

**LOWER YUBA RIVER ACCORD**  
**AGREEMENT FOR THE CONJUNCTIVE USE OF SURFACE AND**  
**GROUNDWATER SUPPLIES**

This Agreement is entered into as of the Effective Date between Yuba County Water Agency, and Browns Valley Irrigation Water District, in the County of Yuba, California. Defined terms are set forth in Section 2 of this Agreement.

**RECITALS**

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

B. The Member Unit provides irrigation water supplies within its service area in Yuba County. The Member Unit and Yuba have entered into the Water Supply Contract.

C. Yuba has been a party to many years of administrative and court proceedings regarding disputes concerning the operation of the Yuba Project in a manner that meets the requirements of California Fish and Game Code Section 5937 (which states in part: "The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam"), and other applicable laws. The State Board has issued Decision 1644, which amends Yuba's water right permits concerning the operation of the Yuba Project. Yuba has developed the Yuba River Accord to amend Decision 1644 and resolve issues associated with operation of the Yuba Project in a way that: (1) protects lower Yuba River fisheries; (2) provides for water-supply reliability for water deliveries in Yuba County; and (3) provides revenues to implement the Yuba River Accord, for local flood control projects and for other activities of Yuba from water sales for

use for protection and restoration of Delta fisheries, and improvements in state-wide water supply management.

D. The Yuba River Accord includes three major agreements: (1) the Fisheries Agreement, under which Yuba will revise the operations of the Yuba Project to provide higher flows in the lower Yuba River under certain conditions to improve fisheries protection and enhancement, and pursuant to which Decision 1644 will be amended by the State Board; (2) the Conjunctive Use Agreements between Yuba and Member Districts within Yuba County for implementing a conjunctive use and water use efficiency program; and (3) a Water Purchase Agreement between Yuba and DWR, pursuant to which DWR will have rights to beneficially use water flows made available by Yuba through the Fisheries Agreement, the Conjunctive Use Agreements, and additional water releases from the Yuba Project.

E. Prior to implementing the Fisheries Agreement, the Conjunctive Use Agreements or the Water Purchase Agreement, Yuba will comply with applicable environmental laws, as necessary. Yuba is the lead CEQA agency for such environmental compliance, and the Member Unit is a responsible agency under CEQA for such environmental compliance.

F. The Member Unit supports the Yuba River Accord, and is willing to enter into this Agreement because it will enable the Yuba River Accord to become effective. The ability of the Member Unit to participate in the conjunctive use program provided for in this Agreement will depend on the extent to which the Member Unit can make arrangements with landowners within its service area to provide the groundwater pumping capacity required for the conjunctive use program, and Yuba will not make these arrangements directly with the Member Unit's landowners.

G. The Parties believe that this Agreement is consistent with Yuba's commitments to utilize water management tools (such as conjunctive use of groundwater) to

create operational efficiencies, and manage water shortage risks in a manner that would benefit the lower Yuba River fisheries and augment water supplies for statewide purposes.

H. Yuba will operate the Yuba Project to satisfy in the following priority: (1) applicable requirements from the United States Army Corps of Engineers New Bullards Bar flood control manual; (2) applicable requirements for instream flow releases or recreation requirements, and other operational requirements under regulatory agency permits (including Decision 1644), licenses (including the FERC License), agreements (including the Fisheries Agreement, and including Schedule 6 Year water transfers), court orders or decisions; (3) obligations under the PG&E Power Contract; (4) obligations under the Phase 8 Settlement Agreement; (5) obligations under the Water Supply Contract; and (6) releases for Groundwater Substitution Water Transfer Program water transfers, Surface Water Supplemental Transfers and other water transfers that do not result from releases pursuant to subsections (1), (2), (3) and (4) of this recital.

## **AGREEMENT**

The Parties agree as follows:

1. **Recitals Incorporated.** The foregoing recitals are incorporated by reference.
2. **Definitions.** When used herein, the term:

**"Agreement"** means this agreement, which is one of the Conjunctive Use Agreements that is part of the Yuba River Accord.

**"CEQA"** means the California Environmental Quality Act.

**"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.

**"Conjunctive Use Agreements"** means those agreements (if any) for implementing a conjunctive use and water use efficiency program between Yuba and a sufficient number of Member Units that Yuba determines is satisfactory for Yuba to meet Yuba's obligations under this Agreement, the Fisheries Agreement, the Water Purchase Agreement and the Yuba Act. The Conjunctive Use Agreements are comparable to the terms of this Agreement, and are among the agreements that comprise the Yuba River Accord.

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

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

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

**"Effective Date"** means the date that this Agreement will take effect, as provided in Section 4 ("Effective Date") of this Agreement.

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

**"FERC License"** means the license, as amended, issued to Yuba by FERC for the operation of the power facilities of the Yuba Project, the term of which expires on April 30, 2016.

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



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

**"Fisheries Agreement"** means the agreement among Yuba, the California Department of Fish and Game and other parties, under which Yuba will operate the Yuba Project to provide instream flows in the lower Yuba River under certain conditions to improve fisheries protection. The Fisheries Agreement is among the agreements that comprise the Yuba River Accord.

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

**"Groundwater Monitoring and Reporting Program"** means the program, set forth in **Exhibit 1** to this Agreement, pursuant to which Yuba will monitor and report groundwater pumping to implement this Agreement.

**"Groundwater O&M Costs"** is a defined term in the Phase 8 Settlement Agreement and the Water Purchase Agreement and means an amount (based on itemized invoices of work done and costs incurred) to reimburse the Member Unit for annual increases above actual 2006 costs for upkeep, power and operation (but excluding overhead charges) of those fixed assets that are dedicated to making groundwater available under the Phase 8 Settlement Agreement and the Water Purchase Agreement, as referenced in Sections 10, 12C

and 15C of this Agreement. Groundwater O&M Costs will be paid to the Member Unit to the extent that payments are received by Yuba under the Phase 8 Settlement Agreement and the Water Purchase Agreement for groundwater provided by the Member Unit. Section 12C of the Water Purchase Agreement provides that annual increases of Groundwater O&M Costs above the baseline specified in the Water Purchase Agreement will be computed based on the Consumer Price Increase as provided by the United States Department of Labor, Bureau of Labor Statistics. Yuba will consult with the Member Unit and the other parties to the Phase 8 Settlement Agreement with respect to the scope and process for reimbursement of Groundwater O&M Costs.

**"Groundwater Substitution Water Transfer Program"** means groundwater that the Member Unit agrees to pump or arrange with the Member Unit's water users to pump, if requested by Yuba, as a substitute supply for the delivery of surface water by Yuba to the Member Unit to provide water as described in the Water Purchase Agreement and as provided for in Section 12 ("Groundwater Substitution Water Transfer Program") of this Agreement.

**"Management Committee"** means the committee, consisting of one representative each from Yuba and the Member Units who execute Conjunctive Use Agreements, established under Section 19 ("Technical Committee and Management Committee") of this Agreement.

**"Member Unit"** means Browns Valley Irrigation Water District.

**"Member Units"** means the Member Unit and other Member Units of Yuba (as defined in Section 2(g) of the Yuba Act).

**"Party"** means Yuba or the Member Unit.

**"Parties"** means Yuba and the Member Unit.

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

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

**"Phase 8 Settlement Agreement"** means the "Short-Term Agreement to Guide Implementation of Short-Term Water Management Actions to Meet Local Water Supply Needs and to Make Water Available to the SWP and CVP to Assist in Meeting the Requirements of the 1995 Water Quality Control Plan and to Resolve Phase 8 Issues" (effective March 24, 2003), or a similar program, including agreements entered into by Yuba in furtherance thereof. The term of the Phase 8 Settlement Agreement is expected to be through 2019.

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

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

**"Schedule 2, 3, 4, 5 or 6 Year"** means a Water Year type with the instream flow requirements that are provided for in a Schedule 2, 3, 4, 5 or 6 Year as defined in the Fisheries Agreement.

