

AGREEMENT FOR TEMPORARY PUMPING RIGHT ASSIGNMENT

This AGREEMENT FOR TEMPORARY PUMPING RIGHT ASSIGNMENT (“**Agreement**”) is made this 10 day of April, 2015 between BANTA-CARBONA IRRIGATION DISTRICT (“**BCID**”) and THE WEST SIDE IRRIGATION DISTRICT (“**WSID**”), each a public agency of the state of California formed pursuant to Division 11 of the California Water Code.

1. Recitals.

a. The year 2015 appears to be a continuation of a multi-year drought in the State of California.

b. The State Water Resources Control Board has notified appropriative water right holders that curtailment notices will be sent shortly to all post-1914 water right holders in the State of California notifying them to cease pumping due to lack of available water resources.

c. BCID holds pre-1914 appropriative water right to divert 200 cfs from the San Joaquin River with a priority date of 1911, as documented in Statement S000495 (“**BCID Water Right**”).

d. WSID holds a post-1914 appropriative water right license to divert 82.5 cfs from Old River, tributary to the San Joaquin River with a priority date of 1916 from the State Water Resources Control Board, License No. 1381. WSID’s point of diversion from the Old River is downstream of BCID’s point of diversion.

e. The parties acknowledge that BCID may be reducing its pumping from the San Joaquin River in 2015 due to water availability, conservation, crop shifting and fallowing as a result of the on-going drought.

f. In order to assist WSID, BCID has determined to allow WSID to pump from the San Joaquin River under its pre-1914 water right under the terms and conditions set forth in this Agreement.

g. California Water Code section 1706 allows the holder of a pre-1914 appropriative right to change the point of diversion and place of use of that water right provided no legal user of water is injured.

2. Temporary Assignment. BCID hereby assigns to WSID a temporary and limited right to pump water pursuant to the BCID Water Right for use on lands served by WSID, subject to the terms and conditions of this Agreement (“**Assignment**”).

3. Pumping Right.

a. Upon written notification from BCID as set forth in Section 4, below (“**Notice**”), WSID may immediately begin to pump water from the San Joaquin River under this Assignment pursuant to the BCID Water Rights up to the maximum cubic feet per second amount specified in the Notice.

b. BCID shall provide WSID with Notice for any change, whether reduction, cessation, or increase, in pumping capacity assigned pursuant to this Agreement, and such changes shall be implemented by WSID within twenty-four (24) hours of such Notice.

c. WSID shall document the amount pumped under the BCID Water Right at all times WSID is exercising the pumping right granted pursuant to this Agreement. The methodology for determining the amounts pumped shall be as described in Exhibit A to this Agreement. Said documentation is to be provided in writing to BCID upon payment as provided in Section 9(b).

4. Notification. Whenever pumping capacity is available under this Agreement, BCID shall provide WSID with written notification as follows: all notices or other communications required or permitted hereunder must be in writing, and be personally delivered (including by means of professional messenger service) or by email transmission with confirmation of receipt which is followed by delivery of a "hard" copy, and under each method identified herein the notice will be deemed received upon the date and time of original receipt thereof.

To WSID: The West Side Irrigation District
 Attention: Dave Kaiser
 P.O. Box 177
 1320 N. Tracy Blvd.
 Tracy, CA 95378-0177
 Phone: (209) 835-0503
 Cell: (209) 479-2116
 Email: dkaiserbv@hotmail.com

To Buyer: Banta-Carbona Irrigation District
 Attention: David Weisenberger
 3514 W. Lehman Road
 Tracy, California 95304
 Telephone: (209) 835-4670
 Email: dweisenberger@banta-carbona.org

5. Termination. This Agreement shall terminate on September 30, 2015, unless sooner terminated by either party upon three (3) days' prior written notice.

6. Compliance. As a condition of the Assignment, WSID shall assume full responsibility for complying with all terms, conditions, and requirements imposed by law upon pumping under the BCID Water Right.

7. Noninterference. WSID hereby agrees to communicate and work with BCID to insure that any and all pumping activities undertaken pursuant to this Agreement shall be done at such times and in such a manner as not to injure any legal user of water.

