

ATTACHMENT 2

Participation Agreement

Participation Agreement Amendment No.1

Participation Agreement Amendment No. 5

**STATE OF CALIFORNIA
THE RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES**

**AGREEMENT FOR THE SUPPLY AND CONVEYANCE OF WATER
BY THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF CALIFORNIA
TO THE PARTICIPATING STATE WATER PROJECT CONTRACTORS
UNDER
THE DRY YEAR WATER PURCHASE PROGRAM**

THIS AGREEMENT is entered into as of the ____ day of _____, 2007, pursuant to the provisions of the California Water Resources Development Bond Act, the State Central Valley Project Act, and other applicable laws of the State of California, between the Department of Water Resources of the State of California, herein referred to as "DWR," and Kern County Water Agency, a public agency in the State of California, herein referred to as the "AGENCY." DWR and the AGENCY are herein referred to separately as the "Party" and collectively as the "Parties."

RECITALS

A. In 2008 and probably for several years to come, because of hydrologic conditions and/or regulatory constraints, the operation of the State Water Project ("SWP") by DWR and the operation of the Central Valley Project ("CVP") by the United States Bureau of Reclamation ("Reclamation") may result in less water being made available to the south-of-Delta CVP water service contractors and the SWP contractors. In anticipation of such potential conditions, DWR is initiating a dry year water purchase program to acquire water from voluntary sellers to augment the water supplies.

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- B. The Yuba County Water Agency ("Yuba") is engaged in the Yuba River Accord initiative ("Yuba River Accord") to resolve issues associated with operation of the Yuba Project in a way that protects lower Yuba River fisheries and local water-supply reliability, while providing revenues for local flood control projects, water to use for protection and restoration of Delta fisheries, and improvements in state-wide water supply management.
- C. The Yuba River Accord includes three major elements, all of which must be in place for the Yuba River Accord to become effective: (1) the Fisheries Agreement (dated November 3, 2007) to provide higher flows for fish in the lower Yuba River under certain conditions; (2) Conjunctive Use Agreements between Yuba and water districts within Yuba County for implementing a conjunctive use and water use efficiency program; and (3) the "Agreement for the Long-Term Purchase of Water from Yuba County Water Agency by the Department of Water Resources" (dated December 4, 2007) ("Yuba Water Purchase Agreement").
- D. DWR and Yuba entered into the Yuba Water Purchase Agreement as part of the Yuba River Accord to purchase specified Components of water for the benefit of the EWA, the SWP contractors, and the member agencies of the San Luis & Delta-Mendota Water Authority ("Authority") to resolve potential conflicts concerning the accounting for water that Yuba will release pursuant to the Fisheries Agreement.
- E. Reclamation determined to not be a party to the Yuba Water Purchase Agreement. Yuba and DWR will amend the Yuba Water Purchase Agreement at such time as Reclamation is willing to become a party thereto, subject to Reclamation and DWR

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entering into a separate agreement for the allocation of, and payment for, water under the Yuba Water Purchase Agreement.

- F. Consistent with the Yuba Water Purchase Agreement, when Yuba makes water available to DWR under the Yuba River Accord for benefit of the SWP contractors and the Authority, DWR intends to offer the water under the dry year water purchase program to the Participating SWP Contractors and to the Authority as set forth herein.
- G. The SWP contractors and the Authority invested significant resources to assist DWR and Yuba with the development of the Yuba River Accord, the Yuba Water Purchase Agreement, and supporting documentation.
- H. The Parties desire to enter into this water supply and conveyance agreement whereby DWR will purchase water under the Yuba River Accord for the dry year water purchase program to make available for purchase by the SWP contractors, including the AGENCY, and the Authority.

AGREEMENT

Now Therefore, in accordance with the Recitals and in consideration of the terms and conditions herein, the Parties agree to the following:

1. DEFINITIONS

When used in this Agreement, the following definitions will apply:

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"Balanced Conditions" means the hydrologic condition of the Delta as defined in the November 24, 1986 "Agreement between the United States of America and the State of California for Coordinated Operations of the Central Valley Project and the State Water Project."

"Banks Pumping Plant" means a SWP facility in the south Delta owned and operated by DWR.

"CALFED" means the joint federal and California program intended to develop and implement a long-term comprehensive plan that will, among other purposes, restore ecological health of the Bay-Delta System and improve water project management.

"Carriage Water" means the water losses due to increased Delta outflow necessary to maintain baseline Delta salinity conditions as determined by DWR, that are associated with Delivered Transfer Water or Stored Released Transfer Water that is exported by CVP or SWP Delta pumping facilities.

"Component 1 Water" means the water supplies available to DWR pursuant to Section 5 of the Yuba Water Purchase Agreement.

"Component 2 Water" means the water supplies available to DWR pursuant to Section 6 of the Yuba Water Purchase Agreement.

"Component 3 Water" means the water supplies available to DWR pursuant to Section 7 of the Yuba Water Purchase Agreement.

"Component 4 Water" means the water supplies available to DWR pursuant to Section 8 of the Yuba Water Purchase Agreement.

"Conference Year" means a Water Year for which the North Yuba Index is less than 500,000 acre-feet, calculated according to the procedures and formulas set forth in Exhibits 4 and 5 of the Fisheries Agreement, and using the latest available forecasts for the Water Year.

"Delivered Transfer Water" means Released Transfer Water from Yuba that is accounted as being exported by the SWP and the CVP, or contributing to exports, as described in Section 5 of Exhibit 1 of the Yuba Water Purchase Agreement.

"EWA" means the Environmental Water Account program described in the CALFED Record of Decision and the EWA Operating Principles Agreement (August 28, 2000, as extended in September 2004), as extended by amendment and supplemental approvals, or a long-term environmental water account program.

"Fisheries Agreement" means the agreement among Yuba, the California Department of Fish and Game, and other parties, which is part of the Yuba River

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Accord, and under which Yuba operates the Yuba Project to provide higher flows in the lower Yuba River under certain conditions to improve fisheries protection.

"Final Classification" means the year-type classification for the Sacramento River region in the May issue of DWR's Bulletin 120.

"Management Committee" means the committee, consisting of one representative each from Yuba, DWR, Reclamation, the CALFED fishery agencies on behalf of EWA, SWP contractors, and the Authority, established under Section 14 ("Technical Committee and Management Committee") of the Yuba Water Purchase Agreement.

"Participating SWP Contractors" means all SWP contractors that have executed an "Agreement for the Supply and Conveyance of Water By the Department of Water Resources of the State of California to the Participating SWP Contractors Under the Dry Year Water Purchase Program" on or before April 1, 2008.

"Purchased Water" means the supply of Component 1 Water that is not used by the EWA as provided in Section 3.B.1.a, Component 2 Water, Component 3 Water, and Component 4 Water that has been delivered by Yuba to DWR that is accounted for as Delivered Transfer Water in the manner set forth in Exhibit 1 ("Scheduling and Accounting Principles") of the Yuba Water Purchase Agreement and made available for the dry year water purchase program. Purchased Water

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includes Carriage Water or water used as Delta outflow when the Export/Inflow ratio is controlling in the time period of July 1 to January 31.

"SWP Long-Term Water Supply Contract" means the long-term water supply contract between the Parties, as amended.

"Technical Committee" means the committee, consisting of technical representatives from Yuba, DWR, Reclamation, the CALFED fishery agencies on behalf of EWA, SWP contractors, and the San Luis & Delta-Mendota Water Authority, established under Section 14 ("Technical Committee and Management Committee") of the Yuba Water Purchase Agreement.

"Water Accounting Year" means the twelve-month period commencing January 1 through December 31.

"Water Year" means the twelve-month period from October 1 of one year through September 30 of the following year. For this Agreement, each Water Year will be classified: (1) as "Wet," "Above-Normal," "Below-Normal," "Dry" or "Critical," based on the Sacramento Valley Water Year Hydrologic Classification in Figure 1 on page 188 of the State Water Resources Control Board's March 15, 2000; Revised Water-Right Decision 1641; or (2) as a "Conference Year."

"Yuba Project" means the Yuba River Development Project, including New Bullards Bar Dam and Reservoir on the North Yuba River.

"Yuba River Accord" means Yuba's initiative as described in Recitals B and C of this Agreement.

"Yuba Water Purchase Agreement" means the Agreement for the Long-Term Purchase of Water from Yuba County Water Agency by the Department of Water Resources, which is attached hereto as Exhibit A.

2. TERM OF AGREEMENT

A. This Agreement will become effective upon execution by the Parties and will terminate on December 31, 2025, provided, however, the Parties may terminate this Agreement on December 31, 2015, if the Parties fail to amend this Agreement pursuant to Section 3.B.5 below and as necessary to address amendments made to the Yuba Water Purchase Agreement regarding the quantity and pricing of water pursuant to Section 15 thereof; provided further that this Agreement shall remain in effect beyond the termination dates set forth above to the extent required to enable the parties to satisfy all obligations then existing or outstanding.