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



**"Surface Water Supplemental Transfer"** is a defined term in the Fisheries Agreement and means a transfer of surface water from storage in New Bullards Bar Reservoir for use outside of Yuba County, where: (1) the transferred water is not part of a Lower Yuba River flow that is reasonably needed to meet the instream flow requirements in Section 5.1.1 or Section 5.1.5 (or operational buffers for such requirements) of the Fisheries Agreement; (2) the release of water from storage in New Bullards Bar Reservoir is in addition to releases reasonably needed to reach a September 30 storage target of 650,000 acre-feet, and instead causes the September 30 New Bullards Bar Reservoir storage to be less than 650,000 acre-feet; and (3) the transfer is not part of: (a) a Groundwater Substitution Water Transfer Program; (b) the Phase 8 Settlement Agreement deliveries; (c) flows that are needed to meet PG&E requests (for example a increase in flow to increase generation to meet critical demands on the PG&E system); (d) flows that are needed for fishery studies; or (e) releases to meet make-up water supply obligations for Component 1, 2 and 3 Water (as defined in the Water Purchase Agreement) in any year.

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

**"Technical Committee"** means the committee, consisting of technical representatives from Yuba and the Member Units who execute Conjunctive Use Agreements, established under Section 19 ("Technical Committee and Management Committee") of this Agreement.

**"Water Purchase Agreement"** means the agreement between Yuba and DWR, pursuant to which DWR will have the right to beneficially use water flows made available by Yuba through this Agreement, the Fisheries Agreement, the Conjunctive Use Agreements and additional water releases from the Yuba Project. The Water Purchase Agreement may be amended to include Reclamation as a party.

**"Water Supply Contract"** means the water supply contract between Yuba and the Member Unit (including all amendments and renewals).

**"Water Year"** means the twelve-month period from October 1 of one year through September 30 of the following year. For this Agreement, each Water Year will be classified: (1) as "Wet," "Above-Normal," "Below-Normal," "Dry" or "Critical," based on the Sacramento Valley Water Year Hydrologic Classification in Figure 1 on page 188 of the State Board's March 15, 2000, Revised Water-Right Decision 1641; or (2) as a "Conference Year," based on the procedures and formulas set forth in Exhibits 4 and 5 of the Fisheries Agreement, using the latest available forecast for the Water Year.

**"Winter Water"** means water for waterfowl habitat, rice straw decomposition, recreation and other beneficial purposes delivered by Yuba to the Member Unit under the Water Supply Contract between October 1 and January 31.

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

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

**"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 proposal as described in Recitals C and D of this Agreement.

**3. Term of Agreement.** This Agreement will terminate on: (a) December 31, 2016; (b) the termination date of the Fisheries Agreement; (c) when all obligations under this Agreement have been satisfied; or (d) the extended term of the Fisheries Agreement or the



Water Purchase Agreement as referred to in Section 21 ("FERC Annual License"), whichever is later, unless this Agreement is terminated earlier as provided herein.

**4. Effective Date.** This Agreement will become effective when all of the following have occurred : (1) full execution of this Agreement; (2) full execution of the other Conjunctive Use Agreements (if any, unless Yuba provides written notification of Yuba's waiver of this condition); (3) full execution and implementation of the Fisheries Agreement; (4) full execution and implementation of the Water Purchase Agreement (including payment in full for Component 1 Water); (5) full execution and implementation of an agreement between Yuba and PG&E to amend provisions of the PG&E Power Contract (unless Yuba provides written notification of Yuba's waiver of this condition); and (6) receipt of all State Board approvals that may be necessary to enable this Agreement, the Fisheries Agreement and the Water Purchase Agreement to be fully implemented, including amendment of Decision 1644 in a form that is satisfactory to Yuba. The Parties acknowledge that, in accordance with Sections 8 and 10 of this Agreement, the Member Unit's obligations to provide groundwater pumping capacity required to meet the Member Unit's allocations provided for in Sections 7 and 9 of this Agreement are subject to the Member Unit providing confirmation to the reasonable satisfaction of Yuba that the Member Unit has entered into binding arrangements for the term of this Agreement with landowners within the Member Unit's service area. The Parties will support the actions described in this section.

**5. Actions Taken by Yuba to Make Water Available.**

**A.** In accordance with Section 5 of the Yuba Act, all sales of water are subject to the prior right to the use of such water or Yuba facilities by or for the Member Units. Yuba has taken the following measures to assure compliance with this provision in implementing the Yuba River Accord:

**1.** Yuba has entered into the Conjunctive Use Agreements under which the contracting Member Units have agreed to provide groundwater supplies in



substitution for surface water supplies to the extent necessary to assist Yuba in implementing the Fisheries Agreement and Water Purchase Agreement; and

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

3. The Board of Directors of Yuba has adopted a resolution making findings concerning Yuba's compliance with Section 5.2 of the Yuba Act with respect to the execution and implementation of the Conjunctive Use Agreements, Fisheries Agreement and Water Purchase Agreement; and

4. Yuba will not carry out a Surface Water Supplemental Transfer during a year in which Yuba imposes deficiencies in deliveries of water supplies to the Member Unit under the Water Supply Contract, without the consent of the Member Unit to such Surface Water Supplemental Transfer. The Member Unit concurs that water released by Yuba to satisfy: (a) applicable requirements from the United States Army Corps of Engineers New Bullards Bar flood control manual; (b) applicable requirements for instream flow releases or recreation requirements, and other operational requirements, under regulatory agency permits (including Decision 1644), licenses (including the FERC License), agreements (including the Fisheries Agreement, and including Schedule 6 Year water transfers), court orders or decisions; (c) obligations under the PG&E Power Contract; and (d) obligations under the Phase 8 Settlement Agreement, is not water that is available to meet the water requirements of the Member Unit under the Water Supply Contract.

**B.** In addition, Yuba may investigate the feasibility of installing and operating water diversion and conveyance facilities at or downstream of the confluence of the lower Yuba River and the Feather River that could be operated to assist Yuba in making additional water supplies available within Yuba County to meet potential future water supply

needs. This Agreement does not require Yuba to install and operate the facilities referred to in this subsection.

**6. Support for Yuba River Accord.** The Member Unit supports the Yuba River Accord and the actions described in this Agreement to implement the Yuba River Accord.

**7. Groundwater Pumping in Schedule 6 Years.** In a Schedule 6 Year, Yuba is required to pump up to 30,000 acre-feet of groundwater to supplement storage releases to provide the Schedule 6 Year instream flows. The Member Units have agreed in the Conjunctive Use Agreements (including this Agreement) to pump the following percentages of up to a total of 30,000 acre-feet of groundwater required during a Schedule 6 Year in replacement of the delivery of irrigation water to the respective Member Units by Yuba:

|                                    |            |                          |
|------------------------------------|------------|--------------------------|
| Brophy Water District:             | 22.5%      | (6,750 acre-feet)        |
| Browns Valley Irrigation District: | 11.5%      | (3,450 acre-feet)        |
| Cordua Irrigation District:        | 0%         |                          |
| Dry Creek Mutual Water Company:    | 9%         | (2,700 acre-feet)        |
| Hallwood Irrigation Company:       | 18%        | (5,400 acre-feet)        |
| Ramirez Water District:            | 12%        | (3,600 acre-feet)        |
| South Yuba Water District:         | 15%        | (4,500 acre-feet)        |
| Wheatland Water District:          | <u>12%</u> | <u>(3,600 acre-feet)</u> |
|                                    | 100%       | (30,000 acre-feet)       |

During the term of this Agreement, the Member Unit will pump the percentage of groundwater set forth in this section as required and requested by Yuba in a Schedule 6 Year in replacement of the delivery of irrigation water by Yuba, subject to the terms of this Agreement. The Parties acknowledge that the ability of the Member Unit to provide such groundwater pumping will depend on the extent to which the Member Unit can make arrangements with landowners within its service area to provide the groundwater pumping



capacity required. The groundwater pumping allocation set forth in this section may be adjusted from time to time with the consent of the Member Unit, other affected Member Units and Yuba to reflect the ability of Member Units to provide this pumping capacity. A Member Unit will be required to provide its specified percentage of groundwater pumping under this section and Section 9 ("Groundwater Pumping to Implement the Phase 8 Settlement Agreement") as a prerequisite to participating in a groundwater substitution water transfer under Section 12 ("Groundwater Substitution Water Transfer Program") of this Agreement. Groundwater pumping under this section will be carried out consistent with the requirements of Section 15 ("Groundwater Pumping Requirements") of this Agreement.

