

Exhibit 8. Proposed Changes To RD-1644, Pages 173-176, Paragraph 1 of Order to YCWA (“Clean” Draft)

Yuba County Water Agency

Permits 15026, 15027, and 15030 of Yuba County Water Agency are amended to include the following terms:

1. For the protection of fish and other public trust resources in the lower Yuba River, permittee shall release or bypass sufficient water to maintain the following instream flows in the lower Yuba River. The minimum flow requirements shall be maintained as measured by a 5-day running average of average daily streamflows with instantaneous flows never less than 90 percent of the specified flow requirements.
 - a. Effective immediately upon adoption of this order, streamflow shall be maintained at or above the flows specified in the following table as measured at the USGS gaging installations at Marysville and Smartville:

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Instream Flow Requirements

Period	Wet & Above Normal Years (cfs)		Below Normal Years (cfs)		Dry Years (cfs)	
	Smartville Gage	Marysville Gage	Smartville Gage	Marysville Gage	Smartville Gage	Marysville Gage
Sep15-Oct 14	700	250	550	250	500	250
Oct 15-Apr 20	700	500	700	500	600	400
Apr21-Apr 30	--	1,000	--	800	--	400
May1-May 31	--	1,500	--	1,000	--	500
Jun 1	--	1,050	--	800	--	400
Jun 2-Jun 30	--	800	--	800/500'	--	400
Jul 1	--	560	--	560	--	280
Jul 2	--	390	--	390	--	250
Jul 3	--	280	--	280	--	250
Jul 4-Sep 14	--	250	--	250	--	250
Period	Critical Years (cfs)		Conference Years			
	Smartville Gage	Marysville Gage	(See Note 3)			
Sep 15-Oct 1	400	150				
Oct 1-Oct 14	400	250				
Oct 15-Apr 20	600	350				
Apr 21	--	280				
Apr22-Apr30	--	270				
May 1-May 31	--	270				
Jun 1-July 2	--	(See Note 2)				
July 3-Sep 14	--	100				

Table Notes:

1. June 2 - June 15/June 16 - June 30.
2. The interim instream flow requirements for June 1-30 of critical years shall be 245 cfs pursuant to the provisions of the agreement between Yuba County Water Agency and the Department of Fish and Game dated September 2, 1965, except if a lower flow is allowed pursuant to the provisions of the 1965 agreement. The minimum flow on July 2 shall be 70 percent of the flow on July 1.
3. The instream flow requirements for conference years shall be the applicable requirements specified in the agreement between Yuba County Water Agency and the Department of Fish and Game dated September 2, 1965, without the reductions authorized by section 1.6 of that agreement.

- b. For purposes of this order, wet, above normal, below normal, dry, critical and conference water year types in the table above are as defined in the North Yuba Index. (See Appendix 1.) Determinations of water year classifications shall be made each year within 5 days for the release of the February 1, March 1, April 1, and May 1 forecasts of unimpaired flow of the Yuba River at Smartville published in California Department of Water Resources Bulletin 120 and any subsequent forecast published by the Department of Water Resources. The final year type for the preceding water year shall remain in effect until the February 1 forecast for the current year is available. If the water year type classification would

change based on information available from any Department of Water Resources forecast, then the flow requirements in effect from the time the forecast is available shall remain in effect until the following forecast becomes available. Any changes in flows due to a change in water year classification shall be made in accordance with the criteria specified in permittee's Federal Power Act license.

- c. If, at any time during the term of the Lower Yuba River Fisheries Agreement among the Yuba County Water Agency, the California Department of Fish and Game, the South Yuba Citizens League, Friends of the River, Trout Unlimited and the Bay Institute, that agreement is terminated early (before the Federal Energy Regulatory Commission issues a new long-term Federal Power license for the Yuba River Development Project), then the following instream-flow requirements shall go into effect:

Marysville Gage (cfs)

Schedule	OCT		NOV	DEC	JAN	FEB	MAR	APR		MAY		JUN		JUL	AUG	SEP
	1-15	16-31	1-30	1-31	1-31	1-29	1-31	1-15	16-30	1-15	16-31	1-15	16-30	1-31	1-31	1-30
1	500	500	500	500	500	500	700	1000	1000	2000	2000	1500	1500	700	600	500
2	500	500	500	500	500	500	700	700	800	1000	1000	800	500	500	500	500
3	500	500	500	500	500	500	500	700	700	900	900	500	500	500	500	500
4	400	400	500	500	500	500	500	600	900	900	600	400	400	400	400	400
5	400	400	500	500	500	500	500	500	600	600	400	400	400	400	400	400
6	350	350	350	350	350	350	350	350	500	500	400	300	150	150	150	350

Smartville Gage (cfs)

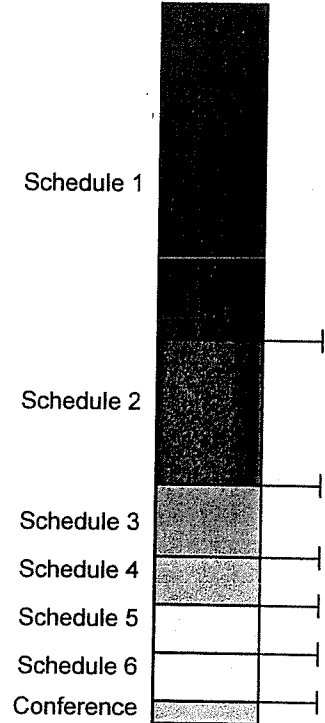
Schedule	OCT		NOV	DEC	JAN	FEB	MAR	APR		MAY		JUN		JUL	AUG	SEP
	1-15	16-31	1-30	1-31	1-31	1-29	1-31	1-15	16-30	1-15	16-31	1-15	16-30	1-31	1-31	1-30
A	700	700	700	700	700	700	700	700	-	-	-	-	-	-	-	700
B	600	600	600	550	550	550	550	600	-	-	-	-	-	-	-	500

* Schedule A used with Schedules 1, 2, 3 and 4 at Marysville.
 * Schedule B used with Schedules 5 and 6 at Marysville.

The applicable schedules in these instream-flow requirements shall be determined by the following values of the North Yuba Index, subject to the following dry year storage adjustment:

Flow Schedule Year Type	North Yuba Index Thousand Acre-Feet (TAF)
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Schedule 1	Equal to or greater than 1400
Schedule 2	Equal to or greater than 1040 and less than 1400
Schedule 3	Equal to or greater than 920 and less than 1040
Schedule 4	Equal to or greater than 820 and less than 920
Schedule 5	Equal to or greater than 693 and less than 820
Schedule 6	Equal to or greater than 500 and less than 693
Conference Year	Less than 500



Dry Year Storage Adjustment

- In some dry years with Schedule 5 instream-flow requirements, the September 30 New Bullards Bar Reservoir storage may be very low.
- To ensure sufficient carryover storage in the event of a subsequent very dry year, a dry-year storage adjustment will be made.
- The dry-year storage adjustment will be made as follows:
 - If the September 30 New Bullards Bar Reservoir storage is less than 400,000 acre-feet, then the Marysville Gage instream-flow requirement will be 400 cfs from October 1 until the next February Bulletin 120 forecasts are available.
 - If the September 30 New Bullards Bar Reservoir storage is less than 450,000 acre-feet but greater than or equal to 400,000 acre-feet, then, the Chief of the Division of Water Rights may, after receiving a request from

permittee and giving other interested parties an opportunity to comment, adjust the Marysville Gage instream-flow requirement to 400 cfs from October 1 until the next February Bulletin 120 forecasts are available.

- When the next February Bulletin 120 forecasts are available, the instream-flow requirements will be based on those forecasts.

- d. All of the preceding instream-flow requirements will be superseded and replaced by the instream-flow requirements in the new long-term Federal Power Act license that the Federal Energy Regulatory Commission issues for the Yuba River Development Project, when that new license goes into effect.

Exhibit 9. Changes To Appendix 1 Of RD-1644

**APPENDIX 1
DEFINITION OF YUBA RIVER INDEX**

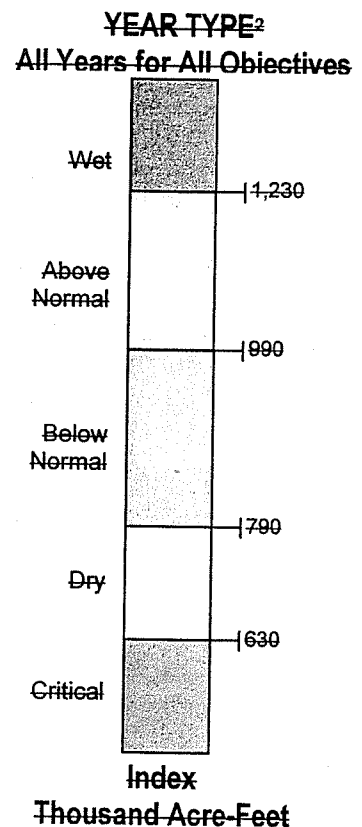
The water year hydrologic classification for the Yuba River shall be determined by the following equation:

$$\text{INDEX} = 0.5X + 0.3Y + 0.2Z$$

- Where
- X** = Current year's April-July Yuba River unimpaired runoff
 - Y** = Current year's October-March Yuba River unimpaired runoff
 - Z** = Previous year's index.²

The Yuba River unimpaired runoff for the current water year (October 1 of the preceding calendar year through September 30 of the current calendar year), as published in California Department of Water Resources Bulletin 120, is a forecast of the unimpaired flow of the Yuba River at Smartville. Preliminary determinations of a year's classification shall be made in February, March, and April, with the final determination in May. These preliminary determinations shall be based on hydrologic conditions to date plus forecasts of future runoff, assuming normal precipitation for the remainder of the water year.

Classification	Index Thousand Acre-Feet (TAF)
Wet	Equal to or greater than 1,230
Above Normal ...	Greater than 990 and less than 1,230
Below Normal	Equal to or less than 990 and greater than 790
Dry	Equal to or less than 790 and greater than 630
Critical	Equal to or less than 630



² A cap of 1,400 TAF is imposed on the previous year's index to account for required flood control reservoir releases during wet years.

³ The year type for the preceding water year will remain in effect until the initial forecast of unimpaired runoff for the current year is available.

**DEFINITION OF THE
NORTH YUBA INDEX**

The North Yuba Index is an indicator of the amount of water available in the North Yuba River at New Bullards Bar Reservoir that can be utilized to achieve flows on the Lower Yuba River through operations of New Bullards Bar Reservoir. The index is comprised of two components: (1) active storage in New Bullards Bar Reservoir at the commencement of the current water year; and (2) total inflow to New Bullards Bar Reservoir for the current water year, including diversions from the Middle Yuba River and Oregon Creek to New Bullards Bar Reservoir. The following is the definition of the index and the procedure for determining the index for each water year.

$$\text{North Yuba Index} = Sa^{\text{NBB}} + I^{\text{NBB}}$$

Where:

Sa^{NBB} = New Bullards Bar Reservoir Active Storage

The New Bullards Bar Reservoir Active Storage for determining the current year North Yuba Index equals the actual recorded amount of water in storage in New Bullards Bar Reservoir on September 30th of the previous water year minus the Federal Energy Regulatory Commission Project License minimum pool amount of 234,000 acre-ft.

and:

I^{NBB} = Forecasted Total Annual Inflow To New Bullards Bar Reservoir

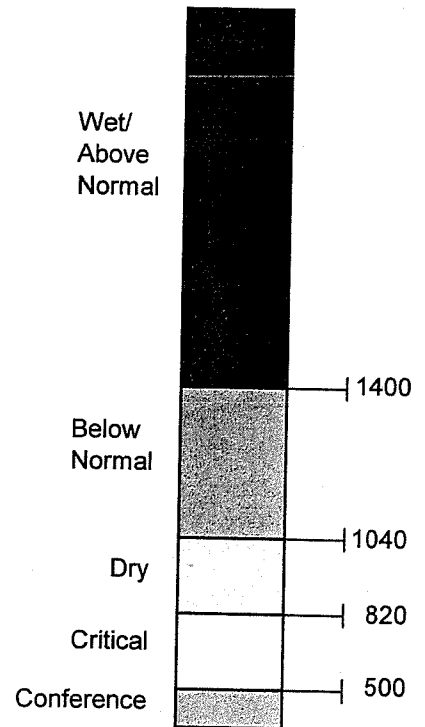
The Forecasted Total Annual Inflow To New Bullards Bar Reservoir shall be based on actual inflow to date to New Bullards Bar Reservoir, including the diversions from the Middle Yuba River and Oregon Creek plus forecasted inflow for the remainder of the water year, where such forecast is based on the Department of Water Resources 50%-exceedance forecast of unimpaired flow contained in Bulletin-120 at the beginning of each month from February until May or June, with periodic updates. The procedure for determining the Forecasted Total Annual Inflow To New Bullards Bar Reservoir is described in the section of this document entitled "*Procedure for Calculating the Forecasted Total Annual Inflow Into New Bullards Bar Reservoir*".

Determination of the North Yuba Index for a water year shall be made based on 50%-exceedance estimates of unimpaired runoff as published in California Department of Water Resources Bulletin 120 beginning in February and updated in March, April and May, and any subsequent updates. The year type for the preceding water year shall remain in effect until the initial forecast of unimpaired runoff for the current year is available.

**YUBA RIVER WATER YEAR CLASSIFICATIONS
 BASED ON THE NORTH YUBA INDEX
 FOR ESTABLISHING REQUIRED FLOWS**

The water year hydrologic classification for the Yuba River to determine the minimum instream flow requirements of Yuba County Water Agency's water right permits shall be based on the North Yuba Index. Determinations of a year's classification shall be made in February, March, April, and May and for any subsequent updates.

<u>Year Type</u> <u>Classification</u>	<u>North Yuba Index</u> <u>Thousand Acre-Feet (TAF)</u>
Wet and Above Normal	Equal to or greater than 1400
Below Normal	Equal to or greater than 1040 and less than 1400
Dry	Equal to or greater than 820 and less than 1040
Critical	Equal to or greater than 500 and less than 820
Conference Year	Less than 500



**Procedure for Calculating the Forecasted Total Annual Inflow Into
New Bullards Bar Reservoir**

The forecasted total inflow into New Bullards Bar Reservoir shall be calculated starting in February and updated periodically, but no less than monthly, until May. If a June updated Bulletin 120 forecast or any post May 1 update is published by the Department of Water Resources, then an updated forecast of total inflow to New Bullards Bar Reservoir shall be calculated as described below.

The forecasted total inflow into New Bullards Bar Reservoir is based on two main components: (1) the actual measured inflow into New Bullards Bar Reservoir to date; plus (2) the Bulletin 120 based calculation of forecasted inflow for the remainder of the water year. The following formula shall be used to calculate the forecasted total inflow to New Bullards Bar Reservoir (NBBR):

$$I^{NBB} \text{ (TAF)} = \text{Total Actual Inflow to NBBR from October 1 to the end of Month}^{i-1} + \text{Forecasted Inflow from the beginning of Month}^i \text{ to September 30}$$

(Monthⁱ⁻¹ is the previous month and Monthⁱ is the current month)

Where:

Total actual inflow to NBBR is the calculated inflow based on a daily summation of inflow for the month as follows:

$$\text{Total Actual Inflow to NBBR (TAF)} = \text{Monthly change in stored water (TAF)} + \text{Monthly outflow (TAF)}$$

and where:

The forecasted inflow from the beginning of Monthⁱ to September 30 is calculated using statistically derived linear coefficients applied to the measured inflow into New Bullards Bar reservoir and the Bulletin 120 published 50%-exceedance forecasts of unimpaired flow of the Yuba River at Goodyears Bar and at Smartville, and for the time periods identified in the following table:

Table 1. Coefficients For the Calculation of Forecasted New Bullards Bar Inflow (AF)

Forecast Month	Forecasted For:	Constant (C)	Total Actual Inflow to NBBR (C1)	Bulletin 120 Forecasted Smartville (C2)	Bulletin 120 Forecasted Goodyear's Bar (C3)
February	February	-2,146	0.01424	0.52533	
	March	-3,221	0.02458	0.54787	
	April-July	-30,416	0.01413	0.62473	-0.24081
	August-September	-	0.01593	0.64037	
March	March	-23,495	0.00596	0.55386	
	April-July	-31,134	0.01237	0.62162	-0.23266
	August-September	-	0.01473	0.59396	
April	April-July	-30,665	0.00547	0.61332	-0.19623
	August-September	-	0.01409	0.53241	
May	April-July	-31,652	0.01033	0.61645	-0.22353

August-September	-	0.01298	0.50071
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For all subsequent forecast updates the May coefficients shall be used, with the forecasted Goodyears Bar runoff equaling 0.273 times the current forecasted Yuba River unimpaired flow at Smartville.

