

KINGS COUNTY

Water Commission Meeting

John Howe – District 1

Mark Gilkey – District 2

Jim Verboon – District 3

Craig Pederson – District 4

Don Mills – District 5

Brian Ehlers – Member at Large

Harold Reed – Special District

Harlin Casida – City Rep.

Sid Palmerin – City Rep.

Secretary: Gregory Gatzka

Staff: Chuck Kinney (559) 852-2674

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact Kings County Community Development Agency at (559) 852-2680 by 3:00 on the Friday prior to this meeting

AGENDA

REGULAR MEETING

Monday, November 24, 2014, at 5:00 P.M.

This regular meeting of the Kings County Water Commission will be held in the AG Commissioner's Multi-Purpose Room, 680 N. Campus Drive, Hanford, California.

The Kings County Water Commission requests that all cell phones and other electronic communication devices be muted or turned off while the meeting is in progress.

I. CALL TO ORDER - Chairperson

A. Roll Call of Water Commission Members: (*Gregory Gatzka- Secretary*)

B. Unscheduled Comments:

Any person may address the Commission on any subject matter within the jurisdiction or responsibility of the Commission at the beginning of the meeting; or may elect to address the Commission on any agenda item at the time the item is called by the Chair, but before the matter is acted upon by the Commission. Unscheduled comments will be limited to five minutes.

C. Approval of the Minutes of the August 25, 2014, regular meeting – *Chairman: call for motion, second and voice vote*

D. Approval of the Minutes of the August 25, 2014, special joint meeting of the Kings County Water Commission and the Kings County Ag Advisory Committee – *Chairman: call for motion, second and voice vote*

II. OLD BUSINESS –

A. **SUSTAINABLE GROUNDWATER MANAGEMENT ACT OF 2014 (AB 1739 (PAVLEY), SB 1168 (DICKINSON), AND SB 1319 (PAVLEY))**

1. Update and discussion of approved groundwater legislation timeline and requirements

B. **REVIEW OF PROPOSED DRAFT AGRICULTURAL GROUNDWATER GUIDING PRINCIPLES**

1. Discussion

2. Possible Action: Consider recommendation of amendments to the Kings County Agricultural Advisory Committee

III. NEW BUSINESS

A. YUBA ACCORD DRY YEAR WATER PURCHASE PROGRAM AMENDMENT NO. 5

1. Overview and Discussion
2. Possible Action: Consider recommendation to the Board of Supervisors

B. BAY DELTA CONSERVATION PLAN (BDCP) AND DELTA HABITAT CONSERVATION AND CONVEYANCE PROGRAM (DHCCP)

1. Overview and Discussion
2. Possible Action: Consider recommendation to the Board of Supervisors

C. CONSIDERATION OF A JOINT MEETING OF THE KINGS COUNTY AND THE TULARE COUNTY WATER COMMISSIONS.

1. Discussion
2. Possible Action: Direct County staff to work with Tulare County to schedule the joint meeting to be held January 10, 2015.

IV. MISCELLANEOUS

- A. Future Agenda Items:
- B. Member comments:
- C. Staff comments:
- D. Correspondence:

V. ADJOURNMENT - Next regular meeting is scheduled for February 23, 2015.

KINGS COUNTY WATER COMMISSION MINUTES

DISTRICT 1
John Howe

DISTRICT 2
Mark Gilkey - Chair

DISTRICT 3
Jim Verboon

DISTRICT 4
Craig Pedersen

DISTRICT 5
Don Mills

MEMBER AT LARGE
Brian Ehlers – Vice Chair

**SPECIAL DISTRICT
REPRESENTATIVE**
Harold Reed

CITY REPRESENTATIVE
Vacant

CITY REPRESENTATIVE
Harlin Casida

KINGS COUNTY

COMMUNITY DEVELOPMENT AGENCY STAFF: Greg Gatzka (559) 852-2682 Chuck Kinney (559) 852-2674

CALL TO ORDER: A meeting of the Kings County Water Commission (KCWC) was called to order by Chairman Gilkey at 5:00 p.m., on August 25, 2014. The KCWC meeting was held in the Human Services Cedar Room, 1400 W. Lacey Blvd., Bldg. 8, Hanford, California.

Roll call of members was conducted by Secretary Gatzka, and a quorum of appointed Committee members were in attendance.

COMMITTEE MEMBERS PRESENT: Don Mills, Brian Ehlers, Mark Gilkey, Craig Pedersen, John Howe, Harlin Casida, Jim Verboon

COMMITTEE MEMBERS ABSENT: Harold Reed

STAFF PRESENT: Greg Gatzka - Director, Erik Kaeding – Deputy County Counsel, Chuck Kinney – Deputy Director - Planning, Terri Yarbrough – Executive Secretary, Dan Kassik – Planner, Jordan Davis - Planner

VISITORS PRESENT: Joe Neves, Dave Orth, Michelle Speer, Scott Sills, Aubrey Bettencourt

UNSCHEDULED COMMENTS: None

APPROVAL OF MINUTES: A motion was made and seconded (Pedersen/Verboon) to approve the minutes of the March 24, 2014 meeting with one correction on page 3 changing AQUA to ACWA. Motion carried unanimously with Reed absent.