3. PURCHASED WATER

A. METHODS FOR ESTABLISHING ALLOCATIONS AND SHARING OF WATER

1. DWR will make available to the Participating SWP Contractors, as a group, fifty percent of the following types of water: Component 1 Water that is not used by the EWA as provided in Section 3.B.1.a, Component 2 Water, Component 3 Water, and Component 4 Water.
2. If the AGENCY does not take some or all of the water made available to it pursuant to Section 3.A.1, then DWR will make the water not taken by the AGENCY available first to the other Participating SWP Contractors pursuant to 3.A.4 and then to the Authority pursuant to Section 3.A.5; provided, that the AGENCY will purchase all Delivered Transfer Water DWR is required to purchase from Yuba and that is made available to the AGENCY pursuant to Sections 3.A.1. through 3.A.4 if said water is not purchased by the Participating SWP Contractors or the Authority.
3. DWR will make available to the Participating SWP Contractors and the Participating SWP Contractors may accept and purchase Component 1 Water that is not used by EWA as provided in Section 3.B.1.a, Component 2 Water, Component 3 Water, and Component 4 Water that is made available to the Authority, if the Authority elects to not take said water.
4. All water made available to the Participating SWP Contractors pursuant to Sections 3.A.1 through 3.A.3 shall be allocated among the Participating SWP Contractors as follows:

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- a) DWR will allocate to the AGENCY its share of Water that is made available to the Participating SWP Contractors under Sections 3.A.1 through 3.A.3 above based on the AGENCY'S maximum Table A amount in its SWP Long-Term Water Supply Contract as a proportion of the total Table A amounts provided under the Long-Term Water Supply Contracts of the Participating SWP Contractors.
 - b) If any Participating SWP Contractor does not request some or any of its share of the water made available pursuant to Section 3.A.3.a above, the remaining Participating SWP Contractors will have the first right to that water, and DWR will allocate that water among the remaining Participating SWP Contractors, but excluding from the calculation the maximum Table A amount of the Participating SWP Contractor(s) not requesting their full allocation. This process will repeat until all water made available pursuant to this Section 3.A.3 is allocated or no Participating SWP Contractor requests the remaining water made available.
5. DWR will offer to the Authority any Component 1 Water that is not used by the EWA as provided in Section 3.B.1.a, Component 2 Water, Component 3 Water, and Component 4 Water made available pursuant to this Section and remaining unrequested after completing the allocation processes set forth above in Sections 3.A.4.

B. TYPES AND PRICES OF PURCHASED WATER

The AGENCY shall pay for Delivered Transfer Water made available to and accepted by the AGENCY under section 3.A above in accordance with the following sections:

1. COMPONENT 1 WATER

- a) While the EWA is in effect, if the EWA does not use all of the Component 1 Water, Component 1 Water unused by the EWA will be allocated and made available by DWR to the AGENCY pursuant to Section 3.A above. The AGENCY will pay for Component 1 Water that is made available to it and accounted for as Purchased Water at the same price per acre-foot as Component 4 Water.
- b) If EWA terminates and Yuba remains obligated to provide Component 1 Water, the Parties agree that Component 1 Water remaining to be delivered under the Yuba Water Purchase Agreement will be managed annually, as follows: (1) Component 1 Water in any year will be used to enhance water supply reliability of the Delta export facilities by off-setting new mandatory restrictions imposed on the CVP and SWP, including those being imposed by the federal court order in *NRDC v. Kempthorne*, or through a subsequent biological opinion for the conservation or protection of fish, and (2) if any Component 1 Water remains after off-setting the restrictions set forth in subsection (1) above, then the remaining Component 1 Water will be used as determined by DWR in close coordination with the California Department of Fish and Game

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consistent with the water supply reliability project requirements of the
funding source from which this water was purchased (Chapter 7(d) of
Proposition 50, California Water Code Section 79550(d)).

2. COMPONENT 2 WATER

- a) For Component 2 Water that is accounted for as Purchased Water and made available in a Water Year that has a Final Classification as Dry, the AGENCY will pay \$75.00 per acre-foot.
- b) For Component 2 Water that is accounted for as Purchased Water and made available in a Water Year that has a Final Classification as Critical, the AGENCY will pay \$93.75 per acre-foot.

3. COMPONENT 3 WATER

For Component 3 Water that is accounted for as Purchased Water and made available to the AGENCY, the AGENCY will pay:

- a. \$25.00 per acre-foot in a Wet Year;
- b. \$50.00 per acre-foot in an Above-Normal Year;
- c. \$75.00 per acre-foot in a Below-Normal Year;
- d. \$100.00 per acre-foot in a Dry Year;
- e. \$125.00 per acre-foot in a Critical Year.

4. COMPONENT 4 WATER

For Component 4 Water that is accounted for as Purchased Water and made available to the AGENCY, the AGENCY will pay:

- a. \$25.00 per acre-foot in a Wet Year;
- b. \$50.00 per acre-foot in an Above-Normal Year;

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- c. \$75.00 per acre-foot in a Below-Normal Year;
- d. \$100.00 per acre-foot in a Dry Year;
- e. \$125.00 per acre-foot in a Critical Year.

5. POSSIBLE FUTURE ADJUSTMENTS TO QUANTITIES AND PRICES.

If the provisions of Section 15 of the Yuba Water Purchase Agreement require changes to the quantity or pricing of water available therein, the Parties agree that amendment of this agreement for such purposes will be a condition precedent of any amendment of the Yuba Water Purchase Agreement pursuant to Section 15 thereof. The Parties agree to meet and confer and negotiate in good faith potential changes to this Agreement.

6. UNCOMMITTED WATER

- a. If Yuba notifies DWR of the availability of uncommitted Delivered Transfer Water prior to accounting for the water in the Holding Account, as set forth in Section 7.4 of Exhibit 1 ("Scheduling and Accounting Principles") of the Yuba Water Purchase Agreement, DWR will notify the AGENCY, the Participating SWP Contractors, and the Authority of the availability of such water by September 30 of that year. Such water will be offered to the Participating SWP Contractors and to the Authority consistent with Section 3.A.
 - i. Within 30 days of such notice, the AGENCY will notify DWR of its request for an amount of the uncommitted water that it will purchase, if any.

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- ii. The amount of this water actually purchased by the AGENCY, the Participating SWP Contractors, and the Authority will be based on requests for this water by the AGENCY, the Participating SWP Contractors, and the Authority, and will not exceed the amount of water made available by Yuba. The Purchased Water that DWR will allocate to the AGENCY will be the lesser of the amount of water requested by the AGENCY or the amount allocated to the AGENCY in the manner set forth in Section 3.A above.
 - iii. The AGENCY will pay DWR the applicable purchase price for the water determined by the Water Year in which the water is accounted for as Delivered Transfer Water at prices set forth in Section 3.B above.
- b. If Yuba has credited uncommitted Delivered Transfer Water to the Holding Account as set forth in Section 7.4 of Exhibit 1 ("Scheduling and Accounting Principles") of the Yuba Water Purchase Agreement and the water remains in storage until the subsequent Water Accounting Year, then DWR will offer the water in the Holding Account to the Participating SWP Contractors and the Authority consistent with Section 3.A.
- i. In the year that the AGENCY elects to take water from the Holding Account, that water will be credited toward the AGENCY's prorata share of the Component 3 Water with any additional deliveries credited as Component 4 Water that is accounted for as Purchased Water for the AGENCY.

- ii. The AGENCY will pay DWR the applicable purchase price for the water determined by the Water Year in which the water was accounted for as Delivered Transfer Water as set forth in Exhibit 1 of the Yuba Water Purchase Agreement and at prices set forth in Section 3.B above.

4. **REQUESTS, SCHEDULING AND CONVEYANCE**

Scheduling and conveyance is subject to DWR's determination of conveyance capacity in SWP facilities. Scheduling and conveyance will be dependent on releases by Yuba, including the flow schedule for the lower Yuba River as provided for in the Fisheries Agreement, the North Yuba Index or the Yuba River Index, capacity of CVP and SWP facilities, and Bay-Delta conditions. In order to meet the goals of Section 6, the Parties may modify in writing the dates established in this Section 4 without amending this Agreement.

A. Requests and Scheduling

1. On or before April 11 of each Water Accounting Year, DWR will inform the AGENCY of the potential quantity of Component 1 Water if not used by the EWA as provided in Section 3.B.1.a, Component 2 Water, Component 3 Water, and Component 4 Water that is available to the Agency.
2. On or about April 11 of each Water Accounting Year, or as soon thereafter as practicable, the AGENCY will submit an initial request to DWR for delivery of Component 1 Water if not used by the EWA as provided in Section 3.B.1.a, Component 2 Water, Component 3 Water, and Component 4 Water and an initial monthly schedule for delivery of the requested water.

