

MEMORANDUM OF UNDERSTANDING  
REGARDING OPERATION AND MONITORING  
OF THE  
SEMITROPIC WATER STORAGE DISTRICT  
GROUNDWATER BANKING PROJECT

**DOCKET**  
**08-AFC-8**

DATE	SEP 14 1994
RECD.	JUL 22 2010

This Memorandum of Understanding is entered into by and among Semitropic Improvement District of Semitropic Water Storage District ("SWSD"), North Kern Water Storage District ("NKWSD"), Shafter Wasco Irrigation District ("SWID"), Southern San Joaquin Municipal Utility District ("SSJMUD"), Buena Vista Water Storage District ("BVWSD") and Rosedale-Rio Bravo Water Storage District ("RRBWSD"), hereinafter collectively referred to as the "Parties," on Sept. 14, 1994.

R E C I T A L S

WHEREAS, SWSD and others ("Banking Partners") have proposed to enter into an agreement whereby certain facilities will be constructed to allow for the importation and storage of water in underground aquifers for later extraction and use for the benefit of SWSD and its Banking Partners ("Project"), all as more fully described in Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, pursuant to the California Environmental Quality Act ("CEQA"), SWSD has prepared a Final Environmental Impact Report ("EIR") for the Project which identifies certain potential impacts; and

WHEREAS, the lands within NKWSD, SWID, SSJMUD, BVWSD and RRBWSD lie adjacent to the lands of SWSD, all of which lands are shown on the map which is attached hereto as Exhibit "B" and by this reference made a part hereof;

WHEREAS, each of the Parties overlies a common groundwater basin which is overdrafted and each of the Parties has for many years imported water from various sources for direct irrigation and to enhance the quantity and quality of the groundwater underlying the respective Parties and as a result of such programs the groundwater conditions underlying each of the Parties are significantly improved over those which would exist without such water importation programs; and

WHEREAS, some, but not all, of the Parties have achieved a balance between natural groundwater recharge and importation of surface water supplies on the one hand and consumptive use of water on the other; and

WHEREAS, in recent years, water banking, extraction and transfer programs in Kern County have become increasingly numerous and complex, and it is appropriate and desirable to mitigate or eliminate any short-term and long-term impacts of these programs upon potentially affected overlying landowners within SWSD and/or neighboring districts; and

WHEREAS, the Parties desire that the design, operation and monitoring of the Project be conducted and coordinated in a manner to insure that the beneficial effects of the Project are maximized and that the Project will not result in significant adverse impacts to water levels, water quality or land subsidence within the boundaries of the Parties or otherwise interfere with the existing and ongoing programs of the Parties; and

WHEREAS, it is expected that this monitoring program will be developed through a combination of technical analyses and empirical studies of selected data, to be modified and improved over time; and

WHEREAS, representatives of several of the Parties have heretofore participated in the preparation of a comprehensive draft report, Kern Water Bank, Ground Water Monitoring Program, February 1992, many of the technical aspects of which are expected to be incorporated in the groundwater monitoring program to be established and refined pursuant to this Memorandum of Understanding; and

WHEREAS, under date of December 15, 1993, the Parties authorized their joint participation in "Points To Be Included In A Memorandum of Understanding Re Initial Phase of Groundwater Monitoring Program," included as Exhibit C hereof and incorporated herein by this reference; and

WHEREAS, pursuant to said Exhibit C, Kenneth D. Schmidt has been engaged to perform certain work related to said initial phase of Ground Water Monitoring Program, including the preparation of a monitoring plan and two associated maps, "Well Location, Water Quality Network", and "Well Location, Water Level Network", which plan and maps depict the location and types of wells anticipated to be used in the initial phase of groundwater monitoring; said which plan and maps are expected to be modified from time to time as the monitoring program is developed and operated; and copies of said plan and maps are attached as Exhibit D and incorporated herein by this reference:

NOW THEREFORE, BE IT RESOLVED that based upon the mutual covenants contained herein, the Parties hereto agree as follows:

1. Project Design and Construction. SWSD has completed a preliminary design of the Project for the above-described purposes which is described at Exhibit A hereto, and which represents the maximum facilities for the Project. SWSD will construct and operate all

or a portion of the Project consistent with such design. Any major modifications of the facilities and/or significant change in the operation of the Project from that described at Exhibit A and in the EIR will be subject to additional environmental documentation.