The following procedure shall be used to calculate the Forecasted New Bullards Bar Inflow:

The general formula for Forecasted New Bullards Bar Inflow is:

$$\text{Forecasted NBB Inflow}^1 = \text{February NBB Inflow} + \text{March Inflow} + \text{April-July Inflow} + \text{August-September Inflow}$$

Formula terms are only applicable as shown in Table 1. As an example, the March forecast does not include a term for forecasted February NBB Inflow. The following formulas shall be used to calculate the terms of the formula above using the corresponding coefficients from Table 1 (Note terms are calculated in AF and the result is converted to TAF for use in the calculation of the Forecasted Total Inflow to New Bullards Bar (I^{NBB} (TAF)):

$$\text{February NBB Inflow} = C + C1 \times \text{Total Actual Inflow to NBB} + C2 \times \text{Forecasted Smartville}^{(\text{February})}$$

$$\text{March NBB Inflow} = C + C1 \times \text{Total Actual Inflow to NBB} + C2 \times \text{Forecasted Smartville}^{(\text{March})}$$

$$\text{April - July Inflow} = C + C1 \times \text{Total Actual Inflow to NBB} + C2 \times \text{Forecasted Smartville}^{(\text{April - July})} + C3 \times \text{Forecasted Goodyears Bar}^{(\text{April - July})}$$

$$\text{August - September Inflow} = C1 \times \text{Total Actual Inflow to NBB} + C2 \times \text{Forecasted Smartville}^{(\text{August - September})}$$

("Forecasted Smartville" is the DWR forecast for "Yuba River at Smartville Plus Deer Creek")

The May calculation of Forecasted NBB Inflow and subsequent updated calculations shall be reduced by the actual NBB inflow between April 1 and the calculation date.

Example calculation of the North Yuba Index for February 1, 2003:

Excerpt from February 2003 DWR Bulletin -120:

**FEBRUARY 1, 2003 FORECASTS
APRIL-JULY UNIMPAIRED RUNOFF**

HYDROLOGIC REGION and Watershed	Unimpaired Runoff in 1,000 Acre-Feet					
	HISTORICAL			FORECAST		
	50 Yr Avg	Max of Record	Min of Record	Apr-Jul Forecasts	Pct of Avg	80 % Probability Range
Yuba River						
North Yuba below Goodyears Bar	286	647	51	240	84%	
Yuba River at Smartville Plus Deer Creek	1,044	2,424	200	900	86%	510-1,560

**FEBRUARY 1, 2003 FORECASTS (CONT'D)
WATER YEAR UNIMPAIRED RUNOFF**

Unimpaired Runoff in 1,000 Acre-Feet													
HISTORICAL			DISTRIBUTION								FORECAST		
50 Yr Avg	Max of Record	Min of Record	Oct Thru Jan*	Feb	Mar	Apr	May	Jun	Jul	Aug & Sep	Water Year Forecasts	Pct of Avg	80% Probability Range
564	1,056	102											
2,459	4,926	369	675	255	300	360	380	130	30	30	2,160	88%	1,510-3260

*Unimpaired runoff in prior months based on measured flows

From the published Bulletin-120 information, and from historical gaged date for New Bullards Bar Reservoir, the North Yuba Index can be calculated as follows:

- 1) The end-of-September 2002 New Bullards Bar Reservoir Storage (from USGS gage number 11413515) is 532,088 acre-feet.
- 2) From end-of-October, November, December, and January New Bullards Bar storage figures and monthly reservoir releases (from USGS gages 11413510 and 11413520), the total inflow to New Bullards Bar between October 1, 2002 and January 31, 2003 is 387,302 acre-feet.
- 3) Using the B-120 information and the inflow to date, the forecasted February inflow is calculated as follows:

$$\text{Inflow} = C + C1*(\text{Oct-Jan Inflow}) + C2*(\text{B120 Forecasted Flow at Smartville for February})$$

$$\text{Forecasted February Inflow} = -2,146 + 0.01424 (387,302) + 0.52533 (255,000) = 137,328 \text{ acre-feet}$$

- 4) The forecasted March inflow is calculated as follows:

$$\text{Inflow} = C + C1*(\text{Oct-Jan inflow}) + C2*(\text{B120 Forecasted Flow at Smartville for March})$$

$$\text{Forecasted March Inflow} = -3,221 + 0.02458 * (387,302) + 0.54787 * 300,000 = 170,660 \text{ acre-feet}$$

- 5) The forecasted April-July inflow is calculated as follows:

$$\text{Inflow} = C + C1*(\text{Oct-Jan Inflow}) + C2*(\text{B120 Forecasted Flow at Smartville for April-July}) + C3*(\text{Forecasted Flow at Goodyear's Bar for April-July})$$

$$\text{Forecasted April-July Inflow} = -30,416 + 0.01413 * (387,302) + 0.62473 * (900,000) + -0.24081 * (240,000) = 479,519 \text{ acre-feet}$$

- 6) The August and September inflows are calculated as follows:

$$\text{Inflow} = C1*(\text{Oct-Jan Inflow}) + C2*(\text{Forecasted flow at Smartville for August and September})$$

$$\text{Forecasted August and September Inflow} = 0.01593 * (387,302) + 0.64037 * (30,000) = 25,381 \text{ acre-feet}$$

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7) The North Yuba Index for 2003, as calculated for February 1, 2003, is:

Active NBB Storage + Actual Inflow (Oct – Jan) +forecasted Feb Inflow + forecasted Mar Inflow + forecasted Apr-Jul Inflow + forecasted Aug-Sept Inflow =

(532,088-234,000) + 387,302 + 137,328 + 170,660 + 479,519 + 25,381 = 1,498,278 acre-feet = Index Number of 1498 which is a Wet/Above Normal year

Example calculation of the North Yuba Index for May 1, 1999:

Excerpt from May 1999 DWR Bulletin -120:

**May 1, 1999 FORECASTS
APRIL-JULY UNIMPAIRED RUNOFF**

HYDROLOGIC REGION and Watershed	Unimpaired Runoff in 1,000 Acre-Feet					
	HISTORICAL			FORECAST		
	50 Yr Avg	Max of Record	Min of Record	Apr-Jul Forecasts	Pct of Avg	80 % Probability Range
Yuba River						
North Yuba below Goodyears Bar	286	647	51	330	115%	
Yuba River at Smartville Plus Deer Creek	1,029	2,424	200	1,200	117%	1,090-1,360

**May 1, 1999 FORECASTS (CONT'D)
WATER YEAR UNIMPAIRED RUNOFF**

Unimpaired Runoff in 1,000 Acre-Feet													
HISTORICAL			DISTRIBUTION								FORECAST		
50 Yr Avg	Max of Record	Min of Record	Oct Thru Jan*	Feb *	Mar *	Apr *	May	Jun	Jul	Aug & Sep	Water Year Forecasts	Pct of Avg	80% Probability Range
564	1,056	102											
2,337	4,926	369	720	520	350	305	510	310	75	55	2,845	122%	2,720-3,030

*Unimpaired runoff in prior months based on measured flows

From this information and historic information, the North Yuba Index can be calculated as follows:

- 1) The end-of-September 1998 New Bullards Bar Reservoir Storage (from USGS gage number 11413515) is 708,904 acre-feet.
- 2) From end-of-October, November, December, January, February, March and April New Bullards Bar storage and monthly reservoir releases (from USGS gages 11413510 and 11413520), the total inflow to New Bullards Bar between October 1, 1998 and April 30 1999 is 1,098,591 acre-feet.
- 3) Using the B-120 information and the inflow to date the forecasted April - July inflow is calculated as follows:

$$\text{Inflow} = C + C1*(\text{Oct-April Inflow}) + C2*(\text{B120 Forecasted Flow at Smartville for April-July}) + C3*(\text{Forecasted Flow at Goodyear's Bar for April-July})$$

Exhibit 9, p. 7

Forecasted April-July Inflow = $-31,652 + 0.01033 * (1,098,591) + 0.61645 * (1,200,000) + -0.22353 * (55,000) = 707,142$ acre-feet.

- 4) The August and September inflows are calculated as follows:

Inflow = $C1 * (\text{Oct-April Inflow}) + C2 * (\text{Forecasted flow at Smartville for August and September})$

Forecasted August and September Inflow = $0.01298 * (1,098,591) + 0.50071 * (55,000) = 41,799$ acre-feet

- 5) The North Yuba Index for May 1, 1999, is calculated as follows:

Active NBB Storage + Actual Inflow (Oct – April) + forecasted Apr-Jul Inflow + forecasted Aug-Sept Inflow – Actual April Inflow =

$(708,904 - 234,000) + 1,098,591 + 707,142 + 41,799 - 182,647 = 2,139,789$ acre-feet = **Index Number of 2140 which is a Wet/Above Normal year**

Exhibit 10
Yuba River Development Project
Operating Assumptions for Yuba River Fisheries Agreement

Introduction

The flow schedules and operations parameters described in Exhibits 1-5 of the Yuba River Fisheries Agreement (YFA) are based on a set of assumed Operating Assumptions for the Yuba River Development Project (YRDP) during: (a) water-management or base-flow operations; (b) storm-runoff operations; and (c) flood-control operations.

These Operating Assumptions, and Significant Changes to these Operating Assumptions, are described in this Exhibit 10.

Definitions

- Base Flow/Water Management Operations
- Storm Runoff Operations
- Flood Control Operations
- Operations for PG&E Power Purchase Contract (PPC) Obligations
- Significant Changes to Operating Assumptions

Definitions of Base Flow/Water Management Operations, Storm Runoff Operations and Flood Control Operations utilize the language in YCWA's pending application for FERC license amendment. The pertinent language states:

“With the exception of emergencies, releases required by U.S. Army Corps of Engineers flood control criteria, releases required to maintain a flood control buffer or for other flood control purposes, bypasses of uncontrolled flows into Englebright Reservoir, uncontrolled spilling, or uncontrolled flows of tributary streams downstream of Englebright Dam, Licensee shall make reasonable efforts to operate New Bullards Bar Reservoir and Englebright Reservoir to avoid fluctuations in the flow of the lower Yuba River downstream of Englebright Dam, and daily changes in project operations affecting releases or bypasses of flow from Englebright Dam shall be continuously measured at the USGS gage at Smartville, and shall be made in accordance with the following conditions: [list of conditions follow]”

Base Flow/Water Management Operations:

Base Flow/Water Management Operations include all operations except operations: (a) during emergencies, (b) when releases are required by U.S. Army Corps of Engineers flood control criteria or to maintain a flood control buffer in New Bullards Bar Reservoir or for other flood control purposes, or (c) when bypasses of uncontrolled flows into Englebright Reservoir, uncontrolled spilling, or uncontrolled flows of tributary streams downstream of Englebright Dam are occurring.

Storm Runoff Operations:

Storm Runoff Operations include all operations while bypasses of uncontrolled flows into Englebright Reservoir, uncontrolled spilling, uncontrolled flows of tributary streams downstream of Englebright Dam are occurring.

Flood Control Operations:

Flood Control Operations include all operations when: (a) releases are required by U.S. Army Corps of Engineers flood control criteria; (b) releases or other actions are required or requested by the U.S. Army Corps of Engineers under its flood-control authority or by the the Department of Water Resources (DWR)/ U.S. Army Corps of Engineers Flood Control Joint Operations Center; (c) releases are required to maintain a flood-control buffer, or for other flood-control purposes, between September 15 and June 1; and (d) emergencies requiring substantial changes in project operations are occurring.

Operations Guidelines

Base Flow/Water Management Operations

Base Flow Operations shall be conducted under the following guidelines:

1. Starting approximately September 1, releases will be set at the rates necessary to meet the controlling instream-flow requirement, which is at either the Marysville Gage or the Smartville Gage, plus any additional amount that is required for diversions.
 - a. These diversions include fall base irrigation diversions and diversions for fall rice decomposition/duck water field flooding. Fall rice decomposition/duck field flooding typically starts in late September to early October and goes through mid November, and includes a ramp up to a maximum diversion rate of between 450 to 550 cfs. Diversions then ramp down during November and December as field flooding requirements decrease. When Wheatland Water District comes on line, this maximum diversion rate is not expected to exceed the historic range of 450 cfs to 550 cfs.
 - b. After the completion of fall field flooding, releases under Base Flow/Water Management Operations drop down to the amounts necessary to meet the controlling minimum instream flow requirement or the requirements in the PPC as amended and pursuant to recent historical practice.
2. During approximately January through March, there normally are minimal diversions at Daguerre Point Dam, and Base Flow/Water Management Operations are set to maintain the releases necessary to meet the controlling instream flow requirement or the requirements in the PPC as amended and pursuant to recent historical practice.

3. Starting about April 1, Base Flow/Water Management Operations are conducted to:
 - a. Meet the controlling minimum instream flow requirements.
 - b. Supply sufficient water for the diversions necessary to meet water-supply contract requirements.
 - c. Meet the requirements of the PPC as amended and pursuant to recent historical practice.
 - d. Meet a September 30 New Bullards Bar Reservoir storage target of 650,000 acre-feet.
4. Base Flow/Water Management Operations will be subject to the flow-fluctuation and ramping criteria in YCWA's pending application for FERC license amendment.

Storm Runoff Operations

Storm Runoff Operations shall be conducted under the following guidelines:

1. Storm Runoff Operations occur during the storm season, which typically occurs between October and May, but can extend into other periods during the year if there are any unusual storm events. Storm Runoff Operations target Englebright Reservoir operations, because Englebright Reservoir is the control point for releasing water into the lower Yuba River.
2. Specific Storm Runoff Operations decisions are highly dependent on the following factors:
 - a. Amount and elevations of snowpack.
 - b. Storm forecasted precipitation and snow level.
 - c. Future storm forecasts.
 - d. PG&E generation schedule.
 - e. Time of year, amount of water in New Bullards Bar Reservoir and relation of New Bullards Bar Reservoir water storage to flood-control requirements.
3. Storm Runoff Operations guidelines for Englebright Reservoir are:
 - a. Maintain an Englebright target base reservoir elevation of about 517 feet (above sea level).
 - b. Maintain Englebright Reservoir storage elevation above 514 feet.
 - c. Maintain Englebright outflow at a generally constant rate until Englebright Reservoir water-surface elevation reaches 523 feet, unless a large storm is forecasted.
 - d. If Englebright Reservoir water-surface elevation reaches 523 feet and still is increasing, or if a major storm is forecasted, then increase Englebright outflow, through Narrows 1 Powerhouse or Narrows 2 Powerhouse or a combination of

both powerhouses, at a ramping rate target of 200 cfs per hour, until Englebright elevation stops increasing.