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That initial monthly schedule will include the quantity of each component of water the AGENCY would like to purchase from DWR.

3. DWR and the AGENCY will, between April 11 and May 19, confer on the allocation of water under Section 3A.
4. Within 5 business days of notice from DWR that there has been a change in the amount of water available, but no later than May 19, the AGENCY will provide DWR with its modified request for each component of water.
5. No later than May 19, DWR will notify the AGENCY of the quantity of Component 1 Water if not used by the EWA as provided in Section 3.B.1.a, Component 2 Water, Component 3 Water, and Component 4 Water that has been allocated to the Agency and that the AGENCY will schedule pursuant to Section 4.A.7 below.
6. The Parties recognize that no later than May 15 DWR must notify Yuba of the quantity of Component 4 Water that DWR will purchase from Yuba.
7. On or about May 20 of each Water Accounting Year, or as soon thereafter as practicable, the AGENCY and DWR will agree upon a final monthly schedule for delivery of Component 1 Water if not used by the EWA as provided in Section 3.B.1.a, Component 2 Water, Component 3 Water, and Component 4 Water that has been allocated to the Agency. The final schedule will be updated to accommodate any changes that affect the delivery of water as provided in Section 9 ("Scheduling of Water") of the Yuba Water Purchase Agreement. The final monthly schedule will include, pursuant to Section 3.A above, the quantity of each component of

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Purchased Water the AGENCY will purchase and that the AGENCY requests be delivered each month of the Water Accounting Year.

8. The final monthly schedule may be modified by mutual agreement. The AGENCY will submit copies of any proposed modifications to the final monthly schedule to DWR's State Water Project Analysis Office (SWPAO) Chief of Water Supply and Transfers Branch, and Chief of Water Deliveries Section, both at FAX number (916) 653-9628. SWPAO will coordinate with the DWR Operations Control Office in determining whether the proposed modifications to the final monthly schedule can be accommodated by DWR.
9. After DWR approves the final monthly schedule, during any week when DWR is conveying water for the AGENCY, the AGENCY will submit weekly schedules to the DWR Operations Control Office: one to the Chief, Pre-Scheduling Section, FAX (916) 574-2782, and one to the Chief, Operations Scheduling Section, FAX (916) 574-2785. The weekly schedules will be consistent with the final monthly schedule.
10. The scheduling of Purchased Water, and any adjustments to the schedule, will be in accordance with the Exhibit 1 ("Scheduling and Accounting Principles") of the Yuba Water Purchase Agreement.
11. DWR's approval of the schedule will be subject to Section 4.B, below.

B. Conveyance

The conveyance of water under this Agreement to the AGENCY's delivery structures from the SWP facilities is subject to the terms and conditions of this Agreement, Article 55 of the AGENCY's Water Supply Contract, and applicable

laws. Use of Purchased Water under this Agreement shall be restricted to the service area of the SWP. Delivery priorities shall be determined in accordance with Article 12(f) of the AGENCY's SWP Long-Term Water Supply Contract, with Purchased Water being classified as non-project water.

5. INVOICING AND PAYMENTS

DWR will invoice the AGENCY and the AGENCY will submit payment to DWR based on each invoice as provided below.

A. INVOICING AND PAYMENT OF PURCHASED WATER

1. On or after June 10 (or within 9 days of the date that DWR receives an invoice from Yuba), DWR will invoice the AGENCY for fifty percent of the payment for the estimated amount of water that the AGENCY scheduled as Purchased Water for that calendar year minus fifty percent of any credits due to the AGENCY as provided in Section 5.C below.
2. On January 17 of the next calendar year (or within 9 days of the date that DWR receives an invoice from Yuba), DWR will invoice the AGENCY for the remaining unpaid cost for Purchased Water, including Purchased Water available pursuant to Section 3.B.6, above, purchased by the AGENCY minus the remaining credits due to the AGENCY as provided in Section 6.C below.
3. Invoices will itemize any prior payments and credits, the total due, less any additional credits.

B. INVOICE FOR CONVEYANCE, DELIVERY, ADMINISTRATIVE COSTS

1. DWR will invoice the AGENCY monthly for conveyance charges in accordance with Article 55 of the SWP Long-Term Water Supply contract. Specifically, the AGENCY shall pay the power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the conveyance of such water from the Delta for the year in which the Purchased Water is conveyed.
2. Upon execution, DWR will invoice the AGENCY a one-time administrative fee of \$3,000 for preparation of this Agreement.

C. PAYMENT FOR FIXED ANNUAL COSTS AND CREDIT AGAINST PURCHASED WATER.

1. On or before February 11, or within 10 days of DWR's receipt of Yuba's invoice, each year DWR will invoice the AGENCY its share of Yuba's fixed annual costs as provided in Section 12.B of the Yuba Water Purchase Agreement. The AGENCY's payment of these fixed annual costs will be its share of up to \$125,000 prorated among the Participating SWP Contractors calculated in the manner as provided in Section 3.A of this Agreement.
2. As provided in Section 5.A above, for all payments made by the AGENCY under this Subsection, DWR will provide to the AGENCY a credit against future payments due to DWR for Purchased Water, excluding Component 1 Water. If necessary, DWR will record and accrue these credits from year to year until DWR makes Purchased Water, excluding Component 1 Water,

available to the AGENCY, at which time such credits will be applied toward payments due.

D. PAYMENTS FOR YUBA DIESEL CONVERSION OF GROUNDWATER PUMPS.

Within 30 days of DWR's receipt of a reviewed and verified invoice from Yuba of its conversion of pumps from diesel as provided under Section 12.A of the Yuba Water Purchase Agreement, DWR will invoice the AGENCY for up to one-half of the amount of the Yuba invoice. The AGENCY's share of Yuba's total costs for diesel conversion will not be more than its share of \$500,000 prorated among the Participating SWP Contractors calculated in the manner as provided in Section 3.A of this Agreement.

E. PAYMENTS FOR ADJUSTMENTS TO GROUNDWATER O&M COSTS.

In accordance with the timing of invoices required by Section 5.A above, DWR will invoice the AGENCY for its share of Yuba's costs for any annual increases above actual 2006 Groundwater O&M Costs, as provided in Section 12.C of the Yuba Water Purchase Agreement. The AGENCY's share of Yuba's costs will be based upon the proportion of the total amount of Purchased Water delivered to the AGENCY to the total amount of water delivered to the Participating SWP Contractors and the Authority in the year that the invoice covers. If no Purchased Water is delivered in the year that the invoice covers, the Participating SWP Contractors and the Authority shall share equally the costs invoiced by Yuba to DWR and AGENCY will pay its share, which share shall be calculated in the manner as provided in Section 3.A of this Agreement.

F. PAYMENTS FOR COSTS ATTRIBUTABLE TO YUBA WATER PURCHASE
AGREEMENT

The Parties agree that costs that DWR is obligated to pay to Yuba pursuant to the Yuba Water Purchase Agreement as attached hereto and that have not been identified by this Agreement, will be an obligation of the Participating SWP Contractors and the Authority. If necessary, the Parties will amend this Agreement to provide for invoicing and payment of such costs if not provided for herein.

G. TIMING OF PAYMENTS.

1. The AGENCY will pay DWR within 32 days after the AGENCY's receipt of an invoice from DWR.
2. Payment made after 32 days of receipt of invoice will be considered delinquent and interest will accrue at a rate of one percent per month for all delinquencies from the due date until paid.
3. If the AGENCY disputes a cost on an invoice, the AGENCY will make payment based on the invoice received, but will submit a notice to DWR identifying the disputed cost within 60 days of receipt of the invoice. Within 21 days after DWR receives notice of the disputed cost, the Parties will meet and confer, and if appropriate, obtain assistance from the Technical Committee and Management Committee to resolve the error or discrepancy. If the Parties resolve the dispute in a manner that recognizes a payment by the AGENCY that exceeds what is required under this Agreement, the amount of the excessive payment will be reflected by DWR pursuant to

Section 6.A as a credit against future payments due from the AGENCY.

DWR will reflect the credit on the next subsequent invoice it provides to the AGENCY. If the Parties cannot resolve the dispute, they will follow the dispute resolution process described in Section 10 below.

6. EFFORTS TO MAXIMIZE THE BENEFICIAL USE OF WATER

DWR will use all reasonable efforts to maximize the amount of Purchased Water available to the Participating SWP Contractors, including the AGENCY, and the Authority. Those efforts will include, but are not limited to fully exercising its rights and obligations under the Yuba Water Purchase Agreement, coordinating with Reclamation on the operations of the SWP and CVP, and storing water in SWP facilities when Delta pumping is constrained, as provided in Section 4.3 of Exhibit 1 to the Yuba Water Purchase Agreement.

