

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

AMENDMENT NO. 2 TO THE
AGREEMENT FOR THE LONG-TERM PURCHASE OF WATER FROM YUBA
COUNTY WATER AGENCY BY THE DEPARTMENT OF WATER RESOURCES
SWPAO NO. 09-800

THIS AMENDMENT NO. 2 ("Amendment") to the December 4, 2007 "Agreement for the Long-Term Purchase of Water from Yuba County Water Agency by the Department of Water Resources" ("Agreement") is entered into as of MAY 8, 2009 between the Department of Water Resources ("DWR") of the State of California, pursuant to the provisions of the California Water Resources Development Bond Act, the Central Valley Project Act and other applicable laws of the State of California, and Yuba County Water Agency ("Yuba"), pursuant to the Yuba Act (California Statutes 1959, Chapter 788, as amended), and other applicable laws of the State of California. Except for as defined herein, defined terms are set forth in section 1 of the Agreement.

RECITALS

- A. In 2009, severe drought conditions have worsened and California is now in its third consecutive year of drought.
- B. In January 2009, precipitation in Northern California was 34 percent of average and storage in the state's reservoir system is at a historic low, with Lake Oroville 70% below capacity, Shasta Lake 66% below capacity, Folsom Lake 72% below capacity, and San Luis Reservoir 64% below capacity.
- C. In February 2009, Governor Arnold Schwarzenegger declared a state of emergency because of three years of below-average rain and snowfall in California, directing State and local water agencies to take actions that facilitate water conservation efforts and water transfers.
- D. At this time, the DWR allocation for the SWP is 20 percent of requested deliveries and Reclamation has allocated no deliveries to the CVP agricultural water service contractors south of the Delta based on a forecast of dry conditions (90% exceedence forecast).

- E. DWR has established a 2009 Drought Water Bank to help augment severely reduced water supplies of many water agencies in the State. Northern California water districts, including some in Yuba County, have contacted DWR to sell water to the Drought Water Bank and other water users have contacted DWR to purchase the water at current market rates, which this year are approximately double the price of water sold under the Agreement.
- F. Under the Agreement, 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 the Yuba Member Units. Yuba and its Member Units have established a groundwater substitution water transfer program ("groundwater substitution pumping program") through their Conjunctive Use Agreements to provide water for the Agreement. The Agreement, Exhibit 1, defines the amount of surface flows made available from the groundwater substitution program as the "Groundwater Substitution Component" and is the "quantity of Released Transfer Water that Yuba makes available from releases from New Bullards Bar Reservoir as a result of Yuba's groundwater substitution pumping program, and that is not related to releases from the Storage Component of Released Transfer Water." (Agreement Exhibit 1, p. 35.)
- G. In 2009, a disagreement arose among Yuba, its Member Units, DWR and the participating SWP contractors and the San Luis & Delta-Mendota Water Authority (SWP contractors and Authority together referred to as "Participating Contractors") over the interpretation of obligations in the Agreement for making groundwater substitution pumping program water available to DWR for purchase for Components 2, 3, and 4 Water.
- H. The Parties dispute whether, under the terms of the Agreement, Yuba may authorize its Member Units to sell water from Yuba's groundwater substitution pumping program water to third parties (for example, under subsection F of section 11 of the Agreement) without first making this quantity of groundwater substitution pumping program water available for purchase by DWR under the water pricing provisions set forth in the Agreement (for example, under subsection B of sections 6, 7 or 8 of the Agreement).
- I. Without any Party waiving any rights and obligations under the Agreement and recognizing that the above dispute has not been resolved, and because of severe drought conditions, DWR and Yuba desire for 2009 only to amend the Agreement by modifying the price of Component 4 Water that is offered from the groundwater substitution program and other provisions of the Agreement.

- J. In accordance with the dispute resolution provisions of section 22 of the Agreement, the Parties presented the dispute to the Management Committee but the Management Committee has not agreed on terms to resolve the dispute. However, in consideration of the 2009 severe drought conditions and the need to facilitate water transfers, the Management Committee has recommended adoption of this Amendment for 2009 only and that discussion continue among Yuba, its Member Units, DWR, and the Participating Contractors to resolve the dispute for the remaining term of the Agreement.

