

**City of Yuba City  
Staff Report**

**Date:** March 18, 2008  
**To:** Honorable Mayor & Members of the City Council  
**From:** Utilities Department  
**Presentation By:** William P. Lewis, Utilities Director

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**Summary**

**Subject:** State Water Project Purchase Agreement with the California Department of Water Resources.

**Recommendation:** Authorize the City Manager to sign the State Water Project Purchase Agreement with the California Department of Water Resources and approve City Staff to file the environmental Notice of Determination on the Agreement.

**Fiscal impact:** \$5600-\$26,500 Annual Payment – Raw Water Purchase Account 7120-64101 (account balance of \$190,257). Estimate cost range depends on water year type.

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**Details**

**Background:** Yuba City diverts surface water from the Feather River under two State Water Resource Control Board Permits, a contract with Yuba County Water District, and another with State Water Project water for a total annual allotment of 29,600 acre feet. All of these water rights have limitations as to when water can be used and the quantity of water that can be delivered.

One of the contracts is with the State Water Project which is administered by the California Department of Water Resources (DWR). DWR has negotiated an agreement with Yuba County Water Agency to purchase additional water for participating State Water Project Contractors. Attached is a standard agreement that will be appropriate for all participating agencies to adopt, while only certain sections apply to individual signers, such as Yuba City.

Yuba County Water Agency has completed an Environmental Impact Report for this Agreement as part of the Lower Yuba River Accord and can be viewed at:  
<http://www.hdrprojects.com/engineering/ProposedLowerYubaRiverAccord/>.

DWR Legal Counsel has advised Yuba City that a Notice of Determination is not required in order to execute the attached Agreement. Even though the Notice is not required, staff recommends that a Notice be filed to shorten the project challenge period from 180 days to 30 days.

**Discussion:**

On March 7, 2006 Council adopted the 2005 Yuba City Urban Water Management Plan. This plan identifies water demands, and sources through 2025. The plan identified that due to seasonal diversion limitations and curtailments associated with dry water years, the City could experience a water shortfall during summer months as soon as 2010. The proposed Agreement will help the City meet its commitment of providing safe and reliable surface water to the citizens of Yuba City.

The attached Agreement provides additional water supply in all years. The largest impact will be during dry water year conditions. The water supplies available under the attached Agreement are shared by the group of participating State Water Project Contractors. Sharing among the participating Contractors is relative to their total State Water Project contract amount. Yuba City's State Water Project contract amount is 9,600 acre feet per year. The estimated total for other participating contractors is approximately 3,300,000 acre feet. It is estimated that Yuba City will be entitled to 0.3% of the purchased water. The estimated maximum water supplied under the attached Agreement will be 209 acre feet per year. Actual water deliveries will vary every year.

The City has the option of not taking water in any year and selling it to other participating Contractors. In turn, the City will have an option to purchase additional water on an annual basis if other Contractors opt not to take their full allotment.

The Agreement is in effect through December 31, 2025. However, Yuba County Water Agency has the option to renegotiate on December 31, 2015 in response to an anticipated new license to operate their reservoir facilities. There may be more water available, and there may be an adjustment in the cost. Yuba City has the option of opting out at that time if the terms are not acceptable.

Additional water rights will be required to meet the future demands of the City and drought supplies. Staff continues to have discussion with local water districts related to the acquisition of additional water rights.

**Fiscal impact:**

\$5600-\$26,500 Annual Payment – Raw Water Purchase Account 7120-64101 (account balance of \$190,257). The cost of water under this Agreement varies from \$25 per acre foot during wet years up to \$125 per acre foot in critical dry years. Only water that is delivered to Yuba City will have charges collected. There is a one time Agreement activation fee of \$3,000 and an annual fee of \$364.

**Alternative:**

Do nothing; negotiate a dry year water contract with other entities to meet all anticipated needs; or implement a mandatory conservation plan during dry years.

**Recommendation:**

Authorize the City Manager to sign the State Water Project Purchase Agreement with the California Department of Water Resources and approve City Staff to file the environmental Notice of Determination on the Agreement.

Prepared by:

*William P. Lewis*

William P. Lewis  
Utilities Director

Submitted by:

*Steven R. Jepsen*

Steven R. Jepsen  
City Manager

Reviewed by:

Department Head

*WPL*

Finance

*MS*

City Attorney

OK by e-mail

Attachments:

Exhibit A – DWR SWP Agreement

Exhibit B – Yuba City Notice of Determination

Exhibit C – Lower Yuba River Accord Frequently Asked Questions

Exhibit D – Lower Yuba River Accord Water Purchase Agreement Technical Brief

# NOTICE OF DETERMINATION

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To: Office of Planning and Research  
P.O. Box 3044  
Sacramento, CA 95812-3044

From: City of Yuba City  
1201 Civic Center Blvd.  
Yuba City, CA 95993

X Sutter County Clerk

**Subject:**

**Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.**

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**Project Title**

City of Yuba City as a Responsible agency under CEQA, certifying adequacy and adopting the findings of the Environmental Impact Report for the Lower Yuba River Accord – SCH# 2005062111 for execution of an agreement to acquire water from Yuba County Water Agency.

