accordance with the additional terms provided in that Agreement, which is incorporated herein.

4. For the elimination of doubt, AWA acknowledges and agrees that its contractual right under the Fourth Amended Contract Between Pacific Gas and Electric Company and Amador Water Agency dated December 13, 2012 to store water in Lower Bear Reservoir under the AWA License and the AWA Permit will be for a total amount of 3,000 af and that such quantity is the maximum amount that may be stored at any given time under the AWA Permit and the AWA License collectively. Nothing in this paragraph alters AWA's right to divert sufficient water into storage at any permitted time when there is available natural flow to maintain 3,000 af of total supply in storage or AWA's obligation to divert a minimum of 90 af into storage annually to comply with its obligation to PG&E to make up annual evaporation and conveyance losses.

5. Diversions and use by AWA and JVID, respectively, under the AWA Permit, the AWA License, and the JVID Permit shall be accounted for and reported to the SWRCB in the two agencies' respective annual water right reports filed with the SWRCB. The filed reports shall collectively demonstrate each year that AWA and JVID have complied with paragraph 1 of this Agreement. Both AWA and JVID will submit copies of those annual reports to EBMUD promptly after their filing with the SWRCB, which obligation will terminate when AWA is making full use of the 1,050 afa under the AWA Permit.

## 6. General Provisions

a. This Agreement is freely and voluntarily entered into by the Parties after having had the opportunity to consult with their respective attorneys. The Parties, in entering into this Agreement, do not rely on any inducements, promises, or representations made by each other, their representatives, or any other person, other than those inducements, promises, and representations contained in this Agreement. This Agreement represents the entire agreement of the Parties regarding the subject matter described herein. All prior agreements between the Parties shall remain in full force and effect and shall not be construed to be modified by this Agreement. This Agreement may be modified only by a written amendment to this Agreement agreed to by the Parties. The Parties and the Party representatives executing this Agreement have the power and authority to execute this Agreement, and once executed by all Parties, this Agreement shall be binding upon the Parties.

b. The Parties acknowledge that each Party and its attorneys have reviewed, negotiated and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any Party in connection with the transactions contemplated by this Agreement.

c. Each Party to this Agreement agrees to do all things that may be necessary, including, without limitation, the execution of all documents which may be required hereunder, in order to implement and effectuate this Agreement.

d. The recitals on pages 1 and 2 of this Agreement are true and are incorporated herein by this reference and made a part hereof.

e. This Agreement will take effect upon the SWRCB's issuance of the AWA Permit that includes the term stated in paragraph 3 of this Agreement.

i. If the SWRCB issues the AWA Permit with terms concerning the relationship between water use under the AWA Permit and water use under the JVID Permit that are different than the terms stated in paragraph 3 of this Agreement, then the Parties will seek in good faith to modify this Agreement within 30 days of the SWRCB's issuance of the AWA Permit to account for those different terms issued by the SWRCB. If the SWRCB issues a draft AWA Permit that, if finalized, would cause the immediately preceding sentence to take effect, then the Parties will cooperatively seek to ensure that the final AWA Permit is consistent with this Agreement by, to the maximum extent possible, jointly proposing to the SWRCB mutually acceptable edits to the draft AWA Permit.

ii. In any case identified in this paragraph 6.e under which the Parties would seek to modify this Agreement or to propose changes to a draft AWA Permit, and unless this Agreement fails to take effect because the SWRCB does not issue the AWA Permit, then, notwithstanding any other provision of this Agreement, the Essential Terms of this Agreement will be and shall remain legally binding among the Parties. For purposes of this paragraph 6.e only, the "Essential Terms" of this Agreement are: (A) paragraph 1's limit on combined beneficial use under the AWA Permit and the JVID Permit; (B) paragraphs 2.a.'s and 2.b.'s notice requirements; (C) paragraph 2.e; (D) paragraph 4's terms concerning AWA's use of storage in Lower Bear Reservoir; and (E) paragraph 5's requirement that AWA and JVID provide EBMUD with copies of their annual water right reports to the SWRCB and that such reports demonstrate compliance with paragraph 1.

iii. If the final terms of the AWA Permit make it impractical for the Parties to implement one or more of the Essential Terms according to the explicit text of the relevant Essential Term(s), then the Parties shall implement the relevant Essential Term(s) according to that explicit text to the maximum extent practical. In such event, each Party may legally challenge any SWRCB action it believes is unlawful or improper.

f. Any notices or communications required to be given by one Party to another shall be deemed to be properly given if delivered personally or sent by United States mail, postage prepaid, addressed as follows:

AWA

Amador Water Agency  
General Manager  
12800 Ridge Road  
Sutter Creek, CA 95685

JVID

Jackson Valley Irrigation District  
Attn: General Manager  
6755 Lake Amador Drive  
Ione, CA 95640

EBMUD

East Bay Municipal Utility District  
Director of Water & Natural Resources  
375 11th Street, MS 901  
Oakland, CA 94607-4240

With a copy to:

East Bay Municipal Utility District  
Office of General Counsel  
375 11th Street, MS 904  
Oakland, CA 94607-4240  
Attn; Jonathan D. Salmon, Esq.

A Party may modify its address(es) for notice by giving written notice of the modification to all other Parties.

g. This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Agreement may also be exchanged via email or other electronic means and any email or other electronic transmission of any party's signature shall be deemed to be an original signature for all purposes.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement on the dates set forth below.

AMADOR WATER AGENCY

By: \_\_\_\_\_

Richard L. Farrington  
President, Board of Directors

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Cris L. Thompson  
Clerk of the Board

JACKSON VALLEY IRRIGATION DISTRICT

By: \_\_\_\_\_

George Lambert  
President, Board of Directors

Dated: \_\_\_\_\_

EAST BAY MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_

Clifford C. Chan  
General Manager

Dated: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
for the Office of General Counsel