2. Project Operation. The project shall be operated to achieve the maximum water storage and withdrawal benefits for SWSD and its Banking Partners, consistent with avoiding, mitigating or eliminating, to the greatest extent practicable, significant adverse impacts resulting from the Project.

3. Project Monitoring. The Parties agree to participate in a comprehensive monitoring program, and as members of a Monitoring Committee, as hereinafter more particularly described, in order to reasonably determine groundwater level and water quality information under Project and non-Project conditions. The program will more particularly require the following:

a. Monitoring Committee. A Monitoring Committee shall be established, comprised of one representative of each of the Parties and one ex officio non-voting representative of the Banking Partners. The Committee shall:

(1) Engage the services of suitable professional groundwater specialist who shall, at the direction of the Committee, provide assistance in the performance of the tasks identified in sections 3(a)(3) through 3(a)(8) below;

(2) Meet and confer monthly or at other intervals deemed to be appropriate in furtherance of the monitoring program;

(3) Establish a groundwater evaluation methodology; or methodologies;

(4) Specify such additional monitoring wells and ancillary equipment as are deemed to be necessary or desirable for the purposes hereof, subject to 3(c)(1) below;

(5) Prepare annual water balance studies and other interpretive studies, which will designate all sources of water and the use thereof within the study area;

(6) Develop criteria for determining the conditions constituting a significant imbalance (as such term is used in Paragraph 4 hereof) between the delivery of water for banking and/or nonbanking purposes and withdrawal for such purposes;

(7) Determine the impacts of the Project on each of the Parties by evaluating with and without Project conditions; and

(8) Develop procedures, review data, and recommend Project operational criteria for the purpose of identifying, verifying, avoiding, eliminating or mitigating to the extent practical, the creation of significant imbalances or significant adverse impacts including, but not limited to, the 15-foot, three-year rule, all as provided further at paragraphs 4, 5 and 6 below.

b. Collection and Sharing of Data. The Parties will make available to the Monitoring Committee copies of all relevant groundwater level, groundwater quality, and other monitoring data currently collected and prepared by each Party. SWSD shall annually report by areas of interest its water deliveries for banking and other purposes and groundwater withdrawals for banking and other purposes. The costs of such data collection and preparation shall continue to be borne by the respective Parties.

c. Monitoring Costs.

(1) The cost of constructing monitoring wells at twelve (12) sites including ancillary equipment as identified in Exhibit D shall be borne by SWSD. The cost of constructing monitoring wells at up to two (2) additional sites including ancillary equipment if deemed by the Monitoring Committee to be appropriate and desirable for monitoring of Project operations, shall also be borne by SWSD. The cost of any additional monitoring wells and ancillary equipment shall be borne as may be determined by separate agreement of the Parties;

(2) Each of the Parties shall be responsible for the personnel costs of its representatives on the Monitoring Committee together with the cost of monitoring operations and facilities within its own boundaries;

(3) All other groundwater monitoring costs, including employment of the professional groundwater specialist, collection, evaluation and analyses of data as adopted by the Monitoring Committee shall be allocated among and borne by the Parties as follows:

BVWSD	10%	-
NKWSD	10%	-
RRBWS	10%	
SWSD	50%	
SWID	10%	<i>for. way - minimum</i>
SSIMUD	10%	
Total	100%	

The total costs to be shared under this paragraph 3c(3) shall not exceed \$20,000 per 00 year adjusted every three (3) years in accordance with the Consumers Price Index or as agreed by the parties. Any additional monitoring costs shall be determined and paid for by separate agreement of the Parties requesting such additional monitoring.