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**State Clearinghouse Number**  
*(If submitted to Clearinghouse)*  
2005062111

**Lead Agency Contact Person**  
**William P. Lewis**

**Area Code/Telephone No.**  
**(530) 822-4639**

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**Project Location:** Yuba County and other counties throughout California

**Project Description:** Yuba County Water Agency initiated a process, referred to as the Yuba Accord, to resolve issues associated with the operations of the Yuba River Development Project (Yuba Project) in a way that protects the lower Yuba River fisheries and local water supply reliability, while providing revenues for local flood control projects, water to use for protection and restoration of Delta fisheries, and improvements in state-wide water supply management.

This is to advise that the City Council of the City of Yuba City has approved the above described project on March 18, 2008, and has made the following determinations regarding the above described project.

1. The project ( will /  will not) have a significant effect on the environment.
2.  An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.  
 A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures ( were /  were not) made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan ( was /  was not) adopted for this project.
5. A statement of Overriding Considerations ( was /  was not) adopted for this project.
6. Findings ( were /  were not) made pursuant to the provisions of CEQA.

This is to certify that the Negative Declaration/final EIR with comments and responses (as noted above) and record of project approval is available to the general public at the City of Yuba City Wastewater Facility, 302 Burns Drive, Yuba City, CA 95991.

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Signature

Date

Acting Environmental Control Officer

**Date received for filing and posting at OPR:**

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

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

THIS AGREEMENT is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2008, pursuant to the provisions of the California Water Resources Development Bond Act, the State Central Valley Project Act, and other applicable laws of the State of California, between the Department of Water Resources of the State of California, herein referred to as "DWR," and City of Yuba City, a public agency in the State of California, herein referred to as the "AGENCY." DWR and the AGENCY are herein referred to separately as the "Party" and collectively as the "Parties."

**RECITALS**

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

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

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

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

**AGREEMENT**

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

1. **DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Final Classification”** means the year-type classification for the Sacramento River region in the May issue of DWR’s Bulletin 120.

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

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

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

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

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

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

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

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

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

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

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

## **2. TERM OF AGREEMENT**

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

**3. PURCHASED WATER**

**A. METHODS FOR ESTABLISHING ALLOCATIONS AND SHARING OF WATER**

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

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

B. TYPES AND PRICES OF PURCHASED WATER

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

1. COMPONENT 1 WATER

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

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

2. COMPONENT 2 WATER

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

3. COMPONENT 3 WATER

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

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

4. COMPONENT 4 WATER

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

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

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

5. POSSIBLE FUTURE ADJUSTMENTS TO QUANTITIES AND PRICES.

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

6. UNCOMMITTED WATER

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

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

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

#### **4. REQUESTS, SCHEDULING AND CONVEYANCE**

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

##### **A. Requests and Scheduling**

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

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

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

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

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

#### B. Conveyance

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

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

**5. INVOICING AND PAYMENTS**

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

**A. INVOICING AND PAYMENT OF PURCHASED WATER**

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

**B. INVOICE FOR CONVEYANCE, DELIVERY, ADMINISTRATIVE COSTS**

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

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

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

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

D. PAYMENTS FOR YUBA DIESEL CONVERSION OF GROUNDWATER PUMPS.

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

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

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

F. PAYMENTS FOR COSTS ATTRIBUTABLE TO YUBA WATER PURCHASE AGREEMENT

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

G. TIMING OF PAYMENTS.

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

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

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

**6. EFFORTS TO MAXIMIZE THE BENEFICIAL USE OF WATER**

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

**7. MEMBERSHIP ON COMMITTEES**

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

**8. CONFERENCE YEAR PRINCIPLES**

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

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

9. **LIABILITY**

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

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

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

## 10. DISPUTE RESOLUTION

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

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

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

#### 11. **NOT A PRECEDENT**

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

**12. PAYMENTS, NOTICES OR OTHER COMMUNICATIONS**

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

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

And

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

AGENCY: Mr. Steven R. Jepsen, City Manager  
City of Yuba City  
1201 Civic Center Boulevard  
Yuba City, California 95993  
(530) 822-4601

And

Mr. William P. Lewis, Utilities Director  
City of Yuba City  
302 Burns Drive  
Yuba City, California 95991  
(530) 822-4639

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

**13. SIGNATORIES' AUTHORITY**

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

**14. COUNTERPARTS OF THIS AGREEMENT**

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

**15. BINDING ON SUCCESSORS/ASSIGNMENT**

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

**16. NO THIRD-PARTY BENEFICIARIES**

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

**17. AMENDMENTS**

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

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

Authority under its “Agreement for the Supply and Conveyance of Water by the Department of Water Resources of the State of California to the San Luis & Delta-Mendota Water Authority under the Dry Year Water Purchase Program.”