OLD BUSINESS:

Irrigated Lands Regulatory Program – David Orth

Mr. Orth provided an update on the Irrigated Lands Regulatory Program. He reported that 840,000 acres are enrolled and that the regulatory program now covers all irrigated acreage. The objective is to keep high vulnerability areas small. Nitrates are the main area of concern but salinity is also an area of concern. He reported that farm evaluations are required to be submitted by March 1, 2015 for high vulnerability areas, low vulnerability deadlines a year later, and small farms the following year. Mr. Orth stated this reporting is no longer an option, growers will either have to join a coalition, 3rd party group, or report individually.

NEW BUSINESS:

A. Extension of Long-term contract for Department of Water Resources to Provide Water Service to Project Contractors Under the State Water Project – Mark Gilkey and Chantal Quellet

Mr. Gilkey provided an overview of the State Water Project, how the contract started, and a brief history and where we are heading. He reported that 23 negotiation sessions had been held with the public which resulted in two workgroups being formed. One group is working on the agreement and principles and the other was a technical group. A PowerPoint presentation was provided by Mr. Gilkey and Chantal Quellet. Ms. Quellet reported that it was agreed to extend the contract for 50 years, implement a “pay-as-you-go” billing methodology for capital costs and conservation operation and maintenance, create a program to fund costs that presently aren’t customer funded and the create a finance steering committee. The goal of the financial committee is to provide capital financing and continue water supply services beyond 2035, enhance financial management, seek assurances for repayment obligation, streamline and improve transparency of billing process. She stated that the next step will be to develop agreements in principle and to begin the CEQA process.

A motion was made and seconded (Howe/Verboon) to recommend that the BOS approve the agreement in principle. Motion carried unanimously with Reed absent.

B. Delta Interim Fix Proposal

Commissioner Verboon gave a presentation proposing an interim fix for the Bay Delta Conservation Plan. The Interim Delta Fix would enlarge the existing channel by diverting the channel which would increase navigability between the San Joaquin River and the Sacramento River. He stated that the goals were to eliminate or reduce reverse flows, reduce salinity levels and to increase fresh water available in the central and south Delta. He also stated that Families Protecting the Valley is the group that is championing this plan.

No action was taken by the Commission.

MISCELLANEOUS

A. **Staff Comments** – None

B. **Member Comments** – Chairman Gilkey stated that things are starting to move on the Bay Delta Conservation Plan so the Commission may want to start looking at recommending a position for the County to take.

C. **Correspondence** – None

ADJOURNMENT

The next scheduled regular meeting of the Water Commission is Monday, November 24, 2014. The meeting was adjourned at 5:59 pm.

Respectfully submitted

KINGS COUNTY WATER COMMISSION


Greg Gatzka, Secretary

KINGS COUNTY WATER COMMISSION

John Howe – District 1
Craig Pederson – District 4
Large

Mark Gilkey – District 2
Don Mills – District 5
Harold Reed – Special District
Harlin Casida – City Rep.

Jim Verboon – District 3
Brian Ehlers – Member at
Vacant – City Rep

KINGS COUNTY AGRICULTURAL ADVISORY COMMITTEE

Charles Draxler – Dairy Industry
Processing
Jim Gregory – Ag Chemicals & Petroleum
Grain
Diane Friend – Kings County Farm Bureau
Equipment

Vacant – Water
Bill Tos – Nut Crops
Dennis Tristao – Small Farms

Johnny Starling – Ag
Bob Prys – Feed/Seed &
Brian Potter – Ag

CALL TO ORDER: A special meeting of the Kings County Water Commission and the Kings County Ag Advisory Committee was called to order by Chairman Gilkey at 5:30 p.m., on August 25, 2014. The meeting was held in the Human Services Cedar Room, 1400 W. Lacey Blvd., Bldg. 8, Hanford, California.

Roll call of members was conducted by Secretary Gatzka, and a quorum of appointed Committee members were in attendance.

COMMITTEE MEMBERS PRESENT:

Don Mills, Brian Ehlers, Mark Gilkey, Craig Pedersen, John Howe, Harlin Casida, Jim Verboon, Charles Draxler, Jim Gregory, Diane Friend, Dennis Tristao, Johnny Starling, Bob Prys

COMMITTEE MEMBERS ABSENT:

Brian Potter, Bill Tos, Harold Reed

STAFF PRESENT:

Greg Gatzka - Director, Erik Kaeding – Deputy County Counsel, Chuck Kinney – Deputy Director - Planning, Terri Yarbrough – Executive Secretary, Dan Kassik – Planner, Jordan Davis - Planner

VISITORS PRESENT:

Joe Neves, Dave Orth, Michelle Speer, Scott Sills, Aubrey Bettencourt, Lou Camara, Chantal Quellet, Steve Stadler, Mike Nordstrom, Dale Melville, Steve Jackson, Roger Reynolds

UNSCHEDULED COMMENTS: None

OLD BUSINESS:

None

NEW BUSINESS:

Groundwater Study Session

A. Report on Groundwater Conditions – David Orth

Mr. Orth reported that California Statewide Groundwater Elevation Monitoring information is now available on-line. He also reported that groundwater levels are dropping and last year one million acre feet of groundwater was pumped. It is expected that another million acre feet will be pumped next year.