7. MEMBERSHIP ON COMMITTEES

DWR agrees that a representative of the Participating SWP Contractors will be a member of the Management Committee and Technical Committee.

8. CONFERENCE YEAR PRINCIPLES

During any Conference Year, the Parties will meet with Yuba and the other parties to the Fisheries Agreement and the Conjunctive Use Agreements to: (1) determine how to address the circumstances, and (2) discuss the operation of the Yuba Project during that Water Accounting Year. During a Conference Year, if Yuba

reduces or does not deliver any Component 2, 3, or 4 Water, the AGENCY's and the Participating SWP Contractors' obligation to schedule or purchase any quantity of Purchased Water will be reduced or eliminated accordingly.

9. **LIABILITY**

- A. DWR will not assert that the AGENCY, its directors, officers, agents or employees, are liable for damages of any nature whatsoever arising out of any actions or omissions by DWR, its Director, officers, agents or employees, related to DWR's performance of this Agreement, where such liability is caused by an act, error or omission of DWR, its Director, officers, agents or employees.
- B. The AGENCY will not assert that DWR, its Director, officers, agents or employees, are liable for damages of any nature whatsoever arising out of any actions or omissions by the AGENCY, its directors, officers, agents or employees, related to the AGENCY's performance of this Agreement, where such liability is caused by an act, error or omission of the AGENCY, its director, officers, agents or employees.
- C. To the extent permitted by California law, the AGENCY will indemnify, defend and hold DWR, its Director, officers, agents and its employees safe and harmless from any and all, claims, judgments, damages, penalties, costs, liabilities and losses (including without limitation, sums paid in settlement of claims, actual attorney's fees paralegal fees, consultant fees, engineering fees, expert fees, and any other professional fees) that arise from or are related in any way to the AGENCY's activities or performance under this Agreement that

are under the exclusive control of the AGENCY, including but not limited to the release, conveyance, use or distribution of water by the AGENCY for purposes of this Agreement.

- D. To the extent permitted by California law, DWR will indemnify, defend and hold the AGENCY, its directors, officers, agents and its employees safe and harmless from any and all, claims, judgments, damages, penalties, costs, liabilities and losses (including without limitation, sums paid in settlement of claims, actual attorney's fees, paralegal fees, consultant fees, engineering fees, expert fees, and any other professional fees) that arise from or are related in any way to DWR's activities or performance under this Agreement that are under the exclusive control of DWR, including but not limited to the release, conveyance, use or distribution of water by DWR for purposes of this Agreement.

10. DISPUTE RESOLUTION

- A. Should any material disputes arise concerning any provision of this Agreement, or the rights and obligations of the Parties hereunder, including those involving possible termination or those that might cause the initiation of any administrative or judicial proceeding to enforce or interpret this Agreement, the Party that believes a dispute exists will notify the other Party, and the Parties will promptly meet and confer to attempt to resolve the perceived dispute.
- B. If the Process described in the preceding subsection fails to resolve the dispute within thirty days, the Parties will submit the dispute to a mediator who has

experience in water-related disputes. The costs of any such mediation will be borne equally by the Parties. Initiation of this mediation process will be through written notice by one Party to the other Party. The Parties reserve all of their other remedies that may be provided by law or equity in the event that such mediation fails to resolve a dispute. The Parties, in consultation with the mediator, will use their best efforts to resolve the dispute within thirty days. Under no circumstances, however, will mediation under this Section result in a requirement that diminishes, limits or contravenes the discretion, authority or any delegated authority of the Director of DWR or the AGENCY under State law.

- C. If mediation fails to resolve the dispute, and prior to commencing any legal action to resolve the dispute, the Party proposing to commence legal action will provide the other Party thirty days' written notice of such action, provided that such notice will not be required where a delay in commencing an action would prejudice the interests of the Party that intends to file suit. During the thirty-day notice period, the Parties will continue to attempt to resolve the dispute.

11. NOT A PRECEDENT

The terms and conditions set forth in this Agreement are not intended to set a precedent for any future contractual arrangements for conveying non-SWP water by DWR to the AGENCY.

12. PAYMENTS, NOTICES OR OTHER COMMUNICATIONS

The time for providing any payments, notices, or other communications specified in this Agreement may be extended within the term of this Agreement with the consent of the Parties, confirmed in writing, without requiring an amendment to this Agreement. All payments, notices, or other communications required under this Agreement will be in writing, and will be deemed to have been duly given upon the date of service, if: (a) served personally on the Party to whom notice is to be given; (b) sent by electronic mail, and the Party to whom notice is to be given confirms receipt; or (c) on the third day after mailing, if mailed to the Party to whom payment, notice or other communication is directed, by first-class mail, postage prepaid, and properly addressed to the designated representative(s) of the Party set forth below.

DWR: Mr. Carl A. Torgersen
Chief of State Water Project Operations Office
Department of Water Resources
3310 El Camino Avenue
Post Office Box 219000
Sacramento, California 95821-9000,

And

Mr. Robert Cook
Chief of State Water Project Analysis Office
Department of Water Resources
1416 Ninth Street, Room 1620
Post Office Box 942836
Sacramento, California 94236-0001

AGENCY: General Manager
Kern County Water Agency
3200 Rio Miranda Drive
Bakersfield, California 93302

A Party may notify the other Party in writing of a change in its designated representatives, without requiring an amendment to this Agreement. Unless other timing is specified within this Agreement, DWR will provide to the AGENCY copies of any and all payments, notices or other communications it sends or receives pursuant to the terms of the Yuba Water Purchase Agreement as soon as possible, but no later than 14 days after DWR receives, or sends, such payments, notices or other communications to Yuba and/or the Authority and/or other Participating SWP Contractors.

13. SIGNATORIES' AUTHORITY

The signatories to this Agreement represent that they have authority to execute this Agreement and to bind the Party on whose behalf they execute this Agreement.

14. COUNTERPARTS OF THIS AGREEMENT

This Agreement may be signed in any number of counterparts by the Parties, each of which will be deemed to be an original, and all of which together will be deemed to one and the same instrument. This Agreement, if executed in counterparts, will be valid and binding on a Party as if fully executed all in one copy.

15. BINDING ON SUCCESSORS/ASSIGNMENT

This Agreement will bind and inure to the benefit of the respective successors and

assigns of the Party, except that, none of the obligations of the Parties set forth in this Agreement will be assigned without the prior, written approval of the other Party, which approval will not unreasonably be withheld.

16. NO THIRD-PARTY BENEFICIARIES

This Agreement will not be construed to create any third-party beneficiaries, except as set forth in this section. This Agreement is for the sole benefit of the Parties, their respective successors and assigns, and no other person or entity will be entitled to rely on or receive any benefit from this Agreement or any of its terms.

17. AMENDMENTS

- A. This Agreement may be amended or modified only by written agreement approved and executed by the Parties.
- B. Prior to any amendment of this Agreement, the Parties will meet and confer with the other Participating SWP Contractors and the Authority. The Parties will not agree to any amendment to this Agreement that would adversely affect the rights and obligations of the Participating SWP Contractors under each of their respective "Agreement for the Supply and Conveyance of Water by the Department of Water Resources of the State of California to the Participating SWP Contractors under the Dry Year Water Purchase Program" or the Authority under its "Agreement for the Supply and Conveyance of Water by the Department of Water Resources of the State of California to the San Luis & Delta-Mendota Water Authority under the Dry Year Water Purchase Program."

AGREEMENT FOR THE SUPPLY AND CONVEYANCE OF WATER BY THE DEPARTMENT OF WATER
RESOURCES OF THE STATE OF CALIFORNIA TO PARTICIPATING STATE WATER PROJECT CONTRACTORS
UNDER THE DRY YEAR WATER PURCHASE PROGRAM

- C. Prior to any amendment of any "Agreement for the Supply and Conveyance of Water by the Department of Water Resources of the State of California to the Participating SWP Contractors Under the Dry Year Water Purchase Program", DWR will meet and confer with the AGENCY. DWR will not agree to any amendments to any "Agreement for the Supply and Conveyance of Water by the Department of Water Resources of the State of California to the Participating SWP Contractors Under the Dry Year Water Purchase Program" or the "Agreement for the Supply and Conveyance of Water by the Department of Water Resources of the State of California to the San Luis & Delta-Mendota Water Authority under the Dry Year Water Purchase Program" that would adversely affect the rights and obligations under this Agreement.
- D. DWR will meet and confer with the AGENCY, the other Participating SWP Contractors and the Authority before agreeing to any proposed changes, amendments, or supplements to the Yuba Water Purchase Agreement. DWR will not agree to any changes, amendments, or supplements to the Yuba Water Purchase Agreement or its Exhibits that would be inconsistent with or adversely affect the Parties' rights and obligations under this Agreement, any other "Agreement for the Supply and Conveyance of Water By the Department of Water Resources of the State of California to the Participating SWP Contractors Under the Dry Year Water Purchase Program" or under the "Agreement for the Supply and Conveyance of Water by the Department of Water Resources of the State of California to the San Luis & Delta-Mendota Water Authority under the Dry Year Water Purchase Program."