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

“Agreement for the Supply and Conveyance of Water by the Department of Water Resources of the State of California to the San Luis & Delta-Mendota Water Authority under the Dry Year Water Purchase Program.”

**18. OPINIONS AND DETERMINATIONS**

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

**19. REASONABLE COOPERATION**

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

**20. CONSTRUCTION AND INTERPRETATION**

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

**21. COMPLETE CONTRACT**

This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this Agreement among the Parties concerning the subject matter, and supersedes all prior negotiations, representations or agreement, either oral or written, that may be related to the subject matter of this Agreement, except as to those other agreements that are expressly referred to in this Agreement.

**22. DETERMINATION OF UNENFORCEABLE PROVISIONS**

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

**23. WAIVER**

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

**24. TIME**

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

**25. APPLICABLE LAW**

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

**26. VENUE**

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

**27. REMEDIES NOT EXCLUSIVE**

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

**28. OFFICIALS NOT TO BENEFIT**

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

**29. STANDARD CLAUSES**

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

Contracts with Public Entities.

**30. EXHIBITS INCORPORATED**

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

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

Approved as to legal form  
and sufficiency:

STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES

\_\_\_\_\_  
David Sandino, Chief Counsel

\_\_\_\_\_  
Lester A. Snow, Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to legal form  
and sufficiency:

AGENCY

\_\_\_\_\_  
Steven R. Jepsen, City Manager

\_\_\_\_\_  
William P. Lewis, Utilities Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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

Attachments:

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

Exhibit B: DWR Standard Clauses

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

**EXHIBIT A**

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

The Proposed  
**Lower Yuba  
River Accord**

**Frequently Asked Questions**

1

***How will the Yuba Accord be better for the lower Yuba River wild salmon and steelhead?***

A

The Yuba Accord will benefit fisheries populations in the lower Yuba River in several significant ways. It will establish new instream flow requirements that significantly increase the minimum protection for Chinook salmon, steelhead, and other fish species. These new flows will range from 260,000 acre-feet in a dry year to over 574,000 acre-feet in a wet year – an annual increase of 25,000 acre-feet to over 170,000 acre-feet compared to present requirements. These higher requirements, in concert with other non-flow commitments in the Yuba Accord, will improve habitat conditions, including water temperatures, for lower Yuba River Chinook salmon and steelhead – among the last remaining wild populations in California’s Central Valley. A River Management Team will address operational, monitoring, and enhancement actions, including a \$6 million fisheries monitoring, studies, and enhancement program. This program will be financed by long-term purchases of YCWA water for the EWA and by state and federal water users.

2

***What guarantees that the Yuba Accord’s higher instream flow requirements will actually be released as envisioned?***

A

After the SWRCB has amended its existing Water Right Decision (Decision 1644) and YCWA’s water right permits to implement the Yuba Accord, YCWA will be contractually and legally obligated under the Fisheries Agreement and its amended water right permits to comply with the Yuba Accord instream flow requirements. Failure to make these releases will result in substantial fines and makeup water requirements. If the agreement terminates early for any reason, Fisheries Agreement flows will not halt but will be implemented under the terms of YCWA’s water right permits.

3

***When will these Yuba Accord flows actually begin, and what will happen to them when the Yuba Accord ends?***

A

The instream flow requirements in the Fisheries Agreement will begin in 2006 under a one-year pilot program. This program will allow the participants in the Yuba Accord to begin to implement the new requirements while they are working on a joint EIR/EIS, as required by state and federal environmental laws, and while YCWA secures all of the necessary permits and approvals to implement the Yuba Accord. This environmental review is planned to be completed in late 2006. The Yuba Accord’s instream flow requirements may be modified when FERC issues a new long-term Federal Power Act license to YCWA for the Yuba Project, which will occur during or after 2016.