- e. When a storm event ends, and runoff starts to subside, decrease Englebright outflow at a target rate of 100 cfs per hour when the reservoir level drops to elevation 520 feet, with a target of returning to base releases when elevation reaches 517 feet.
 - f. If Englebright reservoir elevation increases at a rate greater than 0.5 foot per hour, then higher ramp-up and ramp-down rates, up to the maximum allowable rate of 500 cfs per hour, and up to the maximum capacities of the Narrows 1 and Narrows 2 Powerhouses, may be utilized to attempt to stabilize the reservoir and prevent or reduce spills.
4. Storm Runoff Operations will not be subject to the flow-fluctuation and ramping criteria in YCWA's pending application for FERC license amendment.

Flood Control Operations

Flood Control Operations shall be conducted under the following guidelines:

Flood Control Operations are generally dictated by the Corps flood operations criteria or the Flood Control Joint Operations Center operated by DWR and the Corps. Flood operations are designed to protect life, property and the dams from actual and anticipated major flood events. Flood flow releases from Englebright and New Bullards Bar Reservoirs are controlled by the following requirements and criteria:

1. Corps flood control operations requirements as defined by the flood operations manual or direction from the Corps and include:
 - a. encroachment into the New Bullards Bar Reservoir flood pool or anticipated encroachment into the flood pool from a forecasted storm; and
 - b. ramping rates and spill gate operations criteria from the Corps flood operations manual or direction from the Corps.
2. Department of Water Resources (DWR), Department of Flood Management or Joint Flood Control Center directives.
3. Prereleases from New Bullards Bar Reservoir in advance of a forecasted major flood storm to reduce peak flood flows or to avoid or reduce encroachment into the flood pool during the storm.
4. Creating a flood pool buffer in New Bullards Bar Reservoir to avoid unnecessary flood-control releases operations during a typical storm for that time of the year.

5. At the end of Flood Control Operations, flows shall be returned to Storm Runoff Operations or Base Flow/Water Management Operations as soon as practicable.
6. Flood Control Operations will not be subject to the flow-fluctuation and ramping criteria in YCWA's pending application for FERC license amendment.

Operations for PPC Obligations

Current practice of releases to meet requirements in the 1966 YCWA/PG&E Power Purchase Contract as amended for the Accord include the following:

- Reservoir elevation target maximum of 705 TAF in January, providing that sufficient water is available;
- Reservoir elevation target of maximum 720 TAF in February, providing that sufficient water is available;
- Reservoir elevation target of maximum 790 TAF in March, providing that sufficient water is available;
- Reservoir elevation target of maximum 890 TAF in April, providing that sufficient water is available;
- No minimum monthly generation targets.

Significant Changes to Operating Assumptions

A Significant Change in the assumed Operating Assumptions is defined as one of the following occurrences:

1. Any releases from storage in the New Bullards Bar reservoir required by a regulatory mandate that was not in place on October 1, 2004, that would result in a reduction in the North Yuba Index of 10,000 AF or more in any water year, in comparison to the index value that would occur in the absence of those required releases.
2. Changes in the flow reduction and fluctuation criteria that are included in YCWA's pending license amendment application to FERC that would require the release of additional water from storage in excess of 10,000 AF in any water year.
3. A requirement to release water from storage solely to meet the terms of the Power Purchase Contract between YCWA and PG&E that would prevent YCWA from operating to achieve the following target levels:
 - a. 705 TAF in January;
 - b. 720 TAF in February;
 - c. 790 TAF in March, or
 - d. 890 TAF in April.
4. An increase of 5,000 AF or more in YCWA's total obligation to contribute to the implementation of Bay/Delta water quality objectives, if such increase is caused by a judicial or regulatory action.

5. An ESA, CESA, or other regulatory action that would result in a change in flow Schedules 1 – 6 and that would result in either: a) decrease in total Transfer Agreement payment amounts for Components 2-4 water of 5% per year or more in any water year, or b) decrease in the amount of flow that can be delivered to YCWA's consumptive users of 5% or more in any water year.

The following are not considered Significant Changes in Operating Assumptions:

1. Any decrease in YCWA's Phase 8 Bay/Delta obligations.
2. Any supplemental surface water transfer or supplemental groundwater transfer.
3. An ESA, CESA, or other regulatory action that would result in a change in flow Schedules 1 – 6 and that would result in: a) an increase in Transfer Agreement payment amounts, and b) an increase in the amount of flow that can be delivered to YCWA's consumptive users.

Exhibit 11
Addresses of Representatives of Lower Yuba River Fisheries Agreement Parties

General Manager
Yuba County Water Agency
1402 D Street
Marysville, CA 95901
Telephone: 530-741-6278
Fax: 530-741-6541

Regional Manager
California Department of Fish and Game, Region 2
1701 Nimbus Road
Rancho Cordova, CA 95670
Telephone: 916-358-2898
Fax: 916-358-2912

Executive Director
South Yuba River Citizens League
216 Main Street
Nevada City, CA 95959
Telephone: 530-265-5961
Fax: 530-265-6232

Conservation Director
Friends of the River
915 20th Street
Sacramento, CA 95814
Telephone: 916-442-3155
Fax: 916-442-3396

California Hydro Power Coordinator
Trout Unlimited
828 San Pablo Ave., Suite 208
Albany, CA 94706
Telephone: 510-528-4164
Fax: 510-528-7880

Program Director
The Bay Institute
500 Palm Drive, Suite 200
Novato, CA 94949
Telephone: 415-506-0150
Fax: 415-506-0155

Exhibit 11

Exhibit 12
River Management Fund, Restoration Account

Money from the RMF, Restoration Account, may be used to provide parts of the costs of pilot projects for: (a) side channel restoration; (b) riparian habitat; and (c) woody debris. Any such projects must be simple, robust and self-sustaining and demonstrate, verify or test some specific benefit.

No projects will be funded from the RMF, Restoration Account until sufficient core monitoring or focused studies have been completed and justify the feasibility of the proposed project, efficacy of the proposed location and scope and extent of the proposed actions.

No project will be funded from the RMF, Restoration Account unless matching funds are available for at least 70% of the project's total cost.

The RMT Participants in RMF Issues will make all decisions regarding: (a) the designs of projects to be funded from the RMF, Restoration Account, and (b) expenditures from the RMF, Restoration Account.

Exhibit B

Principles of Agreement for Proposed Conjunctive Use Agreements

PRINCIPLES OF AGREEMENT

YUBA COUNTY WATER AGENCY

Outline of Proposed Principles of Agreement with the Agency Member Units in connection with the Proposed Settlement of SWRCB Decision-1644

INTRODUCTION

The Agency is proposing to enter into a comprehensive settlement that would involve (1) an agreement with state and federal fishery agencies and environmental groups on Lower Yuba River instream flows, which would settle the State Water Resources Control Board's Decision -1644; (2) an agreement with export interests for a long-term water transfer; and (3) an agreement with the Agency's Member Units to implement a program for the conjunctive use of surface and groundwater supplies in furtherance of the settlement. The Agency would not complete the overall settlement without each of these elements.

PROPOSED PRINCIPLES OF THE AGREEMENT WITH THE AGENCY MEMBER UNITS

1. Voluntary Participation. All of the Member Units (including Wheatland Water District) would be invited to participate in the settlement by entering into conjunctive use agreements with the Agency.

2. Term of Agreement. The term of the agreement between the Agency and each participating Member Unit would be the same as the term of the agreements on the instream flow and long-term water transfer components of the settlement (i.e., until 2016),

3. Support for Settlement. The Member Units would support the settlement, including the instream flow and long-term transfer components.

4. Pumping in Schedule 6 Years. The instream flow settlement would have seven different year types, from wet to dry (i.e., schedules 1 through 6, and "conference years," which would be 1-in-100 critically-dry years). In Schedule 6 years (about 4 percent of the years of record), the participating Member Units would agree to pump a specified percentage of 30,000 acre-feet of groundwater to supplement storage releases to provide the agreed-to instream flows.

5. Allocation of Schedule 6 Pumping. The allocation of Schedule 6 pumping would be specified in the conjunctive use agreements, as determined by the participating Member Units. The proposed allocation of pumping capacity among the Member Units is as follows:

Brophy Water District:	18.8%
Browns Valley Irrigation District:	9.7%

Cordua Irrigation District:	16.6%
Dry Creek Mutual Water Company:	7.4%
Hallwood Irrigation Company:	15.3%
Ramirez Water District:	9.9%
South Yuba Water District:	12.3%
Wheatland Water District:	<u>10.0%</u>
	100%

The ability of a Member Unit to participate in the conjunctive use program will depend on the extent to which the Member Unit can make arrangements with landowners within its service area to provide the groundwater pumping capacity required for the conjunctive use program. The proposed groundwater pumping allocation set forth in this section could be adjusted to reflect the ability of Member Units to provide this pumping capacity.

6. Payments for the Schedule 6 Pumping Commitment and Schedule 6 Pumping. The Agency would pay the participating Member Units: (a) a one-time, upfront payment of \$50 per acre-foot (payable in two equal installments the first two years of the agreement) for the commitment to pump groundwater in Schedule 6 years; and (b) \$50 per acre-foot when a Member Unit pumped groundwater in a Schedule 6 year.

7. Pumping to Implement the Phase 8 Settlement. The Agency has supported a settlement of Phase 8 of the SWRCB's Bay-Delta Hearings, which would obligate the Agency to pump 15,000 acre-feet of groundwater to substitute for surface water during certain years. Participating Member Units would agree to pump a specified percentage (the same percentage used for allocating pumping in Schedule 6 years) of 15,000 acre-feet per year in below-normal, dry and critical years to satisfy the Phase 8 settlement obligation.

8. Payments for Phase 8 Pumping. The Agency would pay the participating Member Units \$20 per acre-foot (i.e., an amount to reimburse for groundwater pumping energy costs) when they pumped this water. Payments under this settlement agreement for groundwater pumping energy costs would escalate at the rate provided for in the Phase 8 settlement implementation agreement. Any revenues received by the Agency for this pumping under the Phase 8 settlement implementation agreement that exceeded these payments for pumping costs would be deposited in an account to fund the cost of the ongoing groundwater management program. If there were any unused revenues in this account, they would be split between the Member Units and Agency.

9. Payments for Pumping to Mitigate for Deficiencies in Supplemental Water Supplies. The settlement would result in deficiencies in deliveries of supplemental water supplies under the Agency's water supply contracts with the Member Units. To mitigate for these deficiencies in supplemental water supplies, the Agency would pay a Member Unit \$20 per acre-foot (i.e., an amount to reimburse for groundwater pumping energy costs) when the Member Unit pumped groundwater to make up for a deficiency in the supplemental water supply under the Member Unit's water supply contract with the Agency.

10. Participation in Groundwater Substitution Water Transfer Program. Participating Member Units would have the first priority over non-participating Member Units to participate in the Agency's groundwater substitution water transfers.

11. CEQA Compliance for and SWRCB Approval of the Groundwater Substitution Water Transfer Program. The Agency expects that the long-term water transfer agreement with the export interests will include the purchase of groundwater substitution transfer water when it is made available in dry and critical years at prices specified in the agreement. The Agency's (a) environmental review document for the settlement, and (b) petition to the SWRCB for approval of a long-term water transfer, adding the State Water Project and the Central Valley Project to the place of use under the Agency's water rights, would include the long-term groundwater substitution water transfer program.

12. Payments for Pumping for Groundwater Substitution Water Transfers. The Agency would pay to the participating Member Units the purchase price for transferred groundwater substitution water as specified in the long-term water transfer agreement, except that, the Agency would retain \$10 per acre-foot.

13. Mitigation for Fishery Impacts from Groundwater Substitution Water Transfers. The Agency would seek agreement with state and federal fishery agencies on measures to mitigate instream impacts from groundwater substitution water transfers. In Schedule 2, and 3 years, 10 percent of the groundwater substitution water would be dedicated to mitigating instream impacts. In Schedule 4 and 5 years, 20 percent of the groundwater substitution water would be dedicated to mitigating instream impacts. These mitigation quantities would probably be released during times when the water could not be transferred for export from the Delta. The Agency would attempt to arrange for transfers of these mitigation quantities, and pay any such transfer revenues to the Member Units, except that, the Agency would retain \$10 per acre-foot.

14. Conference Years. In "conference years," the Agency would meet with the Member Units, and the parties to the instream flow agreement and the long-term water transfer agreement, to develop an operating plan for that year that will balance water supply and instream flow needs for that year.

15. The Conjunctive Use Program. The Agency's conjunctive use program would monitor groundwater pumping to avoid long-term impacts to the safe yield of the aquifer and impacts to domestic and municipal wells. The maximum annual amount of groundwater pumping for the Schedule 6 year commitments, for the Phase 8 settlement commitments, to mitigate for deficiencies in supplemental water supplies, and for groundwater substitution transfers would not exceed approximately 120,000 acre-feet per year, to avoid long-term impacts to the safe yield of the aquifer. The Agency would coordinate with the Member Units in developing a program for efficiently providing the groundwater needed to implement the settlement (including the designation of wells that would participate in the program). To avoid air quality impacts from the implementation of the settlement (including the groundwater substitution water transfer program), the Agency

would coordinate with the Member Units in the development and implementation of a program to convert certain diesel pumps to electrical pumps. The Agency would reimburse the Member Units for electricity standby charges incurred to implement the conjunctive use program if the wells were not used to provide water for a groundwater substitution water transfer during the period of years that the standby charge is incurred. The Agency would work with the Member Units to avoid (or mitigate for) impacts to domestic and municipal wells. The Agency would use funds from the Phase 8 settlement implementation agreement to fund the conjunctive use program.

16. Reasonable and Beneficial Use of Agency Water Supplies. In accordance with the terms of the water supply contracts between the Agency and the Member Units, water deliveries to the Member Units would be limited to amounts that could be put to reasonable and beneficial use within the Member Unit's service area. The Member Units would pursue water use efficiency actions to help maintain water supply reliability.

17. Implementation of these Principles of Agreement. The Agency and the participating Member Units would draft agreements to implement the principles of agreement. Execution of these agreements would be subject to compliance with the California Environmental Quality Act, and execution of the instream flow agreement and the long-term transfer agreement. This agreement between the Agency and the Member Units would not affect the provisions of the existing water supply agreements between the Agency and the Member Units except to the extent provided for in the agreement.

Exhibit C

Principles of Agreement for Proposed Long-Term Transfer Agreement

**STATE OF CALIFORNIA
THE RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES
AND
UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
CENTRAL VALLEY PROJECT, CALIFORNIA
AND
YUBA COUNTY WATER AGENCY**

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

This Agreement is entered into as of the Effective Date among the Department of Water Resources of the State of California, 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; the United States Department of the Interior, acting through the United States Bureau of Reclamation, pursuant to Section 14 of the Reclamation Project Act of 1939 (43 USC section 389) and other applicable federal law; and Yuba County Water Agency, acting pursuant to the Yuba Act (California Statutes 1959, Chapter 788, as amended) and other applicable laws of the State of California.

RECITALS

A. DWR operates and maintains the SWP pursuant to the laws of the State of California, involving the development and conveyance of water supplies to water supply agencies throughout the State of California.

B. Reclamation has constructed and is operating the CVP for the diversion, storage, carriage, and distribution of waters of the State of California for irrigation, municipal, domestic, industrial water supplies, for fish and wildlife mitigation, protection and restoration, and for generation and distribution of electric energy, salinity control, navigation, flood control, recreation and other beneficial uses.

C. Yuba is a public agency created and existing pursuant to the provisions of the Yuba Act. Yuba owns and operates the Yuba River Development Project, including the Yuba Project.

D. Yuba is engaged in the Yuba River Accord initiative 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 for the CALFED Program to use for protection and restoration of Delta fisheries, and improvements in state-wide water supply management.

