

C-12-15
10/23/12

AGREEMENT BETWEEN ANTELOPE VALLEY-EAST KERN WATER AGENCY
AND
TEJON RANCHCORP PROVIDING FOR IMPORTATION OF ADDITIONAL SWP TABLE
A AMOUNTS

THIS AGREEMENT ("Agreement") is entered into as of this 10-25-12 day of 2012 ("Effective Date"), by and between the ANTELOPE VALLEY-EAST KERN WATER AGENCY, organized under the Antelope Valley-East Kern Water Agency Law, California Water Code Appendix Section 98 et seq. ("AVEK") and TEJON RANCHCORP, a California Corporation ("Tejon") (each a "Party" and collectively "the Parties").

WHEREAS, AVEK is a State Water Project ("SWP") contractor and in 1962 entered into a water supply contract with the California Department of Water Resources ("DWR"), which now provides AVEK with 141,400 acre-feet (AF) of Table A Amount (the "AVEK SWP Contract"); and

WHEREAS, in 2008, Tejon acquired from landowners in the Tulare Lake Basin Water Storage District ("Tulare Lake") the right to 1,451 AF of SWP Table A Amount ("Tulare Lake Table A Amount"), pursuant to agreements under which Tulare Lake, an SWP Contractor, will facilitate the transfer of the Tulare Lake Table A Amount to another SWP contractor; and

WHEREAS, in 2010, Tejon acquired from landowners in the Dudley Ridge Water District ("Dudley Ridge"), the right to 1,993 AF of SWP Table A Amount ("Dudley Ridge Table A Amount"), pursuant to agreements under which Dudley Ridge, an SWP contractor, would facilitate the transfer of the Dudley Ridge Table A Amount to another SWP contractor; and

WHEREAS, Tejon desires to transfer the Tulare Lake Table A Amount and Dudley Ridge Table A Amount (collectively, "3,444 AF of Table A Amount") to AVEK as provided in this Agreement to support Tejon's operations; and

WHEREAS, transfer of the 3,444 AF of Table A would also benefit AVEK and its landowners/residents by providing additional imported surface supplies to the AVEK water supplies that are currently being provided to the region.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties hereby agree as follows:

1. Transfer of 3,444 AF of Table A Amount

1.1 AVEK shall, in consultation with Tejon, cooperate with the DWR, Tulare Lake and Dudley Ridge to complete the transfer of the 3,444 AF Table A Amount to AVEK, including: (i) completing appropriate California Environmental Quality Act ("CEQA") review, as lead agency, of the transfer to support Tejon's operations, as set forth in Section 2.15; and (ii) negotiating and executing SWP contract amendments with the DWR to complete the transfer of the 3,444 AF of Table A Amount to AVEK. The SWP contract amendments required to transfer the 3,444 AF of Table A Amount to AVEK shall be effective the January 1st following approval for the Tulare Lake portion of the 3,444 AF of Table A Amount and no earlier than January 1, 2013 for the Dudley Ridge portion of the 3,444 AF of Table A Amount. The transfer of the Tulare Lake Table A Amount and the Dudley Ridge Table A Amount may proceed separately.

1.2 After the transfer of all or any portion of the 3,444 AF of Table A Amount to AVEK has been completed, five percent (5%) of the transferred amount shall be added to AVEK's other Table A Amount for delivery to all AVEK customers, including Tejon, in accordance with AVEK's rules and regulations, and the remaining ninety five percent (95%) of the transferred amount (the "Tejon Table A Amount") shall be delivered as follows. AVEK shall deliver the actual allocation of water associated with the Tejon Table A Amount, as determined in each water year by the DWR in accordance with applicable SWP contracts, policies and rules and regulations ("SWP Rules and Regulations"), in the following priority:

(i) to Tejon or any affiliates or assignees of Tejon, for use on lands currently or in the future owned or controlled by Tejon that are within the AVEK service area, including storage of such water for subsequent use by Tejon or any of its affiliates or assignees within the AVEK service area, in accordance with applicable SWP Rules and Regulations;

(ii) to Tejon or any affiliates of Tejon, for use on lands owned by Tejon or its affiliates on land outside of the AVEK service area, through a landowner to landowner exchange or similar transfer mechanism in accordance with applicable SWP Rules and Regulations, subject to approval by the DWR;