**8. Payments for the Schedule 6 Groundwater Pumping Commitment and Schedule 6 Groundwater Pumping.** To the extent the Member Unit confirms to the reasonable satisfaction of Yuba that the Member Unit has entered into binding arrangements for the term of this Agreement with landowners within the Member Unit's service area to provide the groundwater pumping capacity required to meet the Member Unit's allocation provided for in Section 7 of this Agreement, Yuba will pay the Member Unit: (a) a one-time payment of \$50 per acre-foot (payable in two installments of \$25 per acre foot on January 1 of each of the first two years following the Effective Date) for the commitment to pump groundwater in Schedule 6 Years; and (b) \$50 per acre-foot after the Member Unit pumps groundwater in a Schedule 6 Year, payable no later than March 21 of the year following the Schedule 6 Year of water transfer. A Member Unit will be required to provide its specified percentage of groundwater pumping under the other provisions of this Agreement and be in compliance with its other obligations under this Agreement to be eligible to receive the payments provided for in this Section 8.

**9. Groundwater Pumping to Implement the Phase 8 Settlement Agreement.**

**A.** Yuba and the Member Units have supported the Phase 8 Settlement Agreement, which would obligate Yuba to pump 15,000 acre-feet per year of groundwater to substitute for surface water during below-normal, dry, critical and possibly above-normal



years (as these terms are defined in the Phase 8 Settlement Agreement). The Member Units have agreed in the Conjunctive Use Agreements (including this Agreement) to pump the following percentages of up to a total of 15,000 acre-feet per year of groundwater required to implement the Phase 8 Settlement Agreement in replacement of the delivery of irrigation water to the respective Member Units by Yuba:

|                                    |            |                          |
|------------------------------------|------------|--------------------------|
| Brophy Water District:             | 18.8%      | (2,820 acre-feet)        |
| Browns Valley Irrigation District: | 9.7%       | (1,455 acre feet)        |
| Cordua Irrigation District:        | 16.6%      | (2,490 acre-feet)        |
| Dry Creek Mutual Water Company:    | 7.4%       | (1,110 acre-feet)        |
| Hallwood Irrigation Company:       | 15.3%      | (2,295 acre feet)        |
| Ramirez Water District:            | 9.9%       | (1,485 acre feet)        |
| South Yuba Water District:         | 12.3%      | (1,845 acre feet)        |
| Wheatland Water District:          | <u>10%</u> | <u>(1,500 acre feet)</u> |
|                                    | 100%       | (15,000 acre-feet)       |

During the term of the Phase 8 Settlement Agreement, the Member Unit will pump the percentage of groundwater set forth in this section as required and requested by Yuba under the Phase 8 Settlement Agreement in replacement of the delivery of irrigation water by Yuba, subject to the terms of this Agreement. The Parties acknowledge that the ability of the Member Unit to provide such groundwater pumping will depend on the extent to which the Member Unit can make arrangements with landowners within its service area to provide the groundwater pumping capacity required. The groundwater pumping allocation set forth in this section may be adjusted from time to time with the consent of the Member Unit, other affected Member Units and Yuba to reflect the ability of Member Units to provide this pumping capacity. A Member Unit will be required to provide its specified percentage of groundwater pumping under Section 7 ("Groundwater Pumping in Schedule 6 Years") and this section as a prerequisite to participating in a groundwater substitution water transfer under Section 12 ("Groundwater Substitution Water Transfer Program") of this Agreement. Groundwater pumping under this section will be carried out consistent with the requirements of Section 15 ("Groundwater Pumping Requirements") of this Agreement.

**B.** Notwithstanding the previous subsection and the provisions of Section 10 ("Payments for Phase 8 Settlement Agreement Pumping"), Yuba may elect in its sole discretion to provide from storage any amount of the water needed in any year to satisfy the obligations under the Phase 8 Settlement Agreement rather than have the Member Unit pump groundwater as provided in this section, provided that, during any year that Yuba releases water for a Surface Water Supplemental Transfer, Yuba will provide from storage rather than require groundwater pumping by the Member Unit for the amount of water needed to satisfy the obligations under the Phase 8 Settlement Agreement for that year, unless the Surface Water Supplemental Transfer water releases are to meet make-up water supply obligations for Component 1, 2 and 3 Water (as defined in the Water Purchase Agreement) in any year, in which case Yuba may require the Member Unit to pump groundwater as provided in this section. To the extent that Yuba so elects, Yuba will reduce the quantity of groundwater pumping that would otherwise have been required by the Member Unit under this section accordingly, and Yuba will retain all of the revenues received under the Phase 8 Settlement Agreement for such quantity of water provided by Yuba for this purpose.

**10. Payments for Phase 8 Settlement Agreement Pumping.** To the extent the Member Unit confirms to the reasonable satisfaction of Yuba that the Member Unit has entered into binding arrangements for the term of the Phase 8 Settlement Agreement with landowners within the Member Unit's service area to provide the groundwater pumping capacity required to meet the Member Unit's allocation provided for in Section 9 ("Groundwater Pumping to Implement the Phase 8 Settlement Agreement") of this Agreement, Yuba will pay the Member Unit the amount of the payments received by Yuba under the Phase 8 Settlement Agreement for transferred groundwater substitution water (subject to the other provisions of this Agreement) that the Member Unit pumps for this purpose, except that, Yuba will retain \$5 per acre-foot. The Phase 8 Settlement Agreement includes payment of Groundwater O&M Costs (as defined in this Agreement) for groundwater provided by the Member Unit under the Phase 8 Settlement Agreement. The



Member Unit acknowledges that the Phase 8 Settlement Agreement (and not this Agreement or the Water Purchase Agreement) sets forth the provisions for paying for groundwater substitution pumping by the Member Unit under Section 9 ("Groundwater Pumping to Implement Phase 8 Settlement Agreement") and this section. In the event of a dispute that arises under the Phase 8 Settlement Agreement regarding the payment for groundwater substitution pumping by the Member Unit under Section 9 ("Groundwater Pumping to Implement Phase 8 Settlement Agreement") and this section, Yuba will take reasonable steps to enforce such payment provisions, but Yuba will be entitled to deduct its reasonable costs incurred in that regard from the revenues received, or to assign to the Member Unit the right to pursue (at the cost of the Member Unit) enforcement of such payment provisions with respect to the quantity of groundwater pumped by the Member Unit for this purpose. A Member Unit will be required to provide its specified percentage of groundwater pumping under the other provisions of this Agreement and be in compliance with its other obligations under this Agreement to be eligible to receive the payments provided for in this Section 10.

**11. Payments for Pumping to Mitigate for Deficiencies in Supplemental Water Supplies.** Implementation of the Fisheries Agreement and the Water Purchase Agreement may result in deficiencies in deliveries of supplemental water supplies under the Water Supply Contract. To mitigate for these deficiencies in supplemental water supplies, Yuba will pay the Member Unit an amount to reimburse the actual groundwater pumping meter, demand and electrical energy charges incurred when the Member Unit pumps groundwater to make up for a deficiency in the supplemental water supply under the Water Supply Contract, provided that: (a) the Member Unit will take reasonable measures to pump groundwater for this purpose at as low a cost as is feasible (that is, taking into consideration the quantity of groundwater that is needed to be pumped, time-of-use electricity charges and using wells that can most-efficiently pump groundwater for this purpose); and (b) Yuba will not be obligated to make payments under this Section 11 to the Member Unit during a Conference Year. The Member Unit will provide Yuba documentation of these energy costs (such as a utility energy bill and other documentation as Yuba may reasonably request) as a condition of receiving the reimbursement provided for in this section. At the request of the



Member Unit, Yuba will cooperate with the Member Unit to maintain the privacy of the utility bill information provided by groundwater pumpers to the extent allowed under the California Public Records Act. Groundwater pumping under this section will be carried out consistent with the requirements of Section 15 ("Groundwater Pumping Requirements") of this Agreement. A Member Unit will be required to provide its specified percentage of groundwater pumping under the other provisions of this Agreement and be in compliance with its other obligations under this Agreement to be eligible to receive the payments provided for in this Section 11.