E. 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, under which Yuba would revise the operations of the Yuba Project to provide higher flows in the lower Yuba River under certain conditions to improve fisheries protection and enhancement; (2) the Conjunctive Use Agreements between Yuba and water districts within Yuba County for implementing a conjunctive use and water use efficiency program; and (3) this Agreement between Yuba and DWR and Reclamation, pursuant to which DWR and Reclamation will have rights to beneficially use water flows made available by Yuba through the Fisheries Agreement, the Conjunctive Use Agreements, and additional water releases from the Yuba Project, which Yuba asserts it would not and could not make available from the Yuba Project in the absence of the Yuba River Accord and without the revenues provided to Yuba under this Agreement.

F. DWR and Reclamation support the Yuba River Accord, and are willing to enter into this Agreement because it will enable the Yuba River Accord to become effective, thereby improving fishery conditions on the Yuba River and improving water supplies to DWR and Reclamation for: (1) the EWA; (2) the SWP contractors; and (3) authorized purposes of the CVP.

G. The Contracting Parties believe that this Agreement is consistent with: (1) Yuba's commitments to utilize water management tools (such as conjunctive use of groundwater), to create operational efficiencies, and manage water shortage risks in new ways that would benefit the fisheries and augment water supplies for downstream users; and (2) the Projects' need for additional water supplies.

H. Yuba is authorized under the Yuba Act to enter into long-term contracts to sell water for use outside of Yuba County, subject to the provision of Section 5 of the Yuba Act. Yuba has determined, after compliance with the procedures set forth in Section 5 of the Yuba Act, that the water subject to sale or disposition under this Agreement will not be needed during the term of this Agreement by or for the Member Units of Yuba. Yuba has further determined that Yuba is willing, in exchange for the consideration described in this Agreement, to enter into this Agreement.

I. The Contracting Parties, in coordination and consultation with the SWP contractors and CVP contractors, carried out a pilot water transfer program during the 2006 Water Accounting Year, and, based on the success of this pilot program, desire to move forward with this Agreement, as part of the Yuba River Accord.

J. A portion of the Water delivered under this Agreement will be paid for with funds appropriated pursuant to Chapter 7(d) of Proposition 50, California Water Code Section 79550(d).

K. DWR and Reclamation have entered into a separate agreement for the allocation of the Water. In addition, DWR has entered into separate agreements with its SWP contractors, and Reclamation has entered into separate agreements with its CVP contractors, for the allocation of and/or payment for the Water.

L. The Contracting Parties have determined that this Agreement does not conflict with Section 25 of the Short-Term Phase 8 Settlement Agreement.

AGREEMENT

The Contracting Parties agree as follows:

1. Definitions.

When used herein, the term:

- a. **"Buyers"** means DWR and Reclamation.
- b. **"CALFED"** means the joint federal and California program, administered by the California Bay-Delta Authority, intended to develop and implement a long-term comprehensive plan that will, among other purposes, restore ecological health and improve water management for beneficial uses of the Bay-Delta System.
- c. **"CEQA"** means the California Environmental Quality Act.
- d. **"Component 1 Water"** means the water supplies described in Section 5 of this Agreement.
- e. **"Component 2 Water"** means the water supplies described in Section 6 of this Agreement.
- f. **"Component 3 Water"** means the water supplies described in Section 7 of this Agreement.
- g. **"Component 4 Water"** means the water supplies described in Section 8 of this Agreement.
- h. **"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 Exhibit 1 to this Agreement, and using the latest available forecasts for the Water Year.

i. **"Conjunctive Use Agreements"** means those agreements for implementing a conjunctive use and water use efficiency program between Yuba and a sufficient number of Member Units that Yuba determines is satisfactory for Yuba to meet Yuba's obligations under this Agreement, the Fisheries Agreement, and the Yuba Act.

j. **"Contracting Parties"** means DWR, Reclamation and Yuba.

k. **"CVP"** means the Central Valley Project, operated by Reclamation.

l. **"CVPIA"** means the Central Valley Project Improvement Act, Title 34 of the Act of October 30, 1992 (106 Stat. 4706).

m. **"Decision 1644"** means Revised Water-Right Decision 1644 of the State Board, adopted on July 16, 2003.

n. **"DWR"** means the Department of Water Resources of the State of California.

o. **"ESA"** means the federal Endangered Species Act of 1973, as amended (16 U.S.C. sections 1531-1544).

p. **"EWA"** means the environmental water account program described in the CALFED Record of Decision, as extended through the end of 2007, or a long-term environmental water account program.

q. **"Feather River Diversion Facility"** means an intake structure, pumping facilities, a fish screen that meets State and Federal fish screen criteria, and related facilities that Yuba is considering constructing at or below the confluence of the Yuba River and the Feather River for the diversion of water under Yuba's existing water rights for use within Yuba County. The Feather River Diversion Facility would be added as a point of re-diversion under Yuba's existing water rights. On a real-time basis, diversions by Yuba at the Feather River Diversion Facility: (1) would not exceed the quantity of water that would have been available to Yuba for diversion from Yuba River flows upstream of its confluence with the Feather River; (2) when added to the quantity of water diverted by Yuba at Yuba's Daguerre Point of Diversion, would not exceed the quantities of water under Yuba's water rights that Yuba had diverted to beneficial use under applicable provisions of law (including Chapter 1 of Part 1 of Division 2 of the Water Code) prior to the initiation of water diversions at the Feather River Diversion Facility; and (3) would not cause adverse impacts to, or interfere with, DWR or Reclamation's operations of the SWP and CVP, or cause DWR or Reclamation to have to modify operations of their respective SWP or CVP facilities.

r. **"FERC"** means the Federal Energy Regulatory Commission.

s. **"FERC License"** means the license, as amended, issued to Yuba by FERC for the operation of the power facilities of the Yuba Project, the term of which expires on April 3, 2016.

t. **"FERC Annual License"** means one or more annual licenses issued to Yuba by FERC for the operation of the power facilities of the Yuba Project following the expiration of the term of the FERC License.

u. **"FERC Long-Term License"** means the long-term license issued to Yuba by FERC for the operation of the power facilities of the Yuba Project following the expiration of the term of the FERC License and the last FERC Annual License.

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

w. **"Fisheries Agreement"** means the agreement among Yuba, the California Department of Fish and Game, and other parties, dated _____, under which Yuba operates the Yuba Project to provide higher flows in the lower Yuba River under certain conditions to improve fisheries protection.

x. **"Force Majeure Event"** means any: (1) flood; (2) earthquake; (3) failure of the California Aqueduct, the Delta-Mendota Canal, levees, other conveyance facilities, or other major components of the SWP, CVP or the Yuba Project; (4) act of God (other than drought); or (5) any other event (other than a Regulatory Action) beyond the reasonable control of DWR, Reclamation, or Yuba that significantly affects the ability to divert or use Water delivered by Yuba under this Agreement, or that significantly affects Yuba's ability to deliver Water under this Agreement while also meeting its obligations to its Member Units or its obligations under the Fisheries Agreement.

y. **"Groundwater Monitoring and Reporting Program"** means the program, set forth in **Exhibit 3** to this Agreement, pursuant to which Yuba will monitor and report groundwater pumping to implement this Agreement.

z. **"Groundwater O&M Costs"** means the costs related to pumping groundwater as described in Section 12 ("Other Payments to Yuba by Buyers") of this Agreement.

aa. **"Member Units"** means a "Member Unit" as defined in section 84-2(g) of the Yuba Act.

bb. **"NEPA"** means the National Environmental Policy Act.

cc. **"PG&E"** means Pacific Gas and Electric Company.

dd. "PG&E Power Contract" means the power purchase contract between Yuba and PG&E related to the operation of the Yuba Project for the generation of hydroelectric power, dated May 13, 1966.

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

ff. "Projects" means the SWP and the CVP.

gg. "Reclamation" means the United States Department of the Interior, Bureau of Reclamation.

hh. "Regulatory Action" means a court order, regulatory action or change in applicable law that significantly affects either the ability to divert or use Water, or that significantly affects Yuba's ability to deliver Water while also meeting its obligations to its Member Units or its obligations under the Fisheries Agreement.

ii. "Short-Term Phase 8 Settlement Agreement" means the "Short-Term Agreement to Guide Implementation of Short-Term Water Management Actions to Meet Local Water Supply Needs and to Make Water Available to the SWP and CVP to Assist in Meeting the Requirements of the 1995 Water Quality Control Plan and to Resolve Phase 8 Issues" (effective date March 24, 2003).

jj. "State Board" means the California State Water Resources Control Board.

kk. "SWP" means the State Water Project operated by DWR. The SWP is also known as the State Water Facilities, as defined in California Water Code section 12934(d).

ll. "Technical Committee" means the committee, consisting of technical representatives from Yuba, DWR, Reclamation, the CALFED fishery agencies on behalf of EWA, SWP contractors and CVP contractors, established under Section 14 ("Technical Committee and Policy Committee") of this Agreement.

mm. "Water" means Component 1 Water through Component 4 Water delivered by Yuba in a manner consistent with the provisions of Section 11 ("General Provisions Applicable to Water") of this Agreement.

nn. "Water Accounting Year" means the twelve-month period from January 1 to December 31. The Water Accounting Year will be used to account for Water.

oo. "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 Board's March 15, 2000, Revised Water-Right Decision 1641; or (2) as a "Conference Year," based on the procedures and formulas set forth in **Exhibit 1** to this Agreement, using the latest available forecast for the Water Year.

pp. "Yuba" means the Yuba County Water Agency.

qq. "Yuba Act" means the Yuba County Water Agency Act, California Statutes 1959, Chapter 788, as amended.

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

ss. "Yuba River Accord" means Yuba's initiative as described in Recitals D and E of this Agreement.

2. Term of Agreement.

This Agreement will terminate on December 31, 2025, or when all obligations under this Agreement have been satisfied, whichever is later, unless this Agreement is terminated earlier as provided herein.

3. Effective Date.

This Agreement will become effective on the first day of January after: (1) full execution of this Agreement; (2) full execution of the Fisheries Agreement; (3) full execution of the Conjunctive Use Agreements; (4) full execution of an agreement between Yuba and PG&E to amend provisions of the PG&E Power Contract, and approval of the California Public Utilities Commission of such an amendment, if necessary; (5) full execution of the agreement between DWR and Reclamation for the allocation of the Water to be made available under this Agreement; (6) receipt of all State Board approvals that may be necessary to enable the Fisheries Agreement and this Agreement to be fully implemented; and (7) full execution of the agreements between DWR and SWP contractors, and Reclamation and CVP contractors, referred to in Recital K of this agreement. The Contracting Parties will support the actions described in this section.

4. Actions Taken by Yuba to Make Water Available.

A. In accordance with Section 5 of the Yuba Act, all sales of Water are subject to the prior right to the use of such water or Yuba facilities by or for the Member Units. Yuba has taken the following measures to assure that the quantities of Water will be

available to DWR and Reclamation during all Water Year types, as provided in this Agreement, for the term of this Agreement:

1. Yuba has entered into the Conjunctive Use Agreements under which the contracting Member Units have agreed to provide groundwater supplies in substitution for surface water supplies to assist Yuba in implementing this Agreement; and

2. Yuba is implementing a groundwater monitoring program within its service area to ensure that the water supply developed pursuant to the Conjunctive Use Agreements is within the long-term safe yield of the affected aquifer ; and

3. The Board of Directors of Yuba has adopted Resolution No. _____ making findings concerning Yuba's compliance with Section 5 of the Yuba Act, and determining that the Water exceeds the needs of its Member Units and that Yuba can and will perform its obligations under this Agreement.

B. In addition, Yuba is planning for the installation and operation of the Feather River Diversion Facility in the event that Yuba determines that operation of the Feather River Diversion Facility would assist Yuba in making water supplies available within Yuba County. Subject to Yuba agreeing to operate this facility in the manner described in Section 1(q) of this Agreement, DWR and Reclamation will not oppose the installation and operation of the Feather River Diversion Facility for this purpose, and will not object to Yuba obtaining regulatory permits and approvals for the Feather River Diversion Facility.

5. Component 1 Water

A. Component 1 Water Quantity.

1. In each of the first nine Water Accounting Years of this Agreement (January 1, 2007 through December 31, 2015), Yuba will deliver to the Buyers, for use by the EWA, and the Buyers will pay for, 60,000 acre-feet of Component 1 Water, subject to Section 11 ("General Provisions Applicable to Water") of this Agreement. The total quantity of Component 1 Water that Yuba will deliver to the Buyers during the first nine Water Accounting Years of this Agreement will be 540,000 acre-feet. Unless conditions under Section 23.D. apply, Component 1 Water will be used to support continued implementation of current EWA fishery protection purposes that supplement existing regulatory obligations, and Component 1 Water will not be used to comply with, or offset compliance with, the regulatory baseline level of protection in place at the time of the EWA action.

2. In certain years, and pursuant to the accounting principles set forth in **Exhibit 1**, 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 Buyers to be reduced below 60,000 acre-feet during a Water Accounting Year. Under those circumstances, unless the Contracting Parties agree otherwise, Yuba will deliver the

undelivered Component 1 Water: (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; and (c) on a schedule that is acceptable to the Buyers and Yuba that would not impair the ability of Yuba to make Components 2 through Components 4 Water available, as provided in this Agreement.

3. The Buyers and Yuba will schedule Component 1 Water pursuant to Section 9 ("Scheduling of Water") of this Agreement.

4. In all Water Accounting Years that include all or part of the term of any FERC Annual License, Yuba will deliver to the Buyers, and the Buyers will pay for, 60,000 acre-feet of Component 1 Water, subject to Sections 15A(2) and 15B of this Agreement.

5. The quantities of Component 1 Water delivered by Yuba to the Buyers during all Water Accounting Years that include the term of the FERC Long-Term License, and do not include any part of the term of any FERC Annual License, will be subject to Sections 15A(3) and 15C of this Agreement.

B. Component 1 Water Pricing.

1. As full compensation to Yuba for making Component 1 Water, available during each of the first nine Water Accounting Years of this Agreement, the Buyers will pay Yuba as follows: (a) an initial payment of \$32,700,000; and (b) an additional payment of \$2,550,000. These payments will be made as described in Section 5C and Section 10 ("Invoicing") of this Agreement.

2. The pricing provisions applicable to Component 1 Water delivered by Yuba to Buyers during all Water Accounting Years after the first nine Water Accounting Years will be those set forth in Section 15 ("Quantities of and Pricing Provisions for Water During a FERC Annual License and During the FERC Long-Term License") of this Agreement.

C. Component 1 Water Payment Provisions.

1. In accordance with Section 10 ("Invoicing") of this Agreement, Yuba will, within thirty days of the Effective Date, submit an invoice to DWR for the initial payment of (*insert revised number*). DWR will make payment to Yuba within sixty days of the date the invoice has been received by both the DWR Contract Manager and the Accounting Office.

2. In accordance with Section 10 ("Invoicing") of this Agreement, and not more than sixty days before October 1, 2015, unless requested sooner in writing by DWR and Reclamation, Yuba will submit duplicate invoices to DWR and Reclamation for the additional payment for Component 1 Water of (*insert revised number*). The Buyers will promptly allocate the payment responsibilities between DWR and Reclamation. Provided that any undelivered Component 1 water specified in Sections 5(A)(1) and (2) of this Agreement has been delivered or scheduled for delivery within twelve months of the payment due date, and in accordance with Section 9 ("Scheduling of Water") of this Agreement, DWR will make payment to Yuba within sixty days of the date the invoice has been received by both the DWR Contract Manager and the Accounting Office, and Reclamation will make payment to Yuba within thirty days of the date that the invoice is received by Reclamation. If undelivered Component 1 water has not been fully scheduled at the time the invoices are received by DWR and Reclamation, the beginning date for determining when payment to Yuba is due will be the day such schedule is agreed to among the Contracting Parties.