18. OPINIONS AND DETERMINATIONS

Where the terms of this Agreement provide for action to be based upon the opinion, determination, approval or review of either Party, such terms are not intended to be, and will not be construed as permitting such actions to be arbitrary, capricious or unreasonable. Any opinion, determination, approval or review required of a Party under this Agreement will be provided in a timely manner.

19. REASONABLE COOPERATION

The Parties will reasonably cooperate with each other, including the execution of all necessary documents and providing assistance in obtaining approvals and permits from regulatory agencies required to perform the obligations under this Agreement and to carry out the purpose and intent of this Agreement.

20. CONSTRUCTION AND INTERPRETATION

This Agreement is entered into freely and voluntarily. This Agreement has been arrived at through negotiation, and each Party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party will not apply in construing or interpreting this Agreement.

21. COMPLETE CONTRACT

This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this Agreement among the Parties

concerning the subject matter, and supersedes all prior negotiations, representations or agreement, either oral or written, that may be related to the subject matter of this Agreement, except as to those other agreements that are expressly referred to in this Agreement.

22. DETERMINATION OF UNENFORCEABLE PROVISIONS

If any term or provision of this Agreement is deemed invalid or unenforceable by any court of final jurisdiction, the Parties will meet and attempt to address this situation pursuant to the provisions of Section 10 of this Agreement.

23. WAIVER

The waiver at any time by a Party of its rights with respect to a default or other matter arising in connection with this Agreement will not be deemed a waiver with respect to any other default or matter.

24. TIME

Time is of the essence in this Agreement. Any date specified in this Agreement may be changed with the written consent of the Parties.

25. APPLICABLE LAW

This Agreement will be construed under and will be deemed to be governed by the laws of the State of California.

26. VENUE

Any appropriate County under California law will be venue for any state court litigation concerning the enforcement or interpretation of this Agreement.

27. REMEDIES NOT EXCLUSIVE

The remedies provided in this Agreement are cumulative and not exclusive, and are in addition to any other remedies that may be provided by law or equity. The exercise by the Party of any remedy under this Agreement will be without prejudice to the enforcement of any other remedy.

28. OFFICIALS NOT TO BENEFIT

No member or delegate to Congress, Resident Commissioner, or Federal or State official will be admitted to any share or part of this Agreement or to any benefit that may arise therefrom.

29. STANDARD CLAUSES

With respect to the mutual obligations of the Parties under this Agreement, the Parties will comply with the Standard Clauses as shown on Exhibit B ("State of California Standard Clauses") to this Agreement for the State of California, Contracts with Public Entities.

30. EXHIBITS INCORPORATED

Each exhibit to which reference is made is deemed incorporated in this Agreement, whether or not actually attached.

IN WITNESS WHEREOF, the Parties hereto, by their authorized representatives, have executed this Agreement on the last date set forth below.

Approved as to legal form
and sufficiency:

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

Chief Counsel

Lester A. Snow, Director

Date

Date

Approved as to legal form
and sufficiency:

Kern County Water Agency

General Counsel

General Manager

Date

Date

AGREEMENT FOR THE SUPPLY AND CONVEYANCE OF WATER BY THE DEPARTMENT OF WATER
RESOURCES OF THE STATE OF CALIFORNIA TO PARTICIPATING STATE WATER PROJECT CONTRACTORS
UNDER THE DRY YEAR WATER PURCHASE PROGRAM

Attachments:

Exhibit A: Agreement for the Long-Term Purchase of Water from Yuba County Water Agency by the Department of Water Resources (December 4, 2007)

Exhibit B: DWR Standard Clauses

AGREEMENT FOR THE SUPPLY AND CONVEYANCE OF WATER BY THE DEPARTMENT OF WATER
RESOURCES OF THE STATE OF CALIFORNIA TO PARTICIPATING STATE WATER PROJECT CONTRACTORS
UNDER THE DRY YEAR WATER PURCHASE PROGRAM

EXHIBIT A

**AGREEMENT FOR THE LONG-TERM PURCHASE OF WATER FROM YUBA
COUNTY WATER AGENCY BY THE DEPARTMENT OF WATER RESOURCES**

STATE OF CALIFORNIA
THE RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES

AMENDMENT NO. 1 TO THE
AGREEMENT FOR THE SUPPLY AND CONVEYANCE OF WATER
BY THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF CALIFORNIA
TO THE PARTICIPATING STATE WATER PROJECT CONTRACTORS
UNDER
THE DRY YEAR WATER PURCHASE PROGRAM
SWPAO NO. 09-801

THIS AMENDMENT NO. 1 ("Amendment") to the 12/21/2007 "Agreement for the Supply and Conveyance of Water by the Department of Water Resources of the State of California to the Participating State Water Project Contractors under the Dry Year Water Purchase Program" ("Agreement") is entered into as of the ____ day of _____, 2009, pursuant to the provisions of the California Water Resources Development Bond Act, the State Central Valley Project Act, and other applicable laws of the State of California, between the Department of Water Resources of the State of California, herein referred to as "DWR," and Metropolitan Water District of Southern California, a public agency in the State of California, herein referred to as the "AGENCY." DWR and the AGENCY are herein referred to separately as the "Party" and collectively as the "Parties."

AMENDMENT NO. 1 TO THE
AGREEMENT FOR THE SUPPLY AND CONVEYANCE OF WATER BY THE DEPARTMENT OF WATER
RESOURCES OF THE STATE OF CALIFORNIA TO PARTICIPATING STATE WATER PROJECT CONTRACTORS
UNDER THE DRY YEAR WATER PURCHASE PROGRAM

The Parties hereby amend the Agreement as follows:

1. Item no. 9 (at page 55) Section 1 (“General Principles”) of Exhibit 2 (“Reservoir Refill Accounting Provisions”) of Exhibit A (“Long-Term Purchase of water from Yuba County Water Agency by the Department of water Resources”) is revised to read as follows:

“If the Transfer Amount Account is not zero on September 30, then the remaining balance of the account will be carried forward to the subsequent water year and the impact accounting will continue until the outstanding balance is eliminated. Exception: If the difference in storage between the Actual Storage and the maximum baseline storage, on September 30th is less than the remaining balance of the previous year plus the Base Transfer (see item 1 above), then the transfer amount account will be reset to the difference between actual storage and the maximum baseline storage amount.”

2. All remaining provisions of the Agreement will remain in full force and effect.

AMENDMENT NO. 1 TO THE
AGREEMENT FOR THE SUPPLY AND CONVEYANCE OF WATER BY THE DEPARTMENT OF WATER
RESOURCES OF THE STATE OF CALIFORNIA TO PARTICIPATING STATE WATER PROJECT CONTRACTORS
UNDER THE DRY YEAR WATER PURCHASE PROGRAM

The foregoing is hereby agreed to by the Parties.

IN WITNESS WHEREOF, the Parties hereto, by their authorized representatives, have
executed this Agreement on the last date set forth below.

Approved as to legal form
and sufficiency:

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

David Sandino,
Chief Counsel

Lester A. Snow,
Director

Date

Date

Approved as to legal form
and sufficiency:

METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

General Counsel

Chief Executive Officer
General Manager

Date

Date

**STATE OF CALIFORNIA
THE RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES
AND
YUBA COUNTY WATER AGENCY**

**AMENDMENT NO. 5 TO THE
AGREEMENT FOR THE LONG-TERM PURCHASE OF WATER FROM YUBA
COUNTY WATER AGENCY BY THE DEPARTMENT OF WATER RESOURCES
SWPAO NO. 14-800**

This Amendment No. 5 (Amendment) to the December 4, 2007 Agreement for the Long-Term Purchase of Water from Yuba County Water Agency by the Department of Water Resources, as amended from time to time (Agreement), is entered into as of _____, 2014, between the Department of Water Resources of the State of California (DWR), pursuant to the provisions of the California Water Resources Development Bond Act, the Central Valley Project Act, and other applicable laws of the State of California, and Yuba County Water Agency (Yuba), pursuant to the Yuba Act (California Statutes 1959, Chapter 788, as amended), and other applicable laws of the State of California. Except as provided for in this Amendment, defined terms in the Agreement will have the same meaning in this Amendment.

The Parties hereby amend the Agreement as follows:

- 1. Recitals.** The Recitals Section of the Agreement is amended by adding the following new recitals:

“N. The Parties amended the Agreement in 2009 (Amendment No. 1 and Amendment No. 2), 2010 (Amendment No. 3) and 2012 (Amendment No. 4).