## **12. Groundwater Substitution Water Transfer Program.**

**A.** Member Units who execute and perform the Conjunctive Use Agreements (including this Agreement) will have the first priority over Member Units who do not execute the Conjunctive Use Agreements to participate in Yuba's Groundwater Substitution Water Transfer Program. Groundwater pumping under this section will be carried out consistent with the requirements of Section 15 ("Groundwater Pumping Requirements") of this Agreement. Yuba will reach consensus with the Management Committee prior to allowing a Member Unit who does not execute the Conjunctive Use Agreement: (1) to participate in Yuba's Groundwater Substitution Water Transfer Program; or (2) to be compensated for pumping groundwater under the Phase 8 Settlement Agreement; or (3) to be reimbursed for energy costs in pumping groundwater due to deficiencies in supplemental water supplies under their respective water supply contracts, to ensure that such Member Unit pays appropriate fees and agrees to groundwater pumping requirements that are comparable to the requirements under this Agreement.

**B.** The Water Purchase Agreement includes the purchase of transfer water that is made available as a result of the Groundwater Substitution Water Transfer Program in certain dry years at prices and under the terms specified for "Component 4 Water" in the Water Purchase Agreement. Yuba's environmental compliance documents for the Yuba River Accord and petition to the State Board for approval of a long-term water

transfer, adding the SWP and the CVP to the place of use under the Yuba's water rights, include the Groundwater Substitution Water Transfer Program referred to in this section.

C. Yuba will notify the Member Unit from time to time of the opportunity to participate in the Groundwater Substitution Water Transfer Program, consistent with the provisions of the Water Purchase Agreement. When so notified by Yuba, the Member Unit will have the sole discretion to determine: (1) the amount of groundwater (if any) that the Member of Unit will pump for the Groundwater Substitution Water Transfer Program; and (2) the terms under which such groundwater would be pumped (for example, payment for a minimum quantity of groundwater pumped), and will so notify Yuba. Yuba will assist the Member Unit in communicating this information to the Buyer under the Water Purchase Agreement, and confirming this water transfer transaction. Except as provided in subsection D of this section, Yuba will pay the Member Unit for each acre foot of groundwater pumped for the Groundwater Substitution Water Transfer Program the amount of the payments received by Yuba under the Water Purchase Agreement for transferred groundwater substitution water (subject to the other provisions of this Agreement), except that, Yuba will retain \$15 per acre-foot. The Water Purchase Agreement includes payment of Groundwater O&M Costs (as defined in this Agreement) for groundwater provided by the Member Unit for the Groundwater Substitution Water Transfer Program. The Member Unit acknowledges that the Water Purchase Agreement sets forth the provisions for accounting for and paying for groundwater substitution pumping by the Member Unit under this section. In the event of a dispute that arises under the Water Purchase Agreement regarding the accounting or payment for groundwater substitution pumping by the Member Unit under this section, Yuba will take reasonable steps to enforce such payment provisions, but Yuba will be entitled to deduct its reasonable costs incurred in that regard from the revenues received, or to assign to the Member Unit the right to pursue (at the cost of the Member Unit) enforcement of such payment provisions with respect to the quantity of groundwater pumped by the Member Unit for this purpose. A Member Unit will be required to provide its specified percentage of groundwater pumping under the other provisions of this Agreement



and be in compliance with its other obligations under this Agreement to be eligible to receive the payments provided for in this Section 12.

**D.** In accordance with the terms of the Fisheries Agreement (for example Section 5.1.8), in Schedule 2 and 3 Years, ten percent of the Groundwater Substitution Water Transfer Program water will be dedicated to mitigating instream impacts. In Schedule 4 and 5 Years, twenty percent of the Groundwater Substitution Water Transfer Program water will be dedicated to mitigating instream impacts. In the event that these quantities will be released during times when the water could not be transferred for export from the Delta, Yuba will attempt to arrange for transfers of these mitigation quantities, and pay any such transfer revenues (if any) received by Yuba to the Member Units, except that Yuba will retain \$15 per acre-foot.

**13. Conference Years.** In Conference Years, Yuba will meet with the Technical Committee and Management Committee, and the parties to the Fisheries Agreement and the Water Purchase Agreement, to develop an operating plan for that year that will balance water supply and instream flow needs for that year. The water supply that Yuba makes available to the Member Unit during a Conference Year will be according to the provisions of the Water Supply Contract.

**14. Yuba's Conjunctive Use Program.**

**A.** Yuba's conjunctive use program will monitor groundwater pumping to avoid long-term impacts from implementation of the Yuba River Accord to the sustainable yield of the aquifer and impacts to domestic and municipal wells. The maximum annual amount of groundwater pumping for the Schedule 6 Year commitments (Section 7 of this Agreement), for the Phase 8 Settlement Agreement commitments (Section 9 of this Agreement), to mitigate for deficiencies in supplemental water supplies (Section 11 of this Agreement), and for the Groundwater Substitution Water Transfer Program (Section 12 of this Agreement) will not exceed approximately 120,000 acre-feet per year to avoid long-term

impacts to the sustainable yield of the aquifer. Groundwater pumping for all purposes under this Agreement will be managed to avoid long-term impact to the sustainable yield of the aquifer. Yuba will coordinate with the Technical Committee and Management Committee in developing a program for efficiently providing the groundwater needed to implement this Agreement (including the designation of wells that would participate in the program). Yuba will work with the Technical Committee and Management Committee to avoid (or mitigate for) impacts to domestic and municipal wells in accordance with the Groundwater Monitoring and Reporting Program (**Exhibit 1** of this Agreement).

**B.** To avoid air quality impacts from the implementation of the Yuba River Accord (including the Groundwater Substitution Water Transfer Program), Yuba will coordinate with the Technical Committee and Management Committee in the development and implementation of a program to convert certain diesel pumps to electrical pumps. Yuba has implemented as part of the Water Purchase Agreement a program to reimburse costs incurred from and after September 1, 2004 to convert certain pumps used to pump groundwater from diesel to electric, or to other forms of energy that reduce air quality impacts, or implement other actions that mitigate air quality impacts from pumping. Yuba encourages the Member Unit to consult with Yuba and the Management Committee prior to incurring diesel pump conversion costs to ensure that costs will be reimbursable under Section 12A of the Water Purchase Agreement. In consultation with the Member Unit, the Technical Committee and the Management Committee, Yuba will reimburse from up to \$1,000,000 in funds made available for this purpose to Yuba under Section 12A of the Water Purchase Agreement the costs incurred by the Member Unit to convert pumps to electricity or other forms of energy that reduce air quality impacts to provide groundwater under this Agreement, subject to the following: (1) the Member Unit submits documentation to Yuba for costs incurred that meet the requirements for reimbursement for this purpose under the Water Purchase Agreement; (2) Yuba will not be required to reimburse for costs incurred for a well that are not comparable to the costs for diesel conversion for other wells used by the Member Unit for groundwater pumping under this Agreement; (3) the total amount reimbursed to Member Units by Yuba does not exceed the amount of funds received by Yuba



for this purpose under the Water Purchase Agreement; and (4) Yuba will consider costs that have been incurred for this purpose prior to the effective date of this Agreement for reimbursement prior to considering costs incurred after the effective date of this Agreement. A Member Unit will be required to be in compliance with its other obligations under this Agreement to be eligible to receive the payments provided for in this Section 14.