(iii) to third party users in the AVEK service area pursuant to water marketing agreements between Tejon and any such third party users, which AVEK shall cooperate in facilitating, provided that AVEK shall have a 30-day right of first refusal to acquire the applicable water on substantially the same terms as offered to each third party user, and further provided that the water shall not be delivered to then existing customers of AVEK without AVEK's consent if

such deliveries would reduce the quantity of water that AVEK otherwise would deliver to those customers from other AVEK sources in that calendar year.;

(iv) in the event that any of the annual allocation derived from the Tejon Table A Amount in any water year exceeds the demands required to satisfy any of the uses described in subsections (i)-(iii) of this Section 1.2, to AVEK, if AVEK elects to purchase such water, provided that AVEK shall pay all fixed and variable costs under the AVEK SWP contract associated with AVEK's availability and use of any such water; and

(v) in the event that any of the annual allocation of the Tejon Table A Amount in any water year exceeds the demands required to satisfy any of the uses described in subsections (i)-(iv) of this Section 1.2, to other third party users outside of the AVEK service area through exchanges or transfer mechanisms in accordance with then applicable SWP Rules and Regulations, subject to approval by the DWR and the prior written consent of AVEK, which consent shall not be unreasonably withheld.

1.3 Except as provided in subsections 1.2(ii) and 1.2(v) of this Agreement, Tejon shall not use, deliver or agree to use or deliver any of the annual allocation of the Tejon Table A Amount to lands located outside of the AVEK service area.

1.4 Tejon and AVEK acknowledge that, in any water year, the allocation and availability of water associated with the Tejon Table A Amount, and other Table A

Amounts held by AVEK and other SWP contractors, may vary in accordance with hydrologic and other factors and will be determined in each water year by the DWR in accordance with SWP rules and regulations. Tejon and AVEK also acknowledge and agree that use by Tejon of the Tejon Table A Amount shall be limited to agricultural and agricultural related purposes unless and until alternate uses of such water are approved by appropriate land use authorities, following compliance with CEQA.

1.5 Tejon shall reimburse AVEK for all costs incurred by AVEK in effecting the transfer of the 3,444 AF of Table A Amount to AVEK, including: (i) reasonable and necessary expenses to secure and process the SWP contract amendments required to complete the assignment of the Tejon Table A Amount to AVEK; and (ii) CEQA compliance costs. In addition, Tejon shall reimburse AVEK for all ongoing costs associated with the Tejon Table A Amount, including (i) all fixed and variable costs under the AVEK SWP contract associated with availability and use of the Tejon Table A Amount, including any variable and aqueduct capacity costs required to transport and deliver water allocated to the 3,444 AF of Table A Amount using AVEK's SWP conveyance rights; (ii) a proportional share of other ancillary costs that are billed to AVEK as a function of its total Table A Amount, such as dues paid to State Water Contractor organizations, the cost of conducting an annual audit of the State Water Project, and the like, which share shall be determined by dividing 3,272 (95% of 3,444) by AVEK's then existing total Table A Amount (including the 3,444 AF) and multiplying by such total annual costs ("Proportional Share"); and (iii) the Proportional Share of AVEK's annual personnel and administrative costs.

1.6 In addition to, and in a manner that is unaffected by any receipt of water associated with the Tejon Table A Amount, Tejon: (i) shall continue to have the right as a landowner and water user subject to water service assessments within the AVEK service area to request water deliveries from AVEK in accordance with the existing Water Service Agreement between AVEK and Tejon and AVEK's applicable rules and regulations; (ii) may elect to participate in AVEK's existing or future water supply, storage and other water enhancement programs, such as the in-lieu water program, the proposed development water fee program, and proposed regional water banking facilities, on the same terms and conditions applicable to landowners within the AVEK service area; and (iii) shall continue to have the right to receive the return of water previously loaned to AVEK as set forth in the existing 2008 and 2009 Nickel water agreements between AVEK and Tejon. AVEK's rules and regulations shall not be applied in a manner to allocate less water to Tejon, or its affiliates and assignees, because Tejon has secured additional imported supplies through the transfer of the 3,444 AF of Table A Amount to AVEK.