6. Component 2 Water.

A. Component 2 Water Quantity.

1. Yuba will deliver to the Buyers, subject to Section 11 ("General Provisions Applicable to Water") of this Agreement, and the Buyers will pay for:

a. In any Water Year that has a Final Classification as Dry, 15,000 acre-feet of Component 2 Water; and

b. In any Water Year that has a Final Classification as Critical, 30,000 acre-feet of Component 2 Water.

2. The Buyers and Yuba will schedule Component 2 Water pursuant to Section 9 ("Scheduling of Water") of this Agreement.

3. In all Water Accounting Years that include all or part of the term of any FERC Annual License, Yuba will deliver to the Buyers Component 2 Water, subject to Sections 15A(2) and 15B of this Agreement.

4. The quantities of Component 2 Water delivered by Yuba to the Buyers during all Water Accounting Years that include the term of the FERC Long-Term License, and do not include any part of the term of any FERC Annual License, will be subject to Sections 15A(3) and 15C of this Agreement.

B. Component 2 Water Pricing.

1. The Buyers will pay Yuba for Component 2 Water as follows:

- a. In any Water Year that has a Final Classification as Dry, \$50.00 per acre-foot;
 - b. In any Water Year that has a Final Classification as Critical, \$62.50 per acre-foot; and
 - c. The payment adjustments (if any) provided for in Section 12C of this Agreement.
2. The Buyers will pay Yuba for Component 2 Water pursuant to Section 6C and Section 10 ("Invoicing") of this Agreement.
 3. The pricing provisions applicable to Component 2 Water delivered by Yuba to Buyers during all Water Accounting Years that include all or part of the term of any FERC Annual License or the term of the FERC Long-Term License are set forth in Section 15 ("Quantities of and Pricing Provisions for Water During a FERC Annual License and During the FERC Long-Term License") of this Agreement.

C. Component 2 Payment Provisions.

1. For each Water Year that Component 2 Water is being delivered to Buyers, Yuba will submit an invoice to each of the Buyers on or after June 1 for fifty percent of the amount due for Component 2 Water scheduled to be delivered to the Buyers pursuant to this Agreement, adjusted by an amount equal to fifty percent of any credits or reimbursements due from Yuba to the Buyers. By January 7 of the subsequent year, Yuba will submit an invoice to each of the Buyers for the remaining fifty percent of the amount due for Component 2 Water scheduled to be delivered to the Buyers pursuant to this Agreement, less the remaining amount of any credits or reimbursement due the Buyers. The invoices will contain all of the information and be transmitted to Buyers as set forth in Section 10 ("Invoicing") of this Agreement.

2. DWR will pay Yuba within sixty days of the date that both the DWR Contract Manager and the Accounting Office receive invoices containing all of the information required by Section 10(B) of this Agreement. Reclamation will make payment to Yuba within thirty days of the date a complete invoice is received by Reclamation. With respect to the first invoice from Yuba, the Buyers will pay Yuba an amount equal to fifty percent of the price for the Component 2 Water that has been scheduled for delivery during the current Water Accounting Year in accordance with Section 9 ("Scheduling of Water") of this Agreement, minus fifty percent of any credit or reimbursement due from Yuba to the Buyers pursuant to Section 12 ("Payments for Fixed Annual Costs") of this Agreement. With respect to the second invoice from Yuba, the Buyers will pay the remaining amount due to Yuba for Component 2 Water, based on an accounting of actual Water deliveries in the previous Water Accounting Year, less the remaining amount of any credit or reimbursement due the Buyers pursuant to Section 12 ("Payments for Fixed Annual Costs") of this

Agreement. With respect to both invoices from Yuba, DWR will pay Yuba within sixty days of the date both the DWR Contract Manager and the Accounting Office have received the appropriate invoices containing all of the information required by Section 10(B) of this Agreement, and Reclamation will make payment to Yuba within thirty days of the date a complete invoice is received.

7. Component 3 Water.

A. Component 3 Water Quantity.

1. Subject to Section 11 ("General Provisions Applicable to Water") of this Agreement:

a. When the allocations as of April 21:

(i) For CVP South of Delta agricultural contractors are at or below thirty-five percent of their CVP contractual entitlements, and for SWP contractors are at or below forty percent of their SWP water supply contract Table A Amounts, Yuba will deliver to the Buyers, and the Buyers will pay for, 40,000 acre-feet of Component 3 Water; or

(ii) For CVP South of Delta agricultural contractors are at or below forty-five percent and above thirty-five percent of their CVP contractual entitlements, or for SWP contractors are at or below sixty percent and above forty percent of their SWP water supply contract Table A Amounts the Buyers, on or before April 21, the Buyers may request that Yuba deliver up to 40,000 acre-feet of Component 3 Water, and Yuba will deliver to Buyers the quantity of Component 3 Water requested.

2. The Buyers and Yuba will schedule Component 3 Water pursuant to Section 9 ("Scheduling of Water") of this Agreement. In addition:

a. If after April 21, but prior to May 21, allocations to CVP South of Delta agricultural contractors or SWP contractors decrease, then:

(i) if section 7A(1)(a)(ii) of this Agreement remains applicable notwithstanding the decreased allocation(s), the Buyers will have the right to call for Component 3 Water or additional Component 3 Water up to the maximum amount authorized by section 7A(1)(a)(ii); provided, however, that the quantity or increased quantity of Component 3 Water Yuba is required to deliver will be reduced to reflect any reduction in the amount of groundwater pumping availability between April 21 and May 21.

(ii) if section 7A(1)(a)(i) of this Agreement becomes applicable due to the decreased allocations, and the Buyers had opted to have less than 40,000 acre feet of Component 3 Water delivered, Yuba will deliver to the Buyers, and the

Buyers will pay for 40,000 acre feet of Component 3 Water reduced by an amount that reflects any reduction in the amount of groundwater pumping availability between April 21 and May 21.

b. If after April 21, but prior to May 21, allocations to CVP South of Delta agricultural contractors or SWP contractors increase, then the Buyers may, on or before May 21, reduce their request for Component 3 Water to the greater of zero or the quantity of water already delivered by Yuba plus the quantity of water already stored by Yuba through the substitution of groundwater for surface water in anticipation of Component 3 Water deliveries originally requested by the Buyers. This section will not apply to circumstances where, notwithstanding an increase in the Buyers' May water supply allocations, Section 7(A)(1)(a)(i) of this Agreement remains applicable.

3. In all Water Accounting Years that include all or part of the term of any FERC Annual License, Yuba will deliver to the Buyers, and the Buyers will pay for, Component 3 Water, subject to Section 15B of this Agreement.

4. The quantities of Component 3 Water delivered by Yuba to the Buyers during Water Accounting Years that include the term of the FERC Long-Term License, and do not include any part of the term of any FERC Annual License, will be subject to Section 15C of this Agreement.

B. Component 3 Water Pricing.

1. The Buyers will pay Yuba for Component 3 Water as follows:

(Wet year and low allocations not possible?)

a. In any Water Year that has a Final classification Classification as Above-Normal, \$50.00 per acre-foot;

b. In any Water Year that has a Final Classification as Below-Normal, \$75.00 per acre-foot;

c. In any Water Year that has a Final Classification as Dry, \$100.00 per acre-foot;

d. In any Water Year that has a Final Classification as Critical, \$125.00 per acre-foot; and

e. The payment adjustments (if any) provided for in Section 12C ("Payments for Adjustments in Groundwater O&M Costs) of this Agreement. *(Note: no other payment adjustments possible?)*

2. The Buyers will pay Yuba for Component 3 Water pursuant to Section 7C and Section 10 ("Invoicing") of this Agreement.

3. The pricing provisions applicable to Component 3 Water delivered by Yuba to Buyers during all Water Accounting Years that include all or part of the term of any FERC Annual License or the term of the FERC Long-Term License are set forth in Sections 15B and C of this Agreement.

C. Component 3 Payment Provisions

1. In accordance with Section 10 ("Invoicing") of this Agreement, Yuba will submit an invoice to the Buyers on or after June 1 each Water Accounting Year for fifty percent of the amount due for Component 3 Water scheduled to be delivered to the Buyers pursuant to this Agreement, adjusted by an amount equal to fifty percent of any credits or reimbursements due from Yuba to the Buyers. By January 7 of the subsequent year, Yuba will submit an invoice to the Buyers for the remaining fifty percent of the amount due for Component 3 Water scheduled to be delivered to the Buyers pursuant to this Agreement, less the remaining amount of any credits or reimbursement due the Buyers.

2. In accordance with Section 10 ("Invoicing") of this Agreement, DWR will pay Yuba within sixty days of the date that both the DWR Contract Manager and the Accounting Office receive the appropriate invoices and verification that the amount of Component 3 Water specified therein has been scheduled in accordance with Section 9 ("Scheduling of Water") of this Agreement. Reclamation will make payment to Yuba within thirty days of the date the invoice is received by Reclamation. The Buyers will pay Yuba an amount equal to fifty percent of the price for the Component 3 Water that has been scheduled for delivery during the current Water Accounting Year in accordance with Section 9 ("Scheduling of Water") of this Agreement, minus fifty percent of any credit or reimbursement due from Yuba to the Buyers pursuant to Section 12 ("Payments for Fixed Annual Costs") of this Agreement. On or before March 7 of the subsequent year, the Buyers will pay the remaining amount due to Yuba for Component 3 Water, based on an accounting of actual Water deliveries in the previous Water Accounting Year, less the remaining amount of any credit or reimbursement due the Buyers pursuant to Section 12 ("Payments for Fixed Annual Costs") of this Agreement.

8. Component 4 Water.

A. Component 4 Water Quantity.

1. Yuba will provide to the Buyers, subject to Section 11 ("General Provisions Applicable to Water") of this Agreement, Component 4 Water as follows:

a. On or before April 10 of each year, Yuba will inform the Buyers of the quantity of Component 4 Water that Yuba could make available from Yuba's available surface and groundwater that Water Accounting Year.

b. By May 15 the Buyers will notify Yuba if they will take delivery of any or all of the Component 4 Water that Yuba informed the Buyers that Yuba will make available.

2. The Buyers and Yuba will schedule Component 4 Water pursuant to Section 9 ("Scheduling of Water") of this Agreement.

3. In all Water Accounting Years that include all or a part of the term of any FERC Annual License, Yuba will deliver to the Buyers, and the Buyers will pay for, Component 4 Water pursuant to Section 15B of this Agreement.

4. The quantities of Component 4 Water delivered by Yuba to the Buyers during all Water Accounting Years that include the term of the FERC Long-Term License, and do not include any part of the term of any FERC Annual License, will be subject to Section 15C of this Agreement.

B. Component 4 Water Pricing.

1. The Buyers will pay Yuba for Component 4 Water as follows:

a. In any Water Year that has a Final Classification as Wet, \$25.00 per acre-foot;

b. In any Water Year that has a Final Classification as Above-Normal, \$50.00 per acre-foot;

c. In any Water Year that has a Final Classification as Below-Normal, \$75.00 per acre-foot;

d. In any Water Year that has a Final Classification as Dry, \$100.00 per acre-foot;

e. In any Water Year that has a Final Classification as Critical, \$125.00 per acre-foot

f. The payment adjustments (if any) provided for in Section 12C ("Payments for Adjustments in Groundwater O&M Costs") of this Agreement.

2. The Buyers will pay Yuba for Component 4 Water pursuant to the payment and invoicing provisions of this Section.

3. The pricing provisions applicable to Component 4 Water delivered by Yuba to Buyers during all Water Accounting Years that include all or part of the term of any FERC Annual License or the term of the FERC Long-Term License are set forth in Sections 15B and C of this Agreement.

C. Component 4 Payment Provisions.

1. In accordance with Section 10 ("Invoicing") of this Agreement, Yuba will submit an invoice to the Buyers on or after June 1 each Water Accounting Year for fifty percent of the amount due for Component 4 Water scheduled to be delivered to the Buyers pursuant to this Agreement, adjusted by an amount equal to fifty percent of any credits or reimbursements due from Yuba to the Buyers. By January 7 of the subsequent year, Yuba will submit an invoice to the Buyers for the remaining fifty percent of the amount due for Component 4 Water scheduled to be delivered to the Buyers pursuant to this Agreement, less the remaining amount of any credits or reimbursement due the Buyers.

2. In accordance with Section 10 ("Invoicing") of this Agreement, DWR will pay Yuba within sixty days of the date that both the DWR Contract Manager and the Accounting Office receive the appropriate invoices and verification that the amount of Component 4 Water specified therein has been scheduled in accordance with Section 9 ("Scheduling of Water") of this Agreement. Reclamation will make payment to Yuba within thirty days of the date the invoice is received by Reclamation. The Buyers will pay Yuba an amount equal to fifty percent of the price for the Component 4 Water that has been scheduled for delivery during the current Water Accounting Year in accordance with Section 9 ("Scheduling of Water") of this Agreement, minus fifty percent of any credit or reimbursement due from Yuba to the Buyers pursuant to Section 12 ("Payments for Fixed Annual Costs") of this Agreement. On or before March 7 of the subsequent year, the Buyers will pay the remaining amount due to Yuba for Component 4 Water, based on an accounting of actual Water deliveries in the previous Water Accounting Year, less the remaining amount of any credit or reimbursement due the Buyers pursuant to Section 12 ("Payments for Fixed Annual Costs") of this Agreement.

9. Scheduling of Water.

On or about April 10 of each Water Accounting Year, or as soon thereafter as practicable, the Contracting Parties will agree on a proposed delivery schedule for Component 1, 2, 3 and 4 Water. The proposed schedule may be revised periodically thereafter, and the Contracting Parties will agree on a final schedule no later than May 21. The final schedule may be adjusted to account for changes in Bay-Delta conditions that affect the delivery of Water, and for changes in the flow schedule for the lower Yuba River as provided for in the Fisheries Agreement. The proposed and final schedules will also show the scheduling of water delivered by Yuba under the Short-Term Phase 8 Settlement Agreement.

The scheduling of Water, and any adjustments to the schedule, will be in accordance with the water scheduling and accounting provisions set forth in **Exhibit 1** ("Scheduling and Accounting Principles") of this Agreement.

10. Invoicing.

A. On or before May 31 of each year, the Buyers will notify Yuba of the percentage allocation of payments to be billed by Yuba that year to DWR and Reclamation, respectively; provided that, the Buyers will not allocate a payment obligation to one of the Buyers to the extent that the Buyer lacks funds to make the payment that year.

B. Yuba's invoices to DWR and Reclamation will contain the following information:

- i) Federal and State Agreement numbers;
- ii) Yuba's Taxpayer Identification Number;
- iii) remittance address;
- iv) point of contact;
- v) for estimated payments, verification that the Water has been scheduled in accordance with Section 9 ("Scheduling of Water") of this Agreement; and
- vi) for year-end payments, certification that the Water has been delivered.

C. Yuba will submit, at the same time, two copies of each invoice to DWR State Water Project Analysis Office and one copy to DWR Accounting office at the following addresses:

Department of Water Resources
Chief, State Water Project Analysis Office
1416 Ninth Street
Post Office Box 942836
Sacramento, California 94236-0001

Department of Water Resources
Accounting Office, Contracts Payable Unit
Post Office Box 942836
Sacramento, California 94236-0001

D. Yuba will submit copies of each invoice to the following address:

U.S. Bureau of Reclamation, Mid Pacific Region
Re: Agreement No. (to be provided)
2800 Cottage Way
Sacramento, California 95825

11. General Provisions Applicable to Water.

A. Accounting for Water.

Water delivered by Yuba to the Buyers will be accounted for in the manner set forth in **Exhibit 1** ("Scheduling and the Accounting Principles") of this Agreement.