C. During the term of this Agreement, Yuba will pay the Member Units the amount of \$5 per acre foot per year for 60,000 acre-feet of groundwater pumping capacity from wells that satisfy the requirements of Section 15 ("Groundwater Pumping Requirements") of this Agreement, to be used as the Member Unit determines appropriate to pay costs incurred by the Member Unit and affected landowners to perform the obligations of the Member Unit under this Agreement. The payments by Yuba under this section will be allocated to the Member Units as follows, provided that the payment to Wheatland Water District will not commence until the year during which Wheatland receives surface water deliveries from Yuba:

|                                    |            |
|------------------------------------|------------|
| Brophy Water District:             | 22.6%      |
| Browns Valley Irrigation District: | 11.6%      |
| Cordua Irrigation District:        | 0%         |
| Dry Creek Mutual Water Company:    | 8.8%       |
| Hallwood Irrigation Company:       | 18.3%      |
| Ramirez Water District:            | 11.9%      |
| South Yuba Water District:         | 14.8%      |
| Wheatland Water District:          | <u>12%</u> |
|                                    | 100%       |

The groundwater pumping allocation set forth in this section may be adjusted from time to time with the consent of the Member Unit, other affected Member Units and Yuba to reflect the ability of Member Units to provide this pumping capacity. A Member Unit will be required to provide its specified percentage of groundwater pumping under the other provisions of this Agreement and be in compliance with its other obligations under this

Agreement to be eligible to receive the payments provided for in this Section 14. The payment obligation provided by this section will terminate at the end of the final year during which the Member Unit is obligated to pump groundwater for any purpose (other than under the Phase 8 Settlement Agreement, the term of which is expected to be longer than the term of this Agreement) under this Agreement. The payment provided for in this section will be made promptly following the Effective Date and confirmation by the Member Unit of its eligibility to receive this payment as provided herein, and thereafter during January each year as provided in this section. The payment provided for in this section may be suspended or terminated effective upon Yuba notifying the Member Unit prior to December 31 that Yuba has determined that it is unlikely that significant quantities of Yuba transfer water will be accounted for under the Water Purchase Agreement due to a Force Majeure event or a Regulatory Action.

**D.** PG&E electric utility charges include several components. Prior to 2006, one of these components was a "connected-load charge" that was charged on the kilowatt rating of electric pumps that were connected to the PG&E power system during months when there was no energy demand ("Connected-Load Charge"). The Connected-Load Charge for pumps larger than 35 horsepower was discontinued in 2006. Reimbursement for the Connected-Load Charge (if any) may be among the costs for which reimbursement is provided under this Agreement for Groundwater O&M Costs. In the event that after the date of execution of this Agreement, the Connected-Load Charge is reinstituted for pumps larger than 35 horsepower, then during the term of this Agreement, Yuba will pay the Member Units up to \$150,000 per year for the Connected-Load Charge (if any) on wells for pumps larger than 35 horsepower that satisfy the requirements of Section 15 ("Groundwater Pumping Requirements") of this Agreement, in addition to the payments provided for in subsection C of this Section 14, to be allocated among the Member Units in the same percentages as set forth in subsection C of this Section 14, subject to the following: (1) the payment obligation provided by this subsection will be subject to termination or suspension on the same terms as the annual payment provided in subsection C of this Section 14; (2) the Member Unit will not be entitled to reimbursement for the Connected-Load



Charge under this subsection to the extent that the Connected-Load Charge is reimbursed to the Member Units as part of the payment of Groundwater O&M Costs; and (3) the Member Unit must provide Yuba documentation of the Connected-Load Charge (such as the utility energy bill and other documentation as Yuba may reasonably request) as a condition of receiving the payment provided for in this subsection.

## **15. Groundwater Pumping Requirements.**

**A.** The Member Unit will provide to Yuba one or more lists of the wells and their locations that may be pumped to provide groundwater under this Agreement. In no case will groundwater pumping commence from a well prior to approval of the well by Yuba and DWR in accordance with the terms of the Water Purchase Agreement. Yuba will: (1) review the list of wells, their locations and any other pertinent information provided by the Member Unit; (2) determine in consultation with DWR if the well meets the requirements for wells under the Water Purchase Agreement (including meeting the requirements under Section 14B of this Agreement to avoid impacts to air quality); (3) determine, in consultation with the Member Unit, an efficient basis for providing the quantity of groundwater requested by Yuba; and (4) notify the Member Unit as soon as practicable after the submittal of a list by the Member Unit of any well that Yuba or DWR has determined is not acceptable for pumping under this Agreement, and will inform the Member Unit of the basis for this determination.

**B.** The Member Unit will ensure that flow-measuring devices are acquired, installed and maintained to measure the quantity of groundwater actually being pumped by the Member Unit. If requested by Yuba, the Member Unit will require calibration tests of flow-measuring devices and provide the calibration information to Yuba, at no cost to Yuba. Yuba will not be responsible for any costs of installing, operating, collecting information from or maintaining groundwater pumping facilities or flow-measuring devices, or for any costs of conveying groundwater pumped to places of use within the Member Unit's service area pursuant to this Agreement. The Member Unit, at no

cost to Yuba, will comply with and perform the duties of the Member Unit under the Groundwater Monitoring Plan and Reporting Program (**Exhibit 1** to this Agreement).

**C.** Groundwater pumping under this Agreement may occur during the period of time designated by Yuba in the notice to the Member Unit to commence groundwater pumping under this Agreement, or any other period approved by the Parties, and when the Member Unit can reasonably and beneficially use the pumped water, provided that: (a) the well has first been approved by Yuba in accordance with subsection A of this section; (b) the Member Unit has first received the notice from Yuba to commence pumping; (c) the Member Unit will not pump groundwater earlier than the date specified in the notice from Yuba; and (d) groundwater pumped must be put to reasonable use for irrigation on the lands that would have otherwise been served with surface water within the Member Unit's service area in the absence of the groundwater pumping under this Agreement. If the Member Unit receives the notice from Yuba to pump groundwater, then the Member Unit will provide to Yuba within fifteen days of such notice a schedule for pumping the quantity of groundwater requested by Yuba. By the fifteenth day of each month, the Member Unit will provide Yuba the: (1) monthly quantities of groundwater pumped from each well for the previous month under this Agreement; (2) the monthly quantities of surface water diverted by the Member Unit under the Water Supply Contract; and (3) the information necessary for the Member Unit to receive reimbursement for Groundwater O&M Costs for providing groundwater for the Groundwater Substitution Water Transfer Program (as provided in Section 10 and subsection C of Section 12 of this Agreement).

**D.** The Member Unit will be responsible for the distribution and reasonable and beneficial use of water pumped under this Agreement within the Member Unit's boundaries. The Parties intend that only groundwater produced by the Member Unit in lieu of surface water deliveries beyond the normal monthly production of groundwater by the Member Unit will be credited as having been produced as groundwater under this Agreement. Yuba will have the right to deny reimbursement to the Member Unit for groundwater to the extent that the quantities of surface water deliveries to the Member Unit



and groundwater pumped exceed the quantity of surface water that would normally have been delivered to the Member Unit in the absence of this Agreement. Yuba intends to strictly enforce this provision.

**E.** The Member Unit will make arrangements for Yuba and its representatives to have access to facilities and records to the extent reasonably necessary to verify that the groundwater pumping, the management of such pumping and the implementation of the Groundwater Monitoring and Reporting Program meet the requirements of this Agreement.

**F.** The Member Unit will reduce the quantity of surface water that would otherwise have been diverted that year and applied to beneficial use under the Water Supply Contract by the quantity of groundwater requested by Yuba from the Member Unit under this Agreement. The Parties intend that unreasonable canal and ditch water spill rates and other inefficient irrigation practices be avoided, especially during years in which the Member Unit is pumping groundwater for purposes of this Agreement. Yuba intends to strictly enforce this provision in consultation with the Member Unit and the Management Committee. Nothing in this Agreement affects the obligation of the Member Unit to pay Yuba's water charges if any are applicable under the Member Unit's water service contract with Yuba for groundwater pumped under any provision of this Agreement.