The Parties Hereby Amend The Agreement As Follows:

1. Definition.
 - a. When used herein, the term "Accrued Groundwater Substitution Component" water means the amount of surface water in New Bullards Bar Reservoir that results from Yuba's groundwater substitution pumping program established by Yuba and its Member Units under their Conjunctive Use Agreements for making available Groundwater Substitution Component water.
2. Notwithstanding any other provision to the contrary of the Agreement, the following provisions will apply to Groundwater Substitution Component water made available by Yuba during the 2009 Water Accounting Year:
 - a. Yuba will notify DWR by April 1, 2009 of the amount of Accrued Groundwater Substitution Component water that Yuba will make available during the 2009 Water Accounting Year. By April 15, DWR will notify Yuba of the amount of Accrued Groundwater Substitution Component water it commits to purchase based on requests by Participating Contractors. DWR may adjust this amount, up or down, on or before May 15, and on May 15 DWR will commit to the final quantity of Accrued Groundwater Substitution Component water to be purchased in 2009, but such amount will not be less than the actual amount of Accrued Groundwater Substitution Component water made available between April 1 and May 15 for Groundwater Substitution Component water in accordance with the accounting provisions for Groundwater Substitution Component water set forth in Exhibit 1 of the Agreement. This provision is intended to be consistent with, and not modify, provisions of subsection 2.h below. If necessary, the dates herein may be adjusted if approved in writing by Yuba and DWR to allow the Member Units to maximize the quantities of groundwater substitution pumping program water that could be made available during 2009.

- b. DWR will pay Yuba \$250 per acre foot for the amount of Accrued Groundwater Substitution Component that DWR has committed to purchase in subsection 2.a above, unless this amount is reduced pursuant to subsection 2.h below, or reduced because the Yuba Member Units do not pump the requested quantity of groundwater substitution pumping program water for the Groundwater Substitution Component water.
- c. Yuba will confirm on a monthly basis the quantities of the Accrued Groundwater Substitution Component water and the quantities of Groundwater Substitution Component water released as Released Transfer Water, in accordance with the accounting provisions for Groundwater Substitution Component water set forth in Exhibit 1 of the Agreement.
- d. The Parties acknowledge that Section 5.1.8 of the Yuba Accord Fisheries Agreement allows the River Management Team to schedule the release of a portion of Groundwater Substitution Component water at a time when it might not be transferable. DWR will not be required to pay for the portion (if any) of Groundwater Substitution Component water that is scheduled for release in accordance with the provisions of Section 5.1.8 of the Yuba Accord Fisheries Agreement to the extent that this quantity of Groundwater Substitution Component water is not transferable under the accounting provisions set forth in Exhibit 1 of the Agreement.
- e. On or before the eighth day of the month following the month that the groundwater substitution pumping program makes Accrued Groundwater Substitution Component water available, Yuba will submit an invoice to DWR for the amount of Accrued Groundwater Substitution Component water that was made available under this Amendment during that prior month.
- f. On or about the tenth day of the month that Yuba submits an invoice to DWR, DWR will submit the invoice to the Participating Contractors showing their allocated share of the Accrued Groundwater Substitution Component water made available in the prior month and the payment due within 30 days. DWR will reduce the monthly payments invoiced to the Participating Contractors by 10 percent to allow accounting adjustments (if necessary) in the final payment for the Accrued Groundwater Substitution Component water.
- g. Within 60 days of the date that DWR receives an invoice from Yuba, DWR will submit payment to Yuba. DWR's monthly payments will be reduced by 10 percent to allow accounting adjustments (if necessary) in the final payment to Yuba for the Accrued Groundwater Substitution Component water. 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 made available under this Amendment and any adjustments due to section 2.d above, or 2.h below. Yuba will provide to DWR in a final invoice that is undisputed and as required under the Agreement an