**4 What are the likely benefits of the Yuba Accord to the State of California?**

A

As some of the higher instream flows required by the Yuba Accord continue down the 24 miles of the lower Yuba River, then into the Feather and Sacramento rivers and to the Bay-Delta, the flows will create additional environmental and economic benefits. For example, the Water Purchase Agreement will provide (a) a minimum of 60,000 acre-feet each year for the EWA to meet the needs of salmon, steelhead, and other fish and wildlife species throughout the Bay-Delta watershed, and (b) a supplemental water supply of up to 140,000 acre-feet in dry years for DWR and Reclamation. DWR and Reclamation will use these water supplies to meet their supplemental needs, including the needs of fish and wildlife, primarily in dry years when the two agencies normally must reduce their contractual water deliveries to their respective contractors.

Water transfers under the Water Purchase Agreement are scheduled to be provided through December 31, 2015. From 2016 and through 2025, at least 20,000 acre-feet per year of water transfers are to be provided. During this latter period, any transfer quantity above 20,000 acre-feet per year will be negotiated among the parties to the Water Purchase Agreement. These post-2016 transfers will be subject to review by the SWRCB and will comply with any new FERC or water right permit conditions.

**5 Will the Yuba Accord increase SWP or CVP exports from the Bay-Delta?**

A

Overall, the answer is no. In most years, transfer water provided by the Yuba Accord will be used for the EWA, which typically limits exports during fish-sensitive times of the year (winter and spring), with offsetting Bay-Delta exports later in the year (summer and fall), thereby reducing impacts on Bay-Delta fish species. Offsetting Bay-Delta exports are expected to result in no net increase in pumping by either DWR or Reclamation. Water supplies provided by the Yuba Accord will be integrated into these operations. In some dry years when water deliveries from the SWP and CVP normally are reduced, some of the Yuba Accord water supplies may be used to make up some of the deficiencies in DWR and Reclamation's export area water supplies. These additional transfers will represent a continuation on the same scale of YCWA's past sales to DWR, Reclamation, and south of Bay-Delta water users, but with new environmental requirements for protecting Yuba River and Bay-Delta fisheries.

**6 Even though the Yuba Accord water supplies for DWR and Reclamation will be only supplemental supplies, won't they lead to further growth in California?**

A

Unlike the annual commitment of 60,000 acre-feet for the EWA, the transfer flows for DWR and Reclamation for urban, agricultural, and fish and wildlife purposes will be supplemental water supplies, provided primarily in dry years when DWR and Reclamation normally must reduce their contract deliveries to their water users. These Yuba Accord transfer supplies will improve the water supply reliability of DWR and Reclamation deliveries in dry years, but will not increase DWR and Reclamation water supplies in other years. Furthermore, such transfers from YCWA to south of Bay-Delta water users have traditionally occurred in past dry years; the main difference is the new fisheries protections from the Yuba Accord's instream flow requirements and the EWA's export controls. The public environmental compliance process will analyze potential environmental effects of implementing the Water Purchase Agreement, if any.

**7 Will the allocation of funds to acquire water for the EWA be a good investment?**

A

Yes. The Water Purchase Agreement will establish a firm annual commitment of 60,000 acre-feet of water for the EWA through December 31, 2015, for a total delivery of 540,000 acre-feet. CALFED may receive even more water from the Yuba Accord in dry years. This commitment will represent the first major long-term water acquisition by the State of California for CALFED. (The CALFED Record of Decision includes an annual water purchase target of 185,000 acre-feet.) CALFED will use these water supplies to benefit fish and wildlife species throughout the Bay-Delta.

As compensation for this water, DWR and Reclamation will provide YCWA two payments: (a) \$32,700,000 within 60 days of the effective date of the Water Purchase Agreement – once all environmental compliance steps have been completed as required by state and federal law, and (b) an additional \$2,550,000 on or before September 30, 2015. These payments will equate to less than \$70 per acre-foot of water throughout the entire 9-year period of the Yuba Accord – considerably less than the average overall price per acre-foot paid by CALFED in recent years for water supplies from sources north of the Bay-Delta. By comparison, EWA purchases north of the Bay-Delta during 2001-2004 averaged \$83 per acre-foot. YCWA will receive a payment of \$4,200,000 for 60,000 acre-feet that it will provide for the EWA under the 2006 pilot program.