**G.** In the event that the Member Unit fails to pump the quantity of groundwater requested by Yuba pursuant to this Agreement for a Schedule 6 Year obligation or under the Phase 8 Settlement Agreement, or committed by the Member Unit for the Groundwater Substitution Water Transfer Program, Yuba may reduce its surface water deliveries to the Member Unit during the irrigation season during which the Member Unit was required to pump groundwater as a replacement supply for surface water, or during the following irrigation season, by the difference between the quantity of groundwater requested by Yuba and the quantity of groundwater pumped by the Member Unit. Yuba intends to strictly enforce this provision.

**H.** The Member Unit, at no cost to the Yuba, will be responsible for: (a) working cooperatively with third parties (i.e., persons or entities who are not Parties to this Agreement) to reasonably determine whether pumping groundwater causes adverse impacts to third parties; (b) working cooperatively with third parties to avoid or mitigate for adverse impacts from pumping groundwater; and (c) resolving any claim for damages from third parties alleged to have been caused by pumping groundwater, in accordance with the Groundwater Monitoring and Reporting Program (**Exhibit 1** to this Agreement).

**I.** A Member Unit will be required to be in compliance with its obligations under this Section 15, Section 16 ("Reasonable and Beneficial Use of Yuba Water Supplies") and other provisions of this Agreement to be eligible to receive the payments provided for in this Agreement.

**J.** The Water Purchase Agreement sets forth the principles under which Yuba water can be accounted for as transfer water. The priority for accounting for Yuba transfer under the Water Purchase Agreement and this Agreement, will be to account for: (1) Component 1 Water first; (2) then Component 2 Water; (3) then Component 3 Water; (4) then Surface Water Supplemental Transfer water releases to meet water make-up supply obligations for Component 1, 2 and 3 Water in any year; (5) then Phase 8 Settlement Agreement water; (6) then Component 4 Water (as these terms are defined in this Agreement and the Water Purchase Agreement); and (7) then Surface Water Supplemental Transfer water other than for the purposes set forth in (4) of this subsection. The groundwater substitution water that is made available by the Member Unit under this Agreement will be accounted for first as Schedule 6 Year water, then as Phase 8 Settlement Agreement water and then as Groundwater Substitution Water Transfer Program water. Subject to these priorities and the other provisions of this Agreement, Yuba will use its best efforts to have groundwater substitution water made available by the Member Unit under this Agreement accounted for as transfer water under the Phase 8 Settlement Agreement and the Water Purchase Agreement, as applicable.



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

**17. Environmental Compliance.** Execution of this Agreement will be subject to compliance with CEQA and other applicable environmental requirements. Yuba is the lead agency for CEQA compliance.

**18. Mandatory Date for Review of this Agreement.** The Parties will meet prior to December 31, 2009 to discuss procedures under this Agreement and proposals to amend this Agreement.

**19. Technical Committee and Management Committee**

**A. Technical Committee.** The Technical Committee will provide assistance when requested by the Management Committee on issues associated with the technical implementation of this Agreement. If the Technical Committee is unable to agree on a recommendation to the Management Committee, the Technical Committee will cooperate to provide a balanced presentation of the facts, opinions and other information underlying the various positions on the issue to be determined.

**B. Management Committee.** The Management Committee will: (1) provide management guidance in implementing this Agreement; (2) make any factual determinations required to implement this Agreement; (3) consider information provided by the Technical Committee, if applicable, when making decisions; (4) identify and resolve any Management-related implementation issues; (5) compile, or cause to be compiled, data on waterfowl and migratory bird populations, nesting and brooding as result of the use of Winter

Water by the Member Units; and (6) review this Agreement and the procedures provided for herein on an annual basis, and recommend amendments to this Agreement as necessary. If consensus among the representatives to the Management Committee (including Yuba and the Member Unit) cannot be reached on any issue necessary to the ongoing implementation of this Agreement, Yuba and the Member will meet and confer in a good faith effort to reach agreement. In the event that agreement cannot be reached among the Parties on an issue, the issue will be subject to Section 25 ("Remedies and Dispute Resolution") of this Agreement. With respect to item (5) of this subsection, the Member Units will be responsible for all costs associated with collecting this data, and the Management Committee will make an annual presentation of this information to Yuba's Board of Directors, to be included in the official minutes of such Board meeting. The Parties intend that the Management Committee meet at least once prior to the commencement of the irrigation season and at least once after the conclusion of the irrigation season to discuss procedures under this Agreement.

**20. FERC Annual License.**

**A. Annual Extensions of FERC License.** Yuba expects that, upon the expiration of the term of the FERC License, FERC will issue to Yuba one or more FERC Annual Licenses before it issues to Yuba the FERC Long-Term License. The term of this Agreement will be extended for the same term as an extension of the Water Purchase Agreement and/or the Fisheries Agreement to coincide with the term of one or more FERC Annual Licenses.

**B. FERC Long-Term License.** Yuba expects that, upon the expiration of the term of the FERC Annual License, FERC will issue to Yuba the FERC Long-Term License. At or prior to that time, the Parties will meet to discuss an extension of the term of this Agreement on terms that are agreed to by Parties.

**21. Approvals and Conditions Required to Perform this Agreement.**



**A. Actions of Yuba.** Yuba will be responsible for taking all actions necessary for Yuba to perform its obligations under this Agreement.

**B. Actions of Member Unit.** The Member Unit will be responsible for taking all actions necessary for the Member of Unit to perform its obligations under this Agreement.

## **22. Mutual Indemnification.**

**A.** To the extent permitted by California law, Yuba will indemnify, defend and hold the Member Unit and its officers, agents and employees safe and harmless from any and all claims, judgments, damages, penalties, costs, liabilities and losses (including without limitation, sums paid in settlement of claims, actual attorney's fees, paralegal fees, consultant fees, engineering fees, expert fees and any other professional fees) that arise from or are related in any way to Yuba's activities under this Agreement that are under the exclusive control of Yuba, including but not limited to the release, conveyance, use or distribution of water released by Yuba from the Yuba Project for purposes of this Agreement. In addition, Yuba's indemnification obligation under this subsection will apply to claims related to the conveyance and use of Yuba water under the Phase 8 Settlement Agreement and the Water Purchase Agreement.

**B.** To the extent permitted by California law, the Member Unit will indemnify, defend and hold Yuba and its officers, agents and employees safe and harmless from any and all claims, judgments, damages, penalties, costs, liabilities and losses (including without limitation, sums paid in settlement of claims, actual attorney's fees, paralegal fees, consultant fees, engineering fees, expert fees and any other professional fees) that arise from or are related in any way to Member Unit's activities under this Agreement that are under the exclusive control of the Member Unit, including but not limited to the conveyance, use or distribution of groundwater made available by the Member Unit under this Agreement.

**23. Force Majeure Event.** A Force Majeure Event will excuse or suspend performance for the duration of the Force Majeure Event. During a Force Majeure Event, each Party will to the extent practicable take actions to minimize the impacts of the Force Majeure Event on the other Party.

**24. Regulatory Action.** In the event of a Regulatory Action during the term of this Agreement: (a) the affected Party will promptly notify the other Party of the Regulatory Action and the manner in which it affects performance under this Agreement; and (b) the Parties will proceed under the process provided for in Section 25 ("Remedies and Dispute Resolution"), to the extent applicable. This section does not affect the other rights and remedies of the Parties under this Agreement.

**25. Remedies and Dispute Resolution.**

**A.** Should a material disputes arise concerning any provision of this Agreement, or the rights and obligations of the Parties thereunder, including those involving possible termination or those that might cause the initiation of any administrative or judicial proceeding to enforce or interpret this Agreement, the Parties will present the issue to the Management Committee (which may request assistance from the Technical Committee) for a recommendation for resolving the dispute.

**B.** If the process described in the preceding subsection fails to resolve the dispute within thirty days, the Parties will submit the dispute to a mediator who has experience in water-related disputes. The costs of any such mediation will be borne one-half each 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.