4. Modification of Project Operations. The Monitoring Committee may make recommendations to SWSD for modifications in Project operations based upon evaluation(s) of data which indicate that a significant imbalance between the delivery of water for banking and/or nonbanking purposes and withdrawal of water for such purposes has been created in an area of interest. In order to avoid significant imbalance in any area of interest, SWSD shall modify, to the extent reasonable, prudent and practical, project operations within a reasonable period of time after receiving a recommendation from the Monitoring Committee. The Monitoring Committee and its members shall not act in an arbitrary, capricious or unreasonable manner.

5. The Fifteen-Foot/Three-Year Rule. Notwithstanding any other provision of this Agreement SWSD agrees that it will not make withdrawals from any particular area of SWSD

if such withdrawals have caused or would cause the average groundwater levels in such area or affected neighboring areas to be 15 feet or greater amount lower than what the average groundwater levels would have been without-Project over a 3-year period all as further defined at Exhibit E hereto.

6. Well Interference. To the extent that interference, other than insignificant interference, with the pumping lift of any existing active well, is attributable to pumping of any Project well(s), Semitropic will either stop pumping or compensate the owner for such interference. The Monitoring Committee will establish the criteria necessary to determine if well interference, other than insignificant interference, is attributable to pumping of Project well(s) by conducting pumping tests of project wells following installation of monitor wells and considering hydrogeologic information.

7. Long-Term Monitoring Program. The Parties recognize that the monitoring program to be implemented hereunder will be larger in scope than any similar program heretofore conducted in the southern San Joaquin Valley of California and accordingly is fraught with the potential for a number of unknown conditions regarding geologic, engineering, legal and economic issues. The Parties agree to use their best efforts to develop a program which is practicably applicable in addressing such matters in the short-term and more refined and useful in the longer term.

8. Dispute Resolution.

a. Submission to Monitoring Committee. All disputes regarding any provision of this agreement shall first be submitted to the Monitoring Committee for review and analysis. The Monitoring Committee shall meet and review all relevant data and facts



regarding the dispute and, if possible, recommend fair and equitable resolution of the dispute. The Monitoring Committee and its members shall not act in an arbitrary, capricious or unreasonable manner. In the event (1) the Monitoring Committee fails to act as herein provided, (2) any party disputes the Monitoring Committee's recommended resolution or (3) any party fails to implement the Monitoring Committee's recommended resolution, any party to this agreement may seek any legal or equitable remedy available as provided below at paragraph (b).

b. Arbitration. If all of the Parties agree that a factual dispute exists regarding any recommendation of the Monitoring Committee made pursuant hereto, or implementation thereof, such disputes shall be submitted to binding arbitration before a single neutral arbitrator appointed by unanimous consent, of all of the parties, and in the absence of such consent, appointed by the presiding judge of the Kern County Superior Court. The neutral arbitrator shall be a registered civil engineer, preferably with a background in groundwater hydrology. The arbitration shall be called and conducted in accordance with such rules as the contestants shall agree upon and, in the absence of such agreement, in accordance with the procedures set forth in California Code of Civil Procedure, section 1282 et seq.

Any other dispute may be pursued through a court of competent jurisdiction as otherwise provided by law.

c. Landowner Remedies. Nothing in this Agreement shall prevent any landowner within the boundaries of any Party from pursuing any remedy at law or in equity for judicial relief in the event such landowner is damaged as a result of the Project.

9. Term. This agreement shall commence on the day and year first above-written and shall continue in force and effect until terminated by (1) operation of law, (2) mutual agreement of the Parties or (3) Project abandonment and a determination by the Monitoring Committee that any significant adverse impacts have been fully mitigated as provided in this agreement.