1.7 AVEK shall identify and utilize any applicable rights, including, without limitation, AVEK's existing conveyance rights and additional capacity that may be obtained in accordance with Article 12(f) of the AVEK SWP Contract, to transport the annual allocation of the 3,444 AF of Table A Amount from the Tulare Lake and Dudley Ridge turnouts in Reach 8 of the SWP aqueduct. If additional capacity is obtained or utilized by AVEK to deliver such water to Tejon, the costs associated with the acquisition or use of

the additional capacity shall be reimbursed to AVEK as set forth in Section 1.5 of this Agreement.

1.8 Tejon and its affiliates and assigns reserve their claim to the right to all seepage and return flows of water delivered from any portion of the Tejon Table A Amount to Tejon or its affiliate or assignees.

2. Miscellaneous/General Provisions

2.1 Term. Unless terminated or modified by the express written concurrence of the Parties in accordance with Section 2.9, the term of this Agreement shall extend for as long as AVEK has a contract or the ability to receive water supplies from the SWP. The Parties acknowledge that Article 4 of the AVEK SWP Contract provides AVEK with the right to renew the contract for successive terms in perpetuity upon the expiration of the initial contract term in 2035, and that the term of this Agreement is intended to be coextensive with such successive contract renewals. The term of this Agreement shall be unaffected by any SWP service or contract interruptions caused by or related to any of the events described in Section 2.11 (Force Majeure).

2.2 Tejon's Reimbursement of Costs. AVEK shall periodically invoice Tejon for any costs or expenses that Tejon is required to reimburse in accordance with the Agreement. The method of invoicing and payment terms shall be consistent with AVEK's normal and customary practices. AVEK shall submit to Tejon in advance of any expenditure of funds written estimates for any actions or tasks that may generate costs or expenses that are reimbursable by Tejon, and the Parties shall cooperate in the identification of the most

cost-effective and reasonable expenditures required to implement the terms of this Agreement.

2.3 Further Transfers. Should Tejon at any time determine that all or a part of the Tejon Table A Amount exceeds its long-term needs, it may submit to AVEK a proposed transfer of such Table A Amount to another SWP contractor and AVEK shall cooperate to facilitate the transfer of such Table A Amount in accordance with then applicable SWP Rules and Regulations; provided, however, AVEK shall have a 60 day right of first refusal to acquire such Table A Amount on substantially the same terms as offered to another SWP contractor.

2.4 Indemnity. Each Party shall indemnify, hold harmless and defend the other Party from and against any claims, causes of action or judgments or settlements for: (a) any injury to any person or persons or any damage to any property occasioned in any way as a result of the indemnifying Party's exercise of the rights granted to that Party pursuant to this Agreement; and/or (b) the indemnifying Party's breach of its obligations or failure to perform any of its covenants or obligations set forth in this Agreement. No indemnity granted in this Section 4.3 shall extend to any damages arising from the gross negligence, breach of contract, or willful misconduct of the indemnified Party, or to consequential or punitive damages (except in the case of claims by third parties).

2.5 Notices. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to any Party by another Party shall be in writing and shall be deemed duly served and given when personally delivered to the Party, or in lieu of such personal

service, seven days after being deposited in the United States mail, first class postage prepaid, addressed to the parties at the addresses listed below. Any Party may change its address for purposes of this Section by giving written notice of the change to the other parties in the manner provided in this Paragraph. All correspondence shall be sent to the parties as follows:

To AVEK: Antelope Valley-East Kern Water
Agency Attention: Dan Flory, General
Manager 6500 West Avenue N
Palmdale, CA 93551

To Tejon: Tejon Ranchcorp
Attention: Dennis Atkinson, Sr. Vice President
cc: General Counsel
PO Box 1000
Lebec, CA 93243

2.6 Assignability. Neither Party shall sell, assign, transfer, convey or encumber this Agreement or any right or interest in this Agreement, except as otherwise specifically provided in this Agreement, or suffer or permit any such assignment, transfer or encumbrance to occur by operation of law, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

2.7 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

2.8 Waiver. The waiver of any breach of any of the provisions of this Agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement.

2.9 Amendment. This Agreement may only be amended by a written agreement signed by the Parties. During the fifth year following the Effective Date of this Agreement, and at least once every five years thereafter, Tejon and AVEK will jointly review its implementation to determine whether any of its terms are causing detrimental financial or operational impacts on either party. In the event that they are, Tejon and AVEK agree to negotiate in good faith to amend the Agreement as necessary to eliminate or mitigate such detrimental impacts; provided, however, any such amendment shall not affect Tejon's right to continue to receive the water supply available from the Tejon Table A Amount.