B. Groundwater Legislation

Mr. Orth provided an overview of two groundwater bills, SB1168 and AB1739, which were being drafted by Pavley and Dickenson. He stated that the bills would be going to vote this week (August 25-29, 2014). He also provided a letter of opposition from Kings River Conservation District and Kings River Water Association outlining principle concerns they have with the bills. He stated that the California Farm Bureau opposes the bills as they are written and has put in a counter proposal. If the bills pass, local entities would have 5 years to develop a sustainability plan and 20 years to reach sustainability.

A motion was made and seconded (Verboon/ Tristao) to recommend to the Board of Supervisors that they oppose both SB1168 and AB1739. Motion carried unanimously with Potter, Reed and Tos absent.

C. Jurisdiction/Authority of the County to Regulate and Manage Groundwater Resources – Erik Kaeding

Mr. Kaeding gave a presentation on the County’s jurisdiction to regulate groundwater. He reported that the counties have the power to regulate groundwater since the state has not occupied the field of groundwater regulation. He also explained that water rights give the owner a priority of water usage not an ownership of the water. He stated that any ground water regulation the County wants to do needs to consider CEQA and that a flat moratorium is probably not a good idea. He cited litigation in San Luis Obispo County regarding CEQA and water rights priority. He provided some examples of groundwater ordinances in other jurisdictions.

D. Options for Working with Districts, Groundwater Plans and Neighboring Counties

Nothing was discussed on this topic.

E. Groundwater Policy/Guiding Principles – Diane Friend

Diane Friend presented a draft Agricultural Groundwater Guiding Principles that was drafted by the Kings County Farm Bureau for consideration. It was the consensus of the joint committee that the draft Groundwater Guiding Principles be reviewed by the Water Commission and the Ag Advisory Committee individually.

MISCELLANEOUS

- A. **Future Agenda Items:** Agricultural Groundwater Guiding Principles
- B. **Member Comments** – None
- B. **Staff Comments** – None
- C. **Correspondence** – None

ADJOURNMENT

The meeting was adjourned at 7:48 pm.

Respectfully submitted
KINGS COUNTY WATER COMMISSION


Greg Gatzka, Secretary

AGRICULTURAL GROUNDWATER GUIDING PRINCIPLES

August 2014

These principles were developed for the purpose of creating a framework of policy to guide further discussion. As legislative proposals to strengthen groundwater regulation are considered, the Kings County Agriculture Advisory Committee along with the Kings County Farm Bureau proposes that county government agencies, policy makers and other agricultural organizations use and adhere to the following guiding principles:

1. Groundwater Reliance:

Increased reliance on groundwater for growing food, fiber and other agricultural commodities is due not only to a third year of drought, but also to restrictive environmental laws, court decisions and new regulations. This has significantly affected contractual entitlements to surface water and prevented the capture and delivery of flows of storm water runoff through the Sacramento-San Joaquin Delta. This has reduced surface water availability to recharge groundwater basins and has forced farmers to rely more heavily on groundwater. Any legislation that creates a new groundwater management regime must be coupled with real, substantive actions to increase surface water supplies and restore water supply reliability within a specified time horizon.

2. Protection of Property and Water Rights: The reasonable and beneficial use of groundwater is a property right. Under California law, overlying landowners have a correlative right to reasonable and beneficial use of groundwater. Any proposal must recognize and respect these rights. This does not mean that overdraft should continue - overlying rights are limited to a basin's safe yield - but that the existing nature and extent of groundwater rights should be maintained.

- a) Sustainable Yield-The obligation to keep groundwater basins in balance should continue to be described as "the maximum amount of water that could be extracted annually, year after year, without eventually depleting the underground basin."¹
- b) No Moratorium - Access to groundwater should not be impeded except through the appropriate process to define groundwater rights. Any limits or controls on new overlying use must not extinguish or significantly impair overlying groundwater rights or devalue the land they attach to without payment of just compensation.
- c) Surface Water Rights - Any new regulatory structure relating to groundwater must respect existing water rights and the state's existing administration and legal characterization of these rights.
- d) Crop Dictation - No groundwater management entity should be authorized to dictate crop types or agronomic practices. Although processes may improve management and clarify existing groundwater rights, how those rights are used must remain up to the landowner.

3. Recharge: Groundwater recharge should be established as a beneficial use of water.

4. Economic Impacts to Local Economies: Any new approach to groundwater management must protect and strengthen local and regional economies in the short and long-term. Water supply reliability – both surface water and groundwater – is the driver of economic stability and growth in key regions of the state. The impacts

¹ City of Santa Maria v. Adam (2012) 211 Cal.App.4th 266, 279, quoting City of Los Angeles v. City of San Fernando (1975) 14 Cal.3d 199, 214.

on these communities must be considered when developing sustainable groundwater management statutes and regulations, and identifying plans, funding sources and compliance requirements.

5. Economic Impact to Agriculture: Restrictions on groundwater use potentially will reduce land values, limit availability of land acquisition and operational financing, negatively affect infrastructure investments, harm rural communities, and substantially alter land use. Legislative proposals on groundwater management must ensure that local water agencies provide input to local land use decision-makers, while protecting and preserving existing local land use authority.