**8 What will be the funding source for the upfront payment for water provided to the EWA?**

A

DWR proposes to use bonding authority pursuant to Chapter 7(d) of Proposition 50, California Water Code Section 79550(d), as the funding source for the EWA payment. Use of this funding source will be consistent with the CALFED Record of Decision, which requires water purchases for the EWA. Use of these funds also will help meet the goal of a new state law requiring DWR to use not less than 50 percent of the funds from Chapter 7(d) of Proposition 50 for the long-term purchase of water supplies for the EWA. (See Section 35 of Assembly Bill 1747, Chapter 240, August 8, 2004, adding Water Code Section 79555:

- (a) For the 2004-05 fiscal year, and each fiscal year thereafter, not less than 50 percent of the funds made available pursuant to subdivision (d) of Section 79550 for acquisition of water for the CALFED environmental water account shall be expended for long-term water purchase contracts, permanent water rights, and associated costs.
- (b) The California Bay-Delta Authority shall report annually to the Legislature on the state's efforts in acquiring long-term purchase contracts and permanent water rights in accordance with this section.)

DWR also is investigating other funding sources for this water acquisition.

**9 How much revenue will YCWA receive for providing additional transfer water under the Water Purchase Agreement?**

A

Payments that YCWA will receive for providing water supplies for the EWA are discussed in the answer to Question 7. The rest of the transfer water under the Water Purchase Agreement is expected to be paid for by DWR and Reclamation's contractors or through additional EWA acquisitions. The amount of other transfers will depend on hydrology, Bay-Delta conditions, water year type, groundwater conditions, and applicable flow schedules as specified in the Fisheries Agreement. The per acre-foot prices, and overall revenue, that DWR and Reclamation will pay for these additional transfers will vary depending on hydrological conditions (e.g., \$75 per acre-foot in a below-normal year, \$100 per acre-foot in a dry year, and \$125 in a critically-dry year). These prices are the same as the pricing schedule under the agreement between Sacramento Valley water agencies and export interests to settle the SWRCB's Bay-Delta Phase 8 hearings.

**10 How will the Yuba Accord benefit the Yuba County area?**

A

The Yuba Accord was conceived by local interests. For example, the Fisheries Agreement will be used to resolve long-standing litigation over water and fisheries between local organizations such as the South Yuba River Citizens League and YCWA. More generally, the Yuba Accord is the outcome of a collaborative effort to secure protective measures for Yuba River fisheries, water rights, and local water supplies. It will provide YCWA a clear set of operational rules for managing New Bullards Bar Dam and Reservoir and other facilities of the Yuba Project, enabling YCWA to continue its mission of ensuring an adequate water supply for local farmers, recreation, and hydropower generation. The Yuba Accord also will allow YCWA to fund improvements to local flood control and other water management projects, and local fisheries restoration projects. The Yuba Accord also will include a set of agreements known as the Conjunctive Use Agreements. These agreements, between YCWA and some of the local irrigation districts/mutual water companies it serves, will result in a carefully-managed, responsible conjunctive use program to ensure that all groundwater use will be within the safe yield of the groundwater aquifer. This program will be consistent with YCWA's Groundwater Management Plan. To safeguard air quality, some local diesel groundwater motors will be converted to more efficient and cleaner electric motors. Since the late 1980s, YCWA has been at the forefront in the Sacramento Valley in developing water transfer programs that provide statewide water supply benefits while protecting local surface and groundwater supplies, and in using transfer revenues for the benefit of Yuba County water supplies and flood protection. The Yuba Accord builds on these experiences.

**11 Will the Yuba Accord protect local groundwater supplies?**

A

Yes. YCWA and local irrigation districts/mutual water companies will implement a Groundwater Monitoring and Reporting Program to ensure that groundwater pumping associated with the Yuba Accord will be within the safe yield of the groundwater aquifer to safeguard agricultural, domestic, and municipal wells. Under the Conjunctive Use Agreements, groundwater will be pumped for use in Yuba County to implement the Yuba Accord consistent with YCWA's Groundwater Management Plan and within the safe yield of the groundwater aquifer. Under the Yuba Accord, groundwater will be used only to irrigate farmland – no groundwater will be exported out of Yuba County.

12

**Why will the Yuba Accord contain provisions for a new, second point of diversion on the lower Yuba River or Feather River?**

A

These provisions will help ensure that YCWA will be able to meet future water-supply needs within Yuba County. The instream flow requirements in the Fisheries Agreement were developed, in part, based on the need to meet present and anticipated water supply demands within Yuba County through 2016. YCWA believes that if demands continue to increase within the county after 2016, flows in the lower Yuba River may need to do “double duty” (i.e., flows first will be used to improve habitat for lower Yuba River fisheries, and then some of the flows will be diverted near the confluence of the Yuba and Feather rivers as necessary for urban and agricultural use only within Yuba County). To prepare for this possibility, YCWA is considering a new Feather River Diversion Facility in the event it determines that operation of such a facility would assist YCWA in making water supplies available to meet future water supply needs within Yuba County. The Yuba Accord does not require construction of any such facility. However, if YCWA elects to pursue construction of a new diversion facility in the future, project-specific environmental review will be required. For the moment, other parties to the Fisheries and Water Purchase agreements reserve judgment on a potential Feather River Diversion Facility until the comprehensive environmental compliance process has been completed for the Yuba Accord.