8. Indemnification. To the fullest extent permitted by Laws and Regulations, WSID shall defend, indemnify and hold harmless BCID from and against any all litigation that may be brought against either party challenging BCID's right to assign its pumping rights to WSID pursuant to this Agreement.

9. Compensation. WSID hereby agrees and acknowledges that BCID will be compensated by WSID as follows:

a. Upon execution of this Agreement WSID shall pay BCID a non-refundable payment of Ten Thousand Dollars (\$10,000.00) to compensate BCID for administrative oversight and review of the temporary transfer.

b. In addition, WSID shall pay to BCID the amount of One Hundred Seventy-Five Dollars (\$175.00) for each acre-foot of water pumped under the BCID Water Right. Said amount shall be paid by the 15th of the month following pumping.

c. WSID shall also pay all reasonable fees, costs and charges incurred in connection with the preparation and implementation of this Agreement.

d. Any delinquent payments will be subject to BCID's then current interest and/or finance charges and delinquency policy.

10. Attorney Fees. If any legal action or proceeding arising out of or relating to this Agreement is brought by either party, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action or proceeding by the prevailing party.

11. Entire Agreement. This Agreement supersedes any and all other agreements, either oral or written, between the parties with respect to the subject of this Agreement. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this Agreement. No agreement, statement, or promise not contained in this Agreement shall be valid or binding unless such is in writing and signed by the party to be charged.

12. Counterparts. This Agreement may be executed by the parties in counterparts, in which event the signature pages thereof shall be combined in order to constitute a single original document.

WSID:

THE WEST SIDE IRRIGATION DISTRICT

By: Jack Alvarez
Jack Alvarez, President

Attest: Carol Perez
Carol Perez, Secretary

BCID:

BANTA-CARBONA IRRIGATION DISTRICT

By: James McLeod
James McLeod, President

Attest: Margaret Howe
Margaret Howe, Secretary

EXHIBIT A

METHODOLOGY OF QUANTIFYING BCID WATER PUMPED

1. DETERMINATION OF WSID DELIVERIES TO GROWERS:

WSID prepares detailed records of water deliveries to its customers. The records include the following information regarding deliveries to the property:

- Location and Acreage
- Date/Time On/Time Off
- Size of Pipe/Estimated Head
- Second Feet/Total Acre Feet Delivered

WSID will keep these detailed records on a daily basis and produce a monthly accounting of water delivered each day during the irrigation season.

2. DETERMINATION OF ACCRETION WATER DELIVERED

WSID has constructed a weir at the outfall of the District discharge into the WSID Intake Canal which measures the amount of water entering the WSID Intake Canal from return flows from delivery of water in the District. WSID shall record and account on daily basis the amount of water entering WSID Intake Canal. WSID will produce a monthly accounting of accretion water delivered each day during the irrigation season.

3. DETERMINATION OF CITY OF TRACY WASTEWATER TREATMENT PLANT WATER DELIVERIES

WSID is authorized to divert up to 14 cubic feet per second of water discharged from the City of Tracy's Wastewater Treatment Plant (WWTP). WSID and the City of Tracy coordinate on the amount of WWTP Water available for diversion on a weekly basis as the City has flow measurement on its effluent pumping station. City reports to WSID the amount of WWTP Water discharged in acre-feet by City on a monthly basis. WSID will produce a monthly accounting of WWTP water delivered each day during the irrigation season.

4. CALCULATION OF AMOUNT OF BCID WATER PUMPED

WSID shall calculate the amount of BCID water pumped by the following calculation:

WSID Monthly Deliveries - Monthly Accretion Flows - WWTP Monthly Deliveries = BCID Water Pumped

This calculation shall be done on a monthly basis.

BANTA - CARECMA TRNG. DIST.

RECEIPT DATE 4/13/15 No. 640405

RECEIVED FROM The West Side Stragatua Dist \$ 10,000

John Johnson & Co _____ DOLLARS

FOR RENT
 FOR 2015 Water Agreement Fee

ACCOUNT	<u>15138</u>
PAYMENT	<u>10,000.00</u>
BAL. DUE	

CASH
 CHECK
 MONEY ORDER
 CREDIT CARD

FROM _____ TO _____

BY MT

9-11