

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Department of Environmental Resources *SJA*

BOARD AGENDA # \*B-12

Urgent

Routine

AGENDA DATE November 18, 2008

CEO Concur with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval to Authorize, Negotiate, and Execute the Amendment to the Fink Road Farm Lease Agreement with LBFI I-5 Lease L.P., to Purchase Additional Water Supply from the Del Puerto Water District for Fiscal Year 2008-2009.

STAFF RECOMMENDATIONS:

1. Authorize an amendment to the Fink Road Farm Lease Agreement with LBFI I-5 Lease, L.P., to purchase additional water supply from the Del Puerto Water District for Fiscal Year 2008-2009.
2. Authorize the Director of Environmental Resources to negotiate, and execute Amendment No. 3 to the Fink Road Farm Lease Agreement with LBFI I-5 Lease, L.P., in substantially the form as Attachment A.

FISCAL IMPACT:

There is no fiscal impact to the County General Fund. This lease will result in additional expenditure of \$80,000 for the purchase of 400 acre-feet of Del Puerto Water District's 2008-09 additional water supplies. The Fink Road Landfill Enterprise Account has sufficient funding for this expense.

BOARD ACTION AS FOLLOWS:

No. 2008-781

On motion of Supervisor Monteith, Seconded by Supervisor Grover  
and approved by the following vote,

Ayes: Supervisors: O'Brien, Grover, Monteith, and Vice Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: Mayfield

Abstaining: Supervisor: None

1)  Approved as recommended

2)  Denied

3)  Approved as amended

4)  Other:

MOTION:

*Christine Ferraro*

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Authorize, Negotiate, and Execute the Amendment to the Fink Road Farm Lease Agreement with LBFI I-5 Lease L.P., to Purchase Additional Water Supply from the Del Puerto Water District for Fiscal Year 2008-2009.

**DISCUSSION:**

This amendment is to authorize the County to purchase 400 acre-feet of water, at \$200 an acre foot, from the Del Puerto Water District for fiscal year 2008-2009. In addition, LBFI has agreed to purchase 249 acre-feet of water from the Del Puerto Water District. If the Districts (Del Puerto and Oak Flat) allocations are equal to 15%, then roughly 1035 acre feet will be applied to the 345 acres of almonds and a normal production year should be expected. If the allocation of water from the Districts is zero, then the 649 acre feet should be adequate to keep the trees alive for future production years. There is a risk as to the availability and timing of the purchased water, however the General Manager of Del Puerto Water District is fairly certain the water will be available and available when it is needed. Should the Districts allocation be less than 15%, as per the existing agreement, "(t)The parties shall meet and confer to determine the appropriate farm management practices if water allocations are reduced to a level that affects farm production." This may lead to the reduction in rent paid by LBFI.

Stanislaus County entered into a Farm Lease Agreement with Lent-Burden Farming, Inc (LBFI), on November 4, 2003. On April 26, 2005, the Board of Supervisors authorized the Director of Public Works to execute an amendment to the Fink Road Farm Lease Agreement with LBFI for an additional two-year period, expiring on November 3, 2007. On October 11, 2005 (Resolution No. 2005-824), the County approved an Assignment and Assumption of Lease dated August 15, 2005, from Lent-Burden Farming, Inc., to LBFI I-5 Lease L.P. (Tenant). On September 25, 2007, the Board of Supervisors authorized the Director of Environmental Resources to execute an amendment to the LBFI I-5 Lease for an additional two-year period, and changed some of the terms of the lease. The current lease terminates on November 3, 2009.

**POLICY ISSUE:**

The Board of Supervisors should determine if this item is consistent with the priority of striving for a strong agricultural economy/heritage.

**STAFFING IMPACTS:**

There are no staffing impacts associated with this request.

B12

BOARD OF SUPERVISORS

AMENDMENT NO. 3  
TO  
FARM LEASE AGREEMENT

2010 DEC -8 A 11: 49

**(Fink Road Landfill Agricultural Properties)**

This Amendment No. 3 to Farm Lease Agreement ("Amendment No. 3") by and between the County of Stanislaus ("Landlord") and LBFI I-5 Lease, L.P., a California limited partnership ("Tenant") is made and entered into on November 18, 2008.