- amount for final payment for Accrued Groundwater Substitution Component water provided under this Amendment.
- h. DWR will provide Yuba not less than 72 hours notification for suspension or termination of groundwater pumping due to limitations on the ability of DWR to divert and use the Groundwater Substitution Component water. In the event of such a suspension or termination of Groundwater Substitution Component water, DWR will pay for the quantity of Accrued Groundwater Substitution Component water up to and including through the 72-hour notification of suspension or termination (i.e., DWR will pay for the quantity of Accrued Groundwater Substitution Component water through the notice period irrespective of whether DWR was able to divert and use the Accrued Groundwater Substitution Component water).
 - i. During 2009, Groundwater Substitution Component water will be available only as Component 4 Water.
 - j. During 2009, to enable maximum amounts of available Groundwater Substitution Component water to be used for Component 4 Water, Exhibit 1 Sections 7.2.2, 7.2.3, and 7.2.4 of the Agreement are inapplicable as to Groundwater Substitution Component water for the term of this Amendment and the Parties acknowledge that a deficit in delivery of Component 2 and Component 3 Water could occur in 2009.
 - k. To attempt to minimize deficiencies during 2009 in the amounts of Component 2 and Component 3 Water that Yuba has committed to deliver, Yuba will use reasonable best efforts to make available Storage Component water to enable delivery to DWR of the full amount of Component 2 and Component 3 from either Storage Component Water, or supplemental surface water transfers if acceptable by the River Management Team under the Yuba Accord Fisheries Agreement, in accordance with Exhibit 1 of the Agreement.
 - l. In the amendments between DWR and the Participating Contractors implementing this Amendment for the 2009 purchase of Groundwater Substitution Component water, DWR will require that any Participating Contractor requesting Groundwater Substitution Component water to schedule this water with a higher Delta conveyance priority over any other transfer water that DWR conveys at the Harvey O. Banks Pumping Plant for these same Participating Contractors, provided that the 2009 Groundwater Substitution Component water will not have a higher priority than Storage Component water provided under the Agreement.
 - m. In the amendment between DWR and the Authority for implementing this Amendment for the 2009 purchase of Groundwater Substitution Component water, DWR will require that the Authority work with Reclamation to make best efforts to schedule this water with a higher Delta conveyance priority over any

- other transfer water that Reclamation conveys at the Jones pumping plant for the members of the Authority that will receive water pursuant to this Amendment, provided that the 2009 Groundwater Substitution Component water will not have a higher priority than Storage Component water provided under the Agreement.
- n. Section 12.C (Payments for Adjustments in Groundwater O&M Costs) of the Agreement will not be applicable to the 2009 Groundwater Substitution Component water, or the Accrued Groundwater Substitution Component water, and there will be no adjustment to payments for such water made available by Yuba under this Amendment.
 - o. Except as otherwise provided herein, Groundwater Substitution Component water and Accrued Groundwater Substitution Component water will be accounted for in accordance with the provisions of the Agreement.
3. Within 30 days of executing this Amendment, Yuba (in consultation with the Member Units) and DWR (in consultation with the Participating Contractors) will meet to resolve the dispute identified in Recitals G and H of this Amendment.
 4. Within 30 days of executing this Amendment, Yuba and DWR (in consultation with the Participating Contractors) will agree on terms for the makeup of Component 2 and Component 3 Water that would have been delivered in 2009 except for insufficient available surface water and this Amendment, or within 30 days of the Parties having adequate information on the need for an approximate quantity of makeup water that may be required, whichever occurs later. The terms will provide for Yuba, in a subsequent year or years when such makeup water can be delivered from Yuba's available surface water supply, to make available to DWR additional surface water to makeup for 2009 deficits in Component 2 and Component 3 Water at a time when the Participating Contractors can use the makeup water. This makeup water, however, will be scheduled after delivery of the quantity of Components 1, 2, and 3 Water required for the year when the makeup water is provided. The price of the makeup Component 2 and Component 3 water will be at the price of water during the year the makeup water is delivered.
 5. This Amendment is applicable only to the 2009 Water Accounting Year, and will not constitute a precedent that binds either of the Parties or the Participating Contractors as to the future interpretation of the Agreement.
 6. Consistent with the water accounting principles set forth in Exhibit 1 to the Agreement, Yuba agrees that making the Groundwater Substitution Component water available in 2009 will not affect the quantity of Storage Component water that Yuba makes available in 2009 or thereafter.
 7. Yuba agrees to deliver Groundwater Substitution Water to DWR from New Bullards Bar Reservoir on a schedule that maximizes benefits to the SWP and CVP

consistent with the Agreement. Such releases shall not adversely affect Yuba's New Bullards Bar Reservoir operations.


8. This Amendment will become effective upon execution by the Parties, and will terminate on March 31, 2010 or after final payment by DWR to Yuba for any Accrued Groundwater Substitution Component water made available in 2009 as provided under this Amendment, whichever is later, except that commitments under sections 3, 4, and 5 will survive termination of this Amendment until obligations of those sections are met.
9. All remaining provisions of the Agreement will remain in full force and effect.

The foregoing is hereby agreed to by the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on
the date first written above.

Approved as to legal form
and sufficiency:

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES


David Sandino,
Chief Counsel

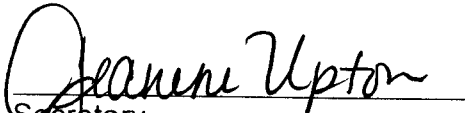

Lester A. Snow,
Director

APR 27 2009
Date

5/8/09
Date

Attest:

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


Secretary


Chairman of the Board

4-14-09
Date

4-14-09
Date