Additionally, the Parties acknowledge that this agreement may be extended or modified in both nature and scope in order to address changes in the nature of the Project or the implementation of new and similar groundwater banking and/or monitoring programs in the area and recognize that where appropriate such other similar programs will be subject to scrutiny similar to that herein provided.

10. Complete Agreement/Incorporation Into Banking Agreements. This agreement constitutes the whole and complete agreement of the Parties regarding the Project as it relates to monitoring activities and replaces any previous agreement, written or oral, of the Parties except and to the extent such agreements are specifically referenced herein and incorporated by such reference. Any other agreements between the Parties other than relating to Project monitoring activities shall remain in full force and effect. SWSD shall incorporate this agreement by reference into any banking agreement it enters into with a Banking Partner.

11. Notice Clause. All notices required by this agreement shall be sent via first class United States mail to the following and shall be deemed delivered three days after deposited in the mail:

W. L. Boschman  
Semitropic Water Storage District  
P. O. Box Z  
Wasco, CA 93280-0877

Martin Milobar  
Buena Vista Water Storage District  
P. O. Box 756  
Buttonwillow, CA 93206

Dana Munn  
North Kern Water Storage District  
1415 18th Street  
Suite 705  
Bakersfield, CA 93301

Mary Collup  
Rosedale-Rio Bravo Water Storage District  
P. O. Box 867  
Bakersfield, CA 93302-0867

Harvey Williams  
Shafter-Wasco Irrigation District  
P. O. Box 158  
Wasco, CA 93280

Stanley Nelson  
Southern San Joaquin Municipal  
P. O. Box 279  
Delano, CA 93216

Notice of changes in the representative or address of a Party shall be given in the same manner.

12. California Law Clause. All provisions of this agreement and all rights and obligations of the Parties hereto shall be interpreted and construed according to the laws of the State of California.

13. Amendments. This MOU may be amended by written agreement of the Parties. In addition, recognizing that the Parties may not now be able to contemplate all the implications of the Project, the Parties agree that on the tenth anniversary of implementation of the Project, if facts and conditions not envisioned at the time of entering into this contract

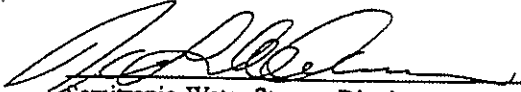
are present, the Parties will negotiate in good faith amendments to this MOU, subject to concurrence of any banking Partner which has a contract with SWSD incorporating the terms of this MOU, as provided in paragraph 10 hereof. If the Parties and/or Banking Partner(s) cannot agree on whether conditions have changed necessitating an amendment and/or upon appropriate amendments to the MOU, such limited issues shall be submitted to an arbitrator or court, as the case may be, as provided in paragraph 8(b) above.


14. Successors and Assigns. This agreement shall bind and inure to the benefit of the successors and assigns of the Parties; provided, however, no Party shall assign any of its rights or obligations hereunder without the prior written consent of all other parties.


15. Severability. The rights and privileges set forth in this agreement are severable and the failure or invalidity of any provision of this agreement shall not invalidate the other provisions of this agreement; rather all other provisions of this agreement shall continue and remain in full force and effect notwithstanding such partial failure or invalidity.


16. Force Majeure. All obligations of the Parties shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, by earthquakes, fires, tornadoes, facility failures, floods, drownings, strikes, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, or other events or causes beyond the control of the Parties. In no event shall any liability accrue against a party, or its officers, agents or employees, for any damage arising out of or connected with a suspension of performance pursuant to this paragraph 16.

This Agreement is executed on this 14 day of Sept., 1994, at Bakersfield  
California.

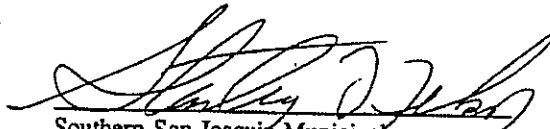
  
Semitropic Water Storage District

  
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