B. Reservoir Refill Impact Accounting.

Yuba will provide assurance to the Buyers that the refilling of reservoir storage in the Yuba Project resulting from the delivery of Water under this Agreement will not adversely impact the Projects by complying with the provisions of **Exhibit 2** ("Reservoir Refill Accounting Provisions") of this Agreement. The provisions of **Exhibit 2** will not apply to Water made available as a result of Yuba delivering groundwater instead of surface water to its Member Units to implement this Agreement.

C. Yuba's Conjunctive Use Program.

To the extent that Yuba delivers groundwater instead of surface water to its Member Units in order to deliver Water to the Buyers pursuant to this Agreement, Yuba will comply with the provisions of **Exhibit 3** ("Groundwater Monitoring and Reporting Program") of this Agreement.

D. Conference Year Principles.

During any Conference Year, the Contracting Parties will meet (along with the parties to the Fisheries Agreement and the Conjunctive Use Agreements) to determine how to address the circumstances, and to discuss the operation of the Yuba Project during that Water Accounting Year. During a Conference Year: (1) Yuba will have no obligation to deliver any quantity of Components 1 through 4 Water; (2) Yuba will not have to refund any part of the payment received for Component 1 Water; and (3) Yuba will deliver in a subsequent Water Accounting Year on a schedule that is acceptable to the Buyers and Yuba the quantity of Component 1 Water that was not delivered during the Conference Year.

E. Efforts to Maximize the Beneficial Use of Water.

Yuba will optimize to the extent feasible the operation of the Yuba Project to meet Yuba's obligations to supply Water under this Agreement. The Contracting Parties will coordinate their respective Projects' operations to maximize the beneficial use of Water released by Yuba under this Agreement.

F. Sale to Third Parties.

To the extent the Water is otherwise transferable under California law, in those years when Yuba offers Components 3 or 4 Water, but the Buyers decline to take all of the Water

offered, Yuba may sell the Water not taken by Buyers to a third party, provided that such sale to the third party will not impair Yuba's ability to meet its obligations to deliver Components 1 through 4 Water in the current or any future Water Accounting Year. In addition, to the extent the water is otherwise transferable under California law, Yuba may sell to a third party any quantity of Components 1, 3 or 4 Water released by Yuba that would have been accounted for as Water except for the inability of the Buyers to take delivery (e.g., during times when the Bay-Delta was out of balance). Yuba will provide the Buyers ten days' advance notice of a sale to a third party under this section.

G. Periodic Accounting of Water Delivered by Yuba.

After the first nine years of operations under this Agreement, and as appropriate thereafter, the Contracting Parties, with the assistance of the Technical Committee and the Policy Committee, will develop a comprehensive accounting of all Water delivered under this Agreement. If it is determined that less than the quantities of Water required to be delivered under the first nine years have been delivered or under appropriate periods thereafter, and the Buyers have paid for quantities of Water that have not been delivered, then Yuba will deliver supplies of Water to the Buyers to make up for such deficiencies, on a schedule that is acceptable to the Buyers and Yuba that would not impair the ability of Yuba to make other deliveries of Water under this Agreement.

12. Other Payments to Yuba by the Buyers.

A. Diesel Conversions.

In furtherance of the mitigation of potential impacts to air quality from implementation of the Accord, Yuba has implemented as part of the Conjunctive Use Agreements a program to convert certain pumps used to pump groundwater from diesel to electric, or to other forms of energy that reduce air quality impacts. Conversion of pumps to electricity or other forms of energy that reduce air quality impacts has been and will be performed by Yuba for purposes of this Agreement. Prior to submitting invoices to the Buyers under Section 10 ("Invoicing") of this Agreement, Yuba will: (1) submit to the Technical Committee for review documentation of the diesel conversion work performed and costs incurred from and after September 1, 2004 for purposes of this Agreement and the Accord; and (2) confirm to the Policy Committee that the work performed and costs incurred were in furtherance of mitigation of potential impacts on air quality from implementation of the Accord. Subject to receipt of such information and concurrence by the Policy Committee, the Buyers will pay Yuba the amount of such invoices, but not more than a total of \$1,000,000.00.

B. Payments for Fixed Annual Costs and for Environmental Compliance.

1. During the term of this Agreement, on or before April 1 each year, the Buyers will pay to Yuba up to \$250,000.00 to pay a portion of Yuba's annual costs for implementing the Yuba River Accord. On or before February 1, Yuba will submit to DWR and Reclamation duplicate invoices with documentation of costs incurred by Yuba to implement the Yuba River Accord, up to \$250,000 per year. The Buyers will pay Yuba the amount of such invoice, but not more than \$250,000 per year, pursuant to this Section and Section 10 ("Invoicing") of this Agreement. Yuba will provide to the Buyers, for payments made under this subsection, a credit against future payments due for Components 2, 3 and 4 Water. Yuba will record and accrue these credits from year to year until Yuba makes Component 2, 3 or 4 Water available, in which time such credits will be applied toward payments due.

2. Under separate agreements between Yuba and DWR, and Yuba and Reclamation, Yuba paid one-third, and the Buyers paid two-thirds, of the costs of environmental compliance for implementing the Yuba River Accord, which is referred to in Section 16 ("Environmental Compliance") of this Agreement. Yuba will provide the Buyers a credit equal to one-half of such costs that were paid by Buyers, which credit will be applied against payments due for delivery of Component 2 through Component 4 Water. *[Drafting note: This section is subject to revision in the event that funding for environmental compliance is provided from sources other than Yuba and the Buyers].*

C. Payments for Adjustments in Groundwater O&M Costs.

During the term of this Agreement, the Buyers will pay Yuba, based on itemized invoices of work done and costs incurred, an amount to compensate for any annual increases above actual 2006 Groundwater O&M Costs, including those costs necessary for upkeep, power, and operation of those fixed assets that are dedicated to making Water available to the Buyers under this Agreement from groundwater sources, and recurring costs or payments required to obtain consents necessary to make Water available under this Agreement from groundwater sources. Groundwater O&M Costs will exclude general district overhead charges. Yuba will submit to the Technical Committee for a thirty-day review the documentation of work done and costs incurred prior to submitting invoices to the Buyers in accordance with the payment and invoicing provisions for Components 2, 3, or 4 Water under this Agreement. The Technical Committee will review invoices to ensure that payments made under the payment and invoicing provisions for Components 1 through 4 Water do not duplicate payments made under this subsection. Annual increases above the 2006 baseline will be computed based on the Consumer Price Increase as provided by the United States Department of Labor, Bureau of Labor Statistics. *[Drafting note: This section is subject to revision to provide a more specific reference to the applicable Consumer Price Index.]*

13. Certain Payments Contingent on Appropriation or Allotment of Funds.

A. General.

In consideration of Yuba's 9-year commitment to deliver Component 1 Water, the Buyers confirm that the funds required to pay Yuba for Component 1 Water during that period have been appropriated, and DWR will encumber the funds to pay Yuba for Component 1 Water during that period on the schedule provided for in Section 5C1 of this Agreement. The Buyers intend that the payments due to Yuba under this Agreement for Components 2, 3, and 4 Water that is made available to the SWP and CVP contractors will be paid from DWR funds received from the SWP contractors and from Reclamation funds received from the CVP contractors. The Buyers have made contractual arrangements with the SWP and CVP contractors under which the SWP and CVP contractors would have an opportunity to make payments due to Yuba under this Agreement, in the event that the Buyers fail to make such payments when due, in order to avoid an interruption in Yuba making Water available to the Buyers under this Agreement. To the extent that the Buyers default in making the payments due to Yuba under this Agreement, then: (1) Yuba's obligation to make Water available to the Buyers under this Agreement will be excused to the extent and for the duration of the Buyers' default; (2) Yuba may attempt to mitigate its damages by selling Component 3 and Component 4 Water made available under this Agreement to other parties to the extent and for the duration of the Buyers' default; and (3) the Buyers will be obligated to pay Yuba to the extent that Yuba is unable to mitigate Yuba's damages resulting from the Buyers' default, subject to any applicable limitations on Reclamation's authority under federal law.

B. State Funding Contingency.

Except to the extent that DWR uses funds from sources that do not require legislative budgetary appropriation, DWR's payment obligations under this Agreement are contingent on appropriation or allotment of funds through the State Budget process.

C. Federal Anti-Deficiency Clause.

The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement will be contingent upon the appropriation or allotment of funds for the purposes of this Agreement. No liability will accrue to the United States in case funds are not appropriated or allotted.

14. Technical Committee and Policy Committee

A. Technical Committee.

The Technical Committee will: (1) collect, review and analyze information relevant to accounting for Water consistent with **Exhibits 1 through 3**, and information related to advances, payments and cost adjustments; (2) identify and attempt to resolve technical implementation issues; (3) periodically report to the Policy Committee on the information gathered and any technical implementation issues identified; and (4) make recommendations to the Policy Committee for resolution of any policy issues that arise or for any required factual determinations. If the Technical Committee is unable to agree on a recommendation to the Policy Committee, the Technical Committee will cooperate to provide a balanced presentation of the facts, opinions and other information underlying the various positions on the issue to be determined.

B. Policy Committee.

The Policy Committee will: (1) provide policy guidance in implementing this Agreement; (2) make any factual determinations required to implement this Agreement; (3) consider information provided by the Technical Committee, if applicable, when making decisions; and (4) identify and resolve any policy-related implementation issues. If agreement among the representatives to the Policy Committee cannot be reached on any issue necessary to the ongoing implementation of the Agreement, the Buyers and Yuba will meet and confer in a good faith effort to reach agreement. In the event that agreement cannot be reached among the Buyers and Yuba on an issue, that issue will be subject to Section 22 ("Remedies and Dispute Resolution") of this Agreement.

C. Interaction with River Management Team.

DWR and Reclamation will each designate a representative to actively participate in the River Management Team established under the Fisheries Agreement.

15. Quantities of and Pricing Provisions for Water During a FERC Annual License and During the FERC Long-Term License.

A. Intent of the Contracting Parties.

1. Yuba expects that, upon the expiration of the term of the FERC License, FERC will issue to Yuba one or more FERC Annual Licenses, before it issues to Yuba the FERC Long-Term License.

2. The Contracting Parties desire that Yuba continue to deliver, and the Buyers continue to pay for, Components 1 through 4 Water in accordance with Section 11 ("General Provisions Applicable to Water") of this Agreement during any Water Year beginning after September 30, 2015 for which either the FERC License or a FERC Annual License is in effect, if: (a) these quantities of Water can be delivered by Yuba consistent with the terms of the FERC License or any FERC Annual License; and (b) subject to a pricing agreement between the Contracting Parties. The Contracting Parties further intend that, other than the pricing provisions, there will be no change in the other provisions

of this Agreement (including the provisions regarding the quantities of Components 1 through 4 Water delivered by Yuba, and paid for by the Buyers) during any Water Year beginning after September 30, 2015 that includes all or part of the term of any FERC Annual License, if the terms of the FERC Annual License do not significantly affect Yuba's ability to make these water supplies available.

3. The Contracting Parties desire that Yuba continue to deliver, and the Buyers continue to pay for, Components 1 through 4 Water in accordance with Section 11 ("General Provisions Applicable to Water") of this Agreement during any Water Year that is within the term of a FERC Long-Term License, and not within the term of any FERC Annual License, if these quantities of Water can be delivered by Yuba consistent with: (a) the terms of the FERC Long-Term License; (b) the water supply needs within the service area of Yuba; and (c) the ability of the Buyers and Yuba to agree to pricing provisions. The Buyers and Yuba further intend that, other than the quantity and pricing provisions, there will be no change in the other provisions of this Agreement during any Water Year that is within the term of a FERC Long-Term License.

B. Quantities of Water and Pricing Provisions Applicable During the Term of the FERC Annual Licenses.

During any Water Accounting Year beginning after December 31, 2015 during which either the FERC License or any FERC Annual License is in effect, Yuba will deliver, and the Buyers will pay for, Components 1 through 4 Water, in accordance with Section 11 ("General Provisions Applicable to Water") of this Agreement, subject to the following: Yuba may adjust the quantities of Water that Yuba will deliver to the Buyers (but the quantity will not be less than 20,000 acre-feet of Water in each such Water Accounting Year, other than a Conference Year), but only to the extent needed to reflect the ability of Yuba to deliver these quantities of Water consistent with the terms of the FERC Annual License. The Buyers and Yuba will negotiate in good faith the quantity and pricing provisions applicable to Components 1 through 4 during such Water Accounting Years, but under no circumstance will the price for the Water be less than the pricing provisions applicable to Components 1 through 4 Water, as set forth in Sections 5 through 8 of this Agreement.

C. Quantities of Water and Pricing Provisions Applicable During the Term of the FERC Long-Term License.

During any Water Accounting Year that is within the term of the FERC Long-Term License, and for which no part of the Water Accounting Year is within the term of any FERC Annual License, Yuba will deliver, and the Buyers will pay for, Components 1 through 4 Water, in accordance with Section 11 ("General Provisions Applicable to Water") of this Agreement, subject to the following: the Buyers and Yuba reach agreement as to the quantities of Components 1 through 4 Water that Yuba will deliver to the Buyers (but which quantities will not be less than 20,000 acre-feet of Water in any Water Accounting Year through December 31, 2025, other than during a Conference Year), to reflect the ability of Yuba to deliver these quantities of Water consistent with: (a) the terms of the FERC Long-

Term License; and (b) the water supply needs within the service area of Yuba. The Buyers and Yuba will negotiate in good faith the quantity and pricing provisions applicable to Components 1 through 4 Water during the term of the FERC Long-Term License.

16. Environmental Compliance. *[Drafting note: this section will be written to reflect final compliance with NEPA, CEQA and ESA.]*

A. NEPA/ESA.

On _____, 20____, Reclamation adopted and approved a Record of Decision on an Environmental Impact Statement addressing the impact and effects of the actions taken under this Agreement. On _____, 20____, Reclamation received a concurrence letter from the United States Fish and Wildlife Service and NOAA Fisheries regarding compliance with ESA. *(To be completed)*

B. CEQA.

Yuba, as lead agency, and DWR and _____, as responsible agencies, have approved and filed notices of determination concerning the implementation of the Yuba River Accord and its environmental effects. *(To be completed)*

17. Approvals and Conditions Precedent to Performance of this Agreement.

A. Section 5.2 of the Yuba Act.

Yuba represents that Yuba has complied with the provisions of Section 5.2 of the Yuba Act, which requires that, prior to entering into this Agreement, the Board of Directors of Yuba to: (1) determine that water to be purchased under this Agreement would be surplus to the amount of water available to meet the contractual requirements of Member Units; (2) hold a public hearing to receive and consider comments on and objections to this Agreement; (3) confirm that a majority in number of registered voters residing within Yuba County have not filed written protests against this Agreement; and (4) find that the long-term purchase of water under this Agreement may be carried out without injuring any legal user of water, without unreasonably affecting fish, wildlife or other instream beneficial uses, and without unreasonably affecting the overall economy of Yuba County.

B. State Board Order.

Yuba has obtained approval of the State Board as necessary to enable this Agreement to be fully implemented.

C. Compliance with Water Code Section 1745.10.

Yuba represents that Yuba has complied with the provisions of Water Code Section 1745.10.

D. Other Approvals by Yuba.

Yuba will be responsible for obtaining any other permits and approvals necessary for Yuba to make Water available to the Buyers under this Agreement.

E. Other Approvals by Buyers.

Except as otherwise addressed in this Agreement, the Buyers will be responsible for obtaining any permits and approvals necessary for them to make use of the Water made available under this Agreement

18. Place of Use of Water.

Water made available under this Agreement will be not used outside of the place of use specified in the State Board order approving this delivery of Water from Yuba to the Buyers, without the written consent of Yuba.