O. Under Section 15 of the Agreement, the pricing provisions for Water that is made available after September 30, 2015 will be subject to a new pricing agreement among the Parties. Amendment 5 memorializes the agreement of the Parties under Section 15 of the Agreement, as well as amending other provisions of the Agreement.

P. On June 9, 2014, the State Board approved Yuba's petition to change water right permit 15026 to add a point of diversion at the point of diversion for the Freeport Regional Water Project. The State Board's order determined that the ordering conditions satisfied the State Board's public trust responsibility, relying on the Yuba Accord Environmental Impact Report and an addendum to the Yuba Accord Environmental Impact Report that was prepared by Yuba.”

- 2. Definitions.** Section 1 of the Agreement is amended by inserting in proper alphabetical order, the following new defined terms:

A. “Accrued Groundwater Substitution Component” water means the amount of surface water in New Bullards Bar Reservoir that results from Yuba's groundwater substitution pumping program established by Yuba and its Member Units under their Conjunctive Use Agreements for making available Groundwater Substitution Component water.”

B. "Freeport POD" means the point of diversion for the Freeport Regional Water Project, as described in the June 9, 2014 order of the State Board that approved the Freeport POD as an authorized point of rediversion for Yuba transfer water."

C. "Participating Contractors" means all SWP contractors and CVP contractors who have executed an agreement with DWR to be entitled to receive water supplies under the Agreement."

D. "State Board Order" means State Board Corrected Order WR 2008-0014, which amended Yuba's Water Right Permits 15026, 15027 and 15030 to include, with some modifications, the streamflow requirements in the Fisheries Agreement and by adding, through December 31, 2025, the SWP and CVP Delta diversion facilities as points of rediversion, and the SWP and CVP service areas to the place of use, under Permit 15026."

3. Section 5.A.2. Section 5.A.2. of the Agreement is amended to read as follows:

"2. In certain years, and pursuant to the accounting principles set forth in Exhibit 1 to the Agreement, operational limitations of the Yuba Project, the CVP, and/or the SWP may cause the quantity of Component 1 Water that Yuba can deliver to the Buyer to be reduced below 60,000 acre-feet during a Water Accounting Year. Under those circumstances, unless the Parties agree otherwise, Yuba will deliver the undelivered Component 1 Water from the 2011 Water Accounting Year and the quantity (if any) of undelivered Component 1 Water from the 2015 Water Accounting Year during subsequent years under the following conditions: (a) during the next Water Accounting Year that is not a Dry or Critical Water Year; (b) when such make-up water can be

delivered from Yuba's available surface-water supply;
(c) notwithstanding any other provision of the Agreement, as the first Delivered Transfer Water provided in the first Water Accounting Year after 2015 that has a Final Classification either as Wet, Above Normal, or Below Normal at the rate of 60,000 acre-feet per year until fully repaid; and (d) on a schedule that is acceptable to the Buyer and Yuba. Yuba will not be required to provide a makeup supply for an account deficit of Component 1 Water that was incurred on or after January 1, 2016. In any year starting in the 2016 Water Accounting Year that Yuba provides a makeup supply of Component 1 Water, Yuba will not be obligated to also provide the quantity of Component 1 Water that is provided for in section 25.C.1 of the Agreement."

4. **Section 5.A.4.** Section 5.A.4. of the Agreement (Component 1 Water Quantity during the term of an FERC Annual License) is deleted as of October 1, 2015.
5. **Section 5.C.** Section 5.C. of the Agreement is amended to read as follows:

"C. **Invoicing.** Yuba will invoice DWR for Component 1 Water made available starting January 1, 2016 in the same manner that Yuba invoices DWR for Component 2 Water and Component 3 Water except that, in those years when Yuba is delivering the remaining undelivered quantity of the 480,000 acre-feet of Component 1 Water, Yuba will reduce its invoice for current year Component 1 deliveries by the amount of water being delivered to repay the remaining undelivered quantity of the 480,000 acre-feet of Component 1 Water."

6. **Section 6.A.** Section 6.A. of the Agreement is amended by adding at the end the following new paragraph:

“5. Yuba will not be required to provide a makeup supply for an account deficit of Component 2 Water that existed before or after the effective date of Amendment 5 to the Agreement.”

7. **Section 6.C.1** Section 6.C.1. of the Agreement is amended by changing the date of June 1 to the date of May 22.

8. **Section 7.A.** Section 7.A. of the Agreement is deleted.

9. **Section 7.B.1.** Section 7.B.1. of the Agreement is amended by deleting subpart f.

10. **Section 7.C.1.** Section 7.C.1. of the Agreement is amended by changing the date of June 1 to the date of May 22.

11. **Section 7.C.** Section 7.C. of the Agreement is amended by adding at the end the following new paragraph:

“3. Yuba will not be required to provide a makeup supply for an account deficit of Component 3 Water that existed before or after the effective date of Amendment 5 to the Agreement.”

12. Section 8.B. Section 8.B. of the Agreement is amended to read as follows:

"B. Provisions Applicable to Groundwater Substitution Component Water as of the Effective Date of Amendment 5 to the Agreement. Notwithstanding any other provision of the Agreement (including Amendment 4 to the Agreement), the following provisions will apply to Groundwater Substitution Component Water that is made available by Yuba after January 1, 2016:

1. Yuba is not required to provide Groundwater Substitution Component water for any purpose under the Agreement except upon pricing and other terms that are agreed to by Yuba and the Member Units, which are also agreed to by DWR and the Participating Contractors.
2. Yuba is not required to provide Groundwater Substitution Component water for delivery of Component 1 Water, Component 2 Water or Component 3 Water. Sections 7.2.2, 7.2.3 and 7.2.4 of Exhibit 1 of the Agreement are inapplicable to Groundwater Substitution Component water.
3. Groundwater Substitution Component water will be the only water that comprises Component 4.
4. Yuba will notify DWR by April 1 of each year during the term of this Agreement of the amount of Accrued Groundwater Substitution Component water that Yuba will make available during the Water Accounting Year. By April 15, DWR will notify Yuba of the amount of Accrued Groundwater Substitution Component water it commits to purchase based on requests by Participating

Contractors. DWR may adjust this amount, up or down, on or before May 15, and on May 15 DWR will commit to the final quantity of Accrued Groundwater Substitution Component water to be purchased during the Water Accounting Year, but such amount will not be less than the actual amount of Accrued Groundwater Substitution Component water made available between April 1 and May 15 for Groundwater Substitution Component water in accordance with the accounting provisions for Groundwater Substitution Component water set forth in Exhibit 1 of the Agreement. The dates herein may be adjusted if approved in writing by Yuba and DWR to allow the Member Units to maximize the quantities of groundwater substitution pumping program water that could be made available during each year.

5. In every year that DWR desires to purchase Accrued Groundwater Substitution Component water, representatives of DWR, Yuba, the Member Units and the Participating Contractors will convene by February 15 and conclude by March 31 as the Management Committee to negotiate the price per acre-foot of Accrued Groundwater Substitution Component water, any provisions for the Delta export priority for such water and any other terms applicable to the Accrued Groundwater Substitution Component water. The 30,000 acre-feet of Groundwater Substitution Component water that Yuba is required to provide in a Schedule 6 Year under term 1a of the State Board Order will be Accrued Groundwater Substitution Component water for all purposes under the Agreement, except that, the Member Units will not be involved in the negotiation of the price for this water supply.

6. In every Water Accounting Year when: (1) one or more Participating Contractor(s) desire to purchase Accrued

Groundwater Substitution Component water; (2) the annual negotiations referenced in Paragraph 5 above have reached a successful conclusion calling for the purchase of such water in that year; (3) the Management Committee representatives for Yuba, the Authority, and the State Water Contractors have agreed as to the terms of, and each of these representatives has recommended in writing said terms and the approval of, a letter agreement between Yuba and DWR establishing the price per acre-foot and any other modified terms that will be applicable to the Accrued Groundwater Substitution Component water for that Water Accounting Year; and (4) DWR and Yuba have executed said letter agreement, DWR will offer in writing to Participating Contractors the opportunity to purchase Accrued Groundwater Substitution Component water at the price and terms as provided in the letter agreement between DWR and Yuba.

7. Yuba will confirm on a monthly basis the quantities of the Accrued Groundwater Substitution Component water and the quantities of Groundwater Substitution Component water released as Released Transfer Water, in accordance with the accounting provisions for Groundwater Substitution Component water set forth in Exhibit 1 of the Agreement.

8. DWR will provide Yuba not less than 72 hours' notification for suspension or termination of groundwater pumping due to limitations on the ability of DWR to divert and use the Groundwater Substitution Component water. In the event of such a suspension or termination of Groundwater Substitution Component water, DWR will pay for the quantity of Accrued Groundwater Substitution Component water up to and including through the 72-hour notification of suspension or termination (i.e., DWR will pay

for the quantity of Accrued Groundwater Substitution Component water through the notice period irrespective of whether DWR was able to divert and use the Accrued Groundwater Substitution Component water).