13

**What does YCWA plan to do with the proceeds it expects to receive from the Water Purchase Agreement?**

A

YCWA plans to use its proceeds from the Water Purchase Agreement to fund various components of the Yuba Accord, including the Conjunctive Use Agreements, the Fisheries Agreement River Management Fund, and other ongoing needs in Yuba County, particularly flood control improvements. Proceeds also will assist in resolving the South Fish Screen issues discussed in the answer to Question 14. All of these activities will be consistent with the YCWA Act of 1959 which states that the primary purposes of YCWA are flood control protection, irrigation, recreation, and hydropower generation.

14

**Will issues associated with the South Fish Screen by Daguerre Point Dam be resolved as part of this process?**

A

The issues surrounding the South Fish Screen are not directly a part of the Yuba Accord, which resolves disputed flow issues on the lower Yuba River. As an outgrowth of the collaborative discussions regarding the Yuba Accord, however, YCWA recently executed a separate, independent letter agreement with CDFG to resolve issues associated with the water diversion and fish screen located on the south bank of the Yuba River immediately upstream from Daguerre Point Dam. The parties who developed the Yuba Accord’s Fisheries Agreement recognize that addressing these issues is an important step in the ultimate improvement of habitat for the lower Yuba River’s salmon and steelhead populations. Under this letter agreement, CDFG and YCWA, in coordination with environmental and fisheries interests and the local irrigation districts/mutual water companies that receive their water supplies through the South Canal, will collaborate on development and implementation of a plan to construct a new fish screen at the head of this canal so that South Canal diversions will comply with applicable state and federal fish screen criteria. Improved protections for the Yuba River fisheries and continued irrigation supplies to farmers in the southern portion of Yuba County are co-equal objectives of this collaborative effort. The overall plan will include a feasibility study phase, a design study phase, and a construction phase. The letter agreement between YCWA and CDFG specifies timelines for these elements. Although continued work on the South Fish Screen is on a separate track from the process to implement the Yuba Accord, resolution of these issues is a prerequisite for final adoption of the Yuba Accord.

<b>15</b>	<b>A</b>	<p><b>What is the schedule for implementing the Yuba Accord?</b></p> <p>The goal of the participants is to implement the Yuba Accord by late 2006. The first step in this process was completion of a Statement of Support (for the Fisheries Agreement), a Memorandum of Understanding (for the Water Purchase Agreement), and Principles of Agreement (for the Conjunctive Use Agreements with YCWA's local irrigation districts/mutual water companies). With these approvals now in place, parties to the Yuba Accord that also are parties to the litigation will request that the California Superior Court stay its proceedings so that these parties and other participants in the Yuba Accord may initiate the environmental compliance process required by CEQA, NEPA, and the state and federal ESAs. After completion of the EIR/EIS, the SWRCB will be asked to take actions to implement the Yuba Accord. Throughout the process, local, state, and federal agencies, the public, and other interested parties will be involved in extensive input, review, and comment activities.</p>
<b>16</b>	<b>A</b>	<p><b>By supporting any one of the three agreements now, are the parties and participants to the Yuba Accord committed to its ultimate implementation?</b></p> <p>No. The 17 parties and participants in the Fisheries Agreement, the Water Purchase Agreement, and the Conjunctive Use Agreements support moving forward with the legal and procedural steps necessary to evaluate the Yuba Accord, which would allow for its eventual implementation. Many of these interests are parties to only one of the agreements that are part of the Yuba Accord and reserve judgment on other components of the Yuba Accord until the comprehensive environmental compliance process has been completed. Many of these parties will formally participate in the development of a joint EIR/EIS. On completion of this thorough environmental review, the parties and participants will determine whether to support the Yuba Accord's ultimate implementation in late 2006. Additionally, many of the interests involved in the Yuba Accord are participating in other forums regarding the use and allocation of water in the State of California (e.g., CALFED). Their support for the Yuba Accord now does not necessarily change their positions on other issues unrelated to this process.</p>
<b>17</b>	<b>A</b>	<p><b>What will happen if the Yuba Accord is not approved?</b></p> <p>The existing Water Right Decision (Decision 1644) would remain in effect, subject to the continuing legal challenges by both YCWA and environmental interests, which these parties have stayed to allow the Yuba Accord to be developed, reviewed, and implemented.</p>