6. Governance: Organizing a governance structure, nurturing consensus, and developing a workable groundwater management plan will take time. Local entities must develop a local governance structure that is effective, open and transparent, and durable. The governance structures may take many forms such as joint powers authorities, obtaining special act authority, etc. In all cases, governance structures must include overlying landowners.

7. Local Control: Compliance with state groundwater management statutes must rest with local authority to design and implement plans with technical assistance from the Department of Water Resources. State authority to intervene (and specific criteria governing termination of state involvement) must be narrowly and specifically articulated in legislation to ensure that state intervention is permitted only if a water basin or sub-basin is experiencing long term overdraft and if in such cases local authorities:

- a) Fail to form a Local Groundwater Management Entity as required by the legislation.
- b) Fail to submit a groundwater management plan as required by legislation.
- c) Fail to implement the groundwater management plan, as objectively measured by specific standards with exceptions for exigent circumstances.

8. Funding: Developing and implementing groundwater management plans and updating them as the need arises will be challenging and costly. Ongoing funding sources must be identified.

9. Adjudication: Landowners must retain the ability to access the adjudicatory process as a means of perfecting their rights. Although this process may be improved, it should not be supplanted by or made subservient to a planning process.

10. Minimize Regulatory and Economic Burdens: Regulatory obligations, and the financial costs necessarily accompanying them, should be narrowly tailored to avoid imposing burdens where they will not return meaningful benefits to groundwater conditions. Fee authority should only be permitted in basins not in a condition of sustainable yield.

11. Privacy: To the extent that private information is provided as part of a groundwater management plan, the privacy of individual information must be ensured. All specific information provided by individuals to local or state agencies should be protected from the Public Records Act and only generally aggregated in reports.

STATE OF CALIFORNIA

**THE RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES**

**AMENDMENT 5 TO THE
AGREEMENT FOR THE SUPPLY AND CONVEYANCE OF WATER
BY THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF CALIFORNIA
TO THE PARTICIPATING STATE WATER PROJECT CONTRACTORS
UNDER
THE DRY YEAR WATER PURCHASE PROGRAM
SWPAO NO. 14-810**

THIS AMENDMENT 5 (Amendment) to the March 31, 2008 “Agreement for the Supply and Conveyance of Water by the Department of Water Resources of the State of California Under the Dry Year Water Purchase Program” (Participation Agreement, or Agreement) is entered into as of the _____ day of _____, 2014 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 the County of Kings, 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.” Unless otherwise provided in this Amendment, the definitions in the Agreement, the Yuba Water Purchase Agreement, and the exhibits to that agreement shall apply to this Amendment.

RECITALS

- A. Under the December 4, 2007 “Agreement for the Long-Term Purchase of Water from Yuba County Water Agency by the Department of Water Resources” (Yuba Water Purchase Agreement), Yuba County Water Agency (Yuba) makes surface water available for delivery and purchase by DWR, some of which is made available through substitution of groundwater for surface flows that would otherwise be used by a number of water districts within Yuba County (Member Units).
- B. In 2007 and 2008, 21 State Water Project (SWP) Contractors and the San Luis & Delta-Mendota Water Authority (“AUTHORITY”) entered into agreements with DWR for the purchase and delivery of the water made available under the Yuba Water Purchase Agreement (cumulatively referred to as the Participation Agreements). The Participating SWP Contractors and the AUTHORITY are jointly referred to as “Participating Contractors”.
- C. In 2009, the parties to the Yuba Water Purchase Agreement executed the first amendment to the Yuba Water Purchase Agreement to address a technical reservoir refill accounting provision in Section 1 of Exhibit 2. DWR and the Participating Contractors executed conforming amendments (Amendment Number 1) to each of the Participation Agreements. This amendment is still in effect.
- D. In 2009 and 2010, the parties to the Yuba Water Purchase Agreement executed the second and third amendments to the Yuba Water Purchase Agreement to make groundwater substitution water available to DWR for purchase as Component 4 Water at mutually agreed upon pricing. DWR and the Participating Contractors executed conforming amendments to each of the Participation Agreements. Both the second and third amendments have since expired.
- E. On January 6, 2012, the parties to the Yuba Water Purchase Agreement executed the fourth amendment to the Yuba Water Purchase Agreement providing for annual pricing negotiations for surface flows made available from groundwater substitution. DWR and the Participating Contractors executed conforming amendments (Amendment Number 4) to each of the Participation Agreements. Amendment 4 expires on December 31, 2015.
- F. The term of the Yuba Water Purchase Agreement is through December 31, 2025, or when all obligations thereunder have been satisfied, whichever is later, unless it is terminated earlier.
- G. Under Section 15 of the Yuba Water Purchase Agreement, a new amendment is needed to establish prices for water made available after September 30, 2015.

- H. In accordance with Section 15 of the Yuba Water Purchase Agreement, DWR and Yuba, in coordination with representatives of the Participating Contractors, have negotiated a new pricing agreement that will be incorporated into the Yuba Water Purchase Agreement by the fifth amendment to that agreement. The fifth amendment reflects changes in market conditions since the initial pricing schedule was proposed in 2004, as well as amending other provisions of that agreement.
- I. In light of the new pricing agreement reflected in the fifth amendment to the Yuba Water Purchase Agreement, the parties to the Participation Agreements desire to amend their respective Participation Agreements to conform with changes made by that amendment. This fifth amendment to the Participation Agreement shall be referred to in this Amendment as "Amendment 5".