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.

**26. Effect of this Agreement on the Water Supply Contract.**

A. Nothing in this Agreement affects or interprets the respective water rights held by the Member Unit or the respective rights and obligations of the Parties under the Water Supply Contract, except as expressly provided herein.

B. In recognition of the importance of having Winter Water available for waterfowl habitat, rice straw decomposition, recreation and other beneficial purposes, Yuba confirms Yuba's continued support, subject to the provisions below, for the ability of the Member Unit to reschedule monthly water delivery allocations for use for Winter Water purposes. In addition, Yuba confirms that nothing in the Yuba River Accord or this Agreement limits the extent, in acreage or in the amount of water, that Winter Water can be put to reasonable and beneficial use by the Member Unit consistent with the terms of the Water Supply Contract. Section 7.4 on pages 110 and 111 of Decision 1644 contains text discussing the State Board's conclusions about the water requirements for waterfowl habitat. Decision 1644 does not contain any order that requires (nor does Yuba interpret Decision 1644 to require) a limitation on either the overall amount of water that may be used for waterfowl habitat or the number of acre feet of water that may be applied to each acre of land for this purpose under Yuba's water right permits. Yuba has a pending lawsuit challenging Decision 1644, including the State Board's conclusions regarding the current and future consumptive water demands within Yuba's service area. Yuba will seek to resolve this issue, in consultation with the Member Units, as part of a settlement of this lawsuit following the

State Board's approval of the Yuba River Accord (referred to in Section 4 of this Agreement). The Member Unit acknowledges, in accordance with the provisions of the Water Supply Contract, that Yuba's ability to approve a request by the Member Unit to reschedule water delivery allocations for use for Winter Water purposes will be affected by: (1) PG&E's approval of the proposed rescheduling to the extent that such approval is required under the PG&E Power Contract; (2) the extent to which water supplies are available for the proposed rescheduling; (3) the extent to which the proposed rescheduling would impair Yuba's contractual commitments, including water delivery obligations under water supply contracts with other Member Units; (4) the extent to which rescheduling would impair Yuba's ability to comply with applicable requirements for instream flow releases or recreation requirements under regulatory agency permits (including Decision 1644), licenses (including the FERC License), agreements (including the Fisheries Agreement), and court orders and decisions; and (5) the extent to which the proposed rescheduling would unreasonably affect Yuba's operations and maintenance of the Yuba Project. Yuba will schedule a meeting with the Management Committee to review and attempt to reach agreement concerning uniform procedures for rescheduling of monthly water delivery allocations for use for Winter Water purposes, with the goal to agree to a uniform process for rescheduling winter water and to amend the Water Supply Contract to include such provisions prior to the expiration of its current term.

## **27. General Contracting Provisions.**

**A. Notices.** The time for providing any notices specified in this Agreement may be extended within the term of this Agreement with the consent of the Parties, confirmed in writing, without requiring an amendment to this Agreement. All notices and other communications required under this Agreement will be in writing, and will be deemed to have been duly given upon the date of service, if: (a) served personally on the 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 notice is to be given by first-class mail, postage prepaid, and properly addressed to the



designated representatives of the Parties set forth below. A Party may notify the other Parties in writing of a change in its designated representatives, without requiring an amendment to this Agreement.

Yuba: General Manager  
Yuba County Water Agency  
1220 F Street  
Marysville, CA 95901

Member Unit: General Manager  
Browns Valley Irrigation District  
Post Office Box 6  
Brownsville, CA 95918

**B. 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.

**C. 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.

**D. Binding on Successors/Assignment.** This Agreement will bind and inure to the benefit of the respective successors and assigns of the Parties, 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 Parties, which approval will not unreasonably be withheld.

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

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

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

**G. Opinions and Determinations.** Where the terms of this Agreement provide for action to be based upon the opinion, determination, approval or review of either 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.

**H. 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.

**I. 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.

**J. Complete Contract.** This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this Agreement between 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.

**K. Determination of Unenforceable Provisions.** If any term or provision of this Agreement is deemed invalid or unenforceable by any court of final jurisdiction, the Parties will meet and attempt to address this situation pursuant to the provisions of Section 25 ("Remedies and Dispute Resolution") of this Agreement.

**L. 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.

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

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

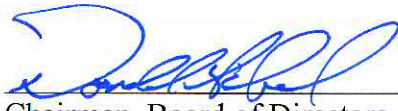
**O. Remedies Not Exclusive.** The remedies provided in this Agreement are cumulative and not exclusive, and are in addition to any other remedies that may be provided by law or equity. The exercise by the Party of any remedy under this Agreement will be without prejudice to the enforcement of any other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

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

The foregoing is hereby agreed to by the Parties.

YUBA COUNTY WATER AGENCY

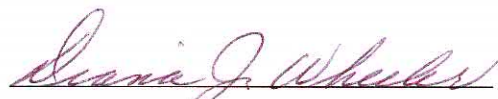
Attest:

  
Chairman, Board of Directors

  
Secretary

BROWNS VALLEY IRRIGATION DISTRICT

Attest:

  
Diana J. Wheeler, President





## **EXHIBIT 1**

### **Groundwater Monitoring and Reporting Program/Third-Party Impacts Action Plan**

#### **1. Groundwater Monitoring and Reporting Program**

This monitoring program is to monitor the effects of pumping groundwater under this Agreement and avoid and mitigate for impacts to third parties.

In cooperation with DWR, Yuba has monitored Yuba County groundwater conditions for many years, and many aspects of the groundwater resources are well known. Yuba and DWR have worked cooperatively to develop a groundwater transfer monitoring and reporting program specific to Yuba County for past groundwater substitution water transfers. Yuba has also developed a Groundwater Management Plan ("GMP"), which was adopted on March 1, 2005 pursuant to Water Code Sections 10750 *et seq.* The GMP formalizes a monitoring program that includes measuring water levels in wells that are part of a dedicated monitoring well network, a plan to expand the network, annual reporting provisions and other groundwater monitoring activities. Since 2005, Yuba has constructed eight additional groundwater monitoring wells for this program. (See DWR, Memorandum Report, "Monitoring Well Construction Technical Assistance," April 2007.) Information gathered from the activities specified in the GMP, along with the activities described in this exhibit, will be used to assess effects of groundwater pumping on groundwater resources, and to provide reasonable assurances that any water pumped and accounted for as part of any groundwater substitution is in lieu of surface water delivered by Yuba to the Member Units. Yuba will continue to work with DWR and the Member Units to identify and resolve any new groundwater monitoring issues.

Consistent with Exhibit 3 of the Water Purchase Agreement, the Member Unit and Yuba, respectively, will do the following:

- a. The water level in selected production wells geographically dispersed throughout each Member Unit pumping groundwater will be measured by the Member Unit each year prior to the initial pumping up groundwater. Selection of these wells will be by mutual agreement of the Member Unit and Yuba and DWR (in accordance with the

provisions of the Water Purchase Agreement). Upon termination of groundwater pumping each year, the water level will be measured by the Member Unit, and such measurements will continue on a monthly basis until water levels have recovered to the pre-pumping level, or have stabilized. Water-level measurements will not be required following Spring high water levels in the year following the year of groundwater pumping. The Member Unit will provide the water-level readings to Yuba within fifteen days of each reading.

b. Flow-meter readings will be recorded every month by the Member Unit for each production well through the pumping period. In addition, electric meter readings and fuel consumption for diesel pumps will be recorded by the Member Unit, and made available to Yuba upon request. The quantity of groundwater pumped between successive readings will be calculated by the Member Unit, and reported to Yuba.

c. Electrical Conductivity ("EC") will be determined by the Member Unit in consultation with Yuba for selected production wells at the initiation of pumping (or as soon thereafter as practicable), two months after initial EC measurements and at the termination of pumping, to the extent required under the Water Purchase Agreement.

d. For selected production wells (to be identified by Yuba in consultation with the Member Unit before the monitoring plan is finalized) near Yuba monitoring wells, draw-downs analyses (distance and time) will be completed by Yuba (with the cooperation of the Member Unit), and comparisons made to monitoring well-water levels.

e. All monitoring data will be reported by the Member Unit to Yuba on a semi-monthly basis, and Yuba will prepare an annual summary report evaluating the impacts of groundwater pumping under this Agreement and the Water Purchase Agreement. The report will include water-level contour maps for the groundwater basin showing initial water levels and final recovered-water levels.