**ABBREVIATIONS & ACRONYMS**

Bay-Delta - San Francisco Bay/Sacramento-San Joaquin Delta	Fisheries Agreement - proposed Fisheries Agreement
CALFED - CALFED Bay-Delta Program	FERC - Federal Energy Regulatory Commission
CDFG - California Department of Fish and Game	NEPA - National Environmental Policy Act
CEQA - California Environmental Quality Act	Reclamation - U.S. Bureau of Reclamation
CVP - Central Valley Project	SWP - State Water Project
Conjunctive Use Agreements - proposed Conjunctive Use Agreements	SWRCB - State Water Resources Control Board
DWR - California Department of Water Resources	Water Purchase Agreement - proposed Water Purchase Agreement
EIR- Environmental Impact Report	YCWA - Yuba County Water Agency
EIS - Environmental Impact Statement	Yuba Accord - Lower Yuba River Accord
ESA - Endangered Species Act	Yuba Project - Yuba River Development Project
EWA - CALFED Bay-Delta Program Environmental Water Account	

# The Proposed Lower Yuba River Accord

## **Water Purchase Agreement Technical Brief**

### **INTRODUCTION**

The proposed Lower Yuba River Accord (Yuba Accord) includes three separate but related proposed agreements: (1) a Fisheries Agreement, (2) a Water Purchase Agreement, and (3) Conjunctive Use Agreements. This Technical Brief summarizes the essential points of the Water Purchase Agreement. For more information on the other agreements comprising the Yuba Accord, please visit [www.ycwa.com](http://www.ycwa.com).

### **WATER PURCHASE AGREEMENT IMPLEMENTATION**

The Water Purchase Agreement will establish the terms and conditions under which Yuba County Water Agency (YCWA) and its local irrigation districts/mutual water companies will provide water supplies to improve reliability for the California Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation), including for fish and wildlife purposes.

Under this agreement, the amount of annual transfer water made available by YCWA will be based on hydrology, Bay-Delta conditions, water year type, groundwater conditions, applicable flow schedules (specified by the Fisheries Agreement), and anticipated State Water Project (SWP) and Central Valley Project (CVP) delivery allocations. All requirements for water transfers under applicable state and federal laws will be met. DWR and Reclamation have conceptually approved a separate agreement regarding allocation of these transfer supplies and other related matters, and will have separate individual agreements with their respective contractors regarding allocation and financing arrangements.

#### **Water Availability and Pricing Structure**

Consistent with the CALFED Bay-Delta Program (CALFED) Record of Decision, DWR proposes to use bonding authority pursuant to Chapter 7(d) of Proposition 50, California Water Code Section 79550(d), as the funding source for its acquisitions of water for the CALFED Environmental Water Account (EWA). DWR also is investigating other funding sources.

Transfer quantities will be provided from both storage releases of surface water and groundwater substitution (which will allow foregoing some surface water diversions). These quantities will include flows from the schedules within the Fisheries Agreement, storage releases from New Bullards Bar Reservoir, and foregone surface water diversions resulting from groundwater substitution. YCWA, DWR, and Reclamation have determined that the range of transfer volumes will be segregated into four components which reflect variations in pricing, purpose of use, and schedule.

**Component 1 Water Supplies** – For the first 9 years of this agreement (2007 through December 31, 2015), DWR and Reclamation will purchase 60,000 acre-feet per year of Component 1 water, for a total of 540,000 acre-feet. DWR and Reclamation plan to use these supplies exclusively for the EWA. In certain years, operational limitations of the Yuba River Development Project (Yuba Project), the SWP, and/or the CVP may cause the quantity of water provided by YCWA to be less than 60,000 acre-feet. In this event, YCWA will provide “make-up” water quantities in a later water year of the same classification, ensuring that over the course of the agreement, the EWA will receive its full entitlement of Component 1 water. As compensation for the Component 1 water, DWR and Reclamation will provide YCWA two payments: (1) \$32,700,000 within 60 days of the effective date of the agreement – once all environmental compliance steps have been completed as required by state and federal law, and (2) an additional \$2,550,000 on or before September 30, 2015.

**Component 2 Water Supplies** – YCWA will provide DWR and Reclamation 15,000 acre-feet of water in any dry year and 30,000 acre-feet in any critical year. DWR and Reclamation will pay YCWA \$50.00 per acre-foot in any dry years and \$62.50 per acre-foot in any critical years.

**Component 3 Water Supplies** – Under certain SWP and CVP delivery allocation scenarios, YCWA will make available a total of 40,000 acre-feet for DWR and Reclamation as Component 3 water. DWR and Reclamation will pay \$50.00 per acre-foot in above-normal years, \$75.00 per acre-foot in below-normal years, \$100.00 per acre-foot in dry years, and \$125.00 per acre-foot in critical years.