AMENDMENT 5 to the Participation Agreement

Now Therefore, the Parties hereby amend the Participation Agreement as follows:

1. SECTION 1 , "DEFINITIONS", is amended as follows:

(a) By adding at the end the following new definition:

“**Contributing Participating Contractor**” means any Participating Contractor that elects to contribute money towards the \$20,000,000 deposit for purchases of Water from Yuba as described in Section 25 of the Yuba Water Purchase Agreement.”

(b) By amending the definition of Participating SWP Contractors to read as follows:

“**Participating SWP Contractors**” means all SWP contractors that have executed a Participation Agreement, Amendment 1 conforming the Participation Agreement to the first amendment to the Yuba Water Purchase Agreement, and Amendment 5 conforming the Participation Agreement to the fifth amendment to the Yuba Water Purchase Agreement. However, a contractor that executes this Amendment 5 will not be considered a Participating SWP Contractor beyond December 31, 2020 if that contractor does not agree to amend its Participation Agreement prior to December 31, 2020.”

(c) By amending the definition of Yuba Water Purchase Agreement by adding after “Exhibit A”: “, and as amended”.

2. EFFECTIVE DATE OF AMENDMENT

Amendment 5 to the Participation Agreement shall take effect when all of the following have occurred: (i) execution by the Parties; (ii) execution of the same or substantively similar amendments by DWR and all other Participating Contractors that elect to participate beyond December 31, 2015; and (iii) execution of the fifth amendment to the Yuba Water Purchase Agreement by DWR and Yuba.

3. SECTION 2, “TERM OF THE AGREEMENT”, is amended by adding at the end the following new subparagraphs :

“B. Notwithstanding Subparagraph A, the Parties may terminate the Participation Agreement on December 31, 2020, if they fail to amend the Participation Agreement pursuant to Section 3.B.5 and as necessary to address amendments made to the Yuba Water Purchase Agreement regarding the quantity and pricing of Water to be made available by Yuba after September 30, 2020 pursuant to Section 15 of the Yuba Water Purchase Agreement.

C. Notwithstanding Subparagraphs A and B, the Agreement shall remain in effect beyond the termination dates set forth above to the extent required to enable the Parties to satisfy all payment and water delivery obligations then existing or outstanding at the time of termination.”

4. CHANGES TO SECTION 3, “PURCHASED WATER”

a. Section 3.B.1.a, “COMPONENT 1 WATER”, is amended to read as follows:

“a. For Component 1 Water that is accounted for as Purchased Water and made available to the AGENCY, the AGENCY will pay:

- i. \$50 per acre-foot in a Wet Year;
- ii. \$100 per acre-foot in an Above Normal Year;
- iii. \$150 per acre-foot in a Below Normal Year;
- iv. \$200 per acre-foot in a Dry Year, except as provided in subsection vi;
- v. \$300 per acre-foot in a Critical Year, except as provided in subsection vi;
- vi. \$350 per acre-foot in two or more consecutive Final Classification Dry Years (or a Dry Year following a Critical Year) or in two or more consecutive Final Classification Critical Years.
- vii. Notwithstanding subsections i-vi, in any year in which Yuba’s Third-Party Transfer of up to 10,000 acre-feet of Storage Component water under

Section 11 of the Yuba Water Purchase Agreement reduces the quantity of Component 2 Water available to the AGENCY, the price for Component 1 Water will reflect the reductions specified in Section 11.F.2 of such agreement.”

b. Section 3.B.2, “COMPONENT 2 WATER”, is amended to read as follows:

“For Component 2 Water that is accounted for as Purchased Water and made available to the AGENCY, the AGENCY will pay:

- a. \$160 per acre-foot in a Dry Year, except as provided in subsection c;
- b. \$200 per acre-foot in a Critical Year, except as provided in subsection c;
- c. \$280 per acre-foot in two or more consecutive Final Classification Dry Years (or a Dry Year following a Critical Year) or in two or more consecutive Final Classification Critical Years.”

c. Section 3.B.3, “COMPONENT 3 WATER”, is amended to read as follows:

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

- a. \$50 per acre-foot in a Wet Year;
- b. \$100 per acre-foot in an Above Normal Year;
- c. \$150 per acre-foot in a Below Normal Year;
- d. \$200 per acre-foot in a Dry Year, except as provided in subsection f;
- e. \$300 per acre-foot in a Critical Year, except as provided in subsection f;
- f. \$350 per acre-foot in two or more consecutive Final Classification Dry Years (or a Dry Year following a Critical Year) or in two or more consecutive Final Classification Critical Years.”

d. Section 3.B.4, “COMPONENT 4 WATER”, is amended to read as follows:

“a. Notwithstanding any other provision to the contrary of the Yuba Water Purchase Agreement, the following provisions shall apply to Groundwater Substitution Component water and Accrued Groundwater Substitution Component water made available by Yuba, through DWR, to the AGENCY beginning on January 1, 2016 and continuing through the term of this Agreement.

b. Component 4 water shall be comprised solely of Groundwater Substitution Component water. All Groundwater Substitution Component water shall be accounted for as Component 4 Water. Except as otherwise provided herein, Groundwater Substitution Component water and Accrued Groundwater Substitution Component water will be accounted for in accordance with the provisions of the Yuba Water Purchase Agreement.