9. Pursuant to the negotiations described in Paragraph 5 above, if the Management Committee so determines, DWR will require any Participating Contractor requesting Groundwater Substitution Component water to schedule this water with the Delta conveyance priority in relation to any other transfer water that DWR conveys at the Harvey O. Banks Pumping Plant for these same Participating Contractors that has been agreed to by the Management Committee, provided that the Groundwater Substitution Component water will not have a higher priority than Storage Component water provided under the Agreement.

10. Pursuant to the negotiations described in Paragraph 5 above, if the Management Committee so determines, DWR will require that the Authority schedule Groundwater Substitution Component water with the Delta conveyance priority in relation to any other transfer water that the Authority schedules for conveyance at the Harvey O. Banks Pumping Plant or at the C.W. Jones pumping plant for the members of the Authority that will receive water pursuant to this Amendment that has been agreed to by the Management Committee, provided that the Groundwater Substitution Component water will not have a higher priority than Storage Component water provided under the Agreement.

11. Except as otherwise provided herein, Groundwater Substitution Component water and Accrued Groundwater

Substitution Component water will be accounted for in accordance with the provisions of the Agreement.

12. Consistent with the water accounting principles set forth in Exhibit 1 to the Agreement, Yuba agrees that making the Groundwater Substitution Component water available in any Water Accounting Year will not affect the quantity of Storage Component water that Yuba makes available in that year or thereafter.”

13. Section 8.C. Section 8.C. of the Agreement is amended to read as follows:

“C. Groundwater Substitution Payment Provisions

1. DWR will pay Yuba the per acre foot price for the amount of Accrued Groundwater Substitution Component that DWR has committed to purchase in the letter agreement described in this Section, unless this amount is reduced as provided for under Section 8.B.8 or is reduced because the Yuba Member Units do not pump the requested quantity of groundwater substitution pumping program water for the Groundwater Substitution Component water.

2. The Parties acknowledge that Section 5.1.8 of the Yuba Accord Fisheries Agreement allows the River Management Team to schedule the release of a portion of Groundwater Substitution Component water at a time when it might not be transferable. DWR will not be required to pay for the portion (if any) of Groundwater Substitution Component water that is scheduled for release in accordance with the provisions of Section 5.1.8 of the Yuba Accord Fisheries Agreement to the extent that this quantity of Groundwater Substitution Component water is not transferable

under the accounting provisions set forth in Exhibit 1 of the Agreement.”

- 14. Section 8.** Section 8 of the Agreement is amended by adding at the end the following new subparagraph:

“D. Groundwater Substitution Water Invoicing

1. On or about May 22 in each year that DWR has agreed to purchase Accrued Groundwater Substitution Component water, Yuba will submit an invoice to DWR for 50 percent of the amount of Accrued Groundwater Substitution Component water that DWR has committed to purchase in the letter agreement described in this section during the current Water Accounting Year.

2. On or about August 30 in each year that DWR has agreed to purchase Accrued Groundwater Substitution Component water, Yuba will submit an invoice to DWR for 100 percent of the amount of Accrued Groundwater Substitution Component water DWR has committed to purchase in the letter agreement described in this section or that is otherwise payable under Section 8 during the current Water Accounting Year, less the amount of prior invoices for such Accrued Groundwater Substitution Component water during the current Water Accounting Year.

3. Within 60 days of the date that DWR receives an invoice from Yuba, DWR will submit payment to Yuba. DWR's payment will be reduced by 10 percent to allow accounting adjustments (if necessary) in the final payment to Yuba for the Accrued Groundwater Substitution Component water.

4. Approximately 30 days after the end of the release of groundwater substitution transfer water from New Bullards Bar Reservoir, after confirmation of the amount of groundwater substitution transfer water has been completed, and after Yuba and DWR have reached agreement on the final accounting, Yuba will provide to DWR in a final invoice that is undisputed and as required under the Agreement, an amount for final payment for Accrued Groundwater Substitution Component water provided under Section 8. The final payment for Accrued Groundwater Substitution Component water will reflect any adjustments necessary to account for the total quantity of Accrued Groundwater Substitution Component water payable under Section 8 and any adjustments provided for under Section 8.B.8.

5. If payments from any contractors to DWR for Accrued Groundwater Substitution Component water are delinquent, DWR will make partial payments to Yuba by the invoice due dates by remitting the amounts received pursuant to the invoice as of the due date. DWR will pay any delinquent portion to Yuba as soon as DWR receives the delinquent payments.

6. The agreements between DWR and the Participating Contractors provide for a Participating Contractor to pay interest on delinquent payments at the rate of 1 percent per month from the due date until paid in full. DWR will assess and use reasonable efforts to collect such interest from Participating Contractors who are delinquent in making payments to DWR for invoices under the Agreement, and DWR will pay such interest collected along with the payments on invoices to Yuba.”

15. Section 11.F. Section 11.F. of the Agreement is amended to read as follows:

“F. Reservation of the Right of Yuba to Transfer Certain Quantities of Water to a Third Party.

1. As provided in Section 25.B. of the Agreement, DWR will purchase all Storage Component water that is accounted for as Delivered Transfer Water. The Parties will estimate as expeditiously as possible during each year whether Storage Component water is likely to be accounted for as Delivered Transfer Water in that Water Accounting Year. Yuba may transfer any quantity of Released Transfer Water that DWR determines will not be accounted for as Delivered Transfer Water to a “Third Party.” A Third Party as defined in this Section 11 includes an agency, entity or individual that is other than: (a) DWR; (b) a Participating Contractor; or (c) a member unit, customer, landowner or any other entity within the boundaries of a Participating Contractor. This type of water transfer is referred to as the “First Type of Third-Party Transfer.” Yuba may transfer the First Type of Third-Party Transfer water for diversion at any diversion facility that is a current or future authorized point of rediversion for Yuba transfer water, except that, the First Type of Third-Party Transfer can be diverted at diversion facilities for Contra Costa Water District, if authorized, and if the diversion does not adversely affect the operation of the Projects during Balanced Conditions or at any other time that such diversion would directly or indirectly require the Projects to release water from storage or to reduce their diversion or rediversion of water from the Delta to provide or assure flow in the Delta required to meet any applicable provision of state or federal law. In order to implement the First Type of Third-Party Transfer, Yuba reserves the right to notify DWR on or before September 1 to not back a specified quantity of Released Transfer Water into Project storage

after September 30 of a Water Accounting Year. DWR reserves the right on or before September 15 to notify Yuba that DWR will purchase the specified quantity of water at current year pricing.

2. Notwithstanding Paragraph 1, beginning in the 2016 Water Accounting Year, Yuba may transfer up to 10,000 acre-feet per year of Released Transfer Water to a Third Party that would otherwise have been made available to DWR and the Participating Contractors as Component 2 Water or Component 3 Water under the Agreement (referred to as the "Second Type of Third-Party Transfer"), subject to the following: (a) The Second Type of Third-Party Transfer can be diverted: (i) at the Freeport POD; (ii) at a point of diversion North of the Freeport POD, if authorized; (iii) at diversion facilities for Contra Costa Water District, if authorized, and if the diversion does not adversely affect the operation of the Projects during Balanced Conditions or at any other time that such diversion would directly or indirectly require the Projects to release water from storage or to reduce their diversion or rediversion of water from the Delta to provide or assure flow in the Delta required to meet any applicable provision of state or federal law; (b) Yuba will use reasonable efforts to transfer the Second Type of Third-Party Transfer during times when Yuba Storage Component water could not otherwise be accounted for as Delivered Transfer Water, as a way of minimizing to the extent feasible reductions in the quantities of Component 2 Water and Component 3 Water that Yuba makes available to DWR and the Participating Contractors; and (c) To the extent needed to preserve the benefit of the 80% payment for Component 2 Water (as provided in Section 26) that DWR and the Participating Contractors would have received that year but for a Second Type of Third-Party Transfer, Yuba will adjust the invoice for payments for Component 1 water at 80% for the

quantity of the Second Type of Third-Party Transfer. The following hypothetical example illustrates this provision (c) to preserve benefits of Component 2 pricing: if in a Critical Year, there would have been 90,000 acre-feet of Delivered Transfer Water (which would have been allocated 60,000 acre-feet for Component 1 and 30,000 acre-feet for Component 2), and Yuba carries out a Second Type of Third-Party Transfer in the amount of 10,000 acre-feet that was transferred during times when Yuba Storage Component water would have been accounted for as Delivered Transfer Water, then the payment for 50,000 acre-feet of Component 1 Water would be at \$300 per acre foot, the payment for 10,000 acre-feet of Component 1 Water would be at \$240 per acre foot (reflecting the 80% Component 2 Water) and the payment for 20,000 acre-feet of Component 2 Water would be at \$240 per acre foot.

