

AGREEMENT BETWEEN
ORANGE COUNTY WATER DISTRICT AND
EAST VALLEY WATER DISTRICT CONCERNING WATER RIGHTS

THIS AGREEMENT, effective as of June 23, 2006, is entered into by and between ORANGE COUNTY WATER DISTRICT ("OCWD") and EAST VALLEY WATER DISTRICT ("EVWD") (collectively, the "Parties").

RECITALS

- A. In 1969, the Orange County Superior Court entered a stipulated judgment in *Orange County Water District v. City of Chino, et al.*, Orange County Superior Court No. 117628 (the "1969 Judgment") declaring rights in the Santa Ana River Watershed (the "Watershed") as between the water users located in the area shown on Exhibit A to the Judgment which lies upstream from Prado Dam (the "Upper Area") and the water users located in the area shown on Exhibit A to the Judgment which lies downstream from Prado Dam (the "Lower Area") (the area shown on Exhibit A to the 1969 Judgment constitutes the "Watershed"). OCWD and EVWD were parties in that case and to certain stipulations that led to the 1969 Judgment. OCWD is located in the Lower Area; EVWD is located in the Upper Area.
- B. Pursuant to the 1969 Judgment and the stipulations leading to it, "water users and other entities in Lower Area have rights, as against all Upper Area claimants, to receive an average annual supply of 42,000 acre feet of Base Flow at Prado, together with the right to all Storm Flow reaching Prado Reservoir. Water users and other entities in Upper Area have rights in the aggregate, as against all Lower Area claimants, to divert, pump, extract, conserve, store and use all surface and ground water supplies originating within Upper Area without interference or restraint by Lower Area claimants, so long as Lower Area receives the water to which it is entitled under this Judgment and there is compliance with all of its provisions."
- C. In addition, pursuant to the 1969 Judgment and the stipulations leading to it, "OCWD and the Lower Area Users are enjoined and restrained from pumping, producing and exporting or directly or indirectly causing water to flow from Upper to Lower Area, except as to salvage of evapo-transpiration losses The acquisition by Upper Districts or other Upper Area entities of Lower Area water rights shall in no way affect or reduce Lower Area's entitlement; and the acquisition of Upper Area water rights by OCWD or other Lower Area entities shall be deemed to be included within the aggregate entitlement of Lower Area and shall not increase said entitlement."
- D. Further, pursuant to the 1969 Judgment and the stipulations leading to it, "[i]nsofar as Lower Area claimants are concerned, Upper Area water users and other entities may engage in unlimited water conservation activities, including spreading, impounding and other methods, in the area above Prado Reservoir, so long as Lower Area receives the water to which it is entitled under the Judgment and there is compliance with all of its

provisions. Lower Area water users and other entities may make full conservation use of Prado Dam and reservoir, subject only to flood control use.”

- E. Further pursuant to the Stipulation for Judgment filed concurrently with the 1969 Judgment, “Water quality requirements, objectives and policy are a function of the Santa Ana River Basin Regional Water Quality Control Board and such other governmental agencies now in existence or as may be hereafter created or vested with such regulatory power. The provisions in the Judgment relating to quality are not to be construed or deemed to affect, or in any way detract from the right of any party hereto to urge such Board or other appropriate agency to take action designed to change or enforce water quality requirements, objectives and policy.”
- F. On or about November 15, 1992, OCWD filed a water right application with the State Water Resources Control Board (“SWRCB”), which was later numbered Application No. 31174 and was supplemented by OCWD on or about August 21, 1998, seeking to appropriate by direct diversion and storage the total amount of 507,800 acre-feet of water per year of base and storm flows from the Santa Ana River (the “OCWD Application”).
- G. On September 3, 1999, OCWD petitioned the SWRCB to modify the Declaration of Fully Appropriated Stream Status to allow the SWRCB to accept the OCWD Application. After evidentiary hearings on September 21, 2000, the SWRCB issued Order WR 2000-12, *In the Matter of the Petitions to Revise Declaration of Fully Appropriated Streams to Allow Processing of Specified Applications to Appropriate Water From the Santa Ana River*. That Order amended the Declaration of Fully Appropriated Streams, as adopted by SWRCB Order WR 98-08, to allow for processing of the OCWD application and other applications.
- H. On January 11, 2002, the SWRCB publicly noticed the OCWD Application. On or about July 17, 2002, EVWD filed a protest to the OCWD Application with the SWRCB alleging, *inter alia*, that the OCWD Application sought water rights in contravention of the 1969 Judgment and that any approval of the OCWD Application by the SWRCB would impair the ability of the City of San Bernardino (the “City”) to continue its efforts to market the recycled water flows from the Rapid Infiltration and Extraction (“RIX”) Facility operated by the City and the City of Colton for tertiary treatment of effluent, including wastewater delivered by EVWD to the City Sewage Treatment Plant for collection and secondary treatment. This was of concern to EVWD because some of the proceeds from the sale of RIX water would offset the operation, maintenance, and expansion costs of the City’s Sewage Treatment Plant, thereby reducing the cost to EVWD and its rate-paying customers. On August 9, 2002, the SWRCB accepted EVWD’s protest to the OCWD Application.
- I. On October 18, 2002, OCWD responded to EVWD’s protest and explained that the OCWD Application is consistent with the rights and obligations declared under the 1969 Judgment.
- J. On September 1, 2004, OCWD and the City entered to an *Agreement Between Orange County Water District and City of San Bernardino Concerning Water Rights* (the

“OCWD/City Agreement”) which resolved the City’s protest to the OCWD Application and certain concerns regarding the City’s efforts to market the recycled water flows from the RIX Facility.