c. In every year within the term of this Agreement when one or more Participating Contractor(s) desire to purchase Accrued Groundwater Substitution Component water from Yuba through DWR, the Management Committee representatives of DWR, Yuba, and the Participating Contractors will convene by February 15 and conclude by March 31 to negotiate the price per acre-foot of Accrued Groundwater Substitution Component water, any provisions for the Delta export priority for such water, and any other terms applicable to the Accrued Groundwater Substitution Component water.

d. In every Water Accounting Year when: (1) one or more Participating Contractor(s) desire to purchase Accrued Groundwater Substitution Component water; (2) the annual negotiations referenced in Section 3.B.4.c have reached a successful conclusion calling for the purchase of such water that year; (3) the Management Committee representatives for Yuba, the AUTHORITY, and the Participating SWP Contractors have agreed as to the terms of, and each of these representatives has recommended in writing said terms and the approval of, a letter agreement between Yuba and DWR establishing the price per acre-foot and any modified terms that will be applicable to the Accrued Groundwater Substitution Component water for that Water Accounting Year; and (4) DWR and Yuba have executed said letter agreement, DWR will offer in writing to the AGENCY the opportunity to purchase Accrued Groundwater Substitution Component water at the price and terms as provided in the letter agreement between DWR and Yuba.”

5. CHANGES TO SECTION 4, “REQUESTS, SCHEDULING AND CONVEYANCE”

a. Section 4.A.1 is amended to read as follows:

“1. On or before April 1 of each year during the term of this Agreement DWR will notify the AGENCY of the quantity of Accrued Groundwater Substitution Component water that Yuba will make available during the Water Accounting Year and the terms of such water, including the price per acre-foot, and any other applicable terms. On or before April 11 of each Water Accounting Year, DWR will inform the AGENCY of the potential quantity of Component 1 Water, Component 2 Water, and Component 3 Water that is available to the AGENCY.”

b. Section 4.A.2 is amended by striking “if not used by the EWA, as provided in Section 3.B.1a”.

c. Section 4.A.3 is amended to read as follows:

- “3. DWR and the AGENCY will, between April 11 and May 14, confer on the allocation of water under Section 3A. By April 13, the AGENCY will notify DWR of the quantity of Accrued Groundwater Substitution Component water it commits to purchase based on the price and terms for Groundwater Substitution Component water for that year. The AGENCY may adjust the quantity of water, up or down, on or before May 14, and on May 14 the AGENCY will commit to the final quantity of Accrued Groundwater Substitution Component water to be purchased during the Water Accounting Year, but such amount will not be less than the actual amount of Accrued Groundwater Substitution Component water made available between April 1 and May 15 for Groundwater Substitution Component water in accordance with the accounting provisions for Groundwater Substitution Component water set forth in Exhibit 1 of the Yuba Water Purchase Agreement. This provision is intended to be consistent with, and not modify, provisions of Section 4.A.5. If necessary, the dates herein may be adjusted if approved in writing by Yuba and DWR with written notice to the AGENCY to allow the Yuba Member Units to maximize the quantities of groundwater substitution pumping program water that could be made available during each year.”

d. Section 4.A.4 is amended to read as follows:

- “4. No later than May 19, DWR will notify the AGENCY of the quantity of Component 1 Water, Component 2 Water, and Component 3 Water that has been allocated to the AGENCY and that the AGENCY will schedule pursuant to Section 4.A.7.”

e. Section 4.A.5 is amended to read as follows:

- “5. The AGENCY will provide DWR not less than 24 hours notification for suspension or termination of groundwater pumping due to limitations on the ability of the AGENCY to divert the Groundwater Substitution Component water. In the event of such a suspension or termination of Groundwater Substitution Component water, the AGENCY will pay for its allocated share of the quantity of Accrued Groundwater Substitution Component water, up to and including through a 72-hour period commencing after DWR notifies Yuba to suspend or terminate pumping related to the amount of Groundwater Substitution Component water requested by the AGENCY unless another Participating Contractor purchases that Accrued Groundwater Substitution Component water.”

f. Section 4.A.6 is amended to read as follows:

“6. Pursuant to the negotiations described in Section 3.B.4.c in which a letter agreement has been executed as provided in Section 3.B.4.d, the AGENCY will comply with Delta conveyance priority, as determined by the Management Committee representatives as provided in Section 3.B.4.c, for any Groundwater Substitution Component water requested under the Agreement, relative to any other transfer water that DWR conveys at the Harvey O. Banks Pumping Plant for the AGENCY, provided that the Groundwater Substitution Component water will not have a higher priority than Storage Component water provided under the Agreement.”

g. Section 4.A.7 is amended by striking “if not used by the EWA, as provided in Section 3.B.1.a”.

h. Section 4.A. is further amended by adding at the end the following new paragraph 12:

“12. In the event that Yuba notifies DWR on or before September 1 to not back a specified quantity of Released Transfer Water into Project storage after September 30 of a Water Accounting Year, DWR will notify the AGENCY within five business days and provide an opportunity for the AGENCY to guarantee, no later than September 15, purchase of that portion of such water allocated to the AGENCY in accordance with Section 3.A at the current year pricing regardless of whether it becomes Delivered Transfer Water. Such water, when stored in Project storage, will be released in a subsequent year to the AGENCY provided it was stored in Project storage and not spilled by flood control releases before its scheduled release.”