3. So long as a First Type of Third-Party Transfer or a Second Type of Third-Party Transfer is carried out consistent with the transfer water accounting provisions of Exhibit 1 for Released Transfer Water during Balanced Conditions, DWR and the Participating Contractors will not object based on the use of the transfer water accounting provisions of Exhibit 1 to such a transfer as not protective of DWR and the Participating Contractors as legal users of water. Except as provided in Section 11.F.2 above, Yuba may conduct Third-Party transfers provided that such transfers will not impair Yuba's ability to meet its obligations under this Agreement. Any agreement between DWR and a Participating Contractor to implement Amendment 5 will contain provisions that are consistent with this subsection. Yuba will provide DWR with ten days' advance notice of a Yuba water transfer to a Third Party. Yuba may transfer Storage Component water to a Third Party only in accordance with this Section 11.F.

4. So long as a transfer of Accrued Groundwater Storage Component water is carried out consistent with the transfer water accounting provisions of Exhibit 1 for Released Transfer Water during Balanced Conditions, Yuba may sell to a Third-Party any quantity of Accrued Groundwater Substitution Component water for which there is no agreement for DWR and the Participating Contractors to purchase pursuant to the negotiations described in Paragraphs 5 and 6 of Section 8.B. and DWR and the Participating Contractors will not object based on the use of the transfer water accounting provisions of Exhibit 1 to such a transfer as not protective of DWR and the Participating Contractors as legal users of water. Any agreement between DWR and the Participating Contractors to implement Amendment 5 will contain provisions that are consistent with this subsection. Yuba will provide DWR with ten days' advance notice of a Yuba water transfer to a Third-Party. Yuba may transfer Accrued Groundwater Component water to a Third Party only in accordance with this Section 11.F.”

- 16. Section 11.** Section 11 of the Agreement is further amended by adding at the end the following new subparagraphs:

“H. The Water Scheduling and Accounting Principles (Exhibit 1) of the Agreement: (a) are intended to provide long-term protection of legal users of water (including without limitation, DWR, Participating Contractors, the SWP and the CVP) from injury from Yuba water transfers; (b) apply throughout the term of the Agreement to Yuba water transfers made available under the Agreement; and (c) are not subject to adjustment due to any regulatory actions (including actions regarding instream flows) that

concern Yuba's water rights permits or licenses, a FERC Annual License, the FERC Long-Term License or a Water Quality Certification issued by the State Board in relation thereto. If there is a regulatory action that requires a change in the operation of the Yuba Project, then Yuba will promptly notify DWR and discuss with DWR and the Participating Contractors the extent to which such action would affect the ability of Yuba to deliver Storage Component or Groundwater Substitution Component water under this Agreement.

I. Yuba has no obligation to make available Storage Component or Groundwater Substitution Component water after September 30, 2020, and DWR and the Participating Contractors have no obligation to pay for such water, unless and until the Parties have entered into an amendment to the Agreement for that purpose.”

17. **Section 12.** Section 12 of the Agreement is amended by deleting Subparagraph B. (Payments for Fixed Annual Costs and for Environmental Compliance) and Subparagraph C. (Payments for Adjustments in Groundwater O&M Costs).

18. **New Sections 25 and 26.** The Agreement is amended by adding at the end the following new sections:

“25. **Storage Component Water.** Notwithstanding any other provision of the Agreement, the following provisions will apply to Storage Component water that is made available by Yuba:

A. Following the effective date of Amendment 5 to the Agreement, Yuba will provide an invoice for payment by DWR to Yuba of \$20,000,000 (Prepayment) by wire transfer instructions provided by Yuba. Payment of this invoice will be due no later than December 31, 2014. Yuba understands that DWR will make arrangements for Participating Contractors to provide the funding for this purpose to DWR. After DWR has obtained contractual commitments from Participating Contractors to fund the Prepayment, then DWR will process one or more wire transfers to Yuba of partial funding of the Prepayment as funds are received by DWR from the Participating Contractors until the full amount of the Prepayment has been made. The Prepayment will be credited by Yuba toward payments due on invoices for Storage Component water that has been accounted for as Delivered Transfer Water that is made available starting October 1, 2015. In the event that there are Prepayment funds that have not been fully credited for Storage Component water that has been accounted for as Delivered Transfer Water that is made available through September 30, 2020, then these remaining funds will be: (1) applied to future payments due by DWR to Yuba for Storage Component Delivered Transfer Water delivered on or after October 1, 2020 under a subsequent amendment between the Parties at the prices provided in Section

26 of the Agreement, (as added by Amendment 5); or (2) if there is no such amendment, refunded by Yuba to DWR.

B. DWR will purchase under the terms set forth in Amendment 5 to the Agreement, all Storage Component water that Yuba makes available from October 1, 2015 through September 30, 2020 that is accounted for as Delivered Transfer Water under the accounting rules set forth in Exhibit 1 to the Agreement, except that DWR is not required to pay for Storage Component water that Yuba transfers to a Third-Party as provided in Section 11.F. of the Agreement, as amended. The Parties expect that DWR will enter into agreements with the Participating Contractors to provide funding for such payments.

C. Subject to the provisions of Section 11 of the Agreement, as amended, Yuba will make the following quantities of Storage Component water available in each Water Accounting Year from January 1, 2016 through December 31, 2020.

- 1. Component 1.** 60,000 acre-feet per year of Component 1 Water.
- 2. Component 2.** 15,000 acre-feet in a Final Classification Dry Year and 30,000 acre-feet in a Final Classification Critical Year of Component 2 Water.
- 3. Component 3.** Any quantity of Storage Component water in excess of the amount of Component 1 and Component 2 Water will be considered Component 3 Water. Yuba will optimize to the extent feasible the operation of the

Yuba Project to make Component 1, 2 and 3 Water available.

26. **Payments.** In accordance with Section 15 of the Agreement, the Parties have met, conferred and agreed upon the following pricing for Storage Component Water made available from October 1, 2015 through September 30, 2020. DWR will make the following payments to Yuba for Storage Component water made available during this time period, except that, the payment for Component 2 Water will be 80% of these amounts:

- A. **Wet Year.** \$50 per acre foot in a Final Classification Wet Water Year.
- B. **Above-Normal Year.** \$100 per acre foot in a Final Classification Above-Normal Water Year.
- C. **Below-Normal Year.** \$150 per acre foot in a Final Classification Below-Normal Water Year.
- D. **Dry-Year.** \$200 per acre foot in a Final Classification Dry Water Year (except as provided in subsection 6, below).
- E. **Critical Year.** \$300 per acre foot in a Final Classification Critical Water Year (except as provided in subsection 6, below).
- F. **Consecutive Dry or Critical Years.** \$350 per acre foot in two or more consecutive Final Classification Dry Water Years (or a Dry Year following a Critical Year) or in two or more consecutive Final Classification Critical Water Years.”

19. **DWR Agreements with Participating Contractors.** Nothing in the terms of an agreement between DWR and the Participating Contractors that implements this Amendment will be inconsistent with DWR's or Yuba's obligations under this Amendment.
20. **Effective Date of this Amendment.** Section 25.A. of the Agreement (Prepayment) will become effective upon execution by the Parties of this Amendment. Section 26 of the Agreement (Payments) will become effective October 1, 2015. The remaining terms of the Amendment will become effective January 1, 2015.
21. **Effect of this Amendment.** All of the remaining provisions of the Agreement that are not changed by this Amendment will remain in full force and effect. Nothing in this Amendment affects the current term of the Agreement, which is through December 31, 2025.
22. **Environmental Compliance.** On October 23, 2007, Yuba's Board of Directors adopted Resolution No. 2007-23 and, as the lead agency under CEQA, certified the Final Environmental Impact Report/Environmental Impact Statement for the Proposed Lower Yuba River Accord (State Clearinghouse #2005062111) (Final EIR). DWR approved the Final EIR as a responsible agency under CEQA. Yuba will be responsible for complying with CEQA to the extent required for Yuba to transfer water to a Third Party under this Agreement.

The foregoing is hereby agreed to by the Parties.

Approved as to legal form and sufficiency:

STATE OF CALIFORNIA
DEPARTMENT OF WATER
RESOURCES

Cathy Crothers, Chief Counsel

Mark W. Cowin, Director

_____, 2014

_____, 2014

Approved as to legal form and sufficiency:

YUBA COUNTY WATER AGENCY
A Political Subdivision of the
State of California

Paul M Bartkiewicz,
General Legal Counsel

Chairman of the Board of Directors

_____, 2014

_____, 2014

Attest:

Secretary

_____, 2014