## **2. Groundwater Pumping Operations Plans**

The Water Purchase Agreement sets forth the procedures by which the total amount of water to be transferred will be determined. A portion of the water will be from surface water and a portion may be provided through groundwater substitution pumping. Yuba will



base the determination of the amount of water to be provided through groundwater substitution pumping (in consultation with the Member Unit) by: (a) estimating the amount of surface water that will be transferred for the year by operation under the flow schedules in the Fisheries Agreement and the September 30 target New Bullards Bar Reservoir storage level; (b) determining the amount of water from groundwater substitution pumping that Member Units can make available through wells of farmers who are willing to participate in the program and whose farms are located within a participating Member Unit; and (c) determining the amount of water that can be pumped within the safe yield of the basin without contributing to long-term overdraft and without resulting in significant unmitigated impacts to other groundwater users in the basin.

This section sets forth the procedure that will be used to determine the amount of water that can be pumped within the safe yield of the basin without contributing to long-term overdraft, and without resulting in any significant unmitigated third-party ("Third Party" or "Third Parties") impacts to other groundwater users in the basin. Section 1 of this Exhibit describes the monitoring plan that will be used to obtain information from which the determination will be made of the condition of the groundwater basin in the Spring of the year during which groundwater substitution pumping is planned. Based on this condition, Yuba will determine the expected response of the basin to the proposed pumping for that year and the resulting condition of the basin at the conclusion of the pumping. Determination of the expected condition at the conclusion of the pumping will be made by examining the historic response of the basin during previous years when pumping occurred and by examining the recovery of the basin during pumping years and successive years, and by comparing these basin responses with the planned pumping. Analysis of the historical responses of the basin to pumping will be used to develop empirical relationships between pumping and basin drawdown and recovery. These empirically-derived relationships will be the formulas that will be used to determine basin response to the proposed pumping.

The determination of basin response to the proposed pumping will result in an estimated basin condition at the end of pumping and an estimated condition for the Spring of the next year. This estimated condition will be compared to historical groundwater levels in the basin. In 1991, Yuba and the Member Units completed a groundwater substitution

transfer to provide water to other parts of California under the Governor's Emergency Drought Water Bank in response to a severe statewide drought. The groundwater levels that occurred in the Fall of 1991 at the end of pumping did not result in any overdraft of the groundwater basin or any significant unmitigated Third-Party impacts. Groundwater levels had been lower than these levels during the 1980's, but the extent of effects of these lower levels on groundwater users in the basin is not well known. Therefore, the Fall 1991 groundwater levels will be used for comparison with the estimated condition of the basin that will result from the proposed groundwater pumping under this Agreement and the Yuba River Accord.

If the estimated levels are above the Fall 1991 levels, then significant unmitigated Third-Party impacts will not be expected. If the estimated levels are below the Fall 1991 levels, then further examination of potential impacts and consultation with the Member Units and the GMP Water Advisory Group (discussed below) will be required. The GMP Water Advisory Group is a group that was formed under the GMP to provide input and guidance on groundwater issues. The GMP Water Advisory Group comprises representatives from local groundwater users, including municipal water purveyors, Member Units, reclamation districts and others. Groundwater substitution pumping that would result in levels near the Fall 1991 levels will occur only if the affected Member Units agree to allow such pumping. Even if the determination is that estimated levels resulting from proposed pumping will be above the Fall 1991 levels, the Member Units still will be consulted, and each Member Unit must individually approve the proposed pumping in its area or such pumping will not occur. If the amount of proposed pumping that will not cause Fall groundwater levels to drop below 1991 levels cannot be confirmed using the procedures described above, then a lower amount of pumping that satisfies the conditions of this section will be determined using these procedures. The Yuba Board of Directors reserves the right to restrict the maximum amount of groundwater substitution pumping and the right to resolve any disputes in the Water Advisory Group, Management Committee and among Member Units regarding the maximum amount of groundwater pumping.

### **3. Third-Party Impacts Action Plan**



The purpose of this third-party impacts action plan is to describe actions that will be undertaken by Yuba and the Member Unit in response to potential impact to Third Parties due to pumping groundwater under this Agreement. For purposes of this exhibit, Third Parties include local groundwater users that could be affected by fluctuations in groundwater levels due to the pumping of groundwater under this Agreement. Yuba and the Member Unit concur that prompt response to and mitigation of potential impacts to Third Parties is an important element in assuring community support for Yuba's conjunctive use program.

This action plan includes a series of steps to be taken to ensure that pumping of groundwater under this Agreement does not cause significant, unmitigated impacts to Third Parties. Under this action plan, the pumping of groundwater must not produce unmitigated impacts on Third Parties, impacts must be identified and mitigated as quickly as possible and there must be ongoing, open communications with affected Third Parties. Because not all potential impacts can be known in advance, this plan provides a response to concerns expressed by local groundwater users who believe that their water-production facilities are being or will be impacted.

Each Member Units that pumps groundwater under this Agreement will identify to Yuba a contact person or persons for initially responding to a notification of a potential Third-Party impact. The contact person for a Member Unit will be the person designated to represent the Member Unit on the Technical Committee and the GMP Water Advisory Group, unless otherwise specified. The responsibilities of Yuba under this action plan will be carried out by the General Manager, or a person designated by the General Manager.

Upon either Yuba or the Member Unit receiving notification of a potential Third-Party impact, it will immediately notify the other Party of the nature of the potential impact. The Member Units will promptly (within one day) contact the Third Party and obtain all available information as to the nature and extent of the potential impact, provide that information to Yuba, and regularly update Yuba on the status of the Member Unit's response.

If the Third Party is not within the boundaries of a Member Unit of Yuba, Yuba will either: (1) determine if it is evident that the Third Party is in close proximity to the

groundwater-production facilities of a Member Unit that are involved with pumping of groundwater, and designate the Member Unit or Member Units responsible for responding to the potential impact; or (2) consult with the Technical Committee concerning which Member Unit or Member Units should be designated for responding to the potential impact.

After the Third Party has been contacted, and relevant information received on the potential impact, the Member Unit will develop in consultation with the Technical Committee an approach (subject to approval of Yuba, and at the cost and expense of the Member Unit) to: (1) determine whether the Third Party has actually been impacted by groundwater pumping by the Member Unit; and (2) if it is determined that the Third Party has been impacted by groundwater pumping by the Member Unit, to mitigate for the impact.

Yuba will be available to provide assistance to the Member Unit in developing the foregoing approach. If it is determined that the Third Party has either not been impacted, or the impact is unrelated to groundwater pumping by the Member Unit, then Yuba and the Member Unit will work cooperatively to resolve this issue.

Yuba will resolve any dispute concerning implementation of this action plan, including which Member Unit will be responsible for mitigating a potential impact, whether it is reasonably likely that there was a Third-Party impact and the measures to be taken by the Member Unit to mitigate the impact. In the event that a Member Unit fails to carry out its responsibilities under this action plan, Yuba will be authorized (but not required) to perform the responsibilities of the Member Unit and recover its reasonable costs in doing so from the Member Unit, including deducting these costs from payments due the Member Unit under this Agreement. Yuba will consult with the Technical Committee in carrying out its responsibilities under this paragraph.

It is the intention of this action plan that: (1) any Third-Party impact that is reasonably likely to have been caused by the pumping of groundwater under this Agreement will be promptly and substantially mitigated; (2) as to any Third-Party impact that is not reasonably likely to have been caused by the pumping of groundwater, the Third-Party will be provided information to reasonably demonstrate the reasons that there were no impacts; and (3) Yuba, the Member Unit and the Technical Committee be involved in the implementation of this action plan.