6. CHANGES TO SECTION 5, “INVOICING AND PAYMENTS”

a. Section 5.A.1 is amended to read as follows:

“A. Invoicing and Payment of Purchased Water

1. On or about May 22 (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 Storage Component water that the AGENCY scheduled as Purchased Water for that calendar year minus any credits due to the AGENCY as provided in Sections 5.C and 5.D. DWR will simultaneously invoice the AGENCY for 50 percent of the amount of Accrued Groundwater Substitution Component water that the AGENCY has committed to purchase under Section 4.A.3. Within 32 days of the date that

the AGENCY receives an invoice from DWR, the AGENCY will submit payment to DWR.”

b. Section 5.A. is amended further by: redesignating Section 5.A.2 as 5.A.3, Section 5.A.3 as 5.A.4, and adding a new Section 5.A.2 as follows:

- “2. a. The AGENCY will pay DWR the per acre foot price for the quantity of Accrued Groundwater Substitution Component water that the AGENCY has committed to purchase pursuant to Section 4.A.3, unless this amount is reduced pursuant to Sections 4.A.5 or 5.A.2.b or is reduced because the Yuba Member Units do not pump the requested quantity of groundwater substitution pumping program water for the Groundwater Substitution Component water.
- b. The Parties acknowledge that Section 5.1.8 of the Yuba Accord Fisheries Agreement allows the River Management Team to schedule the release of a portion of Groundwater Substitution Component water at a time when it might not be transferable. The AGENCY will not be required to pay for the portion (if any) of Groundwater Substitution Component water that is scheduled for release in accordance with the provisions of Section 5.1.8 of the Yuba Accord Fisheries Agreement to the extent that this quantity of Groundwater Substitution Component water is not transferable under the accounting provisions set forth in Exhibit 1 of the Yuba Water Purchase Agreement.
- c. On or about August 30 in each year that the AGENCY has agreed to purchase Accrued Groundwater Substitution Component water, DWR will submit an invoice to the AGENCY for 90 percent of the amount of Accrued Groundwater Substitution Component water the AGENCY has committed to purchase in Section 4.A.3 or that is otherwise payable under this Agreement during the current Water Accounting Year, less the amount of prior invoices for such Accrued Groundwater Substitution Component water during the current Water Accounting Year. Within 32 days of the date that the AGENCY receives an invoice from DWR, the AGENCY will submit payment to DWR.
- d. Approximately 30 days after the end of the release of Accrued Groundwater Substitution Component water from New Bullards Bar Reservoir, after confirmation of the amount of Groundwater Substitution Component water released has been completed, after Yuba and DWR have reached agreement on the final accounting, and Yuba has provided to DWR a final invoice that is undisputed and as required under the Yuba Water Purchase Agreement, DWR will invoice the AGENCY for final payment for Accrued Groundwater Substitution Component water

provided under this Amendment. The AGENCY will submit payment to DWR within 32 days of invoicing by DWR.

- e. The final payment for Accrued Groundwater Substitution Component water will reflect any adjustments necessary to account for the total quantity of Accrued Groundwater Substitution Component water payable under this Agreement and any adjustments due pursuant to Sections 4.A.5 or 5.A.2.b.
- f. The Agreement provides for a Participating Contractor to pay interest on delinquent payments at the rate of 1 percent per month from the due date until paid in full. DWR will assess such interest on the AGENCY if payments to DWR for invoices pursuant to this Agreement are delinquent. The AGENCY agrees to pay such interest, and DWR will pay such interest collected along with the payments on invoices to Yuba.”

c. Section 5.A is further amended by adding at the end the following new subsection 5.A.5:

“5. In the event that the AGENCY has guaranteed the purchase of Water allocated in accordance with Section 3.A that Yuba had notified DWR to not back into Project storage, DWR will invoice the AGENCY for the amount of Water the AGENCY has guaranteed in accordance with Section 4.A.12 to purchase at the current year pricing regardless of whether it becomes Delivered Transfer Water.”

d. Section 5.C, PAYMENT OF FIXED ANNUAL COSTS AND CREDIT AGAINST PURCHASED WATER, is amended to read as follows:

“C. PAYMENTS AND CREDITS FOR TIME VALUE OF DEPOSIT FUNDS

- 1. The AGENCY shall make an annual payment to DWR for the purpose of compensating Contributing Participating Contractors for the time value of the money, computed as a compounded interest rate of 2.25 percent on the outstanding balance, that Contributing Participating Contractors contribute by about December 31, 2014 to comprise the \$20,000,000 of deposit funds that serve to guarantee the five-year pricing reflected in the fifth amendment to the Yuba Water Purchase Agreement. On or about May 22 each year, DWR will invoice the AGENCY its share of the annual charge to pay the interest costs on the deposit funds provided by Contributing Participating Contractors providing deposit funds as provided in Section 5.E. The AGENCY’s payment of these fixed annual costs will be its share of \$175,000 prorated among the Participating SWP Contractors calculated in the manner as provided in Section 3.A. This payment may be offset with any applicable credits due the AGENCY under the Agreement. This annual

payment will be discontinued once the total interest charges have been paid to the Contributing Participating Contractors that fund the deposit after the \$20,000,000 deposit has been fully credited to Storage Component water purchases by the Participating Contractors. This annual charge may be reduced in the final year(s) of payment to assure complete payment of the interest without overcharging the Participating Contractors.