Whereas, the Landlord and Lent Burden Farming, Inc. entered into a Farm Lease Agreement dated November 4, 2003 (the "Farm Lease"), which, by this reference, is made a part hereof; and

Whereas, by Amendment to Farm Lease dated April 26, 2005, the Landlord and Lent Burden Farming, Inc. mutually agreed to extend the term of the Lease for an additional two-year term commencing on November 4, 2005, and terminating on November 3, 2007; and

Whereas, by resolution of the Board of Supervisors dated October 11, 2005 (Resolution No. 2005-824), the County approved an Assignment and Assumption of Lease dated August 15, 2005, from Lent Burden Farming, Inc. to Tenant; and

Whereas, by Amendment No. 2 to Farm Lease dated September 18, 2007 (approved September 25, 2007 by Resolution No. 2007-773), the Landlord and Tenant agreed to extend the term of the Farm Lease for two years terminating on November 3, 2009, and added a provision to the Farm Lease which provided that Tenant shall not be obligated to make periodic rental or lease payments if, due to no fault or omission of the Tenant, the delivery or allocation of water to the Property is reduced to an amount that would prevent a viable crop from being produced on the Property; and

Whereas, water allocation for the farm property is expected to be reduced to an amount that would prevent a viable crop from being produced on the property in 2009; and

Whereas, the Del Puerto Water District has made available additional water at a cost of \$200 per acre foot, and the parties desire to purchase such additional water supply on the terms and conditions set forth in this Amendment No. 2; and

Whereas, this amendment is for the mutual benefit of Landlord and Tenant;

Now, therefore, the Landlord and Tenant agree as follows:

1. The Landlord agrees to purchase 400 acre feet of water from the Del Puerto Water District 2008-09 Additional Water Supplies, and the Tenant agrees to purchase 249 acre feet of water from the Del Puerto Water District 2008-09 Additional Water Supplies, for a total of 649 acre feet of water.

05/13/2009 08:08 20949294012094929401

0003

FROM BURDEN FARMING CO.  
05/11/2009 16:40 FAX 209 525 6773

Post-it® Fax Note	7671	Date	5-13	# of pages	1
To	Sonya H	From	Dennis W		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #		Fax #			

2. The parties intend that if the water allocation for the property equals at least 15 percent of the total allowable allocation, then approximately 1035 acre feet of water will be applied at a rate of 3 feet per acre to 345 acres of almonds to allow normal production in the 2008-2009 year. If water allocation is less than 15 percent for the 2008-2009 year, then combined purchases of Del Puerto Water District 2008-09 Additional Water Supplies equal to 649 acre feet will be applied to the 345 acres of almonds to allow the orchards to survive for future production, and, as provided in Amendment No. 2, the parties shall meet and confer to determine the appropriate farm management practices if water allocations are reduced to a level that affects farm production.

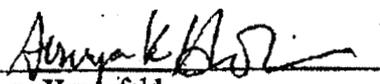
3. Except as provided in this Amendment, all other terms and conditions of the Farm Lease and amendments to the Farm Lease remain unchanged.

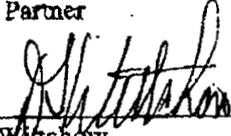
IN WITNESS WHEREOF, the parties have caused this Amendment No. 3 to be executed by their duly authorized representatives, on the date and year first above written.

COUNTY OF STANISLAUS

LBFI I-5 LEASE, L.P.

By: Lent Burden Farming, Inc.  
Its: General Partner

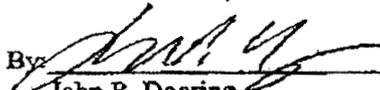
By:   
Sonya Hardgfeld  
Director of Environmental Resources

By:   
Dennis Witchow  
President

"Landlord"

"Tenant"

APPROVED AS TO FORM:

By:   
John P. Doering  
County Counsel