

FIRST AMENDMENT TO TOLLING AND WAIVER AGREEMENT

This FIRST AMENDMENT TO TOLLING AND WAIVER AGREEMENT (“First Amendment”), which shall be effective as of December 15, 2007 (“Effective Date”), is entered into by and between the Santa Barbara County Flood Control & Water Conservation District (“DISTRICT”) and the CALIFORNIA DEPARTMENT OF WATER RESOURCES (“DWR”). DISTRICT and DWR are referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

A. In 2007, the Parties entered into a Tolling and Waiver Agreement (“Agreement”), a copy of which is attached hereto as Exhibit A. Except as otherwise set forth in this First Amendment, capitalized terms have the meanings given to such terms in the Agreement.

B. Among other things, the Agreement tolls the applicable time limits for pursuing Claims related to certain of DWR’s bills to the State Water Contractors for 2007. (“SWP bills for 2007”).

C. Although the Agreement expressly preserves DISTRICT’S Claims with respect to the SWP bills for 2007, it does not address or apply to any SWP bills issued by DWR for subsequent years.

D. Thus, in the absence of an amendment to the Agreement, DISTRICT will be required to formally protest its SWP bills for 2008 and/or take other legal action to preserve any claims it may have with respect to such bills.

E. The Parties currently are engaged in good faith discussions concerning a possible resolution of the claims related to the SWP bills issued for 2007 and certain other claims related to the State Water Project. In order to facilitate these discussions, the Parties agree that the applicable time limits for pursuing claims related to the SWP bills issued by DWR for 2008 also should be tolled.

F. The Parties also desire to amend the definition of the term “Claims” so that the reference to DWR’s bills to the State Water Contractors for 2007 shall include “any revisions to such bills”.

NOW, THEREFORE, DISTRICT and DWR, for good and adequate consideration, the sufficiency of which is hereby acknowledged, agree to the following:

TERMS OF FIRST AMENDMENT

1. The text in Paragraph 1(b) of the Agreement is deleted in its entirety and replaced with the following text, shown here in italics:

The term “Claims” is broadly defined to include any and all claims for relief, actions, suits, causes of action, damages, debts, costs, demands, losses, liabilities and obligations of whatever nature, whether legal or equitable, and notices of contest under Article 29(i) of the State Water Contracts that arise out of or are related to: (1) the Metropolitan Claim; (2) the use, prior to July 1, 2006, of revenue bond proceeds and commercial paper note proceeds to pay “costs incurred for the enhancement of fish and wildlife or for the development of public recreation;” (3) the related establishment, restatement or adjustment of charges and rate reductions under the State Water Contracts; (4) the accounting for the costs of the San Joaquin Drainage Program; (5) the allocation of the costs of certain facilities in the Delta to the purposes of the development of public recreation and the enhancement of fish and wildlife; (6) DWR’s bills to the State Water Contractors for 2007, including any revisions to such bills ; or (7) DWR’s bills to the State Water Contractors for 2008, including any revisions to such bills.

2. All other terms and conditions of the Agreement are unchanged by this First Amendment and shall remain in full force and effect.

3. Each individual signing below represents and warrants that he or she is authorized to execute this First Amendment on behalf of the respective Parties to this First Amendment and does so freely and voluntarily.

4. Each Party warrants and represents that, in executing this First Amendment, it has relied upon legal advice from counsel of its choice; that the terms of this First Amendment have been read and its consequences have been completely explained to it by counsel; that it fully understands the terms of this First Amendment; and that it knows of no reason why this First Amendment shall not be a valid and binding agreement of that Party.

5. This First Amendment may be executed in counterparts.

DATED: _____

DAVID A. SANDINO
Acting Chief Counsel
California Department of Water Resources

SANTA BARBARA COUNTY FLOOD
CONTROL & WATER CONSERVATION
DISTRICT

By: _____
Chair, Board of Directors

Date: _____

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

APPROVED AS TO FORM:
STEPHEN SHANE STARK
COUNTY COUNSEL

BY: _____
Deputy

BY: _____
Deputy

APPROVE AS TO ACCOUNTING:
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

BY: _____
Deputy