2. All charges invoiced to the Participating Contractors for interest as provided in Section 5.C.1 shall be credited by DWR to Water purchases in the same Water Accounting Year by the Contributing Participating Contractors, in proportion to the amount of money each Contributing Participating Contractor contributed to the deposit described in Section 5.E. DWR will compute the actual amount of interest due to the AGENCY, if it is a Contributing Participating Contractor, based on the 2.25 percent interest rate and the deposit balances outstanding during the term of this Agreement. DWR shall credit or pay to AGENCY its proportionate share of the interest amount until the full amount of such interest due has been paid.”

e. Section 5.E. PAYMENTS FOR ADJUSTMENTS TO GROUNDWATER O&M COSTS is amended to read as follows:

“E. PROVISION OF DEPOSIT FUNDS TO SECURE PRICING GUARANTEE

1. An AGENCY that has elected to be a Contributing Participating Contractor shall deposit money with DWR towards the \$20,000,000 deposit for purchases of Water from Yuba.
 - a. The AGENCY shall pay a deposit of \$0 to DWR within 10 working days of executing Amendment 5 to the Agreement as its share of the \$20,000,000 deposit towards all purchases of Storage Component water by all Participating Contractors beginning after September 30, 2015. DWR will remit these deposit funds to Yuba by December 31, 2014 as part of the \$20,000,000 deposit as provided in the Yuba Water Purchase Agreement.
 - b. As Yuba credits the deposit funds to Storage Component water purchases by all Participating Contractors, if the AGENCY is a Contributing Participating Contractor, DWR will, in turn, credit these deposit credits to all purchases of Water by the AGENCY beginning October 1, 2015 in proportion to the AGENCY’s contribution to the deposit until the entire deposit has been credited and the AGENCY has received full credit for or repayment of its deposit amount during the term of the Agreement as provided herein. In the event that the AGENCY’s purchases of Water in any Water Accounting Year are less than the credits available to the AGENCY under the Agreement, DWR

will pay such credit amounts to the AGENCY upon receipt of an invoice.

- c. By June 10 each year and by January 17 of the following year, DWR will provide the AGENCY with an accounting of all purchases of Water by Participating Contractors setting forth the amount and cost of Storage Component and Groundwater Substitution Component water purchased by the AGENCY, charges for the AGENCY's proportional share of interest payments, credits for the AGENCY's share of interest on the deposit if any, credits for repayment of deposit funds to the AGENCY from purchases of Storage Component water if any, and any other applicable credits and charges provided in this Agreement. If funds are due from DWR to the AGENCY, the AGENCY shall promptly invoice DWR, and DWR will pay the AGENCY within 30 days. DWR will compute the deposit balance attributable to the AGENCY and compute the interest amounts earned and credited or paid, and provide the AGENCY with detailed accounting of these balances. DWR will adjust the deposit balance attributable to the AGENCY's contribution to the deposit accordingly until the deposit is fully credited.
2. In the event that there are AGENCY deposit funds that have not been fully credited for Storage Component water that has been accounted for as Delivered Transfer Water that is made available through September 30, 2020, then these remaining deposit funds will be: (1) applied to future payments due by the AGENCY to DWR for Storage Component Delivered Transfer Water delivered on or after October 1, 2020 under a subsequent amendment between the Parties at the prices provided in Section 26 of the Yuba Water Purchase Agreement; or (2) if there is no such amendment, refunded by DWR to the AGENCY upon receipt of Prepayment funds from Yuba as provided in Section 25.A of the Yuba Water Purchase Agreement."

7. YUBA WATER SALES TO THIRD PARTIES

The Agreement is amended by adding at the end the following new section:

"31. SALES TO THIRD PARTIES

Amendment 5 to the Yuba Water Purchase Agreement provides for the sale of water to third parties under the terms outlined in Section 11.F of that agreement. In accordance with Sections 11.F.3 and 4 of the Yuba Water Purchase Agreement, so long as a transfer is carried out consistent with the transfer water accounting provisions of Exhibit 1 for Released Transfer Water during Balanced Conditions, the AGENCY will not object based on the use of the transfer water accounting provisions of Exhibit 1 to such a transfer as not protective of DWR and the AGENCY as legal users of water during the time the AGENCY remains a Participating Contractor. The

AGENCY also agrees that while a Participating Contractor, it will not purchase water from Yuba other than through the Yuba Water Purchase Agreement.”

8. NO OTHER CHANGES

All remaining provisions of the Agreement that are not changed by this Amendment will remain in full force and effect.

9. COUNTERPARTS OF THE AGREEMENT

This Amendment 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 Amendment, if executed in counterparts, will be valid and binding on a Party as if fully executed all in one copy.

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

Approved as to legal form
and sufficiency:

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

Cathy Crothers
Chief Counsel

Mark W. Cowin
Director

Date

Date

Approved as to legal form
and sufficiency:

THE AGENCY

Counsel

Title

Date

Date