2.10 Severability. In the event a portion of this Agreement is illegal or unenforceable, the remaining provisions will be given effect in order to preserve the original intent of the Parties.

2.11 Force Majeure. Except as otherwise provided herein, all obligations of the Parties set forth in this Agreement shall be suspended so long as, and to the extent that, the performance thereof shall be prevented by earthquakes, fires, tornadoes, facility failures, floods, drowning, strikes, other casualties or acts of God, orders of court or governmental agencies having jurisdiction over the subject matter hereof, or other events or causes beyond the control of the Parties.

2.12 Specific Performance. Any water supplies subject to this Agreement are of unique value and nature and in the event of breach of this Agreement, specific performance of the Agreement in accordance with its terms and conditions shall be proper relief.

2.13 Counterparts. This Agreement may be executed in counterparts and all of said counterparts shall be considered as constituting one complete original.

2.14 Headings and Section References. All references to a numbered "Section" or "Subsection" in the text of this Agreement refer to the applicable section or subsection of this Agreement. Heading references are provided for ease of reference only, are not part of this Agreement, and do not affect its interpretation.

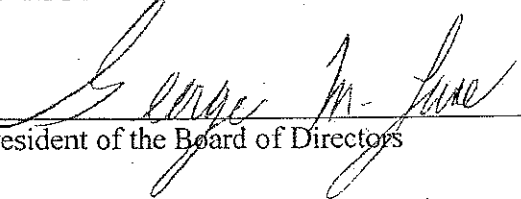
2.15. Compliance with CEQA

- (i) Implementation of this Agreement is subject to compliance with the California Environmental Quality Act (CEQA). AVEK shall act as lead agency in carrying out compliance with CEQA. This Agreement shall not be construed as approval for implementation of this Agreement, nor a predetermination of any mitigation measures that may be required for compliance with CEQA.
- (ii) Only to the extent required by CEQA, the parties retain discretion to adopt feasible mitigation measures, approve a project alternative, disapprove the project, and consider whether impacts that have not been reduced to a less than significant level are outweighed by economic, legal, social, technological, or other benefits.
- (iii) If AVEK acting as lead agency determines based on substantial evidence in the record of its proceedings, that implementation of this Agreement would result in significant adverse impacts on the environment, the parties shall cooperate and attempt to develop mitigation measures necessary to reduce such significant impact or impacts to a less-than-significant level.
- (iv) In the event AVEK acting as lead agency determines based on substantial evidence in the record of its proceedings that implementation of this Agreement would result in significant adverse impacts to the environment that cannot be mitigated, and it does not determine that such impacts are outweighed by economic, legal, social, technical or other benefits, and according does not approve implementation of this Agreement, then this Agreement shall terminate.

- (v) AVEK acting as lead agency shall proceed expeditiously with CEQA review and shall perform and complete such review at soon as possible.

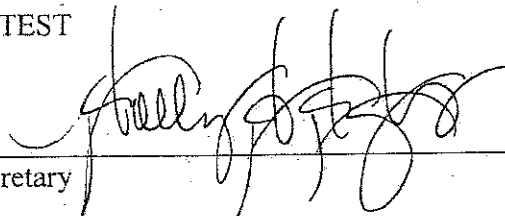
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as the Effective Date.

ANTELOPE VALLEY-EAST KERN WATER AGENCY




President of the Board of Directors

ATTEST



Secretary

TEJON RANCHCORP

By: 

SLUP Tejon Ranch

By: _____

RECOMMENDED BOARD ORDER 11 (a)

To the Board of Directors

FOR BOARD ACTION

APPROVE TEJON RANCH TABLE A
EXCHANGE AGREEMENT
CONTRACT NO. C-12-15

The Board of Directors adopted the following board order on
October 23, 2012:

Authorizing approval of the Agreement between Antelope Valley-
East Kern Water Agency and Tejon Ranchcorp providing for importation
of additional SWP Table A amounts, pursuant to the terms and conditions
of AVEK Contract No. C-12-15.

Motion by

Donato

Second by

Rutledge

Carried

F. D. Aye

BOARD ORDER 11 (a)

10-23-12