19. Hold Harmless.

A. DWR will not assert that Reclamation and Yuba, their respective officers, agents or employees, are liable for damages of any nature whatsoever arising out of any actions or omissions by DWR, its 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 officers, agents or employees.

B. Reclamation will not assert that DWR and Yuba, their respective officers, agents or employees, are liable for damages of any nature whatsoever arising out of any actions or omissions by Reclamation, its officers, agents or employees, related to Reclamation's performance of this Agreement, where such liability is caused by an act, error or omission of Reclamation, its officers, agents or employees.

C. Yuba will not assert that DWR and Reclamation, their respective officers, agents or employees, are liable for damages of any nature whatsoever arising out of any actions or omissions by Yuba, its officers, agents or employees, related to Yuba's performance of this Agreement, where such liability is caused by an act, error or omission of Yuba, its officers, agents or employees.

D. To the extent permitted by California law, Yuba will indemnify, defend and hold DWR and its officers, agents and 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 Yuba's activities under this Agreement that are under the exclusive control of Yuba, including but not limited to the release, conveyance, use or distribution of water released by Yuba from the Yuba Project for purposes of this Agreement.

E. To the extent permitted by California law, DWR will indemnify, defend and hold Yuba and its officers, agents and 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 under this Agreement that are under the exclusive control of DWR, including but not limited to the conveyance, use or distribution of water made available by Yuba from the Yuba Project for purposes of this Agreement.

F. Yuba and its officers, agents, employees and insurers will not be responsible for the quality of water made available by Yuba from the Yuba Project for purposes of this Agreement.

20. Force Majeure Event.

A. A *Force Majeure* Event will excuse or suspend performance as provided in this section for the duration of the *Force Majeure* Event. To the extent that *Force Majeure* Event prevents the Buyers from using the Water delivered by Yuba, then: (a) the Buyers will be excused from paying for Components 2 through 4 Water during the duration of the *Force Majeure* Event; and (b) Yuba will retain the payments received for Component 1 Water with no obligation to deliver this Component 1 Water again at some later time.

B. To the extent that a *Force Majeure* Event prevent Yuba from providing Components 1 through 4 Water, then: (a) Yuba's performance will be excused during the duration of the *Force Majeure* Event; (b) Yuba will not be required to refund payments for Component 1 Water; and (c) Yuba will deliver this Component 1 Water supply at some later time on a schedule that is acceptable to the Buyers and Yuba.

C. During a *Force Majeure* Event, each of the Contracting Parties will, to the extent practicable, take actions to minimize the impacts of the *Force Majeure* Event on the other Contracting Parties.

21. Regulatory Action.

In the event of a Regulatory Action during the term of this Agreement: (a) the affected Contracting Party will promptly notify the other Contracting Parties of the Regulatory Action and the manner in which it affects performance under this Agreement; and (b) the Contracting Parties will proceed under the process provided for in Section 22

("Remedies and Dispute Resolution"), to the extent applicable. This section does not affect the other rights and remedies of the parties under this Agreement.

22. Remedies and Dispute Resolution.

A. Should any material disputes arise concerning any provision of this Agreement, or the rights and obligations of the Contracting Parties thereunder, 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 Contracting Parties will present the issue to the Policy Committee (which may request assistance from the Technical Committee) for a recommendation for resolving the dispute.

B. If the Process described in the preceding subsection fails to resolve the dispute within thirty days, the Contracting Parties will submit the dispute to a mediator who has experience in water-related disputes. The costs of any such mediation will be borne one-third each by the Contracting Parties. Initiation of this mediation process will be through written notice by one Contracting Party to the other Contracting Parties. The Contracting 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 Contracting 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 22 result in a requirement that diminishes, limits or contravenes the discretion, authority or any delegated authority of the Commissioner of Reclamation or of the Secretary of the Interior, under federal law or of the Director of DWR under State law.

C. If mediation fails to resolve the dispute, and prior to commencing any legal action to resolve the dispute, the Contracting Party proposing to commence legal action will provide the other Contracting 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 Contracting Party that intends to file suit. During the thirty-day notice period, the Contracting Parties will continue to attempt to resolve the dispute.

23. Effect of this Agreement on other Matters.

A. As a Precedent.

Nothing in this Agreement is intended or will be construed as a precedent or other basis for any argument that the Contracting Parties have waived or compromised their rights that may be available under State or federal law, except as to matters addressed in this Agreement.

B. As to Water Rights.

The only rights granted to the Contracting Parties as a result of this Agreement are those expressly set forth in this Agreement. The providing of water by Yuba

under this Agreement will not confer any appropriative, public trust or other right to water on any person or entity. Nothing in this Agreement is intended or will be construed to act as a forfeiture, diminution or impairment of any water right of Yuba. Consistent with the provisions of California Water Code sections 109, 475, 1011, 1014 through 1017, 1244 and 11961, the delivery of water under this Agreement will not be evidence of or used to demonstrate either the existence of surplus water after this Agreement expires, or the lack of beneficial use of the water supplies referred to in this Agreement, and the Contracting Parties will not contend otherwise. In accordance with Water Code section 1016, and other applicable provisions of California law, at the conclusion of the term of the water transfers provided for under this Agreement, all rights in, and the use of, the water supplies referred to in this Agreement will revert back to the Yuba, and DWR, Reclamation or any beneficiary of this Agreement, will not do either of the following: (1) bring any claim for continuation of the water supply made available by this Agreement; or (2) claim any right to a continued supply of water made available under this Agreement, based on reliance, estoppel, intervening public use, prescription, water shortage emergency, or unforeseen or unforeseeable increases in demand, or any other cause.

C. As to the Phase 8 Settlement

Nothing contained in this Agreement affects the Contracting Parties' respective rights and obligations under the Short-Term Phase 8 Agreement. The Contracting Parties agree that water provided by Yuba under the Short-term Phase 8 Agreement will be accounted for and delivered on a higher priority than water delivered under this Agreement.

D. As to the Continuation of the EWA Program

1. The Buyers intend that Component 1 Water will be dedicated to the EWA, and that in the future, upon completion of environmental documentation for a long-term EWA, the EWA would be sized sufficiently to accommodate the proposed South Delta Improvement Program, including the proposal to increase the maximum diversion rate into Clifton Court Forebay for the SWP Bank's Pumping Plant. If the EWA terminates or the maximum diversion rate into Clifton Court Forebay of the SWP Banks Pumping Plant is not increased to 8500 cfs by December 31, 2008, the Buyers agree that Component 1 Water remaining to be delivered under this Agreement will be managed annually, as follows: (a) DWR, in coordination with the California Department of Fish and Game, will first use Component 1 Water to fulfill fishery obligations necessary to maintain and enhance water supply reliability of the Delta export facilities; and (b) if any Component 1 Water is not used for such fishery obligations, DWR will use the remaining Component 1 Water for other purposes consistent with the requirements of the funding source from which this water was purchased, including funds from Chapter 7(d) of Proposition 50, California Water Code Section 79550(d).

2. Except as provided in the previous subsection, none of the rights and obligations of the Contracting Parties under this Agreement will be affected in the event that the EWA program terminates prior to the expiration of the term of this Agreement.

E. As to the Fisheries Agreement.

None of the rights and obligations of the Contracting Parties under this Agreement will be affected in the event that the Fisheries Agreement terminates prior to the expiration of the term of this Agreement.

F. As to the Application of Section 27 of the Federal Power Act.

Section 27 of the Federal Power Act limits the licensing authority of FERC with respect to a law regarding the control, appropriation, use or distribution of water used in irrigation or for municipal or other uses. The Contracting Parties, and the SWP and CVP contractors, will not contend or bring any claim that any provision of this Agreement is a law regarding the control, appropriation, use or distribution of water used in irrigation or for municipal or industrial uses, as these terms are used in Section 27 of the Federal Power Act.

24. General Contracting Provisions.

A. Notices.

The time for providing any notices specified in this Agreement may be extended within the term of this Agreement with the consent of the Contracting Parties, confirmed in writing, without requiring an amendment to this Agreement. All notices and 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 Contracting Party to whom notice is to be given; (b) sent by electronic mail, and the Contracting Party to whom notice is to be given confirms receipt; or (c) on the third day after mailing, if mailed to the Contracting Party to whom notice is to be given by first-class mail, postage prepaid, and properly addressed to the designated representatives of the Contracting Parties set forth below. A Contracting Party may notify the other Contracting Parties in writing of a change in its designated representatives, without requiring an amendment to this Agreement.

DWR: Director
Department of Water Resources
1416 Ninth Street, Room 1115-1
P.O. Box 942836
Sacramento, CA 94236-0001

Reclamation: Regional Director
U.S. Department of the Interior
Bureau of Reclamation, MP-100
2800 Cottage Way
Sacramento, CA 95825

Yuba: General Manager
Yuba County Water Agency
1402 D Street
Marysville, CA 95901

B. Signatories' Authority.

The signatories to this Agreement represent that they have authority to execute this Agreement and to bind the Contracting Party on whose behalf they execute this Agreement. Yuba will provide to DWR and Reclamation a copy of a resolution or minute order authorizing execution of this Agreement.

C. Counterparts of this Agreement.

This Agreement may be signed in any number of counterparts by the Contracting 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.

D. Binding on Successors/Assignment.

This Agreement will bind and inure to the benefit of the respective successors and assigns of the Contracting Parties, except that, none of the obligations of the Contracting Parties set forth in this Agreement will be assigned without the prior, written approval of the other Contracting Parties, which approval will not unreasonably be withheld.

E. No Third-Party Beneficiaries, Except as Expressly Provided.

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 Contracting Parties, their respective successors and permitted transferees 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.

F. Amendments.

This Agreement may be amended or modified only by a subsequent written agreement approved and executed by the Contracting Parties.

G. Opinions and Determinations.

Where the terms of this Agreement provide for action to be based upon the

opinion, determination, approval or review of either Contracting 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 Contracting Party under this Agreement will be provided in a timely manner.

H. Reasonable Cooperation.

The Contracting 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.

I. Construction and Interpretation.

This Agreement is entered into freely and voluntarily. This Agreement has been arrived at through negotiation, and each Contracting 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.

J. Complete Contract.

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

K. Determination of Unenforceable Provisions.

If any term or provision of this Agreement is deemed invalid or unenforceable by any court of final jurisdiction, the Contracting Parties will meet and attempt to address this situation pursuant to the provisions of Section 22 ("Remedies and Dispute Resolution") of this Agreement.

L. Waiver.

The waiver at any time by a Contracting 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.

M. Time.

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

N. Applicable Law.

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

O. Venue.

1. As to actions to which Yuba and DWR are parties, any appropriate County under California law will be venue for any state court litigation concerning the enforcement or interpretation of this Agreement.

2. As to actions to which Reclamation is a party, the Eastern District of California will be venue for any federal court litigation concerning the enforcement or interpretation of this Agreement, and each of the Contracting Parties consents to the jurisdiction of such courts and waives any objection to venue therein.

P. 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 Contracting Party of any remedy under this Agreement will be without prejudice to the enforcement of any other remedy.

Q. 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.

R. Standard Clauses.

With respect to the mutual obligations of DWR and Yuba under this Agreement, DWR and Yuba will comply with the Standard Clauses as shown on **Exhibit 4** ("State of California Standard Clauses") to this Agreement for the State of California, Contracts with Public Entities.

S. Exhibits Incorporated.

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

The foregoing is hereby agreed to by the Contracting Parties.

List of Exhibits
[This draft does not include exhibits.]

- Exhibit 1** Scheduling and Accounting Principles
- Exhibit 2** Reservoir Refill Accounting Provisions
- Exhibit 3** Groundwater Monitoring and Reporting Program
- Exhibit 4** State of California Standard Clauses

[Signature page to be added.]

APPENDIX B2

MEMORANDUM OF UNDERSTANDING FOR IMPLEMENTATION OF ENVIRONMENTAL REVIEW AND A ONE-YEAR PILOT WATER PURCHASE PROGRAM FOR THE YUBA RIVER ACCORD

MEMORANDUM OF UNDERSTANDING
FOR IMPLEMENTATION OF ENVIRONMENTAL REVIEW AND A
ONE-YEAR PILOT WATER PURCHASE PROGRAM
FOR THE YUBA RIVER ACCORD

This Memorandum of Understanding ("MOU") is entered into on April 21, 2005, by and among the Department of Water Resources of the State of California, 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; the United States Department of the Interior, acting through the United States Bureau of Reclamation, pursuant to Section 14 of the Reclamation Project Act of 1939 (43 USC section 389) and other applicable federal law; and Yuba County Water Agency, acting pursuant to the Yuba County Water Agency Act (California Statutes 1959, Chapter 788, as amended) and other applicable laws of the State of California.

Background and Purpose

A. DWR operates and maintains the SWP pursuant to the laws of the State of California, involving the development and conveyance of water supplies to water supply agencies throughout the State of California.

B. Reclamation has constructed and is operating the CVP for the diversion, storage, carriage and distribution of waters of the State of California for irrigation, municipal, domestic, industrial water supplies, for fish and wildlife mitigation, protection and restoration, and for generation and distribution of electric energy, salinity control, navigation, flood control, recreation and other beneficial uses.

C. Yuba is a public agency created and existing pursuant to the provisions of the Yuba Act. Yuba owns and operates the Yuba Project.

D. Yuba is engaged in the Yuba River Accord initiative 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 for the CALFED Program to use for protection and restoration of at-risk fisheries, and improvements in state-wide water supply management.

E. The Yuba River Accord includes three major elements, all of which must be in place for the Yuba River Accord to become effective: (1) a Fisheries Agreement, under which Yuba would revise the operations of the Yuba Project to provide higher flows in the lower Yuba River under certain conditions to improve fisheries protection and enhancement; (2) Conjunctive Use Agreements between Yuba and water districts within Yuba County for implementing a conjunctive use and water use efficiency program; and (3) a long-term Water Purchase Agreement between Yuba, DWR and Reclamation, pursuant to which DWR and Reclamation will have rights to beneficially use water made available by Yuba through the Fisheries Agreement, the Conjunctive Use Agreements and additional water releases from the Yuba Project. A copy of the current draft Water Purchase Agreement is attached hereto as **Exhibit 1** for disclosure of intent and information purposes generally, and not as an agreement to which the parties are yet bound.

F. The Contracting Parties intend to cooperatively complete Environmental Compliance for the Yuba River Accord, following which and subject to the results of Environmental Compliance, the Contracting Parties propose to complete the negotiation of and execute the draft Water Purchase Agreement as one element of the Yuba River Accord.

G. The Contracting Parties desire to carry out a 2006 Pilot Program to provide information to facilitate implementation of the Yuba River Accord, upon completion of Environmental Compliance, and to develop data and to test the proposed water accounting methodology for the draft Water Purchase Agreement.

H. The Contracting Parties commit to continue their efforts to reach agreement on the draft Water Purchase Agreement, in part through the implementation of the 2006 Pilot Program. The Contracting Parties propose to execute one or more agreements (i.e., between Yuba and DWR, and between Yuba and Reclamation) to carry out the 2006 Pilot Program consistent with the provisions of the draft Water Purchase Agreement to the extent applicable, and consistent with the provisions of this MOU.

I. The Contracting Parties intend that nothing in this MOU commits any Contracting Party to any particular decision regarding the Yuba River Accord. In addition, the Contracting Parties intend that Environmental Compliance and appropriate documents will be completed prior to any such decisions. The Contracting Parties further intend that this MOU represents their commitment to use their best efforts to implement the actions specifically described herein, consistent with applicable environmental review requirements.

J. Yuba is authorized under the Yuba Act to enter into contracts to sell water for use outside of Yuba County, subject to the provision of Section 5 of the Yuba Act.