- K. OCWD and EVWD now wish to resolve their dispute with respect to the OCWD Application in the manner set forth herein.

COVENANTS

NOW THEREFORE the Parties agree as follows:

1. **Dismissal of EVWD’s Protest**

In consideration of OCWD’s satisfaction of its obligations under the OCWD/City Agreement and the terms and conditions contained herein, EVWD shall notify the SWRCB within 21 days after the effective date of this Agreement that EVWD withdraws its protest to the OCWD Application, subject to the request that the SWRCB’s final order on the OCWD Application and any permit or license issued pursuant thereto incorporate the 1969 Judgment and this Agreement.

2. **Affirmation of the 1969 Judgment**

In consideration of EVWD’s agreement to dismiss its protest to the OCWD Application, OCWD agrees as follows:

a. OCWD acknowledges and affirms the rights and obligations set forth in the 1969 Judgment, including the “Declaration of Rights” contained in Paragraph 4 thereof, and agrees, subject to those rights, not to object to EVWD’s use of water allowed under the 1969 Judgment.

b. OCWD represents that the OCWD Application is not intended to, and shall not, alter the 1969 Judgment and its declaration of rights within the Watershed, or the terms and conditions of the agreements executed prior to the date of entry of the 1969 Judgment as a condition to stipulation to the 1969 Judgment. OCWD further represents that nothing in the OCWD Application is intended to diminish the rights of the Upper Area parties to the 1969 Judgment (“Upper Area Parties”) as they are declared in the 1969 Judgment, and OCWD covenants that OCWD shall not assert that anything in the OCWD Application diminishes those rights.

c. The OCWD Application only applies to waters in the Watershed that reach Prado Dam or originate downstream of Prado Dam in the Lower Area. The OCWD Application is not intended to, and shall not, change or affect the rights of EVWD, to store, conserve, or use all water or reclaimed water that originates in the Upper Area, to withdraw and use all treated wastewater or return flows now discharged to the Santa Ana River, and to otherwise exercise all rights declared under the 1969 Judgment, provided the obligations of the upstream entities are met as required under the 1969 Judgment. Through the OCWD Application, OCWD shall not obtain any right as against EVWD inconsistent with the terms of the 1969 Judgment, despite any expenditures made by OCWD to capture and use the flows that

reach Prado Dam. Nothing in this Agreement shall be construed as conveying to EVWD any rights to water within the Watershed that it does not already have.

d. The OCWD Application does not challenge the right of the Upper Area Parties to engage in reasonable conservation and storage of water consistent with the 1969 Judgment. OCWD recognizes that the Upper Area Parties, including EVWD, may engage in reasonable and beneficial conservation activities consistent with the 1969 Judgment which may have the effect of diminishing the water supply reaching OCWD's diversion points.

e. The OCWD Application shall not operate to challenge or seek to limit the rights of Upper Area Parties under the 1969 Judgment, or otherwise abridge the rights of Upper Area Parties as set forth in the 1969 Judgment to "divert, pump, extract, conserve, store and use all surface and groundwater supplies originating in the Upper Area without interference or restraint by Lower Area claimants."

f. The OCWD Application shall not be construed to seek any water rights as against EVWD or otherwise to claim that the water rights held by EVWD are not valid and/or have been diminished, lost, or abandoned.

g. OCWD and EVWD will request the SWRCB to incorporate the entire 1969 Judgment into any permit/license to divert water resulting from the OCWD Application. OCWD and EVWD agree that they will comply with all applicable provisions of the 1969 Judgment and that, specifically as to EVWD, OCWD will not in any proceeding assert or argue status as a "legal user" pursuant to Water Code sections 1210-1212 of any water in excess of that to which it is entitled under the 1969 Judgment or to which EVWD is entitled under the 1969 Judgment.

3. OCWD's EIR

As long as OCWD is in material compliance with this Agreement, EVWD will not comment on, bring, or join in or assist in any court or administrative action to challenge OCWD's Environmental Impact Report ("EIR") for OCWD's Application, whether draft or final.

4. Specific Enforcement

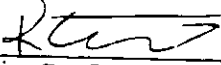
The Parties agree that violation of the provisions of this Agreement cannot be adequately compensable in damages, and that the Parties lack an adequate remedy at law, and therefore agree that in any action to enforce this Agreement, this Agreement may be specifically enforced by any court of competent jurisdiction and any violation or threatened violation thereof may be enjoined.

The undersigned covenant and represent that they are duly and properly authorized to execute this Agreement and thereby bind the Party for whom they sign.

ORANGE COUNTY WATER DISTRICT

EAST VALLEY WATER DISTRICT

By: 
Philip L. Anthony, President

By: 
Kip E. Sturgeon, President

Date: 6-7-06

Date: 06/23/2006

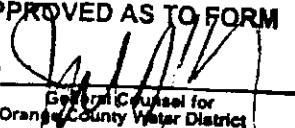
By: 
Virginia Grebbien, General Manager

By: 
Robert E. Martin, General Manager

Date: 6-13-06

Date: 6/22/06

APPROVED AS TO FORM

By: 
Attorney Counsel for
Orange County Water District