**Component 4 Water Supplies** – In all water year types, YCWA will inform DWR and Reclamation of the quantity of any additional water available from surface and groundwater supplies. DWR and Reclamation then will notify YCWA if they will opt to take delivery of any or all of this Component 4 water. The pricing for the Component 4 water will be the same as for Component 3, except wet year water will be priced at \$25 per acre-foot.

### **Water Supplies Available to Third Parties**

When YCWA identifies an opportunity to provide Component 3 or 4 water, but DWR and Reclamation do not elect to take delivery of that water, YCWA may sell those supplies to a third party, providing (1) the sale will not impair YCWA’s ability to meet its current and future obligations to deliver water to DWR and Reclamation, and (2) YCWA will provide DWR and Reclamation with advance notice of such sale. In addition, any Component 1, 3, or 4 water released by YCWA that cannot be used by DWR and Reclamation, but meets the criteria to be considered transferable, will be water that may be sold by YCWA to a third party.

### **Water Accounting Mechanism**

On or about June 1 of each year, the parties to this agreement will decide on a schedule for the Components 1, 2, 3, and 4 water that YCWA will provide to DWR and Reclamation within that water year. The agreement also will include specific accounting provisions for reservoir refill impacts. This accounting will be very similar to the refill accounting used in previous one-year temporary transfers that YCWA has made for the EWA.

### **Conference Year Principles**

A “Conference Year” is an extremely dry year. During any such year, Yuba Accord participants, including representatives of all three agreements, will meet to determine how to address the circumstances, and to discuss Yuba Project operations in that water year. Also during such a year, YCWA will (1) have no obligation to provide any quantity of Components 1 through 4 water, (2) not have to refund the payment received for Component 1 water that water year, and (3) provide in a subsequent water year the quantity of Component 1 water that was not delivered during the Conference Year on a schedule acceptable to YCWA, DWR, and Reclamation.

## Place of Use of Water

Water made available under the Water Purchase Agreement must be approved for use within the SWP and CVP service areas, requiring that YCWA petition the State Water Resources Control Board (SWRCB) to approve the long-term transfer and amend YCWA's water rights to include the SWP and CVP within the authorized place of use for the specific term of the long-term Water Purchase Agreement, and subject to conditions of the Water Purchase and Fisheries agreements.

## Groundwater Monitoring and Reporting Program

YCWA and its local irrigation districts/mutual water companies will implement a Groundwater Monitoring and Reporting Program to ensure that groundwater pumping associated with the Yuba Accord will be within the safe yield of the groundwater aquifer to safeguard agricultural, domestic, and municipal wells. This program will be consistent with YCWA's Groundwater Management Plan.

## TERM OF TRANSFER AGREEMENT

The Water Purchase Agreement is scheduled to go into effect in late 2006. The Yuba Accord water transfers are scheduled to be provided through December 31, 2015. From 2016 and through 2025, at least 20,000 acre-feet per year of water transfers will be provided. During this latter period, any transfer quantity above 20,000 acre-feet per year will be negotiated among the parties to the Water Purchase Agreement. These post-2016 transfers will be subject to review by the SWRCB and will comply with any new Federal Energy Regulatory Commission (FERC) or water right permit conditions. In addition, the term of the Water Purchase Agreement may be extended to coincide with the term of the long-term YCWA FERC Federal Power Act license for the transfer quantities agreed to by the parties to the Water Purchase Agreement, subject to SWRCB approval.

## INTEGRATION WITH OTHER, ONGOING YUBA ACCORD PROCESSES

### 2006 Pilot Program

YCWA, DWR, and Reclamation plan to implement a pilot transfer program during the 2006 water year based on the instream flow requirements in the Fisheries Agreement and the transfer accounting rules in the Water Purchase Agreement, as modified to accommodate the pilot program concept. Parties to the Fisheries Agreement also plan to implement a pilot fisheries program during the 2006 water year. Parties to the Fisheries and Water Purchase agreements will collaborate in developing this 2006 pilot program, including applicable environmental compliance.

### Agreement Approval

The parties to the Yuba Accord are now working on a joint Environmental Impact Report/Environmental Impact Statement required by the California Environmental Quality Act and National Environmental Policy Act, and additional reviews required by the state and federal Endangered Species Acts. Based on results of these steps, parties to the Water Purchase Agreement will determine whether to approve and execute the agreement. Subject to the foregoing, and subject to approval and execution of the Fisheries Agreement and Conjunctive Use Agreements (expected in late 2006), SWRCB approval of amendments of Water Right Decision 1644, and other related matters, the involved parties plan to execute the Water Purchase Agreement.