K. A portion of the water delivered under the 2006 Pilot Program will be paid for with funds appropriated pursuant to Chapter 7(d) of Proposition 50, California Water Code Section 79550(d).

L. DWR and Reclamation propose to enter into separate agreements with their respective contractors for the allocation of and payment for the water supplies to be made

available under the 2006 Pilot Program.

NOW, THEREFORE, the Contracting Parties agree to the following:

1. Definitions.

When used herein, the term:

- a. **"Buyers"** means DWR and Reclamation.
- b. **"CALFED"** means the joint federal and California program, administered by the California Bay-Delta Authority, intended to develop and implement a long-term comprehensive plan that will, among other purposes, restore ecological health and improve water management for beneficial uses of the Bay-Delta System.
- c. **"Conjunctive Use Agreements"** means those proposed agreements for implementing a conjunctive use and water use efficiency program between Yuba and a sufficient number of Member Units that Yuba determines is satisfactory for Yuba to meet Yuba's obligations under Water Purchase Agreement, the Fisheries Agreement, and the Yuba Act.
- d. **"Contracting Parties"** means DWR, Reclamation and Yuba.
- e. **"CVP"** means the Central Valley Project operated by Reclamation.
- f. **"DWR"** means the California Department of Water Resources.
- g. **"Environmental Compliance"** means compliance with the applicable provisions of the California Environmental Quality Act, the National Environmental Policy Act and the federal and state endangered species act as necessary to implement the 2006 Pilot Program and the Yuba River Accord.
- h. **"EWA"** means the Environmental Water Account program described in the CALFED Record of Decision, as extended through 2007, or a long-term Environmental

Water Account program.

i. **"Fisheries Agreement"** means the proposed agreement among Yuba, the California Department of Fish and Game, and other parties, under which Yuba will operate the Yuba Project to provide higher flows in the lower Yuba River under certain conditions to improve fisheries protection and enhancement.

j. **"Reclamation"** means the United States Department of the Interior, Bureau of Reclamation.

k. **"SWP"** means the State Water Project operated by DWR. The SWP is also known as the State Water Facilities, as defined in California Water Code section 12934(d).

l. **"2006 Pilot Program"** means the water purchase program described in section 3 of this MOU.

m. **"Water"** means water delivered by Yuba in a manner consistent with the 2006 Pilot Program.

n. **"Water Accounting Year"** means the twelve-month period from January 1 to December 31. The Water Accounting Year will be used to account for Water to be delivered under the 2006 Pilot Program.

o. **"Water Purchase Agreement"** means the long-term agreement between the Contracting Parties pursuant to which DWR and Reclamation will have rights to beneficially use water made available by Yuba through the Fisheries Agreements, the Conjunctive Use Agreements, and additional water releases from the Yuba Project.

p. **"Water Year"** means the twelve-month period from October 1 of one year through September 30 of the following year. For this MOU, the 2006 Water Year will be classified for the period October 1, 2005 through September 30, 2006: (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 Board's March 15, 2000, Revised Water-Right Decision 1641; or (2) as a "Conference Year," based on the procedures and formulas set forth in **Exhibit 1** to this Agreement, using the latest available forecast for the Water Year.

q. **"Yuba"** means the Yuba County Water Agency.

r. **"Yuba Act"** means the Yuba County Water Agency Act, California Statutes 1959, Chapter 788, as amended.

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

t. **"Yuba River Accord"** means Yuba's initiative as described in Recitals D and E of this Agreement.

2. COMMITMENT TO SUPPORT AND PARTICIPATE IN THE ENVIRONMENTAL COMPLIANCE PROCESS FOR THE YUBA RIVER ACCORD.

a. The Contracting Parties will support and participate as necessary in the Environmental Compliance process referred to in the draft Notice of Intent, attached as **Exhibit 2** to this MOU. The Contracting Parties will work cooperatively to complete Environmental Compliance. Each Contracting Party reserves its discretion whether or how to approve the draft Water Purchase Agreement and other actions to implement the Yuba River Accord based on the results of the Environmental Compliance documents.

b. Each of the Contracting Parties will provide staff and/or consultants and a project manager to participate in the development of the appropriate Environmental Compliance documents. A preliminary Environmental Compliance plan is attached as **Exhibit 3** to this

MOU.

c. The Parties intend to provide funding for the Environmental Compliance process through separate agreements between DWR and Yuba, and between Reclamation and Yuba, which are currently under development. Yuba will fund one-half of the costs for Environmental Compliance. DWR and Reclamation will collectively provide one-half of the costs for Environmental Compliance. In the event that the Water Purchase Agreement fails to take effect due to the failure of the Fisheries Agreement to take effect for the reason that Yuba is not able to obtain all of the necessary approvals and/or permits for the proposed Feather River Diversion Facility, then Yuba agrees to negotiate in good faith with the Buyers for a long-term water purchase agreement under which the Buyers would receive credit in water or money for the funding provided by the Buyers for the costs of Environmental Compliance, such credit to be amortized over the term of any such long-term water purchase agreement.

d. Any Contracting Party may terminate its support and participation in the Environmental Compliance process, and be relieved of any further obligation for costs of Environmental Compliance after notice of such termination has been provided to the other Contracting Parties, if it determines that it will not execute the draft Water Purchase Agreement.

e. The costs of Environmental Compliance referred to herein are consultant costs, and do not include Yuba's staff costs.

3. THE PROPOSED 2006 PILOT PROGRAM.

The Parties commit to continue their efforts to reach agreement on the terms of the draft Water Purchase Agreement, and propose to implement the 2006 Pilot Program consistent with the provisions of the draft Water Purchase Agreement, to the extent applicable,

and consistent with this MOU. Subject to the completion of appropriate environmental review, the 2006 Pilot Program will be implemented through a one-year water purchase agreement among the Contracting Parties; or separate agreements between DWR and Yuba, and between Reclamation and Yuba. In addition, to ensure appropriate sharing of the 2006 Pilot Program water, DWR will execute one-year conveyance agreements, as necessary, for the EWA and with SWP contractors, and, as necessary, with CVP contractors, and, subject to the completion of appropriate environmental review, Reclamation proposes to execute one-year supplemental water supply contracts, as necessary, with CVP contractors.

The following provisions are the proposed elements of the 2006 Pilot Program, and do not commit any Contracting Party to any particular decision regarding the 2006 Pilot Program and any subsequent one-year water purchase agreement:

a. All Water Year Types

Yuba will sell and DWR will purchase 60,000 acre-feet of water in 2006 at a total cost of \$4,200,000.00.

b. Additional Quantities of Water In A Dry Year

(1) If the 2006 Water Year is classified as Dry, Yuba will sell and DWR and Reclamation will purchase an additional 15,000 acre-feet of water at a cost of \$50.00 per acre-foot.

(2) For purposes of the 2006 Pilot Program only, if the 2006 Water Year is classified as Critical, Yuba will use its best efforts to maximize the amount of water available under Paragraph 3.d. below.

c. Additional Quantities of Water in Years of Low Contract Allocations

(1) If on April 21, 2006, allocations for CVP South of Delta agricultural water

service contractors are at or below 35 percent of their CVP contractual entitlement and allocations for SWP contractors are at or below 40 percent of their SWP water supply contract Table A Amounts, Yuba agrees to sell and DWR and/or Reclamation agree to purchase 40,000 acre-feet of water at a cost provided under Paragraph 3.e.

(2) If on April 21, 2006, allocations for CVP South of Delta agricultural water service contractors are above 35 percent and at or below 45 percent, or allocations of SWP contractors are above 40 percent and at or below 60 percent of their Table A Amounts, respectively, DWR and/or Reclamation may request and Yuba will deliver up to 40,000 acre-feet of water, at a cost provided under Paragraph 3.e. The request by DWR and/or Reclamation must occur on or before May 15, 2006.

(3) If after April 21 but before May 21, 2006:

(a) Allocations to CVP South of Delta agricultural water service contractors or SWP contractors increase such that the (1) terms of Paragraph 3.c.2 would have applied, instead of the terms of Paragraph 3.c.1, or (2), notwithstanding the increase, the terms of Paragraph 3.c.2 remain applicable, then DWR and/or Reclamation may, on or before May 21, 2006, reduce their request for water under Paragraph 3 to a lesser amount, including zero, but no less than the quantity of water already delivered by Yuba plus the quantity of water already stored by Yuba through the substitution of groundwater for surface water in anticipation of water deliveries originally requested by the Buyers.

(b) Allocations to CVP South of Delta agricultural water service contractors or SWP contractors decrease such that the terms of Paragraph 3.c.1 would have applied, instead of the terms of Paragraph 3.c.2, then Yuba will sell and DWR and/or Reclamation will purchase, at the cost provided under Paragraph 3.e, 40,000 acre-feet, consistent with Paragraph 3.c.1, less

any loss in groundwater availability between April 21 and May 21, 2006.

(c) Allocations to CVP South of Delta agricultural water service contractors or SWP contractors decrease but the terms of Paragraph 3.c.2 applied and remain applicable, DWR and/or Reclamation may call and Yuba will provide, at the cost provided under Paragraph 3.e, water or additional water up to the maximum amount authorized by Paragraph 3.c.2, less any loss in groundwater availability between April 21 and May 21, 2006.

d. Additional Quantities of Water

(1) On or before April 10, 2006, Yuba will inform DWR and Reclamation if it has any water available for sale in addition to the quantities Yuba will deliver pursuant to Paragraphs 3.a, b. and c. Prior to May 21, 2006, DWR and Reclamation will request and Yuba will schedule that quantity of water requested by DWR and Reclamation, up to that quantity Yuba indicated it could deliver.

(2) Yuba will deliver water pursuant to Paragraph 3.d. at the cost provided under Paragraph 3.e.

e. Water Pricing

Water delivered under Paragraphs 3.c and 3.d will be paid for at the following rates:

\$25.00 per acre-foot if the Water Year is classified as Wet;

\$50.00 per acre-foot if the Water Year is classified as Above-Normal;

\$75.00 per acre-foot if the Water Year is classified as Below-Normal;

\$100.00 per acre-foot if the Water Year is classified as Dry; and

\$125.00 per acre-foot if the Water Year is classified as Critical.

f. Rights to Water Between DWR and Reclamation

(1) Under the 2006 Pilot Program, DWR will use the water purchased under Paragraph 3.a. to support continued implementation of current EWA fishery protection purposes that supplement existing regulatory obligations. Water purchased under Paragraph 3.a. will not be used to comply with, or offset compliance with, the regulatory baseline level of protection in place at the time of the EWA action.

(2) The foregoing subsection notwithstanding, in the event that the United States Fish & Wildlife Service, National Marine Fisheries Service and California Fish & Game, in consultation with DWR and Reclamation, determine that the EWA does not need some or all of the water provided by Yuba for EWA purposes during the term of the 2006 Pilot Program, DWR will make such water available in equal shares to the contractors of the SWP and CVP, at a price to be determined at the time the decision is made that the water is not needed for the EWA program. Such price will not exceed the applicable year-type prices described in Paragraph 3.e above, and will not be less than the cost of the water paid per acre-foot.

(3) Under the 2006 Pilot Program, DWR and Reclamation will deliver water obtained under Paragraphs 3.b., c., and d. for SWP and CVP water supply purposes, to be shared equally between DWR and Reclamation.

(4) Notwithstanding Paragraph 3.b., c., and d., in the event that some or all of the water available under the Paragraphs 3.b., c., and d. is not needed for SWP or CVP water supply purposes, the other Project will have the next right to purchase that share for water supply purposes. If less than all of the water available under Paragraphs 3.b., c., and d. is needed for SWP or CVP water supply purposes, after obtaining a confirmation by the SWP contractors and CVP contractors that otherwise have a right for such water under other agreements, DWR and/or

Reclamation may purchase the water for the EWA.

g. Accounting

Water provided for the 2006 Pilot Program will be accounted for consistent, to the extent practicable, with the draft water accounting provisions attached hereto as **Exhibit 4** and consistent with the draft Water Purchase Agreement.

h. Scheduling of Water

Yuba will provide a final schedule to DWR and Reclamation for water to be delivered for the 2006 Pilot Program by June 1, 2006.

4. EWA TERMINATION

a. If the EWA terminates during the term of the 2006 Pilot Program, the Buyers agree that water remaining to be delivered under Paragraph 3.a will be used as follows: (1) DWR, in coordination with California Department of Fish and Game, will use such water to first fulfill fishery obligations necessary to maintain and enhance water supply reliability of the Delta export facilities; and (2) if any such water is not used for such fishery obligations, DWR will use the remaining water for other purposes consistent with the requirements of the funding source by which this water was purchased, including funds provided under Chapter 7(d) of Proposition 50, California Water Code Section 79550(d).

b. The Contracting Parties intend and agree that if, after the execution of, but during the term of the Water Purchase Agreement, the EWA terminates or the maximum diversion rate into Clifton Court Forebay of the SWP Banks Pumping Plant is not increased to 8500 cubic feet per second by December 31, 2008, the Component 1 Water described in and remaining to be delivered under the Water Purchase Agreement will be managed annually as

follows: (1) DWR, in coordination with California Department of Fish and Game, will use such water to first fulfill fishery obligations necessary to maintain and enhance water supply reliability of the Delta export facilities; and (2) if any such water is not used for such fishery obligations, DWR will use the remaining water for other purposes consistent with the requirements of the funding source by which this water was purchased, including funds provided under Chapter 7(d) of Proposition 50, California Water Code Section 79550(d).

5. TERMINATION AND MODIFICATION

This MOU and any agreement executed in furtherance of the 2006 Pilot Program will remain in effect until December 31, 2006, or until all of the obligations under this MOU and such agreements have been satisfied, which ever occurs later. This MOU may be amended by written agreement of all the Contracting Parties.

6. NOTICES

For administration of this MOU, the persons designated as the primary contacts are:

DWR: Director
Department of Water Resources
1416 Ninth Street, Room 1115-1
P.O. Box 942836
Sacramento, CA 94236-0001

Reclamation: Regional Director
U.S. Department of the Interior
Bureau of Reclamation, MP-100
2800 Cottage Way
Sacramento, CA 95825

Yuba: General Manager
Yuba County Water Agency
1402 D Street
Marysville, CA 95901

7. ACTION BY THE PARTIES

Except for the commitments related to Environmental Compliance, the Contracting Parties agree that nothing in this MOU will be construed to require any of the Contracting Parties to take any particular action, nor will it be construed as committing any Contracting Party to any particular decision regarding the Yuba River Accord or the 2006 Pilot Program, nor does it create or imply any commitment by any party to fund or participate in a long-term EWA. The Contracting Parties commit to make their best efforts to implement the actions specifically described herein through execution of other agreements.

8. FUNDING

The expenditure or advance of any money or the performance of any obligation of the United States or the State of California under this MOU will be contingent upon appropriation and allotment of funds. No liability will accrue to the United States or the State of California in case funds are not appropriated or allotted.

The foregoing is approved by the Contracting Parties as of the effective date set forth in this MOU.

Dated: _____
By: *John F. Davis*
Title: Deputy Regional Director

United States Bureau of Reclamation

APPROVED AS TO LEGAL
FORM AND SUFFICIENCY
[Signature]
OFFICE OF REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

Dated: _____
By: *[Signature]*
Title: _____

Approved as to legal form
and sufficiency:
[Signature]
Asst Chief Counsel, DWR

California Department of Water Resources

Dated: 4-21-05

By: 

Title: _____

Yuba County Water Agency

EXHIBITS

1. Draft Water Purchase Agreement
2. Draft Notice of Intent
3. Draft Environmental Compliance Plan
4. Draft Water Accounting Provisions
5. Draft Reservoir Refill Provisions

